

**DATED**

**21<sup>st</sup> December 2016**

**INVITATION TO TENDER**

**THE COALFIELDS REGENERATION TRUST**

**CONSULTANCY SERVICES TO PROVIDE A CHARRETTE LED REGENERATION  
FRAMEWORK FOR KINCARDINE, FIFE**

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NAME OF CRT GROUP COMPANY: THE COALFIELDS REGENERATION TRUST
TENDER FOR: CONSULTANCY SERVICES TO PROVIDE A CHARRETTE LED REGENERATION FRAMEWORK FOR KINCARDINE, FIFE.
REF: CHAR/KIN
TENDER RETURN DATE & TIME (DEADLINE): MONDAY 30 <sup>TH</sup> JANUARY 2017, 12:00 PM

## 1. INTRODUCTION AND BACKGROUND

### 1.1. Contents of the ITT

This invitation to tender (ITT) comprises:

- Tender completion requirements, evaluation model, specification and schedules.
- Draft contract and schedules.
- Technical and commercial questions.

### 1.2. Introduction to the Company

The Company is conducting the procurement for the purpose of procuring the services described in the Specification (**Services**).

This ITT is being issued to all suppliers who expressed an interest (**Tenderers**).

This ITT contains information about the procurement process, the Services, and assessment questions for Tenderers to complete. Each Tenderer's response (**Tender**) should be detailed enough to allow the Company to make an informed selection of the most appropriate solution.

The Coalfields Regeneration Trust was established in 1999 to respond to the needs of coalfield communities. The Trust is the only organisation dedicated to supporting coalfield communities. The State of the Coalfields' report (2014) commissioned by the Trust and produced by Sheffield Hallam University's Centre for Regional Economic and Social Research, provides compelling evidence that, 'coalfield communities remain under acute stress' and, 'the coalfields have significantly above-average levels of deprivation.'

In response to these findings our activities are focussed on addressing these problems and brokering the resources necessary to decrease the levels of deprivation in the former mining communities across England, Scotland and

Wales. Our ambition is for former mining communities to move to national average levels of deprivation, or better, and for this re-balancing to be achieved within a generation.

Our mission is: "To champion and strengthen coalfield communities, generate resources to respond to their needs and deliver programmes that make a positive and lasting difference." In furtherance of our mission, and to address the evidenced problems in coalfield communities, our activities will be designed to meet five core strategic objectives:

1. *Develop pathways to increase the number of people in work*
2. *Grow the skills of people to increase their opportunities*
3. *Support activities that improve the health and wellbeing of all age groups*

The intended legacy of our work is for our communities to be:

- Places where families feel supported and have good access to local services
- Supportive to the needs of children and young people to help them achieve their full potential
- Full of opportunities for people to work and improve their skills
- Responsive to the aspirations of people to live healthy lives
- Enterprising with the infrastructure to grow business and social enterprise
- Supported by effective and resourced voluntary and community organisations.

### 1.3. **Scope of the Project**

The Coalfields Regeneration Trust (CRT) wishes to procure a Regeneration Framework for Kincardine, Fife that will establish the following:

- a) A coherent shared vision for the future socio economic sustainability of the settlement of Kincardine, Fife.
- b) A range of regeneration investment opportunities that will contribute positively to the future socio economic sustainability of the towns. These will include investment opportunities associated with the development and improvement of key sites and premises, and also opportunities for investment in the public realm and infrastructure. These regeneration investment opportunities will cover a time period of up to ten years;

- c) A set of Development Briefs that will inform future development and other initiatives associated with place making in Kincardine that will deliver benefits of increased civic pride and increased attractiveness to the local community and investors;
- d) A clear and robust Delivery Plan and associated Investment Strategy for regeneration investment in Kincardine. This should include details of funding sources and phasing and should be based around priorities for action, including a series of 'early wins' that can be delivered within 12-18 months from the date of the community endorsing the Framework.

The Kincardine Regeneration Framework will comprise a collection of documents and reports to be delivered through this Commission and described in more detail in Schedule 2.

#### 1.4. Value of the contract

The anticipated value of the Services is not expected to be more than £30,000 excluding VAT.

Details of current expenditure or potential future uptake are given in good faith as a guide to past purchasing and current planning to assist you in submitting your Tender. They should not be interpreted as an undertaking to purchase any goods or services to any particular value and do not form part of the Contract.

#### 1.5. Contract term

The Company proposes to enter into one Contract for a maximum period of 6 months with the successful Tenderer (**Service Provider**).

The anticipated service commencement date is 20/02/17.

#### 1.6. Purpose and scope of this ITT

This ITT:

- Asks Tenderers to submit their Tenders in accordance with the instructions set out in the remainder of this ITT.
- Sets out the overall timetable and process for the procurement to Tenderers.
- Provides Tenderers with sufficient information to enable them to submit a compliant Tender (including providing templates where relevant).
- Sets out the Award Criteria and the Tender Evaluation Model that will be used to evaluate the Tenders.

- Explains the administrative arrangements for the receipt of Tenders.

### 1.7. Clarifications about the Services or ITT

Any clarifications relating to this ITT must be e-mailed to: tenders@coalfields-regen.org.uk.

The Company will respond to all reasonable clarifications as soon as possible through issuing a document listing Tenderers' questions and the Company's response to them (**Clarifications Log**), which will be e-mailed to all Tenderers. If a Tenderer wishes the Company to treat a clarification as confidential and not issue the response to all Tenderers, it must state this when submitting the clarification. If, in the opinion of the Company, the clarification is not confidential, the Company will inform the Tenderer and it will have an opportunity to withdraw it. If the clarification is not withdrawn, the response will be issued to all Tenderers.

The deadline for receipt of clarifications relating to the Services or this ITT is set out in the Timetable.

Tenderers are advised not to rely on communications from the Company in respect of the Services or ITT unless they are made in accordance with these instructions.

### 1.8. Clarifications about the contents of the Tenders

The Company reserves the right (but shall not be obliged) to seek clarification of any aspect of a Tenderer's Tender during the evaluation phase where necessary for the purposes of carrying out a fair evaluation. Tenderers are asked to respond to such requests promptly. Vague or ambiguous answers are likely to score poorly or render the Tender non-compliant.

## 2. TENDER TIMETABLE

### 2.1. Key dates

This procurement will follow a clear, structured and transparent process to ensure a fair and level playing field is maintained at all times, and that all Tenderers are treated equally.

The key dates for this procurement (**Timetable**) are currently anticipated to be as follows:

Event	Date
Issue ITT	16/01/17
Deadline for receipt of proposals	30/01/17

(tenders)	
Scoring/Shortlisting	W/C 30/01/17
Interviews	W/C 6/02/17 At: Coalfields Regeneration Trust 3/7 The e-Centre Cooperage Way Business Centre Cooperage Way Alloa FK10 3LP
Confirm contract award	13/02/17
Contract start	20/02/17
Pre Charrette Work	20/02/17
Design Charrette	2/05/17
1 <sup>st</sup> Draft Report	9/06/17
Final Report	7/07/17

Any changes to the procurement Timetable shall be notified to all Tenderers as soon as practicable.

## 2.2. Deadline for receipt of Tenders

Responses to this ITT must arrive at the address and in the manner prescribed under paragraph 3.1 no later than the Deadline.

Any Tender received after the Deadline shall not be opened or considered. The Company may, however, in its own absolute discretion extend the Deadline and in such circumstances the Company will notify all Tenderers of any change.

## 2.3. References

Tenderers are requested to supply two references. References will be used to verify the technical proposals put forward in the Tender and will not be scored.

## 2.4. Contract award

The Company may award Contract(s) on the basis of a Tender submitted in accordance with the instructions below.

Contract award is subject to the formal approval process of the Company. Until all necessary approvals are obtained, no Contract(s) will be entered into.

Once the Company has reached a decision in respect of a contract award, it will notify all bidders of that decision.

## 3. TENDER COMPLETION INFORMATION

### 3.1. Formalities

The envelope, packing or postmark must be sealed and must not indicate the identity of the Tenderer. Tenders with external identification may not be opened or considered. It must be clearly labelled "Kincardine Procurement". It must be addressed as follows:

Helen Smithard  
Quality Assurance Co-ordinator  
The Coalfields Regeneration Trust  
1 Waterside Park  
Valley Way  
Wombwell  
Barnsley  
S73 0BB

Please number every page sequentially in the main body of your response as "Page [x] of [xx]" and include the date and title of your document on each page of the main body. Any additional pre-existing material which is necessary to support your Tender should be included as schedules with cross-references to this material in the main body of your Tender. Cross-references to this ITT should also be included in your Tender whenever you consider it to be relevant.

The following requirements must be adhered to when submitting Tenders:

- The Tender must be in English and drafted in accordance with the drafting guidance set out in this ITT.
- Each Tender must be uniquely named or referenced.
- A table of contents must be provided.
- The Tender must be fully cross-referenced.
- A list of supporting material must be supplied.
- Any electronic copies of the Tender shall be in PDF formats.



- Pages must be A4 in size or, where necessary, A3 folded in half.
- Tenderers should use Arial with a minimum font size 11.

The Tender must be clear, concise and complete. The Company reserves the right to mark a Tenderer down or exclude them from the procurement if its Tender contains any ambiguities or lacks clarity. Tenderers should submit only such information as is necessary to respond effectively to this ITT. Unless specifically requested, extraneous presentation materials are neither necessary nor desired. Tenders will be evaluated on the basis of information submitted by the Deadline.

Where the Tenderer is a company, the Tender must be signed by a duly authorised representative of that company. Where the Tenderer is a consortium, the Tender must be signed by the lead authorised representative of the consortium, which organisation shall be responsible for the performance of the Contract. In the case of a partnership, all the partners should sign or, alternatively, one only may sign, in which case he must have and should state that he has authority to sign on behalf of the other partner(s). The names of all the partners should be given in full together with the trading name of the partnership. In the case of the sole trader, he should sign and give his name in full together with the name under which he is trading.

### **3.2. Submission of Tenders**

Each Tenderer must submit one Tender.

The Tender must meet the Company's minimum requirements, operate as a stand-alone bid and not be dependent on any other bid or any other factors external to the Tender itself. That is, Tender must be capable of being accepted by the Company in its own right.

### **3.3. Contract terms**

The draft Contract that the Company proposes to use is attached at 0. By submitting a Tender, Tenderers are agreeing to be bound by the terms of this ITT and the Contract without further negotiation or amendment.

If the terms of the Contract render the proposals in the Tenderer's Tender unworkable, the Tenderer should submit a clarification in accordance with paragraph 1.7 and the Company will consider whether any amendment to the Contract is required. Any amendments shall be published through the Clarifications Log and shall apply to all Tenderers. Where both the amendment and the original drafting are acceptable and workable to the Company, the Company shall publish the amendment as an alternative to the original drafting. Tenderers should indicate if they prefer the amendment;

otherwise the original drafting shall apply. Any amendments which are proposed, but not approved by the Company through this process, will not be acceptable and may be construed as a rejection of the terms leading to the disqualification of the Tender.

#### 3.4. Documents forming the contract

The following documents shall form part of the Contract between the Company and the Service Provider(s):

- Contract and its schedules.
- Specification.
- Schedules (such as service levels, site plans, asset lists, contracts list, list of transferring employees, relevant policies and so on).
- A pricing model (as completed by the Service Provider).
- Responses to requirements OR method statement question (as completed by the Service Provider).

#### 3.5. Consortia and subcontractors

The Company requires all Tenderers to identify whether and which subcontracting or consortium arrangements apply in the case of their Tender and precisely which entity they propose to be the Service Provider.

For the purposes of this ITT, the following terms apply:

- **Consortium arrangement.** Groups of companies come together specifically for the purpose of bidding for appointment as the Service Provider and envisage that they will establish a special purpose vehicle as the prime contracting party with the Company.
- **Subcontracting arrangement.** Groups of companies come together specifically for the purpose of bidding for appointment as the Service Provider, but envisage that one of their number will be the Service Provider, the remaining members of that group will be subcontractors to the Service Provider.

#### 3.6. Warnings and disclaimers

While the information contained in this ITT is believed to be correct at the time of issue, neither the Company, its advisors, nor any other awarding authorities will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability in relation to any statement, opinion or conclusion contained in or any omission from, this ITT (including its appendices) and in respect of any other written or oral communication transmitted (or otherwise made available) to

any Tenderer. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Company.

If a Tenderer proposes to enter into a Contract with the Company, it must rely on its own enquiries and on the terms and conditions set out in the Contract(s) (as and when finally executed), subject to the limitations and restrictions specified in it.

Neither the issue of this ITT, nor any of the information presented in it, should be regarded as a commitment or representation on the part of the Company (or any other person) to enter into a contractual arrangement.

### **3.7. Confidentiality**

This ITT is made available on condition that its contents (including the fact that the Tenderer has received this ITT) is kept confidential by the Tenderer and is not copied, reproduced, distributed or passed to any other person at any time, except for the purpose of enabling the Tenderer to submit a Tender.

The Company shall treat all Tenderers' responses as confidential during the procurement process. Requests for information received following the procurement process shall be considered on a case-by-case basis

While the Company aims to consult with third-party providers of information before it is disclosed, it cannot guarantee that this will be done. Therefore, Tenderers are responsible for ensuring that any confidential or commercially sensitive information has been clearly identified to the Company.

Tenderers should be aware that, in compliance with its transparency obligations, the Company routinely publishes details of its contract(s), including the contract values and the identities of its suppliers on its website.

### **3.8. Publicity**

No publicity regarding the Services or the award of any Contract will be permitted unless and until the Company has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Tender, its contents or any proposals relating to it without the prior written consent of the Company.

### **3.9. Tenderer conduct and conflicts of interest**

Any attempt by Tenderers or their advisors to influence the contract award process in any way may result in the Tenderer being disqualified. Specifically, Tenderers shall not directly or indirectly at any time:

- Devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith

with a person who is a proposed partner, supplier, consortium member or provider of finance.

- Enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender.
- Enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender.
- Canvass the Company or any employees or agents of the Company in relation to this procurement.
- Attempt to obtain information from any of the employees or agents of the Company or their advisors concerning another Tenderer or Tender.

Tenderers are responsible for ensuring that no conflicts of interest exist between the Tenderer and its advisors, and the Company and its advisors. Any Tenderer who fails to comply with this requirement may be disqualified from the procurement at the discretion of the Company.

### 3.10. **Company's rights**

The Company reserves the right to:

- Waive or change the requirements of this ITT from time to time without prior (or any) notice being given by the Company.
- Seek clarification or documents in respect of a Tenderer's submission.
- Disqualify any Tenderer that does not submit a compliant Tender in accordance with the instructions in this ITT.
- Disqualify any Tenderer that is guilty of serious misrepresentation in relation to its Tender, expression of interest, or the tender process.
- Withdraw this ITT at any time, or to re-invite Tenders on the same or any alternative basis.
- Choose not to award any Contract as a result of the current procurement process.
- Make whatever changes it sees fit to the Timetable, structure or content of the procurement process, depending on approvals processes or for any other reason.

### 3.11. **Bid costs**

The Company will not be liable for any bid costs, expenditure, work or effort incurred by a Tenderer in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by the Company.

### 3.12. Guarantees

Recipients of this ITT will note that 06 is a form of deed of guarantee. The Company may have qualified the Tenderers on the assumption that, where the Tenderer is an operating company, it will be guaranteed by the parent company. As a result, the Company may require each Tenderer to confirm the identity of the guarantor of its obligations under any Contract(s). This guarantor should be the ultimate parent company of the Tenderer, except in exceptional circumstances. In the case of consortia, the Company will require confirmation that the consortium will provide either a parent company guarantee from the lead consortium member or an equivalent level of security.

## 4. TENDER EVALUATION MODEL

### 4.1. Award Criteria and Evaluation Criteria

Any Contract(s) awarded as a result of this procurement will be awarded on the basis of the offer that is the most economically advantageous to the Company. The Award Criteria are:

- 70% technical or quality.
- 30% cost.

Scores are arrived at following the application of the Evaluation Criteria set out below to the Tenderer's Tender.

Tenderers are required to submit a Tender strictly in accordance with the requirements set out in this ITT, to ensure the Company has the correct information to make the evaluation. Evasive, unclear or hedged Tenders may be discounted in evaluation and may, at the Company's discretion, be taken as a rejection by the Tenderer of the terms set out in this ITT.

The Tender Evaluation Model showing the Evaluation Criteria and the maximum scores attributable to them is set out below.

<b>Evaluation criteria: Commercial</b>	<b>Points Available</b>	PERCENTAGE %	<b>Means of evaluation</b>	<b>Means of moderation</b>
Price-comparison of total cost	10	30	Not applicable	Not applicable
Commercial questions and costs model	105	20	Written submissions	Not applicable

<b>Evaluation criteria: Technical</b>				
Requirement 1	5	12.5	Written submissions	References and meeting
Requirement 2	5	12.5		
Requirement 3	5	12.5		
Requirement 4	5	12.5		

#### 4.2. Evaluation process

##### Technical or quality evaluation

The technical evaluation will be scored in accordance with the table below.

##### Scoring matrix for the technical and quality criteria

0	Completely fails to meet required standard or does not provide a proposal.
1	Proposal significantly fails to meet the standards required, contains significant shortcomings or is inconsistent with other proposals.
2	Proposal falls short of achieving expected standard in a number of identifiable respects.
3	Proposal meets the required standard in most material respects, but is lacking or inconsistent in others.
4	Proposal meets the required standard in all material respects.
5	Proposal meets the required standard in all material respects and exceeds some or all of the major requirements.

##### Pricing evaluation

Bid prices will be scored on a comparative basis with the lowest bid receiving 100% of the available marks (30% following weighting). All other bids will be compared against that lowest bid.

#### 5. ASSESSMENT QUESTIONS FOR COMPLETION BY TENDERERS

Tenderers should reply to all questions set out in Schedule 3 in accordance with the stated requirements.

Schedule 1 Draft contract

DATED \_\_\_\_\_ 201

THE COALFIELDS REGENERATION TRUST

AND

\_\_\_\_\_  
PROVIDER AGREEMENT  
\_\_\_\_\_

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**THIS AGREEMENT** is made on the            of            201

**BETWEEN:**

(1) **THE COALFIELDS REGENERATION TRUST** (Company Number: 03738566) (Registered Charity Number: 1074930) whose registered office is situated at 1 Waterside Park, Valley Way, Wombwell, Barnsley, South Yorkshire S73 0BB (“**the Trust**”);

(2) [INSERT PROVIDER DETAILS INCLUDING REGISTERED NUMBER AND REGISTERED OFFICE] (“**the Provider**”)

**KEY OBJECTIVES**

The Provider is an independent contractor willing to provide services to the Trust as set out below:

**OPERATIVE PROVISIONS:**

1. **Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise):

**Commencement Date:** the date specified in paragraph 1 of Schedule A.

**Insurance Policies:** the insurance policies specified in paragraph 2 of Schedule A.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

**Invention:** any invention, idea, discovery, development, improvement or innovation made by the Provider in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

**Services:** the services to be carried out by the Provider for the Trust and more particularly described in Schedule A.

**Works:** all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Provider in the provision of the Services.

- 1.2 The headings to the clauses are for convenience only and have no legal effect;
- 1.3 References to statutory provisions shall, where the context so admits or requires, be construed as including references to the corresponding provisions of any earlier statute (whether repealed or not), and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- 1.4 References to clauses and the Schedules are references to clauses of and the Schedules to this Agreement; and the Schedules shall form part of this Agreement and shall be interpreted and construed as though they were set out in this Agreement.

## 2. **Appointment**

The Trust hereby engages the Provider on a non-exclusive basis to provide the Services to the Trust and the Provider hereby agrees to provide the Services upon the terms and conditions set out in this agreement and at such locations as the Trust and the Provider shall agree from time to time.

## 3. **Duration**

This Agreement shall commence on the Commencement Date and shall continue until:

- 3.1 completion of the Services to the satisfaction of the Trust; or
- 3.2 termination in accordance with the provisions of clause 8 of this agreement.

## 4. **Provider's Obligations**

- 4.1 During the period of this Agreement the Provider is retained to provide the Services to the Trust and shall devote such of its time attention and abilities to the Trust's business as may be necessary for the proper performance of its duties under this Agreement and at such

locations as the Trust and the Provider shall agree from time to time, provided that nothing in this Agreement shall prevent the Provider from acting in a similar or any other capacity for any other person other than as expressly stated in this Agreement.

- 4.2 The Provider will not seek to provide the Services using personnel other than those described in Schedule A without the Trust's prior written approval (which shall not be unreasonably withheld).
- 4.3 The Provider will ensure that the Services are performed with reasonable care and skill and to the best of the ability of it and any other personnel and in accordance with the terms of this Agreement.
- 4.4 The Provider shall declare any business, financial or personal interest that it or any other any of the personnel may have in any group, organisation or project, which makes an application for funding by the Trust and relating to any purpose of this Agreement.
- 4.5 The Provider shall have personal liability for and shall indemnify the Trust for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Provider, its staff or agents, of the terms of this Agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force full and comprehensive Insurance Policies.
- 4.6 The Provider shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Trust and that the level of cover and other terms of insurance are acceptable to and agreed by the Trust.
- 4.7 The Provider shall on request supply to the Trust copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 4.8 The Provider shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Provider is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Provider shall notify the Trust without delay.
- 4.9 The Provider shall produce and submit to the Trust any documents in its possession relating to the Services as set out in this Agreement.

- 4.10 The Provider shall give access to the Trust or its duly authorised representatives to all documents including computerised documents and data, upon reasonable notice during normal business hours for the purpose of discussing, monitoring and evaluating the Provider's performance of its obligations under this Agreement.
- 4.11 The Provider shall give such information orally or in writing as the Trust may require from time to time for the purposes of monitoring and evaluation of the Service.
- 4.12 The Provider shall put in place adequate security and virus checking procedures in relation to any computer facilities, which it uses to carry out its obligations under this Agreement, or to which it provides the Trust access or on to which it stores any documentation, software or other materials provided or created under this Agreement.
- 4.13 The Provider acknowledges that information given to it by the Trust in carrying out its obligations under this Agreement may contain personal data under the Data Protection Act 1998. The Provider agrees that in respect of such personal data: -
- 4.13.1 It will follow the instructions of the Trust and will not use that personal data other than as authorised by the Trust; and
- 4.13.2 It will comply in all respects with the provisions of the Data Protection Act 1998 and any regulations or guidance issued under it and in particular (but without limitation) will take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to such personal data.
- 4.13.3 It will keep all information confidential and will safeguard the information entrusted to it to ensure that all personal and sensitive information remains properly protected and any information relating to participants is handled and protected in accordance with statutory and central government requirement.
- 4.14 The Provider shall ensure that in delivering the Services, the Provider and any other personnel shall comply with all applicable laws and guidance.

**5. The Trust's Obligations**

- 5.1 The Trust shall appoint a project manager to be the Provider's main point of contact, who will liaise with the Provider regarding the Services ("the Project Manager"). The Trust shall notify the Provider of the name of the Project Manager and of any subsequent changes to that appointment.
- 5.2 The Trust shall comply with the payment provisions set out in clause 6 and Schedule B subject to the Provider successfully delivering the Services. However, payment of may be suspended if the Trust considers it necessary to investigate any matters relating to the Services. The Trust accepts no liability for any consequences, whether direct or indirect (including any loss of profit), which arise as a consequence of such a suspension even if the investigation subsequently establishes no cause for concern.
- 5.3 The Trust shall use reasonable endeavours to give the Provider all such information, as the Provider reasonably requires so that the Provider may comply with its obligations under this Agreement.

**6. Payment**

- 6.1 The Trust shall pay the Provider in accordance with the provisions of Schedule B.
- 6.2 In the event that this Agreement is terminated at any time before the completion of the Services, the Trust shall only be liable to pay the Provider for the Services provided before the date of termination, which must be claimed within four weeks of such date of termination. This provision shall not prejudice or affect any rights, which shall have accrued to the Trust before termination.

**7. Bribery & Corrupt Gifts**

- 7.1 The Provider shall:
  - 7.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
  - 7.1.3 promptly report to the Trust any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Agreement;

- 7.1.4 ensure that all persons associated with the Provider or other persons who are performing services or providing goods in connection with this Agreement comply with this clause 7.1; and
- 7.1.5 within three months of the date of this Agreement, and at its expiry (however terminated), certify to the Trust in writing, its compliance with this clause 7.1. The Provider shall provide such supporting evidence of compliance as the Trust may reasonably request.
- 7.2 Failure to comply with clause 7.1 may result in the immediate termination of this Agreement.
- 7.3 The Provider shall not give or offer any gift or consideration of any kind as an inducement or reward to any member, employee, agent or representative of the Trust for any act in relation to the obtaining of an agreement with the Trust or commit any offence under the Prevention of Corruption Acts 1889 to 1916.

## 8. Termination

- 8.1 The Trust may by notice in writing terminate this Agreement with immediate effect with no liability to make any further payment to the Provider (other than in respect of amounts accrued prior to termination) if the Provider shall:
  - 8.1.1 be in material breach of any of the terms of this Agreement which in the case of a breach capable of remedy is not remedied by the Provider within 14 days of receipt by the Provider of a notice from the Trust specifying the breach and requiring its remedy; or
  - 8.1.2 be incompetent, commit any material act of gross misconduct and/or neglect or materially omit to perform the Services or any of its duties or obligations under this Agreement; or
  - 8.1.3 refuse after written warning to carry out the Services or the duties reasonably and properly required of it under this Agreement; or
  - 8.1.4 be the subject of a proposal for a voluntary arrangement; or an administration order or a winding up order; or passes a resolution to wind up; or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors, or

purports to do so; or is subject to the appointment of a receiver, administrator or liquidator; or is struck from the register at Companies House; or being an individual is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984; or

8.1.5 commits any offence under the Bribery Act 2010.

8.2 The rights of the Trust under clause 8.1 are without prejudice to any other rights that it might have at law to terminate this Agreement or to accept any breach of this Agreement on the part of the Provider as having brought this Agreement to an end. Any delay by the Trust in exercising its rights to terminate shall not constitute a waiver of these rights.

## 9. Confidential Information

9.1 The Provider shall treat as secret and confidential and not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information relating to the Trust's business affairs or finances or any such information relating to any applicant, customer or client of the Trust where knowledge or details of the information was received during the period of this Agreement or previously unless such information:

9.1.1 is or becomes generally available to the public otherwise than through the act or default of the Provider;

9.1.2 is required to be disclosed by law or any court of competent jurisdiction or any other regulatory body.

9.2 Forthwith upon completion of any service carried out in accordance with the provisions of this Agreement and upon termination of this Agreement for whatever reason the Provider will return to the Trust all working papers and other material (in whatever format it is stored) provided to it pursuant to this Agreement or prepared or created by it either in pursuance of this Agreement or previously and shall erase any copies held on any electronic media on which they are stored and shall confirm to the Trust that this has been done.

9.3 Any information provided by the Trust to the Provider during the period of this Agreement shall be and shall remain the property of the Trust.

10. **Intellectual Property Rights**

10.1 The Provider hereby assigns to the Trust all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Provider holds legal title in these rights and inventions on trust for the Trust.

10.2 The Provider undertakes:

10.2.1 to notify to the Trust in writing full details of any Inventions promptly on their creation;

10.2.2 to keep confidential details of all Inventions;

10.2.3 whenever requested to do so by the Trust and in any event on the termination of this Agreement, promptly to deliver to the Trust all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its possession, custody or power;

10.2.4 not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Trust; and

10.2.5 to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Trust.

10.3 The Provider warrants to the Trust that:

10.3.1 it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;

10.3.2 it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and

10.3.3 the use of the Works or the Intellectual Property Rights in the Works by the Trust will not infringe the rights of any third party.

10.4 The Provider agrees to indemnify the Trust and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Trust, or for which the Trust may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Provider to the Trust during the course of providing the Services. The Provider shall



maintain adequate liability insurance coverage and shall supply a copy of the policy to the Trust on request. The Trust may at its option satisfy this indemnity (in whole or in part) by way of deduction from any payments due to the Provider.

- 10.5 The Provider waives any moral rights in the Works to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Works or other materials infringes the Provider's moral rights.
- 10.6 The Provider acknowledges that, except as provided by law, no further fees or compensation other than those provided for in this agreement are due or may become due to the Provider in respect of the performance of his obligations under this clause 10.
- 10.7 The Provider undertakes, at the expense of the Trust, at any time either during or after this Agreement, to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of the Trust, be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of the Trust and to defend the Trust against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works and the Inventions.
- 10.8 The Provider irrevocably appoints the Client to be its attorney in its name and on its behalf to execute documents, use the Provider's name and do all things which are necessary or desirable for the Trust to obtain for itself or its nominee the full benefit of this clause. A certificate in writing, signed by any director or the secretary of the Trust, that any instrument or act falls within the authority conferred by this agreement shall be conclusive evidence that such is the case so far as any third party is concerned.

## 11. Indemnity

- 11.1 In pursuance of this Agreement the Provider will indemnify the Trust against the cost expense or claims in respect of any direct or indirect

loss or damage due to any negligent wilful or malicious act by the Provider in connection with the Services to which the Trust shall become liable to pay and all solicitors' and any other professional costs on an indemnity basis except to the extent that such loss or damage is caused solely by the negligence of the Trust.

**12. Notice**

12.1 Any demand, notice or communication shall be deemed to have been duly served:

12.1.1 if delivered by hand, when left at the address for Service provided for in this clause; or

12.1.2 if sent by prepaid first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays).

12.1.3 if sent by Email, 24 hours after being sent.

12.2 Any demand, notice or communication pursuant to this Agreement must be made in writing addressed to the recipient at the recipient's address stated in this Agreement or at such other address as may from time to time be notified in writing by the recipient to the sender as the recipient's address for service.

**13. General**

13.1 Any waiver of any breach of, or default under, any of the terms of this Agreement by the Trust shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.

13.2 If any provision or part of any provision of this Agreement is found by a court or other competent authority to be void or unenforceable, such provision or part of a provision shall be deleted from this Agreement and the remaining provisions or parts of the provision shall continue in full force and effect.

13.3 This Agreement sets out the entire agreement of the parties and supersedes all prior agreements and understandings relating to its subject matter, provided that nothing in this clause shall exclude liability for either party for fraudulent misrepresentation or concealed fraud.

13.4 The terms of this Agreement may only be varied by agreement in writing between persons duly authorised by both parties.

13.5 No person may enforce any terms of this Agreement under the Contracts (Rights of Third Parties Act) 1999.

13.6 This Agreement shall be governed and construed in all respects in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English courts.

**SIGNED on behalf of THE COALFIELDS REGENERATION TRUST by:**

Signature .....  
Date: .....  
Name Gary Ellis  
Position CEO

**Countersigned by:**

Signature .....  
Date: .....  
Name Louise Dyson  
Position Head of Finance & Corporate Services

**SIGNED on behalf of the PROVIDER by:**

Signature .....  
Date: .....  
Name .....  
Position .....

**Countersigned by:**

Signature .....  
Date: .....  
Name .....  
Position .....

## **SCHEDULE A**

- 1. COMMENCEMENT DATE** means the [insert date]
- 2. INSURANCE POLICIES** [Insert details of relevant insurances required of the Provider]
  - 2.1 [commercial general liability insurance cover]
  - 2.2 [professional indemnity insurance cover]
  - 2.3 [employer's liability insurance cover] [and]
  - 2.4 [public liability insurance cover].
- 3. AIMS & OBJECTIVES/PROVIDER'S PROPOSAL**
- 4. DETAILS OF THE WORK TO BE CARRIED OUT**
- 5. METHODOLOGY**
- 6. OUTPUTS AND MILESTONES**
- 7. RECORD KEEPING & REPORTING PROCEDURE**
- 8. PERSONNEL**
- 9. PROVIDER'S MANAGER**
  - 9.1. The Provider shall appoint a project manager to be the Trust's main point of contact, who will liaise with the Trust regarding the Services ("the Provider's Manager"). The Provider shall notify the Trust of the name of the Provider's Manager and of any subsequent changes to that appointment.

## **SCHEDULE B**

### **TIMESCALES / PAYMENTS**

1. The fee to be paid by the Trust for the delivery of the Services by the Provider shall be as follows:
  - 1.1. Total fee: [insert details]
  - 1.2. Payments: [insert timing and amounts of payments]
2. All payments to the Provider shall be made against the Provider's invoices which should be submitted as follows: The Provider will invoice the Trust for the delivery of actual outputs outlined in Schedule A.
3. The Trust will pay the Provider's invoices providing the Services are delivered to the satisfaction of the Trust and the terms and conditions of this Agreement and agreed timescales are met.
- [4. The Trust may withhold any instalment of any payment or require the Provider to repay all or any part of the fees already paid to it, at the Trust's absolute discretion within 7 days of the Trust's request, in the following circumstances:
  - 4.1 if the Provider is or becomes ineligible in law to hold or receive payment from the Trust;
  - 4.2 if in the Trust's opinion the Provider commits a material breach of any of the terms of this Agreement;
  - 4.3 if any materially misleading or inaccurate information, whether deliberate or accidental, is given by the Provider to the Trust during the Term;
  - 4.4 if the Provider ceases to operate, is dissolved or becomes insolvent, or enters into administration or receivership or liquidation or an arrangement is made with, or a trust deed entered into with its creditors, or in Scotland an estate is sequestrated;
  - 4.5 if the Provider, members of its governing body, volunteers or staff of the Provider have acted at any time during this Agreement, dishonestly or negligently and directly or indirectly to its detriment or have committed any breach of the provisions of clause 7 of this Agreement;
  - 4.6 if the Provider commits a material breach of any relevant law or its constitution;
  - 4.7 if any overpayment is made or any payment is made in error.]

5. It is the responsibility of the Provider to comply with any VAT regulations with respect to payments made under this Agreement.
6. Any payment under this Agreement shall be made via bacs to:
  - Name of Bank:
  - Sort Code:
  - Account name:
  - Account number:
7. [The Provider acknowledges that the Trust is dependent on funding from the Government in order to make payment of the fees to the Provider. As such, the Trust reserves the right in its absolute discretion at any time to withhold, suspend, reduce, postpone payment or demand repayment of any part of the Grant in the event that funding has been withheld from the Trust.]

## Schedule 2 Specification

### 1. INTRODUCTION

The Coalfields Regeneration Trust (CRT) wishes to procure a Regeneration Framework for Kincardine, Fife that will establish the following:

- a) A coherent shared vision for the future socio economic sustainability of the settlement of Kincardine, Fife.
- b) A range of regeneration investment opportunities that will contribute positively to the future socio economic sustainability of the towns. These will include investment opportunities associated with the development and improvement of key sites and premises, and also opportunities for investment in the public realm and infrastructure. These regeneration investment opportunities will cover a time period of up to ten years;
- c) A set of Development Briefs that will inform future development and other initiatives associated with place making in Kincardine that will deliver benefits of increased civic pride and increased attractiveness to the local community and investors;
- d) A clear and robust Delivery Plan and associated Investment Strategy for regeneration investment in Kincardine. This should include details of funding sources and phasing and should be based around priorities for action, including a series of 'early wins' that can be delivered within 12-18 months from the date of the community endorsing the Framework.

The Kincardine Regeneration Framework will comprise a collection of documents and reports to be delivered through this Commission and described in more detail in paragraph 4 (below).

### 2. BACKGROUND

Kincardine is a small town located on the north shore of the Firth of Forth, in Fife, 6 miles east of Alloa and 11 miles west of Dunfermline. The town was given the status of a Burgh in 1663.

Kincardine was a successful trading port in the 17<sup>th</sup> century, the second largest in Scotland. As a result, shipbuilding, sail making and rope making became key industries along with coal mining. Kincardine Power station was built in the 1950s and a few years later, Longannet Power station. In March 2016 Scottish Power closed Longannet Power Station the last coal fired power station in Scotland.

The population is currently around 3,000 and has dropped slightly in the last 10 years. 27% of the population is of pensionable age, compared to 21% for Fife as a whole. In contrast the percentage of children dropped from over 18% to 14.5% between 2001 and 2011.

There is an eclectic mix of housing in Kincardine, including a conservation area with old terraced fishing cottages, housing estates built over the last 50 years, and modern affordable flats and houses. Three distinctive blocks of "high flats" used to sit above the skyline, built in the 1960's to house workers at the Kincardine & Longannet Power stations. The last of the high flats was demolished recently, to be replaced by attractive new houses.

The area of Kincardine continues to experience multiple complex issues arising from changes in the social and economic circumstances of the area. These issues are reflected in the current socio- economic data and trends. The Scottish Index of Multiple Deprivation (SIMD) defines deprivation as the range of problems that occur due to a lack of resources or opportunities concerning health, safety, education, employment, housing and access to services, as well as financial aspects.

However, the recent (2016) SIMD figures do not take into account the recent closure of the Longannet Power Station which will have a considerable impact on the local economy.

A Regeneration Investment Framework is to be prepared through a Charrette driven process. The process will examine:

- The causes of socio economic decline in Kincardine;
- The characteristics of people and place in Kincardine and how they interact; and
- The extent to which spatial and socio economic disparities between Kincardine and the wider region can be overcome, through improvements to the local economic environment: skills, infrastructure and the built environment.

The Charrette driven process will identify a vision for the area's future, and the subsequent Regeneration Framework will describe the interventions required to realise this vision.

### **3. KINCARDINE CHARRETTE**

The Regeneration Framework should be based on the findings of a range of studies plus a series of technically collaborative and fully inclusive sessions that collectively form the Kincardine Charrette.

Ideally, a public Kincardine Charrette event will take place over 3 to 5 days. The appointed Consultant team is asked to engage local people in the urban analysis and socio economic baseline stages of the work in order to make the best use of local knowledge.

The purpose of the public Charrette event is to fully engage, encourage and mentor local people and wider stakeholder groups through the process of urban analysis and then urban design stages that will inform the overall final Regeneration Framework, helping the local community to understand how Kincardine functions and allowing them an opportunity to identify and consider options and potential recommendations to be adopted by the Regeneration Framework.

### **4. SERVICES REQUIRED**

Through this Commission, our Council requires the following services that will deliver the following outputs:

- a) A Baseline Study & Benchmarking Report: This element of the Framework should comprehensively profile the key economic and community characteristics, drivers, performance, strengths and weaknesses (as far as is possible) to act as a baseline.

This baseline will enable appropriate comparisons to be made over a period of time as and when the Delivery Plan and Investment Strategy is implemented, and



should also enable appropriate comparisons to be made to other similar towns and villages in the area and in the UK.

Through this exercise the Coalfields Regeneration Trust wishes to identify opportunities for developing the vitality and viability of town/village centre by focusing on opportunities for developing the trading environment and business infrastructure, attracting and growing business, supporting entrepreneurship, developing a competitive workforce, and developing quality of life by strengthening place based assets.

- b) A Characterisation Study (Urban Analysis/Characterisation Study/ Understanding the Place): A study of Kincardine should be undertaken by the appointed Consultant Team demonstrating its understanding of the form and function of Kincardine, its street hierarchies and how these serve the community for better or worse.

This should include analysis Kincardine's historic growth, permeability and legibility and how these relate to their communities, including assessment of walkable neighbourhoods; using Isochronal diagrams to support findings.

Recommendations are required on the physical improvements that should be made through an investment process, and these in turn should be fed into the Outline Business Case and Investment Strategy, and be supported by the Placemaking Strategy and Design Guidance.

- c) A public Charrette and a Charrette Report: A Charrette is an interactive and intensive multi-disciplinary event that engages local people with experts to develop designs for their community. It allows people to positively shape the decision-making process in their communities in a dynamic and effective way, improving the quality, attractiveness and success of places. It is a hands-on approach where ideas are translated into plans and drawings. It typically involves a series of interactive design workshops and presentations held over a number of days (at least 5 days) where the public, the Consultant Team (including design professionals and other relevant consultants) work together on developing a detailed plan for a site or location. A number of meetings are also held during this process which enables all stakeholders to discuss the key policies and issues relating to the area.

A key benefit of this approach is that local residents are involved throughout the duration of the design process, helping to formulate the vision and informing subsequent decisions on the future of their community.

The Kincardine Charrette should result in the creation of a shared vision for retaining, repairing, renewing and developing the town centre study area in a sustainable manner and in accordance with the aspirations of the report of the National Review of Town Centres and the Scottish Government's response, the Town Centre Action Plan.

- d) A Placemaking Strategy: This should build on the Characterisation Study, the Baseline Study and Benchmarking Report, reflects the results of the Charrette, and be aligned with the Local Development Plan. It should establish place making principles for the four settlements; it is essential that these place making principles should form linkages across the four settlements, where possible. It should establish the urban design principles and place making objectives that will support the establishment of the sustainable vision for the area's future as

identified through the Charrette process. The Placemaking Strategy will also be used to identify regeneration priorities and development proposals, which in turn, should be supported by the Outline Business Case and Investment Strategy. The Placemaking Strategy should take account of the following key Scottish Government and Council policy documents in relation to designing places.

- e) An Outline Business Case: This should assess and establish the outline business case for a portfolio of near term priority projects for the first 5 years (2017 to 2019/22) that will progress the aims and objectives of the Placemaking Strategy, and it should also highlight longer term objectives and potential for investment beyond this. It should select and prioritise those regeneration investment projects across the four settlements (where appropriate) that are to be the subject of the Investment Strategy and it should estimate the benefits (financial and non-financial) associated with their realisation. It should assess constraints and risks associated with these projects, and provide advice and guidance on issues around procurement (in particular the potential for involvement by the private and community/voluntary sector), timescales, phasing and delivery.
- f) An Investment Strategy: recommendations for investment, plus details of potential for additional leverage by this investment programme of external funding, including:
  - Council Capital funding;
  - Scottish Government Regeneration Funding;
  - Big Lottery funding;
  - Heritage Lottery Fund;
  - Private Capital Investment; and
  - Other funding.
- g) Development Briefs: The consultant team should also prepare Development Briefs for those regeneration or development sites identified in the Outline Business Case and Investment Strategy that are also particularly critical to the establishment or maintenance of a sense of place within each locality, as discussed in the Placemaking Strategy. In broad terms the selection of such sites should be based on the prominence or environmental sensitivity of a development (regardless of scale or investment requirements). The Briefs should comply with the Local Development Plan and Supplementary Guidance.

## **5. METHODOLOGY**

It is expected that the appointed Consultant Team will deliver the Commission through a series of field and desk based activities which should include:

- Desk research;
- Interviews;
- A public design-led Charrette Event;
- briefings/meetings with Council officers;
- Presentations & feedback; and
- Preparation of findings in the form of detailed reports and summary 'briefing papers/publications'.

## 6. QUALITY REQUIREMENTS

The Council's Quality Expectations from the Appointed Consultants will be as follows:

### a) Project Quality Expectation

CRT's quality expectation for this project is that it should produce a set of documentation – 'the Regeneration Framework' documentation -that is supportable and usable by the Council and its stakeholders as the principal policy guide and route plan for achieving a vision for sustainable regeneration in Kincardine for a period of up to ten years. The Placemaking Strategy and Development Briefs should be of a sufficient standard as to be adoptable by the Local Development Plan as Supplementary Planning Guidance.

### b) Quality Expectations from Commission Products

PRODUCT	QUALITY REQUIREMENTS
Baseline Study & Benchmarking Report	The Baseline Study and Benchmarking Exercise might be undertaken using a Town Centre Health check tool, or by using the Association of Market Town's Benchmarking and Benchmarking+ tools, or by a combination of these, or by another appropriate approach. The approach selected by the Tenderer must be described in the Technical Proposal in the Tender submission. The approach selected should also be replicable by CRT and/or its partners at no or minimum additional cost to create further reports on a time series basis.
Characterisation Study	<p>Materials Palettes - Every effort should be made to provide an accurate record of the settlements' material palettes and building typologies and how these relate to street hierarchies. This should include information on the use of certain materials in different locations or on different buildings within the settlement core, e.g. where there is predominant use of sandstone on a High Street and secondary routes and red brick in tertiary streets/routes elsewhere.</p> <p>Identification and Description of Character Areas - The study should highlight areas of key importance and should include Conservation Areas, Listed Buildings of interest and other key character areas such as retail clusters on High Street or areas of important public space. These areas may be currently thriving, underutilised, neglected, unseen or lack formal delineation, but should be highlighted together with specific recommendations for inclusion within the Regeneration Framework document.</p> <p>Environment Mapping - To include flooding/landscape analysis</p> <p>Infrastructure Mapping - Roads/rail/ water/drainage</p> <p>Current Land Use - Annotated Plan</p>

	Community Infrastructure - Mapping exercise of Local service provision
Charrette	<p>The Kincardine Charrette should feature meetings with a wide variety of groups, including both the general public, community sector and business groups, and specialised professionals, with community feedback incorporated directly into the proposals for town and/or village centre renewal.</p> <p>Communications and publicity in the run up to the Charrette will be expected to be in agreed in advance with CRT.</p> <p>Between and even during the meetings, the Consultant team will be expected to prepare the necessary layouts, illustrations, architectural plans and diagrams. All should be presented on-site within the Charrette in the presence of the public.</p>
Outline Business Case	<p>The Outline Business Case should include the following chapter headings/sections:</p> <ul style="list-style-type: none"> <li>• Executive Summary</li> <li>• Introduction</li> <li>• Strategic Case</li> <li>• Economic Case</li> <li>• Commercial Case</li> <li>• Financial Case</li> <li>• Management Case</li> <li>• Conclusion</li> <li>• List of Appendices</li> </ul> <p>Where it is proposed that an alternative document structure/ chapter headings or sections be used, then this should be pre agreed with the Council.</p>
Investment Strategy	A funding matrix would be desirable
Development Briefs	The Development Briefs should cite diagrammatic examples, illustrating key characteristics on sites for development and or areas/buildings for targeted investment and regeneration and provide coherent rationale on urban design (block treatment) including access, density, nature of development, appropriate materials, car parking and rudimentary elevation/frontage treatments to principal elevations together with estimated costs.
General	All final reports and documentation should be provided in digital, CD and print formats.

Following appointment, an Inception Meeting will be arranged to be attended by CRT's Lead Officer and the Commission Consultant Team to handover key documents, discuss and agree the following:

- Commission Team Work plan;
- Commission Team contact list;
- CRT Contact List;
- Documents and information in relation to the Commission Team's Information Requirements List;
- Provision of data contained within the Information Required Schedule, as far as possible;

- Communication and engagement protocols for the project, including handover of CRT's Stakeholder List, and Communications & Engagement Plan; and
- Availability of CRT resources and support to co-ordinate staff diaries and book rooms for workshops and meetings.

Tenderers shall be required to nominate a Lead Consultant for the Commission. Tenderers must nominate and allow CRT to interview the Lead Consultant who shall have overall responsibility for the Commission throughout, including the supervision of key staff.

The Commission Lead Consultant will be required to attend meetings with CRT Lead Officer as follows:

- Inception meeting to finalise the work plan and address any outstanding points, queries or issues in relation to the commission;
- Meetings at key stages of the project – to be agreed at the Inception Meeting;
- Presentation of Draft Report to CRT Lead Officer and any associated officer or teams; and
- Attendance at CRT and Task Force Project Team and/or associated Meetings or Briefings, as required.

The Contract will be managed on behalf of CRT Project Lead Officer.

### Schedule 3 Assessment Questions

#### 1. TENDER COMPLIANCE CHECKLIST

Tenderers must ensure the items below are returned. Failure to include any of the mandatory items by the Deadline may render the Tender non-compliant.

Item	Form of response	Status
Company details	Template attached (see 2 below)	Mandatory Not evaluated
Technical and quality questions and method statements	Template attached (see 7 below)	Mandatory Evaluated
Commercial questions	Questionnaire attached	Mandatory Evaluated
Costs model	Template attached (see 21 below)	Mandatory Evaluated
Form of Tender signed	Template attached (see Schedule 5)	Mandatory Not evaluated

All Tenders received by the Deadline will be checked for compliance with the submission requirements set out in this ITT. If the Company does not consider a Tender compliant, it reserves the right not to carry out any further evaluation and may eliminate the Tenderer from the procurement.

You must respond to all of the questions in this document, ensuring that the numbering and order remains the same. You should ensure your answers are as clear and concise as possible, ideally limiting your answer to no more than one side of A4. Please ensure the question appears above your answer.

All proposals contained in a Tender must be capable of delivery and the Tender must have commitment from within the Tenderer's organisation.

Where a section of a Tender is duplicated between a different section, Tenderers may cross-refer to the part of their Tender where the information has been provided, rather than repeat that information for each section. This should be clearly referenced.

**2. COMPANY DETAILS**

<b>Information required</b>	<b>Response</b>
Registered name of the company with which it is proposed that the Company enters a contractual relationship in relation to the Services	
Registered company address	
Registered number	
Contact name for enquiries related to [specific areas of] your Tender	
Company position of contact[s]	
E-mail address of contact[s]	
Landline telephone number of contact[s]	
Mobile telephone number of contact[s]	

**3. CORPORATE STRUCTURE**

Please provide the following details:

- a) ownership details (including any key shareholders (holding more than 25% of the equity));
- b) whether your company or any group companies are publicly listed and, if so, on which stock exchanges.

**4. YOUR VALUES**

- 4.1 Please describe briefly your organisation's history, generally and in relation to the provision of the Services.
- 4.2 Over what period of time have you been providing services which are similar to the Services?
- 4.3 Please provide details of your management hierarchy, including length of service dynamics and qualifications.
- 4.4 Please provide details of your policies, procedures and practices, as well as your monitoring processes, in relation to:
  - a) equal opportunities and non-discrimination concerning your staff and customers;
  - b) the environment;
  - c) health and safety; and
  - d) corporate social responsibility.

**5. ANTI-BRIBERY**

- 5.1 Please provide copies of your company's anti-corruption policies. When were the policies implemented and how often are they reviewed?
- 5.2 Is the business of your company conducted through agents, intermediaries, consultants or other third parties or joint venture parties? If yes, please provide details.
- 5.3 How are the agents, intermediaries, consultants or other third parties appointed? What investigation is done before appointment or renewal?
- 5.4 Has there been any actual or potential violation of anti-corruption laws or internal policies by your company or its employees, agents or other persons who perform or have performed services for or on behalf of your company?
- 5.5 Has your company or its employees, agents or other persons who perform or have performed services for or on its behalf been investigated by any law enforcement agency or customer in relation to corrupt practices?
- 5.6 Has your company or its employees, agents or other persons who perform or have performed services for or on behalf of your company been prosecuted or convicted in any jurisdiction for corruption?
- 5.7 Has your company ever been debarred from bidding for public contracts?
- 5.8 Are there any policies in place in relation to gifts, hospitality and promotional expenditure and is the giving and receiving of gifts and hospitality properly documented?

**6. YOUR FINANCIAL STANDING**

- 6.1 Please provide a summary of the total revenue and pre-tax profitability for accounting year ending 2016 for your company and for your holding company or group.
- 6.2 Please provide a set of your annual reports and audited accounts for the last three trading years and those relating to your holding company or group.
- 6.3 Please provide the name and address of your current bankers.

**7. TECHNICAL AND QUALITY QUESTIONS AND METHOD STATEMENTS**

- 7.1 Tenderers are asked to respond to each of the numbered requirements in the Specification and detail how they would ensure delivery of that requirement in the manner expressed with examples as appropriate.



<b>Tenderer's response to the specification</b>			
<b>Response number</b>	<b>Specification reference</b>	<b>Specification requirement</b>	<b>Tenderer's response</b>
	[A.4 service requirements]		
1	Schedule 2	Provide details how you propose to carry out the Commission, this must include an overview of the key stages of work and discrete work package, a corresponding Method Statement and with timeline, having due regard to sensitivity to partnership working, local engagement, and any innovation you could bring to the brief	
2	Schedule 2	Provide details of previous experience of delivering work utilising urban design Charrette techniques	
3	Schedule 2	Provide details of the range and depth of experience of the team. You should provide details of the proposed Commission Team structure (including a team structure chart), details of roles and responsibilities, and curricula vitae for each of the proposed Commission team. Any changes to the team or delivery should be communicated to CRT with an outline of impact if any on delivery.	
4	Schedule 2	Provide an indicative work programme, detailing anticipated	

		milestones that meet the required dates outlined above; include number of days to be allocated to named staff within your team and project management arrangements.	
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**8. RESOURCING**

8.1 Please set out the number of staff providing each of the service elements for which proposals are being sought in the ITT, giving a detailed breakdown of their skills, duties, locations and reporting structure. Please set out any key skill or employee dependencies and the availability of replacement skills in those areas.

**9. YOUR EXPERIENCE**

9.1 Provide details of your experience in providing similar services contemplated by the ITT, particularly your experience which relates to implementation and transition, service levels, regulatory compliance, achievement of economies of scale and value for money.

**10. REFERENCES**

10.1 Provide at least three references from existing customers who are provided with services similar to the Services who would be suitable to act as referees, should this be required.

<b>Details</b>	<b>Referee 1</b>	<b>Referee 2</b>
Contact details (name, email address & telephone number)		
Types of service provided		
Length of time of these services were provided by your organisation		
When & how you are happy for the referee to be contacted during the tender process		

10.2 Provide details of:

- a) any disputes or claims in which you have been involved with previous or existing customers; and
- b) any litigation relevant to your provision of services similar to the Services or to customers in the same industry sector, outlining the history and claims profile.

## **11. STANDARDS AND PROCEDURES**

11.1 Please provide a copy of your quality policy and, if applicable, any quality related accreditations or certifications you hold. Please list any other industry standards you have gained that are relevant to provision of the services. In each case, please explain to which services or elements of your business they apply, when they were obtained and what they cover.

## **12. CONFIDENTIALITY AND DATA SECURITY**

12.1 Please specify whether you have a data protection policy and submit a copy if you do.

## **13. REGULATIONS**

13.1 Please specify what other regulations or legislative requirements not discussed elsewhere in your response are relevant to the provision of the Services and explain how you will ensure compliance with these.

## **14. INDIVIDUAL SERVICE ELEMENTS**

14.1 Please describe how you would provide these services to the Company and how you propose structuring and managing the provision of the Services?

14.2 From which locations would you provide these services and how would this be managed?

14.3 What resources would you use to provide these services? Please give details of these resources and where they will be based.

14.4 How would you ensure the service levels set out in the Specification would be met?

14.5 How would you accommodate the Company if it decided to increase the scope or volume of the Services?

14.6 What preventative and proactive measures would you put in place to maintain performance in relation to these services?

14.7 Would you propose any different approaches to this service from that set out in the Specification? If so, please describe.

14.8 Are there any new developments in the marketplace or potential technological or other changes in relation to the services which may affect the provision of the services which are the subject of the Specification?

**15. SERVICE MANAGEMENT AND REPORTING**

15.1 How will you report on the performance of the Services and will you provide the Company with any online information?

15.2 What management information reporting tools do you propose using?

15.3 Please provide examples of how the management information will be presented.

15.4 Please provide examples of any additional management information that you believe would be useful for the Company.

**16. CUSTOMER SATISFACTION**

16.1 How would you measure and report on levels of customer satisfaction and how would you try and improve customer satisfaction on an ongoing basis throughout the life of the Contract?

**17. BENCHMARKING AND BEST PRACTICE**

17.1 How do you benchmark your activities against others in the marketplace and generally ensure best practice in relation to your activities?

17.2 How would you ensure the services you provide are cost-effective when compared with the provision of the services by other suppliers in the marketplace and with the services were they to be provided in-house?

**18. BUSINESS CONTINUITY AND DISASTER RECOVERY**

18.1 Please set out your approach to mitigating risk and managing any shortfall in service and how it would guarantee continuity of service.

18.2 Please provide details of your contingency provision for continuation of service in the event of a disaster during the term of the Contract across a range of scenarios including:

- a) Industrial action.
- b) Computer hardware or software failure.

- c) Loss of key site or facility.

## **19. RISK AND INSURANCE**

- 19.1 What measures would you take to monitor risk in relation to the Services?
- 19.2 Please confirm that you will have sufficient insurance cover to provide for all your potential liabilities under the resulting outsourcing agreement and that you will maintain an adequate level of insurance cover throughout the term of the agreement.
- 19.3 Please provide documentation from your insurance broker confirming OR give details of the levels and kinds of insurance held by your organisation and describe to which Services and areas that insurance would apply.

## **20. ADDITIONAL GENERAL MATTERS**

- 20.1 Please confirm that you have included in your response all assumptions you have made throughout your proposal.
- 20.2 Please identify any requirements in the ITT with which you cannot comply. Please include cross-references to the relevant part or parts of the ITT with which you cannot comply and give detailed reasons for this non-compliance and your proposals in relation to these matters.
- 20.3 Please set out any additional matters which you think should have been included in the ITT or which you think are relevant to your response.

## **21. COST MODEL AND PRICING INFORMATION**

- 21.1 Please provide a detailed breakdown of the cost model you propose to use for the provision of the Services.
- 21.2 Please breakdown your price below. This should include your total charges for all of the Services, which should be broken down into individual service elements and as specified in the tables. If you wish to provide any additional services or to break down your charges into other elements, please include them below.
- 21.3 Please explain all assumptions made in your pricing proposals (such as the number of staff you have assumed) and the rationale behind such assumptions.
- 21.4 Please confirm that your pricing proposals include all costs (including travel and accommodation costs) of transporting your and Company personnel between all relevant locations for the purpose of implementing the proposed agreements, including training.

21.5 Please state whether any of your services are to be provided on a call-off basis (such as consultancy, training or using an alternate pricing mechanism) and if so, please specify:

- a) To which services this would apply.
- b) How such charges would be calculated, including details of:
  - i. any rates that would be used;
  - ii. how such charges may vary;
  - iii. whether any proportion of the charges would be fixed; and
  - iv. any matters that would not be included in such charges.

21.6 Please specify your daily, weekly, monthly, quarterly and annual rates for each of your grades of staff, giving a brief breakdown of their skills. Please include all types of staff and skills including, for example, transition and service delivery managers and consultancy rates together with details of where you would seek to employ all such staff.

21.7 Please specify how many hours are included in your day rates and give details of how all your rates would vary depending on such matters as times of work, location of employees, length of any commitment to use such employees and other relevant matters. If offshoring is proposed as part of your solution, how does this affect your rates for different hours of business?

21.8 How would you price up other changes to the Services which may be requested by the Company?

21.9 Please specify what price reviews you would envisage during the term of the contract, including the following details:

- a) When these would take place.
- b) How these would affect the charges.
- c) Whether you would be prepared to protect the Company from future increases in costs.

## **22. GUARANTEE**

Please confirm that a parent company guarantee would be given from the ultimate parent company or holding company if required by the Company to cover your financial and operational performance obligations contained in any resulting Contract.

## **23. CONTINUOUS SERVICE IMPROVEMENT AND VALUE ADDED SERVICES**

23.1 Please set out the specific measures that you are prepared to include within your service solution that will effectively serve to differentiate you from your competitors. Measures might include:

- a) Alternative contract term.

- b) Innovative charging mechanisms.
- c) Cost variation mechanisms, particularly where these are volume driven.

23.2 Please provide details of any innovations that you have brought to relationships with other customers and how these could be used in relation to these Services.

23.3 Please explain how you propose improving the services over time. Please describe and quantify any resources, tools, staff, processes or additional measures you propose using specifically to enhance and improve the services and service delivery. Please explain where these additional resources would come from, where they would be based and how you would propose recovering your costs in relation to these resources.

## **24. SUBCONTRACTING**

24.1 Please specify any areas or elements for which you wish to use a subcontractor and provide the following details:

- a) Which subcontractor you would wish to use and for what elements.
- b) What reasons you have for such subcontracting.
- c) Why particular third parties would be chosen.
- d) Any existing relationship with each such subcontractor.
- e) How you would ensure that appropriate management controls would be put in place.

24.2 Please confirm that all appropriate obligations under the agreements between you and the Company would be flowed down to all permitted subcontractors.

**Schedule 4 Deed of guarantee**

**DATED**

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**PARENT COMPANY GUARANTEE**

**between**

**GUARANTOR**

**and**

**CUSTOMER**



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THIS DEED is dated [DATE]

## **PARTIES**

1. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Guarantor**).
2. [FULL COMPANY NAME CRT OR SUBSIDIARY] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [1 Waterside Park, Valley Way, Wombwell, Barnsley S73 0BB ] (**Customer**).

## **BACKGROUND**

- a) By an agreement dated on or about the date of this guarantee (**Agreement** which term includes all amendments to variations of or supplements to it from time to time in force) the Customer has agreed to engage [INSERT NAME] (**Supplier**) for [INSERT DETAILS OF SERVICES TO BE PROVIDED].
- b) It is a condition of the Agreement that the Supplier procures the execution and delivery to the Customer of a parent company guarantee substantially in the form of this guarantee.
- c) The Guarantor has agreed to guarantee the due performance of the Agreement by the Supplier.
- d) It is the intention of the parties that this document be executed as a deed.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 Unless the context requires otherwise, the definitions and rules of interpretation in the Agreement shall apply in this guarantee.
- 1.2 A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's personal representatives, successors or permitted assigns]
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

### **2. OBLIGATIONS OF THE GUARANTOR**

In consideration of the Customer entering into the Agreement with the Supplier, the Guarantor:

- a) as primary obligor guarantees to the Customer the due and punctual performance by the Supplier of each and all of the obligations, representations, warranties, duties and undertakings of the Supplier under and pursuant to the Agreement when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of such Agreement;
- b) agrees, in addition to its obligations set out in clause a), to indemnify the Customer on demand against all losses which may be awarded against the Customer or which the Customer may otherwise incur arising out of, under or otherwise in connection with the Agreement whether arising under statute, contract or at common law including without limitation by reason of any breach by the Supplier of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the Agreement howsoever arising, save that, subject to the other provisions of this guarantee (including without limitation clause c)), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Supplier under the Agreement; and
- c) agrees to indemnify the Customer on demand against all losses whether arising under statute, contract or at common law which may be awarded against the Customer or which the Customer may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall not in any circumstances be greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **3. LIABILITY**

The Guarantor agrees that it shall not in any way be released from liability under this guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

- a) any arrangement made between the Supplier and the Customer; or
- b) any alteration in the obligations undertaken by the Supplier whether by way of any addendum or variation referred to in clause 4 or otherwise; or
- c) any waiver or forbearance by the Customer whether as to payment, time, performance or otherwise; or
- d) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person; or
- e) any unenforceability, illegality or invalidity of any of the provisions of the Agreement or any of the Supplier's obligations under the Agreement, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or

- f) any legal limitation, disability, incapacity or other circumstances relating to the Supplier, or any other person; or
- g) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Supplier or any other person.

#### **4. ADDENDUM OR VARIATION**

The Guarantor by this guarantee authorises the Supplier and the Customer to make any addendum or variation to the Agreement, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this guarantee.

#### **5. GUARANTEE**

- 5.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Customer shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Supplier, to make any claim against or any demand of the Supplier, to enforce any other security held by it in respect of the obligations of the Supplier under the Agreement or to exercise, levy or enforce any distress, diligence or other process of execution against the Supplier. In the event that the Customer brings proceedings against the Supplier, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.
- 5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Supplier, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Supplier under the Agreement have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Customer may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

#### **6. OUTSTANDING PAYMENTS**

- 6.1 Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Customer or claim or prove in competition with the Customer against the Supplier or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of

any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Customer.

6.2 The Guarantor shall not hold any security from the Supplier in respect of this guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Customer.

6.3 Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 0 and clause 0) the Guarantor has any rights of subrogation against the Supplier or any rights to prove in a liquidation of the Supplier, the Guarantor agrees to exercise such rights in accordance with the directions of the Customer.

## **7. CHANGE OF CONTROL**

7.1 The Guarantor shall procure that, during the term of this guarantee, there shall be no Change of Control of the Supplier.

7.2 **Control** shall bear the meaning given in section 1124 of the Corporation Tax Act 2010.

## **8. PAYMENT AND EXPENSES**

8.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Customer receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

8.2 If The Guarantor fails to make any payment due to the Customer under this guarantee by the due date for payment, then the Guarantor shall pay interest on the overdue amount at the rate of [4]% per annum above [FULL NAME OF BANK]'s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Guarantor shall pay the interest together with the overdue amount.

8.3 The Guarantor shall reimburse the Customer for all legal and other costs (including VAT) incurred by the Customer in connection with the enforcement of this guarantee.

## **9. SETTLEMENT**

Any settlement or discharge between the Customer and the Supplier and/or the Guarantor shall be conditional upon no settlement with security or payment to the Customer by the Supplier or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Customer's other rights hereunder) the Customer shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Customer has placed upon such settlement or security or the amount of any such payment.

## **10. WARRANTIES**

10.1 The Guarantor warrants and confirms to the Customer:

- a) that it is duly incorporated with limited liability and validly existing under the laws of England;
- b) that it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;
- c) that it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
- d) that it has been duly authorised to enter into this guarantee;
- e) that it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
- f) that this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- g) that all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and
- h) that it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.

10.2 The Guarantor warrants and undertakes to the Customer that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.

10.3 The Guarantor warrants and confirms to the Customer that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Customer (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

## 11. ASSIGNMENT

The Customer shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

## 12. NOTICES

12.1 Any notice [or other communication] given to a party under or in connection with this guarantee shall be in writing and shall be:

- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- b) sent by fax to its main fax number.

12.2 Any notice [or communication] shall be deemed to have been received:

- a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address];
- b) if sent by pre-paid first-class post or other next working day delivery service, at [9.00 am] on the [second] working day after posting [or at the time recorded by the delivery service];
- c) if sent by fax, at [9.00 am] on the next working day after transmission.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. [For the avoidance of doubt, "writing" shall not include e-mail for the purposes of this clause.]

## 13. WAIVER

13.1 No delay or omission of the Customer in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Customer provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.

13.2 A waiver given or consent granted by the Customer under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

13.3 A waiver by the Customer shall not constitute a continuing waiver and shall not prevent the Customer from subsequently enforcing any of the provisions of this guarantee.

## **14. SEVERANCE**

- 14.1 If any provision or part-provision of this guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this guarantee.
- 14.2 If [one party gives notice to the other of the possibility that] any provision or part-provision of this guarantee is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **15. THIRD PARTY RIGHTS**

- 15.1 Except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 11, a person who is not a party to this guarantee shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this guarantee. [This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.]
- 15.2 [The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this guarantee are not subject to the consent of any other person.]

## **16. LANGUAGE**

- 16.1 This guarantee is drafted in the English language. If this guarantee is translated into any other language, the English language version shall prevail.
- 16.2 [Any notice given under or in connection with this guarantee shall be in the English language. All other documents provided under or in connection with this guarantee shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language version shall prevail [unless the document is a constitutional, statutory or other official document].]

## **17. COSTS**

Each party shall pay its own costs incurred in connection with the negotiation, preparation, [and] execution [and registration] of this guarantee [and any documents referred to in it].



## **18. COUNTERPARTS**

This guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

## **19. GOVERNING LAW**

This guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## **20. JURISDICTION**

20.1 Each party irrevocably agrees, for the sole benefit of the Customer that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this guarantee or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Customer to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

20.2 The Guarantor irrevocably appoints [INSERT NAME] as its agent for service of process.

## **21. ENTIRE AGREEMENT**

21.1 This guarantee constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this guarantee. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this guarantee.

21.3 Nothing in this clause limits or excludes any liability for fraud.

This deed has been entered into on the date stated at the beginning of it.

Executed as a deed by [NAME OF GUARANTOR] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....  
[SIGNATURE OF FIRST DIRECTOR]  
Director  
.....  
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]  
[Director **OR** Secretary]

**OR**

Executed as a deed by [NAME OF GUARANTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....  
[SIGNATURE OF DIRECTOR]  
Director

.....  
[SIGNATURE OF WITNESS]  
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF CUSTOMER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....  
[SIGNATURE OF FIRST DIRECTOR]  
Director  
.....  
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]  
[Director **OR** Secretary]

**OR**

Executed as a deed by [NAME OF CUSTOMER] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....  
[SIGNATURE OF DIRECTOR]  
Director

.....  
[SIGNATURE OF WITNESS]  
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

**Schedule 5 Form of Tender**

**FORM OF TENDER: TENDER CERTIFICATE**

TO: [NAME OF COMPANY]

DATE: [DATE]

PROVISION OF: [TITLE OF CONTRACT]

REFERENCE NUMBER: [CONTRACT NOTICE REFERENCE NUMBER]

We [INSERT NAME[S]] the undersigned, having examined the ITT and all other schedules, do hereby offer to provide [NAME OF SERVICES] as specified in those documents and in accordance with the attached documentation to the Company commencing [DATE] and continuing for the period specified in the Contract.

If this offer is accepted, we will execute such documents in the form of the Contract within [NUMBER] days of being called on to do so.

We agree that before executing the Contract (and associated schedules) substantially in the form set out in the ITT, the formal acceptance of this Tender in writing by the Company or such parts as may be specified, together with the contract documents attached hereto shall comprise a binding contract between the Company and the [manager OR company].

We further agree with the Company in legally binding terms to comply with the provisions of confidentiality set out in paragraph 3.77 of the ITT.

We further undertake and it shall be a condition of any Contract, that:

- The amount of [my OR our] Tender has not been calculated by agreement or arrangement with any person other than the Company and that the amount of [my OR our] Tender has not been communicated to any person until after the closing date for the submission of Tenders and in any event not without the consent of the Company.
- We have not canvassed and will not, before the evaluation process, canvass or solicit any member or officer, employee or agent of the Company or other contracting Company in connection with the award of the Contract and that no person employed by us has done or will do any such act.

I warrant that I have all requisite Company to sign this Tender and confirm that I have complied with all the requirements of the ITT.

Signature \_\_\_\_\_

Name and Status \_\_\_\_\_

Signature \_\_\_\_\_

Name and Status \_\_\_\_\_

For and on behalf of [NAME OF COMPANY, PARTNERS OR CONSORTIUM]