Dated the day of 20

**DUBLIN CITY COUNCIL**

(DCC)

**[ ]**

(Developer)

[AND

**[ ]**

(Guarantor)]

**AGREEMENT**

Development of Residential Lands

at O’Devaney Gardens, Arbour Hill, Dublin 7.

**TABLE OF CONTENTS**

**Background 3**

**Definitions 4**

**Interpretation 12**

**Clause 1 - Pre-Condition 14**

**Clause 2 - Rights of Entry 16**

**Clause 3 - Developer’s Contracts and Collateral Agreements 18**

**Clause 4 - Obligation to Develop 20**

**Clause 5 - Defects Liability 23**

**Clause 6 - Payments by DCC and by Developer 24**

**Clause 7 - Variation of Consideration 26**

**Clause 8 - Further Obligations 27**

**Clause 9 - Protect and Secure the Development Site 28**

**Clause 10 - Insurance 28**

**Clause 11 - Practical Completion 30**

**Clause 12 - Transfer of Title 33**

**Clause 13 - DCC’s Right to Determine 33**

**Clause 14 - Building Regulations 35**

**Clause 15 - Appointment of and co-operation with Design Certifier and Assigned Certifier 36**

**Clause 16 - 2014 Regulations Certificates 36**

**Clause 17 - Social Employment Clause 36**

**Clause 18 - Guarantor Provisions 39**

**Clause 19 - No Partnership 41**

**Clause 20 - Fees and Costs 41**

**Clause 21 - No Assignment 41**

**Clause 22 - No Warranty 41**

**Clause 23 - Expert 42**

**Clause 24 - Survival of Agreement 44**

**Clause 25 - Delay and Extension of Time 44**

**Clause 26 - Damages for Non-Completion 45**

**Clause 27 - No Mis-Description 45**

**Clause 28 - Confidentiality 45**

**Clause 29 - Entire Agreement 45**

**Clause 30 - Governing Law and Jurisdiction 46**

**Clause 31 - Notices 46**

**Appendices**

**THIS AGREEMENT made the day of , 20**

**BETWEEN:**

1. **DUBLIN CITY COUNCIL** of Civic Offices, Wood Quay, Dublin 8 (hereinafter called “DCC”);[[1]](#footnote-1)
2. **[ ]** of / having its registered office at [ ] (hereinafter called “the Developer”);[[2]](#footnote-2)

AND

1. **[ ]** of / having its registered office at [ ] and [ ] of / having its registered office at [ ] (hereinafter called “the Guarantor”).[[3]](#footnote-3)

**BACKGROUND**

1. DCC wishes to procure the development of the Development Site at O’Devaney Gardens, Arbour Hill, Dublin 7 as a sustainable integrated mixed tenure housing development comprising a mix of houses, [apartments][[4]](#footnote-4) and crèche facilities.
2. DCC is the owner of the Development Site free from encumbrances.[[5]](#footnote-5)
3. DCC, in accordance with its statutory objectives, desires to ensure that the Development Site is developed in accordance with the objectives of the Key Project Documents and in accordance with the Plans.
4. DCC conducted a procurement process in accordance with the competitive dialogue procedure pursuant to EU Directive 2014/24/EU as implemented in Ireland by the European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016) (the “Regulations”) the OJEU reference for which was 2017/S 117-234294. The Developer has been identified as the preferred tenderer as a result of the procurement process and has agreed to enter into this Agreement, as provided for in that process.
5. DCC requires the Development of the Development Site in the manner provided for in this Agreement.
6. On receipt of the Planning Permission the Developer shall carry out the Development on the Development Site in accordance with the Plans the Planning Permission and the Developer's Timetable and thereafter acquire completed residential units within the Development Site.
7. DCC has agreed with the Developer, for the Consideration hereinafter appearing and in Consideration of the observance of and performance by the Developer of the covenants and conditions hereinafter set forth, to permit the Developer to enter upon and take possession of the Development Site for the periods hereinafter set out and for the purpose only of carrying out the Development in accordance with the Plans, the Planning Permission and the Developer's Timetable and to grant Assurances of completed Developer’s Units and the Affordable Purchase Units within the Development Site (excluding the sites for Social Units) to the Developer in accordance with this Development Agreement and in particular Clause 4 hereof.

**Definitions**

In this Agreement the following expressions shall where the context so admits have the following meanings:-

**“AF1”** means Approved Form (AF 1) containing particulars to be notified by the Construction Contractor to the Health and Safety Authority before the design process begins in accordance with Safety Regulations;

**“AF2”** means Approved Form (AF 2) containing particulars to be notified by Project Supervisor Construction Stage to the Health and Safety Authority before the construction work begins in accordance with Safety Regulations;

**“Affordable Purchase Units”** means the [ ] units of the Development comprising [[*[ x ] 1-bed apartment (own door), [x ]two bedroom apartments (own door), [ x ] three bedroom 4-person house, [x ] three bedroom 5-person house and [ x ] four bedroom 7-person house]* to be constructed in accordance with this Agreement ;[[6]](#footnote-6)

"**Affordable Purchase Unit Price**" means the purchase price to be paid by a Nominee(s) in respect of Affordable Purchase Units as follows:

* + - * 1. one bed apartment (own door) - €[] per unit;
				2. two bedroom apartments (own door) - €[] per unit;
				3. three bedroom 4-person house - €[] per unit;
				4. three bedroom 5-person house - €[] per unit; and
				5. four bedroom 7-person house - €[] per unit;

“**Ancillary Certificate”** means a certificate as prescribed by the Building Control Regulations, other than a statutory certificate of compliance as prescribed in the 2014 Regulations given by a Competent Person to confirm compliance of elements of the building, design or Works with Building Regulations;

**“Ancillary Certifier”** means a person proposed, approved or appointed by the Developer to issue an Ancillary Certificate;

**“Assigned Certifier”** means the person or entity assigned by the Developer to certify compliance with the relevant requirements for the Social Units, the Affordable Purchase Units and the Developer’s Units under the Building Control Regulations;

[“**Apartment Lease”** means a Lease of a Developer's Unit comprising an Apartment in the form of the draft lease annexed to this Agreement at Appendix 23]

[“**Apartments”** means those of the Developer's Units comprising apartment units and duplex units only and for the avoidance of doubt do not include the Social Units and Affordable Purchase Units and “Apartment” shall have a corresponding meaning;]

[**“Assurance”** means collectively a Transfer or Lease or Apartment Lease, as the case may be];

[“**Blocks”** means each of the blocks comprising Apartments to be constructed as part of the Development and as set out on the map attached hereto at Appendix 24 and thereon marked with the references [ ];]

**“Builder”** has the meaning assigned to it in clause 2 of the Code of Practice. The Construction Contractor will be the Builder for the purposes of this Agreement;

“**Building Contract”** means the building contract or building contracts to be entered into by the Developer with the Construction Contractor in relation to the Development or parts thereof, approved in writing in advance by DCC(such approval not to be unreasonably withheld or delayed);[[7]](#footnote-7)

**“Building Control Regulations”** means the Building Control Regulations 1997-2014 and any amendments thereto.

“**Building Regulations”** means the Building Control Acts 1990 and 2007 and any and all subordinate legislation pursuant thereto (including but not limited to the Building Regulations 1997-2013 and the Building Control Regulations), as may be amended, extended or modified from time to time;

**“Certificate of Compliance on Completion”** means the certificates to be signed by the Construction Contractor and the Assigned Certifier at Practical Completion of the Social Units, Practical Completion of the Affordable Purchase Units, Practical Completion of the Development Units, and Practical Completion of the Development,in the form set out in the sixth schedule to the 2014 Regulations;

**“Clerk of Works”** means the clerk of works appointed by DCC for the purposes of this Agreement;

**“Code of Practice”** means the Code of Practice for Inspecting and Certifying Building Works issued by the Department of Environment, Community and Local Government in February 2014 as amended from time to time;

**“Collateral Warranties”** means the collateral warranties (which shall include rights for DCC to step-in), required to be delivered and/or procured by the Developer for the Works in accordance with Clause 3.6.3 of this Agreement;[[8]](#footnote-8)

[“**Common Areas Transfer(s)**” means the transfer of the common areas within the Blocks and any external common areas, (if any) within the Development to the Management Company in the form specified in Appendix 25 and in accordance with the MUD Act;]

 **“Completion Standard for the Development”** means the standard to which the Development (other than the Developer’s Units, the Affordable Purchase Units and the Social Units) shall be completed by the Developer before being taken in charge by DCC being the standard specified in Appendix 1;[[9]](#footnote-9)

“**Completion Standard for the Affordable Purchase Units”** means the standard to which the Affordable Purchase Units shall be constructed and completed by the Developer being the standard specified in Appendix 2;[[10]](#footnote-10)

“**Completion Standard for the Developer’s Units”** means the standard to which the Developer’s Units shall be constructed and completed by the Developer being the standard specified in Appendix 2;[[11]](#footnote-11)

 “**Completion Standard for the Social Units”** means the standard to which the Social Units shall be constructed and completed by the Developer being the standard specified in Appendix 4;[[12]](#footnote-12)

**“Consideration”** means the DCC Consideration payable by DCC to the Developer and the Developer’s Consideration payable by the Developer to DCC in accordance with Clause 6 of this Agreement but being subject to adjustment in accordance with Clause 7;

**“Construction Contractor”** means [ ][[13]](#footnote-13) or such other reputable building contractor or building contractors as may from time to time be nominated in writing by the Developer for the carrying out of the Development or parts thereof and approved in writing in advance by DCC;

**"Construction Regulations”** means the Safety, Health and Welfare at Work (Construction) Regulations 2013 (as amended);

“**DCC's Architect**” means [●] or such other architect as DCC may from time to time nominate;

**“DCC Consideration”** means that part of the Consideration payable by DCC to the Developer for the Social Units calculated on the basis of €[ ] for each 1 bed Social Unit; €[ ] for each 2 bed Social Unit; €[ ] for each three bed Social Unit and €[ ] for each four bed Social Unit, payable in accordance with Clause 6.2 of this Agreement but being subject to adjustment in accordance with Clause 7 of this Agreement;

**“Deduction Authorisation”** means the deduction authorisation received by DCC from the Revenue Commissioners pursuant to a Payment Notification;

**“Defects Liability Period”** means the period of 12 months commencing on the Working Day after the day on which:

* + - * 1. the Certificate of Practical Completion for each Phase is issued; and
				2. the Certificate of Practical Completion of the Development is issued;

**“Design Certifier”** means the person or entity assigned by the Developer to issue statutory certificates of compliance as prescribed by the Building Control Regulations;

“**Design Team**” means the Developer's Architect, the Developer's Landscape Architect, the Developer's Civil and Structural Engineer, the Developer's Fire Consultant, the Developer's Mechanical and Electrical Engineer, the Developer’s Planning and Environmental Consultant, the Developer's Quantity Surveyor, the Developer’s Energy Consultant, and the Design Certifier;

**“Design Team Appointment”** means the terms and conditions of appointment of each of the members of the Design Team, each of which shall be approved in writing by DCC and each of which shall contain wording required by DCC entitling DCC to step-in to the Design Team Appointment in the manner specified;[[14]](#footnote-14)

“**Developer's Architect”** means [ ] of [ ] or such person or persons as may be appointed, with the prior written approval of DCC, by the Developer as its Architect;[[15]](#footnote-15)

“**Developer's Civil and Structural Engineer”** means [ ] of [ ] or such person or persons as may be appointed by the Developer as its Civil and Structural Engineer; [[16]](#footnote-16)

“**Developer’s Consideration”** means that part of the Consideration payable by the Developer to DCC for the Development Site excluding the Social Units and the Affordable Purchase Units and including the Development Site Costs amounting to €[ ] together with VAT thereon but being subject to adjustment in accordance with Clause 7;

**“Developer’s Energy Consultant”** means [ ] of [ ] or such person or persons as may be appointed by the Developer as its Energy Consultant; [[17]](#footnote-17)

“**Developer's Fire Consultant**” means [ ] of [ ] or such person or persons as may be appointed by the Developer as its Fire Consultant;

**“Developer's Landscape Architect”** means [ ] of [ ] or such person or persons as may be appointed by the Developer as its Landscape Architect;[[18]](#footnote-18)

“**Developer's Mechanical and Electrical Engineer**” means [ ] of [ ] or such person or persons as may be appointed by the Developer as its Mechanical and Electrical Engineer; [[19]](#footnote-19)

**“Developer’s Planning and Environmental Consultant”** means [ ] of [ ] or such person or persons as may be appointed by the Developer as its Planning and Environmental Consultant;[[20]](#footnote-20)

**“Developer's Quantity Surveyor”** means [ ] of [ ] or such person or persons as may be appointed by the Developer as its Quantity Surveyor;[[21]](#footnote-21)

“**Developer's Timetable**” means the dates for the commencement and completion of the Development and each Phase as set out in Appendix 6;[[22]](#footnote-22)

“**Developer's Units**” means the [ ] units [comprising [*specify mix*] to be constructed by the Developer in accordance with this Agreement;[[23]](#footnote-23)

“**Development**” means the construction and completion of the Affordable Purchase Units, of the Social Units, of the Developer’s Units, and completion of the Development on the Development Site by the Developer in accordance with the Planning Permission, the Plans, the Developer's Timetable and this Agreement;

**“Development Bond”** means the development bond to be provided by the Developer to DCC prior to commencement of the Development, in the form of the bond annexed hereto at Appendix 7[[24]](#footnote-24)**PROVIDED HOWEVER THAT** the Developer shall furnish to DCC on or about (but before and not after) the date hereof a letter of undertaking from a Surety Company in the form attached in Appendix 8;

**“Development Plan"** means the Dublin City Development Plan 2016-2022;

**“Development Site”** means the parts of the lands comprised in Folios [●][[25]](#footnote-25), all situate at O’Devaney Gardens, Arbour Hill, Dublin 7 shown for identification purposes only as outlined in red on Map no. 1 in Appendix 9;

“**Environmental Laws”** means all laws (whether criminal, civil or administrative) including common law, statutes, regulations, statutory instruments, directives, bye-laws, orders, codes and judgements, having the force of law in Ireland concerning environmental matters and protection of the environment;

**“Expert”** means a person appointed in accordance with Clause 23 to resolve a matter under the Agreement.

**“Feasibility Study”** means the document entitled “*O’Devaney Gardens Land Initiative/Regeneration Project*” dated 9th January 2017 prepared by or on behalf of the Council;

**“Financial Model”** means the financial model provided by the Developer to DCC as part of the procurement process for the Development, a copy of which is included in Appendix 10;

“**Fire Safety Certificate**” means such fire safety certificates as may be required in respect of the Works;

“**Force Majeure**” means war, civil commotion, strike, lock-out, labour dispute, shortage of labour and materials, serious inclement weather loss or damage by fire or other such risks or any other cause beyond the reasonable control of the Developer;

**“Funder”** means [ ] being the Developer’s funder for the Development or such other funder as may be notified by the Developer to DCC during the Term;

“**Hand-over Date**” means in respect of any Social Unit the date upon which it is delivered by the Developer to DCC or its nominee in accordance with this Agreement means in respect of any Affordable Purchase Unit the date upon which it is delivered to DCC's Nominee;

**“Health & Safety Plan”** means the health & safety plan prepared by the Developer in respect of the Works in accordance with this Agreement;

“**Independent Architect**” means such the Independent Architect as may be agreed between the Developer and DCC or failing agreement between the parties within five (5) Working Days (on the application of either party) the person nominated by the President or acting President for the time being of The Royal Institute of the Architects of Ireland;

**“Inspection Notification Framework”** has the meaning attributed to it in the Code of Practice;

**"Inspection Plan”** has the meaning attributed to it in the Code of Practice;

 **“Interest Rate”** means the interest rate specified from time to time by the Prompt Payment of Accounts Act, 1997 as amended by the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. 580 of 2012).

**"Key Project Documents”** means the following:

* + - * 1. Development Plan and, in particular, the SDRA 11 Principles;
				2. Feasibility Study; and
				3. Masterplan;

**[“Lease”** means a lease of a Developer’s Unit in the form of the draft lease annexed to this Agreement at Appendix 268;]

[“**Lease of Easements”** means a lease of easements relating to each of the Developer’s Units in the form of the draft Lease of Easements annexed to this Agreement at Appendix 27;]

“**Liquidated and Ascertained Damages**” means [●][[26]](#footnote-26)

“**Long Stop Date”** means the [ *insert date which is 3 years from the date of this Agreement* ]or such later date as may be determined in accordance with the provisions of clause [1.1] of this Agreementbeing the date by which the Developer must have satisfied the Pre-Condition;

**[“Management Company”** means the owners’ management company or companies (being a company or companies limited by guarantee) to be incorporated by the Developer to take the Common Areas Transfer and to manage, inter alia, the common parts of the Development;]

**“Map**” means the maps of the Development Site and the Phasing Map annexed to this Agreement at Appendix 9;

**“Masterplan”** means the O’Devaney Gardens masterplan for the Development of 2010;

“**Method Statement**” means the method statement describing how the Developer intends to implement the Development and carry out the Works provided for in this Agreement;[[27]](#footnote-27)

[“**MUD Act**” means the Multi-Unit Development Act, 2011 and any statutory modification or re-enactment thereof for the time being in force;]

**“Nominee(s)”** means the person or persons nominated by DCC to acquire any of the Affordable Purchase Units and in the event that such units are to be sold to DCC, shall include DCC;

**“Opinions on Compliance”** means the certificates or opinions on compliance with planning permission and Building Regulations in respect of the Works in the current RIAI form as of the date of Practical Completion of the Development or the part of the Works to which the Opinion on Compliance refers;

**“Payment Notification”** means the notifications to be made from time to time by DCC, as principal contractor, for the purposes of RCT, to the Revenue Commissioners, of the gross payments of the DCC Consideration to be made to the Developer pursuant to this Agreement;

“**Pre-Condition**” means the obtaining the Planning Permission for the Development as specified in Clause 1 of this Agreement;

**“Project Supervisor Construction Stage”** means the Construction Contractor such other person as shall be appointed, with the prior consent of DCC, by the Developer as the Project Supervisor Construction Stage pursuant to the Safety Regulations in the form of appointment at Appendix 11;

“**Project Supervisor Design Process**” means [ ] or such other person as may be appointed, with the prior consent of DCC, by the Developer as Project Supervisor Design Process pursuant to the Safety Regulations in the form of the appointment at Appendix 12;

“**Phases**” means the phases of the Development as identified in the Developer’s Time-Table and in the Phasing Map and “Phase” shall be construed accordingly;[[28]](#footnote-28)

**“Phasing Map”** means the map attached as Map 3 showing the Phases of the Development;[[29]](#footnote-29)

“**Plans”** mean the plans, specifications, elevations, schedule of finishes and drawings for the Development prepared for the purposes of applying for the Planning Permission;

“**Planning Acts**” means the Local Government (Planning and Development) Acts 1963-1999, the Planning and Development Acts, 2000-2014, the Building Control Acts 1990 and 2007 and the Building Regulations and the Technical Guidance Documents Regulations or Orders made or issued thereunder and any statutory modification or re-enactment thereof for the time being in force and any regulations or orders made thereunder;

“**Planning Application**” means the planning application made by the Developer in respect of the Development in accordance with this Agreement;

“**Planning Permission”** means the grant of full planning permission for the construction of the Development on foot of the Planning Application granted by An Bord Pleanala;

“**Possession Date”** means the date or dates on which DCC permits the Developer to enter on the Development Site (or parts thereof) pursuant to Clause 2 hereof;

**“Practical Completion”** means in relation to each element and/or Phase of the Works that the work in question has reached the stage at which:

* + - 1. the work has been completed to the Completion Standard for the Development, the Completion Standard for the Developer’s Units, the Completion Standard for the Affordable Purchase Units and the Completion Standard for the Social Units and in accordance with this Agreement excluding minor defects and/or omissions which will not prevent the Works from being taken over and used for their intended purpose; and

* + - 1. the Developer has in conjunction with the Assigned Certifier executed the Certificate of Compliance on Completion and the relevant particulars of the said Certificate have been included on the register maintained by the Building Control Authority and the Contractor has delivered all other certificates required under this Agreement; and
			2. the Developer has delivered to DCC:
				1. all Collateral Warranties required pursuant to the provisions of this Agreement;
				2. as-built drawings in respect of the Works;
				3. the Safety File, operation and maintenance manuals;
				4. product guarantees for those items forming part of the Works; and
			3. the Works have been cleared of any builder’s debris and all plant, tools, equipment and surplus materials and goods belonging to or placed there by the Construction Contractor or his sub-contractors (except where the Construction Contract otherwise requires those items to remain on the Development Site on or after the date of Practical Completion);

And “**Date of Practical Completion**” shall be construed accordingly.

**Practical Completion of the Development**” means the date on which a Certificate shall issue confirming that all Phases and the Development as a whole have been practically completed within the meaning of the Building Contract and in accordance with this Agreement;

 **“RCT”** means Relevant Contracts Tax as provided for in Chapter 2, Part 18, of the Taxes Consolidation Act, 1997;

**“Requisite Consents”** means those permissions, consents, approvals, licenses, certificates and permits in legally effectual form as may be necessary lawfully to commence, carry out, maintain and complete the Works including (but without limitation):

* + - 1. the Planning Permission;
			2. Building Regulations;
			3. Fire Safety Certificate(s);
			4. consents under the Safety Regulations;
			5. Environmental Laws;
			6. the requirements of all competent authorities regulating the Works and/or the use of the Development Site; and
			7. the Planning Acts;

**“Safety Regulations”** means the Safety, Health and Welfare at Work Act, 2005 and any and all subordinate legislation pursuant thereto (including but not limited to the Safety, Health and Welfare at Work (Construction) Regulations 2013), as may be amended, extended, or modified from time to time;

“**Social Units”** means the [ ] units of the Development comprising [*[ x ] 1-bed apartment (own door), [x ]two bedroom apartments (own door), [ x ] three bedroom 4-person house, [x ] three bedroom 5-person house and [ x ] four bedroom 7-person house]* to be constructed in accordance with this Agreement;[[30]](#footnote-30)

**“Sub-Contract”** means any sub-contract entered into by the Developer or the Construction Contractor for design services or for the construction of a substantial part of the Works;

“**Sub-Contractors**” means those sub-contractors providing design services or constructing a substantial part of the Works appointed by the Construction Contractor and the Developer for the carrying out of the Works;

**“Term”** means, unless this Agreement is terminated pursuant to the terms hereof, the period of 48 months commencing on the date of the grant of Planning Permission, **SUBJECT** to the right of DCC to extend the Term, as provided for in Clause 4.3;

“**Transfer”** means each of the Deeds of Transfer of the freehold interest of a Developer’s Unit or an Affordable Purchase Unit in the form of the draft deed of transfer annexed to this Agreement as Appendix 13;

**“VAT”** means Value Added Tax;

**“VAT Act”** means the Value-Added Tax Consolidation Act 2010 and related VAT regulations;

**“Working Day”** means any day that is not a Saturday, Sunday, a bank holiday or a public holiday in Ireland;

“**Works”** means the works to be carried out by Developer in relation to the design, construction and completion of the Development as detailed in the Completion Standard for the Social Units, the Completion Standard for the Developer’s Units, the Completion Standard for the Affordable Purchase Units and the Completion Standard for the Development;

**“2014 Regulations”** means the Building Control (Amendment) Regulations 2014 as may be amended, extended or modified from time to time.

**Interpretation**

In this Agreement unless the context otherwise admits or requires:-

* + - 1. Clause and clause headings are inserted for convenience only and shall not affect the construction of this Agreement.
			2. All references to Clauses, clauses, sub-clauses, paragraphs, sub-paragraphs, Schedules or Appendices are references to Clauses, clauses, sub-clauses, paragraphs, sub-paragraphs, Schedules or Appendices in this Agreement.
			3. Any reference in a clause or a paragraph to a sub-clause or a sub-paragraph is a reference to a sub-clause or a sub-paragraph of the clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended.
			4. Words denoting the singular include the plural and vice versa.
			5. References to persons include references to bodies corporate and unincorporated and vice versa.
			6. References to the masculine gender include the feminine and neuter genders and vice versa.
			7. References to any prescribed forms or conditions of any Institute or Professional Body referred to in this Agreement include references to such prescribed forms or conditions as may exist from time to time.
			8. References to “this Agreement” include this Agreement as supplemented, amended, modified or varied from time to time.
			9. The Schedules are to be read and construed as if they formed part of the body of this Agreement and the term “this Agreement” is to be interpreted as including the Schedules hereto.
			10. References to any society, institute or other professional body include any other body established from time to time in succession to or in substitution of or for or carrying out the function formerly carried on by such society, institute or other professional body.
			11. References to a “week” mean a calendar week.
			12. References to a “month” mean a calendar month.
			13. All approvals, consents, confirmations of satisfaction, agreements, certificates and notifications required pursuant to this Agreement shall be in writing. Where any approval, consent, confirmation of satisfaction or any action of a similar nature is provided for in this Agreement to be given or withheld by a Party save where expressly provided otherwise it shall not be unreasonably withheld or refused (but may be given subject to reasonable conditions) and shall be so given or withheld within such reasonable time as may be stipulated in the application for such approval or action, being not less than 10 (ten) days from date of presentation and request for such approval or action, failing which such approval, consent, configuration or satisfaction shall be deemed to have been given. Any provision hereof relating to time limits for approvals or disapprovals (or similar actions) shall apply equally to re-presentation or re-requests for approval following any refusal.
			14. Where two or more persons comprise any party to this Agreement, references to that party shall include both or all of them and they shall be jointly and severally liable hereunder.
			15. Reference to any statute, order or regulation shall be deemed to include any modification or re-enactment thereof for the time being in force and reference to any statute shall also be deemed to include any regulations or orders made thereunder.
			16. Any rights conferred on DCC to have access to or to enter upon the Development Site shall be construed as extending to all persons authorised by DCC (acting reasonably) including agents, professional advisors, contractors and others.
			17. If any term or provision of this Agreement is held to be illegal or unenforceable in whole or in part such term shall be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.
			18. The Schedules and Appendices hereto shall form part of this Agreement.

**NOW THIS AGREEMENT WITNESSES** that **SUBJECT TO** satisfaction of the Pre-Condition and in consideration of the payment of the Consideration, DCC and the Developer **HEREBY AGREE** as follows:-

1. Pre-Condition
	1. This Agreement is conditional upon the Pre-Condition being satisfied by the Long Stop Date **PROVIDED HOWEVER** that, if it appears to either party (acting reasonably) that the Pre-Condition will not be satisfied by the Long Stop Date but is likely to be satisfied in the [six] month period thereafter, then either party may, by notice to the other, extend the Long Stop Date by up to a maximum of [six] months.[[31]](#footnote-31).
	2. **Obtain Planning Permission for Development**

* + 1. The Developer shall use all reasonable endeavours to procure that the Planning Permission is obtained and this Pre-Condition is satisfied as soon as practicable and in any event by the Long Stop Date.
		2. The Design Team shall prepare an Environmental Impact Statement (“EIS”) and Plans for the Planning Application, within the general parameters of the terms set out herein, taking into account the Key Project Documents and the preliminary planning reports for the Masterplan regarding Strategic Environmental Assessment, Strategic Flood Risk Assessment, Appropriate Assessment, Archaeological Impact Assessment and Ecological Surveys (copies of which have been made available to the Developer on a non-reliance basis).
		3. The Developer shall, within six months of signing this Agreement, submit the Planning Application[[32]](#footnote-32) in accordance with the Plans to An Bord Pleanala and shall use all reasonable endeavours to obtain the Planning Permission as soon as practicable.
		4. The Developer shall pay all appropriate fees in respect of the Planning Application.
		5. On or before the fifth Working Day after the day on which the Developer shall receive formal written notice from An Bord Pleanala of the decision to grant or to refuse planning permission on foot of the Planning Application (the “Decision”) the Developer shall deliver a copy of the Decision to the DCC.
		6. Should the Decision be to grant Planning Permission then the Decision shall be deemed to be the Planning Permission and this Pre-Condition shall be deemed to have been satisfied as of the date of grant of the Planning Permission.
	1. The Developer and DCC shall meet on at least a monthly basis from the date hereof until such time as this Pre-Condition has been satisfied in order to review progress in compliance with the Pre-Condition.
	2. For the avoidance of doubt, any rights, entitlements, approvals, consents or other actions of DCC under this Agreement shall not in any way affect or prejudice the statutory planning or other functions of DCC as planning authority for the area, and such rights, entitlements, approvals, consents or other actions are independent of and unconnected with such statutory functions.[[33]](#footnote-33)
	3. If the Pre-Condition has not been satisfied by the Long Stop Date, (or any extended Long Stop Date provided for pursuant to this Agreement) this Agreement shall cease to have effect immediately after that time on that date except for:
		+ 1. the Definitions and Interpretation provisions;
			2. this Clause (Pre-Condition);
			3. Clause 28 (Confidentiality);
			4. Clause 21 (No Assignment);
			5. Clause 29 (Entire Agreement);
			6. Clause 20 (Fees and Costs);
			7. Clause 19 (No Partnership);
			8. Clause 31 (Notices);
			9. Clause 3.7 (Intellectual Property rights);
			10. Clause 30 (Governing Law and Jurisdiction); and
			11. any rights, remedies, obligations or liabilities that have accrued under this Agreement.
1. Rights of Entry
	1. Subject to the Pre-Condition being satisfied, and to compliance by the Developer with the access requirements specified in Clause 2.3 below, DCC shall permit the Developer to enter on to the Development Site on foot of a bare license (the “License”) provided by DCC for a period of 48 months from the date of the grant of Planning Permission to enable the Developer carry out the Development in accordance with the Plans, the Developer's Timetable, and the Planning Permission.
	2. The Developer shall not be permitted to have access to the Development Site or any part thereof for the purposes of commencing the Works in any Phase until all payments required to be paid as part of the Developer’s Consideration to that date pursuant to this Agreement have been paid in full to DCC and DCC is furnished with and confirms in writing that it is satisfied it has been provided with the following documents:[[34]](#footnote-34)
		* 1. a certified copy of the executed Building Contract including all appendices thereto;
			2. the Development Bond, duly executed;
			3. Certified copy appointment of the Project Supervisor Design Process;
			4. Certified copy appointment of the Project Supervisor Construction Stage;
			5. Certified copy appointment of the Design Certifier;
			6. Certified copy appointment of the Assigned Certifier;
			7. Certified copies of the Commencement Notice(s) served and the local authority’s acknowledgement of receipt of same;
			8. All insurances as required pursuant to Clause 10;
			9. The Health & Safety Plan;
			10. Certified copies of the Forms AF1 and AF2 duly completed and lodged with the Health and Safety Authority;
	3. Notwithstanding that part of the Development Site may be subject to a Licence granted pursuant to clause 2.1 above, during the course of the carrying out of the Development, DCC, its authorised officials, employees, agents or contractors shall be entitled to enter upon the Development Site at all reasonable times to view the state and progress of the Development and to inspect and test the materials and the workmanship on the Development Site. DCC shall appoint a Clerk of Works for the purpose of representing DCC's interests in respect of the Development. The Clerk of Works is not empowered to issue instructions or interfere with the progress of the Works. The Developer shall afford the Clerk of Works and/or procure that the Clerk of Works is afforded every facility for the performance of its duties. The Developer shall be informed of the appointment of the Clerk of Works (or any replacement Clerk of Works appointed by DCC during the Term). The Clerk of Works shall be paid by DCC. No inspection, review, consent or approval by DCC, its authorised officials, employees, agents, contractors or the Clerk of Works, or any omission to inspect, review, object to or disapprove, shall negate or in any way diminish any duty or liability of the Developer under or in connection with this Agreement.
	4. For the avoidance of doubt the Development Site shall remain in the ownership and control of DCC unless and until Licence or Licences of part or parts thereof have been granted by DCC to the Developer in accordance with clause 2.1 above.
2. Developer's Contracts and Collateral Agreements
	1. The Developer shall retain the Design Team and such other professional advisors and contractors at its own cost and expense as shall be necessary to carry out the Development.
	2. The Developer shall enter into such contract or contracts for the Development with the Construction Contractor upon such terms and conditions as may seem reasonable to the Developer with the approval of DCC (such approval not to be unreasonably withheld or delayed) **PROVIDED HOWEVER** that such contract or contracts shall contain such indemnities in respect of insurances in favour of DCC as are provided for hereafter in this Agreement.
	3. The Developer shall appoint the Design Certifier and the Assigned Certifier in accordance with the provisions of the Construction Regulations and shall procure that they shall each execute an agreement with respect to his or her appointment in the form set out in Appendix 14 and shall provide DCC with a certified copy of the appointments as provided for in clause 2.3 above. [[35]](#footnote-35)
	4. The Developer shall appoint the Project Supervisor Design Process in accordance with the provisions of the Construction Regulations and shall procure that the Project Supervisor Design Process shall execute an agreement with respect to its appointment as Project Supervisor Design Process in the form set out in Appendix 15 and shall provide DCC with a certified copy of the appointment as provided for in clause 2.3 above.
	5. The Developer shall appoint the Construction Contractor as Project Supervisor Construction Stage in accordance with the provisions of the Construction Regulations and shall procure that the Construction Contractor shall execute an agreement with respect to its appointment as Project Supervisor Construction Stage in the form set out in Appendix 16 and shall provide DCC with a certified copy of the appointment as provided for in clause 2.3 above.
	6. The Developer shall:
		1. within five (5) Working Days after the execution of a Building Contract (but in any event not later than is provided for in clause 2.3 above) deliver to DCC a certified copy of the agreed form duly executed Building Contract and procure that there is executed and delivered to DCC a Collateral Warranty from the Construction Contractor in the form of the specimen attached in Appendix 17;.
		2. within five (5) Working Days after the execution of the Design Team Appointments (but in any event not later than is provided for in clause 2.3 above) deliver to DCC certified copies of the agreed form, duly executed Design Team Appointments and procure that there is executed and delivered to DCC Collateral Warranty from the following in the form of the specimens attached in Appendix 18:
			1. each member of the Design Team
			2. the Project Supervisor for Design Process;
			3. the Assigned Certifier and
			4. the Design Certifier;
		3. within five (5) Working Days after the execution of each Sub-Contract deliver to DCC certified copies of the agreed form, duly executed Sub-Contract and procure that there is executed and delivered to DCC Collateral Warranties from each Sub-Contractor in the form of the specimen attached in Appendix 19.
	7. The intellectual property rights (including copyright) in any plans, drawings, reports, specifications, calculations and other documents (the “**Design Information**”) produced by or on behalf of the Developer, in connection with the Works shall remain vested in the Developer but the Developer shall grant to DCC and shall procure that the Design Team members and Sub-Contractors grant to DCC, free of charge, an irrevocable, non-exclusive and transferable licence (carrying the right to grant sub-licences) to reproduce, copy and use the Design Information (and all amendments and additions thereto), whether in existence or to be made, for all purposes connected with the Works (including without limitation and generality thereof, the design, construction, alteration, reconstruction and completion of the Works). The Developer shall ensure that Design Information created, brought into existence or acquired during the Term of this Agreement vests, and remain vested throughout the term of this Agreement, in the Developer and the Developer shall enter into appropriate agreements with any third parties that may create or bring into existence, or from which it may acquire, any Design Information rights.
3. Obligation to Develop

 The Development shall be carried out in accordance with the following conditions:-

* 1. The Developer shall at its own expense do all works in connection with the preparation of the Development Site or any Phase thereof for the Development and shall take down and remove all work and materials (if any) which may be unsound or unfit for the purposes of the Development.
	2. The Developer shall, acting at all times in accordance with this Agreement, at its own expense prepare the Development Site for building purposes and shall complete the Development in the Phases in conformity in every respect with the Plans (as varied only with the written consent of DCC) and in full compliance with the Requisite Consents and with the provisions of this Agreement.
	3. The Developer shall ensure that the Development and each Phase thereof proceeds in a regular manner, in accordance with the Health And Safety Plan, the Method Statement and the Phasing Map without delay or interruption and shall take such steps as may be necessary to ensure the carrying out and completion of the Development in accordance with the Developer's Timetable and in accordance with the Planning Permission and to the Completion Standard for the Development, the Completion Standard for the Affordable Purchase Units, the Completion Standard for the Developer’s Units, and the Completion Standard for the Social Units and within the Term **PROVIDED ALWAYS** that if default or delay in completing the Development or any part thereof shall arise from Force Majeure then DCC shall allow such further time for the completion of the Development as shall be reasonable in the circumstances in accordance with the provisions of Clause 25 and **PROVIDED FURTHER** that DCC may, in any event, acting reasonably, permit the Term to be extended by two further periods of one year each in circumstances where the Developer makes written applications to DCC not less than 4 months before the expiration of the Term (or the extended Term, as the case may be) and provides evidence to the satisfaction of DCC that there are economically justifiable grounds for extending the Term by such further one year period, and thereafter, in the absolute discretion of DCC, for the completion of the Development or any Phase thereof as shall be reasonable in the circumstances up to and including a maximum of two further one-year extensions of the Term but so that the Term shall not exceed eight years from the date of grant of Planning Permission.
	4. The Developer shall procure the delivery of the Social Units, the Affordable Purchase Units and the Developer's Units, completed in their entirety in accordance with the Phasing Map and Developer’s Timetable. In particular the Developer shall, within each Phase, deliver the Social Units, Affordable Purchase Units and the Developer’s Units in the tranches and proportions agreed with DCC and set out in the Phasing Map and the Developer’s Timetable.[[36]](#footnote-36)
	5. The Developer shall procure that the Development is carried out and completed in a good and workmanlike manner in accordance with good building practice with the materials specified or otherwise with suitable materials of a comparable quality and substantially in accordance with:-
		+ 1. the Plans;
			2. the Requisite Consents; and
			3. all Acts of Oireachtas and Regulations made thereunder or deriving validity therefrom and the regulations and enforceable codes of practice of any authority (including all reasonable requirements of the Fire Authority insofar as it is necessary to incorporate such requirements in the Development).
	6. The Developer shall ensure there shall not be used on or in connection with the Works any materials and/or substances the use of which would be contrary to the Plans and applicable current Irish Standards and codes of practice (including all permissions, consents, approvals, licences, certificates and permits as may be necessary, to lawfully commence, carry out and complete the Works) and/or which would be known to be reasonably suspected to be: -
		+ 1. deleterious either by themselves or when used in conjunction with any other materials or in any particular situation or location;
			2. likely to cause damage to the Works;
			3. a potential hazard to health and safety;
			4. capable of posing a threat to the stability, integrity or performance of the Works or any part of the Works; and
			5. capable of reducing the normal life expectancy of the Works or any part of the Works.
	7. During the course of the Development all services including water, sewerage, electricity (including signalling, electrical and telecommunications equipment) on the Development Site and/or on DCC's adjoining lands and of which the Developer shall be notified or become aware shall be maintained so that any interruption to those services at any time during the carrying out of the Development of the Development Site shall be remedied forthwith by the Developer at its own expense.
	8. The Developer shall, during the course of the Development, facilitate the connection of DCC’s lands adjoining or adjacent to the Development Site to the services on the Development Site and shall co-operate at its own expense with DCC in facilitating the layout and installation of the services on the Development Site is such a way as to ensure such connection can be facilitated as conveniently as possible by DCC.
	9. The Developer shall not use the Development Site prior to Practical Completion of the Development for any purpose other than the carrying out of the Development. Without prejudice to the generality of the forgoing, the Developer shall not erect or construct any buildings on the Development Site save in conformity with the Plans, and the Planning Permission PROVIDED ALWAYS that if the Developer should at any time wish to depart in any way from the approved Development it may not do so without first obtaining the prior consent in writing of DCC and complying with all requirements under the Planning Acts which affect or relate to the Development or the user thereof. DCC may in its absolute discretion withhold such consent if it considers that the departure would materially depart from the approved Development.
	10. The Developer shall register with HomeBond or Premier Guarantee (or such other similar entity as approved by DCC) in respect of the Social Units, Affordable Purchase Units and the Developer's Units and enter into appropriate agreements to procure the provision of certificates from HomeBond or Premier Guarantee for completion.
	11. The Developer shall pay and shall indemnify DCC against liability in respect of any fees or charges payable under any Acts of the Oireachtas or any regulation of any local authority in respect of the Development including, for the avoidance of doubt, any financial contributions payable under the Planning Permission, which shall be the responsibility of the Developer.
	12. The Developer shall not sell or dispose of any earth, clay, gravel or sand from the Development Site except so far as shall be necessary for the completion of the Development.
	13. The Developer shall not use or deposit on or in connection with the Development any materials or substances which are not in full compliance with the Building Regulations.
	14. The Developer shall not at any time allow or cause to be allowed any trespass upon or interference with the adjoining lands of DCC.
	15. The Developer shall take all such reasonable precautions as shall be necessary to avoid nuisance, annoyance, inconvenience, injury, loss, danger to or interference with the public or any owners or occupiers of adjoining or neighbouring property (including DCC) or to any other persons.
	16. The Developer shall submit to DCC monthly reports, at a time and in a format agreed with DCC which shall include:[[37]](#footnote-37)
		+ 1. the Contractor’s monthly progress report on the overall Development and the progression of the Works including any issues which are or may cause delay to the Works;
			2. details of the numbers employed in connection with the Works on the Development Site distinguished by profession and trade including the numbers required by the Social Employment Clause at Clause 22 hereafter;
			3. a Health and Safety report; and
			4. the Assigned Certifier’s report for the preceding month.

If in the reasonable opinion of DCC’s Architect the Works are not being constructed or completed in accordance with the terms of this Agreement, then DCC’s Architect shall be entitled to notify the Developer's Architect in writing and give details of any such deviation. If the Developer's Architect does not within ten (10) Working Days of the date of such notification notify DCC’s Architect in writing of proposals reasonably acceptable to DCC to remedy and/or make good any such deviation or if the Developer's Architect disputes the reasonable option of DCC’s Architect, then anyone of the parties shall be entitled to refer the determination of the matter to the Expert who shall give his decision within seven (7) Working Days from the date of the matter being referred to him.

1. Defects Liability
	1. The Developer will enforce the defects liability provisions in the Building Contract which shall be for the Defects Liability Period and shall use all reasonable endeavours to ensure that all defects, shrinkages and other faults are made good as soon as possible to the satisfaction of DCC's Architect.
	2. In respect of any Phase, any defects, shrinkage or other faults concerning the Social Units which appear before the expiration of the Defects Liability Period for that Phase, which in the opinion of DCC’s Architect are due to materials or workmanship not in accordance with this Agreement or the Plans shall, within five (5) Working Days or such other reasonable period (as DCC’s Architect may nominate) after receipt of written instructions from DCC’s Architect, be made good by the Developer and (unless DCC’s Architect shall otherwise decide) at the cost of the Developer.
	3. DCC shall inspect each of the Social Units on or about 10 months after the date of Practical Completion of the relevant Phase in question and shall deliver to the Developer a list of any snagging items disclosed by the DCC inspection. The Developer shall attend to the rectification of the matters identified in the snagging list as soon as practicable, both before and after the expiration of any 12 months defects period provided for in the Construction Contract.
	4. Notwithstanding the foregoing, DCC’s Architect may issue such written instructions from time to time during the Defects Liability Period for each Phase and in any event shall issue a final list of defects, not later than twenty (20) working days after the expiration of the Defects Liability Period for each Phase. Completion of such outstanding items and remedying such defects shall be proceeded with expeditiously by the Developer and shall be finished and rectified within a reasonable time (but in any event no later than three months) after the date of receipt by the Developer of DCC’s Architect’s final list of defects, notwithstanding that the Defects Liability Period may have expired.
	5. The Developer and the Construction Contractor shall each provide a separate structural defects indemnity to DCC in respect of Social Units for a period of 12 years from the date of Practical Completion of each relevant Phase, in the form set out in Appendix 20.[[38]](#footnote-38)
	6. Without prejudice to any other right or remedy of DCC, the Developer will diligently, from the Possession Date to the end of the Defects Liability Period for each Phase prosecute claims for the benefit of DCC and the Developer and seek redress for the consequences of failure on the part of the Construction Contractor, the Design Team or any Sub-Contractor to observe and perform their respective obligations under the Building Contract or any of the Design Team Appointments or any Sub-Contract, as applicable.
2. Payments by DCC and by Developer
	1. **Payment by the Developer**[[39]](#footnote-39)
		1. The Developer shall pay DCC the Developer’s Consideration as follows:
			1. 25% on the execution of this Agreement;
			2. 25% within ten (10) Working Days of the date of the grant of the Planning Permission pursuant to Clause 1; and
			3. the balance on the date which is the earlier of the eighteen month anniversary of the date on which the Developer was permitted to enter on to the Development Site for the purposes of commencing the Development or the date of Practical Completion of the second tranche of Social Units in accordance with the Developer’s Timetable and the Phasing Map;

**PROVIDED HOWEVER** that the entire of the Developer’s Consideration shall be due and payable before the expiration of four years from the date of grant of the Planning Permission pursuant to Clause 1 above.

* + 1. The Developer’s Consideration shall be released to DCC on receipt of each payment and shall not be held by DCC as stakeholder pending delivery of the Transfers by DCC to the Developer in accordance with Clause 12. In the event of the termination of this Agreement due to the Developer’s default, and without prejudice to any other rights of DCC hereunder, the Developer’s Consideration (to the extent it has been paid) shall be forfeited to DCC and shall not be repayable to the Developer.
	1. **Payments by DCC**
		1. Subject to the Developer having a current and valid tax clearance certificate at the due date for payment on each of the payment dates hereunder, DCC shall pay the Developer the DCC Consideration as follows:
			1. within fifteen (15) Working Days of the date of Practical Completion of a Phase, that part of the DCC Consideration payable in respect of the Social Units in the relevant Phase, subject to delivery to DCC of the items listed in Clause 11 for each such Social Unit;
			2. DCC shall be regarded as the Principal Contractor for the purposes of RCT and shall operate RCT on each and any payment of the DCC Consideration. In advance of making each payment of the DCC Consideration, DCC shall make a Payment Notification to the Revenue Commissioners and shall remit the DCC Consideration on the basis of the Deduction Authorisation which issues from the Revenue Commissioners in response to the Payment Notification. Any such deductions from the DCC Consideration shall be deemed to have been paid by DCC to the Developer in accordance with this Agreement. For the avoidance of doubt DCC shall not be obliged to make any payment of the DCC Consideration unless and until it has received the Deduction Authorisation;
			3. as the Principal Contractor for RCT, DCC is the accountable person for VAT in respect of the services being provided pursuant to this Agreement in exchange for the DCC Consideration. DCC shall self- account for reverse-charge VAT at the reduced rate applicable from time to time on the DCC Consideration. The Developer shall provide DCC with an invoice, issued in accordance with the provisions of the VAT Act, within 15 days of the month following that within which a payment of the DCC Consideration is made, and the Developer shall not apply VAT to such invoice.
	2. Any payments properly due to either the Developer or DCC which remain unpaid 30 days after the invoice date (provided such invoice has not been queried by either party within ten (10) Working Days after the date of receipt of the invoice) shall be subject to interest at the Interest Rate for the period between the Working Day after the date of receipt of the invoice and the actual date of payment. Such interest shall accrue from day to day and shall be payable before and after any judgment.
	3. DCC shall be entitled (but not obliged) to offset, against the DCC Consideration for the Social Units all or part of the Developer’s Consideration and/or any stamp duty (at the discretion of DCC) which is due for payment but remains unpaid and/or any reasonable costs incurred by DCC to make good any defects in the Social Units which have not been remedied by the Developer in the manner provided for in Clause 5 of this Agreement against payments required to be made at the date on which the DCC Consideration for the Social Units (or any proportion thereof) becomes payable to the Developer in accordance with Clause 6.2 above.
	4. The Developer shall be liable for payment of stamp duty arising on this Agreement and arising on the Transfers [and Assurances and the Common Areas Transfer] and any counterparts thereto and shall at its own expense register the Assurance and the Common Areas Transfer]. The Developer shall furnish to DCC, on demand, evidence of payment of the stamp duty arising on this Agreement and shall indemnify DCC against payment of any stamp duty howsoever arising.
1. Variation of Consideration
	1. If Planning Permission when granted requires a greater number of Social Units, Affordable Purchase Units and/or Developer’s Units to be built than is envisaged by this Agreement then this Agreement shall be varied as follows:
		1. The Developer shall construct the additional number of Social Units, Affordable Purchase Units and/or Developer’s Units (as appropriate) as is required by the Planning Permission;
		2. The DCC Consideration shall be increased by an amount equivalent to the sum which represents the amount payable for the additional number of Social Units, which amount shall be calculated taking into account whether the additional Social Units to be constructed are 1-bed apartment (own door), two bedroom apartments (own door), three bedroom 4-person house, three bedroom 5-person house or four bedroom 7-person house Social Units, such increased DCC Consideration for the Social Units to ascertained by reference to the Financial Model.

* 1. If Planning Permission, when granted requires a lesser number of Social Units, Affordable Purchase Units and/or Developer’s Units to be built than is envisaged by this Agreement then this Agreement shall be varied as follows:
		1. there shall not be any change to the Developer’s Consideration but the Developer shall construct the number of Developer’s Units permitted by the Planning Permission; and
		2. the DCC Consideration shall be reduced pro-rata to take account of the lesser number of Social Units to be built, such reduced DCC Consideration for the Social Units to be ascertained by reference to the Financial Model.
	2. DCC and the Developer shall, prior to the commencement of the Development, agree the revised layout, tenure and details of the Development and the location, type and tenure of the Social Units, Affordable Purchase Units and the Developer’s Units to take account of the increased or decreased number of residences permitted, in accordance with the principles contained in this Agreement and in the PQQ and ITPD and on the basis that 30% of the residences shall be Social Units, 20% of the residences shall be Affordable Purchase Units and 50% of the residences shall be Developer’s Units. If DCC and the Developer are unable to reach agreement in this regard, any matters in dispute may be referred to the Independent Architect for decision in accordance with the provisions of Clause 23.
1. Further Obligations
	1. As part of the Development the Developer shall provide for and shall accommodate all wayleaves and connections in respect of any existing services traversing the Development Site and such connections thereto as may reasonably be required by DCC.
	2. On completion of the Development the Developer shall apply to the local authority to have the roads and services on the Development Site taken in charge by the local authority and shall enter into such documentation and comply with all the reasonable requirements of the local authority in order to have the roads and services taken in charge.
	3. The Developer shall provide DCC with the Development Bond in the form approved by DCC. The Development Bond shall be in the amount of [●] and shall be executed by the Developer and a surety approved by DCC.[[40]](#footnote-40)
	4. As part of the Development the Developer shall be responsible for the costs of making satisfactory connections to the local authority's and Irish Water water mains and sewers in accordance with the requirements of such local authority and Irish Water as the case may be.
	5. The Developer will pay all rates, taxes and outgoings in respect of the Development Site from the date of the execution of this Agreement.
	6. The Developer shall as and from the date hereof manage the Development Site in accordance with the principles of good estate management pending the grant by DCC of the Transfers pursuant to this Agreement.
2. Protect and Secure the Development Site
	1. Prior to the commencement of the Development on the Development Site, and in respect of each Phase of the Development, the Developer shall provide at its own expense to the reasonable satisfaction of DCC a secure fence or boundary hoarding of a specification approved in advance by DCC.
	2. The Developer at its own expense shall support, shore up, protect and make proper provision for the support and use of any adjoining or neighbouring lands (including the adjoining and neighbouring land of DCC and the parts of the Development Site which have not been licensed to the Developer), and all and any buildings, walls, roads and footpaths which may be on or partly on or adjoining the Development Site and for that purpose shall enter in such arrangements and upon such terms reasonably acceptable to DCC as may be necessary or desirable with adjoining or neighbouring owners or occupiers in respect thereof.
3. **INSURANCE:**[[41]](#footnote-41)
	1. The Developer shall indemnify and keep DCC indemnified from and against all actions, proceedings, claims, demands, damages, costs, liabilities, expenses, charges, penalties and fines howsoever arising by reason of or incidental to the breach, non-performance or non-observance of the obligations or any of them on the part of the Developer contained in this Agreement.
	2. The Developer shall be liable for and shall indemnify DCC against:-
		1. any liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal insofar as any such injury or damage arises out of or in the course of or by reason of the execution of the Works provided that such injury or damage is due to any negligence, omission or default of the Developer, the Construction Contractor or their servants or agents or any member of the Design Team or their servants or agents or any Sub-Contractor its servants or agents (whether or not also partly due to the negligence, omission or default of DCC or of any person for whom DCC is responsible);
		2. any liability, loss, claim or proceeding whatsoever arising under any statute or at Common Law in respect of personal injury to or disease contracted by or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Works unless solely due to any act or neglect of the DCC or of any person for whom DCC is responsible.
	3. The Developer shall take out, or procure that the Construction Contractor takes out, on the date hereof Public Liability insurance having a minimum indemnity limit of €13,000,000 (thirteen million euro) for any one incident, and shall take out, or procure that the Construction Contractor takes out Employer's Liability insurance having a minimum indemnity level of €13,000,000 (thirteen million euro) covering any liability, loss, claim or proceedings in respect of the matters referred to in Clauses 10.1 and 10.2 above.
	4. The Developer shall take out (or procure the taking out) on the date hereof for a period of 12 (twelve) years after the date of Practical Completion of the Development professional indemnity insurance having a minimum indemnity limit of €6,500,000 (six million five hundred and fifty million euro) in respect of each and every claim to cover any claims made in respect of the Development.
	5. The Developer shall ensure that all Sub-Contractors employed by the Construction Contractor on the Works have adequate Public Liability and Employers’ Liability insurances with a minimum limit of €6.5 million for each and every claim and shall, if requested to do so, cause satisfactory evidence of such insurances to be furnished to DCC.
	6. On the date of commencement of the Works and for the period of the carrying out of the Development, the Developer shall ensure that the Construction Contractor takes out All Risks Insurance which insures the Development against loss or damage against such risks as the Construction Contract (with the consent of DCC, such consent not to be unreasonably withheld or delayed) may from time to time reasonably consider appropriate, in the joint names of the Construction Contractor, Developer and DCC and such other persons having an insurable interest in the Development, in the full reinstatement cost of the Development from time to time. Such insurance policy shall include an amount for materials on Development Site, a percentage of not less than [12.5%] for professional fees and the cost of Development Site clearance. The Developer shall ensure that the Construction Contractor pays all premiums and other monies necessary to effect and maintain such insurances and shall annually or when reasonably required by DCC produce the policy or policies of insurance and the receipt for the current premium payable thereunder.
	7. If the Development or any part thereof shall at any time be damaged or destroyed by any of the risks covered by such policy or policies of insurance, the Developer shall forthwith apply for and use its best endeavours to obtain all necessary statutory and local authority approvals for reinstatement and shall forthwith re-build, repair or otherwise reinstate the Development or such part thereof in accordance with the Plans and provisions of this Agreement and shall apply all insurance monies received (other than sum in respect of loss of rent or other consequential loss) on such reinstatement and the Developer shall make up any deficiency in such insurance monies out of its own resources.
	8. The Developer shall take out (or procure the taking out) and maintain from the date hereof to Practical Completion of the Development insurance in respect of third party liability (including property damage). Such insurance shall cover all automobiles and/or automotive equipment used in connection with the Works including any loading or off loading at on or adjacent to the Development Site upon which the Works are to be carried out.
	9. The insurance policies under this clause shall be with insurers of good repute and in such form as shall be approved by DCC (such approvals not to be unreasonably withheld or delayed). Specifically, for the avoidance of doubt, the policies shall contain only such exclusions as are normally permitted in the construction industry in Ireland (but not in respect of loss or damage due to design) and as are published from time to time by the Royal Institute of the Architects of Ireland, the Construction Industry Federation and the Society of Chartered Surveyors in the Republic of Ireland, and as contained in the most recent edition of such document (but not in respect of loss or damage due to design as aforesaid).
	10. The Employers’ Liability policy shall include a provision by which in the event of any claim in respect of which the Developer or the Construction Contractor would be entitled to receive indemnity under the policy being brought or made against DCC the insurer will indemnify DCC against such claims and any costs, charges and expenses in respect thereof. The Public Liability Policy shall name DCC as joint insured.
	11. The Developer shall comply with all conditions in any policy or policies of insurance under this clause.
	12. The Developer shall before commencing the Works produce to DCC for inspection any policy or policies of insurance required under this Agreement together with the receipt in respect of premiums paid under such policy or policies and should the Developer make default in producing such policy or policies or in insuring or maintaining insurance or procuring the insuring or maintenance of insurance, DCC may itself insure against any risk with respect to which the default shall have occurred and amount paid in respect of premiums shall be recoverable from DCC as a contract debt and may be deducted by DCC from any moneys due or to become due to the Developer under this Agreement or any other agreement made by the parties.
	13. The Developer shall proceed with due diligence to repair, rebuild or make good at his own expense any damage to or destruction of the Works which occurs prior to the date of issue of the Certificate of Practical Completion for the relevant part. The provisions of this Sub-Clause shall not limit in any way the Developer's obligations to DCC pursuant to the provisions hereof.
4. Practical Completion
	1. The Developer’s Architect shall provide not less than two (2) weeks prior written notice to DCC’s Architect of the date a Phase or the Development (as applicable) will reach Practical Completion and will take account of all representations made by DCC's Architect as to whether or not Practical Completion of the Phase or the Development should occur.
	2. DCC's Architect may make representations to the Developer upon whether the Certificate of Practical Completion of the Phase or the Development (as applicable) should be issued at a particular time or what qualification should be made to the Certificate of Practical Completion upon its issue.
	3. The Developer’s Architect shall then notify DCC’s Architect in writing as soon as the Phase or the Development (as applicable) is Practically Complete and available for inspection. The Developer’s Architect shall carry out a joint inspection of the Affordable Purchase Units and/or the Social Units which have reached Practical Completion in that Phase (and/or the Development in respect of Practical Completion of the Development) with DCC’s Architect within five (5) Working Days of receipt by the Developer’s Architect of notice that the Works are available for inspection.
	4. If in the opinion of DCC's Architect the Certificate of Practical Completion should not issue in respect of the Affordable Purchase Units and/or the Social Units in that Phase or for the Development (as applicable), DCC shall notify the Developer at least five (5) Working Days prior to the anticipated date of issue of the Certificate of Practical Completion giving details of DCC's material objections and DCC and the Developer will endeavour to resolve what (if any) action should be taken, but if they cannot or do not do so:
		1. A list of outstanding works shall be prepared by DCC and the Certificate of Practical Completion of the Phase or the Development will be issued subject to completion of those works (or such of them, if there is a dispute, as may be determined pursuant to Clause 11.4.2 below) and subject to the Developer complying with the provisions of Clause 11.5 below. The Developer shall undertake in writing to DCC to carry out the said outstanding works without delay; or
		2. the objection or the list of outstanding works not so resolved shall be submitted to the Independent Architect who acting as an expert shall decide the matter within ten (10) Working Days of such referral and his decision shall be binding and conclusive upon the parties. The Independent Architect may obtain from the parties such evidence whether written or oral as he may require and make such order as to costs as he shall in his absolute discretion decide. He will however give written reasons for his decision.
	5. The Developer shall, without delay and at its own expense, carry out such works and/or remedy any omission or defect as may be required in consequence of the material objections of DCC or the decision of the Independent Architect. Save where the provisions of Clause 11.4.1 above apply, the date of Practical Completion of the Phase or the Development (as applicable) shall in such event be the date upon which:-
		* 1. such works omissions or defects as are necessary as a result of the objections of DCC and/or the Independent Architect's decision are completed by the Developer to the reasonable satisfaction of DCC or the Independent Architect as the case may be; and,
			2. the Developer complies with the provisions of Clause 11.6 below.
	6. On or about the date of Practical Completion in respect of each Phase and/or the Development (as applicable), the Developer shall furnish to DCC[[42]](#footnote-42) the following documents in respect of each Phase (or the Development):-
		* 1. The Developer's Architect's Opinion on Compliance in standard RIAI form that the Social Units in the Phase in question have been built in substantial compliance with the Planning Permission together with all confirmations and other documents referred to or relied upon therein;
			2. The Developer's Architect’s Opinion on Compliance in a standard RIAI form that all works, in relation to the construction of the Social Units in the Phase in question, carried out by the Construction Contractor to which the Building Control Act complies is in substantial compliance with the Building Regulations together with all confirmations and other documents referred to or relied upon therein including without limitation any Fire Safety Certificate imposed by the Building Control Authority;
			3. Premier Guarantee/Homebond Certificate[[43]](#footnote-43) in respect of each Social Unit in the Phase question;
			4. 12 year structural defects indemnities from the Developer and from the Construction Contractor in favour of DCC;
			5. Written evidence of up to date professional indemnity insurance for the Construction Contractor, the Sub-Contractors and the members of the Design Team and where such parties are a body corporate, certified copy Certificates of Incorporation and Memoranda and Articles of Association together with a letter from the insurance brokers for the Construction Contractor, Sub-Contractors and Design Team confirming that all insurances required under this Agreement are in place;
			6. Three copies of all “as built drawings” to include services in the form of stable negatives and on CAD disk(s);
			7. A certified copy of the certificate of Practical Completion of the Phase in question/the Development;
			8. Satisfactory evidence from the local authority that all financial contributions and bond requirements under the Requisite Consents have been paid in respect of that Phase/the Development;
			9. Certified copies of the Commencement Notice served on the local authority where required and the local authority's acknowledgement;
			10. Fire Safety Certificate, if applicable;
			11. All necessary information and documents for the Safety File as that term is defined in the Safety Regulations, on CAD disk, the Construction Contractor’s site specific Health and Safety Plan and the Construction Contractor’s Safety Statement pursuant to Section 20 of the Safety, Health and Welfare Act, 2005.
			12. All relevant certificates (three copies of each) required under 2014 Regulations, including Ancillary Certificates and (i) copies of all Ancillary Certificates issued for the Works and (ii) a signed statement listing all Ancillary Certificates provided or signed by any Sub-Contractor engaged by the Construction Contractor;
			13. A certificate of compliance from the Construction Contractor in the form set out in Appendix 22 that the Works have been constructed in compliance with the Requisite Consents, Building Control Act and the Building Regulations;
			14. Signed certificates of compliance from each Sub-Contractor;
			15. Evidence that the Works have been entered onto the Register maintained by DCC;
			16. A complete suite of Collateral Warranties from the Developer, Construction Contractor, Sub-contractors and Design Team executed in favour of DCC;
			17. Confirmation by way of BER Certificate and Advisory Report from suitably qualified BER assessor that the Building Energy Rating of the Social Units in the Phase conform to the minimum standards of A3 or better;
			18. Copies of appointments of each member of the Design Team, the Project Supervisor Design Process, The Project Supervisor Construction Stage, the Assigned Certifier and the Design Certifier;
			19. Certified Copy of the Certificate of Compliance on Completion in respect of the Social Units in the Phase in question with evidence that same has been submitted to the Building Control Authority and relevant particulars thereof have been included on the register maintained under Part IV of the 2014 Regulations;
			20. A full set of keys and alarm codes for the Social Units in the Phase in question;
			21. Any other docs legally required to be delivered at the time of Practical Completion of the Phase in respect of the Social Units in that Phase; and
			22. Land registry/PRA approved scheme map as part of the Development Site.
5. Transfer of Title
	1. Subject to the Developer having made all payments required to be paid as part of the Developer’s Consideration to that date, within fifteen (15) Working Days after the date of Practical Completion of a Phase and/or the Development (as applicable), DCC shall on written request from the Developer and at the Developer’s expense, deliver Transfers in respect of such Developer's Units and Affordable Purchase Units in the relevant Phase to the Developer.
	2. Following the transfer of the Affordable Purchase Units in accordance with the provisions of clause 12.1, the Developer will, on written notice from DCC, sell the relevant Affordable Purchase Units to the Nominee(s) at the Affordable Purchase Unit Price.
	3. In the event that DCC identifies a Nominee for a particular Affordable Purchase Unit, and the Nominee does not complete the purchase of that unit from the Developer, DCC shall be entitled to identify another Nominee for the particular unit. DCC shall be entitled to specify a maximum of three different successive Nominees in respect of any particular Affordable Purchase Unit. If the third Nominee does not complete the purchase of the particular Affordable Purchase Unit, then DCC shall become the Nominee in respect of that Affordable Purchase Unit.
	4. All amounts payable to DCC under or in connection with this Agreement are exclusive of VAT. In addition to the sums payable to DCC under this Agreement, the Developer shall pay to DCC the amount of any VAT as shall be exigible in relation to any supplies made by  DCC to the Developer under or in connection with this Agreement and the VAT shall be payable on the sums payable under this agreement and on any other consideration paid or given or deemed to be given by the Developer to DCC same to be calculated in accordance with the provisions of the VAT Act and the Developer shall pay this amount to DCC on receipt of an invoice by the Developer from DCC, such invoice to be prepared in accordance with the provisions of the VAT Act.
6. DCC's Rights to Determine
	1. Without prejudice to any other rights, remedies or other powers herein contained or otherwise available to DCC:-
		1. If for any reason, except circumstances of the nature referred to in the proviso below, the Development shall not be completed and made fit for use or occupation within [48] months[[44]](#footnote-44) of the Date of the Planning Permission (or such longer period as DCC shall allow) or if for any reason the Development shall not be completed and made fit for use or occupation during the Term or in case the Developer shall in any material way fail to perform and observe the covenants and conditions on its part herein contained or shall fail to remedy any breach of any of the said covenants and conditions within [*two*] months of the receipt of notice in writing to that effect from DCC; or
		2. Without prejudice to the generality of the provisions of Clause 13.1.1. above, if the Developer materially breaches the Method Statement, and/or the Developer’s Timetable; or
		3. If the Developer fails to make any payment of the Developer’s Consideration at the time provided for payment in this Agreement; or
		4. If for any reason, except circumstances of the nature referred to in the proviso in Clause 25 hereof, the carrying out of the Development is wholly or partly suspended for more than three [3] months in any period of six months and such suspension shall continue for and shall not be remedied within three [*3*] months after service on the Developer by DCC of a notice specifying the suspension and invoking the provisions of this Clause, or
		5. If it transpires that the Developer provided information or confirmations to DCC as part of the procurement process leading to the award of this Agreement which are proved to be untrue or incorrect; or
		6. If a Receiver, Liquidator or Examiner is appointed in respect of the Developer and if such appointment is not terminated or set aside within twenty one [21] days of the date of such appointment and if the carrying out of the Development is wholly or substantially suspended for more than fourteen [14] days as a result of such appointment and such suspension shall continue for and shall not be remedied within three [3] months after service on the Developer by DCC of a notice specifying the suspension and invoking the provisions of this Sub-Clause, then and in any such case this Agreement may be determined by DCC by notice in writing to that effect (such notice to take effect without prejudice to the rights of the parties hereof in respect of antecedent breach) and DCC shall have liberty to re-enter the Development Site and, in such event, all building materials, fixtures, plant, equipment and materials on the property shall become the property of DCC

**PROVIDED HOWEVER** that where the Developer has mortgaged or charged this Agreement in accordance with Clause 21 hereafter DCC shall, before exercising any of the rights set out in this clause give notice in writing to that effect to the Funder and from the date of receipt of such notice the Funder shall have three (3) months (as to which time shall be of the essence) on which to decide:-

* + - 1. If it wishes to carry on or cause to be carried and completed the outstanding works on the Development Site in accordance with the terms of this Agreement, or
			2. If it wishes to assign the benefit of this Agreement to an assignee to be approved by DCC (such approval not to be unreasonably withheld or delayed), or
			3. If it wishes to take no further action.
	1. If any such Funder shall notify its decision in writing to DCC as aforesaid and in the event of such mortgagee stating in such notification that it wishes to carry out and complete or cause to be carried out and completed the outstanding works on the Development Site as aforesaid or that it wishes to assign the benefit of this Agreement it shall tender such notification or procure from the proposed assignee for DCC:-
		1. full details in the case of a proposed assignment (as to the identity of the intended assignee its financial status and the source of its funding for such portion of the works as may be outstanding and in either case as to the manner in which such mortgagee or such assignee intends to complete the Development);
		2. a duly perfected covenant in a form to be approved by DCC binding such Funder or assignee to complete such portion of the Development as shall be outstanding upon the terms herein contained and to observe and perform all relevant obligations, terms and conditions on the part of the Developer to be performed and observed but with such reasonable extension of the time limits set out in the Developer's Timetable as shall in the circumstances be reasonable;
		3. this Agreement shall thereupon continue in full force and effect in respect of such portion of the Development and shall be construed as though the name of such mortgagee or assignee as the case may be had been substituted for the name of the Developer in respect of such portion of the works and the mortgagee or assignee as the case may be shall have the same rights as those herein granted by DCC to the Developer in respect of the Development.
	2. In the event of such Funder deciding not to take any further action or in the event of such mortgagee failing to notify its decision to DCC within such period of one month as aforesaid then DCC shall be entitled to determine this Agreement as aforesaid.
	3. Where this Agreement is terminated pursuant to the provisions of this Clause 13, the Developer shall at its own expense remove all the Developer's property from the Development Site as appropriate and leave the Development Site clean and tidy and to bear the cost (if any) incurred by DCC in making good any damage caused in the course of the removal of the Developer's property.
1. Building Regulations
	1. The Developer shall, upon Practical Completion of each Phase and the Development (as applicable), furnish to DCC a certificate in the form of the specimen attached in Appendix 21 from the Construction Contractor certifying that in respect of the construction of the Social Units and the Affordable Purchase Units in the relevant Phase, they have been carried out in substantial compliance with the Building Control Act, the Building Regulations, and the Requisite Consents.
	2. Without limiting the generality of the foregoing, the Developer agrees to procure compliance with the provisions of the Building Regulations and the Code of Practice insofar as they relate to the construction of the Works. The Developer further agrees to procure in the forms and within the time limits prescribed in the Building Regulations, all undertakings, certificates, confirmations and documents to be provided by a “Builder” pursuant to the Building Regulations and/or the Code of Practice.
	3. The Developer agrees to procure from the Construction Contractor and Sub-Contractors such Ancillary Certificates as may be required by the Assigned Certifier. For this purpose the Developer agrees that it shall include the provisions set out in Appendix 22 in any Sub-Contract of any part of the Works. As a pre-condition to Practical Completion of each Phase the Developer shall provide such Ancillary Certificates, as may be required by the Design Certifier and/or the Assigned Certifier from the Construction Contractor and the Sub-Contractors.
	4. The Developer shall appoint the Construction Contractor to carry out and perform the role of the “Builder” as defined in and for the purposes of the Building Regulations and the Code of Practice respectively.
	5. The Developer agrees to cooperate and coordinate with the Assigned Certifier in relation to the adoption and maintenance throughout the duration of the Works, of an appropriate Inspection Plan and Inspection Notification Framework which take full account of relevant factors for the Works including the complexity of the Works. For the avoidance of doubt, nothing in this clause shall relieve the Developer of its own obligations in this respect.
2. Appointment of and co-operation with Design Certifier and Assigned Certifier
	1. The Parties agree that the Developer shall be the “Building Owner” for the purpose of the Building Regulations and Code of Practice.
	2. The Developer shall appoint a competent person to carry out the functions and comply with the obligations of Design Certifier and Assigned Certifier in accordance with the Building Regulations and the Code of Practice.
	3. The Developer shall, upon request and within a reasonable timeframe, without charge, supply or procure the supply of sufficient and accurate data information and assistance to the Design Certifier and Assigned Certifier in connection with the Inspection Plan and the Inspection Notification Framework to facilitate compliance by the Design Certifier and Assigned Certifier with their obligations under the Building Regulations.
	4. The Developer shall be responsible for all costs in respect of its compliance with the requirements of this Clause 15.
3. 2014 Regulations Certificates

The Developer will procure the provision and execution of certificates of compliance from each member of the Design Team, Construction Contractor and Sub-Contractors required under the 2014 Regulations, including all Ancillary Certificates. The Developer shall furnish (i) copies of all Ancillary Certificates issued for the Works to DCC and (ii) a signed statement listing all Ancillary Certificates provided or signed by the Construction Contractor, Design Team, and Sub-Contractors.

1. Social Employment Clause [[45]](#footnote-45)
	1. During the period commencing on the date of grant of Planning Permission up to the date of Practical Completion of the Development, the Developer shall procure that the Construction Contractor shall ensure that:
		1. 10% of the aggregate number of Person Weeks (being a whole number, rounded down, where a “Person Week” is the amount of work done by an individual worker in relation to the Works based on a 39 hour working week) will be carried out at the Development Site by individuals who have been registered on a national unemployment register within the European Union (and States that are party to the EEA Agreement) for a continuous period of at least twelve (12) months immediately prior to their employment specifically for the purposes of the execution of the Works (“Relevant Workers”). For the purposes of this clause, any of the Construction Contractor’s personnel whose employment commenced more than four (4) weeks prior to the date of the grant of Planning Permission shall not be considered to be a Relevant Worker; and
		2. 5% of the Person Weeks (being a whole number, rounded down) is carried out at the site by individuals who are employed under a registered scheme of apprenticeship or equivalent national training or educational work placement arrangement accredited within the European Union (“Relevant Trainees”).
	2. Individuals engaged by the Construction Contractor in accordance with Clauses 17.1.1 and 17.1.2 above may progress into full-time jobs and apprenticeships. DCC acknowledges that jobs may be dependent on the availability of appropriate skills.
	3. Employment Coordinator
		1. The Developer will nominate an employment coordinator who shall oversee the implementation of the requirements of Clauses 17.1.1 and 17.1.2 above (“the Initiative”) and deal with any of DCC’s and the Construction Contractor’s queries in connection with it.
		2. The employment coordinator shall, irrespective of the form of contract under which the Construction Contractor is engaged, be responsible for monitoring the implementation of the Initiative by the Developer and the Construction Contractor.
	4. Developer’s Liaison Officer

The Construction Contractor will appoint a liaison officer who will liaise with the employment coordinator and the Construction Contractor in order to promote and achieve the objectives and terms of the Initiative.

* 1. Meetings

The employment coordinator shall, within two (2) weeks of the date of the Building Contract, organise a ‘Meet the Contractor Day’, which will be hosted at a venue local to the Development Site, to be agreed with the Construction Contractor. The aim of the day will be to introduce the Development and the Construction Contractor to local people and businesses.

* 1. Duties of the Parties
		1. The liaison officer will, within four (4) weeks of the date of the Building Contract and at the end of each calendar quarter after that, provide the employment coordinator and DCC with a non-binding projection of any employment opportunities on the Development in the following six (6) month period. He or she will do this by completing and submitting a quarterly planning forecast template (in a format prepared by DCC) to the employment coordinator and DCC.
		2. The liaison officer will inform the employment coordinator and DCC of any employment or apprenticeship opportunities on the Development. In this regard, it shall inform the employment coordinator and DCC at least fourteen (14) days (or, in urgent cases, as soon as reasonably possible) before it fills the position and no later than when it first advertises the opportunity elsewhere.
	2. Monitoring
		1. The liaison officer will complete and submit to the employment coordinator and DCC the quarterly planning forecast template.
		2. The Construction Contractor shall provide accurate documentary evidence to the Developer and to DCC on a monthly basis and upon DCC’s request at any other time to demonstrate that the provisions of this Clause 17 have been and continue to be complied with.
		3. The documentary evidence required under Clause 17.7.2 shall include, but not be limited to:
			1. Signed confirmations from the Construction Contractor, in a form approved by DCC, that the Relevant Worker(s) and / or Relevant Trainee(s) fall within the category of persons identified in Clauses 17.1.1 and 17.1.2 above;
			2. Timesheets indicating when and where each Relevant Worker or Relevant Trainee (as the case may be) has been deployed in carrying out the Works and the total hours worked by each Relevant Worker or Relevant Trainee (as the case may be) in the carrying out of the Works.
		4. The employment coordinator shall be entitled to request any other documentary evidence as s/he may reasonably require at any time in respect of both the monthly reports required under Clause 17.7.2 and the final report required under clause 17.11.
		5. The employment coordinator and the liaison officer will have regular meetings to monitor and review the implementation of the Initiative.
		6. The employment coordinator and DCC will have regular meetings to monitor and review the implementation of the Initiative.
	3. The employment coordinator will, in particular, monitor and review the effectiveness of measures taken to achieve any commitments or targets of the Construction Contractor under the Initiative. The liaison officer, in conjunction with the employment coordinator, will monitor the number of apprenticeships and long term unemployed people employed on the Development.
	4. Monitoring of employment outcomes will be a standing item on the agenda of the Construction Contractor’s programme meeting with the Developer.
	5. The liaison officer will, upon request from the employment coordinator, provide an update on the implementation of the Initiative and the employment coordinator will, in turn, upon request, provide an update to DCC.
	6. A detailed final report and reconciliation with supporting documentation shall be provided by the liaison officer to the employment coordinator and the report shall form part of the overall Development review.
	7. Upon Practical Completion of the Development, the Construction Contractor shall provide the Developer and DCC with the Construction Contractor ’s Employer PAYE/PRSI Number (in its capacity as employer of the Relevant Worker or Relevant Trainee, as applicable), and a full and final written report on how it has discharged its obligations under Clauses 17.1.1 and 17.1.2 together with accurate supporting documentary evidence including but not limited to those items specified in Clause 17.7.3 in respect of the period from date of grant of Planning permission up to the date of Practical Completion of the Development.
	8. Training and Development

The employment coordinator will work with educational provider partners to identify training opportunities/up-skilling programmes in relation to employment opportunities arising from the project and co-ordinate their development and roll-out by educational partners for the local community.

* 1. Contract Documentation

The Developer shall procure that the Construction Contractor’s obligations and responsibilities with regard to the Initiative will be set out in the Building Contract and will form part of the Contract between the Developer and the Construction Contractor.[[46]](#footnote-46)

1. Guarantor Provisions[[47]](#footnote-47)
	1. The Guarantor/s [jointly and severally] guarantee[s] the due and punctual performance by the Developer of the Developer’s duties and obligations to DCC under this Agreement.
	2. If the Developer fails to observe or perform any of its duties or obligations to DCC under this Agreement, or fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Developer to DCC under or in connection with this Agreement, the Guarantor (as a separate and independent obligation and liability from its obligations and liabilities under Clause 18.1) shall indemnify DCC against all loss, debt, damage, interest, cost and expense incurred by DCC by reason of such failure or non-payment and shall, on first written demand, pay to DCC, without any deduction or set-off, the amount of that loss, debt, damage, interest, cost and expense.
	3. If the Developer suffers entry into liquidation, receivership or examinership, the Guarantor shall indemnify DCC against all loss, debt, damage, interest, cost and expense incurred by DCC by reason of such insolvency event and shall, on first written demand, pay to DCC without any deduction or set-off the amount of that loss, debt, damage, interest, cost and expense.
	4. This Agreement may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this deed (which includes the Developer’s duties, obligations and liabilities under the Building Contract as modified, amended or supplemented) shall not be affected by:
		* 1. any neglect, delay or forbearance of DCC in endeavouring to enforce the performance or observance of any of the obligations of the Developer under this Agreement;
			2. any extension of time given by DCC to the Developer;
			3. any variation of the terms of this Agreement;
			4. any change in the constitution, structure or powers of either the Developer, the Guarantor or DCC or the liquidation, administration or bankruptcy (as the case may be) of either the Developer or the Guarantor;
			5. any legal limitation, or any immunity, disability or incapacity of the Developer (whether or not known to DCC) or the fact that any dealings with DCC by the Developer may be outside or in excess of the power of the Developer;
			6. any other act, omission, matter or thing whatsoever whereby, but for this provision, the Guarantor would be exonerated either wholly or in part (other than a release under seal given by DCC)
	5. DCC does not have to pursue any remedy against the Developer before proceeding against the Guarantor under this deed.
	6. As long as any liability incurred by the Developer to DCC guaranteed under this deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this deed, effect (or try to effect) any recovery from the Developer, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise.
	7. DCC may assign or charge the benefit of this Guarantee to any person to whom it assigns or charges the benefit of this Agreement.
	8. The Guarantor and the Developer may not assign or charge the benefit of this Guarantee without DCC’s written consent.
	9. DCC shall notify the Guarantor of any assignment. If DCC fails to do this, the assignment shall still be valid.
	10. The Guarantor shall not contend that any person to whom the benefit of this deed is assigned under Clause 21.1 may not recover any sum under this deed because that person is an assignee and not a named party to this deed.
	11. This Guarantee shall in all respects be governed and interpreted in accordance with the laws of Ireland;
		* 1. For the benefit of DCC, the Guarantor hereby irrevocably agrees that the Courts of Ireland are to have jurisdiction to settle any disputes which may arise out of or in connection with this Guarantee and that accordingly any suit, action or proceedings (together in this clause referred to as “proceedings”) arising out of or in connection with this Agreement may be brought in such Courts;
			2. The Guarantor hereby irrevocably waives any objection which it may have now or hereafter to the taking of any proceedings in any such Court as is referred to in this clause and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agree that any judgement in any proceedings brought in the Courts of Ireland shall be conclusive and binding upon them and may be enforced in the courts of any other jurisdiction;
			3. Nothing contained in this clause shall limit the right of DCC to take proceedings against the Guarantor in any other court of competent jurisdiction nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not;
			4. The Guarantor agrees that the proceedings may be served by delivery at its registered office or at such other address in Ireland as the Guarantor may from time to time notify to DCC in writing for this purpose.
2. No Partnership

This Agreement does not create nor shall it in any circumstance be taken or construed as having created a partnership or joint venture between DCC and the Developer. Nothing in this Agreement is intended to, or shall be deemed to, constitute any party the agent of another party. The Developer confirms that it is acting on its own behalf and not for the benefit of any other person.

1. Fees and Costs

Except as expressly provided in this Agreement, the Developer and DCC shall each be liable for and shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement (and any documents referred to in it).

1. No Assignment
	1. This Agreement is not to operate as a Transfer, Lease or other Assurance of title and it shall not be capable of transfer or assignment or mortgage/charge by the Developer except in the case of a financial institution or institutions which has or have entered into a mortgage or other form of security with the Developer which mortgage or other form of security shall be first approved in writing by DCC (such approval not to be unreasonably withheld or delayed) and must have been entered into specifically for the purposes of financing the Developer to enable it to undertake and complete the Development on the Development Site.
	2. The Developer shall not without the prior written consent of DCC assign, charge or create any security interest over this Agreement. DCC may assign transfer or otherwise novate the benefit and/or the burden of this Agreement without the Developer’s consent and the Developer hereby consents to any such assignment, transfer or novation of this Contract by DCC. The Developer, shall, if required to do so, enter a novation agreement in such form acceptable to DCC within ten (10) Working Days of such request.
	3. The sub-contracting of any part of the Works shall not relieve the Developer from any liability under or connected with this Agreement. The Developer at his own cost shall be entirely responsible for the co-ordination of all works carried out by the Construction Contractor and any Sub-Contractors so as to ensure that the Works are progressed in a timely manner in accordance with this Agreement.
2. No Warranty
	1. DCC does not warrant whether expressly or by implication, and it is hereby agreed that DCC has not made or given such warranty, that the Development Site qualifies or is suitable for the Development envisaged by this Agreement or as to the condition thereof and the Developer shall its own cost satisfy itself as to quality, suitability and condition of the Development Site for the Development envisaged by this Agreement prior to the commencement of the Development.
	2. DCC makes no representation and gives no warranty as to the accuracy of any Development Site ground information or data howsoever obtained by the Developer, including the position of sewers, wires, cables, pipes, or other conduits (if any) within or over or adjacent to the Development Site or as to the ground, geotechnical, environmental, structural, hydrological and/or climatic conditions on the Development Site and/or the general suitability of the Development Site for the Works. The Developer shall be deemed to have carried out its own investigations to determine ground, geotechnical, environmental, structural, hydrological and climatic conditions of the Development Site. The Developer confirms and acknowledges that it is responsible for the full cost of the Works under this Agreement and for the avoidance of doubt shall not be entitled to any payment or compensation for any reason whatsoever in relation to Development Site conditions.
	3. The Developer acknowledges that DCC is, and will at all times be, relying upon the Developer’s professional expertise and judgment. No inspection review, consent or approval by the DCC, DCC’s Architect or any person acting on behalf of DCC, or any omission to inspect, review, object to or disapprove, shall negate or in any way diminish any duty or liability of the Developer under or in connection with this Agreement.
	4. The Developer warrants that it has examined the Development Site and has satisfied itself that same is suitable to enable the Developer to proceed with the Development and completion of the design of the Works and to carry out and complete the Works.
	5. The Developer acknowledges that DCC has provided satisfactory evidence of its title to the Development Site, that it has been afforded the opportunity to carry out a full investigation of title and has satisfied itself that the title to the Development Site is a good and marketable title and is of a quality commensurate with prudent standards of current conveyancing practice in Ireland.
3. Expert
	1. If any dispute or difference arises between DCC and the Developer as to their respective, rights, duties and obligations hereunder or as to any matter arising out of or in connection with the subject matter of this Agreement (other than any matter arising directly or indirectly out of Clauses [ ] hereof and/or with regard to the meaning or construction of this Agreement) the same shall be referred to an independent chartered surveyor of not less than ten years standing appointed in default of agreement between the parties by the President for the time-being of The Society of Chartered Surveyors Ireland. Any dispute or difference arising between DCC and the Developer arising directly or indirectly out of Clauses [ ] hereof and/or with regard to the meaning or construction of this Agreement) the same shall be referred to an [independent Chartered Accountant / Solicitor/Senior Counsel/Architect] of not less than ten years standing appointed in default of agreement between the parties by the President for the time-being of The Institute of Chartered Accountants /The Law Society of Ireland /The Bar Council / Royal Institute of Architects in Ireland. [[48]](#footnote-48)
	2. The parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of their appointment.
	3. If the parties are unable to agree on an Expert or the terms of their appointment within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the Independent Expert to appoint an Expert of repute in the matter and for the President of the Institute nominating the said Expert to agree with the Expert the terms of appointment.
	4. The Expert is required to prepare a written decision, including reasons, and give notice (including a copy) of the decision to the parties within a maximum of three (3) months of the matter being referred to the Expert.
	5. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
		* 1. either party may apply to relevant Institute to discharge the Expert and to appoint a replacement Expert with the required expertise; and
			2. this clause shall apply to the new Expert as if they were the first Expert appointed.
	6. All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.
	7. The parties are entitled to make submissions to the Expert, including oral submissions, and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
	8. To the extent not provided for by this clause, the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination.
	9. Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause.
	10. The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matter in dispute which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
	11. [Each party shall bear its own costs in relation to the reference to the Expert OR The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination shall be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs]. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties [equally or in such other proportions as the Expert shall direct].
	12. All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
	13. Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching their determination.
4. Survival of Agreement

It is hereby agreed that such provisions of this Agreement as shall not have been fully performed at the time of the granting of the last of Transfer pursuant to Clause 12 shall remain in full force and effect until performed and accordingly this Agreement shall not merge in such Transfer.

1. Delay and Extension of Time
	1. If in the opinion of the Developer’s Architect the Developer has been or will be delayed in acquiring Practical Completion of the Development by the expiration of the Term:­-
		* 1. by Force Majeure; or
			2. by reason of any exceptionally inclement weather which for the purposes of this Agreement shall mean hail, snow, rain, wind or frost which in each case is greater than twice the average in respect of that element for the corresponding month in the preceding 5 years;
			3. by reason of loss or damage to the Works or ancillary matters which are covered by the insurance provisions of this Agreement; or
			4. by reasons of civil commotion, local combination of workmen, strike or lockout affecting any of the trades employed upon the Works other than strikes or lockouts which are confined to the Developer’s or any of his sub-contractor’s own work force and which is unofficial in nature

then in any such case the Developer shall within five (5) Working Days of the happening of the event notify DCC’s Architect who shall, as soon as it is practicable for him to do so (having received all requested information from the Developer) make a fair and reasonable extension of time for completion of the Works. Upon the happening of any such event causing delay the Developer shall nevertheless use constantly all reasonable endeavours to prevent delay and to proceed with the Works. In determining what extension of time (if any) is fair and reasonable under this paragraph for loss or damage to the Works or ancillary matters, DCC’s Architect shall have regard in particular to any negligence, omission or default of the Developer which caused or contributed thereto.

* 1. No extension of time shall be granted pursuant to this clause where any of the events above arise wholly or in part from the default negligence or omission of the Developer.
	2. For the avoidance of doubt the Developer shall not be entitled to any increase in the DCC Consideration as result of the granting of an extension of time.
1. Damages for Non-Completion[[49]](#footnote-49)
	1. If the Developer fails to achieve Practical Completion of the Development by the expiration of the Term or within any extended time granted pursuant to this Agreement and DCC’s Architect (after consultation with the Developer) certifies in writing on simultaneous notice to DCC and the Developer that in his opinion the same ought reasonably to have been completed, the Developer shall pay or allow to DCC [the Liquidated and Ascertained Damages] for the period during which the said Works shall so remain or have remained incomplete and DCC may deduct such damages from any money due or to become due to the Developer under this Agreement.
	2. The Developer hereby agrees and acknowledges that the Liquidated and Ascertained Damages are a genuine pre-estimate of loss which could be incurred by DCC in the event of a delay to Practical Completion of the Development.
2. No Mis-Description

Without prejudice to the provisions of Clause 22, the Development Site is believed and shall be taken to be correctly described and shall be demised subject to any rights affecting the same and any error, omission or mistake discovered shall not annul this Agreement nor shall any compensation be allowed in respect thereof and no minor deviation from or minor variation of the Plans shall vitiate this Agreement.

1. Confidentiality
	1. The Developer and DCC hereby covenant and confirm with each other that they will keep confidential the contents of this Agreement and will not divulge to any third party the details thereof (other than to necessary professional advisers and in any proceedings issued or intended to be issued or as required by law).
	2. Neither the Developer nor DCC shall make, or permit any person to make, any public announcement or communication concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). The parties shall consult together on the timing, contents and manner of release of any announcement.
2. Entire Agreement
	1. The Developer agrees and accepts that no statement, measurement or description contained in any newspaper or other advertisement published by DCC, its servants or agents, or any statement, description or measurement contained in any brochure or hand-out issued by DCC, its servants or agents in respect of the Development Site shall constitute a representation inducing the Developer to enter into this Agreement or any warranty forming part of this Agreement and that any statement description or measurement contained in any such particulars or in any verbal form given on behalf of DCC its servants or agents are for illustration purposes only and are not taken as matters of fact and that any mis-statement, mis-description or incorrect measurement given verbally or in form of any printed particulars by DCC its servants or agents, shall not give rise to any cause of action or claim for compensation against DCC or its servants or agents, or any right of rescission under this Agreement.
	2. This Agreement contains the entire agreement between the parties hereto relating to the transactions hereby contemplated and all prior or contemporaneous agreements, understandings, representations and statements whether oral or written are merged herein.
3. Governing Law and Jurisdiction

This Agreement shall in all respects be governed by and interpreted in accordance with the Laws of Ireland and DCC and the Developer hereby irrevocably agree that the Courts of Ireland are to have jurisdiction in all or any disputes which arise in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection this Agreement may be brought in such Courts.

1. Notices
	1. A notice given to or by a party under or in connection with this Agreement shall be in writing and in English and shall be signed by or on behalf of the party giving it.
	2. Any notice to be served on the Developer and the Guarantor shall be deemed to be well and sufficiently given if served by prepaid registered post addressed to the Developer or the Guarantor at its ordinary place of business and shall be deemed to have been delivered on the Working Day immediately following the date upon which it was posted.
	3. It is hereby further agreed by the parties that any notice to be served on DCC shall be deemed to be well and sufficiently given if served by prepaid registered post addressed to the Chief Executive of DCC at the address shown in this Agreement or at such other address as DCC may inform the Developer in writing and shall be deemed to have been delivered on the Working Day immediately following the date on which it was posted.
	4. A party may change its details for service of notices as specified in this clause by giving notice to the other party, provided that the address for service is an address in Ireland following any such change. Any change notified pursuant to this clause shall take effect at 9.00 am on the later of:
		* 1. the Working Day (if any) specified in the notice as the effective date for the change; and
			2. five (5) Working Days after deemed receipt of the notice of change.

**IN WITNESS** whereof the parties hereto have executed this Agreement the day and year first herein **WRITTEN.**

**PRESENT** when the Common Seal

of **DUBLIN CITY COUNCIL**

was affixed hereto:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Mayor/Deputy Mayor/Nominated employee of**

**DUBLIN CITY COUNCIL**

**EXECUTED** as a Deed and

**DELIVERED** by

the **GUARANTOR** in

the presence of:

**EXECUTED** as a Deed and

**DELIVERED** by

the **DEVELOPER** in

the presence of:

**List of Appendices**

**Appendix 1** Completion Standard for the Development

**Appendix 2** Completion Standard for the Developer’s Units

**Appendix 3** Completion Standard for the Link Road (may not be required)

 **Appendix 4** Completion Standard of the Social Units

**Appendix 5** Completion Standard of the Affordable Purchase Units

**Appendix 6** Developer’s Timetable

**Appendix 7** Form of Development Bond

**Appendix 8** Letter of Undertaking regarding Development Bond

**Appendix 9** Maps

**Appendix 10** Financial Model

**Appendix 11** Form of Appointment for Project Supervisor Construction Stage

**Appendix 12** Form of Appointment for Project Supervisor Design Process

**Appendix 13** Form of Deed of Transfer

**Appendix 14** Forms of Appointment for Design Certifier and Assigned Certifier

**Appendix 15** Form of Appointment for Project Supervisor Design Process

**Appendix 16** Form of Appointment for Project Supervisor Construction Stage

**Appendix 17** Form of Collateral Warranty for Construction Contractor

**Appendix 18** Forms of Collateral Warranties for Design Team

**Appendix 19** Form of Sub-Contractor Collateral Warranty

**Appendix 20** Form of 12 year Structural Defects Indemnity to be provided by the Developer and the Construction Contractor

**Appendix 21** Form of certificate of compliance from the Construction Contractor that the Works have been constructed in compliance with Requisite Consents, Building Control Act and the Building Regulations

**Appendix 22** Form of wording to be included in contracts with Construction Contractor and Sub-Contractors to ensure Ancillary Certificates will be provided to the Assigned Certifier.

**Appendix 23** Form of Apartment Lease (if required)

**Appendix 24** Blocks (of apartments, if required)

**Appendix 25** Common Areas Transfer

**Appendix 26** Lease (of a Developer’s Unit)

**Appendix 27** Lease of Easements

1. Tenderers should note that the Contract award and grant of Development Agreement shall be subject to standstill period and formal approval process of DCC pursuant to s.183 of the Local Government Act, 2001. [↑](#footnote-ref-1)
2. Tenderers should note that the Developer shall be the Economic Operator specified in the PQQ being the single enterprise or Consortium which shall take contractual and organisational responsibility for delivering the Contract. [↑](#footnote-ref-2)
3. Tenderers should note that if the Developer is a Consortium or an SPV incorporated for the purposes of entering into this Development Agreement, or Other Entities are relied upon by the Developer (as identified in the PQQ), a joint and several guarantee from the Consortium Members and/or Other Entities in favour of DCC shall be required. [↑](#footnote-ref-3)
4. Tenderers should note that references to Apartments, Common Areas, Common Areas Transfers, Blocks, Management Companies, Lease, Lease of Easements, etc. in recitals and Definitions which follow will only be required if Developer’s Units include apartment blocks. This will emerge as part of the Dialogue Stage in accordance with ITPD. [↑](#footnote-ref-4)
5. Tenderers should note that DCC will prepare a booklet of title which will be released to shortlisted Economic Operators in accordance with the provisions of the draft ITPD. Economic Operators may raise any clarification queries in relation to the title at that time in accordance with the ITPD. [↑](#footnote-ref-5)
6. Tenderers should note that the number and mix of Affordable Purchase Units shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-6)
7. Tenderers should note that it is envisaged the Building Contract(s) will be negotiated between the Developer and the Construction Contractor(s) once Planning Permission issues. [↑](#footnote-ref-7)
8. Tenderers should note that the form of Collateral Warranties shall be finalised as part of the Dialogue Stage in accordance with the ITPD and the Collateral Warranties shall include the right (but not the obligation) for DCC to step-in post termination of this Agreement for the purposes of completing an identifiable Phase or Phases of the Development and to make proportionate payments to the relevant professional. [↑](#footnote-ref-8)
9. Tenderers should note that this Appendix shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-9)
10. Tenderers should note that this Appendix shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-10)
11. Tenderers should note that this Appendix shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-11)
12. Tenderers should note that this Appendix shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-12)
13. Tenderers should note that this entity shall be the Construction Contractor provided for and evaluated as part of the ITPD [↑](#footnote-ref-13)
14. Tenderers should note that the wording required in the Design Team Appointments shall be finalised as part of the Dialogue Stage in accordance with the ITPD and the Design Team Appointments shall include the right (but not the obligation) for DCC to step-in post termination of this Agreement for the purposes of completing an identifiable Phase or Phases of the Development and to make proportionate payments to the relevant professional. [↑](#footnote-ref-14)
15. Tenderers should note that the Developer’s Architect is envisaged to be the Architect Subcontractor identified by the Tenderer in its response to the PQQ. [↑](#footnote-ref-15)
16. Tenderers should note that the Developer’s Civil and Structural Engineer is envisaged to be the Civil and Structural Engineer Subcontractor identified by the Tenderer in its response to the PQQ. [↑](#footnote-ref-16)
17. Tenderers should note that the Developer’s Energy Consultant is envisaged to be the Civil and Structural Engineer Subcontractor identified by the Tenderer in its response to the PQQ. [↑](#footnote-ref-17)
18. Tenderers should note that the Developer’s Landscape Architect is envisaged to be the Landscape Architect Subcontractor identified by the Tenderer in its response to the PQQ. [↑](#footnote-ref-18)
19. Tenderers should note that the Developer’s Mechanical and Electrical Engineer is envisaged to be the Mechanical and Electrical Engineer Subcontractor identified by the Tenderer in its response to the PQQ. [↑](#footnote-ref-19)
20. Tenderers should note that the Developer’s Planning and Environmental Consultant is envisaged to be the Planning and Environmental Consultant Subcontractor identified by the Tenderer in its response to the PQQ. [↑](#footnote-ref-20)
21. Tenderers should note that the Developer’s Quantity Surveyor is envisaged to be the Quantity Surveyor Subcontractor identified by the Tenderer in its response to the PQQ. [↑](#footnote-ref-21)
22. Tenderers should note that the Developer’s Timetable shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-22)
23. Tenderers should note that the number and mix of Developer’s Units shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-23)
24. Tenderers should note that the form of Development Bond will be in accordance with the Development Bond requirements set out in the PQQ. [↑](#footnote-ref-24)
25. Tenderers should note that this will be confirmed during the dialogue stage in accordance with the ITPD. [↑](#footnote-ref-25)
26. Linked to Clause 26. [↑](#footnote-ref-26)
27. Tenderers should note that the Method Statement shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-27)
28. Tenderers should note that the Phases will evolve during the Dialogue Stage in accordance with the ITPD. The phasing will be in accordance with the Tender Forms. [↑](#footnote-ref-28)
29. Tenderers should note that the Phasing Map will be agreed during the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-29)
30. Tenderers should note that the number and mix of Social Units shall be finalised as part of the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-30)
31. Tenderers should note that the extension period shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-31)
32. Tenderers should note that DCC reserves the right to amend this draft Agreement to take account of any procedures for fast track planning for strategic housing developments which may be enacted as provided for in Planning & Development (Housing) and Residential Tenancies Act, 2016. [↑](#footnote-ref-32)
33. Tenderers should note that notwithstanding the provisions of clause 1.4, it is envisaged that DCC shall separately provide confirmation in writing to the Developer that the delivery of the Social Units will satisfy the Developer’s Part V obligations under the Planning Permission. [↑](#footnote-ref-33)
34. Tenderers should note that DCC reserves the right to extend the list of documents required to be delivered and this will be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-34)
35. Tenderers should note that the forms of the documents referenced in clauses 3.3. to 3.6 shall be finalised as part of the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-35)
36. Tenderers should note that the detailed Phases shall be finalised during the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-36)
37. Tenderers should note that the detailed requirements of this monthly report shall be finalised during the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-37)
38. Tenderers should note that the format of these documents shall be finalised as part of the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-38)
39. Tenderers should note that the schedule and phasing of payments shall be finalised as part of the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-39)
40. Tenderers should note the Development Bond requirements set out in the PQQ. [↑](#footnote-ref-40)
41. Tenderers should note the insurance provisions shall be finalised during the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-41)
42. Tenderers should note that the documents to be provided shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-42)
43. or equivalent [↑](#footnote-ref-43)
44. Tenderers should note that this timing shall be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-44)
45. Tenderers should note that the details of the Social Employment clause shall be finalised as part of the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-45)
46. Tenderers should note that DCC reserves the right to impose sanctions on the Developer for failure to comply with this clause; this will be finalised as part of the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-46)
47. Tenderers should note that the guarantee provisions will be finalised as part of the Dialogue Stage in accordance with the ITPD. [↑](#footnote-ref-47)
48. Tenderers should note that this provisions shall be finalised during the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-48)
49. Tenderers should note that this provision shall be finalised during the Dialogue Stage in accordance with the ITPD [↑](#footnote-ref-49)