

DATE

5 May

2020

(1)

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

- and -

(2)

CHUNNEL PLANT HIRE & CONTRACTORS LTD

**CONTRACT FOR THE PROVISION OF
BEACH MANAGEMENT**

THIS CONTRACT is made the 5th day of May 2020

BETWEEN

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE** of the Civic centre, Castle Hill Avenue, Folkestone CT20 2QY ("**the Employer**") **AND**
- (2) **CHUNNEL PLANT HIRE & CONTRACTORS LTD** (company registration no 01141225) whose registered office is at Chunnel House, 6-16 Canterbury Road, Lydden Nr Dover, Kent, CT15 7ER ("**the Contractor**")

(hereinafter collectively called "**the Parties**" and independently called "**the Party**")

WHEREAS

The Employer wishes certain works to be provided, namely the provision of Beach Management ("the Works") and has accepted a tender from the Contractor dated 27 February 2020 for the provision of the Works

IT IS HEREBY AGREED as follows:

1. This Contract incorporates the following Contract Documents and constitutes the entire agreement between the Parties relating to the Works:
 - the Employer's Schedule of Amendments to the JCT Measured Term Contract 2016 Edition ("Schedule of Amendments"), which shall prevail over any of the other documents listed below in the event of conflict between those documents and the Employer's Schedule of Amendments;
 - JCT Measured Term Contract 2016;
 - Form of Tender and Contract Specification including:
 - Price Schedule
 - Contract Drawings (Appendix D);
 - Drawing PT03 - 2015 - 001

- Drawing PT03 - 2015 – 002
- Drawing PT03 - 2015 - 003
- Drawing PT03b - 2013 - 01 - colour A1
- Drawing PT03b - 2013 - 02 - colour A1
- Drawing PT03b - 2013 - 03 - colour A1
- Drawing PT03b - 2013 - 04 - colour A1

- The Contractor's Tender Document including:
 - Form of Tender dated 27 February 2020
 - Tender Response
 - Pricing Schedule
 - Contract Specifications
 - Forms of Declaration
 - any relevant specified correspondence between the Parties.
2. In consideration of the provision of the Works by the Contractor, the Employer agrees to pay the Contractor the Contract Sum at the times and in the manner set out in this Contract. The Contract Sum shall be **£835,775.00**
 - 3 In consideration of the payments to be made by the Employer to the Contractor in accordance with Clause 2 of this Contract, the Contractor agrees to deliver the Works in compliance in all respects with the provisions of this Contract.
 4. The Employer hereby appoints the Contractor as Principal Contractor for the Works for the purposes of regulation 14 of the Construction (Design and Management) Regulations 2015 ("CDM").
 5. Without prejudice to the Contract Documents, the Contractor agrees indemnify and hold harmless the Employer against any liability which the Employer may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by the Employer to the extent that the same arises by reason of any breach of this Contract or an instruction or any tortious or negligent act or omission on the Contractor's part (and/or any third party to whom the Contractor has subcontracted the performance of the

Contractor's obligations or part thereof) in the performance of the Contractor's obligations under and in connection with this Contract.

6. Nothing in the Contracts (Rights of Third Parties) Act 1999 shall entitle a person who is not a party to this Contract to enforce any term of the Contract.
7. For the avoidance of doubt the provisions of this Contract shall be construed and interpreted according to the laws of England and for the purpose of any steps to be taken by the Employer to enforce the Contractor's obligations under this Contract or any of them the Contractor hereby submits to the jurisdiction of the Courts of Law of England.

IN WITNESS whereof the Parties have executed this Contract as a deed the day and year above written

THE COMMON SEAL of
THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE
was hereunto affixed in the presence of:



9033

[Redacted signature area]

EXECUTED AS A DEED by
CHUNNEL PLANT HIRE & CONTRACTORS LTD acting by:

Director	[Redacted signature area]
Director/ Company Secretary	[Redacted signature area]

CONDITIONS OF CONTRACT

The Form of Contract in respect of The Provision of Beach Management Services shall be the **JCT Standard Form of Measured Term Contract 2016 Edition**

The Employer shall be:

THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY

The Contractor shall be:

CHUNNEL PLANT HIRE & CONTRACTORS LTD (company registration no 01141225) whose registered office is at Chunnel House, 6-16 Canterbury Road, Lydden Nr Dover, Kent, CT15 7ER

The Contractor shall enter into the Contract with the Employer executed as a Deed

The Recitals, Articles and Contract Particulars shall be construed in accordance with the following:

1st Recital: **Folkestone to Hythe beach** as listed in PT03b 01-04 (“the Contract Area”) in accordance with the details set out or referred to in the Contract Particulars

Article 3: The Contract Administrator shall be [REDACTED] of The District Council Of Folkestone & Hythe of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY

or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.10 of the Conditions.

Article 4: The Principal Designer for the purposes of this Contract shall [REDACTED] of The District Council Of Folkestone & Hythe

or such other person as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders

Article 5: The Principal Contractor for the purposes of the CDM Regulations shall be the Contractor

or such other contractor as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders

Article 9: Modifications. The Articles of Agreement and the Conditions shall have effect as modified by the Employer’s Schedule of Amendments attached hereto.

Contract Particulars

Item	Insertion
1.1 List of Properties in the Contract Area (first Recital)	Properties owned and managed within the administrative area of The District Council Of Folkestone & Hythe
1.2 Description of types of work	Beach Management Work
2. Supplemental Provisions (Fifth Recital and Schedule)	
Collaborative working	Paragraph 1: applies
Health and Safety	Paragraph 2: applies
Cost savings and value improvements	Paragraph 3: applies
Sustainable development and environmental considerations	Paragraph 4:applies
Performance Indicators and monitoring	Paragraph 5: applies
Notification and negotiation of disputes	Paragraph 6: applies
Where Paragraph 6 applies, the respective nominees of the Parties are	Employer's nominee: [REDACTED], Engineer, The District Council of Folkestone & Hythe Contractor's nominee: [REDACTED] or such replacement as each Party may notify to the other from time to time
3 Contract Period	36 months with the provision to extend by an additional 24 months
commencing on	01 June 2020
4 Arbitration	Article 7 and clauses 9.3 to 9.8 apply.

Item		Insertion
5	BIM Protocol (where applicable)* State title, edition, date or other identifiers of relevant documents (Clause 1.1)	Does not apply
6	Minimum Value of any one Order	Does not apply
	Maximum Value of any one Order	Does not apply
7	Approximate anticipated Value of work to be carried out under this Contract	£1,250,000 (One Million, two hundred and fifty thousand pounds) for the Contract Period
	Liquidated Damages	at the rate of £15,000.00 per week
8	Priority coding for Orders (Clause 2.6)	Priority coding does not apply. Orders will contain dates for commencement and completion.
9	Construction Industry Scheme (CIS) (Clause 4.2)	The Employer at the commencement of the Contract Period is a 'contractor' for the purposes of the CIS
10	Progress Payments (Clauses 4.3, 4.4 and 4.5) <i>Estimated value of an Order above which progress payments can be applied (If none is stated, it is £2,500)</i>	Does not apply
	Valuation Dates <i>(if no date is stated, the Valuation Date is the last day of each month)</i>	The Valuation Date in each month is the [] day of the month
11	Responsibility for measurement and valuation (Clause 5.2) <i>(Unless one of the 3 options opposite is selected, the Contract Administrator shall measure and value all Orders)</i>	The Contractor shall measure and value all Orders
12.1	Schedule of Rates (Clauses 5.3, 5.6.1 and 5.6.2)	
	The Schedule of Rates is	

Item

Insertion

as contained in the Contractor's
Tender

subject to adjustments of the rates
listed in that Schedule by the

of the Adjustment Percentage
which is

_____ %

12.2 Where the Schedule of Rates is the
National Schedule of Rates the
version(s) identified opposite are to
apply

does not apply

12.3 Rates – Fluctuations
Clause 5.6.1
*(Unless "applies" is deleted, the
clause shall be deemed to apply)*

does not apply

12.4 Basis and dates of revision
(Not applicable where National
Schedule of Rates applies)

Where clause 5.6.1 applies, the
basis on which the Schedule of
Rates is to be revised under clause
5.6.1.2

*(If no basis is identified the rates
remain fixed for all Orders)*

Where clause 5.6.1 applies, the dates as
at which the Schedule of Rates is to be
revised are:


*(If no other date(s) are specified here
or in the document setting out the
basis for revision, the date shall be 1
August in each year)*

13.1 Daywork Valuation – percentage
additions (Clauses 5.4, 5.6.3 and
5.6.4)

does not apply

Item	Insertion
Where not included in or annexed to the Schedule of Hourly Charges, the percentage additions to the invoice price of non-labour items are as follows:	
Overheads and profit on Materials	_____ %
Overheads and profit on Plant, Services and Consumable Stores	_____ %
Overheads and profit on Sub-Contractors	_____ %
13.2 Revision of Schedule of Hourly Charges (Clause 5.6.3) <i>(unless "applies" is deleted, the clause shall be deemed to apply)</i>	does not apply
Where clause 5.6.3 applies, the annual revision date (if other than 1 August) is:	_____
Where clause 5.6.3 applies, the basis of revision of hourly charges (if not set out in the Schedule of Hourly Charges)	_____
14 Overtime Work (Clause 5.7) The percentage addition in respect of overheads and profit on non-productive overtime rates is <i>(Not applicable where an inclusive rate for such overtime is included in the Schedule of Hourly Charges)</i>	does not apply
*(Normal working hours are between 8am and 5.30pm Monday to Friday (excluding Public Holidays). No weekend working will be permitted without the written authorisation of the Contract Administrator. All overtime costs shall be the responsibility of the Contractor including evening and Saturday morning appointments unless specifically ordered in writing by the Contract	

Item	Insertion
Administrator. All work carried out under 'Emergency' priority code will be paid for using normal working hours rates regardless of when the work is undertaken).	
15 Insurance (Clauses 6.4.1, 6.7A, 6.7B, 6.8 and 6.11)	
15.1 Contractor's Public Liability insurance; injury to persons or property – the required level of cover is not less than	Public Liability: £5,000,000 for any one occurrence or series of occurrences arising out of one event Employer's Liability: <i>minimum of £5,000,000</i> Professional Indemnity: £2,000,000
15.2 Percentage to cover professional fees	15%
15.3 Insurance of existing structures – clause 6.7A.1 <i>(Unless otherwise stated, clause 6.7A.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s)) (</i>	applies <hr/> <hr/> (the 'Clause 6.7A.1 Replacement Schedule')
15.4 Insurance of work or supply comprised in Orders – clause 6.7B <i>(If neither entry is deleted, the clause does not apply)</i>	does not apply
15.5 Where clause 6.7B applies and cover is to be provided under the Contractor's annual policy, the annual renewal date is (as supplied by the Contractor)	<hr/>
15.6 Terrorism Cover – details of the required cover <i>(Unless otherwise stated, Pool Re Cover is required)</i>	Not Applicable <hr/>

Item		Insertion
16	Break Provisions – Employer or Contractor (Clause 7.1)	13 weeks
17	Settlement of Disputes (Clauses 9.2, 9.3 and 9.4.1)	
	Adjudication	Nominator of Adjudicator: The Royal Institution of Civil Engineers
	Arbitration Appointer of Arbitrator	President or a Vice-President of The Royal Institution of Civil Engineers
18	Contractor's Representative shall be <i>(or such other person appointed by the Contractor in accordance with new clause 3.3.3)</i>	

Schedule of Amendments to the JCT Measured Term Contract 2016 Edition (Article 9)

Definitions

Clause 1.1:

“Adjustment Percentage” – depending on Contract Particulars

“Contract Documents” - delete the definition and replace with the following words:

“JCT Standard Form of Measured Term Contract 2016;

Specification

Drawings (Appendix D);

- Drawing PT03 - 2015 – 001
- Drawing PT03 - 2015 – 002
- Drawing PT03 - 2015 – 003
- Drawing PT03b - 2013 - 01 - colour A1
- Drawing PT03b - 2013 - 02 - colour A1
- Drawing PT03b - 2013 - 03 - colour A1
- Drawing PT03b - 2013 - 04 - colour A1

The Employer’s Schedule of Amendments to the JCT Measured Term Contract 2016 Edition contained in this Article 9;

The Contractor’s Tender Document including:

- Form of Tender dated 27 February 2020
- Tender Responses
- Pricing Schedule

and any relevant specified correspondence between the parties”

“Employer” – at the end of the definition, insert the words “and it’s permitted assignees under this Contract”

Insert the following new Definitions:

“Data Protection Legislation - means (i) the Data Protection Act 1998 (“DPA 1998”), (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”), Law Enforcement Directive (Directive (EU) 2016/680) (“LED”), (iii) the Data Protection Act 2018 (“DPA 2018”) to the extent that it relates to processing of personal data and privacy and (iv) all applicable Legislation about the processing of personal data and privacy;”

“Environmental Laws - any law statute, statutory instrument or legislation of the European Union having effect in the United Kingdom, or circulars, guidance notes and the like issued by the United Kingdom Government or relevant regulatory agencies relating to the protection or pollution of the environment (within the meaning of the Environmental Protection Act 1990)”

“Hazardous Substances - any substances which are capable of carrying harm to man or any living organisms supported by the environment (within the meaning of the Environmental Protection Act 1990)”

“Proprietary Material - all drawings, details, plans, specifications, schedules, reports, calculations and other work, whether in written or electronic form (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Contractor in connection with this Contract and/or any Order”

Contractor’s Obligations

Clause 2.1 – the following new clauses shall be inserted:

- “2.1A The Contractor shall fully carry out the works using all the reasonable skill, care, expedition and efficiency to be expected of a properly qualified and competent contractor (and to the extent that the Order includes any design to be carried out by the Contractor using all the reasonable skill, care, expedition and efficiency to be expected of a properly qualified and competent architect or other appropriate designer) who is experienced in carrying out work (and preparing designs) of a similar scope, nature and complexity and size to the Order.
- 2.1B The Contractor shall work in a proper and workmanlike manner and fully in accordance with the Contract Administrator's instructions, any instructions of the Employer, the Contract Documents and other Statutory Requirements and shall give all notices required by the Statutory Requirements.
- 2.1C To the extent that the Order contains any design, the Contractor shall be responsible for carrying out and completing the entire design for the Order.
- 2.1D The Contractor shall take due account of the terms of any agreements between the Employer and third parties as are from time to time disclosed to him and shall perform his obligations under this Contract in such a manner as not to constitute, cause or contribute to any breach by the Employer of his obligations under such agreements and shall indemnify the Employer in respect of any loss and/or damage which he incurs as a result of any breach by the Contractor of this clause where such loss and/or damage arises under such agreements.
- 2.1E The Contractor shall not use, generate, dispose of or transport to the Site any Hazardous Substances otherwise than in accordance with Environmental Laws.”

Materials, Goods and Workmanship

Clause 2.2.1 shall be deleted and replaced by the following new clause 2.2.1:

“The Contractor in carrying out each Order shall not specify or use materials which are generally known at the time of use to be deleterious to health and safety or to durability in the particular circumstances in which they are used and the Contractor shall use materials, goods and workmanship of the quality and standards specified in the Order, or if not so specified, of the quality and standard to be expected of a contractor experienced in works of a like nature to the works set out in the Order. The Contractor warrants to the Employer that he has not specified and will not specify for use nor use in carrying out each Order any substance and/or material which is not in conformity with any relevant British or European Standards or Codes of Practice or which are generally known to the UK construction industry to be deleterious to health and safety or the durability of the Works in the particular circumstances in which it is used or which is not used in accordance with the guidance contained in the publication "Good Practice in the Selection of Construction Materials" 1997) Over Arup & Partners.”

Clause 2.2.2 shall be deleted and replaced by the following new clause 2.2.2:

“Where and to the extent that the approval of the quality of materials or goods or of the standards of workmanship is a matter for the opinion of the Contract Administrator, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are not described in the Order nor stated to be a matter for such opinion or satisfaction, they shall be of a standard appropriate to the relevant work. For the avoidance of doubt the standards of workmanship required pursuant to this clause shall be no less than those set out in British Standard 8000 or any other standard that may be applicable.”

Rights of Employer

Clause 2.3.5 - the following words shall be deleted “and the Contractor shall be entitled to a handling charge of 5% on that value. The Adjustment Percentage shall not be applied to that charge”.

Clause 2.3.6 shall be deleted and replaced with the following new clause 2.3.6:

“Any materials and/or goods supplied by the Employer for any Order shall be at the sole discretion of the Employer”

Value of work to be carried out under this Contract

Clause 2.5 shall be deleted and replaced with the following new clause 2.5:

“The Employer is not obliged to provide the Contractor with any Orders nor does the Employer give any warranty or undertaking as to the actual amount of work that will be ordered and no variance in the actual value of work ordered shall give rise to a change in any rate, price or percentage adjustment. For the avoidance of doubt, the Employer shall not be liable for any loss of profits, loss of contracts or other costs,

expenses or losses suffered or incurred by the Contractor as a result of the Contractor not being awarded any Orders under this Contract.”

Programme

Clause 2.7 shall be amended by deleting the words “Nothing in the programme or in any amendment or revision of it shall impose any obligations beyond those imposed by the Contract Documents” and replacing this with the following words:

“The Contractor Administrator shall have 7 days from receipt of the programme to approve or register its disapproval, in writing, of the programme. If the Contract Administrator fails to respond within the 7 days then it shall be deemed to have approved. Provided the Contract Administrator has approved or deemed to have approved the programme, the Contractor shall procure that all of the works carried out in accordance with or under any Order(s) is carried out strictly in accordance with the programme. If the Contract Administrator has stated to the Contractor that it does not approve of the programme then the Contractor shall resubmit a revised programme to the Contract Administrator for approval and this process shall be repeated until the Contract Administrator has given its written approval to the programme, whereupon the Contractor shall carry out the works within the order strictly in accordance with such approved programme.”

Divergence from Statutory Requirements

Clause 2.8.2 shall be deleted and replaced with the following new clause 2.8.2:

“Provided the Contractor has provided the written notice specified in clause 2.8.1 then it shall not be liable under this Contract if the work carried out under an Order, does not comply with the Statutory Requirements, but only to the extent that the non-compliance results from the divergence between the Statutory Requirements and either an Order or a Variation that the Contractor has previously advised the Employer of in accordance with clause 2.8.1.”

Extension of Time

Clause 2.10.1 shall be deleted and replaced with the following new clause 2.10.1:

“If, at any time during the course of completing an Order, the Contractor shall establish that the progress of the works under the Order shall have been effected by reason of:

- (i) force majeure; or
- (ii) fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped from them, riot or civil commotion or any other risks insured against,

the Contract Administrator shall allow such extension of time as is fair and reasonable in the circumstances upon written application by the Contractor to the Employer and Contract Administrator provided always that such application is made immediately that the Contractor is aware that such delay has or might occur (which written application shall include any documentation the Contractor may wish to provide in support of or justifying its application and the Contractor's assessment of the extension of time it seeks). To the extent that any extension of time is granted, a revised date for completion for the Order shall be fixed by the Contract Administrator and notified to the Contractor."

Defects

Clause 2.12 shall be renumbered 2.12.1 and amended by deleting the words "6 months" and substituting with "12 months" and adding the words "and shall commence rectification within [5] days of notification" at the end of the Clause:

Additional Clause 2.12.2:

"In the case of default, the Employer may provide labour and/or materials or enter into a contract to make good such defects and all costs and expenses consequent thereon shall be borne by the Contractor and shall be recoverable from the Contractor by the Employer either by offsetting against monies due on any contract with the Employer or by directly invoicing the Contractor."

Assignment

The clause heading shall be amended from "Assignment" to "Assignment and Novation"

Clause 3.1 shall be deleted and replaced with the following new clause 3.1:

"The Employer may assign or otherwise transfer this Contract or the benefit hereof at any time without the consent of the Contractor. The Contractor hereby consents to the novation of this Contract by the Employer and agrees to enter into such documents as are required to effect such novation. The Contractor shall not assign, novate or otherwise transfer this Contract without the prior written consent of the Employer."

Sub-Contracting

Delete Clause 3.2 and replace with the following clauses:

"3.2.1 The Contractor shall not sub-contract any works under the Contract without the previous written consent of the Contract Administrator. Such consent shall not be unreasonably withheld or delayed and shall apply to all works except to the extent otherwise stated in that consent.

3.2.2 In the event of the Employer agreeing to any assignment under clause 3.1 or sub-contracting under clause 3.2.1, such consent shall not relieve the Contractor from any liability or obligation under this Contract and the Contractor

shall be responsible for the acts, defaults and negligence of any assignee or sub-contractor, his or its agents, servants or employees.”

Contractor’s Representative

Clause 3.3 shall be deleted in its entirety and replaced by the following new clause 3.3:

“3.3.1 The Contractor shall appoint a competent Contractor’s Representative for the proper administration of this Contract.

3.3.2 The Contractor’s Representative shall have suitable and sufficient qualifications and experience to carry out this function and shall be the representative empowered to act on behalf of the Contractor for all purposes connected with the Contract.

3.3.3 The Contractor’s Representative shall be the person named in the Contract Particulars or such other person nominated in writing by the Contractor from time to time to act in the name of the Contractor for the purposes of the Contract.

3.3.4 From time to time the Contractor may appoint one or more representatives to act for the Contractor generally or for specified purposes or periods. Immediately any such appointment is made or terminated, the Contractor shall give written notice thereof to the Employer and until such notice is received the Contractor shall be under no obligation to comply with any instruction issued by such representative.

3.3.5 Any Order, notice, information, instruction or other communication given to the Contractor’s Representative shall be deemed to have been given to the Contractor.

Additional Clause 3.4.4:

“The Contract Administrator or their representative shall have at all times access to the Site or other places off-site where materials or equipment are being stored or prepared for the works.”

Cancellation of an Order

Additional Clause 3.6.3:

“The provisions of clauses 3.6.2.1 and 3.6.2.2 do not apply where scheduled works or an Order for works is cancelled before any physical works have commenced.”

Exclusion from Site

Clause 3.7 shall be amended by inserting the following sentence at the end of the clause:

“The Contractor shall then ensure that such person is immediately excluded from the Site.”

Additional Employer’s Rights and Remedies

Additional Clause 3.11:

“Where the Contractor’s performance significantly and consistently fails to meet the required targets or Key Performance Indicators (KPI’s) and the Contractor has not proposed acceptable remedial measures in respect of such failings within 28 days of being requested by the Contract Administrator in writing to do so, or the Contractor indicates that their current workload will not enable them to complete within targets, the Employer may award work to other contractors. Where works are awarded to other contractors, it will be measured and valued using fair and reasonable tendered rates. Should this incur additional costs to the Employer, the Employer reserves the right to charge the Contractor the extra-over cost plus 10% administration costs.”

Progress Payment

Clause 4.3 shall be deleted and replaced with the following new clause:

“Monthly Payment

Payments shall be made on a per calendar month basis and shall include all Orders completed in the previous calendar month that have been agreed as completed by the Contract Administrator and shall form part of the Contractor’s monthly payment application in accordance with clause 4.5.1.”

Payment Application

Clause 4.5.1 shall be amended by inserting the words “Subject to clause 4.3” at the beginning of the clause.

Valuation – day work

Clause 5.4.2 shall be amended by inserting the words “and any other evidence required by the Employer.” at the end of the clause:

Derived Rates

Clause 5.5 shall be deleted and replaced by the following new clause 5.5:

“5.5.1 Where the rates or prices in the Schedule of Rates do not apply or where there is no applicable all-in labour rate in the Schedule of Hourly Rates, as the case may be, the value shall be decided by the Contract Administrator and shall be based upon such rates or prices as may fairly be deducted therefrom, rates and

prices deduced from the Schedule of Rates being subject to adjustment by the Adjustment Percentage.

5.5.2 If it is not practicable or would not be fair and reasonable to apply the rates or prices in the Schedule of Rates or Schedule of Hourly Charges or to deduce rates or prices therefrom, the value shall be ascertained on a fair and reasonable basis by the Contract Administrator after consultation with the Contractor.”

Rates – Fluctuations

Clause 5.6 shall be deleted

Overtime

Additional Clause 5.7.4:

“Where the Contractor wishes to work outside normal working hours, he must first obtain the permission of the Contract Administrator and the person in charge of the premises. In these circumstances no additional or enhanced payments will be made.”

Liability of the Contractor – personal injury or death

Clause 6.1 shall be amended by inserting the words “or of any obligation pursuant to clause 2.12,” in the third line after the word “Order” and before the word “except”.

Liability of the Contractor – injury or damage to property: nuisance

Clause 6.2 shall be amended by inserting the words “or of any obligation pursuant to clause 2.12” in the fourth line after the word “Order” and before the word “and”.

The following words shall be inserted at the end of clause 6.2:

“The Contractor shall at all times reasonably prevent any public or private nuisance (including without limitation any such nuisance caused by noxious fumes, noisy working operations or the deposit of any materials or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of an Order or of any obligation pursuant to clause 2.12 and shall defend or, at the Employer's option, assist the Employer in defending any action or proceedings which may arise as a result of any breach by the Contractor of its obligations under this Contract.”

Contractor's Insurance and his Liability

*Additional clause: 6.4.3

“Without limiting his other obligations under the Contract or otherwise at law, the Contractor shall maintain professional indemnity insurance of not less than [£] million] in respect of each and every claim.”

Related Definitions

Under clause 6.6, the definition of “Joint Names Policy” shall be amended by inserting the words “and any funder or other third party as the Employer may require” after the word “Contractor” and before the word “as”.

Additional clause 6.15

“The Contractor shall ensure so far as is reasonably practicable the health, safety and welfare at work of his employees and shall conduct his undertakings in such a way as to ensure that persons other than his employees who may be affected by his operations are not exposed to risks to their health or safety and shall in all respects perform all his duties under the Health and Safety at Work etc. Act 1974 and all Health and Safety Regulations made thereunder.”

Collateral Warranties and Copyright

Insert new clause 7A as follows:

“Copyright Contractor Warranties in favour of others

7A1 If required by the Employer, the Contractor shall execute and deliver to the Employer deeds of collateral warranty in favour of any purchaser and/or any funder in the form agreed by the Employer and in each case such deed to be procured and provided to the Employer within 14 days of the Employer's written request to do so. If the Contractor fails to deliver any deed of warranty validly requested under this clause 7A.1 within 14 days of the Employer's request, the Employer may withhold any payment or further payment (as the case may be) which would otherwise be due to the Contractor under this Contract until such deed of warranty is delivered.”

Sub-contractor Warranties

7A2 If required by the Employer, the Contractor shall procure that all sub-consultants and sub-contractors appointed to carry out any work shall provide to the Employer a deed of collateral warranty in favour of the Employer and/or any purchaser and/or any funder in a form agreed by the Employer with such amendments as are required to account for the warrantor being either a sub-contractor or sub-consultant, and in each case such deed to be procured and provided within 14 days of the appointment of the sub-consultant or sub-contractor or of the Employer's written request as relevant together with a certified copy of the relevant completed appointment document.

Copyright Licence

7A3 The copyright in the Proprietary Material shall remain vested in the Contractor, but the Contractor grants to the Employer an irrevocable royalty-free non exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with this Contract and/or any Order, including

(without limitation) the execution, completion, maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of any works carried out under this Contract and/or any Order."

Default by Contractor

Additional Clause 8.4.1.3:

"fails to comply with any of his obligations including all of the Contractor's obligations contained within the Council's Tender Documents and/or the Contractor's priced Schedule of Rates in respect of this Contract."

Insert new clauses 8.4.2.1 and 8.4.2.2 as follows:

"8.4.2.1 Where the Contractor receives notice under clause 8.4.1 that it has failed to perform the works in accordance with the Contract Documents, the Employer may, without prejudice to any other remedy it may have:

- (i) request from the Contractor that, at the Contractor's own expense and as specified by the Employer, it reschedules and carries out the works in a manner satisfactory to the Employer, which may include rectifying completed works or repeating the provision of any of the works within such period as the Employer may specify by such written notice; and/or
- (ii) withhold or reduce payments to the Contractor, as the Employer shall reasonably deem appropriate in each particular case; and/or
- (iii) request that the Contractor pay or allow to the Employer liquidated damages at the rate stated in the Contract Particulars between the specified date for completion and the actual date of completion; and/or
- (iv) employ a third party to carry out and complete the works.

8.4.2.2 Any expenses incurred which are in addition to the cost of the relevant part of the works arising as consequence of suspension of the works or procuring a third party to carry out the works, shall be recovered in full from the Contractor, including any administrative costs reasonably incurred by the Employer."

Renumber existing clauses 8.4.2 and 8.4.3 as 8.4.3 and 8.4.4 respectively.

Prevention of Bribery and Corruption

Insert new Section 10 to the JCT Conditions of Contract as follows:

"10.1 The Contractor warrants and undertakes to the Employer that:

- 10.1.1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will not give any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972;
- 10.1.2 it will procure that any person who performs or has performed services for or in its behalf ("Associated Person") in connection with this Contract complies with this clause and subject to the JCT Form of Contract to be used;
- 10.1.3 it will not enter into any agreement with any Associated Person in connection with this Contract, unless such agreement contains undertakings on the same terms as contained in this clause and subject to the JCT Form of Contract to be used;
- 10.1.4 it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;
- 10.1.5 from time to time at the reasonable request of the Employer it will confirm in writing that it has complied with its undertakings under clauses 10.1.1 to 10.1.4 and will provide any information reasonably requested by the Employer in support of such compliance;
- 10.1.6 it shall notify the Employer as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.
- 10.2 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by the Bribery Act 2010 or the Local Government Act 1972 section 117(2) in relation to this or any other contract with the Employer, the Employer has the right to;
- a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Employer resulting from the termination, including the cost reasonably incurred by the Employer of making other arrangements for the provision of the works and any additional expenditure incurred by the Employer throughout the remainder of the Contract.
 - b) recover in full from the Contractor any other loss sustained by the Employer in consequence of any breach of this clause, whether or not the Contract has been terminated."

Freedom of Information

Insert new Section 11 to the JCT Conditions of Contract as follows:

- “11.1 The Employer is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 ("the Acts"). As part of the Employer's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a request. The Employer has absolute discretion to apply or not to apply any exemptions under the Acts.
- 11.2 The Contractor shall assist and co-operate with the Employer (at the Contractor's expense) to enable the Employer to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Employer.
- 11.3 The Contractor acknowledges that the Employer is committed to the Government's transparency agenda requiring the Employer to publish on line items of spend over £500 (five hundred pounds) including actual payments made to the Contractor, the Contractor's tender and the terms of this Contract (excluding commercially sensitive information).
- 11.4 The Contractor acknowledges that the Employer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the discharge of public authorities functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) be obliged under the FOIA or the Environmental Information Regulations to disclose information;
- a) without consulting with the Contractor, or
 - b) following consultation with the Contractor and having taken its views into account.”

Data Protection

Insert new Section 12 to the JCT Conditions of Contract as follows:

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“DPA” means the Data Protection Act 2018 as amended from time to time;

“Data Protection Officer” has the meaning given in the GDPR;

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679)

“LED” means the Law Enforcement Directive (Directive (EU) 2016/680)

“Protective Measures” appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Processor Personnel” all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor

“Personal Data Breach” has the meaning given in the GDPR;

“Sub-processor” any third party appointed to process Personal Data on behalf of the Supplier related to this agreement;

12.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority and The District Council of Folkestone & Hythe, as the contract administrator, are joint Controller and the Supplier is the Processor unless otherwise specified in Schedule Processing Personal Data). The only processing that the Processor is authorised to do is listed in Schedule Processing Personal Data and may not be otherwise be determined by the Processor.

12.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

12.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

12.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule Processing Personal Data, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule Processing Personal Data);

- (ii) *it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:*
 - (A) *are aware of and comply with the Processor's duties under this Clause;*
 - (B) *are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;*
 - (C) *are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and*
 - (D) *have undergone adequate training in the use, care, protection and handling of Personal Data;*
- (d) *not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:*
 - (i) *the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;*
 - (ii) *the Data Subject has enforceable rights and effective legal remedies;*
 - (iii) *the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavors to assist the Controller in meeting its obligations); and*
 - (iv) *the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;*
- (e) *at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.*

12.5 *Subject to Clause 12.7, the Processor shall notify the Controller immediately if it:*

- (a) *receives a Data Subject Access Request (or purported Data Subject Access Request);*
- (b) *receives a request to rectify, block or erase any Personal Data;*
- (c) *receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;*
- (d) *receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;*

- (e) *receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or*
- (f) *becomes aware of a Data Loss Event.*

12.6 The Processor's obligation to notify under Clause 12.5 shall include the provision of further information to the Controller in phases, as details become available.

12.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 12.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) *the Controller with full details and copies of the complaint, communication or request;*
- (b) *such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;*
- (c) *the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;*
- (d) *assistance as requested by the Controller following any Data Loss Event;*
- (e) *assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.*

12.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) *the Controller determines that the processing is not occasional;*
- (b) *the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and*
- (c) *the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.*

12.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

12.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

12.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) *notify the Controller in writing of the intended Sub-processor and processing;*
- (b) *obtain the written consent of the Controller;*
- (c) *enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 12.11 such that they apply to the Sub-processor; and*
- (d) *provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.*

12.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

12.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

12.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office."

Equal Opportunities, Unlawful Discrimination and Human Rights

Insert new Section 13 to the JCT Conditions of Contract as follows:

- “13.1 The Contractor shall comply with all applicable equalities, inclusion, and diversity legislation, which shall include any law, statute, bye-law, regulation, order, regulatory policy, guidance or code of practice, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body (“the Equalities Provisions”) now in force or which may be in force in the future and with the Employer's equality and diversity policies as may be amended from time to time, copies of which will be provided by the Employer to the Contractor at the Contractor's written request.
- 13.2 For the avoidance of doubt, the term “Contractor” in this clause 13 shall include the Contractor's employees, agents, representatives and sub-contractors employed in the execution of the Contract.
- 13.3 The Contractor will provide to the Employer such information as the Employer may reasonably request in respect of the impact of equality issues on the operation of the Contract.
- 13.4 If a complaint is made about the acts or omissions of the Contractor in relation to the Equality Provisions, the Contractor may be the subject of an investigation by the Employer. During the course of such an investigation the Contractor shall make all documents the Employer considers to be relevant to the investigation available and co-operate with the investigation. If any breach of the Employer's duties under the Equalities Provisions is found to have occurred due to the acts or omissions of the Contractor, the Contractor shall indemnify the Employer in respect of any loss, damage and/or compensation, fines and costs (including

but not limited to legal costs and expenses) which may be suffered by or imposed on the Employer by any court, tribunal or ombudsman.

- 13.5 If requested to do so by the Employer the Contractor shall co-operate with the Employer at the Contractor's expense in connection with any legal proceedings, ombudsman enquiries, arbitration or Court proceedings in which the Employer may become involved arising from any breach of the Employer's duties under the Equalities Provisions due to the alleged acts or omissions of the Contractor.
- 13.6 The Contractor shall carry out the works in a manner which is consistent with the Human Rights Act 1998 as though (for the avoidance of doubt) it is bound by the Act and in such a way that the Employer shall not be liable to any person for a breach of its duties under the said Act and shall indemnify the Employer against any direct or indirect costs expenses damages compensation liabilities or other claims incurred or suffered by the Employer arising from or in relation to a breach or alleged breach of the said Act.
- 13.7 Failure by the Contractor to comply with the provisions of this clause 13 may lead to the termination of this Contract."

Contractor's Persons

Insert new Section 14 to the JCT Conditions of Contract as follows:

- "14.1 The Contractor shall comply with all relevant legislation relating to the Contractor's Persons however employed including (but not limited to) the compliance in law of the ability of the Contractor's Persons to work in the United Kingdom.
- 14.2 The Contractor shall employ sufficient persons to ensure that the works are carried out in accordance with the Contract. The Contractor's Persons engaged in and about the provision of the works shall be properly and sufficiently qualified, competent, skilled and experienced and the Contractor shall ensure that such Persons are properly and continuously trained, sufficiently instructed and adequately supervised with regard to the provision of the works generally and in particular:
- (i) the task or tasks such Persons have to perform;
 - (ii) all relevant rules, procedures and statutory requirements concerning health and safety, including the Employer's health and safety policy;
 - (iii) all other statutory requirements in connection with the Contract

and the Contractor shall indemnify the Employer against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this clause 14.

- 14.3 The Employer shall be entitled to require the Contractor to remove from the performance and carrying out of the works any of the Contractor's Persons whose behaviour is in the opinion of the Employer negligent, (should it become

aware) disruptive, disturbing or likely to cause offence to the Employer or its employees and where the Employer has received a valid complaint.

- 14.4 The Employer shall in no circumstances be liable either to the Contractor or to any Persons (including its sub-contractors) removed pursuant to clause 14.3 in respect of any cost, expense, liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Employer in respect of any claim or proceedings made or brought against the Employer by such Contractor's Persons.”

Safeguarding

Insert new Section 15 to the JCT Conditions of Contract as follows:

- “15.1 The Contractor shall make arrangements during the provision of any works under this Contract to ensure that the Contractor and the Contractor's Persons comply, in all respects, with all relevant legislation and Employer policy in relation to the safeguarding of children and vulnerable adults, which may include enhanced disclosure checking of the Contractor's Persons, undertaken through the Disclosure and Barring Service (“DBS”) and a check against the adults barred list or the children's barred list as appropriate
- 15.2 The Contractor shall monitor the level and validity of the checks for each of the Contractor's Persons.
- 15.3 The Contractor warrants that at all times for the purposes of this Contract, it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the works is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.”

Insert new Section 16 to the JCT Conditions of Contract as follows:

16. The Contractor irrevocably undertakes to indemnify the Employer against any costs, expenses, damages, liabilities, losses, claims and/or proceedings which the Employer may incur in respect of death or personal injury to any person whomsoever and damage to property arising as a consequence of the performance of the Works. The Parties agree that the contraction of any industrial disease as a result of exposure to dangerous materials during the course of the work within this Contract will be deemed to be covered by this condition.

Additional Employer's Requirements

Insert new Section 17 to the JCT Conditions of Contract as follows:

- “17.1 In the event of any inconsistencies or any ambiguity between the Articles of Agreement, Conditions and this Schedule of Amendments, the Parties agree

that the Schedule of Amendments shall take precedence over the Articles of Agreement and Conditions whilst the Articles of Agreement shall take precedent over the Conditions.

- 17.2 The Contractor shall ensure that it has policies or codes of conduct in relation to:
- equality and diversity policies
 - sustainability
 - information security rules
 - whistleblowing and/or confidential reporting policies.
- 17.3 The Contractor shall keep and maintain until 6 years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the agreement including:
- (a) the works provided under it;
 - (b) all expenditure reimbursed by the Employer;
 - (c) all payments made by the Employer.

The Contractor shall on request afford the Employer or the Employer's representatives with such access to those records as may be required in connection with this Contract.

- 17.4 The Contractor shall co-operate fully with any enquiry or investigation made by the Employer's internal or external auditors, or any other quality or performance inspectors, that in any way concerns this Contract or any sums claimed or charged in relation to this Contract. The Employer may use information given by the Contractor in connection with this Contract to prevent and detect fraud and money-laundering; it may also share this information, for the same purpose, with other organizations that handle public funds. The Contractor shall take all necessary action to prevent money laundering. Where the Employer deems that the Contractor has been involved in money laundering it will take whatever measures appropriate to prevent this and report such action to the relevant authorities. The discovery of fraud and/or money laundering shall be grounds for termination of the Contractor's employment.
- 17.5 The Contractor shall comply with any Employer policies affecting the Contract and shall if requested provide the Employer with any relevant information required in connection with any legal inquiry, arbitration or court proceedings in which the Employer may become involved or any relevant disciplinary hearing internal to the Employer and shall give evidence in such inquiries or proceedings or hearings arising out of the Contract. The Contractor shall co-operate fully with the Commissioner for Local Administration in England (the Local Government Ombudsman) in any investigation by him of any complaint relating to the Contract and in enquiries by any of the Employer's Committees. From time to time, the Employer may require the Contractor to provide reports to, or be involved in discussions with, elected members. The Contractor shall comply with the Employer's reasonable requirements and shall not be entitled to any additional payment in respect thereof save to the extent such costs are incurred as a result of a default on the part of the Employer.

- 17.6 The Contractor shall, upon becoming aware of anything in connection with the Contract that is likely to give rise to legal inquiry or litigation, forthwith notify the Contract Administrator, giving such details as are available.
- 17.7 The Contractor shall deal with any complaints about its performance of the Contract, received from whatever source, in a prompt, courteous and efficient manner. The Contractor shall set up an internal process for dealing with complaints and shall keep a written record of all complaints received and of the action taken in relation to such complaints. The Contractor shall inform the Contract Administrator in writing of all complaints received and of all steps taken, and shall permit its record of complaints to be inspected by the Contract Administrator (or any other person nominated by him) at all reasonable times on reasonable notice.
- 17.8 The Contractor shall not speak to the press or broadcasting media about any matters connected with the Contract without the prior written consent of the Contract Administrator. If the Contractor intends to advertise its provision of the works to the Employer, it shall obtain approval of the Employer before doing so as to the content of such advertisement.
- 17.9 The Contractor should note that it is of the utmost importance that their employees and sub contract employees carry with them at all times their company's identification card to produce when challenged by the Employer's staff or council residents.
- 17.10 Where under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum item due or which at any time thereafter may become due to the Contractor under the Contract or under any other similar construction contract with the Employer.
- 17.11 The Contractor shall be deemed to have obtained information on all matters affecting the execution of the works. No claim arising from errors or omissions will be considered.
- 17.12 The Contractor shall comply with all Standing Orders of the Employer in so far as they are applicable to the execution of the Works. It is the responsibility of the Contractor to determine the nature and extent of such Standing Orders for lack of knowledge will not constitute grounds for non-compliance. A copy will be available for inspection on request.
- 17.13 The Contractor shall comply with all statutory requirements to be observed and performed in connection with the Contract and shall indemnify the Employer against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this clause.

***Bonds and Guarantees**

Insert new Section 18 to the JCT Conditions of Contract as follows:

- “18.1 At the exclusive discretion of the Employer, when the Contractor is a subsidiary of another company it shall procure that its ultimate holding company (or, at the Employer’s complete discretion, such other company within the Contractor’s group as the Employer shall require) shall provide a parent company guarantee in favour of the Employer in respect of the Contractor’s obligations under the Contract executed as a deed in the form set out in Appendix [1]. The guarantee must be in place before the Contract commences.
- 18.2 At the exclusive discretion of the Employer, where the Contractor does not have a parent company or where the parent company is not approved by the Employer, the Contractor shall enter into a contract guarantee bond, in the form set out in Appendix [2], by which they shall be jointly and severally bound to the Employer in a sum equivalent to [10%]* of the [total contract value/annual price]* conditioned for the due fulfilment of the terms and conditions of the Contract. The surety shall be either an insurance company or bank whose registered office is situated in England. The bondsman is to be approved by the Employer. The bond must be in place before the Contract commences.”

BEACH MANAGEMENT SPECIFICATION

SECTION 1

WORKS INFORMATION FOR CONTRACT PERIOD

Principal Objective

- 1 The principal objective of the works is to maintain the existing standard of coastal defences along the Folkestone & Hythe District Council frontage between Fisherman's Beach, Hythe to the Harbour at Folkestone in order to maintain the standard of protection which is approximately 1 in 200 years.
 - 1.1 This will be achieved through the recycling and regrading of the existing shingle beaches. This will raise and stabilise beach levels to provide protection to the sea wall and thus reduce the risk of coastal erosion and landslip reactivation.

Location of the Works

- 2 The frontage extends over a length of approximately 7 kilometres from St. Leonard's Road, Hythe in the west (Grid reference 6158 1340, Ordnance Survey Sheet reference TR 1533 NE) to Marine Walk, Folkestone in the east (Grid reference 6228 1356, Ordnance Survey Sheet reference TR 2235 NE).
 - 2.1 The extent of the frontage is as defined by the *boundaries* in cl. 2.11.

Beach and Tide Levels

- 3 Beach levels – levels shown on the drawings are design levels only. Actual levels are likely to differ and will fluctuate considerably during the contract period. The *Contractor* shall make allowances for variations in beach levels.
 - 3.1 Tide levels derived from the Admiralty Tide Tables and interpolated for Folkestone are as follows:
 - Mean High Water Spring Tides (MHWS): +3.45m OD
 - Mean High Water Neap Tides (MHWN): +1.95m OD
 - Mean Low Water Neap Tides (MLWN): -1.65m OD
 - Mean Low Water Spring Tides (MLWS): -3.05m OD
 - 3.2 Tide levels may vary considerably from the predicted levels due to meteorological conditions and the *Contractor* shall make allowance for such variations. Surges of over 1 metre are possible.

Pre-Construction Information

- 4 The pre-construction information is at Appendix B.

Cultural Heritage

- 5 Any features of potential cultural heritage interest discovered during the works are to be reported to the *Project Manager* and instruction obtained before proceeding.

Information Required

- 6 The following list identifies the items that are to be provided by the *Contractor* to the *Project Manager* at least 2 weeks before the first planned access period and, if changed, at least 2 weeks before all subsequent planned access periods and at least 1 day before any emergency works. All items are subject to the approval of the *Project Manager*, which will not be unreasonably withheld. All sub-contractors are subject to the approval of the *Project Manager*.
 - 6.1 Construction Phase Health and Safety Plan identifying the person(s) responsible for health and safety during the access period and incorporating detailed method statements, the Traffic and Pedestrian Management Plan (including plant delivery) and proposals for minimising noise, dust and vibration.
 - 6.2 Detailed risk assessments and method statements.
 - 6.3 Details of sub-contractors.
 - 6.4 Details of site facilities.
 - 6.5 Details of any materials to be used, including manufacturer's information and names of suppliers.

Health and Safety

- 7 The *Contractor* shall adopt safe methods of work and comply with all other requirements of the Health and Safety at Work etc Act 1974 in order to protect the health and safety of its personnel and if relevant the health and safety of Council employees and all other persons.
 - 7.1 The *Contractor* is required to act as the Principal Contractor as defined in the Construction (Design and Management) Regulations 2007.
 - 7.2 The pre-construction information prepared by the Council is enclosed at Appendix B. The *Contractor* is to comply with all requirements therein.
 - 7.3 Tenderers are required to include preliminary method statements for all significant residual risks identified in the pre-construction information, any other significant risks identified by the *Contractor's* own risk assessment and all major construction activities as a separate document with their tender submission. The preliminary method statements shall include information on the major items of plant to be used.
 - 7.4 The *Contractor* shall develop the preliminary risk assessments and method statements into detailed risk assessments and method statements for inclusion in the Construction Phase Health and Safety Plan required by the CDM Regulations. These are to be approved by the *CDM Co-ordinator* at least 2 weeks before the first planned access period and in the event of any subsequent proposed change.
 - 7.5 The Construction Phase Health and Safety Plan must include copies of all personnel certification/accreditation for plant operation or use for all personnel on

site, a Traffic and Pedestrian Management Plan (including plant delivery) and proposals for minimising noise, dust and vibration.

- 7.6 The *CDM Co-ordinator* will notify the HSE before all access periods (planned and emergency) and shall provide a copy of the Form F10 notification for display on site and shall copy the *Contractor* and *Project Manager* into any correspondence with the HSE.
- 7.7 The *Contractor* is to produce the Health and Safety File as required in the pre-construction information.

Hazardous Substances

- 8 When substances covered by the Control of Substances Hazardous to Health (COSHH) Regulations are likely to be encountered or used by the *Contractor*, the *Contractor* shall maintain Health Risk Assessment Statements relevant to any of his activities on the site which may be affected by the substances. These risk assessments shall be included in the Construction Phase Health and Safety Plan. The *Contractor* shall hold on site relevant Product Hazard Sheets and evidence of the control, exposure monitoring and health surveillance measures to be employed
 - 8.1 Records of examinations and tests carried out shall be available at all times for inspection by the *Project Manager* and the HSE.
 - 8.2 The *Contractor* shall warn and instruct his workmen and all other persons (including sub-contractors' workmen and visitors) under his control as to the hazards and precautions to be taken. Such instruction shall be documented in the Construction Phase Health and Safety Plan.
 - 8.3 The *Contractor* shall remain alert to the possibility that other hazards may exist which are not identified prior to work commencing.
 - 8.4 The *Contractor* shall establish a procedure to ensure that all persons requiring instruction or warning actually receive and understand the instruction or warning, together with a record thereof. He shall furnish such records to the *Project Manager* when called upon to do so.

Project Manager's Equipment

- 9 Survey Equipment – if required, the *Contractor* is to provide survey equipment for the *Project Manager's* use which shall remain in the *Employer's* ownership at the completion of the Contract. Evidence of cost is to be provided and shall be the basis for payment. No allowance is required at tender stage.
 - 9.1 Personal Protective Equipment – if required, the *Contractor* shall provide personal protective equipment for the *Project Manager's* use which shall remain in the *Employer's* ownership at the completion of the Contract. Evidence of cost is to be provided and shall be the basis for payment. No allowance is required at tender stage.

Working Hours

- 10 The hours of working during planned access periods are for the *Contractor* to determine, subject to the prior agreement of the *Project Manager* and provided that they fall within the

normal working hours detailed in Appendix B i.e. between 0800 and 1800 on weekdays (excluding bank holidays) and between 0800 and 1300 on Saturdays. Work on Saturday afternoons and at any time on Sundays will not normally be permitted for planned work.

- 10.1 A period of up to half an hour before and one hour after normal working hours may be used for preparatory, maintenance and other non-productive activities including taking deliveries, unloading, movement to/from places of work, refuelling and the like, provided that these activities do not include the use of plant and machinery which give rise to noise likely to exceed the trigger levels detailed in Appendix B.
- 10.2 Tenderers are to set out their proposed working hours during planned access periods in their tender submission.
- 10.3 There is no restriction on working hours or noise levels during emergency works, although the *Contractor* should do everything possible to minimise disturbance to residents at all times.

Access

- 11 Road access to the seafront shall be via the routes shown in the pre-construction information (Appendix B). The *Project Manager* will provide keys to the height barriers at the Battery Point and Twiss Road car parks. The *Contractor* is to replace the barriers immediately after delivery to site of each item of plant and ensure that they are in place at all other times during the works.
 - 11.1 The use of the promenades as access routes is to be kept to a minimum. Where it is necessary to do so the promenades are to be treated as working areas and access to the public prevented accordingly. Other than plant, the *Contractor* is to allow no more than 2 vehicles on the promenade outside of areas to which public access is prevented, one for the transportation of workmen (a minibus or similar) and the other for the transportation of supervisory staff (a car or similar). Workmen are not to use individual cars or similar for their personal transportation along the promenade, except in the case of banksmen when the use of cars for shelter against adverse weather has been approved by the *Project Manager*.
 - 11.2 The *Contractor* should note that the promenade varies in width and that there are a number of obstructions (not all shown on the contract drawings) hindering access along its length. These include bollards, handrailing, floodwalls, street furniture, gates, shelters and kiosks. Shingle can also be thrown onto the promenade by storms.
 - 11.3 The existing slipways are available as accesses to the beach. The *Contractor* is permitted to adapt the ramps to accommodate larger plant if required. Any additional expense incurred in reinstating the promenade and seawall prior to the slipway alterations shall be the *Contractor's* responsibility. The *Project Manager* will arrange for removal and subsequent replacement of sufficient railings at Battery Point Car Park and for the opening of the flood gate at Twiss Road Car Park (location references C on Drawing PT03/2015/03) to enable access for plant to the beach via the slipways.
 - 11.4 The *Contractor* shall have due regard for the operational and access requirements of any private concerns such as kiosks and vans selling ice cream, snacks etc.

- 11.5 The *Contractor* shall take proper precautions, to the satisfaction of the *Project Manager*, for the protection, safety and convenience of members of the public using the public rights of way and the promenade in the vicinity of the works. Before commencing the works details of precautions to be taken by the *Contractor* are to be submitted as an integral part of the Construction Phase Health and Safety Plan.
- 11.6 On no account shall the *Contractor* prevent or obstruct access on public or private rights of way, unless unavoidable for safety or other reasons and only with the permission of the *Project Manager*.
- 11.7 To carry out the works it may be necessary to create access routes within the site e.g. to gain access over groynes. Any such routes are to be located where agreed in advance with the *Project Manager*, created from existing shingle and removed on completion.

Site Clearance and Preparation

- 12 No necessity for such works is envisaged.

Statutory Undertakers and Regulatory Authorities

- 13 For the purposes of this document, Statutory Undertakers shall be taken to mean all organisations responsible for the provision and/or maintenance of the public highway and underground or overhead utility services, including electricity, telecommunications, water supply, sewerage, drainage and the like.
 - 13.1 There are no known buried services in the working area where recycling normally takes place apart from the storm water outfalls (location references E & K on Drawing PT03/2015/03. The *Project Manager* will advise the *Contractor* if he becomes aware any new services or work on existing services are planned although it is anticipated that there will be no change during the contract period. Any change that affects the works would be the subject of a Compensation Event. Further information and requirements regarding this is contained within the pre-construction information.
 - 13.2 The *Contractor*, during his inspection of the site, shall note the location of any buried or overhead services, including drainage, street lights and supplies etc. within the area proposed for the site compound(s) and adjacent to the working area and shall allow for any measures necessary to locate and protect them within his rates.
 - 13.3 If necessary, the *Contractor* shall be responsible for obtaining from the Statutory Authorities up to date publications and requirements for carrying out works in connection with their services. All work carried out by the *Contractor* on or adjacent to any apparatus or plant owned by any Statutory Authority shall comply with these requirements. The *Contractor* shall comply with all procedures and liaison required by the Statutory Undertakers that are necessary to obtain their consent and approval for the carrying out of any works or which are otherwise reasonably required.
 - 13.4 The *Contractor* is to ensure and allow for the support and full protection of mains, pipes, cables, plant and other apparatus owned by the Statutory Undertakers during the progress of the Works and shall construct and provide, to the satisfaction of the Statutory Undertaker concerned all works necessary for the

prevention of damage or interruption of services. If, in the execution of the Works, the *Contractor* causes, either directly or indirectly, any damage to any apparatus or any interruption of any service, the *Contractor* shall bear and pay the cost incurred by the Statutory Authority for any loss sustained as a result of such damage or interruption.

- 13.5 The *Contractor* shall at all times during the progress of the Works afford facilities to properly accredited agents of the Statutory Authority for access to any of their plant or apparatus situated in or under the site, as may be necessary for inspecting, reporting, maintaining, removing, renewing or altering such apparatus in connection with the construction of the works or for any other purpose whatsoever.
- 13.6 During the works the *Contractor* is responsible for the maintenance of flows in existing drains, sewer outfalls, culverts and the like wherever such flows are affected either permanently or temporarily by the works and shall indemnify the Council against any claims for flooding as a result of his operations.
- 13.7 The *Contractor* is to liaise and co-operate as necessary with all Regulatory Authorities having an interest in the site or works thereon, including the Environment Agency, Marine Management Organisation, Coastguard, Highway Authority and Planning Authority.
- 13.8 The *Contractor* is to liaise and co-operate with all Statutory Undertakers and Regulatory Authorities as necessary in respect of the details of his programme and methods of working.

Damage and Reinstatement

- 14 The *Contractor* shall take all necessary precautions to avoid damaging all land and property, including promenades, highways, roads, tracks, access ways, buildings, bridges, boundary walls, fences, structures, grassed areas, gardens, plants, beaches, cliffs, coastal slopes, coast protection structures and Sandgate Castle.
 - 14.1 On or before completion he shall make good any damage caused, including by sub-contractors and suppliers, and clean away any cement, mortar, concrete, grout, oil or other deposited materials at his own expense, to the satisfaction of the *Project Manager*. Making good shall be with identical and matching materials or the complete item(s) shall be replaced with approved alternative materials.
 - 14.2 The *Project Manager's* opinion regarding original condition shall be final in the event that the Condition Survey (see Section 5) does not clearly show the original condition of an area where damage has occurred.
 - 14.3 The *Contractor* is specifically reminded that, other than in an emergency or by prior agreement with the *Project Manager*, on no account shall plant be permitted to track on or immediately adjacent to the rock outcrops at Mill Point, which is located in Cell 6 (location reference R on Drawing PT03/2015/03).
 - 14.4 Except for the placing of materials by plant in their permanent position shown on the Drawings or otherwise specified by the *Project Manager*, no loads shall be placed upon any works, structures or buildings without the written permission of the *Project Manager*.

Scope of Works

15 This section contains a general description of, and requirements for, the main activities to be carried out along the frontage. Following sections contain specific details of, and requirements for, the additional works to be carried out in each beach recycling cell. A recycling cell is a section of frontage between groynes and other boundaries as shown on Drawings PT03/2015/01 & 02.

15.1 Shingle recycling is to be carried out as detailed below:

15.2 Shingle is to be excavated from source sites identified by the *Project Manager* at least one week before the start of each planned access period and transported to renourishment sites also identified by the *Project Manager*. Source and renourishment sites will generally, but not always, be at the east and west ends respectively of each cell. Shingle is generally, but not always, to be deposited at the beach crest where it is to be graded to reform the beach to as near as possible the design width and level of crest shown on the sections and tables on Drawings PT03/2015/01 & 02 along all parts of the frontage, which vary along the frontage as specified on the tables. If insufficient shingle exists on any section(s) of beach to form the design crest width, design crest level and/or a reasonable slope (see below) then an adjusted profile will be determined by the *Project Manager* to suit the amount of shingle available.

15.3 The normal range of volumes of shingle to be recycled in each recycling cell during each planned access period are shown in Table C below for information only, together with indicative average haul distances. The actual volumes to be recycled will depend on the condition of the beach and funding available and will be advised by the *Project Manager* before each access period and could be outside the ranges shown.

Table C – Typical Haul Distances & Recycling Volumes				
Recycling Cell Name	Location	Average haul distance (m)	Normal minimum total volume of shingle to be recycled (m³)	Normal maximum total volume of shingle to be recycled (m³)
Cell 1	Groyne A to Groyne B	350	3,000	7,000
Cell 2	Groyne B to Groyne C	450	2,000	7,000
Cell 3	Groyne C to Groyne D	1,800	4,000	10,000
Cell 4	Groyne D to Groyne I	2,300	4,000	10,000
Cell 5	Groyne I to Groyne J	400	3,000	10,000
Cell 6	Groyne J to Groyne K	250	0	5,000

Cell 7	Groyne K to Groyne L	120	0	5,000
Cell 8	East of Groyne L	100	0is required	1,000

- 15.4 Shingle may also be recycled between recycling cells, as instructed by the *Project Manager*, where insufficient material is available at the source site of a cell to suit the volumes required at the renourishment site of that cell. Indicative haul distances and volumes cannot be provided as they will depend on the condition of the beach at the time.
- 15.5 Normal (typical) recycling activities are described in the Activity Schedule for each cell, for information and as a basis for pricing. Actual recycling activities will depend on the condition of the beach and available funding and will be as directed by the Project Manager. *Tenderers* are to price for recycling work in each cell separately using the assumed volumes and haul distances shown in the Activity Schedule, for tender purposes only.
- 15.6 In the Activity Schedule *tenderers* are to provide rates for the recycling of shingle in £/m³/km which will be used to calculate payments due. These rates will apply to any recycling work instructed by the *Project Manager* on any part of the beach. Payments will be based on volumes recycled, actual haul distances and the tendered rates.
- 15.7 The budget available for each planned access period will not be determined until a month before each period.

Shingle regrading is to be carried out as detailed below:

- 15.8 The beach is to be reformed to as near as possible the design width and crest levels shown on the sections and tables on Drawings PT03/2015/01 & 02. For convenience on site, the vertical distances from the top of the maintenance gangway/promenade down to the adjacent design crest level are shown on Drawings PT03/2015/01 & 02. The slope below the crest (design slope shown as 1 in 8) is less critical and any reasonable slope will be accepted, provided that it is evenly graded from the crest seawards, no steeper than 1 in 5 in any area and free from “cliffing” or other steep drops.
- 15.9 Final beach levels and profiles along crests and slopes are to be blended in with the adjacent beach so as to achieve a natural appearance as far as is reasonably practicable. Final beach surfaces are to be smooth, evenly graded and free from vehicle ruts.
- 15.10 Shingle is to be moved away from the back of the beach where it has built up against the promenade/sea wall, including around slipways, ramps, access stairs, stormwater outfalls and the like, so that the beach is level across the full width of the crest, or as otherwise agreed with the *Project Manager*. When working within 2 m of the promenade/sea wall plant is to work carefully and in a perpendicular direction to minimise the risk of damaging the stormwater outfalls which pass through the sea wall and which terminate in stainless steel grilles and/or projecting rubber non-return pipes. Shingle is to be cleared away from all stormwater outfalls to at least 300 mm below the invert level of the outfalls. It is expected that plant used for recycling will also be used for regrading when not being used to load dumper trucks or distribute deposited shingle.

- 15.11 Tenderers should allow for the provision of a 35 tonne 360 degree tracked excavator and a D6 bulldozer for the durations shown in the Activity Schedule for each cell, which are in addition to any time spent by this or similar plant during recycling. These durations are based on previous experience and should be adequate to complete the specified regrading work. If more time and/or other plant is necessary due to the condition of the beach this will be the subject of a Compensation Event. It is for the *Contractor* to determine when this work is carried out to suit his working method and programme but regrading should be completed out as soon as possible after recycling within each cell so as to allow each section of beach to be re-opened to the public with a minimum of delay.
- 15.12 Shingle clearance – during each access period the *Contractor* is required to remove any shingle which has been deposited on the maintenance gangway/promenade and on, over or around slipways, ramps, access stairs, stormwater outfalls and the like, down to and level with the adjacent finished beach crest. All shingle is to be returned to the beach. Provided that the amounts of shingle are not too great, this is to be carried out by the banksmen while recycling and/or regrading are being carried out on the adjacent beach. Banksmen are to be equipped with suitable brooms and shovels. If the amount of shingle deposited is too great to be removed by the banksmen, a mechanical wheeled sweeper brush and/or a small rubber-tracked excavator may be required, depending on the location, which shall be the subject of a Compensation Event. Accordingly the activities for banksmen and shingle clearance are combined in the Activity Schedule and are on a cell-by-cell basis.
- 15.13 Additional works – works additional to the main activities of shingle recycling, regrading and clearance are normally required at specific locations along the frontage to suit local conditions and requirements. These are due to features in the beach and promenade, adjustments to the design profile and other reasons, as set out below. For the location of these additional works see the reference letters given below and the locations shown on Drawing PT03/2015/03. Other additional works may be instructed by the *Project Manager* which will be the subject of Compensation Events.
- 15.14 Damping down - if dry and windy weather occurs during an access period the plant may generate an unacceptable amount of dust. In this case the *Contractor* is to damp down the haul routes with seawater using suitable plant and equipment. The damping down plant is to be self-propelled (e.g. a tanker) or provided with a means of propulsion (e.g. a tractor unit with towed bowser) so that it is not reliant on other items of plant for relocation. It must have a storage capacity of at least 10,000 litres and be equipped with the means to pump water from the sea and spray it back across the haul routes, including all necessary hoses. Only one section of beach is required to be damped down at any one time. The damping down plant is to have a dedicated full time operator and an additional full time banksman to ensure public safety. A preliminary method statement is to be submitted with the tender detailing the proposed plant, associated equipment and method of working. Tenderers may wish to note that no damping down work has been necessary in recent years.
- 15.15 The *Contractor* is to supply all necessary personnel, vehicles, plant, equipment and materials to ensure the safe and efficient completion of the works and is to allow for all necessary associated work including fuelling, maintenance and cleaning.
- 15.16 The *Contractor* must comply with all appropriate and related legislation together with associated regulations and Codes of Practice at all times.

Planned Works

- 15.17 Tenderers are to allow for time and cost of carrying out all specified activities during each planned access period in the Activity Schedule, including all plant (including fuel, maintenance, servicing, mobilisation and demobilisation) and personnel (including supervisors, drivers, banksmen and any other operatives). 'Working days' shall be taken to mean full days between 0800 and 1800 when the plant is available to carry out the Activities listed in Section 5 and excludes mobilisation and demobilisation.
- 15.18 The items of plant, the duration that each is required for, the sequence of working and the number of banksmen required will depend upon the condition of the beach, time of year, available funding and other factors for each access period and will be agreed with the *Contractor* prior to the commencement of the respective access period.

Emergency Works

- 15.19 At any time between 7th April 2020 and 7th April 2025 the *Contractor* may be required to respond to requests from the *Project Manager* to mobilise plant to site (and on completion to demobilise) to carry out emergency regrading/recycling works following a severe storm. It is possible that emergency works will need to be carried out on a weekend or during unsociable hours. If a request is received the *Contractor* is expected to make every effort to mobilise the required plant to site within 24 hours of the request. All health and safety provisions and the requirements of the works information will apply to emergency works. The *Contractor* is required to provide an action plan for mobilising to site which shall include details of key people who can be contacted by the *Project Manager* in an emergency both during and outside of normal working hours.
- 15.20 The *Contractor* is not expected to have plant or labour on standby for emergency works but is to have an action plan that can be put into place to source appropriate plant and labour at short notice.
- 15.21 The number of emergency events, their timing, duration and details of the works necessary cannot be predicted at tender stage. Tenderers are therefore to allow for one period of emergency work lasting up to two weeks occurring at any time during the contract period which requires plant of the type and for the durations shown on the Activity Schedule. Payment for emergency event(s) will be based on the activities undertaken. Rates for each activity shall be based on those tendered for the previous and next planned access periods, adjusted on a pro rata basis based on the number of days between the start date of each planned access period and the start date of the emergency works.

Plant

- 15.22 Plant that has been used successfully in recent works is described below. The *Contractor* is free to choose the type and number of plant used provided that they achieve the requirements of the contract.

- Dumper trucks - 6 wheeled with tailgate, 30 & 40 tonne maximum load capacity
 - Excavators - 35 tonne, 360 degree tracked with loading bucket
 - Bulldozers - D6
- 15.23 Tenderers should satisfy themselves by inspection of the site that all plant proposed is suitable for the works to be undertaken, including access to, from and within the site. The use of alternative plant will only be approved by the *Project Manager* if it can be shown by the *Contractor* that it will not cause any damage to the site and environs or other problems. No plant is to be used unless approved in advance by the *Project Manager*. Permission to use alternative plant may be withdrawn at any time if its use causes unacceptable problems, at the discretion of the *Project Manager*.
- 15.24 Copies of all personnel certification / machine tickets (including banksmen) must be supplied with the *Contractor's* construction phase health and safety plan.
- 15.25 Plant is to be used at its maximum potential consistent with safe working practices as appropriate to the location and site conditions. All trucks are to be fitted with tailgates to minimise spillage during hauling: trucks without tailgates are not to be used. Trucks are to be driven in such a manner as to minimise spillage, particularly when travelling up, down or across slopes.
- 15.26 The *Contractor* shall choose appropriate plant and use best practice to minimise the amount of noise and vibration during working hours.
- 15.27 The *Contractor* is to avoid moving slow and/or heavy vehicles through the local area during rush hours during mobilisation, demobilisation and at other times.
- 15.28 Plant may be left overnight on the section of beach where it has been working that day. However no plant is to be parked overnight near to any particular dwellings for more than one night.
- 15.29 The *Contractor* is to make written daily records of activities and events on site and provide copies to the *Project Manager* on a weekly basis or otherwise on request. The daily records are to include the following:
- Weather conditions
 - Working hours
 - Work locations
 - Work activities
 - Details of personnel on site and their roles
 - Details of plant and equipment on site and moving to/from site
 - Number of loads and total weight of shingle recycled by each individual truck
 - Total weight of shingle recycled by all trucks in each recycling cell
 - Quantity of fuel delivered with meter readings
 - Details of working time and any breakdowns
 - Any other issues including health and safety, spillages, visitors, instructions received additional work etc.
- 15.30 Any plant or machinery that cannot feasibly be repaired within one day is to be replaced at the *Contractor's* expense so as to ensure that the works proceed without unnecessary delay.

Progress

- 15.31 Once the works have commenced they shall continue until completion without delay subject to clauses 4.69. and 4.70. below.
- 15.32 Work on the foreshore is limited by marine conditions, including waves, tides and storms. The *Contractor* shall make due allowance for this in his working times, programme and time for completion.
- 15.33 Work on the foreshore can be affected by weather conditions. The *Contractor* is to take all reasonable measures to work through, reschedule or extend activities to accommodate the conditions and inform the *Project Manager* immediately at the commencement and cessation of such conditions. The *Project Manager* may allow the *Contractor* to work outside of the previously agreed working hours if necessary to complete the work within the agreed programme or may require the *Contractor's* programme to be extended.

Waste

- 15.34 The works comprise the recycling and regrading of existing beach material within the site so it is not anticipated that any waste will be produced. Accordingly a Site Waste Management Plan (SWMP) is not relevant so has not been prepared. In the event that any waste is produced, or is anticipated to be produced, the *Contractor* is to immediately comply with the requirements of the Site Waste Management Plans Regulations 2008 which shall include working with the *Project Manager* to set up and manage a SWMP in accordance with these Regulations.
- 15.35 In the event that any waste is produced, a Registered Waste Carrier shall dispose of all surplus arisings and waste in an appropriate manner to a suitable licensed tip. Copies of all Waste Transfer Notes are to be provided to the *Project Manager*.

Progress Reports and Meetings

- 15.36 The *Contractor* shall produce daily updates detailing the work completed with sufficient details (work locations, plant and personnel used, volumes recycled, haul distances etc.) for payment to be calculated. The daily updates are to be emailed to the *Project Manager* by 12.00 on the following working day.
- 15.37 The *Contractor* shall produce reports summarising progress at weekly intervals. Each weekly progress report shall include a description of any delays which have occurred and the action the *Contractor* proposes to take to overcome such delay. The weekly progress reports shall also detail any additional works and costs, so far as these are known or can reasonably be estimated.
- 15.38 Weekly progress meetings between the *Contractor* and the *Project Manager* may be required and will be held on site during which the weekly progress report will be discussed.

Funding and Expenditure

- 16 Funding for the works is currently provided by the Environment Agency. At time of tender invitation the required funding for the term of the contract has been identified but not yet

allocated or finally approved by the Environment Agency. In recent years final approval of funding in each financial year has been received in the summer of each year prior to the planned works in the following autumn on a rolling annual basis. It is possible that funding for either of the financial years covered by the term of the contract may not be approved in part or full. It is also possible that additional funding may be granted in one or both of the financial years.

16.1 The anticipated approximate expenditure profile for the term of the contract (assuming that all funding identified is finally approved) is shown below, together with the activities assumed in each period:

- **Financial Year 2020/21 – £230,000**

- first planned access period
- second planned access period
- emergency works

- **Financial Year 2021/22 – £230,000**

- third planned access period
- fourth planned access period
- emergency works

- **Financial Year 2022/23 – £230,000**

- fifth planned access period
- sixth planned access period
- emergency works

- **Financial Year 2023/24 – £230,000**

- fifth planned access period
- sixth planned access period
- emergency works

- **Financial Year 2024/25 – £230,000**

- fifth planned access period
- sixth planned access period
- emergency works

16.2 The *Contractor* is to liaise and co-operate with the *Project Manager* to ensure that the contract expenditure in any financial year does not exceed the funding available for that year, when known. This will be achieved by adjusting the activities (if necessary) to suit the funding available.

16.3 If emergency works are not required in a financial year it may be possible, subject to Environment Agency approval at the time, for the associated funding to be used to increase the scope of planned works in that year and/or carried over to subsequent years.

16.4 The expenditure profile may be varied for any reason at the *Project Manager's* discretion including changes in funding, unforeseen beach conditions, weather events and the necessity for emergency works.

Marine and Coastal Access Act 2009

17 The works are exempt from licensing by the Marine Management Organisation (MMO) under the above Act.

Environmental Best Practice

18 The Council is committed to the environmental principles of stewardship and sustainability to maintain and enhance the water environment. The *Contractor* shall plan and order all his activities to assist the Council to achieve these goals. In addition to this general requirement, particular areas for action are:

- Avoidance of pollution of any waters (surface or underground)
- Avoidance of pollution of any land
- Preservation of flora and fauna
- Avoidance of nuisance of sounds, vibration and dust

18.1 The *Contractor* shall demonstrate in his written method statements his proposals to minimise environmental impact and satisfy the above requirements. The following, inter alia, shall be addressed/taken into account in the method statement:

- *Contractor's* equipment which leaks any fuel, lubricant or any hydraulic fluid shall not be used
- Bio-degradable hydraulic fluid is preferred
- *Contractor's* equipment shall be maintained to ensure efficiency and to minimise emissions
- *Contractor's* equipment shall be steam cleaned prior to delivery to the site
- Fuel and oil storage shall be away from watercourses, fully contained within an impermeable bund to 110% of the volume stored and maintained in a clean and secure manner. Delivery and vent pipes shall terminate within the bund
- Refuelling and servicing of *Contractor's* equipment shall be carried out in designated locations away from water
- Refuelling shall be supervised and shall be carried out by pumping through a trigger-type delivery nozzle
- An adequate supply of absorbent materials shall be readily available on site at all times (e.g. in cab of *Contractor's* equipment)
- Any spillage shall be immediately contained, removed from site and disposed to a licensed tip. The *Project Manager* shall be informed immediately
- *Contractor's* equipment shall be effectively silenced and shall comply with any stated requirements of the Council.

18.2 The *Contractor's* attention is drawn to the CIRIA Manual 'Coastal and Marine Environmental Site Guide'. This publication offers guidance and good practice in avoiding the effects of poor environmental practice on coastal and marine construction projects.

18.3 The *Contractor* is to comply with all current guidance on the prevention of pollution published by the Environment Agency.

18.4 The *Contractor* is to note and comply with the Environmental Action Plan which applies to this project (see Appendix C). Note that some of the actions applied to the construction phase of the project are not relevant to these works e.g. rock placement.

Specification

19 All works are to be carried out in accordance with the 'Civil Engineering Specification for the Water Industry', 7th Edition (CESWI 7), published by WRc plc on behalf of UK Water Industry Research Ltd. in March 2011, supplemented by any specific requirements of this Contract contained in Special Clauses or Appendices and later amendments due to changes in the relevant British Standards Institution publication.

19.1 Any Special Clause or Special Sub-Clause which bears precisely the same number as a clause or sub-clause of CESWI 7 shall be deemed to be substituted for that clause or sub-clause of CESWI 7.

19.2 Insofar as any Special Clause, Special Sub-Clause or Appendix may conflict or be inconsistent with any provision of CESWI 7, the Special Clause, Special Sub-Clause or Appendix shall always prevail.

19.3 Special Clauses comprise of:

- Standard clauses with additions and/or amendments.
- Additional clauses including associated appendices where appropriate.
- Standard appendices with additions and/or amendments.

19.4 In addition to this Specification, the Council has produced a 'Construction Works Policy' that any contractor carrying out work in the Shepway area is expected to comply with. This Policy is contained within the pre-construction information.

Additional Works

20 Additional works are only to be carried out with the express prior permission of the *Project Manager*.

WORKS INFORMATION FOR EACH ACCESS PERIOD

Condition Survey

- 21 Immediately before the beginning of each access period, the *Contractor* shall produce a photographic Condition Survey of all property that may potentially be affected by the works. The *Contractor* shall be responsible for making the inspections, taking high resolution (5 MB or greater) JPG format digital photographs, and providing the *Project Manager* with copies on a computer disc (not emailed or web hosted) within 48 hours of possession of the site. Hard copy (printed) photographs are not required.
- 21.1 The Condition Survey shall cover all property within and immediately adjacent to site areas, within and immediately adjacent to site access routes and property nominated (within reason) by the *Project Manager*. Property shall include sand pits, groynes, sea walls, promenades, walls, fences, roads, paths, paved areas, steps, ramps, street furniture, grassed areas, trees, bushes, etc.
- 21.2 The photographs should pay particular attention to property in poor condition and/or possessing existing faults.
- 21.3 The location of each photograph must be identified in some way, either by means of a marked up drawing, geo-tagging or some other means. The date each photograph was taken shall also be identified.
- 21.4 The *Contractor* should note that the Condition Survey will be used to establish the standard of reinstatement required on completion of the scheme. It will also be used to determine if any damage or defects reported may have been caused by the *Contractor* or already existed before the works.

Progress Photographs

- 21.5 The *Contractor* shall take dated photographs to record any storm event, damage caused or any other significant event that may occur during the works. These are to be high resolution (5 MB or greater) JPG format digital photographs and shall be provided on a computer disc (not emailed or web hosted) to the *Project Manager* on completion of each access period.
- 21.5.1 The location of each photograph must be identified in some way, either by means of a marked up drawing, geo-tagging or some other means. The date each photograph was taken shall also be identified

Signage

- 21.6 Public notices - at least 14 days before the beginning of each planned access period the *Contractor* shall provide and erect public notices to advise the public about the planned works. Wording shall be generally as shown in Appendix A but the final version shall be agreed with the *Project Manager*. The minimum size of the signs shall be A3 (420 x 297 mm). Public notices are to be located throughout the site at all purpose built access points to the beach (stairs, ramps, slipways etc.) and at regular intervals and appropriate locations along the seawall. The maximum distance between signs shall be 300 m.

- 21.7 Scheme board – throughout each planned access period the *Contractor* shall provide and erect at least two portable scheme boards. Wording shall be generally as shown in Appendix A but the final version shall be agreed with the *Project Manager*. The minimum size of the signs shall be A1 (840 x 598 mm). The signs shall be securely mounted on whatever means deemed necessary, moved on a daily basis to locations agreed with the *Project Manager* as being nearest to the main construction activities and removed on completion of the works.
- 21.8 *Contractor's* board - The *Contractor* may also erect his own signboard, provided it is no greater in size than the portable scheme boards and after approval of the content has been obtained from the *Project Manager*.
- 21.9 Warning signs - throughout the works the *Contractor* shall provide and erect pairs of warning signs (Vehicle Warning and Beach Closed) to warn the public that access to the beach is temporarily closed and of vehicle movements. Wording shall be generally as shown in Appendix A but the final versions shall be agreed with the *Project Manager*. The minimum size of each sign shall be A4 (297 x 210 mm). Warning signs are to be located at all purpose built access points to the beach (stairs, ramps, slipways etc.) and at regular intervals and appropriate locations along the seawall directly adjacent to site activity. The maximum distance between pairs of signs shall be 150 m.
- 21.10 General - all signage is to be provided, erected, maintained in good condition and removed on completion. It is to be rigid, robust, durable, properly secured and clearly visible. Laminated paper or other flexible signs are not acceptable. Signs may be temporarily fixed to railings provided that these are not damaged in any way. Temporary posts or other temporary means of mounting the signs are to be provided where there is nothing existing that is suitable. Signage is to be purpose made for the scheme and must include the *Contractor's*, Environment Agency's and Folkestone & Hythe District Council's logos as indicated in the preliminary details. Details of the form, size, wording and precise locations shall be to the approval of the *Project Manager*.

Site Facilities

- 21.11 There are no facilities on site for storage, telecommunications, foul drainage or the supply of water, lighting and power. Temporary facilities are to be arranged by the *Contractor* as required and necessary for the completion of the works at his own expense. Preliminary details of the facilities to be provided shall be provided with the tender submission.
- 21.12 The *Contractor* will be permitted to use an area of the site as a temporary compound. This is to be sited as far from dwellings and business premises as is reasonably practical in a location agreed with the *Project Manager*. In previous years contractors have used the car park and adjacent beach at Battery Point (location reference 3 Drawing PT03/2015/03) for their temporary compound.
- 21.13 The *Contractor* shall provide, erect, maintain, clean and remove on completion temporary accommodation within the temporary compound for the use of his own staff and workforce and those of his sub-contractors. This accommodation shall include messing, sanitary and welfare facilities, stores, workshops, compounds, parking areas and the like, as necessary for the completion of the works and as required by the CDM Regulations. The location and layout of the temporary accommodation shall be to the approval of the *Project Manager*.

- 21.14 The *Contractor* shall ensure that the temporary compound and accommodation are maintained in a clean, tidy and safe condition at all times. All areas adjacent to the site, including roads and pavements, are to be kept clean and clear of mud, dirt, water or other materials at all times.
- 21.15 When going to and from the site and temporary compound, workmen must keep strictly to roads, footpaths and other agreed routes. They must not enter on to any private land or buildings unless this is necessary to carry out work included in the contract, and then only with the prior permission of the owner(s).
- 21.16 The *Contractor* shall maintain a visitor book for the duration of the works.
- 21.17 The *Contractor's* staff may park during the day at the pay-and-display public car parks at Battery Point, Twiss Road and the Coastal Park. For locations see references P on Drawing No. PT03/2015/03. Parking permits are required for these car parks which will be provided free by the Council for the duration of the works including mobilisation and demobilisation. The *Contractor* is entirely responsible for using the car parks in accordance with the regulations: penalty notices will not be waived for failure to display a valid permit or for any other reason. At least 3 weeks before each access period the *Contractor* to advise how many vehicles require parking permits. The *Project Manager* may require registration and other details of the cars to be parked. Contractor's cars are to be parked on the northern (landward) side of each car park whenever possible and at least 6 spaces are to be retained at all times for parking by the public on the southern (seaward) side of each car park.
- 21.18 The *Contractor* shall leave the site in a clean, tidy and safe condition at the end of each working day.
- 21.19 The *Contractor* shall, on removal of all his plant, equipment and temporary works from the site, leave all affected areas clean and in a tidy condition.

Project Manager's Facilities

- 21.20 Office Accommodation - the *Contractor* shall provide for each planned access period (but not for emergency work) a suitable temporary office area with a minimum floor space of 10m² for the use of the *Project Manager's* staff. The office is to be located in one of the temporary compound sites identified by the location references C on Drawing No. PT03/2015/03.
- 21.21 Sanitary Accommodation - toilet facilities shall be housed within a separate but adjacent building with a wash hand basin with cold water supply. Portable self contained units are acceptable.
- 21.22 Services – the *Contractor* shall provide all reasonable assistance to the *Project Manager* and his staff in carrying out site surveys, checking, setting out, taking material samples and undertaking quality control, if required. Assistance shall include the provision of small tools, sample sacks and equipment and a chainman as and when required. No allowance for this work need be made at tender stage.
- 21.23 Maintenance - all office and sanitary accommodation shall be kept clean and well maintained. The *Contractor* shall supply and pay for all cleaning materials, washing materials and paper towels.

Security

- 21.24 Tenderers' attention is drawn to the risks of vandalism and theft, particularly outside working times. Security of the site is entirely the *Contractor's* responsibility. The *Contractor* is to provide and maintain suitable security measures throughout the period of the works. Preliminary details of the security measures to be provided shall be provided with the tender submission.
- 21.25 The *Contractor's* temporary compound is to be protected by suitable means which may include security fencing around the perimeter, lockable steel shutters over the windows of accommodation units, CCTV cameras and/or watchmen.
- 21.26 When parked overnight all plant is to be covered and/or protected in an appropriate manner to ensure any possible vandalism is kept to a minimum (e.g. all fuel filler points must be secured, windscreens must be shielded etc.).
- 21.27 Security arrangements, particularly lights and generators, are to be arranged so as not to cause nuisance or annoyance to nearby residents, particularly out of working hours. Any lights used are to be directed towards the sea only. Any generators used are to be the 'super-silenced' type where the noise measured at 1 m from the generator housing does not exceed 40 dB when the generator is running at less than 50% load. Generators are not to be run at more than this level outside working hours.
- 21.28 If any complaints are made by members of the public or nearby businesses these are to be immediately communicated to the *Project Manager*. The *Contractor* is to change the security arrangements to address any valid complaints at his own cost.

Mobilisation and Demobilisation

- 21.29 Tenderers are to allow for the mobilisation and demobilisation of all plant and equipment to and from the site for each planned access period, including all associated costs. The area chosen by the *Contractor* for his temporary compound will be available for use up to one week before planned activities commence and up to one week after they have been completed. No plant, materials etc. are to be left on site outside of this period.

Supervision

- 21.30 The *Contractor* is to ensure that a suitably qualified and experienced foreman (or equivalent) is on site during all working hours to direct work activities including plant and personnel. The foreman shall ensure that the works are carried out safely and efficiently and shall, when necessary, act on the instructions of the *Project Manager*. The foreman shall have an independent means of transportation within the site so that he is able to adequately supervise activities running concurrently on different parts of the site. The foreman shall be included in the list of key people included in the tender document.

Activities in Cell 1

- 21.31 Shingle recycling is generally to be as described in Section 4. Shingle in this cell is normally recycled from the source site at the eastern end of the cell (normally Zones 6 & 7) to the deposition site at the western end of the promenade (normally Zones 3 & 4). In Zone 3 the design profile is normally extended in front of the promenade at least 20 m westward of the access steps at the end of the promenade (location reference Q) to marry in with adjacent beach levels in Zones 1 & 2, to achieve a gradual transition between profiles.
- Shingle regrading is to be as described in Section 15.
 - Shingle clearance is to be as described in Section 15.
 - Damping down may be necessary but has not been so in recent years.
 - Avoid working in any areas used by commercial fishermen which is normally in Zones 1 & 2.

Activities in Cell 2

- 21.32 Shingle recycling is generally to be as described in Section 4. Shingle in this cell is normally recycled from the source site at the eastern end of the cell (normally Zones 14 & 15) to the deposition site at the western end (normally Zones 9 & 10).
- 21.33 Shingle regrading is to be generally as described in Section 15. Opposite the Hythe and Saltwood Sailing Club (location reference S) reduce the crest locally to a length exceeding 10 m but less than 15 m to form a more evenly sloped access between Hythe and Saltwood Sailing Club and the sea. Marry in with adjacent beach levels to achieve a gradual transition between profiles. Throughout this cell ensure that all plant, but especially bulldozers, travels and works parallel to the promenade as far as is reasonably possible. This is necessary to minimise vibrations transmitted to nearby houses.
- 21.34 Shingle clearance is to be as described in Section 15.
- 21.35 There are normally four items of additional work as follows:
- 21.35.1 Sandpit - the sandpit is to be raked to remove all stones and other debris on the surface. Return any shingle removed to the beach. If additional play sand is required to make up levels this will be instructed by the *Project Manager* and will be the subject of a Compensation Event. See location reference N.
 - 21.35.2 Temporary ramp - the temporary timber ramp from the promenade to the beach will be removed by Hythe and Saltwood Sailing Club and stacked on the promenade or at the back of the beach. Profile the shingle under evenly so that the ramp, when replaced by Hythe and Saltwood Sailing Club, slopes evenly and without trip hazards between the promenade and the beach. The finished ramp levels are to be slightly above the adjacent surfaces to allow for settlement. See location reference S.
 - 21.35.3 Buried ramp - opposite the Hythe and Saltwood Sailing Club the *Contractor* is to be aware that sections of temporary timber ramp that have not been removed may be buried in the beach. At the commencement of work in this area to probe the beach for any

remaining sections and either remove them or advise the *Project Manager* immediately. The *Contractor* is to avoid plant travelling over any remaining sections of ramp. See location reference S.

21.35.4 Permanent ramp - dress shingle around the permanent timber ramp from the promenade to the beach at Hythe and Saltwood Sailing Club to reduce the drop at all edges of the ramp to less than 100 mm. Marry in with adjacent beach levels to achieve a gradual transition between profiles. See location reference S.

21.36 Damping down may be necessary but has not been so in recent years.

Activities in Cell 3

21.37 Shingle recycling is generally to be as described in Section 4. Shingle in this cell is normally recycled from the source site at the eastern end of the cell (normally Zones 35 to 38) to the deposition site at the western end (normally Zones 17 to 20). It is often necessary around Smuggler's Slipway (location reference M) to extend the width of the crest sufficiently seaward beyond the design profile to allow access for plant during the works.

21.38 Shingle regrading is to be as described in Section 15.

21.39 Shingle clearance is to be as described in Section 15.

21.40 There is normally one item of additional work as follows:

21.40.1 Sandpit - the sandpit is to be raked to remove all stones and other debris on the surface. Return any shingle removed to the beach. If additional play sand is required to make up levels this will be instructed by the *Project Manager* and will be the subject of a Compensation Event. See location reference L.

21.41 Damping down may be necessary but has not been so in recent years.

Activities in Cell 4

21.42 Shingle recycling is generally to be as described in Section 4. Shingle in this cell is normally recycled from the source site at the eastern end of the cell (normally Zones 62 to 66) to the deposition site at the western end (normally Zones 40 to 43). It is often necessary to move shingle from the eastern end of Cell 3 (Zones 37 & 38) into this cell to provide access for plant along this cell, primarily immediately eastwards of Battery Point (location reference C), before recycling and other work within and eastwards of this cell can commence. At the back of the beach opposite Folkestone Rowing Club in Granville Parade (location reference F) mound the shingle locally to just below promenade level to facilitate beach access by rowers carrying boats.

21.43 Shingle regrading is to be generally as described in Section 15. At Coastguard Cottages in Sandgate (location reference H) locally build out the beach using shingle from adjacent sections of the beach to provide additional protection to the row of houses. The crest is to be at least 10 m further seaward than the design profile, extending to at least 20 m in both directions measured along the beach from the gable wall of the terrace of houses. Marry in with adjacent beach levels

to achieve a gradual transition between profiles. Pull shingle away from the western sides of the four small groyne (location reference G) so that shingle levels on both sides of each groyne are the same as each other and the adjacent beach.

21.44 Shingle clearance is to be as described in Section 15.

21.45 There are normally three items of additional work as follows:

21.45.1 Storm overflows - the Enbrook Stream Storm Overflows are both encased in concrete and supported on timber piles. Avoid damaging the concrete casing or piles by mounding shingle over the casings before any plant traverses across them. The depth of shingle mounded over is for the *Contractor* to determine dependent on the plant being used but is to be a minimum of 500 mm. See location reference E.

21.45.2 Stormwater outfalls - on the beach adjacent to Sandgate Road clear shingle away from the three stormwater outfalls to at least 500mm below the invert level of the outfalls and grade the beach onto which the outfalls discharge to fall seaward, to enable them to function properly. See location reference K.

21.45.3 Inclinator - avoid damaging the concrete inclinometer housing by digging carefully in this area to expose it, if not already visible, and marking its position with excavation marker tape or similar to prevent plant access during the works. See location reference J.

21.46 Damping down – this may be necessary but has not been so in recent years.

Activities in Cell 5

21.47 Shingle recycling is generally to be as described in Section 4. Shingle in this cell is normally recycled from the source site at the eastern end of the cell (normally Zones 70 & 71) to the deposition site at the western end (normally Zones 68 & 69). It is often necessary to move shingle from the eastern end of Cell 4 (Zones 65 & 66) into the western end of this cell (Zone 68) to provide access for plant along this cell before recycling and other work within and eastwards of this cell can commence.

21.47.1 Shingle regrading is to be as described in Section 15.

21.47.2 Shingle clearance is to be as described in Section 15.

21.47.3 There is normally one item of additional work as follows:

Grilles - in the concrete sea wall at the back of the beach there are two stainless steel grilles with fixed louvres, each approximately 1.0 m square. The grilles are positioned in front of the louvred air vents behind the concrete splash wall at the rear of the promenade. These grilles cover overflows to the Channel Tunnel Rail Link stormwater drainage system. Avoid damage to the grilles by digging carefully in this area to expose them, if not already visible, and marking their position with excavation marker tape or similar to prevent plant access during the works. See location reference D.

21.48 Damping down may be necessary but has not been so in recent years.

Activities in Cell 6

21.49 Shingle recycling is generally to be as described in Section 15. Shingle in this cell is normally recycled from both sides of the bay towards the middle, or as directed by the *Project Manager*.

21.50 Shingle regrading is to be as described in Section 15.

21.51 Shingle clearance is to be as described in Section 15.

21.52 There are normally two items of additional work as follows:

21.52.1 Sandpit - the sandpit is to be raked to remove all stones and other debris on the surface. Return any shingle removed to the beach. If additional play sand is required to make up levels this will be instructed by the *Project Manager* and will be the subject of a Compensation Event. See location reference A.

21.52.2 Concrete access ramp to groyne - the concrete ramp from the promenade to the concrete surfaced groyne in Zone 72 is to be cleared of shingle. Shingle is to be graded evenly so that the ramp edge slopes evenly and without trip hazards between the promenade and the concrete walkway. The finished ramp levels are to be slightly above the adjacent surfaces to allow for settlement. See location reference B.

21.53 Damping down may be necessary but has not been so in recent years.

Activities in Cell 7

21.54 Shingle recycling is generally to be as described in Section 15. Shingle in this cell is normally recycled from both sides of the bay towards the middle, or as directed by the *Project Manager*.

21.55 Shingle regrading is to be as described in Section 15.

21.56 Shingle clearance is to be as described in Section 15.

21.57 Damping down may be necessary but has not been so in recent years.

Activities in Cell 8

21.58 Shingle recycling is generally to be as described in Section 15. Shingle in this cell is normally recycled within the cell to create a minimum crest width, or as directed by the *Project Manager*.

21.59 Shingle regrading is to be as described in Section 15.

21.60 Shingle clearance is to be as described in Section 15.

21.61 Damping down may be necessary but has not been so in recent years.

Measurement and Payment

22 The basis of payment for shingle recycling shall be a rate in pounds sterling per cubic metre of shingle per kilometre (or part thereof) hauled. The means of measurement shall be as specified below. The basis of payment for shingle regrading shall be a daily rate for each item of plant required in each cell. Payment for all other aspects of work shall be on a lump sum basis. No other payments will be made except where specifically referred to in this document or covered by a Compensation Event.

22.1 The *Contractor* shall provide and maintain an accurate, detailed and independent means of measurement for recording the volumes, distances, source sites and deposition sites of all shingle recycled. The proposed means of measurement is to be described and submitted with the tender for assessment and is to be approved by the *Project Manager* before being implemented. The *Project Manager* may require the *Contractor* to provide details and justification of the accuracy, completeness or any other aspect of the means of measurement at any time during the contract. All costs associated with the means of measurement are to be met by the *Contractor*.

22.2 The means of measurement are for the *Contractor* to determine but the following are suggested. Other means may be used provided that full details are submitted with the tender and all details subsequently approved by the *Project Manager*. Tenderers are reminded that a quality score will be given for the proposed means of measurement which must reach or exceed the quality threshold if the tender is not to be rejected.

22.2.1 Telemetry – use of an accredited on-board GPS-based system on all trucks. Details of the proposed system including accreditation, data recorded, analysis and reporting are to be submitted to and approved by the *Project Manager* before use. Reports containing all of the load and location details required above are required for each truck separately and in total on both a daily and weekly summary basis. Daily reports covering all trucks used are to be submitted by email within one working day of the work being carried out unless agreed otherwise by the *Project Manager*. Weekly reports covering all trucks used are to be submitted by email within two working days of the end of the previous week unless agreed otherwise by the *Project Manager*. A conversion factor of 0.5556 (= 1 / 1.8) shall be used to convert the weight of shingle in tonnes to volume in cubic metres, unless evidence based on site measurements is provided to the contrary to the satisfaction of the *Project Manager*. Loss of shingle due to the action of wave, tide, storm or any other cause which occurs during the course of work in each recycling cell is an *Employer's* risk if this means of measurement is used.

22.2.2 Visual recording – use of one or more independent surveyors, as necessary to suit the working method and locations, to record the size of load and number of trips made by each truck. At the beginning of the contract period, and again whenever new trucks are used, the *Contractor* shall confirm to the *Project Manager* the minimum load in cubic metres to be carried by each truck. The minimum load shall be verified by the *Contractor* by means of measurement of the dump box, use of a weighbridge or other means agreed with the *Project Manager*.

A means of verifying visually from the adjacent promenade that each truck is carrying this minimum load is to be agreed with the *Project Manager*. This may include filling each dump box to overflowing or levelling each load so that the shingle reaches a datum level in the dump box. The surveyor is to record any trucks which do not appear to be carrying the minimum load and report these to the *Contractor* and *Project Manager* immediately. Haul distances are to be based on site measurements or by reference to the zones, the reference numbers of which are marked on the sea wall at the centre of each. If the latter the chainage of the centre of the cell, derived from the chainages shown on Drawings PT03/2015/01 & 02, may be used for any shingle taken from or deposited in that cell. Reports containing load and trip data and the location details required above are required for each truck separately and in total on both a daily and weekly summary basis. Daily reports covering all trucks used are to be submitted by email within one working day of the work being carried out unless agreed otherwise by the *Project Manager*. Weekly reports covering all trucks used are to be submitted by email within two working days of the end of the previous week unless agreed otherwise by the *Project Manager*. The surveyors and any survey or other equipment required by them are to be paid for the *Contractor*. The surveyors are to be employed and managed by the *Contractor* and are to report to both the *Contractor* and the *Project Manager* at the same time. Banksmen or other contractor's staff may not be used as surveyors. Details of the proposed surveyors are to be submitted by tenderers. Surveyors are only to be employed if approved by the *Project Manager*. Loss of shingle due to the action of wave, tide, storm or any other cause which occurs during the course of work in each recycling cell is an *Employer's* risk if this means of measurement is used.

- 22.2.3 Survey - use of independent surveyors to survey, analyse and report the volume and locations of all shingle moved. Surveys are to be carried out in each recycling cell both immediately before and immediately after work in that cell has been completed. A report for each completed recycling cell is to be submitted by email within two working days of the work in that cell being completed unless agreed otherwise by the *Project Manager*. Surveys are to comprise plan and level information for all areas affected by the works to a maximum spacing in plan of 5 m in any direction and to minimum accuracy of 50 mm in both plan and level. All levels must be referenced to Ordnance Datum. GPS surveys are preferred but not required. Reports are to include all raw survey data in Excel format and analysis of volumes and distances for checking and approval by the *Project Manager*. The surveyors and any survey or other equipment required by them are to be paid for the *Contractor*. The surveyors are to be employed and managed by the *Contractor* and are to report to both the *Contractor* and the *Project Manager* at the same time. Banksmen or other contractor's staff may not be used as surveyors. Details of the proposed surveyors are to be submitted by tenderers. Surveyors are only to be employed if first approved by the *Project Manager*. No payment will be made for any shingle moved which has not been recorded by the surveys. Loss of shingle due to the action of wave, tide, storm or any other cause which occurs during the course of work in each recycling cell or between the completion of work and the survey in each cell is therefore a *Contractor's* risk if this means of measurement is used.

22.2.4 The *Contractor* should note that the *Project Manager* will verify the volumes and haul distances reported by the *Contractor* using GPS-based survey equipment to carry out surveys before, during and after the works. In the event of any significant discrepancy between the volumes reported by the *Contractor* and those surveyed by the *Project Manager*, the *Project Manager* may require the means of measurement to be checked and verified by the accredited supplier and may not accept the volumes reported by the *Contractor* unless they can be adequately verified. In the event of any dispute, the volumes surveyed by the *Project Manager* shall be used for the purposes of payment.

Banksmen

23 The primary duty of the banksmen is to ensure public safety by making sure that members of the public do not access the beach in areas where plant is working. Banksmen are to be distributed along the promenade between the source and deposition sites during recycling or near to the plant during regrading. They are to advise members of the public attempting to use the beach that it is not safe and that they should use another section of beach. If anyone refuses to leave the works are to cease in the area and the *Project Manager* is to be advised immediately.

23.1 Banksmen are to be equipped with the means, such as mobile phones or radios, to contact or warn plant operators if members of the public access any part of the beach where plant is working. Plant working in an area where a member of the public has accessed the beach is to stop immediately and remain at a standstill until the members of the public have left the beach.

23.2 No plant is allowed to work unless a banksman is present in the designated working area. Downtime incurred due to the absence of banksman is to be recorded.

23.3 In addition to their primary duty of ensuring public safety, banksmen are also required to clear shingle from the promenade and other areas as described above. This work is to be carried out in such a way that it does not conflict with their primary duty. This is to be achieved by making sure that shingle is cleared from a section of promenade only when recycling or regrading works are being carried out in that area, so that the position of the banksmen does not need to be altered from that which would exist if there were no shingle to clear. Accordingly the activities for banksmen and shingle clearance are combined in the Activity Schedule and are on a cell-by-cell basis.

23.4 Banksmen are to be positioned on the promenade as follows:

23.4.1 Close to each excavator

23.4.2 Close to each bulldozer

23.4.3 Between source and deposition sites in positions enabling them to see the whole of the promenade and beach during recycling in each cell

23.5 During working periods banksmen are to remain on the promenade in all weather except heavy rain or strong winds and are to be provided with suitable weatherproof clothing. If heavy rain or strong winds occur and subject to the prior approval of the *Project Manager*, banksmen may shelter in vehicles parked on the promenade while there are no members of the public using the promenade

or beach. Vehicles are to be parked in such a way that full visibility is maintained and banksmen are to remain vigilant in case any members of the public access the promenade or beach, in which case they are to leave their vehicles.

23.6 The behaviour of banksmen is important as they are the main interface between the public and the *Contractor* and *Employer*. Banksmen are to be briefed on the purpose of the works so that they can explain to the public if asked. They are to be appropriately dressed and are to maintain a professional standard of behaviour. Any banksmen who fails to maintain an appropriate standard of behaviour is to be removed from the works, at the discretion of the *Project Manager*.

23.7 The numbers of banksmen necessary in each cell are for the *Contractor* to determine in order to satisfy the above requirements and ensure public safety. However, as guidance to tenderers, the following number of banksmen in each cell are anticipated as a minimum:

- Cell 1 - 3 No.
- Cell 2 - 3 No.
- Cell 3 - 4 No.
- Cell 4 - 4 No.
- Cell 5 - 2 No.
- Cell 6 - 2 No.
- Cell 7 - 2 No.
- Cell 8 - 1 No.

Compensation Events

24 The place where weather is to be recorded is the nearest coastal location to the site at which records are made by the Met Office and/or the Channel Coastal Observatory, as appropriate to the type of record.

24.1 The *weather measurements* to be recorded for each access period are:

24.2 The daily rainfall (mm)

24.3 The number of days with rainfall more than 5mm

24.4 The number of days with minimum air temperature less than 0 degrees Celsius

24.5 The number of days with snow lying at 0900 hours GMT

24.6 And these measurements:

- wind speed and direction - this data shall be measured and recorded in sufficient detail at an agreed location to allow the wave hindcasting methods outlined in the CIRIA/CUR 'Manual on the use of rock in coastal and shoreline engineering' to be employed.
- actual wave heights (on which compensation events will be determined) by either or both of the following methods:
 - From actual measured data recorded at the wave rider buoy, located approximately on the 12mCD contour due south of Sandgate Castle 51°

03' 32" North 01° 08' 23" East. Data from this buoy is freely available from the internet or directly from Folkestone & Hythe District Council.

- In the event that the wave buoy is inoperative, wave heights are to be established through traditional hindcasting methods as outlined in the CIRIA/CUR 'Manual on the use of rock in coastal and shoreline engineering'. Wind speeds used for the calculation of wave heights shall be mean, not peak speeds.

- 24.7 The nearest Met Office Weather Recording Station to the site is between Dover and Deal at Langdon Bay. The Ordnance Survey Grid Reference is 6340 E and 1425 N, 117m AMSL.
- 24.8 For the purposes of defining a compensation event that relates to a delay to the works caused by excessive wave heights, the 1 in 10 year extreme significant wave height of 4.16m shall be the threshold value. This value was established from wave modelling and extremes analysis carried out for the detailed design of a coastal defence project along this frontage and is based on a 10-year offshore data set provided by the Met Office. The modelled location for this wave event is the 5m CD contour due south of Sandgate Castle.
- 24.9 The *arbitration procedure* is the Institution of Civil Engineers Arbitration Procedure 2006 including any amendments in force at the time the arbitrator is appointed.
- 24.10 The person or organisation who will choose an arbitrator if the Parties cannot agree a choice is the President of the Institution of Civil Engineers.
- 24.11 These are additional shared *Contractor's* and *Employer's* risks:

Excessive changes in the cost of fuel for plant, as defined below:

For the purposes of this contract clause an excessive change (increase or reduction) in the cost of fuel is defined as having occurred if the cost of fuel is outside the range given in Table B below for each access period

Table B – Fuel Prices		
Access Dates	Minimum Price per litre	Maximum Price per litre
September to October 2020	61p	76p
February to March 2021	62p	77p
September to October 2021	63p	78p
February to March 2022	64p	79p
September to October 2022	65p	80p
February to March 2023	67p	81p
September to October 2023	68p	82p
February to March 2024	69p	83p
September to October 2024	70p	84p
February to March 2025	71p	85p
September to October 2025	72p	86p

If the cost of fuel rises excessively additional payment to the Contractor will be made for all justified additional fuel costs incurred by the Contractor based on the quantity of fuel used and the amount by which the cost of fuel exceeds the maximum price per litre

If the cost of fuel reduces excessively payment to the Contractor will be reduced for all fuel costs incurred by the Contractor based on the quantity of fuel used and the amount by which the cost of fuel is lower than the minimum price per litre.

For the purposes of this contract clause 'cost of fuel' is defined as the price reasonably paid by the Contractor at the point of delivery including any taxes, duties or other similar costs levied directly or indirectly by the Government or regulatory authorities.

For the purposes of establishing the value of a compensation event the Contractor is to provide invoices for relevant fuel deliveries that shall clearly show the unit price paid on all dates for which a compensation event is considered to have occurred. He is also to provide delivery notes or other means acceptable to the Project Manager to evidence the quantity of fuel used during the period for which a compensation event is considered to have occurred.

The Project Manager may require further information to justify that the quantity of fuel used is reasonable for the number and type of plant being used and the duration of the works, taking into account the terrain, site conditions and operations carried out.

The Contractor notify the Project Manager of any actual or possible changes in the cost of fuel that fall outside the range given above within 24 hours of its delivery to site to enable the Project Manager to maintain suitable records for the purposes of agreeing the value of any compensation event.

The Contractor is to co-operate fully with the Project Manager in obtaining records of fuel deliveries, costs and usage sufficient to agree the value of any compensation event.

- 24.12 Delay damages for Completion of the whole of the works or the programmed works in any access period are £250 per working day.
- 24.13 The amount and form of the performance bond (if considered necessary) will be determined by the Employer following the receipt of tenders.

Appendices

The following appendices are provided as separate documents i.e. not part of this document:

- Appendix A Signage details
- Appendix B Pre-construction information
- Appendix C Environmental Action Plan
- Appendix D Drawings