

**LDA TEMPLATE DOCUMENT
SUBJECT TO CONTRACT / CONTRACT DENIED
MARCH 2026**

DATED

20[]

**THE LAND DEVELOPMENT AGENCY
(EMPLOYER)**

AND

**●
(CONSULTANT)**

**APPOINTMENT OF
CONSULTANT TO PROVIDE
●¹ SERVICES**

¹ Insert short description of services to be provided.

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THIS AGREEMENT is made on

2026

BETWEEN:

- (1) **THE LAND DEVELOPMENT AGENCY**, a designated activity company (limited by shares) with company number 710453, having its registered office at 4th Floor Ashford House, Tara Street, Dublin 2, D02 VX67 (the “**Employer**” which expression includes its successors and assigns and any body to whom its functions are transferred under statute or law); and
 - (2) ●, with company registration number ● having its registered office at ● (the “**Consultant**”),
- each a “**Party**” and together, the “**Parties**”.

BACKGROUND:¹

- (A) The Employer wishes to procure [the design, construction and completion of the regeneration site at [*insert location*] as more particularly described in Schedule 1 (the “**Project**”).
- (B) The Consultant has been appointed by the Employer pursuant to a framework agreement dated [*insert date*] (the “**Framework Agreement**”) in respect of various projects to be undertaken pursuant to the powers vested in the Employer.
- (C) The Employer now wishes to appoint the Consultant to provide *certain* ●² *services* (the “**Services**”) as more particularly set out in Schedule 2.
- (D) The Parties have agreed to record the terms of their agreement in respect of the Services in this Appointment.

AGREEMENT

In consideration of the promises made by both parties throughout this Agreement the Parties HEREBY AGREE as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Appointment, except where the context requires otherwise:

“**Additional Services**” means any services which are additional to the Services;

“**Affiliate**” means any person which in relation to the person concerned is a holding company or a subsidiary or a subsidiary of a common holding company and in relation to an individual or a firm or other unincorporated body means and includes any person directly or indirectly controlled by such person;

“**Appointment**” means all documents comprising the terms and conditions of this Appointment including the appendices. In the event of an inconsistency between them, the documents shall be construed in order of precedence as follows:

- (a) the terms and conditions of this Appointment;
- (b) Schedule 2;

¹ Recitals may require to be amended to take account of anticipated transaction structure and not all of the below may be relevant or correct.

² Insert short description of services to be provided.

- (c) Schedule 3;
- (d) the remaining Schedules in the order in which they appear;

“**Code of Practice**” means the code of practice governing the conduct of adjudications under section 6 of the Construction Contracts Act 2013;

“**Fee**” means the fixed price fee payable to the Consultant in accordance with Clauses 4 and 4.1 and Schedule 3 hereto and shall include all fees due in respect of the performance of the Services and all other obligations under this Appointment, net of any Withholding;

“**Force Majeure Event**” means an event or circumstance which is beyond a Party’s reasonable control, against which such Party could not reasonably have provided against before entering into the Appointment, and which having arisen, such Party could not reasonably have avoided or overcome;

“**Funder**” means any funding institution or other investor that provides substantial finance in connection with the construction and long-term ownership of the Project;³

“**Interested Party**” means any current member of the Employer, an Affiliate or any shareholder of the Employer or any Affiliate and/or any Funder or Purchaser and any other party identified by the Employer to the Consultant and as agreed by the Consultant acting reasonably (and “Interested Parties” shall be construed according);

[“**Planning Permission**” means all planning permissions and/or consents issued in respect of the Project and/or the Works;]⁴

“**Purchaser**” means any and all persons acquiring from the Employer a freehold, or freehold equivalent, interest in the Project or any part or parts thereof excluding any purchasers of individual residential units;

“**Regulatory Requirements**” means all statutory and legal requirements, all Acts of the Oireachtas, statutory regulations, orders, local authority, local fire officer requirements, building regulations and other regulations or requirements applicable from time to time in Ireland (including without limitation, the Safety Health and Welfare Work Act 2005 and all regulations made under the Act (including the Safety Regulations), the Planning Permission and any other planning requirements to further issue in respect of the Project from the relevant local authority, An Bord Pleanála or otherwise and any enforceable community rights within the meaning of Section 2 of the European Community Act 1972);

“**Safety Regulations**” means the Safety, Health and Welfare at Work (Construction) Regulations 2013 to 2020 and any amendments thereto;

“**Services**” means the services in respect of the Project identified in Schedule 2 (and include any services provided by the Consultant in respect of the Project prior to the date of this Appointment, which services are deemed to have been carried out under the terms of this Appointment);

“**Withholding**” means any taxes, levies, or other duty, due under Irish law that the Employer is required to deduct from the fee (and expenses) payable to the Consultant and remit to the Revenue Commissioners or similar body; and

³ Delete if not relevant for project.

⁴ May not be relevant at early stage.

“Works” means the works to be carried out in relation to the Project.

1.2 Interpretation

- (a) Words importing persons include firms, companies, corporations and *vice versa*.
- (b) Clause headings are for reference only and do not affect the interpretation of this Appointment.
- (c) Any reference to the masculine gender shall include reference to the feminine and neuter gender and any reference to the neuter gender shall include the masculine and feminine genders and reference to the singular shall include reference to the plural.
- (d) If the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Appointment, falls on a Saturday, Sunday or Statutory or Public Holiday, then the time for giving the notice, issuing the certificate, making the payment or doing the other act shall be deemed to be on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday.
- (e) The *contra proferentem* rule shall not apply to the interpretation of this Appointment.
- (f) Any reference to a statute or statutory provision shall be construed as a reference to such statute or statutory provision as it may have been amended, modified or re-enacted from time to time.
- (g) To the extent that any specific term or condition in this Appointment is inconsistent or conflicts with any term of condition of the Framework, the relevant term of condition in the Appointment shall prevail.

2. Appointment

- 2.1 The Consultant is hereby appointed by the Employer to carry out and complete the Services in accordance with this Appointment.
- 2.2 This Appointment together with the Framework Agreement shall constitute the entire agreement between the Parties relating to the Services and supersedes all previous agreements, proposals, correspondence, representations and/or discussions, and all payments made to the Consultant prior to the date of this Appointment, in connection with the Services, are hereby agreed as forming payment of the Consultant’s Fee under this Appointment.
- 2.3 This Appointment shall apply to all Services provided by the Consultant, including any Services undertaken by the Consultant prior to the date of this Appointment.

3. Consultant’s Obligations

- 3.1 The Consultant shall carry out the Services:
 - (a) in accordance with the terms of this Appointment;
 - (b) in accordance with any Planning Permission, if applicable, and all Regulatory Requirements, and the applicable European and Irish Codes of Practice (and in

the case of conflict between them they shall be read in that order of precedence);

- (c) using the standard of reasonable skill, care and diligence to be expected of a competent professional experienced in providing services in the nature of the Services for projects of similar scope and complexity of the Project;
- (d) acting in good faith at all times; and
- (e) in accordance with all reasonable directions of the Employer in respect of the Services and/or the Project.

3.2 In carrying out the Services, the Consultant shall:

- (a) be responsible for the performance of all Services, whether performed by the Consultant or by any sub-consultants;
- (b) co-operate at all times with the Employer and relevant stakeholders in relation to the delivery of the Services and in relation to the Project; and

4. **Fee And Payment**

- 4.1 The Fee payable in respect of the performance of the Services and all other obligations under this Appointment by the Consultant shall be calculated and paid, net of any Withholding, in accordance with the terms of payment set out in Schedule 3, together with any applicable VAT. In the event of Withholding being applied, the Employer will provide the Consultant with supporting documentation in respect of the amount of the Withholding to enable the Consultant to claim a credit for any such Withholding.
- 4.2 The Fee payable to the Consultant shall be fixed and free from fluctuation and is not subject to any price adjustment or escalation formula to reflect variations in currency, consumer price index, exchange rates, taxation, the cost of labour, materials, overheads or any other expense. The Fee includes the entire cost of the provision of the Services by the Consultant, save where expressly stated to the contrary herein. The Consultant shall be responsible for ensuring payment of all sums due to any sub-consultant.
- 4.3 The date upon which an instalment of the Fee becomes payable shall be known as the payment claim date for the purposes of the Act (the "**Payment Claim Date**"). For the avoidance of doubt if an instalment is defined by reference to a period of time (as opposed to a date) or a particular stage of work, the Payment Claim Date shall be the last day of such period or the date of completion of that stage of the Services, unless the contrary is clearly stated elsewhere in this Appointment.
- 4.4 On each Payment Claim Date (and in any event within five days thereof), the Consultant shall submit an application for payment in respect of each instalment of the Fee ("**Payment Claim Notice**") for services properly executed in accordance with this Appointment together with any supporting documents that are reasonably necessary to check the Payment Claim Notice. Each Payment Claim Notice and supporting documents shall specify the sum that the Consultant considers will become due on the payment due date in respect of the instalment of the Fee, and the basis on which that sum is calculated. The Employer shall not be deemed to have received a Payment Claim Notice which has been submitted prematurely or does not comply with the requirements of this sub-Clause 4.4.
- 4.5 If the Employer receives a Payment Claim Notice which it believes is valid and properly due the Employer shall so notify the Consultant within 21 days of the Payment

Claim Date. The Consultant shall deliver a valid VAT invoice for the amount stated in the Payment Claim Notice. The date for payment of such invoice shall be 30 days after receipt by the Employer of the said invoice (“**Payment Due Date**”).

- 4.6 If the Employer receives a Payment Claim Notice which it reasonably believes includes a sum which is not valid and/or properly due the Employer shall so notify the Consultant in writing within 21 days of the Payment Claim Date. The response to the Payment Claim Notice shall specify the relevant sum which the Employer does not consider to be valid/properly due (the “**Disputed Amount**”) and why it is not valid and/or properly due. If a reason for the difference is attributable to a claim against the Consultant, the response shall also specify how the claim arose, when any claimed loss or damage occurred, the particulars of the claim including any claimed loss or damage, and how much of the difference is attributable to the claim.
- 4.7 The issue of a response by the Employer under Clause 4.6 does not of itself deem that a valid Payment Claim Notice within the meaning of the Act has been submitted by the Consultant.
- 4.8 If the Employer issues a notice under clause 4.6 the Consultant shall deliver a valid invoice for the amount in the Payment Claim Notice less the Disputed Amount. The Employer shall pay the invoice by the Payment Due Date. The Employer’s failure to pay the Disputed Amount shall not be deemed to be a breach of this Agreement.
- 4.9 Once any dispute in respect of an amount due has been resolved where either party is required to make a balancing payment, it shall do so within 30 days of such resolution.
- 4.10 The Employer may deduct from any payment under this Appointment the amount of any *bona fide* claim for loss or damage or any other claim, set off or counterclaim by the Employer against the Consultant or in respect of which the Employer may be or become entitled to seek an indemnity from the Consultant whether or not arising out of this Appointment.
- 4.11 If the Employer fails to properly pay the amount, or any part thereof, due to the Consultant by the Payment Due Date, the amount remaining unpaid shall bear interest, at the rate of three percent (3%) over the European Inter Bank offered rate as quoted by Bank of Ireland, current at the date that the payment became overdue.
- 4.12 Where Services are delayed for reasons directly attributable to the Consultant, the Employer may (without prejudice to any other rights the Employer may have in respect of the delay) deduct an amount equal to the reasonable value of the Services delayed from any monthly payment(s) due after those delayed Services would otherwise have been performed but for the delay. Subject to the satisfactory completion by the Consultant of the delayed Services, the Employer shall pay any such deducted amounts to the Consultant with the monthly payment due immediately after completion of the delayed Services (or if no further payments are due, immediately on completion of the delayed Services).
- 4.13 Where either party is prevented from performing its obligations under this Appointment by reason of a Force Majeure Event, it shall give written notice to the other party of the Force Majeure Event, and shall specify the obligations the performance of which is or will be prevented. The notice shall be given as soon as practicable and in any event, within 14 days of the party becoming aware (or should have become aware) of the Force Majeure Event. The party shall, having given notice, be excused performance of such obligations for as long as the Force Majeure Event prevents it from performing them.

4.14 Where the Employer directs that any element of the Services be omitted from this Appointment, such omission shall not give rise to a claim by the Consultant for additional cost, or for loss of profit, loss of contracts or otherwise. The Fees payable to the Consultant shall be adjusted pro rata to take account of any element of the Services so omitted (provided that the Consultant shall be entitled to payment for any Services already performed in respect of the omitted element(s)).

5. **Additional Services**

5.1 The Employer may vary the scope of the Services at any time (including without limitation by omission). No such variation shall vitiate this Appointment.

5.2 The Consultant shall not carry out Additional Services save except on receipt of an instruction in writing from the Employer.

5.3 Where the Consultant considers that any direction of the Employer will require Additional Services, the Consultant shall notify the Employer of such in writing. The Consultant shall issue such notice to the Employer within five (5) days of the direction, which notice shall be subject to written approval by the Employer prior to the Consultant carrying out any Additional Services. The Employer shall not be liable to a claim from the Consultant in respect of Additional Services carried out other than in accordance with this Clause 4.1 and in accordance with the terms and conditions of this Appointment. For the avoidance of doubt, services which are necessarily incidental to the provision of the Services shall not constitute Additional Services.

5.4 The fee or basis for charging for Additional Services must be agreed in writing prior to the commencement of such Additional Services and shall be based on the rates set out at Schedule 3. The Consultant shall invoice the Employer separately for any Additional Services on a monthly basis in the form requested by the Employer and each such invoice shall be accompanied by supporting documents indicating the work/task carried out, the number of man hours per task, the individuals involved and their relevant hourly (or other) rate (a list of the agreed rates are set out in Schedule 3 hereto). In ease of administration, each direction of the Employer requiring Additional Services shall be given a separate designated number by the Consultant and all invoices in respect of Additional Services shall make reference to the relevant designated number.

5.5 Invoicing errors made by the Consultant shall be fully described in the succeeding invoice and an adjustment made to that invoice accordingly.

5.6 In the event that the Employer disagrees with any portion of an invoice relating to Additional Services, the Employer shall notify the Consultant in writing within 21 days of receipt of the invoice. The Employer shall pay, net of any Withholding, all undisputed amounts of any invoice from the Consultant within 30 days of receipt by the Employer of an invoice and adequate documentation (in the reasonable opinion of the Employer) supporting the request for payment.

5.7 It is a pre-condition to the Consultant's entitlement to submit application for payment for Additional Services that the Consultant has complied with the provisions of this Clause 5.

5.8 Any Additional Services provided shall be (unless agreed in writing by the Parties) performed by the Consultant under the terms and conditions of this Appointment.

6. **Disclosure and Use of Reliance Documents**

- 6.1 The Employer may disclose any reports, opinions and/or advices issued by the Consultant in the performance of the Services (the “**Reliance Documents**”) to any Interested Party. The Interested Parties shall be entitled to rely on the Reliance Document and the Consultant and the Interested Party shall execute a letter of Reliance with the letter being in the form set out in Schedule 5 (the “**Letter of Reliance**”). The Consultant will execute a maximum of 5 (five) Letters of Reliance in total to third parties.
- 6.2 The Employer may also disclose a true copy of any Reliance Documents to a third party strictly on the following conditions:
- (a) the disclosure is made only to inform the third party of the terms of the Reliance Documents, but not so the third party may rely on it in any way; and
 - (b) the Consultant shall owe no duty of care, and accepts no responsibility or legal liability, to the third party under or in connection with this Appointment.
- 6.3 Where Reliance Documents are disclosed on a reliance basis, the Consultant’s liability arising out of or in connection with the Reliance Documents:
- (a) is limited so that the aggregate of the Consultant’s liability to the Employer and any party signing a Letter of Reliance for all claims and losses of whatever nature in respect of any matter shall not be greater than the Consultant’s liability in respect of the matter to the Employer alone;
 - (b) shall be subject to the provisions of clause 15; and
 - (c) shall be no greater in scope, duration or indemnity, than the Consultant owes to the Employer under the Appointment.
- 6.4 Notwithstanding anything to the contrary in this Appointment, under no circumstances may any Reliance Documents or other extract or summary thereof or reference thereto be disclosed or used or attributed to the Consultant:
- (a) in connection with any public or private securities offering, including, without limitation, any related memorandum or prospectus for any securities offering, whatsoever or stock exchange listing announcement; or
 - (b) to any party who has rights under any other statutory law or regulation or otherwise under the laws of any relevant jurisdictions which may make ineffective any disclaimer included in such Reliance Documents, the limitation of liability within this Appointment or will entitle any third party to rely on such Reliance Documents notwithstanding the terms of this Appointment or otherwise subject the Consultant to liability.

7. **Project Documents**

- 7.1 The Consultant undertakes to furnish the Employer with two copies of such documentation (in a format required by the Employer) as is prepared by them and/or any sub-consultants and, as appropriate, to collate and furnish to the Employer such documentation as is produced by third parties relating to the Services under this Appointment immediately on the date of completion of the Services.

8. Phasing of the Services and Suspension

- 8.1 The Consultant acknowledges and agrees that this Appointment shall apply only to those Services set out in Schedule 2.
- 8.2 The Employer may, in its absolute discretion, suspend all or part of the Services by not less than five days' written notice to the Consultant. On receipt of such notice, the Consultant shall immediately make arrangements to cease performance of the Services and minimise further expenditure.
- 8.3 The Employer shall pay the Consultant's reasonable vouched demobilisation costs arising from any instruction to suspend and any fees due to the Consultant up to the date of the notice. The Employer may at any time instruct the Consultant to resume the Services and shall be liable to pay any costs reasonably incurred by the Consultant by such resumption (to the extent such costs are not already covered by any part of the Consultant's Fee hereunder). The entitlement of the Consultant to any cost howsoever arising in respect of suspension is limited to that set out in this Clause 8.3. In particular (but without limitation) the Consultant is not entitled to additional payment for economic loss, loss of profit, loss of contracts or other similar losses.

9. Collateral Warranties

- 9.1 As and when required by the Employer, the Consultant will enter into and unconditionally deliver within ten working days of request:
- (a) Collateral Warranties executed under seal by the Consultant in favour of one or more of the Interested Parties in the form set out at Part 1 of Schedule 6 (or such other form as may be agreed by the Parties acting reasonably); and/or
 - (b) Collateral Warranties executed under seal by any Sub-Consultant(s) in favour of the Employer and/or one or more of the Interested Parties in the forms set out at Part 2 of **Error! Reference source not found.**6 (or such other form as the Employer may reasonably require) together with certified copies of the Sub-Consultant agreement with each such Sub-Consultant and evidence of professional indemnity insurance held.
- 9.2 Upon a request by the Employer, the Consultant shall provide certified copies of its and any Sub-Consultant's Certificate of Incorporation and Memorandum and Articles of Association together with satisfactory evidence of insurances required to be held pursuant to this Appointment for the purpose of the Employer providing such information to any of the Interested Parties.
- 9.3 The Employer shall be entitled to withhold payment (without accrual of any interest) of any part of the Fee otherwise due to the Consultant if any Collateral Warranties requested by the Employer in accordance with this Clause 9 has not been furnished to it by the Consultant, including any Collateral Warranty requested from any Sub-Consultant.

10. Information

- 10.1 The Consultant will, at no additional cost to the Employer, co-operate as reasonably directed by the Employer in making available any reasonable information or documentation it may possess

- (a) to the Employer or its professional advisers or to such other persons or bodies as the Employer may specify; and/or
- (b) any third parties as may be engaged by the Employer in respect of the Project.

11. **Co-Operation**

- 11.1 The Consultant will at no additional cost to the Employer liaise and co-operate fully with any other person appointed in relation to the Project including any other consultants or other nominated persons or bodies notified to the Consultant by the Employer.
- 11.2 The Employer shall use all reasonable endeavours to ensure that all persons with whom the Consultant is required to work or cooperate in accordance with this Appointment have a corresponding obligation to work and cooperate with the Consultant.

12. **Records**

- 12.1 The Consultant is obliged to ensure, as far as practicable, that proper and accurate management records are maintained, which records shall include such records as are reasonably required from time to time by the Employer (or its nominated representative).

13. **Termination**

- 13.1 The Employer may terminate this Appointment following the expiration of 14 days written notice to the Consultant:
 - (a) at any time for the Employer's convenience;
 - (b) if the Consultant or any of the sub-consultants without reasonable cause fails to proceed with the Services with due diligence in accordance with this Appointment;
 - (c) if the Consultant or any of the sub-consultants is in material breach of its obligations under this Appointment and fails to remedy such breach within 14 days after notice in writing from the Employer; or
 - (d) if the Consultant makes a composition or arrangement with creditors or has a winding up order made or (except for the purposes of amalgamation or reconstruction) has a liquidator (provisional or otherwise), receiver, manager or examiner of their business or undertaking duly appointed or has possession taken of any property comprised in or subject to a fixed or floating charge.

The date of the expiry of the 14-day period after the giving of such notice is referred to as the "**Termination Date**".

- 13.2 In the event that the Employer terminates this appointment in accordance with Clause 13.1(a):
 - (a) such termination shall be without prejudice to any antecedent breach of this Appointment by either Party;
 - (b) the Employer may employ another Consultant to complete the Services to be provided by the Consultant under this Appointment;

- (c) the Consultant shall provide all Documents (as such term is defined in Clause 16.1 below) to the Employer;
- (d) subject to compliance with Clause 13.2(b), the Consultant shall be entitled to be paid:
 - (i) such Fees as are reasonable having regard to the Services performed up to the Termination Date;
 - (ii) all demobilisation costs reasonably incurred;
 - (iii) the value of any commitment undertaken and paid or payable by the Consultant in respect of the Services which cannot also be terminated by the Consultant using all reasonable endeavours (but only to the extent not compensated under paragraph (i) above);
- (e) the Consultant shall not be entitled to claim for economic loss, loss of profit, loss of contracts or for any other losses in the event of such termination;
- (f) without limitation to any other continuing obligations, the Consultant shall remain obliged to comply with Clause 9 of this Appointment but any Reliance Documents furnished by the Consultant shall expressly provide that same relate only to the part of the Services and Additional Services performed up to the Termination Date.

13.3 In the event that the Employer terminates this Appointment in accordance with Clause 13.1(b), 13.1(c) or 13.1(d) above:

- (a) such termination shall be without prejudice to any other right or remedy the Parties may have in respect of any breach of the terms of this Appointment; and
- (b) the Employer may employ another Consultant to complete the Services to be provided by the Consultant under this Appointment;
- (c) the Consultant shall provide all Documents (as such term is defined in Clause 16.1 below) to the Employer;
- (d) subject to Clause 13.3(c) and Clause 13.3(e), the Consultant shall be entitled to be paid such part of the Fee as is reasonable having regard to the Services and any Additional Services performed up to the Termination Date less
 - (i) any amounts payable by the Consultant to the Employer pursuant to the Appointment; and
 - (ii) any reasonable additional costs incurred by the Employer pursuant to Clause 13.3(b) above in circumstances where the Employer has taken all reasonable steps necessary to mitigate those additional costs,

which amounts may be set off against any Fees and/or money due to the Consultant under this Appointment;

- (e) unless the Consultant provides the Employer with a bond or other security to cover the value of outstanding amounts as at termination, the Employer shall have no obligation to make any further payment to the Consultant until the Employer has ascertained as soon as reasonably possible the Employer's loss

or damage arising from the termination, including the additional costs in respect of engaging a replacement Consultant;

- (f) the Consultant shall not be entitled to claim for economic loss, loss of profit, loss of contracts or for any other losses in the event of such termination in accordance with Clause 13.1(b), 13.1(c) or 13.1(d) above.

14. **Materials**

The Consultant shall not specify for use in the Project any materials and/or substances which are known to the general architectural profession to be hazardous or deleterious and/or which are not in accordance with current European and/or Irish Standards and/or British Standards and/or Codes of Practice insofar as such codes and/or standards are applicable at the time of specification. All materials and/or substances specified must have due regard to health and safety, the durability of the Project and the particular use and/or circumstances for which it is intended.

15. **Insurance And Liability**

- 15.1 The Consultant has and shall maintain the following insurances with the minimum limit of indemnity as set out below

Professional Indemnity Insurance

- (a) Professional Indemnity Insurance (“PII”) for the duration of the provision of the Services and shall maintain such insurance for a period of 6 years from the completion of the Services with a limit of indemnity of not less than €XXXXXX (XXXXXX euro)⁵ for any one claim (or series of claims arising out of any one event) (the “Required PII”) provided such insurance is generally available in the European Union at commercially reasonable rates and terms, excluding any increased or additional premia required by insurers by reason of the Consultant’s own claims record or other acts, omissions or matters, which will be deemed to be within the Consultant’s obligations.

The Consultant shall immediately inform the Employer if the Required PII ceases to be generally available at commercially reasonable rates and terms and the Consultant shall provide evidence, to the satisfaction of the Employer (acting reasonably), that such cover is not generally available. In such circumstances the Consultant shall take out and maintain the next best level of PII available at commercially reasonable rates and terms at the applicable time. The Consultant agrees that if any the Required PII subsequently becomes available in the market at commercially reasonable rates and terms, then the Consultant shall immediately take out and maintain the cover at the next PII renewal date and provide the relevant evidence to the Employer.

Public Liability Insurance

- (b) Public Liability Insurance with a limit of indemnity not less than €XXXXXX (XXXXXX euro)⁶ for any one occurrence until completion of the Services.

Employer’s Liability Insurance

⁵ LDA Drafting Note: PI Requirements as per level and basis stated in the Framework Agreement

⁶ LDA Drafting Note: Required level of PL as per Framework Agreement

- (c) Employer's Liability Insurance for not less than €XXXXXXXX(XXXXXXXX euro)⁷ for any one occurrence from the date hereof until the completion of the Services

Insurances Generally

- 15.2 The Consultant shall ensure that the insurances required to be maintained under this Clause 15 are maintained with a well-established and reputable insurer of repute licensed to carry on business in the European Union and containing a legal jurisdiction clause that includes Ireland.
- 15.3 The Consultant shall immediately inform the Employer in the event of any material amendments or additional exceptions to the standard of cover of any warranties, endorsements, exclusions or special conditions affecting the insurance policies required to be maintained under Clause 15.1.
- 15.4 The Consultant shall not, by any act or omission, invalidate or otherwise void any of the insurances required to be maintained under Clause **Error! Reference source not found.**
- 15.5 As and when the Consultant is reasonably requested to do so, it shall produce for inspection sufficient documentary evidence that the insurance required under Clause 15 is being maintained in accordance with the terms of this Appointment and that all premia have been paid.
- 15.6 The insurances required to be put in place pursuant to Clauses **Error! Reference source not found.** and **Error! Reference source not found.** shall be extended to provide specific indemnity to the Employer as requested by the Employer.
- 15.7 The Consultant shall ensure that any sub-consultant also maintains insurances in accordance with Clause 15 unless otherwise agreed with the Employer.

Indemnity

- 15.8 The Consultant hereby indemnifies and agrees to hold the Employer harmless from all claims, liability, loss and expense arising from:
- (a) any death or personal injury resulting from any act, default, omission of the Consultant, or its employees, sub-consultants, servants or agents; and
 - (b) any damage to property resulting from any negligence of the Consultant, and any employees, sub-consultants, servants or agents.

Limitations on Liability

⁷ LDA Drafting Note: Required level of EL as per Framework Agreement

- 15.9 Subject to Clause 15.10 the liability of Consultant for any breach of this Appointment shall not exceed €XXXXXXXX (XXXXXXXX euro)⁸ for each and every claim (the “Liability Cap”).
- 15.10 The Liability Cap in Clause 15.10 shall not apply to or limit the liability of the Consultant in respect of (and the following shall not be taken into account in any calculation of such Liability Cap):
- (a) fraud or fraudulent misrepresentation, wilful default and/or gross negligence;
 - (b) death, personal injury or illness;
 - (c) damage to third party property;
 - (d) any liability arising pursuant to the indemnity given under Clause 16.4 of this Appointment; and
 - (e) any liability which cannot be lawfully excluded or limited.
- 15.11 The Consultant shall have no liability under this Appointment in respect of proceedings issued after the expiration of 6 years from the completion of the Services.

16. Copyright And Licence To Use Documents

- 16.1 The copyright in all designs, drawings, reports, specifications, bills of quantities, calculations, consents, papers and any other documents produced by the Consultant (or any of its sub-consultants) in connection with the Project (the “**Documents**”) shall vest in the Consultant (or the relevant sub-consultant) but the Employer shall have a non-exclusive irrevocable and royalty free licence to reproduce, copy and use the Documents for all purposes in connection with the Project. The Consultant is not liable for use of the Documents by the Employer for any purpose other than the purpose for which any Document was originally prepared.
- 16.2 The Employer is entitled to obtain full and proper copies of all Documents (in a form specified by the Employer) relating to the Project in the possession or power of procurement of the Consultant.
- 16.3 The license granted under Clause 16.1 above shall include a right for the Employer to grant sub-licences.
- 16.4 The Consultant hereby indemnifies and agrees to hold harmless the Employer against all liabilities, losses, costs and expenses which the Employer may suffer if the designs provided by the Consultant or any of the Documents infringe any patent, trade mark or other third party rights protected by law.

17. Assignment

- 17.1 The Employer may assign the benefit of this Appointment to any Affiliate of the Employer without the consent of the Consultant. The Employer may assign the benefit of this Appointment to any person acquiring the Employer’s interest in the Project without first obtaining the consent of the Consultant on no more than two occasions. The Employer shall give the Consultant prompt notice of any such assignment provided that the giving of such notice is not a pre-condition to the effectiveness of any assignment. Nothing in this Appointment prevents the Employer from assigning, charging and/or transferring the Consultant’s obligations under this Appointment

⁸ LDA Drafting Note: Liability Cap set by reference to level of PI required

whether on one or more occasions or, by way of security to any Funder or any other person or persons providing financial assistance to the Employer.

- 17.2 This Appointment is personal to the Consultant. The Consultant shall not assign, charge or transfer any right or obligation under this appointment to any other person without first obtaining the written consent of the Employer.
- 17.3 The Consultant agrees that it shall, upon request from the Employer, enter into a novation agreement with the Employer and a third party identified to the Consultant by the Employer (such person being the “**New Client**”). The Consultant shall, as and when the Employer may from time to time require, promptly execute and deliver a deed of novation in a form the same as or substantially similar to that as set out in Schedule 4, novating this Agreement from (1) the Employer and the Consultant to (2) the New Client and the Consultant. Where the Consultant has any reasonable concerns regarding the financial standing of the New Client, it shall inform the Employer without delay, providing reasons.

18. **Confidentiality**

- 18.1 The Consultant agrees to keep and to ensure that its personnel keep and professional advisors confidential all information, documentation or other matters arising or coming to its or their attention in connection with the Project or the provision of the Services and not at any time for any reason whatsoever to disclose or permit to be disclosed any information to any third party except as permitted hereunder to enable the Consultant to carry out its duties and obligations. The Consultant shall procure that its employees who have access to such information are subject to the same obligations as the Consultant and shall take all reasonable steps to ensure that its employees are made aware of such obligations. The Consultant shall be permitted to disclose this Appointment and related documentation and/or information relating to the same to its professional advisors, provided such advisors comply with the confidentiality requirements of this Clause 18.1.
- 18.2 The Consultant understands and agrees that it will not use the Employer’s name, logo or trademarks or issue any public announcements or press releases regarding this Appointment without the Employer’s prior specific written permission on each occasion.

19. **Dispute Resolution**

- 19.1 Without prejudice to the entitlement of either party to this Appointment to refer a dispute relating to payment to adjudication at any time in accordance with the provisions of the Act and the Code of Practice, if any dispute or difference arising out of or in connection with this Appointment (a “**dispute**”) arises between the Parties to this Appointment or their respective assigns then a Party shall deliver by hand or send by registered post to the other Party a notice of dispute in writing adequately identifying and providing details of the dispute.
- 19.2 Within seven (7) days after the service of the notice of the dispute (or such longer period as the Parties may agree), the Parties shall meet at least once and shall, in good faith, attempt to negotiate and resolve the dispute or to agree to methods of resolving the dispute by other means. At any such meeting, each Party shall be represented by one or more senior representative(s) having authority to agree to a resolution of the dispute.
- 19.3 If the dispute has not been resolved within twenty-one (21) days of the service of the notice of dispute, or such other time as may be mutually agreed by the Parties prior to

the expiry of twenty-one (21) days, the matter shall be referred to conciliation by either of the Parties by notice in writing. Within fourteen (14) days of the date of such notice, a conciliator shall be appointed by the Parties.

- 19.4 In the event that the Parties cannot agree upon the appointment of a conciliator within fourteen (14) days of the notice to refer to conciliation, the Parties shall seek the nomination of a conciliator by the President for the time being of the Institute of Engineers of Ireland (“IEI”) . The conciliator, in conjunction with the Parties, shall decide on the procedure to govern the conciliation and an appropriate timeframe for the resolution of the dispute. Without prejudice to the foregoing, the conciliation must be completed within three (3) months from the date of notice to refer to conciliation, unless otherwise agreed between the Parties.
- 19.5 In the event that no settlement is reached during the conciliation, the conciliator shall, within fourteen (14) days of the completion of the conciliation (unless an alternative timeframe is agreed between the Parties and the conciliator), make a recommendation. The Parties hereby agree that any recommendation of the conciliator shall be final and binding on the Parties in respect of the dispute unless rejected by either of the Parties within twenty-eight (28) days of the issue of such recommendation.
- 19.6 **Option 1**⁹– In the event that one party rejects the recommendation of the conciliator, either Party shall be entitled to refer the Dispute to the Courts of Ireland.

Option 2 - In the event that one Party rejects the recommendation of the conciliator, either Party shall be entitled to refer the dispute to arbitration and the final decision of such person as the Parties may agree to appoint as arbitrator or failing agreement as may be appointed upon the application of either IEI provided that either Party may by written notice require that such nomination be to an arbitrator that has legal qualifications and with construction dispute experience (and the President shall be obliged to limit his nomination to a person with such qualifications and experience). Every or any such reference shall be deemed to be a submission to Arbitration within the meaning of the Arbitration Act 2010 or any Act amending same. Where appropriate the parties agree to adopt the ‘100 Day Arbitration’ procedure issued by the IEI. The award of the arbitrator shall be final and binding on the Parties. The language of arbitration shall be English and the venue shall be Dublin.

If any dispute referred to arbitration under this Clause 19 raises issues which are substantially the same as and/or connected with issues raised in a dispute between the Employer and any third party in relation to the Project and if such related dispute is to be or has already been referred for determination to an arbitrator, the Employer may elect, at its discretion, to refer the dispute under this Appointment to such arbitrator, who shall have power to make such directions and all necessary awards as if the procedure set out in the Rules of the Superior Courts (as amended) as to the joining of one or more co-defendants or third parties was available to all the Parties and to such arbitrator.

20. Law And Jurisdiction

This Appointment is governed by and shall be construed in accordance with the laws of Ireland and subject to Clause 19 above, the Parties submit to the exclusive jurisdiction of the Irish Courts.

⁹ LDA Drafting Note: Final forum for resolving disputes TBC on a project by project basis

21. **Non-Waiver**

- 21.1 No delay or omission by any Party in exercising any right, power or remedy provided by law shall affect that right, power or remedy; or operate as a waiver.
- 21.2 The exercise or partial exercise of any right, power or remedy provided by law or under this Appointment shall not preclude any other or further exercise of any such right, power or remedy.
- 21.3 The rights, powers and remedies provided in this appointment are cumulative and not exclusive of any rights, powers and remedies provided by law.

22. **Severance**

Each provision of this Appointment is severable and distinct. If one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected or impaired.

23. **Notices**

- 23.1 Any notice to be given by the Employer to the Consultant under the Appointment shall be given by sending same by hand or by registered post to the following address:

FAO: ●¹⁰

- 23.2 Any notice to be given by the Consultant to the Employer under the Appointment shall be given by sending same by hand or by registered post to the following address:

FAO: ●

24. **Counterparts**

- 24.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original of this Appointment but all the counterparts shall together constitute one and the same instrument.
- 24.2 Transmission of an executed counterpart of this Agreement by email or other means of electronic transmission (in PDF, JPEG or other readable format) or by personal delivery or by courier shall take effect as delivery of an executed counterpart of this Appointment.

IN WITNESS WHEREOF this Appointment is duly executed the date first hereinbefore written.

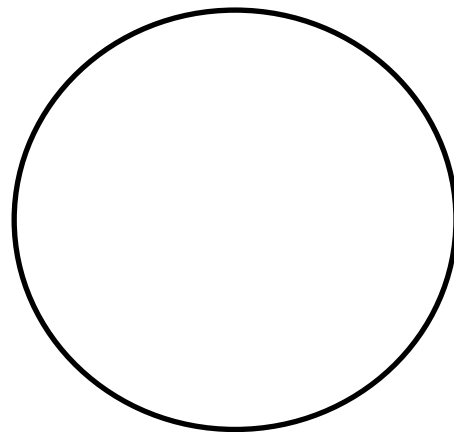
¹⁰ TBC

GIVEN UNDER the common seal of the
CONSULTANT ¹¹
and **DELIVERED** as a **DEED**:

Director

Director/Secretary

GIVEN UNDER the common seal of
THE LAND DEVELOPMENT AGENCY
And delivered as a **DEED**:



Company Seal of
The Land Development Agency

Signature of Authorised Person

Print Name

Signature of Authorised Person

Print Name

¹¹ Consultant to confirm execution block

SCHEDULE 1

THE PROJECT

[DESCRIPTION TO BE INSERTED]

SCHEDULE 2

THE SERVICES

[DESCRIPTION OF THE SERVICES TO BE INSERTED.]

SCHEDULE 3

FEE SCHEDULE AND METHOD OF PAYMENT

1. In consideration of the proper performance of the Services, the Employer shall pay the Fee, net of any Withholding, to the Consultant at the times and manner as indicated in this Schedule 3 provided always that the final payment to the Consultant shall be subject to compliance with clause 7 and 16 of this Appointment.
2. The portion(s) of the Fee payable [for the various Stages]¹, excluding Value Added Tax, are outlined below. The Fee includes all expenses and disbursements (including travel expenses and contract administration costs) which may be incurred by the Consultant in carrying out the Services unless otherwise agreed in advance in writing by the Employer.

FEE	Total Fee proposed (Excluding VAT)
	€
	€
Proposed Total Fee (<i>to include all expenses and disbursements</i>)	€

3. All fees, costs and disbursements expressed to be payable or reimbursable to the Consultant under this Appointment shall be deemed to be Value Added Tax exclusive. Value Added Tax shall be payable (where applicable) by the Employer on the submission by the Consultant of a valid Value Added Tax invoice.
4. The Consultant shall be entitled to submit a valid VAT invoice [on completion of each of the stages above for the amount so identified / on the last working day of each month]². Each such invoice submitted shall have attached to such supporting documentation as is reasonably required by the Employer.
5. Any Additional Services performed by the Consultant which will be payable in accordance with the terms of Clause 4.1 of the Appointment and this Schedule 3. The fee payable for any Additional Services may, where appropriate, be assessed and agreed on the basis of the hourly rates set out below.

Hourly Rates (inclusive of all administrative expenses)	
Role	Hourly Rate (Eur)

6. The making of any payment by the Employer to the Consultant shall not be taken or deemed to indicate satisfactory performance of the Services and/or Additional Services.

¹ LDA to confirm stage payments are necessary for the services appointment.

² Payment periods will be confirmed on a project specific basis taking account of the nature of the Project.

**SCHEDULE 4
NOVATION AGREEMENT**

DATED

20 ●

**LAND DEVELOPMENT AGENCY
(EMPLOYER)**

●
(NEW CLIENT)

●
(CONSULTANT)

NOVATION AGREEMENT

BETWEEN:

- (1) **LAND DEVELOPMENT AGENCY**, a designated activity company (limited by shares) with company number 710453, having its registered office at 4th Floor Ashford House, Tara Street, Dublin 2, D02 VX67 (the “**Employer**” which expression includes its successors and assigns and any body to whom its functions are transferred under statute and law);
 - (2) ●, a company registered in Ireland under number ● whose principal place of business is situated at ● (the “**New Client**”); and
 - (3) ● with company registration number ● having its registered office at ● (the “**Consultant**”),
- each a “**Party**” and together, the “**Parties**”.

BACKGROUND:

- (A) The Employer wishes to procure the design, construction and completion of the regeneration site at [] as more particularly described in Schedule 1 (the “**Project**”).
- (B) This Novation Agreement is supplemental to the agreement dated ●, made between the Consultant and the Employer (the “**Appointment**”) under the terms of which the Consultant has undertaken to provide certain master planning services in accordance with the terms and conditions expressed and/or implied therein.
- (C) The Employer desires to be released and discharged from the Appointment, and the Consultant has agreed to release and discharge the Employer upon the New Client’s undertaking to perform the Appointment and be bound by its terms.

IT IS AGREED as follows:

1. Subject to terms of this Novation Agreement the Appointment shall remain in full force and effect.
2. The Appointment is hereby novated from the Employer and the Consultant to the New Client and the Consultant.
3. The Consultant releases and discharges the Employer from the performance of all duties, liabilities and obligations arising out of or in connection with the Appointment and from all claims and demands whatsoever in respect of the Appointment whether by virtue of its terms or by virtue of any breach or otherwise.
4. Similarly, the Employer releases and discharges the Consultant from the performance of all duties, liabilities and obligations arising out of or in connection with the Appointment and from all claims and demands whatsoever in respect of the Appointment whether by virtue of its terms or by virtue of any breach or otherwise.
5. The Consultant shall be bound and shall be deemed always to have been bound to perform the Consultant’s duties and obligations and observe the terms and conditions of the Appointment for the benefit of the New Client as if the New Client was and always had been named as the employer in the Appointment, in place of the Employer.
6. Similarly, the New Client shall be bound and shall be deemed always to have been bound to perform the Employer’s duties and obligations and observe the terms and conditions of the Appointment for the benefit of the Consultant as if the New Client was and always had been named as the employer in the Appointment, in place of the Employer.

7. The New Client undertakes unconditionally to the Consultant to discharge all payments which are or have become due and owing to the Consultant under the Appointment but which remain unpaid and the New Client shall make payment to the Consultant of any such sums upon execution of this Novation Agreement.
8. The Consultant shall give full credit to the New Client for any monies paid by the Employer to the Consultant pursuant to the Appointment prior to the date of this Novation Agreement which, for the avoidance of doubt, has been agreed by all of the Parties to be in the sum [●] plus value added tax.
9. This Novation Agreement shall be governed by the laws of Ireland and the courts of Ireland shall have non-exclusive jurisdiction.

IN WITNESS WHEREOF the Parties have affixed their seals the day and year first hereinbefore written.

GIVEN UNDER
the Common Seal of
EMPLOYER
and delivered as a Deed:

Director

Director/Secretary

GIVEN UNDER
the Common Seal of
NEW CLIENT
and delivered as a Deed:

Director

Director/Secretary

GIVEN UNDER
the Common Seal of
CONSULTANT
and delivered as a Deed:

Director

Director/Secretary

SCHEDULE 5
LETTER OF RELIANCE
Letter of Reliance

[Name and Address
The “Interested Party”]

Dear Colleagues

Letter of Reliance – Project: [Description of Project] (the “**Project**”).

Background

- A. By an agreement dated [] (the “**Appointment**”) [insert name consultant] (the “**Consultant**”) was appointed by the Land Development Agency (the “**Employer**”) to provide certain [Insert brief description of the services] (the “**Services**”) in respect of the Project.
- B. As part of the Services the Consultant produced a report dated [insert date of report] (the “**Report**”)
- C. The Consultant agrees that the Interested Party may use, copy and rely upon the Report.

In consideration of the mutual covenants contained herein and notwithstanding any provision or statement in the Report to the effect that only the Employer may rely on the report, the Consultant and the Interested Party agree as follows:

- 1. The Consultant warrants that the Report has been prepared to the best of the Consultant’s ability using the standard of reasonable skill, care and diligence to be expected of a competent professional experienced in providing services in the nature of the Services for projects of similar scope and complexity of the Project and the Consultant undertakes the Interested Party shall be entitled to rely upon this warranty.
- 2. The Consultant agrees to allow the Interested Party the use and reliance upon the Report in all respects as if the Report had been prepared for and on behalf of and addressed to the Interested Party for its originally intended purpose.
- 3. The Consultant grants to the Interested Party, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to use and reproduce for any purpose relating to the Project all documents, reports, drawings, calculations and specifications (and the designs contained in them) which have been or will be prepared by the Consultant or on its behalf in connection with the Report, and the Consultant agrees to supply to the Interested Party on request copies of such materials (subject to reimbursement of the Consultant's reasonable copying charges). The Consultant shall be liable for and shall indemnify (and keep indemnified) the Interested Party against any and all claims, damages, losses, costs or expenses suffered by the Interested Party and its licensees or for which the Interested Party is otherwise liable arising out of or in connection with any infringement of any existing or future copyright, design rights or intellectual property rights.

4. The Interested Party confirms that it shall only use the Report in connection with the Project. The Consultant will not be liable for any misuse of the Report other than for the purpose for which it was prepared by or on behalf of the Consultant.
5. [The Interested Party may assign the benefit of this Letter of Reliance without the consent of the Consultant on two occasions only and the Interested Party shall notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of this Assignment.]
6. The Consultant warrants and undertakes to the Interested Party to maintain with a reputable insurance company carrying on business in the European Union from the date hereof and for a period expiring no earlier than [six (6)] years from the date of the Report professional indemnity insurance with a limit of indemnity of at least ([]) in respect of each and every claim¹⁵.
7. This letter of reliance shall be governed and construed in accordance with the laws of Ireland and the courts of Ireland shall have exclusive jurisdiction in relation to any matter arising under or in respect of this letter of reliance.

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

GIVEN UNDER the common seal of the
CONSULTANT

(1) Signature of Director / Authorised Person

Print Name:

(2) Signature of Director / Company Secretary /
Authorised Person

Print Name:

**Company Seal of
Consultant**

¹⁵ LDA Drafting Note: Insert details of PI cover.

GIVEN UNDER the common seal of
THE INTERESTED PARTY

(1) Signature of Director/ Authorised Person

Print Name:

(2) Signature of Director/ Authorised Person

Print Name:

Company Seal of
The Interested Party

GIVEN UNDER
the Common Seal of
CONSULTANT
and delivered as a Deed:

Director

Director/Secretary

GIVEN UNDER
the Common Seal of
EMPLOYER
and delivered as a Deed:

Director

Director/Secretary

SCHEDULE 6

COLLATERAL WARRANTIES

Part 1: Collateral Warranty- Consultant in Favour of Interested Parties

DATED

20 ●

●

AND

●

COLLATERAL WARRANTY
CONSULTANT TO INTERESTED PARTIES

BETWEEN:

- (1) ● with company registration number ● and whose registered office is at ● (the “**Consultant**”) and
- (2) ● with company registration number ● and whose registered office is at ● (the “**Interested Party**”),

each a “**Party**” and together, the “**Parties**”.

BACKGROUND:

- (A) By an Agreement in writing dated ● and made between ● (the “**Employer**”) and the Consultant (the “**Appointment**”), the Consultant agreed to provide the Employer with architectural services in connection with ● (the “**Project**”) as more particularly described and defined in the Appointment.
- (B) The Interested Party has agreed:¹⁶
 - (a) to provide funds to facilitate the construction of the Project;
 - (b) to purchase (by way of transfer, conveyance, lease or otherwise) the whole/part of the Project;
 - (c) to take a lease of or acquire an interest or estate in the whole/part of the Project; and
 - (d) to manage the whole/part of the Project.
- (C) The Consultant has agreed to enter into this Collateral Warranty with the Interested Party.
- (D) Throughout this Deed any words and expressions commencing with a capital letter shall have the meanings ascribed to those words as defined in the Appointment.

IN CONSIDERATION of the sum of €5 (five euro) paid by the Interested Party to the Consultant (receipt of which is acknowledged), **IT IS AGREED** as follows:

10. The Consultant warrants to and undertakes to the Interested Party for a period of 12 years from the date of Practical Completion of the works comprising the Project that it has and will carry out its duties and the Services under the Appointment with all the reasonable skill, care and diligence to be expected of a professionally qualified consultant experienced in providing services of a similar nature, size and scope as the Project.
11. The Consultant binds itself to the Interested Party in all respects as if the Interested Party had jointly and severally with the Employer appointed the Consultant to act prior to the commencement of any work by the Consultant to the extent that the Interested Party and the Employer shall be entitled to enforce all remedies against the Consultant by virtue of any breach by the Consultant of its obligations pursuant to the Appointment.
12. The Consultant shall have no greater liability in time or amount to the Interested Party by virtue of this Agreement than it would have had if the Interested Party had been named jointly with the Employer as the employer under the Appointment. The Consultant shall be entitled in any action or proceedings by the Interested Party to rely on any limitation or exclusion of liability

¹⁶ Delete as appropriate.

in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Employer under the Appointment save in respect of any set off or counterclaim.

13. Professional Indemnity Insurance

- (a) The Consultant shall maintain professional indemnity insurance (“PII”) in respect of the Project in the amount of [€ ● (● thousand euro)] for any one claim (or series of claims arising out of any one event) (the “Required PII”) for a period of 12 years after the date of Practical Completion of the Construction Contract provided that such insurance is generally available in the European Union at commercially reasonable rates and terms, excluding any increased or additional premia required by insurers by reason of the Consultant’s own claims record or other acts, omissions or matters, which will be deemed to be within the Consultant’s obligations.
- (b) The Consultant shall immediately inform the Interested Party if the Required PII ceases to be generally available at commercially reasonable rates and terms, and the Consultant shall provide evidence, to the satisfaction of the Interested Party (acting reasonably) that such cover is not generally available. In such circumstances the Consultant shall take out and maintain the next best level of PII available at commercially reasonable rates and terms in the market at the applicable time.
- (c) The Consultant agrees that if the Required PII subsequently becomes available in the market at commercially reasonable rates and terms, then the Consultant shall immediately take out and maintain the cover at the next PII renewal date and provide the relevant evidence to the Employer.
- (d) The Consultant shall immediately inform the Employer in the event of any material amendments or additional exceptions to the standard cover, or any warranties, endorsement, exclusions or special conditions affecting the PII policy maintained by the Consultant.
- (e) The Consultant warrants that the premiums for the current period of insurance have been duly paid to the insurer. Where the Consultant pays premiums in instalments, the Consultant shall ensure that all insurance payments required under this Clause are being maintained in accordance with the terms of this Agreement. As and when the Consultant is reasonably requested to do so by the Interested Party, the Consultant shall produce for inspection sufficient documentary evidence that the insurance required under this Clause is being maintained in accordance with the terms of this Agreement.

14. The copyright in all designs, drawings, reports, specifications, bills of quantities, calculations, consents, papers and other similar documents (to include CAD materials and other data stored on disk or in electronic format) produced by the Consultant in connection with the Project (the “**Documents**”) shall remain vested in the Consultant but the Interested Party shall have a non-exclusive irrevocable and royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Project. The Consultant shall not be liable for any use of the Documents for any purpose other than that for which they were prepared or for any use not originally intended.

- (a) The Interested Party shall be entitled (at its own cost) to full and proper copies of the Documents relating to the Project in the possession or control of the Consultant and the Consultant will not claim copyright or a lien in respect of them against the Interested Party.
- (b) The licence granted to the Interested Party under this Clause 5 shall include a right for the Interested Party to grant sub-licences.

15. The Consultant warrants that it has not and will not specify for use in the Project any material known to be deleterious or affecting the durability of the Project or any material not in accordance with the Employer's standards, Irish standards or codes of practice or, if no Irish standards or codes of practice exist, the relevant British or European standard or code of practice which is the most current and appropriate.
16. The Interested Party shall be entitled at any time to assign the benefit of this Agreement on two occasions by way of absolute legal assignment to such person or persons as the Interested Party thinks fit without the consent of Consultant. The Interested Party shall give the Consultant prompt notice of any such assignment provided that the giving of such notice shall not be a precondition to the effectiveness of any assignment.
17. The obligations of the Consultant under this Collateral Warranty shall not be released or diminished by the appointment of any person by the Interested Party to carry out any independent enquiry into any matter, or by any rights of approval, monitoring or inspection that the Interested Party or any person acting on behalf of the Interested Party may have.
18. If any dispute or difference arises out of or in connection with this Agreement or arising thereunder (a "**dispute**"), then any such dispute shall be and is hereby referred to arbitration and the final decision of such person as the Parties may agree to appoint as arbitrator or failing agreement as may be appointed upon the application of either Party to the President for the time being of the Institute of Engineers of Ireland ("IEI") provided that either Party may by written notice require that such nomination be to an arbitrator that has legal qualifications and with construction dispute experience (and the President shall be obliged to limit his nomination to a person with such qualifications and experience). Every or any such reference shall be deemed to be a submission to Arbitration within the meaning of the Arbitration Act 2010 or any Act amending same. Where appropriate, the Parties agree to adopt the '100 Day Arbitration' procedure issued by IEI. The award of the arbitrator shall be final and binding on the Parties. The language of arbitration shall be English and the venue shall be Dublin.¹⁷
19. This Agreement shall be governed by and construed in accordance with the laws of Ireland.
20. The Consultant shall have no liability under this Agreement in respect of proceedings issued after the expiration of 12 years from the date of Practical Completion of the Works.
21. Where this Agreement is executed by a partnership, all partners from time to time shall be jointly and severally liable.
22. Counterparts
 - (a) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original of this Agreement but all the counterparts shall together constitute one and the same instrument.
 - (b) Transmission of an executed counterpart of this Agreement by email or other means of electronic transmission (in PDF, JPEG or other readable format) or by personal delivery or by courier shall take effect as delivery of an executed counterpart of this Agreement.

IN WITNESS whereof this Agreement is duly executed the day and year first hereinbefore written.

¹⁷ **LDA Drafting Note:** Final forum for disputes TBC on a project by project basis

GIVEN UNDER
the Common Seal of
CONSULTANT
and delivered as a Deed:

Director

Director/Secretary

GIVEN UNDER
the Common Seal of
INTERESTED PARTY
and delivered as a Deed:

Director

Director/Secretary

Part 2: Collateral Warranty Sub-Consultant in Favour of Employer

DATED

20 ●

●

AND

LAND DEVELOPMENT AGENCY

COLLATERAL WARRANTY

SUB-CONSULTANT TO EMPLOYER

BETWEEN:

- (1) ● with company registration number ● and whose registered office is at ● (the “**Sub-Consultant**”);
 - (2) **THE LAND DEVELOPMENT AGENCY**, designated activity company (limited by shares) with company number 710453, having its registered office at 4th Floor Ashford House, Tara Street, Dublin 2, D02 VX67 (the “**Employer**” which expression shall include its successors and assigns and any body to whom its functions are transferred under statute or law); and
 - (3) ● with company registration number ● and whose registered office is at ● (the “**Consultant**”),
- each a “**Party**” and together, the “**Parties**”.

BACKGROUND:

- (A) By an Agreement in writing dated ● and made between the Employer and the Consultant (the “**Appointment**”), the Consultant agreed to provide the Employer with certain services in connection with ● (the “**Project**”) as more particularly described and defined in the Appointment (the “**Services**”).
- (B) The Consultant has engaged the Sub-Consultant pursuant to an agreement dated ● (the “**Sub-Consultant Appointment**”) to perform certain ● services forming part of the Services as more particularly described and defined in the Sub-Consultant Appointment (the “**Sub-Consultant Services**”).
- (C) The Sub-Consultant hereby agrees to provide this Collateral Warranty (the “**Collateral Warranty**”) for the benefit of the Employer.
- (D) Throughout this Deed any words and expressions commencing with a capital letter shall have the meanings ascribed to those words as defined in the Sub-Consultant Appointment.

IN CONSIDERATION of the sum of €5 (five euro) paid by the Sub-Consultant to the Employer (receipt of which is acknowledged), **IT IS AGREED** as follows:

1. The Sub-Consultant warrants to and undertakes with the Employer for a period of 12 years from the date of Practical Completion of the works comprising the Works, that it has exercised and will continue to exercise all reasonable skill and care in the performance of its obligations and duties pursuant to the Sub-Consultant Appointment and has not broken and shall not break any express or implied term of the Sub-Consultant Appointment.
2. The Sub-Consultant binds itself to the Employer in all respects as if the Employer had jointly and severally with the Consultant appointed the Sub-Consultant to act prior to the commencement of any work by the Sub-Consultant to the extent that the Employer and the Consultant shall be entitled jointly and severally to enforce all remedies against the Sub-Consultant by virtue of any breach of the Sub-Consultant of its obligations pursuant to the Sub-Consultant Appointment.
3. The Sub-Consultant shall have no greater liability in time or amount to the Employer by virtue of this Collateral Warranty than it would have had if the Employer had been named jointly with the Consultant as the employer under the Appointment. The Sub-Consultant shall be entitled in any action or proceedings by the Employer to rely on any limitation or exclusion of liability in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Consultant under the Appointment save in respect of any set off/counterclaim.

4. Professional Indemnity Insurance

- (a) The Sub-Consultant shall maintain professional indemnity insurance (“PII”) in respect of the Project in the amount of [€ ● (● thousand euro)] for any one claim (or series of claims arising out of any one event) (the “Required PII”) for a period of 12 years after the date of Practical Completion of the Construction Contract provided that such insurance is generally available in the European Union at commercially reasonable rates and terms, excluding any increased or additional premia required by insurers by reason of the Sub-Consultant’s own claims record or other acts, omissions or matters, which will be deemed to be within the Sub-Consultant’s obligations.
- (b) The Sub-Consultant shall immediately inform the Employer if the Required PII ceases to be generally available at commercially reasonable rates and terms, and the Sub-Consultant shall provide evidence, to the satisfaction of the Employer (acting reasonably) that such cover is not generally available. In such circumstances the Sub-Consultant shall take out and maintain the next best level of PII available at commercially reasonable rates and terms in the market at the applicable time.
- (c) The Sub-Consultant agrees that if the Required PII subsequently becomes available in the market at commercially reasonable rates and terms, then the Sub-Consultant shall immediately take out and maintain the cover at the next PII renewal date and provide the relevant evidence to the Employer.
- (d) The Sub-Consultant shall immediately inform the Employer in the event of any material amendments or additional exceptions to the standard cover, or any warranties, endorsement, exclusions or special conditions affecting the PII policy maintained by the Sub-Consultant.
- (e) The Sub-Consultant warrants that the premiums for the current period of insurance have been duly paid to the insurer. Where the Sub-Consultant pays premiums in instalments, the Sub-Consultant shall ensure that all insurance payments required under this Clause are being maintained in accordance with the terms of this Agreement. As and when the Sub-Consultant is reasonably requested to do so by the Employer, the Sub-Consultant shall produce for inspection sufficient documentary evidence that the insurance required under this Clause is being maintained in accordance with the terms of this Agreement.

5. Step In Right: Sub-Consultant may not Terminate or Discontinue

- (a) The Sub-Consultant shall not exercise (or take steps to exercise) any right to terminate its employment under the Sub-Consultant Appointment or to treat the Sub-Consultant Appointment as having been repudiated, or discontinue carrying out the Sub-Consultant Services for any reason (including any breach on the part of the Consultant) without giving the Employer at least thirty (30) working days prior written notice of its intention to do so. Any such notice shall specify the grounds, in reasonable detail, for the Sub-Consultant's proposed termination, repudiation or discontinuance.
- (b) Following the issue of a notice under Clause 5(a), the Sub-Consultant shall, if so required by the Employer, promptly provide to the Employer all documents, information (including in respect of claims and/or undischarged payment obligations) and assistance to allow the Employer to consider the risks and merits of issuing a notice under Clause 5(c) and/or stepping into the role of the Consultant following the issue of such notice.
- (c) The Sub-Consultant's right to terminate its appointment under the Sub-Consultant Appointment, or to repudiate the Sub-Consultant Appointment or to discontinue

carrying out the Sub Consultant Services shall cease if, within the period referred to in Clause 5(a), the Employer issues a notice to the Sub-Consultant, copied to the Consultant requiring the Sub-Consultant not to terminate or repudiate the Sub-Consultant Appointment, or discontinue carrying out of the Sub-Consultant Services and confirming that the Consultant, or its nominee, will assume all the Consultant's rights and obligations under the Sub-Consultant Appointment, including any payment obligations to the Sub-Consultant under the Sub-Consultant Appointment.

- (d) If a notice under Clause 5(c) is not issued within the period referred to in Clause 5(a), the Sub-Consultant may exercise any rights under the Appointment to terminate or repudiate the Appointment or discontinue the Sub-Consultant Services.
- (e) For the avoidance of doubt, save where the Employer has assumed all the rights and obligations of the Consultant under the Sub-Consultant Appointment, the Sub-Consultant shall have no claim whatsoever against the Employer in respect of any damage or loss or expense however arising out of or in connection with any termination of the Sub-Consultant Appointment.

6. Step-In Rights: For Employer and /or Employer Nominee

- (a) Separate and independent to Clause 5(a), at any time, the Employer may serve not less than five (5) working days' notice on the Sub-Consultant, copied to the Consultant confirming that the Employer or its nominee is electing to assume all of the Consultant's rights and obligations under the Sub-Consultant Appointment.
- (b) Where such notice is served, the Sub-Consultant shall assume that, as between the Consultant and the Employer, the Employer may give a notice under Clause 6(a).

7. Step In Rights: General

- (a) Any notice (**Step-In Notice**) served under Clause 5(c) or Clause 6(a) (as applicable) shall state whether the Employer or its nominee (the entity so stated in the notice being the **Step-In Entity**) is assuming the Consultant's rights and obligations under the Sub-Consultant Appointment. If the Employer serves a Step-In Notice then:
 - (i) from the date of service of the Step-In Notice, the Sub-Consultant Appointment shall continue in full force and effect, as if it had been entered into between the Sub-Consultant and the Step-In Entity, to the exclusion of the Consultant; and
 - (ii) any sums properly due and payable to the Sub-Consultant under the Sub-Consultant Appointment that are unpaid prior to the date of service of the Step-In Notice shall be payable by the Step-in Entity.
- (b) Following the issue of a notice under Clause 6(a), the Sub-Consultant shall, if so required by the Employer provide to the Step-In Entity all documents, information (including in respect of claims and/or undischarged payment obligations) and assistance to assist the Step-In Entity in performing the obligations of the Consultant following the issue of a Step-In Notice.
- (c) Each party hereto shall (at their own cost) execute such documents and do such acts or things within its power to implement and give effect to Clause 5 and/or Clause 6, including (without limitation) assigning any agreements which are collateral to the Sub-Consultant Appointment.

8. No Instructions To Sub-Consultant By Employer

Until a notice has issued under Clause 5(c) and Clause 6(a), the Employer may not give instructions to the Sub-Consultant under the Sub-Consultant Appointment.

9. Intellectual Property

- (a) The copyright in all drawings reports specifications bills of quantities calculations, consents, papers and other similar documents produced by the Sub-Consultant in connection with the Project (the “**Documents**”) shall remain vested in the Sub-Consultant but the Employer shall have a non-exclusive irrevocable and royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Project.
- (b) The Employer shall be entitled (at its own cost) to full and proper copies of the Documents in the possession or control of the Sub-Consultant and the Sub-Consultant will not claim copyright or a lien in respect of them against the Employer.
- (c) The licence granted to the Employer under Clause 9(b) shall include a right for the Employer to grant sub-licences.

10. The Sub-Consultant warrants that it has not and will not specify for use in the Project any materials or substances which are not in accordance with current European and Irish Standards and Codes of Practice insofar as they may be applicable or any materials or substances known to be deleterious to health or safety or the durability or suitability of the Works in the particular circumstances in which the same is used.

11. The Employer’s rights under this Collateral Warranty may be assigned in whole or in part twice without the consent of the Sub-Consultant. Further assignments shall be permitted with the prior consent of the Sub-Consultant (such consent not to be unreasonably withheld or delayed) provided always that no such consent shall be required in the event of any assignments in favour of a company which is a member of the Employer’s group, or is necessitated for the purposes of providing security to any bank, financial institution, or any other person or persons providing finance to the Employer.

12. The obligations of the Sub-Consultant under this Collateral Warranty shall not be released or diminished by the appointment of any person by the Employer to carry out any independent enquiry into any matter, or by any rights of approval, monitoring or inspection that the Employer or any person acting on behalf of the Employer may have.

13. The Sub-Consultant agrees with the Employer not to vary or agree to vary or waive the terms of the Sub-Consultant Appointment without the prior written consent of the Employer such consent not to be unreasonably withheld.

14. Dispute Resolution

- (a) If any dispute or difference arising out of or in connection with this Appointment (a “**dispute**”) arises between the Parties to this Appointment or their respective assigns then a Party shall deliver by hand or send by registered post to the other Party a notice of dispute in writing adequately identifying and providing details of the dispute.
- (b) Within seven days after the service of the notice of the dispute (or such longer period as the Parties may agree), the Parties shall meet at least once and shall, in good faith, attempt to negotiate and resolve the dispute or to agree to methods of resolving the dispute by other means. At any such meeting, each Party shall be represented by one or more senior representative(s) having authority to agree to a resolution of the dispute.

- (c) If the dispute has not been resolved within 21 days of the service of the notice of dispute, or such other time as may be mutually agreed by the Parties prior to the expiry of 21 days, the matter shall be referred to conciliation by either of the Parties by notice in writing. Within 14 days of the date of such notice, a conciliator shall be appointed by the Parties.
- (d) In the event that the Parties cannot agree upon the appointment of a conciliator within 14 days of the notice to refer to conciliation, the Parties shall seek the nomination of a conciliator by the President for the time being of Engineers Ireland. The conciliator, in conjunction with the Parties, shall decide on the procedure to govern the conciliation and an appropriate timeframe for the resolution of the dispute. Without prejudice to the foregoing, the conciliation must be completed within three months from the date of notice to refer to conciliation, unless otherwise agreed between the Parties.
- (e) In the event that no settlement is reached during the conciliation, the conciliator shall, within 14 days of the completion of the conciliation (unless an alternative timeframe is agreed between the Parties and the conciliator), make a recommendation. The Parties hereby agree that any recommendation of the conciliator shall be final and binding on the Parties in respect of the dispute unless rejected by either of the Parties within 21 days of the issue of such recommendation.
- (f) **Option 1**¹⁸ In the event that one Party rejects the recommendation of the conciliator, either Party shall be entitled to refer the Dispute to the Courts of Ireland.

Option 2 In the event that one Party rejects the recommendation of the conciliator, either Party shall be entitled to refer the dispute to arbitration and the final decision of such person as the Parties may agree to appoint as arbitrator or failing agreement as may be appointed upon the application of either Party to the President for the time being of Institute of Engineers of Ireland (“IEI”) provided that either Party may by written notice require that such nomination be to an arbitrator that has legal qualifications and with construction dispute experience (and the President shall be obliged to limit his nomination to a person with such qualifications and experience). Every or any such reference shall be deemed to be a submission to Arbitration within the meaning of the Arbitration Act 2010 or any Act amending same. Where appropriate, the Parties agree to adopt the ‘100 Day Arbitration’ procedure issued by IEI. The award of the arbitrator shall be final and binding on the Parties. The language of arbitration shall be English and the venue shall be Dublin.

If any dispute referred to arbitration under Clause 14 above raises issues which are substantially the same as and/or connected with issues raised in a dispute between the Employer and any third party in relation to the Project and if such related dispute is to be or has already been referred for determination to an arbitrator, the Employer may elect, at its discretion, to refer the dispute under this Agreement to such arbitrator, who shall have power to make such directions and all necessary awards as if the procedure set out in the Rules of the Superior Courts (as amended) as to the joining of one or more co-defendants or third parties was available to all the Parties and to such arbitrator

- 15. Save as otherwise expressly provided for herein, nothing in this Collateral Warranty shall prejudice the Employer’s rights at law.
- 16. The Consultant has joined in this Agreement to confirm its concurrence with the arrangements made and contemplated by it.

¹⁸ LDA Drafting Note: Final forum for dispute resolution TBC on a project by project basis.

17. This Agreement shall be governed by and construed in accordance with the laws of Ireland.
18. The Sub-Consultant shall have no liability under this Agreement in respect of proceedings issued after the expiration of 12 years from the date of Practical Completion of the Works.
19. Where this Agreement is executed by a partnership, all partners from time to time shall be jointly and severally liable.
20. Precedence
 - (a) If there is a conflict between this Agreement and the Sub-Consultant Appointment, this Agreement takes precedence.
 - (b) If the Sub-Consultant Appointment allows the Sub-Consultant a shorter notice period for the exercise of a right referred to in Clause 5(a), the Consultant and Sub-Consultant agree that the notice period in the Appointment shall be extended to take account of the notice period required under Clause 5(a).
21. Counterparts
 - (a) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original of this Agreement but all the counterparts shall together constitute one and the same instrument.
 - (b) Transmission of an executed counterpart of this Agreement by email or other means of electronic transmission (in PDF, JPEG or other readable format) or by personal delivery or by courier shall take effect as delivery of an executed counterpart of this Agreement

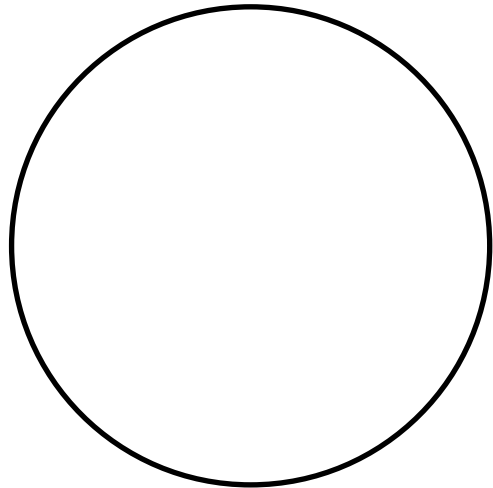
IN WITNESS whereof the Parties have caused their Common Seals to be affixed the day and year first herein written.

GIVEN UNDER
the Common Seal of
SUB-CONSULTANT
and delivered as a Deed:

Director

Director/Secretary

GIVEN UNDER the common seal of
THE LAND DEVELOPMENT AGENCY
And delivered as a **DEED**:



(1) Signature of Authorised Person

Print Name:

(2) Signature of Authorised Person

Print Name:

Company Seal of
The Land Development Agency

GIVEN UNDER
the Common Seal of
CONSULTANT
and delivered as a Deed:

Director

Director/Secretary

Part 3: Collateral Warranty - Sub-Consultant in Favour of Interested Party

DATED

20 ●

●

AND

●

COLLATERAL WARRANTY

SUB-CONSULTANT TO INTERESTED PARTY

BETWEEN:

- (1) ● with company registration number ● and whose registered office is at ● (the “**Sub-Consultant**”)
 - (2) ● with company registration number ● and whose registered office is at ● (the “**Interested Party**”) and
 - (3) ● with company registration number ● and whose registered office is at ● (the “**Consultant**”)
- each a “**Party**” and together, the “**Parties**”.

BACKGROUND:

- (A) By an Agreement in writing dated ● and made between the [Land Development Agency] (the “**Employer**”) and ● (the “**Consultant**”) (the “**Appointment**”), the Consultant agreed to provide the Employer with architectural and other design services (the “**Services**”) in connection with ● (the “**Project**”) as more particularly described and defined in the Appointment.
- (B) The Consultant has engaged the Sub-Consultant pursuant to an agreement dated ● (the “**Sub-Consultant Appointment**”) to perform certain ● services forming part of the Services as more particularly described and defined in the Sub-Consultant Appointment (the “**Sub-Consultant Services**”).
- (C) The Interested Party has agreed:¹⁹
 - (c) to provide funds to facilitate the construction of the Project;
 - (d) to purchase (by way of transfer, conveyance, lease or otherwise) the whole/part of the Project;
 - (e) to take a lease of or acquire an interest or estate in the whole/part of the Project; and
 - (f) to manage the whole/part of the Project.
 - (i) The Consultant has agreed to procure that any sub-consultant engaged by it in relation to the Services shall execute and furnish a collateral warranty to, inter alia, the Interested Party, its successors and its assigns as more particularly described and defined in the Appointment.
 - (ii) The Sub-Consultant hereby agrees to provide this Collateral Warranty (the “**Collateral Warranty**”) for the benefit of the Interested Party.
- (D) Throughout this Deed any words and expressions commencing with a capital letter shall have the meanings ascribed to those words as defined in the Sub-Consultant Appointment.

IN CONSIDERATION of the sum of €5 (five euro) paid by the Sub-Consultant to the Interested Party (receipt of which is acknowledged), **IT IS AGREED** as follows:

1. The Sub-Consultant warrants to and undertakes with the Interested Party for a period of 12 years from the date of Practical Completion of the works comprising the Project, that it has exercised and will continue to exercise all reasonable skill and care in the performance of its

¹⁹ Delete as appropriate.

obligations and duties pursuant to the Sub-Consultant Appointment and has not broken and shall not break any express or implied term of the Sub-Consultant Appointment.

2. The Sub-Consultant binds itself to the Interested Party in all respects as if the Interested Party had jointly and severally with the Consultant appointed the Sub-Consultant to act prior to the commencement of any work by the Sub-Consultant to the extent that the Interested Party and the Consultant shall be entitled jointly and severally to enforce all remedies against the Sub-Consultant by virtue of any breach of the Sub-Consultant of its obligations pursuant to the Sub-Consultant Appointment.
3. The Sub-Consultant shall have no greater liability in time or amount to the Interested Party by virtue of this Collateral Warranty than it would have had if the Interested Party had been named jointly with the Consultant as the employer under the Appointment. The Sub-Consultant shall be entitled in any action or proceedings by the Interested Party to rely on any limitation or exclusion of liability in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Consultant under the Appointment save in respect of any set off/counterclaim.
4. Professional Indemnity
 - (a) The Sub-Consultant shall maintain professional indemnity insurance (“PII”) in respect of the Project in the amount of [€ ● (● thousand euro)] for any one claim (or series of claims arising out of any one event) (the “Required PII”) for a period of 12 years after the date of Practical Completion of the Construction Contract provided that such insurance is generally available in the European Union at commercially reasonable rates and terms, excluding any increased or additional premia required by insurers by reason of the Sub-Consultant’s own claims record or other acts, omissions or matters, which will be deemed to be within the Sub-Consultant’s obligations.
 - (b) The Sub-Consultant shall immediately inform the Interested Party if the Required PII ceases to be generally available at commercially reasonable rates and terms, and the Sub-Consultant shall provide evidence, to the satisfaction of the Interested Party (acting reasonably) that such cover is not generally available. In such circumstances the Sub-Consultant shall take out and maintain the next best level of PII available at commercially reasonable rates and terms in the market at the applicable time.
 - (c) The Sub-Consultant agrees that if the Required PII subsequently becomes available in the market at commercially reasonable rates and terms, then the Sub-Consultant shall immediately take out and maintain the cover at the next PII renewal date and provide the relevant evidence to the Interested Party.
 - (d) The Sub-Consultant shall immediately inform the Interested Party in the event of any material amendments or additional exceptions to the standard cover, or any warranties, endorsement, exclusions or special conditions affecting the PII policy maintained by the Sub-Consultant.
 - (e) The Sub-Consultant warrants that the premiums for the current period of insurance have been duly paid to the insurer. Where the Sub-Consultant pays premiums in instalments, the Sub-Consultant shall ensure that all insurance payments required under this Clause are being maintained in accordance with the terms of this Agreement. As and when the Sub-Consultant is reasonably requested to do so by the Interested Party, the Sub-Consultant shall produce for inspection sufficient documentary evidence that the insurance required under this Clause is being maintained in accordance with the terms of this Agreement.

5. Intellectual Property
 - (a) The copyright in all drawings reports specifications bills of quantities calculations, consents, papers and other similar documents produced by the Sub-Consultant in connection with the Project (the “**Documents**”) shall remain vested in the Sub-Consultant but the Interested Party shall have a non-exclusive irrevocable and royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Project.
 - (b) The Interested Party shall be entitled (at its own cost) to full and proper copies of the Documents relating to the Works in the possession or control of the Sub-Consultant and the Sub-Consultant will not claim copyright or a lien in respect of them against the Interested Party.
 - (c) The licence granted to the Interested Party under Clause 9(b) shall include a right for the Interested Party to grant sub-licences.
6. The Sub-Consultant warrants that it has not and will not specify for use in the Project any materials or substances which are not in accordance with current European and Irish Standards and Codes of Practice insofar as they may be applicable or any materials or substances known to be deleterious to health or safety or the durability or suitability of the Works in the particular circumstances in which the same is used.
7. The Interested Party shall be entitled at any time to assign the benefit of this Agreement on two occasions by way of absolute legal assignment to such person or persons as the Interested Party thinks fit without the consent of the Sub-Consultant. The Interested Party shall give the Sub-Consultant prompt notice of any such assignment provided that the giving of such notice shall not be a precondition to the effectiveness of any assignment.
8. The obligations of the Sub-Consultant under this Collateral Warranty shall not be released or diminished by the appointment of any person by the Interested Party to carry out any independent enquiry into any matter, or by any rights of approval, monitoring or inspection that the Interested Party or any person acting on behalf of the Interested Party may have.
9. The Sub-Consultant agrees with the Interested Party not to vary or agree to vary or waive the terms of the Sub-Consultant Appointment without the prior written consent of the Interested Party such consent not to be unreasonably withheld.
10. [If any dispute or difference arises out of or in connection with this Agreement or arising thereunder (a “**dispute**”), then any such dispute shall be and is hereby referred to arbitration and the final decision of such person as the Parties may agree to appoint as arbitrator or failing agreement as may be appointed upon the application of either Party to the President for the time being of the Institute of Engineers of Ireland (“**IEI**”) provided that either Party may by written notice require that such nomination be to an arbitrator that has legal qualifications and with construction dispute experience (and the President shall be obliged to limit his nomination to a person with such qualifications and experience). Every or any such reference shall be deemed to be a submission to Arbitration within the meaning of the Arbitration Act 2010 or any Act amending same. Where appropriate, the Parties agree to adopt the ‘100 Day Arbitration’ procedure issued by IEI. The award of the arbitrator shall be final and binding on the Parties. The language of arbitration shall be English and the venue shall be Dublin.]²⁰
11. Save as otherwise expressly provided for herein, nothing in this Collateral Warranty shall prejudice the Interested Party’s rights at law.

²⁰ LDA Drafting Note: Final forum for resolving dispute TBC on a project by project basis

12. The Consultant has joined in this Agreement to confirm its concurrence with the arrangements made and contemplated by it.
13. This Agreement shall be governed by and construed in accordance with the laws of Ireland.
14. The Sub-Consultant shall have no liability under this Agreement in respect of proceedings issued after the expiration of 12 years from the date of Practical Completion of the Works.
15. Where this Agreement is executed by a partnership, all partners from time to time shall be jointly and severally liable.
16. Counterparts
 - (a) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original of this Agreement but all the counterparts shall together constitute one and the same instrument.
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IN WITNESS whereof the Parties have caused their Common Seals to be affixed the day and year first herein written.

GIVEN UNDER
the Common Seal of
SUB-CONSULTANT
and delivered as a Deed:

Director

Director/Secretary

GIVEN UNDER
the Common Seal of
INTERESTED PARTY
and delivered as a Deed:

Director

Director/Secretary

GIVEN UNDER
the Common Seal of
CONSULTANT
and delivered as a Deed:

Director

Director/Secretary