

DATED

20

RESPOND

(the Company)

[•]

(the Developer)

DEVELOPMENT AGREEMENT

in relation to the Housing Development at [•]



Riverside Two
Sir John Rogerson's Quay
Dublin 2

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THIS DEED OF AGREEMENT is made on day of 20

BETWEEN:

- (1) Respond (company number 90576) having its registered office at Airmount, Dominick Place, Waterford, Co. Waterford (the **Company**)
 - (2) [●] (company number [●] having its registered office at [●] (the **Developer**)¹.
- (each a **Party** and together the **Parties**)

WHEREAS:

- A. The Company has acquired the Site (as hereinafter defined) and wishes to enter into this Agreement with the Developer to procure the design, construction and completion of the Works (as hereinafter defined) in accordance with the Company Requirements (as hereinafter defined).
- B. In consideration of the Developer covenanting with the Company to fully perform and discharge all of the obligations on its part under this Agreement, the Company has agreed to pay the Developer the Contract Sum (as hereinafter defined) and grant the Developer a licence to access and remain on the Site (as hereinafter defined) for the purposes of carrying into effect this Agreement.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Defined Terms Used in this Agreement

In this Deed of Agreement (the **Agreement**) (save where the context otherwise requires or implies) the following words and expressions shall have the meanings assigned to them hereunder:

Accepted Developer Design has the meaning given to this term in Clause 4.7.3;

Applicable Rate² means the VAT rate applicable on the Closing Date as determined by the Finance Act 2025 (as may be amended from time to time), any related Revenue Guidelines and agreed as applicable to this Agreement by the Company and the Funder;

Ancillary Certificate means a certificate as prescribed in the Building Control Regulations given by a competent person to confirm compliance of the design or works comprised in the Development with the Building Control Regulations;

Appendix means the appendix attached to this Agreement;

Assigned Certifier means the suitably qualified, competent, registered professional appointed by the Developer in accordance with the Code of Practice to perform the role of "Assigned Certifier" pursuant to Building Control Regulations, being the party identified as such in Schedule 4 (*Developer's Professional Team*);

¹ The entity to be verified and agreed on a project specific basis and where appropriate, the requirement for a parent company guarantee will be considered.

² Subject to ongoing review and approval by the Company's tax advisors.

Benchmark Unit(s) means:

- (i) the specimen Social Unit; and
- (ii) where:
 - Cost Rental Units are included in the Development; and
 - the Cost Rental Units have a different specification to the Social Units, the specimen Cost Rental Unit

each to be constructed by the Developer to act as quality benchmark(s) and reference point(s) for the Units in the Development and to define agreed quality standards expected in the construction of the Units and quality of the materials inside and outside the Units;

Block means any of the blocks comprising multiple Units to be constructed as part of the Works and which are identified in the plan attached hereto at Schedule 1;

Builder shall have the meaning ascribed to it in the Code of Practice;

Building Contract means the contract for the carrying out of the Works entered into or to be entered into by (1) the Developer and (2) the Building Contractor substantially in the form of the document annexed in Schedule 6;

Building Contractor means the contractor to be employed by the Developer pursuant to the terms of the Building Contract as the contractor for the Works (as at the date of this Agreement being the company identified as such in the Appendix);

Building Control Act means Building Control Acts 1990 - 2021 and any regulations made thereunder (and any amendment or re-enactment of such Act);

Building Control Authority means any authority defined as a Building Control Authority under the Building Regulations;

Building Control Regulations means the Building Control Regulations 1997 – 2021 and any amendments thereto;

Building and Performance Specification means the Building and Performance Specification identified in the Company Requirements (subject to any Variations administered in accordance with this Agreement);

Building Regulations means the Building Control Act and the regulations made thereunder including the Building Regulations 1992-2022 and the Building Control Regulations;

CCA 2013 means the Construction Contracts Act 2013;

Certificate of Compliance on Completion shall mean each Certificate of Compliance on Completion to be executed by the Builder and the Assigned Certifier in respect of the Works or any Section thereof in the format prescribed in the Building Regulations;

Certificate of Practical Completion means the certificate to be issued by the Developer's Architect (subject to and in accordance with the provisions of Clause 10.4 hereof) certifying that the Works have reached Practical Completion;

Chartered Building Surveyor means such chartered building surveyor or other competent person as the Company may appoint from time to time with the approval of the Funder and notify to the Developer;

Chartered Quantity Surveyor means such chartered quantity surveyor or other competent person as the Company may appoint from time to time with the approval of the Funder and notify to the Developer;

Code of Practice means the Code of Practice for Inspecting and Certifying Buildings and Works (September 2016) as published by the Department of the Environment, Community and Local Government (pursuant to Article 20G of the Building Control Regulations) as may be amended and updated from time to time;

Collateral Warranties means the collateral warranty agreements in the forms set out in Schedule 7 to be provided by the Developer, the Building Contractor, each member of the Developer's Professional Team and any Design Sub-Contractor;

Commencement Date means the date on which the Conditions Precedent are either satisfied or waived by the Company in accordance with Clause 2.3;

Commencement Notice means a notice referred to in Section 6(2)(k) of the Building Control Act;

Company Requirements means the plans, drawings (including architect's detailed plans and layout drawings) specifications, engineering calculations and other data relating to the carrying out of the Works and which are set out and/or referred to in Schedule 3A and/or included in the USB Stick appended to this Agreement at Schedule 3A;

Company's Representative means such architect, quantity surveyor, project manager or other competent person as the Company may appoint from time to time, the identity of whom to be as notified in writing to the Developer by the Company;

Conditions Precedent mean the conditions identified in Clause 2.3.1;

Conditions Precedent Deadline Date means the date identified as such in the Appendix;

Contract for Sale means the contract for sale of the Site between the Developer and the Company;

Contract Sum means the fixed price lump sum identified in the Appendix and broken down as set out in the Pricing Document at Schedule 3B;

Cost Rental Unit means any of the Units to be constructed as part of the Development which on completion are to be allocated by the Company for cost rental occupation (as identified in the plan annexed at Schedule 1);

Date of Practical Completion means the date on which the Developer's Architect issues (and is entitled to issue) the Certificate of Practical Completion;

Date for Completion means the date identified as such in the Appendix;

Date for Show Unit Completion means the date by which each Show Unit is to be completed and accessible for inspection by members of the public, as specified in the Appendix;

Defect means any defect, omission, shrinkage or other fault in the Works which is due to:

- (a) materials or workmanship not in accordance with this Agreement; or

(b) any fault or breach of this Agreement by the Developer;

and any damage to the balance of the Works consequent on such defect, omission, shrinkage or other fault;

Defects Liability Period means the period of 12 (twelve) months commencing on the day after the Date of Practical Completion;

Design Certifier means the suitably qualified, competent, registered professional appointed by the Developer in accordance with the Code of Practice to perform the role of "Design Certifier" pursuant to Building Control Regulations, being the party identified as such in Schedule 4 (*Developer's Professional Team*);

Design Sub-Contract means a contract between a Design Sub-Contractor and the Building Contractor;

Design Sub-Contractor means a Sub-Contractor engaged by the Building Contractor to undertake works or provide services which form part of the Works and which include a design element (being those parties identified as such in the Appendix or who are to be appointed to undertake works in respect of the trade packages identified in the Appendix for such Sub-Contracts) and any other Sub-Contractor who is required to issue an Ancillary Certificate in respect of the Works;

Developer's Architect means the individual or firm as described in Schedule 4 (*Developer's Professional Team*) or such other person (being a member of The Royal Institute of the Architects of Ireland) or firm (one at least of whose partners shall be so qualified) as may be appointed by the Developer from time to time to be the Developer's Architect for the purposes of the Works;

Developer's Civil and Structural Engineer means the individual or firm as described in Schedule 4 (*Developer's Professional Team*) or such other person(s) or firm(s) in each case as may be appointed by the Developer from time to time to be the Developer's Civil and Structural Engineer for the purposes of the Works;

Developer's Design means the categories of design identified in the Appendix which are to be produced for the Works and which are to be submitted to the Company by the Developer for the Company's review in accordance with Clause 4.7;

Developer's Fire Services Engineer means the individual or firm as described in Schedule 4 (*Developer's Professional Team*) or such other person(s) or firm(s) in each case as may be appointed by the Developer from time to time to be the Developer's Fire Services Engineer for the purposes of the Works;

Developer's Mechanical and Electrical Engineers means the individual or firm as described in Schedule 4 (*Developer's Professional Team*) or such other person(s) or firm(s) in each case as the Developer may appoint from time to time to be the Developer's Mechanical and Electrical Engineers for the purposes of the Works;

Developer's Professional Team means a collective term to refer to the Developer's Architect, the Developer's Civil and Structural Engineer, the Developer's Fire Services Engineer, the Developer's Mechanical and Electrical Engineer, the Developer's Quantity Surveyor, the Assigned Certifier, the Design Certifier and the Project Supervisor Design Process as individually described in Schedule 4 (*Developer's Professional Team*);

Developer's Quantity Surveyor means the individual or firm as described in Schedule 4 (*Developer's Professional Team*) or such other person or firm as the Developer may appoint or approve from time to time;

Development means the residential housing development as broadly described in the Appendix;

Disability Access Certificates means any disability access certificate(s) required under the Building Control Act in relation to the Development;

Effective Date means the date of execution of this Agreement;

Environment means the following, in so far as they affect human health and social well-being:

- (a) fauna and flora living organisms including the ecological systems;
- (b) land, soil, water (including marine and coastal waters), air, climate and the landscape (natural or man-made structures, whether above or below ground); and
- (c) cultural heritage (natural, tangible and intangible);
- (d) the built environment,
- (e) human health and wellbeing;

Environmental and Social Laws means:

- (a) EU Law, including principles and standards;
- (b) the laws and regulations of Ireland; and
- (c) applicable international treaties,

in each case of which a principal objective is the preservation, protection or improvement of the Environment and/or the protection or improvement of Social Matters;

Escrow Agent means the party to hold the Non-Residential Development Performance Security in accordance with clause 25, the identity of whom is as specified in the Appendix.

EU Law means the *acquis communautaire* of the European Union as expressed through the Treaties of the European Union, the regulations, directives, delegated acts, implementing acts, and the case law of the Court of Justice of the European Union;

Facility Agreement means the agreement between the Company and the Funder in respect of the provision of finance for the carrying out of the Works under this Agreement;

Fire Safety Certificate means any fire safety certificate(s) required under the Building Control Act in relation to the Development;

Force Majeure means

- (a) natural catastrophe, flood, earthquake, volcanic activity, hurricane, typhoon, landslide or tsunami;
- (b) war, act of a public enemy (whether war is declared or not), civil war, riot, civil commotion, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;
- (c) ionising radiation or contamination by radioactivity;
- (d) fire, sonic boom, explosion, impact by aircraft or aerial devices or articles dropped from

them;

- (e) restrictions or restraints of any court or governmental body or authority;
- (f) strike, lockout or labour dispute (that is not solely internal to the workforce of the Building Contractor or any of its subcontractors of any tier);
- (g) epidemic, pandemic or quarantine by order of any authority PROVIDED ALWAYS that any legislative enactment or government or regulatory authority issued requirements, instructions or guidelines in response to the Covid 19 virus will only constitute an event of Force Majeure to the extent that:
 - (i) the enactment, requirement, instruction or guideline:
 - a. is promulgated, made or issued after the Commencement Date; and
 - b. either stops the carrying out of the whole of the Works completely or requires the implementation of measures or work methods which cause greater delay or disruption to the carrying out of the Works than the measures and work methods specified in the Construction Industry Federations "Construction Sector C-19 Pandemic Standard Operating Procedures" issued on 14 April 2020; and
 - (ii) the Developer is bound by law to comply with such enactment, requirement, instruction or guideline or is following guidance of any government regulatory authority having jurisdiction on public health matters;
- (h) an act of terrorism,

which:

- (i) is not caused or contributed to by the act or default of the party which is asserting that it has been affected by Force Majeure (the **Affected Party**) or its employees, agents, subcontractors or consultants of any tier (excluding, in the case of the Company, the Developer and its employees, agents, subcontractors or consultants of any tier); and
- (ii) is beyond the reasonable control of the Affected Party, which that party could not reasonably have provided against before entering into this Agreement and which by the exercise of reasonable care the party could not have been able to prevent or overcome;

Funder means the Housing Finance Agency Public Limited Company (**HFA**) or such other bank or financial institution which provides or agrees to provide funds to facilitate the design and/or construction of the Works or any mortgagee or bank or other person who takes a mortgage or charge of the Works and/or the Site or any part thereof but not for the avoidance of doubt any mortgagee of an individual house or unit forming part of the Works and/or the Site;

Funder's Representative means such architect, quantity surveyor, project manager or other competent person as the Funder may appoint from time to time and notify to the Developer and the Company;

Good Industry Practice means the exercise of that degree of skill, diligence and prudence which would reasonably be expected from a prudent, experienced and skilled builder and developer engaged in Ireland to procure the design and construction of works seeking in good faith to comply

with its contractual obligations, complying with all applicable laws, codes of professional conduct, relevant codes of practice, Irish, European and other relevant standards, building regulations, all conditions of planning and other consents;

HFA Blackout Period means either of the June Blackout Period or the December Blackout Period imposed by the HFA as identified in the Appendix;

Independent Architect means such independent qualified architect registered with the Royal Institute of the Architects in Ireland of at least 10 (ten) years standing as the Parties may agree to nominate or in default of such agreement to be nominated on the application of either party in writing by the President of the Royal Institute of the Architects in Ireland or such person or persons to whom he may from time to time have delegated the power to make such nominations;

Inspection Plan has the meaning set down in Section 7.1 of the Code of Practice;

Insolvent means, in respect of a party, if:

- (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 570 of the Companies Act 2014 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction where such petition, notice or resolution is not withdrawn or revoked within twenty one (21) days of its filing, publication or passing;
- (d) an application is made to court (and not withdrawn within twenty one (21) days of its filing), or an order is made, for the appointment of a liquidator, a receiver or examiner, or if a notice of intention to appoint a liquidator, receiver or examiner is given (and not withdrawn within twenty one (21) days of its issue) or if a liquidator, receiver or examiner is appointed over it (being a company);
- (e) a request is made by the directors of the Party for the appointment of a liquidator, receiver, examiner (or the equivalent);
- (f) the holder of a qualifying floating charge over its assets (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (g) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 (ten) Working Days;
- (h) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (f) above (inclusive); or

- (i) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

a reference to "**Insolvency**" with respect to a person shall be construed as a reference to a person to whom one or other of the above conditions applies;

Interim Certificates of Payment means the interim certificates of payment to issue in accordance with the provisions of Schedule 2 (*Payment Schedule*) of this Agreement;

Laws means any laws applicable and having force in Ireland (without further enactment) and shall include without limitation, EU Law, common law (including the law of equity), all statutes, regulations, directives, decisions, proclamations and any delegated or subordinate legislation (including any rule, order, notice, bye-law, decision or instruments) and further including any code of practice or code of conduct which is enforceable by law;

LDI Policy means a latent defects insurance policy in respect of the Works on terms acceptable to the Company issued by an insurer authorised by the Central Bank of Ireland to issue such policies in Ireland, with a financial security rating of Standard & Poors A or equivalent and establishing the Company and the HFA as insureds³;

Letters of Appointment means the letters or agreements pursuant to which each member of the Developer's Professional Team has been or will be appointed in respect of carrying out of the Works (to be substantially in the form of the drafts annexed hereto at Schedule 5 (*Form of Letters of Appointment*));

Liquidated and Ascertained Damages (Show Unit) means the rate(s) of damages (specified in the Appendix) for which the Developer shall be liable subject to and in accordance with Clause 7.8.6 of this Agreement;

Liquidated and Ascertained Damages (Works) means the rate(s) of damages (specified in the Appendix) for which the Developer shall be liable subject to and in accordance with Clause 10.3 of this Agreement;

Long Stop Date means the date specified as such in the Appendix;

Management Suite means, where such facilities are identified as being required in the Appendix, the suite of offices to be set aside for the Company's management staff within the Development (to the layout and specification set out in the Company Requirements) at the location identified in the Appendix;

Maximum Amount Payable means the fixed price lump sum inclusive of VAT as identified in the Appendix⁴;

Non-Residential Development means the elements of works (if any) identified in the Appendix to be designed and constructed as part of the Works but which are not contemplated to be used as residential housing;

Non-Residential Development Performance Security means the security to be provided by the Developer regarding the works in respect of each element of the Non-Residential Development (if

³ Policy to be approved by the Company's insurance advisor whose consideration of the proposed policy will include but not be limited to assessment of loss of rent cover

⁴ Subject to ongoing review and approval by the Company's tax advisors.

any) in the amount(s) identified in the Appendix (together with any additional security in respect of such works to be provided by the Developer pursuant to Clause 25.7);

Opinion on Compliance means an Opinion on Compliance with the Planning Permission and the Building Regulations to be given by the Developer's Architect pursuant to its Letter of Appointment on Practical Completion of the Works in respect of each Block in accordance with the then standard form of such document issued by the RIAI together with any relevant supporting certification of the Developer's Professional Team;

Payment Schedule means the protocols and procedures in respect of the payments to be made to the Developer under this Agreement as set out in Schedule 2;

Performance Bond means the bond referred to in Clause 17 of this Agreement to be in the form of the draft document attached to Schedule 10 and with a value in the amount as specified in the Appendix;

Planning Acts means the Planning and Development Acts 2000 to 2022, the Building Control Act, the Building Regulations and the technical guidance documents, regulations or orders made or issued thereunder and any statutory modification or re-enactment thereof for the time being in force and any regulations or orders made thereunder and the Fire Services Act, 1981;

Planning Permission means the permission required pursuant to the Planning Acts for the purposes of carrying out the Works (as identified in the Appendix where any relevant planning permissions(s) is/are in place as at the Effective Date);

Practical Completion means that:

- (i) the Works have been carried to such a stage that they can be taken over and used by the Company for its intended purpose and that any items then outstanding or any defects then patent are of a trivial nature only and are such that their completion or rectification does not interfere with or interrupt such use, and
- (ii) all documents and items listed in Schedule 15 have been delivered by the Developer to the Company; and
- (iii) the Works and the Site have been cleared of any builder's debris and all plant, tools, equipment and surplus materials and goods belonging to or placed there by the Contractor or his sub-contractors

and **Practically Completed** shall have the corresponding meaning);

Pricing Document means a fully priced detailed breakdown on which the Developer's tender was based which document is included at Schedule 3B (to be used for the purposes of valuing Variations or preparing Interim Certificates of Payment only and not for any other purpose);

Programme means:

- (i) the building programme to be issued by the Developer pursuant to Clause 14.5.1; or
- (ii) any substitute or revised Programme that is furnished by the Developer to the Company from time to time during the currency of this Agreement (in accordance with Clause 14.5.3 and to which the Company does not take reasonable objection in accordance with Clause 14.5.4);

Project Supervisor Construction Stage means the party identified as such in the Appendix or such other suitably qualified person as is appointed by the Developer to perform the role of Project Supervisor Construction Stage pursuant to the Safety, Health, and Welfare at Work Legislation;

Project Supervisor Design Process means the party identified as such in the Appendix or such other suitably qualified person as is appointed by the Developer to perform the role of Project Supervisor Design Process pursuant to the Safety, Health, and Welfare at Work Legislation;

Relevant Consents means the Planning Permission, the Fire Safety Certificate(s), the Disability Access Certificate(s), all other requirements under the Building Regulations and all other permissions, consents, approvals, licences, certificates and permits in legally effectual form as may be necessary to lawfully commence, carry out, maintain and complete the Works or any part thereof;

Relevant Consent Deadline Date means the date identified as such in the Appendix;

RIAI means the Royal Institute of Architects of Ireland;

RZLT means Residential Zoned Land Tax or any similar or other tax imposed replacing same;⁵

Safety File means the safety file to be compiled and maintained (in digital format or otherwise) pursuant to the Safety, Health, and Welfare at Work Legislation;

Safety, Health, and Welfare at Work Legislation means the Safety, Health, and Welfare at Work Acts 2005 to 2014 including but not by way of limitation the provisions of the Safety, Health and Welfare at Work (Construction) Regulations 2013 to 2021;

Section means any or all of the sections of Works identified as such in the Appendix, such term to be deemed to include (as regards each such Section respectively) a reference to all associated external and infrastructure works to the Units comprised within the Section and all services, common areas and recreational and open spaces and all access routes benefitting the Units within the Section (and each such Section is described and numbered as set out in the Section Particulars in the Appendix);

Section Particulars means the particulars as follows:

- (a) Description;
- (b) Section Sum;
- (c) Date for Completion;
- (d) Applicable Liquidated and Ascertained Damages (Works);

in respect of each Section as set out in the Appendix;

Section Sum means the portion of the Contract Sum applicable to a Section (if any) as set out in the Section Particulars for each Section;

Show Unit(s) means the Unit(s) to be prepared by the Developer in the configuration(s) specified in the Appendix to serve as show unit(s) for the Development and which shall be capable of being

⁵ Treatment to be considered on a project specific basis and in context of RZLT map as evolving over lifetime of project and related planning permission timeline for expiry.

accessed by potential tenants (under the Company's supervision) and which are to be used by the Company for marketing purposes as and from the dates specified in the Appendix;

Site means the lands described and shown for identification purposes only delineated in red on the plan attached to Schedule 1⁶;

Snagging Items means any minor defects and omissions in the Works:

- (a) which do not prevent the Works from being reasonably capable of being used for their purpose as stated in or to be reasonably inferred from the Agreement; and
- (b) the rectification of which will not prejudice the convenient use of the Works;

Snagging List means the list of Snagging Items as issued by the Company's Representative pursuant to Clause 10.4.2;

Social Matters means all, or any of, the following:

- (a) labour and working conditions;
- (b) occupational health and safety;
- (c) rights and interests of vulnerable groups;
- (d) rights and interests of indigenous peoples;
- (e) gender equality;
- (f) public health, safety and security;
- (g) avoidance of forced evictions and alleviation of hardship arising from involuntary resettlement; and
- (h) stakeholder engagement;

Social Unit means any of the Units to be constructed as part of the Development which on completion are to be allocated by the Company for social housing (as identified in the plan annexed at Schedule 1);

Statutory Requirements means all Laws applicable to the design, construction and carrying out of the Works and/or the Site including but not limited to;

- (a) the Relevant Consents;
- (b) Building Regulations;
- (c) Fire Safety and/or Disability Access Certificates;
- (d) consents under the Safety, Health, and Welfare at Work Legislation;
- (e) Environmental and Social Laws; and

⁶ To be Tailte Éireann compliant map.

- (f) the lawful requirements of all competent authorities regulating the Works and/or the use of the Site;

Sub-Contract means any contract in connection with the Works between the Building Contractor and a Sub-Contractor.

Sub-Contractor means any person, firm or company engaged by:

- (a) the Developer (excluding the Building Contractor); or
- (b) the Building Contractor

to carry out any part of the Works, or to provide any material, equipment or services in connection with the Works.

Variation shall take the meaning ascribed to the term in Clause 7.4.1;

VAT means Value Added Tax or any similar or other tax imposed replacing same;

Units means, as the context requires or permits, any or all of the residential units to be constructed as part of the Works on the Site in accordance with the Planning Permission and the Relevant Consents in the locations delineated on the plan annexed at Schedule 1;

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

Works means all works and services required for the carrying out and completion of the Development (as varied pursuant to any Variation instructed pursuant to Clause 7.4) including all works and services required for any associated external infrastructure for the Development, all services, common areas and access routes benefitting the Development as more particularly identified in the Company Requirements.

1.2 Interpretation of the Agreement

The following shall apply in the interpretation of this Agreement:

- 1.2.1 References to the acts or defaults of any party hereto include acts or defaults of any contractor or sub-contractor, employee, or agent declared or authorised by it to perform any of the obligations under this Agreement.
- 1.2.2 All references to headings, sub-headings, paragraphs, sub-paragraphs, Clauses, Sub-Clauses, clauses, sub-clauses, Schedules, or Appendices are references to headings, sub-headings, paragraphs, sub-paragraphs, Clauses, Sub-Clauses, clauses, sub-clauses, Schedules, or Appendices in this Agreement.
- 1.2.3 Headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement.
- 1.2.4 The Schedules to this Agreement (including any Annexes or Appendices thereto) are an integral part of this Agreement and reference to this Agreement includes reference thereto and reference to any Schedule includes reference to any Annex or Appendix thereto.
- 1.2.5 All references to any agreement (including, without limitation, this Agreement), document or other instrument include (subject to all relevant approvals and any other provision of

this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned.

- 1.2.6 All references to any statute, statutory provision, or to any order or regulation shall be construed as a reference to that statute, provision, order, or regulation as extended, consolidated, modified, amended, replaced, or re-enacted from time to time (whether before or after the date of this Agreement) and all statutory instruments, regulations, and orders from time to time made thereunder or deriving validity therefrom (whether before or after the date of this Agreement) provided that between the Parties no new or extended obligations, liability, or restrictions shall be imposed on any party as a result of the operation of this sub-clause.
- 1.2.7 Any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative.
- 1.2.8 All references to any society, institute, or other professional body include any other body established from time to time in succession to, or in substitution of or for carrying out the function formerly carried on by, such society, institute, or other professional body.
- 1.2.9 All references to persons include references to bodies corporate and unincorporate and vice versa;
- 1.2.10 The words “herein”, “hereto” and “hereunder” refer to this Agreement as a whole and not to the particular clause, Schedule, part, section, paragraph, annex or appendix in which such word may be used.
- 1.2.11 Words importing the singular include the plural and vice versa.
- 1.2.12 Words importing a particular gender include all genders.
- 1.2.13 All references to a “day” mean a calendar day.
- 1.2.14 All references to a “week” mean a calendar week.
- 1.2.15 All references to a “month” mean a calendar month.
- 1.2.16 All monetary amounts are expressed in Euro.
- 1.2.17 Any obligation on the Developer or the Company not to do anything shall be deemed to include an obligation not to knowingly permit or knowingly suffer anything to be done.
- 1.2.18 Any reference to a document being in the “agreed form” means in relation to that document the draft of that document which has been initialled by each of the Parties or by their respective solicitors on their behalf by way of identification or which is attached to the Schedules hereto.
- 1.2.19 The Parties have participated jointly in the negotiating and drafting of this Agreement. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

1.3 Sections of the Works

1.3.1 The provisions of the Agreement which are expressed to apply to the whole of the Works (or which are otherwise not expressly stated to apply separately in respect of Sections) shall be construed to apply separately, mutatis mutandis, to each Section save where the context would not permit such a construction, and in this regard (without limitation) references to:

- (a) the Site shall be construed as a reference to such part of the Site as is required in relation to each Section;
- (b) the Works will mean to so much of the Works as is comprised in each Section as set out in the Section Particulars;
- (c) the Contract Sum shall be construed as a reference to each Section Sum as set out in the Section Particulars;
- (d) Practical Completion shall be construed as a reference to Practical Completion for each Section;
- (e) the Date for Completion shall be construed as a reference to the Date for Completion for each Section as set out in the Section Particulars;
- (f) Units (in a context referring to the totality of Units comprised in the Works) shall be construed as a reference to Units comprised in each Section;
- (g) Liquidated and Ascertained Damages (Works) shall be construed as a reference to the Liquidated and Ascertained Damages (Works) applicable to each Section as set out in the Section Particulars (and not the rate specified in the Appendix to apply in respect of the Works as a whole at Clause 10.3);
- (h) the Defects Liability Period shall be construed as a reference to the Defects Liability Period in respect of Works comprised in each Section as set out in the Section Particulars to run from the Date of Practical Completion of the Section; and
- (i) the Retention Fund (or reference to any amounts being "so retained" or words to that effect in Schedule 2) shall be construed as a reference to so much of the Retention Fund (or the amounts "so retained") as is referable to the payments made in respect of the Works in each Section (provided always that the parties agree and acknowledge that amounts retained by the Company in accordance with Schedule 2 and which are referable to any particular Section, may be applied by the Company to make good its loss for any breach of the Agreement by the Developer pursuant to its performance in respect of any other Section).

1.3.2 Where the Works are to be carried out in Sections, on or before the date which:

- (a) is 6 calendar months prior to the Date for Completion of the first Section of the Works due for completion, the Developer shall submit a draft **Sectional Completion Plan** covering the following matters (as a minimum):
 - (i) proposed procedures for Sectional handover;
 - (ii) proposals for compartmentalisation of the different Sections of the Works to facilitate occupation of each Section as it achieves Practical

Completion (such that each Section can separately meet occupancy requirements and the requirements of the Fire Safety Certificate and Disability Access Certificate);

- (iii) waste management strategies for dual use of the Site pending Practical Completion of the whole of the Works;
- (iv) traffic management plans for each stage of Sectional completion identifying proposed plans for the management of traffic for the duration of any dual use of the Site by construction traffic and residents of the development (to the extent applicable);
- (v) site security arrangements post Sectional completion;
- (vi) proposed insurance arrangements for the Site post Sectional completion;

in a form reasonably satisfactory to the Company;

- (b) is 3 calendar months prior to the Date for Completion of the first Section of the Works due for completion, the Developer shall submit a final form Sectional Completion Plan the contents of which must cover the matters referred to in Clause 1.3.2(a) above and be reasonably satisfactory to the Company taking reasonable account of any comments issued by the Company in respect of any draft of the Sectional Completion Plan.

1.3.3 Subject to any amendments to the final form Sectional Completion Plan reasonably requested by the Company, the Developer shall implement the Sectional Completion Plan issued under Clause 1.3.2(b) for the purposes of the administration of Sectional completion.

2 CONDITION PRECEDENT

2.1 Rights and Obligations Conditional

Subject to Clause 2.2, the rights and obligations of the parties under this Agreement are conditional upon the satisfaction or waiver of the Condition(s) Precedent set out in Clause 2.3.1 of the Agreement.

2.2 Day One Clauses

The rights and obligations of the parties under the following clauses commence on the Effective Date:

- 1 Definitions and Interpretation
- 2 Conditions Precedent
- 12 Corporate Warranties
- 13 Indemnity and Insurance (Clause 13.1 only)
- 18 Force Majeure
- 19 Termination

- 20 Dispute Resolution
- 21 Confidentiality
- 22 Set Off
- 23 Data Protection
- 24 General Provisions

2.3 Conditions Precedent

2.3.1 The Condition(s) Precedent to be satisfied or waived is/are:

- (a) completion by the Parties of the Contract for Sale for the Site;
- (b) the delivery to the Company of the Performance Bond [and an executed Assignment of Performance Bond in the form set out in Schedule 11⁷];
- (c) the production by the Developer of evidence that all arrangements are in place such that on Practical Completion, the Works and each of the Units will be insured under an LDI Policy (and that any premia required to be paid in respect of that policy prior to the commencement of the Works has been paid);
- (d) [the cleared transfer by the Developer to the Escrow Agent of the Non-Residential Development Performance Security;]⁸
- (e) [●others●]⁹:

2.3.2 The Condition(s) Precedent is/are for the benefit of the Company and may only be waived by the Company in its sole discretion. The exercise of this discretion does not require the Developer's consent or approval (provided always that the Company shall not be entitled to waive the condition at Clause 2.3.1(a)).

2.3.3 The Company will promptly notify the Developer in writing of the date on which any Condition Precedent has been satisfied or waived in accordance with Clause 2.3.2 by the Company.

2.4 Failure to satisfy Conditions Precedent

If any Condition Precedent is not satisfied or waived by the Conditions Precedent Deadline Date then:

- 2.4.1 either Party may terminate this Agreement by notice to the other Party and this Agreement will cease to be of further legal force and effect;
- 2.4.2 The Parties will each bear their own costs of and incidental to the preparation, negotiation and signing of the Agreement and any activities performed subsequent to the signing of the Agreement; and

⁷ Required where Performance Bond being furnished by Building Contractor

⁸ For inclusion where the development includes commercial or non-residential elements.

⁹ Identify and insert any other Conditions precedent

- 2.4.3 save for any obligations and rights which have accrued pursuant to the provisions referred to in Clause 2.2 (or their breach) prior to the date of any termination under this clause, the Parties will have no further obligations or liabilities under, arising out of or in connection with the Agreement (including in connection with its termination).

2.5 **Work/Payment prior to Commencement**

The Parties agree and acknowledge that:

- (a) any work carried out in respect of the Works by or on behalf of the Developer prior to the Commencement Date shall (on and from the Commencement Date) be deemed to have been carried out pursuant to the terms of this Agreement (and subject to its requirements);
- (b) any payment made by or on behalf of the Company to the Developer in respect of any work referred to in Clause 2.5(a) shall be deemed to be a payment made to the Developer on account of the Contract Sum.

3 **APPOINTMENT AND RELEVANT CONSENTS**

- 3.1 The Company hereby appoints the Developer to design, construct and complete the Works or to procure the design, construction and completion of the Works, at the Developer's sole cost in accordance with the terms of this Agreement. The Developer hereby accepts this appointment on the terms and conditions of this Agreement.

- 3.2 In so far as they have not already been obtained, the Developer shall apply for and use all reasonable endeavours to obtain at its cost the Relevant Consents to enable the carrying out of the Works and if a Relevant Consent is refused then the Developer will at its own cost, appeal the refusal or take such other action as may be appropriate in order that it may be in a position to proceed as soon as practicable with the Works and the Developer shall not and shall not be required to commence or permit the commencement of the carrying out of the Works until:

3.2.1 the Relevant Consents have been obtained; and

3.2.2 the Developer has:

- (a) discharged all charges, costs, fees and expenses in connection with obtaining the Relevant Consents (including, without prejudice to the generality of the foregoing, satisfaction of all financial, bond/security and Part V conditions in the Planning Permission); and/or
- (b) in lieu thereof entered into a phasing agreement with the local authority for the phased payment of all such financial and bond/security contributions in the Planning Permission (such phasing agreement and related correspondence with the local authority to be approved in advance by the Company);

provided always that the Company shall give to the Developer all necessary information and co-operation (within the Company's control) requested in writing by the Developer such as the Developer reasonably requires to enable the Developer to fully and effectively perform its obligations under this clause.

FOR THE AVOIDANCE OF DOUBT, in the event of the relevant local authority agreeing to waive any of the financial contributions payable under the Planning Permission, to the extent only that the Contract Sum includes allowance for financial contributions that have been waived, any such waiver (including any VAT which would have been payable thereon) shall be reflected as a

deduction from the Contract Sum and such waived amounts (including any VAT which would have been payable thereon) shall not be payable by the Company to the Developer.

3.3 If the Developer has not received the Relevant Consents by the Relevant Consent Deadline Date, the Company may:

3.3.1 terminate this Agreement by notice in writing to the Developer (which shall be deemed to be a termination under Clause 19.1 hereof); or

3.3.2 (at the cost of the Developer) itself apply for Planning Permission for the Works in relation to the Site in which event the Company will provide:

(a) a copy of the planning application as proposed to be submitted to the Developer not less than 7 (seven) Working Days prior to its lodgement;

(b) copies of all notices, requests for information or other communications to and from the local authority in connection with the Planning Permission and respond (at the cost of the Developer) to all requests for information in full and in accordance with the timelines for such submission.

3.4 The Developer is solely responsible and/or liable for any and all charges, costs, fees, and expenses or otherwise in connection with obtaining the Relevant Consents (and any such costs incurred by the Company pursuant to Clause 3.3.2 shall be recoverable from the Developer as a debt due).

3.5 The Developer shall, within a reasonable time after any written request from the Company, furnish the Company with copies of correspondence with the relevant local authority relating to the Works, including but not limited to the Planning Permission.

3.6 The Developer shall:

3.6.1 ensure that the Relevant Consents are preserved for, *inter alia*, the benefit of the Works and that the Relevant Consents remain in full force and effect for at least the period up to the Date of Practical Completion, to include making all necessary applications to the local authority to further extend the Planning Permission; and

3.6.2 apply for and obtain all necessary orders for the stopping up or diversion of highways or footpaths to the extent that they may be required to enable the Works to be carried out.

For the avoidance of doubt, the Developer shall be liable for all costs associated with its obligations under this Clause 3.6 and the Developer's obligations shall extend to ensuring that the Planning Permission is preserved and/or extended as specified in Clause 3.6.1 in order to facilitate the Company claiming any RZLT abatement applicable to the Site. The Developer shall indemnify the Company against all costs associated with any breach of such obligation including RZLT charges, interest and any related penalties.

4 DESIGN

4.1 Letters of Appointment

The Developer agrees to either itself engage, or procure that the Building Contractor engage, the Developer's Professional Team pursuant to the Letters of Appointment (and where the Developer has engaged the Developer's Professional Team it may novate the relevant appointments to the Building Contractor).

4.2 Due Performance under Appointments

The Developer:

4.2.1 itself shall procure; or

4.2.2 where the Letters of Appointment have been executed by or novated to the Building Contractor, procure that the Building Contractor shall procure

the due performance and observance of the obligations and duties of the Developer's Professional Team pursuant to the Letters of Appointment.

4.3 **Amendment of Appointments**

The Developer:

4.3.1 shall not amend any of the terms of the Letters of Appointment; and

4.3.2 where the Letters of Appointment have been executed by or novated to the Building Contractor, shall procure that the Building Contractor shall not amend any of the terms of the Letters of Appointment;

without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

4.4 **Administration of Appointments**

The Developer:

4.4.1 shall itself not; and

4.4.2 where the Letters of Appointment have been executed by or novated to the Building Contractor, shall procure that the Building Contractor does not;

do any of the following:

- (a) do or omit to do any act such as to entitle any member of the Developer's Professional Team to treat as terminated its appointment under a Letter of Appointment;
- (b) exercise or seek to exercise any right which may be available to determine the appointment of a member of the Developer's Professional Team under the relevant Letter of Appointment or to treat it as determined; or
- (c) waive, release, vary nor estop itself from enforcing or seeking redress for any obligation or duty of any of the Developer's Professional Team under the relevant Letter of Appointment in any way that will or may prejudice the interest of the Company;

without the Company's written approval (such approval not to be unreasonably withheld or delayed).

4.5 **Compliance with Appointments**

The Developer:

4.5.1 shall itself comply; and

4.5.2 where the Letters of Appointment have been executed by or novated to the Building Contractor, shall procure that the Building Contractor shall comply;

in all material respects with any applicable obligations and duties under the Letters of Appointment.

4.6 Failure to Comply with Appointments

The Developer shall notify the Company as soon as reasonably practicable after becoming aware of any failure by the Developer, the Building Contractor (where applicable) or by any member of the Developer's Professional Team to comply with any of their respective obligations under the Letters of Appointment.

4.7 Design Review

4.7.1 The Developer shall, without charge to the Company, provide:

- (a) 1 hard copy (to a scale not smaller than 1 to 100); and
- (b) a digital copy;

of all Developer's Design (but, for the avoidance of doubt, excluding any design identified in Schedule 3A as having been approved by the Company) on or before the date which is 10 (ten) Working Days prior to the date on which the Developer is to commence procurement or construction work in relation to the relevant element of the Works.

4.7.2 All design submitted to the Company pursuant to Clause 4.7.1 shall include:

- (a) a copy of the relevant design risk assessment in relation to the submitted Developer's Design;
- (b) a certificate from each relevant designer to the effect that the design comprised in the submission is compliant with all relevant requirements of the Agreement.

4.7.3 Without prejudice to any other rights the Company may have in respect of defective or non-compliant works or services under the Agreement, the Company may, within 10 (ten) Working Days of receipt of any Developer's Design:

- (a) reject the design where it is not in accordance with the Agreement or if the relevant element of the Works, when constructed in accordance with that design, will be non-compliant with the Agreement (giving particulars of any identified non-compliances);
- (b) otherwise provide comment on the design; or
- (c) confirm it has no comment on the submitted design;

by notice in writing to the Developer (and any Developer's Design which is not rejected by the Company pursuant to Clause 4.7.3(a) above shall be referred to as **Accepted Developer Design**).

4.7.4 Where the Company:

- (a) rejects any Developer's Design in accordance with Clause 4.7.3(a), the Developer shall rectify any non-compliant design and reissue the design to the Company for further review (in which event the earlier provisions of this Clause 4.7 shall reapply) before the Developer commences procurement and/or construction in respect of the affected element of the Works;

- (b) makes comment on any Developer's Design in accordance with Clause 4.7.3(b), the Developer shall, at its own cost, take the Company's comment into account (to the extent required to ensure compliance with the Agreement including, without limitation, to ensure compliance with the Planning Permission and the Building Regulations) in proceeding with any necessary procurement and/or the execution of the Works; or
- (c) issues no notice in accordance with Clause 4.7.3 within 10 (ten) Working Days of the submission to it of any Developer's Design, without prejudice to Clause 4.7.8 or any rights the Company may have in respect of Defects, the Company shall be deemed to have confirmed that it has no comment on the design (and such design shall be deemed to be Accepted Developer Design for the purposes of this Agreement).

4.7.5 The Developer shall not commence the construction of any Works pursuant to any Developer's Design until the date the earlier of:

- (a) the date of issue of a notice by the Company confirming that:
 - it has comments on the design but does not reject it; or
 - it has no comment on that design;in accordance with the provisions of Clause 4.7.3; or
- (b) the date on which the Company is deemed to have confirmed that it has no comment on the design in accordance with Clause 4.7.4(c);

and thereafter shall carry out (or procure the carrying out of) the Works in accordance with all Accepted Developer Design.

4.7.6 Where the Company has wrongfully rejected any Developer's Design pursuant to its review under this Clause 4.7, the Developer shall be entitled to make application for an appropriate extension of time, such application to be made in accordance with and subject to Clause 10.2.

4.7.7 The Developer shall:

- (a) give the Company at least 5 (five) Working Days' notice of any design review meetings with the Developer's Professional Team which are scheduled to discuss:
 - any design which the Company has rejected or commented on under Clause 4.7.3 above;
 - the discussion of the results of any technical due diligence carried out in respect of any Developer's Design reviewed by the Company;
 - design in respect of any elements of the Works which the Company has at any time identified to the Developer (by notice in writing) as being of interest to the Company;
- (b) allow Company representative(s) to attend all such meetings; and
- (c) take due regard of any comments made by the Company representative(s) at those meetings.

4.7.8 Subject to Clause 4.7.6, the Developer shall not be released from any liability in respect of any Developer's Design prepared for or on its behalf pursuant to the Company's:

- (a) receipt, review, comment, approval, certificate, acceptance or deemed or inferred approval or acceptance in respect of any Developer's Design or any other submission to the Company made by the Developer for the purposes of the Agreement; or
- (b) failure to review, comment upon or reject any such Developer's Design (or any other submission of the Developer), including any failure to detect, comment upon or notify the Developer of, any errors, omissions or non-compliance with the requirements of the Agreement contained in such Developer's Design;

and otherwise releases the Company from all claims (including for any additional costs or extension of time) and liability arising out of or in connection with same.

4.7.9 Any dispute in relation to whether any Developer Design is compliant with the Agreement may be referred to the Independent Architect. In respect of any such dispute, the Independent Architect shall (a) act as an expert and not as an arbitrator and (b) shall permit oral submissions and (if he deems it appropriate) written submissions to be made by the Parties hereto and by their advisors. The Independent Architect's decision shall be final and binding on the Parties.

4.8 Developer Design Revisions

4.8.1 The Developer may propose to the Company revisions to any design or specification comprised in the Company Requirements or in any Accepted Developer Design where:

- (a) the proposed revision is reasonably required to comply with any relevant requirements of this Agreement, Relevant Consents, any applicable Statutory Requirements or the requirements or recommendations of any competent body or authority (the **Requirements**);
- (b) the existing design or specification includes a requirement for goods or materials that have ceased to be reasonably available or only available on terms of purchase or with delivery periods that are not commercially acceptable to the Developer or the Building Contractor (each acting reasonably);

and any such proposal shall be made by notice in writing to the Company (**Substitution Notice**) giving particulars of the proposal and the reasons why the revision is required to be implemented, evidence of non-availability (if applicable) and confirmation of the compliance of the proposed revisions with the Requirements. Each such notice shall identify on its face that it is a **Substitution Notice under Clause 4.8 of the Development Agreement**.

4.8.2 Any design or specification proposed to be substituted for any existing element of the Company Requirements or Accepted Developer Design pursuant to Clause 4.8.1 must:

- (a) provide for works which would not adversely affect the quality, lettability, appearance or investment value of the Works as compared to the works required under the design or specification originally included in the Company Requirements or Accepted Developer Design;
- (b) provide for a revised design or specification which contemplates levels of finish, specification and performance equal to or better than any relevant design or

specification originally included in the Company Requirements or Accepted Developer Design;

- (c) contemplate varied work which is aesthetically consistent with the balance of the Works provided for in the existing Company Requirements or Accepted Developer Design.

4.8.3 Any Substitution Notice issued under this clause shall be issued by the Developer prior to the incorporation into the Works of the design or specification proposed for substitution. The Company shall by notice in writing indicate its approval or rejection of a proposed substitution as soon as it is reasonably possible to do so but in any event within 10 (ten) Working Days of its receipt of the relevant Substitution Notice (and shall be deemed to have approved of the proposed substitution failing the issue of such notice within the 10 (ten) Working Day period). The Company's approval shall not be unreasonably withheld (but, for the avoidance of doubt, any withholding of its approval shall not be deemed unreasonable where the design or specification proposed for substitution does not comply with the requirements set out in Clause 4.8.2 above).

4.8.4 The Developer:

- (a) shall not be entitled to any extension of time, any adjustment to the Contract Sum or to make claim for additional costs under or in connection with this Agreement; and
- (b) shall not be relieved of any duty, obligation or liability under or arising out of this Agreement;

by reason of any substitution of design or specification under this clause 4.8.

4.9 **Design Compliance**

The Developer undertakes to the Company that the design of the Works shall be prepared such that, when constructed in accordance with that design, the Works when complete shall comply with the Company Requirements, the Relevant Consents, any Statutory Requirements and any other relevant requirements of this Agreement.

4.10 **IP Licence**

4.10.1 The Developer hereby grants (or, where relevant copyright vests with third parties, shall procure that the relevant third parties grant) to the Company an irrevocable and royalty free licence (with a right to grant sub-licenses) to copy and use all designs, drawings, reports, specifications, bills of quantities, schedule of rates, calculations and other documents provided by or on behalf of the Developer in connection with the Works for any purpose related to the Works (including, without limitation, the construction, completion, reconstruction, modification, use, sale, letting, advertisement and repair thereof). The Developer shall not be liable for any use by the Company or its appointee of any design, drawings or other documents for any purpose other than that for which same were prepared and provided by or on behalf of the Developer.

4.10.2 The Developer shall procure that the licence(s) to be provided or procured by the Developer pursuant to Clause 4.10.1 shall entitle the Company to grant, without having to obtain any consent from the Developer or any third party, corresponding copyright licences to any person acquiring an interest in the Works from the Company (including any security over the Company's interest).

5 CONSTRUCTION

5.1 Engagement of Building Contractor

The Developer agrees to

- 5.1.1 engage the Building Contractor pursuant to the Building Contract annexed at Schedule 6;
- 5.1.2 procure the due performance and observance of the obligations and duties of the Building Contractor under the Building Contract;
- 5.1.3 not amend any of the terms of the Building Contract without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed);
- 5.1.4 comply in all material respects with its obligations and duties under the Building Contract.

5.2 Administration of Building Contract

The Developer shall not:

- 5.2.1 do nor omit to do any act such as to entitle the Building Contractor to treat as terminated the Building Contract;
- 5.2.2 exercise or seek to exercise any right which may be available to determine the Building Contract or to treat it as determined;
- 5.2.3 waive, release, vary nor estop itself from enforcing or seeking redress for any such obligation or duty of the Building Contractor under the Building Contract in any way that will or may prejudice the interest of the Company;

without the prior written approval of the Company (such approval not to be unreasonably withheld or delayed).

5.3 Failure to Comply with Appointments

The Developer shall notify the Company as soon as reasonably practicable after becoming aware of:

- 5.3.1 any failure by the Developer or by the Building Contractor to comply with any of their respective obligations under the Building Contract; and
- 5.3.2 any failure by the Building Contractor or by any Sub-Contractor to comply with any of their respective obligations under any Sub-Contracts.

6 COLLATERAL WARRANTIES

6.1 The Developer shall itself execute and deliver to the Company a Collateral Warranty in favour of:

- 6.1.1 the Funder upon execution of the Agreement; and
- 6.1.2 any purchaser of the whole or a substantial part of the Works or any other party the Company or Funder reasonably requires within 15 (fifteen) Working Days of a request from the Company or Funder to do so,

such Collateral Warranties to be substantially in the form annexed at Schedule 7 Part 1.

6.2 The Developer shall deliver to the Company executed Collateral Warranties from:

6.2.1 the Building Contractor;

6.2.2 each member of the Developer's Professional Team; and

6.2.3 any Design Sub-Contractor;

in favour of:

6.2.4 each of the Company and the Funder, upon execution of the Agreement (or, in respect of any warranting party that has not been contracted in respect of the Works as at the date of execution of the Agreement, then within a reasonable period after the request of the Company which such request may only be issued after that party has been so contracted); and

6.2.5 any purchaser of the whole or a substantial part of the Works or any other party the Company or Funder reasonably requires within 15 (fifteen) Working Days of a request by the Company or Funder to do so;

and each such Collateral Warranty is to be substantially in the form of the relevant form annexed at Parts 2, 3 and 4 of Schedule 7 and shall be accompanied by a certified copy of the underlying contract where not already in the possession of the Company (with commercial detail redacted where necessary). Where a warranting party has not been contracted as at the date a Collateral Warranty is to be provided as set out above, the Developer shall procure that such warranty is provided to the Company within 15 (fifteen) Working Days of the date of the relevant contract.

7 WORKS

7.1 Carrying out the Works

The Developer hereby covenants with the Company that at its own cost and expense it shall carry out or procure the carrying out and completion of the design and construction of the Works as follows:

7.1.1 using the standard of reasonable skill and care that would reasonably be expected from a prudent, experienced and skilled developer engaged in Ireland to procure the design and construction of works of a similar nature and scope as the Works;

7.1.2 in accordance with the Company Requirements (including the Building and Performance Specification), any Accepted Developer Design and to ensure that the Works when complete are fit for their intended purpose as specified in or to be reasonably inferred from this Agreement;

7.1.3 in a good and workmanlike manner with good quality robust materials fit for their purposes in accordance with Good Industry Practice;

7.1.4 in accordance with all Statutory Requirements, including without limitation:

(a) the Building Control Act;

(b) the Safety, Health and Welfare at Work Legislation;

(c) all Environmental and Social Laws;

7.1.5 in the selection of materials and goods for the Works such that it shall not use or specify for use (or permit the use or the specification by others to the extent within its reasonable control) in the design and / or construction of the Works any substances or materials which, at the time of specification:

(a) are not in accordance with Irish standards or codes of practice in so far as they may be applicable or relevant (and if there are no Irish standards or codes of practice, then the appropriate European or British standards or codes shall be applicable, as relevant); or

(b) are known to the building trade or profession to be deleterious to health or safety or the durability or suitability of the Works in the particular circumstances which the same was used.

7.2 Developer Warranties regarding the Works

The Developer acknowledges and warrants to the Company that:

7.2.1 it has, or has procured, the necessary skill and experience to perform its obligations under this Agreement and has satisfied itself in relation to the costs associated with the completion of Works and compliance with its obligations hereunder;

7.2.2 it has satisfied itself that the Company Requirements are suitable to enable the Developer to carry out the design and construction of the Works;

7.2.3 it has satisfied itself as to the nature and extent of the Works together with the nature and extent of the obligations and risks assumed by it under this Agreement;

7.2.4 it has examined the Site and satisfied itself in all respects as to the form and nature of the Site, the boundaries and access thereto;

7.2.5 it has gathered all information that is necessary to perform its obligations under this Agreement and has satisfied itself, as to the nature, location and condition of the Site (including hydrological, geological, geo-technical and sub-surface conditions), the ground and sub-soil therein and access thereto, and information relating to local conditions and facilities and the quality of existing structures;

7.2.6 it has satisfied itself as to the character, quality and quantity of the labour, materials, equipment and facilities needed for the Works, wage levels, safety requirements, environmental matters, availability of utilities, legal and regulatory requirements and approvals and all other matters which may affect the satisfactory provision of the Works;

7.2.7 it has generally obtained for itself all necessary information as to any other factors which would affect its decisions to enter into this Agreement or the terms upon which it would do so.

7.3 Other Obligations regarding Performance of the Works

The Developer:

7.3.1 shall provide or procure all personnel, equipment, material, services and other resources necessary or appropriate for the full and proper performance of the necessary works in respect of the Development;

- 7.3.2 shall not, without the prior consent of the Company (such consent not to be unreasonably withheld or delayed), remove or permit or suffer to be removed from the Site until no longer required, any building materials (other than inferior or unfit materials removed for the purpose of being replaced by proper materials) or plant brought upon the Site for the purpose of constructing the Works **PROVIDED HOWEVER** that the Developer shall be entitled to remove surplus materials and plant and machinery which are not required for the Works;
- 7.3.3 will cooperate with the Company to ensure that proper arrangements will be made with the supply authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the Works (such services to be provided at the Developer's cost to the extent required for the execution of the Works) and the Developer shall procure that the Programme will, so far as reasonably practicable, ensure that sufficient time is allowed and proper arrangements made with supply authorities for the provision of the said services;
- 7.3.4 shall comply with (and shall procure that the Building Contractor complies with) all Statutory Requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement and with any applicable statutory terms relating to minimum pay including but not limited to the Industrial Relations Acts 1946 to 2004 and to any applicable legally binding sectoral agreements.

7.4 Variations

- 7.4.1 The Company may, at any time and from time to time, through issue of a written instruction, direct the Developer to vary the Works and/or any of the Developer's obligations under this Agreement (including without limitation by omission) provided that the instruction requires works or services or the performance of other or different obligations which are of a character and extent reasonably contemplated by, and capable of being carried out under, the provisions of the Agreement. Subject to Clause 7.4.3, any such instruction shall constitute a "**Variation**" for the purposes of this Agreement. No Variation shall vitiate this Agreement.
- 7.4.2 Subject to Clause 4.8, the Developer shall not vary the Works except as directed by the Company. Subject to the provisions of this Clause 7.4, the Developer shall carry out any additional or different works or services required pursuant to any instructed Variation in accordance with all relevant requirements of this Agreement (including without limitation such that the Works, when completed as varied, are compliant with the Planning Permission, any other Relevant Consents and the Building Regulations).
- 7.4.3 Where and to the extent an instruction issued by the Company was issued:
- (a) to ensure the Developer's compliance with the Agreement;
 - (b) by reason of or occasioned by some breach of this Agreement or a negligent act or omission by the Developer or its employees, agents, subcontractors or consultants (of any tier);

the instruction shall not constitute a Variation and the Developer shall have no right to make any claim in relation to the instruction, whether under or in connection with this Agreement or otherwise at law (and the Company shall not be liable on any such claim).

- 7.4.4 (a) If the Developer has received from the Company:

- (i) an oral instruction (including an oral instruction which is recorded or referred to in correspondence, any relevant meeting minutes or in any other written document); or
- (ii) a written instruction which is not expressly stated on its face to be a **Variation Under Clause 7.4**

and which the Developer believes to be a Variation, then the Developer shall so advise the Company by notice in writing prior to the Developer commencing the implementation of the instruction. All such notices shall be addressed to the Company. The Developer shall only proceed with the implementation of such an instruction when the Company issues a written confirmation to so proceed in response to the Developer's notice. To the extent that the instruction comprises a Variation, it shall be administered in accordance with this Clause 7.4.

- (b) The Developer agrees and acknowledges that:
 - (i) its compliance with the notification provisions of Clause 7.4.4(a) in respect of any oral or written instruction giving rise to a Variation; and
 - (ii) the issue of a written confirmation of the relevant instruction by the Company in accordance with Clause 7.4.4(a)

shall be conditions precedent to any entitlement it has (whether under or in connection with the Agreement or otherwise at law) to recover any additional costs, or to claim any adjustment in the Contract Sum or extension of time under Clause 10.2 pursuant to the relevant instruction (and the Company shall not be liable in respect of any claim by the Developer in relation to the instruction in the event of any non-compliance with such conditions).

- 7.4.5 (a) The Company may from time to time by notice in writing request that the Developer investigate both the cost and time impact of a proposed instruction which the Company contemplates may give rise to a Variation. The Company shall provide sufficient details of the proposed instruction to enable the Developer to investigate same. The Developer shall, at its cost, within 10 (ten) Working Days of receipt of such written request, furnish to the Company a detailed quotation (**Variation Quotation**) in respect of the proposed instruction which shall include:
- (i) particulars as to the effect of the proposed instruction on the carrying out of the Works or any other obligation of the Developer under the Agreement, identifying how (if it does) that the instruction would vary the Works or the obligation;
 - (ii) particulars as to any impact on any critical path activities showing in the then current Programme that would result from the implementation of the proposed instruction and the Developer's opinion as to whether it would be entitled to an extension of time if the instruction was issued (and, if so, the duration of the required extension of time and the additional costs to be reasonably and necessarily incurred by the Developer as a direct result of the delay);
 - (iii) the Developer's quotation to carry out any additional or different works or services that would be required in respect of the proposed instruction, with particulars as to:

- (1) the quantities of, and applicable rates for, those additional or different works or services; and/or
- (2) the corresponding information in respect of deleted works and services where the Company has proposed that works or services be omitted;

and the Developer's quotation in this regard shall provide for all costs in respect of the implementation of the instruction including value added tax, Developer's Professional Team fees and (if applicable) the costs of delay and/or disruption that will result from the instruction.

- (b) Where the Company proceeds to issue an instruction the subject of a Variation Quotation, the Developer's entitlements under the Agreement in respect of the instruction shall not exceed the entitlements in relation to additional costs and time that were identified by the Developer in the Variation Quotation.
- (c) As soon as practicable after receipt of a Variation Quotation from the Developer, the Company shall indicate to the Developer by notice in writing whether or not the Company wishes to proceed with the proposed instruction the subject of the quotation and, in circumstances where notice is given that the Company wishes to proceed, the Developer shall perform and carry out (or procure the performance and carrying out) of the relevant instruction.

7.4.6 Subject to Clauses 7.4.3, 7.4.4 and 7.4.5(b), as soon as possible after the issue of an instruction which gives rise to a Variation:

- (a) the Chartered Quantity Surveyor shall price the Variation by making a reasonable assessment of the additional, reduced or different costs that will result from the Variation (to include any delay costs where applicable) using the following order of precedence in respect of the rates and prices to be applied to the Variation valuation assessment:
 - (1) prior agreement (including where the Company has accepted a Variation Quotation from the Developer);
 - (2) if paragraph (1) does not apply, applicable rates or prices from the Pricing Document, where the relevant work is of a character similar to that to which the aforesaid rates or prices apply and is carried out in similar conditions and to the extent that it is reasonable to use them (and such rates might be adjusted to reflect differences in the precise nature of the necessary work, if applicable and reasonable);
 - (3) if neither paragraphs (1) nor (2) apply, reasonable rates or prices, which shall include a reasonable amount for profit and overheads, where applicable;
- (b) the price so determined by the Company shall be added to or deducted from the Contract Sum as applicable; and
- (c) any applicable extension of time shall be administered in accordance with and subject to the provisions of Clause 10.2.

- 7.4.7 The Developer may make claim for payment for any works or services carried out in respect of a Variation with the next payment claim due after those works or services have been performed.

7.5 The Site

- 7.5.1 The Developer shall observe and comply with (and shall procure that the Building Contractor observes and complies with) all rules and regulations as to the carrying out of the Works and as to access to and egress from and within the Company's property as are set out in the site access plan attached at Schedule 18.

- 7.5.2 As and from the Commencement Date and at all times during the construction of the Works, the Developer shall erect such hoardings and fencing (**Hoarding**) along the outside boundaries of the Site (and/or any area outside the Site boundary) as may be required from time to time in the interest of branding, safety and security (and without limitation, the Developer shall construct all Hoarding in accordance with the Hoarding specification in the Company Requirements).

- 7.5.3 The Developer shall:

- (a) comply or procure the compliance with the conditions of any consent, permit and/or licence from the local authority regarding the Hoarding and/or any area outside the boundary of the Site bounded by the Hoarding;
- (b) maintain, alter and adapt the Hoarding as required in the Company Requirements at all times in accordance with the requirements and subject to the approval of the Company.

- 7.5.4 The Developer shall otherwise ensure that at all times the Site will be:

- (a) secured to the extent reasonably practicable against unauthorised entry;
- (b) kept tidy and properly cleared of surplus materials, rubble, rubbish or waste and that no goods or materials are brought onto Site prematurely and which are not required within a reasonable time for the carrying out of the construction of the Works.

- 7.5.5 The Developer shall ensure that each of:

- (a) the Funder's Representative (or any person nominated by the Funder to act on their behalf);
- (b) the Company's Representative (or any other person nominated by the Company to act on their behalf which may include, without limitation, representatives of the Company's Asset Management and Tenant Management teams);
- (c) the Assigned Certifier;
- (d) any Chartered Building Surveyor;
- (e) the Chartered Quantity Surveyor;

are able at all reasonable times but on reasonable written notice to have access to:

- (f) the Site; and

- (g) all other places where the Works are being executed and any place where any items to be incorporated into the Works are produced, stored, extracted or prepared, or where any other obligation of the Developer under this Agreement is being performed;

to inspect, test, observe and examine the Works and all such items and activities **PROVIDED ALWAYS** that in exercising such access rights those parties shall comply with:

- (h) the reasonable directions and requirements of the Building Contractor (including any requirements of the Building Contractor's health and safety plan for the Site); and
- (i) the reasonable directions and requirements of any relevant third party (with charge of any location outside the Site where any items to be incorporated into the Works are being produced, stored, extracted or prepared);

and will not hinder, delay or impede the progress of the Works (whether or not at the Site) and will not issue any instructions to any person carrying out the Works (to include but not limited to the Building Contractor) other than any instructions permitted under this Agreement.

7.5.6 The Developer shall procure that at the Date of Practical Completion the Site shall be left:

- (a) in good repair and condition, cleared of all rubbish, rubble and unused building materials, plant, equipment and temporary structures used in the carrying out of the Works;
- (b) fully accessible at ground floor level to facilitate the proper use and enjoyment of the Development for its intended use,

and that any damage to the footpaths and roads surrounding the Site caused by the Works shall be reinstated and left fit for their intended purpose.

7.6 **Adjoining Areas**

7.6.1 The Developer will at its own cost:

- (a) during the execution of the Works and the rectification of Defects, take such precautions as are reasonably necessary to protect any adjoining or neighbouring property from damage or loss pursuant to such activity; and
- (b) support, shore up, protect and make proper provision for the support and use of any adjoining or neighbouring lands buildings, walls, roads and footpaths which may be on or partly on or adjoining the Site to the extent affected by construction activity associated with the Works.

7.6.2 Without prejudice to the foregoing, unless the Agreement expressly provides to the contrary, the Developer shall (as part of the Works) perform all additional works rendered necessary as a result of the carrying out of the Works or the rectification of Defects in order to uphold or ensure the integrity or functionality of:

- (a) any buildings or other structures situate on the adjoining property or adjacent to or opposite the Site; and
- (b) any public utility services in, under or over the Site; and

- (c) the surface of any right of way adjoining or near the Site (excluding any public roadways, unless these are damaged pursuant to the carrying out of the Works);

notwithstanding that such additional works are not otherwise expressly identified in this Agreement as being required as part of the Works.

- 7.6.3 Where the Developer fails within a reasonable period to make good any damage to any neighbouring or adjoining property caused by the execution of the Works (or the Developer's rectification of Defects), then following reasonable notice by the Company, the Company may engage others to rectify that damage and the Developer shall pay and reimburse to the Company within ten (10) Working Days of a vouched demand all sums reasonably expended by the Company in so doing.

7.7 Benchmark Unit(s)

- 7.7.1 This clause 7.7 shall only apply where the Appendix indicates that Benchmark Unit(s) for the Development are required to be constructed (and if the Appendix indicates Benchmark Unit(s) are not required, the clause shall not apply).

- 7.7.2 The Developer shall:

- (a) procure the construction of Benchmark Unit(s) for the Development and, in this regard, where:

- (i) the Development comprises both Social Units and Cost Rental Units; and
- (ii) the finishes and fitout specification for each such Unit type differs;

the Developer shall construct a Benchmark Unit for each such Unit type;

- (b) procure that any required Benchmark Unit is completed:

- (i) to the design, specification, standards and finishes as set out in the Company Requirements for the relevant Unit type; and
- (ii) on or before the date(s) on which the Development reaches the stage(s) identified in the Appendix.

- 7.7.3 The Developer shall notify the Company in writing of the date on which any Benchmark Unit has been completed in accordance with this Clause 7.7 (and shall promptly thereafter rectify any Defects in a Benchmark Unit identified to it in writing by the Company).

- 7.7.4 The Parties agree and acknowledge that the Benchmark Unit(s) shall be used as benchmark(s) for quality and finishes for the Development and as a reference point for the roll-out of all corresponding Unit types in the Development **PROVIDED ALWAYS** that no review, approval or acceptance of a Benchmark Unit by the Company shall relieve the Developer of its obligations to comply with any requirements of this Agreement in respect of the design and construction of the Units.

- 7.7.5 Subject to the proviso in Clause 7.7.4 above:

- (a) the Developer shall ensure that each Unit in the Development is completed to a standard consistent with the relevant Benchmark Unit;
- (b) the Benchmark Unit(s) shall define agreed quality standards expected in the

construction of the Units and quality of the materials inside and outside the Units including but not limited to finishes (flooring, wall tiles, painting), kitchen and built units, sanitary ware, ironmongery, mechanical, electrical and heating systems, external works railings/gates, boundary walls and fences, bin-storage and other external storage, paving and planting.

7.8 Show Unit(s)

7.8.1 This clause 7.8 shall only apply where the Appendix indicates that Show Unit(s) for the Development are required to be constructed (and if the Appendix indicates Show Unit(s) are not required, the clause shall not apply).

7.8.2 The Developer shall procure the completion of such Show Unit(s) as are indicated in the Appendix as being required in respect of the Development on or before the Date for Show Unit Completion. Completion of a Show Unit shall require:

- (a) completion of the Unit to a standard consistent with it having been completed in accordance with any requirements in respect of the Development under the Agreement including the completion of all final finishes and the installation of all such fittings, furnishings and equipment as specified in the Company Requirements; and
- (b) that the Unit is safely accessible from the public realm by the Company, its representatives and members of the public invited by the Company to inspect the Show Unit(s) without any requirement for the use of personal safety gear;
- (c) that all access routes to the Show Unit(s) are appropriately isolated from any continuing construction activity and are finished and dressed to a state reasonably consistent with their use for marketing purposes;
- (d) that the Works and all persons accessing a Show Unit are insured for damage done to or by those persons (and/or their property) and the Developer shall provide evidence of such insurance on request by the Company.

7.8.3 The Developer may comply with its obligations under this clause by dressing and furnishing a relevant Benchmark Unit (provided always that such a Unit will continue to be regarded as a Benchmark Unit and shall serve a dual role in this regard).

7.8.4 In the period up to the Date of Practical Completion, the Developer shall procure that:

- (a) the Show Unit(s) are kept secure, clean and maintained to relevant completion standards and that any damage to the Show Unit is made good without undue delay; and
- (b) the Company and its agents and representatives and prospective tenants are entitled to gain access to the Show Unit from the date on which it/they are made available to the Company during the hours of 9.00am to 5.00pm Monday to Sunday inclusive (subject to compliance with any relevant Developer health and safety requirement).

7.8.5 The Developer shall notify the Company in writing of the date on which it considers each Show Unit has been completed and is ready for use by the Company in its marketing activities in respect of the Development. On issue of such notice, the Parties shall jointly inspect the relevant Show Unit (within 5 (five) Working Days of the Developer's notice).

The Company shall within 2 (two) Working Days thereafter and acting reasonably, notify the Developer:

- (a) of any Defects in the Show Unit (and after rectification of such Defects by the Developer a further joint inspection will be held and the process under this Clause will iterate); or
- (b) that it accepts the Show Unit has been completed in accordance with the requirements of this Clause 7.8 and identifying the date on which such completion has occurred.

7.8.6 The Developer shall pay or allow the Company the Liquidated and Ascertained Damages (Show Unit) at the rate specified in the Appendix for each day after the relevant Date for Show Unit Completion until the date on which a Show Unit has achieved completion in accordance with the requirements of this Clause 7.8 (and the parties agree that the Liquidated and Ascertained Damages (Show Unit) represent a genuine pre-estimate of the Company's loss and/or damage in the event the Developer fails to complete a Show Unit by the Date for Show Unit Completion).

7.8.7 Subject to Clause 7.8.8 and without prejudice to any right the Company may have to terminate the Agreement under Clause 19, the Company's entitlement to recover Liquidated and Ascertained Damages (Show Unit) under this Clause 7.8 is the Company's sole and exclusive remedy for any failure by the Developer to complete a Show Unit by the Date for Show Unit Completion.

7.8.8 If (and to the extent that) the Company's entitlement to recover Liquidated and Ascertained Damages (Show Unit) under this Clause 7.8 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Company from claiming such damages, the Company is entitled to claim general damages for delay against the Developer for any failure to complete a Show Unit by the Date for Show Unit Completion **PROVIDED ALWAYS** that such damages shall not accumulate at a rate greater than the rate specified for Liquidated and Ascertained Damages (Show Unit) pursuant to this Clause 7.8.

7.8.9 For the avoidance of doubt, the Parties agree and acknowledge that use of the Show Unit(s) by the Company for its marketing activities in respect of the Cost Rental Units shall not be deemed to give rise to any conclusion or inference that Practical Completion of the Show Unit(s) as an element of the Works has been achieved.

7.9 Management Suite

7.9.1 This clause 7.9 shall only apply where the Appendix indicates that a Management Suite for the Development is required to be constructed (and if the Appendix indicates a Management Suite is not required, the clause shall not apply).

7.9.2 Where delivery by the Developer of a Management Suite is contemplated in the Company Requirements (as indicated in the Appendix), the Developer shall use reasonable endeavours to procure that the Management Suite is delivered and/or made available to the Company in the location(s) as set out in the Appendix (such location(s) to be within a 1 km radius of the Site) on or before the Date for Show Unit Completion such that as and from the date of such delivery:

- (a) the Management Suite has been completed to a standard that will enable the Company's staff to work therein without interference or interruption;

- (b) an access route to the Management Suite is available and isolated from any ongoing construction activity on the Site;
- (c) the Company's management staff are afforded (exclusive) access to the Management Suite; and
- (d) the Management Suite has the benefit of WIFI coverage and is otherwise fitted out in accordance with the Company Requirements;

PROVIDED ALWAYS that the Company shall procure that the Company's staff accessing the suite shall:

- (e) cooperate with the Developer so as to minimise any impact on the carrying out of the Works prior to the Date of Practical Completion;
- (f) comply with the reasonable requirements of the Developer (including all relevant site safety, security and insurance requirements) in accessing the Management Suite.

7.9.3 For the avoidance of doubt, the Parties agree and acknowledge that use of the Management Suite by the Company shall not be deemed to give rise to any conclusion or inference that Practical Completion of any Works comprised in the Management Suite (where applicable) has been achieved.

8 STATUTORY OBLIGATIONS

8.1 Building Control

8.1.1 The Parties agree that the Developer is the "Building Owner" in respect of the Works for the purposes of the Building Regulations and the Code of Practice and will be responsible for ensuring the Works are carried out in accordance with the requirements of the Building Regulations.

8.1.2 The Developer shall, in relation to the Works:

- (a) ensure that the Building Contractor acts as Builder for the purposes of the Building Regulations and is competent to act in that role;
- (b) appoint the Assigned Certifier and Design Certifier and ensure that those appointees are competent to act in those roles;
- (c) ensure that the above-mentioned statutory appointees liaise with the relevant Building Control Authority as required to facilitate compliance of the Development with all relevant requirements of the Building Regulations;
- (d) procure:
 - (i) the production of the Commencement Notice and the Certificate Of Compliance (Design) (both as defined in the Code of Practice);
 - (ii) the drafting and implementation of the Inspection Plan;
 - (iii) the execution of the Certificate of Compliance on Completion by all necessary statutory appointees; and

- (iv) the production of all other documentation and/or information as may be reasonably required by the Design Certifier, Assigned Certifier, Builder for the purposes of the occupation of the Development and its compliance with the Building Regulations;
- (e) otherwise procure that the Works are carried out in accordance with all relevant requirements of the Building Regulations;

so as to facilitate the entry by the Building Control Authority of the particulars of the Certificate of Compliance on Completion on the register maintained under Part IV of the Building Regulations to permit the occupation and use of the Works as and from the Date of Practical Completion.

- 8.1.3 Without prejudice to or derogation from any other clause in this Agreement, the Parties shall co-operate at all times with the Design Certifier, Assigned Certifier, the Builder and/or any other person engaged in the Works, for the purposes of the compliance with or satisfaction of requirements of the Building Regulations.

8.2 Health & Safety

- 8.2.1 The Developer agrees and acknowledges that:

- (a) for the purposes of this Agreement, the Developer or its nominee shall be designated as the “client” in relation to the Works for the purposes of the Safety, Health and Welfare at Work Legislation;
- (b) in relation to the Works, it shall appoint or procure the appointment of a suitably qualified and experienced Project Supervisor Design Process and a Project Supervisor Construction Stage and confirm that such appointments shall be with persons competent to undertake the duties as set out in the Safety, Health and Welfare at Work Legislation and promptly deliver a certified copy of each such appointment to the Company;
- (c) it shall furnish to the Company a safety statement and a developed safety and health plan prepared in accordance with the Safety, Health and Welfare at Work Legislation prior to the commencement of any Works on Site (or on the execution of this Agreement if the Works have already commenced at that time); and
- (d) it shall procure that any consultants and sub-contractors engaged in respect of the Works comply with the Safety, Health and Welfare at Work Legislation and furnish copies of all necessary notices and communications given by them to the relevant authority in accordance with the Safety, Health and Welfare at Work Legislation.

- 8.2.2 The Developer shall otherwise procure that the execution or the construction of the Works is carried out in compliance with the Safety, Health and Welfare at Work Legislation and the Developer will:

- (a) be responsible for the care of the Works to be undertaken pursuant to this Agreement and for the safety of all persons who enter upon the Site; and
- (b) procure that all necessary notices and declarations are given to the relevant authority pursuant to the Safety, Health and Welfare at Work Legislation and furnish copies thereof to the Company.

8.3 Safety File

The Parties agree and acknowledge that the Safety File and its contents are of critical importance to the Company's future management of the Development. Without prejudice to the Developer's obligations in respect of Practical Completion of the Works, the Parties shall observe and undertake the processes and procedures for the production of the Safety File set out in Schedule 16.

9 COMPANY'S OBLIGATIONS

- 9.1 With effect from the date of this Agreement and until the expiry of the Defects Liability Period, the Company grants to the Developer (and all others authorised by it for these purposes) a licence to access and remain on the Site for the purposes of carrying into effect this Agreement, which licence shall automatically terminate on completion of the Developer's obligations under this Agreement or otherwise on the determination of this Agreement if sooner.
- 9.2 The Company shall facilitate first access to the Site by the Developer for the purposes of the exercise of the Developer's rights under the licence issued under Clause 9.1. From the date of first access until the Date of Practical Completion, the Developer shall be responsible for and bear the risk of ensuring it is able to effect access to the Site for the purposes of the Works.
- 9.3 The Developer shall be empowered to licence and authorise the Building Contractor, its servants and agents and all other persons permitted under the terms of the Building Contract, the Developer's Professional Team, and any other person so required to enter upon the Site for the sole purpose of carrying into effect this Agreement and the Building Contract.
- 9.4 The Company shall not, for the duration of the licence in Clause 9.1, without good cause restrict or prevent access to the Site by persons employed in the undertaking of the Works.
- 9.5 Subject to Clause 7.4 (Variations):
- 9.5.1 only the Company's Representative shall be entitled to issue instructions to the Developer in respect of the performance of the Building Contractor or any member of the Developer's Professional Team during the Works;
 - 9.5.2 the Developer will ensure that any instructions of the Company's Representative in respect of the Works and its progress are taken into account by the Building Contractor and/or the Developer's Professional Team, as appropriate.
- 9.6 If reasonably requested in writing to do so, the Company shall promptly complete, execute and deliver such consents, agreements, deeds and documents and otherwise provide all things within its possession and control in respect of the Site or the Development as are lawfully required of the owner of the Site by the local or other competent body or authority, Uisce Éireann, Bord Gáis and or the Electricity Supply Board (including for the provision, relocation or disconnection of any utilities contemplated by the Company Requirements) (each an **Authority Requirement** and together the **Authority Requirements**) **PROVIDED ALWAYS** that the Company shall not be in breach of this provision where any delay or failure by the Company in satisfying an Authority Requirement has arisen by reason of any delay or failure by the Developer to:
- 9.6.1 carry out or do any act or thing; or
 - 9.6.2 provide any documents or things to be done or provided by the Developer and reasonably required and requested in writing by the Company, the relevant authority or relevant utility supplier; or

- 9.6.3 otherwise provide any assistance reasonably required and requested in writing by the Company in order to facilitate the completion, execution or delivery of any consents, agreements, deeds and documents by the Company;

for the purposes of the Company satisfying the Authority Requirement.

- 9.7 Where, for the purposes of any Authority Requirement, the Developer is required to itself execute any documents for the purposes of the satisfaction of an Authority Requirement, it shall do so as agent for the Company and shall procure that the Company is identified as a notification party for the purposes of that document (including without limitation for the purposes of any utility connection agreement(s) in respect of the Site).

10 PROGRESS, DELAY AND PRACTICAL COMPLETION

10.1 Commencement and Progress

The Developer shall:

- 10.1.1 commence the construction of the Works on or before the date specified in the Appendix and shall thereafter progress the Works:

- (a) with due expedition; and
- (b) so as not to unreasonably depart from the Programme to be issued by the Developer under Clause 14.5.1 (and, for the purposes of this clause, a departure from such Programme shall not be considered an unreasonable departure to the extent it has resulted from any delay for which the Developer is entitled to an extension of time under Clause 10.2);

and it is acknowledged that a breach of this clause by the Developer shall be deemed to be a material breach of its obligations; and

- 10.1.2 procure that the Works achieve Practical Completion on or before the Date for Completion;

- 10.1.3 procure that Practical Completion of the Works shall occur no later than one (1) month after the date on which practical completion of the works under the Building Contract has been certified.

10.2 Delay and Extensions of Time

Each of:

- 10.2.1 the Date for Show Unit Completion; and
- 10.2.2 the Date for Completion and the Long Stop Date

shall, on the written application of the Developer, be extended by the period of time (to be assessed by the Company's Representative acting reasonably) equal to the duration of any delay to the Developer achieving, respectively:

- 10.2.3 completion of the Show Unit(s) by the Date for Show Unit Completion; or
- 10.2.4 Practical Completion of the Works by the Date for Completion (noting, for the avoidance of doubt, that where the Date for Completion is extended under this clause,

a corresponding extension to the Long Stop Date shall be administered);

where such delay has resulted from:

- 10.2.5 the instruction of a Variation;
- 10.2.6 a breach of this Agreement by the Company; or
- 10.2.7 any other act of prevention of the Company (including without limitation as contemplated under Clause 10.4.2); or
- 10.2.8 the occurrence of an event or circumstance of Force Majeure;

PROVIDED ALWAYS that:

- 10.2.9 the Company shall not in any case be liable to the Developer (and the Developer waives and releases the Company from all claims) for any additional cost arising as a result of any such extension or the relevant delay (save as provided in clause 7.4 in respect of any delay resulting from the instruction of a Variation); and
- 10.2.10 the Company's Representative may administer an extension of time to the Date for Show Unit Completion and/or the Date for Completion at any time and for any reason without application by the Developer and at the Company's Representative's complete discretion (and the Company's Representative shall not be obliged to exercise that discretion for the benefit of the Developer or at all).

10.3 Damages for Developer Delay to the Works

- 10.3.1 If the Developer fails to achieve Practical Completion of the Works by the Date for Completion (as adjusted under this Clause 10 if at all) then, within 20 (twenty) Working Days of any demand by the Company, the Developer shall pay or allow to the Company liquidated and ascertained damages at the applicable rate(s) specified in the Appendix (**Liquidated and Ascertained Damages (Works)**) for the period during which the Works or parts thereof shall so remain or have remained incomplete.
- 10.3.2 The Company may deduct Liquidated and Ascertained Damages (Works) from any money due or to become due to the Developer under this Agreement.
- 10.3.3 The parties agree that the Liquidated and Ascertained Damages (Works) represent a genuine pre-estimate of the Company's loss and/or damage in the event the Developer fails to reach Practical Completion of the Works by the Date for Completion.
- 10.3.4 Subject to Clause 10.3.5 and without prejudice to any right the Company may have to terminate the Agreement under Clause 19, the Company's entitlement to recover Liquidated and Ascertained Damages (Works) under this Clause 10.3 is the Company's sole and exclusive remedy for any failure by the Developer to bring the Works to Practical Completion by the Date for Completion.
- 10.3.5 If (and to the extent) the Company's entitlement to recover Liquidated and Ascertained Damages (Works) under this Clause 10.3 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Company from claiming such damages, the Company is entitled to claim general damages for delay against the Developer for its failure to bring the Works to Practical Completion by the Date for Completion **PROVIDED ALWAYS** that such damages shall not accumulate at a rate greater than the rate specified for Liquidated and Ascertained Damages (Works) pursuant to this Clause

10.3.

10.4 Administration of Practical Completion

10.4.1 The Developer shall:

- (a) procure that the Developer's Architect notifies the Company, the Company's Representative and the Funder's Representative in writing no later than 1 (one) month in advance of the date on which the Works are likely to reach Practical Completion and on which date it is anticipated that the Certificate of Practical Completion shall issue; and
- (b) arrange for a joint inspection of the Works with the Company's Representative (and a representative of any person or body who has acquired or intends acquiring an interest in the Works) to occur not later than the date which is 10 (ten) Working Days before the anticipated date of Practical Completion of the Works (and for the purposes of this and any other inspection referred to in this Clause 10.4, the Company's Representative may include one or more persons including the Chartered Building Surveyor or any other appropriately qualified professionals).

10.4.2 Within 5 (five) Working Days of the carrying out of the joint inspection contemplated under Clause 10.4.1, the Company shall procure that the Company's Representative, acting reasonably, shall notify the Developer and the Developer's Architect in writing either that:

- (a) he or she is of the opinion that the Works have not achieved Practical Completion, and in such case shall identify the items of Work or any outstanding documents or other requirements which, in the opinion of the Company's Representative, are necessary pursuant to this Agreement to achieve Practical Completion (provided always that the list of such items shall not include items which are of a minor nature and normally dealt with in a Snagging List); or
- (b) he or she has identified no further Works or things that are required to be carried out or done pursuant to this Agreement to achieve Practical Completion (but he or she may include with such notice a Snagging List);

PROVIDED ALWAYS that the Parties agree that the Company shall not be obliged to procure the issue of any notice under Clause 10.4.2(b) (whether or not such notice should reasonably issue):

- (i) during the period prior to the Date for Completion; or
- (ii) during an HFA Blackout Period;

and may, in its absolute discretion, direct the Company's Representative to delay the issue of such notice until the date immediately following the end date of either such period, as relevant. In such circumstances, the Developer shall remain on risk in respect of the Works (or any relevant Section thereof) pending the issue of the Clause 10.4.2(b) notice and the Certificate of Practical Completion. Subject to the provisions of Clause 10.2, the Developer shall be entitled to an extension to the Date for Completion of a duration equal to the duration of any period where the Company Representative's notice under Clause 10.4.2(b) has been delayed in accordance with this clause.

10.4.3 If the Company's Representative issues a notice under:

- (a) Clause 10.4.2(a), the Certificate of Practical Completion may not be issued until the items identified in the notice have been completed to the reasonable satisfaction of the Company's Representative or as the case may be, as determined by the Independent Architect (and the Developer shall issue a notice in writing to the Company when it considers it has completed any outstanding Defects in which event the parties shall re-inspect the Works within 3 (three) Working Days after the receipt of the notice and the earlier provisions of this Clause 10.4 shall iterate);
- (b) Clause 10.4.2(b), the Developer's Architect may issue the Certificate of Practical Completion to both the Company and the Developer noting the date on which Practical Completion was achieved as being the date of the Clause 10.4.2(b) notice (and for the avoidance of doubt the Developer shall procure that the Developer's Architect shall not issue a Certificate of Practical Completion prior to the issue of such notice by the Company's Representative).

10.4.4 Where pursuant to Clause 10.4.2(b) the Company's Representative has issued a Snagging List with the notice issued under that clause, the Developer shall procure that the items notified therein are remedied within 10 (ten) Working Days of the issue of the Snagging List (provided always that the Company's Representative shall (acting reasonably) extend this period by a reasonable duration to accommodate procurement lead times for any necessary work involved in the rectification) and in accordance with a programme to be agreed between the Company's Representative and the Developer (both acting reasonably).

10.5 **Reference to the Independent Architect**

10.5.1 In the event of a dispute between the Developer's Architect and the Company's Representative as to whether the Works have reached Practical Completion (and/or what is outstanding in order to achieve Practical Completion, whether there are any outstanding Defects, the content of the Snagging List or the rectification of same) either the Developer or the Company may refer such dispute to the decision of the Independent Architect who shall:

- (a) within a period of 5 (five) Working Days from the date of his/her appointment inspect the Works and, on such inspection, the Independent Architect shall be entitled, if he/she so desires to require the Developer, the Developer's Architect and the Company's Representative to attend at the Works with him; and
- (b) within a further period of 5 (five) Working Days, issue to the Parties his or her determination as to whether or not the Works have properly reached a stage of Practical Completion;

and pending the Independent Architect's determination, the Certificate of Practical Completion shall not issue for the purposes of this Agreement.

10.5.2 In the event that the Independent Architect has determined that:

- (a) the Certificate of Practical Completion should have been issued (in which event the Developer's Architect may issue the Certificate of Practical Completion), then the Independent Architect shall so notify the Parties and

the Company shall bear the Independent Architect's costs pursuant to the reference of the dispute to him or her; or

- (b) the Works have not reached a stage of Practical Completion then the Independent Architect shall include in his or her determination the items of Work or things to be provided or done (**Outstanding Matters**) that are required for Practical Completion, in which event the Developer:
 - (i) shall bear the Independent Architect's costs pursuant to the reference of the dispute to him or her; and
 - (ii) shall carry out and complete (or procure the carrying out and completion of) the Outstanding Matters expeditiously so that they are completed within a reasonable time after the date of the issuing of the Independent Architect's notification (at the Developer's cost).

10.5.3 Where the Developer has completed any Outstanding Matters notified by the Independent Architect in any determination issued under Clause 10.5.1:

- (a) the Developer shall notify the Independent Architect, the Company's Representative and the Funder's Representative in writing of same, and a joint inspection shall be arranged within a period of 5 (five) Working Days for the Independent Architect, the Company's Representative and the Developer's Architect;
- (b) within a further period of 5 (five) Working Days, the Independent Architect shall then notify the Parties in writing that he or she:
 - (i) is satisfied that any notified Outstanding Matters have been completed, in which event the Developer's Architect may then issue the Certificate of Practical Completion;
 - (ii) is not satisfied that any notified Outstanding Matters have been completed, the Developer shall then proceed to make good any works still outstanding and the procedures under this Clause 10.5.3 shall be repeated until the notified Outstanding Matters have been completed to the Independent Architect's satisfaction;

and as between the Parties the Developer shall be liable for the Independent Architect's costs of the procedures under this Clause 10.5.3 and the Parties shall otherwise bear their own costs.

10.5.4 The Independent Architect shall, for the purposes of any dispute referred to him or her under this Clause 10.5:

- (a) act as an expert and not as an arbitrator; and
- (b) shall permit oral submissions and (if he deems it appropriate) written submissions to be made by the Parties hereto and by their advisors and his decision shall be final and binding on the Parties;
- (c) be required to provide a decision within ten (10) Working Days of such referral (or such other period as may be provided for elsewhere in this Agreement).

11 RECTIFICATION OF DEFECTS

The Parties agree that the procedures and provisions of Schedule 17 in respect of the rectification of Defects in the Works shall apply and each undertake to observe those procedures and provisions.

12 CORPORATE WARRANTIES

12.1 The Developer hereby represents and warrants to the Company that:

- 12.1.1 it is duly incorporated under the laws of Ireland and has full power and authority to carry on its business as it is now being conducted and to own its property and other assets and to enter into and perform its obligations under this Agreement and all documents referred to hereunder (either expressly or by implication);
- 12.1.2 neither the entry into nor the performance or observance of its obligations under this Agreement will conflict with or result in any breach of any law, statute, regulation, indenture, mortgage, trustee arrangement or other instrument arrangement or obligation or duty by which the Developer is bound;
- 12.1.3 no litigation, arbitration, administrative or other proceedings are current, pending or threatened by or against the Developer or any person connected with the Developer in relation to the Site or any part of it;
- 12.1.4 it has sufficient rights in respect of the copyright in all designs, drawings, specifications forming part of the Planning Permission to procure and give effect to the licensing arrangements contemplated under the Agreement in respect of that copyright and that there is no dispute or litigation threatened or pending in relation to such copyright; and
- 12.1.5 no order has been made or petition presented or resolution passed or proceedings or action taken for the winding up of the Developer or with a view to appointing a liquidator, examiner, receiver, administrator, trustee or similar officer to the Developer nor has any distress, execution, sequestration, attachment or other process been served or entered upon or sued out in respect of the Developer or against any property or asset of the Developer nor is any of the foregoing in the process of being so served, entered upon or sued out, nor is there any unfulfilled or unsatisfied judgement, court order or award outstanding against the Developer.

13 INDEMNITY AND INSURANCE¹⁰

13.1 **3rd Party Loss Indemnity** The Developer shall be liable for and shall indemnify the Company against any liability, loss, claim, expense or proceeding whatsoever arising under any statute or at common law in respect of:

- 13.1.1 loss, damage or injury to any property real or personal insofar as any such loss, damage or injury arises out of or in the course of or by reason of the execution of the Works; and
- 13.1.2 personal injury to or disease contracted by or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Works;

¹⁰ Insurance requirements subject to ongoing review by the Company and the Funder as well as their respective insurance advisors on a case by case basis and dependant on value of project and works involved.

Note: Non-negligence insurance may be required depending on the nature of the project and proposed works involved.

provided always that the Developer's liability under the indemnity in this Clause 13.1 shall be reduced proportionately to the extent that any liability, loss, claim, expense or proceeding otherwise indemnified has resulted from the negligence of the Company or its agents, employees, consultants and subcontractors (excluding the Developer and its agents, employees consultants and subcontractors of any tier).

- 13.2 **Public Liability & Employer's Liability Insurance** The Developer shall (and shall procure that the Developer's Professional Team, the Building Contractor and all Sub-Contractors shall) take out before commencing the Works and maintain until the Date of Practical Completion:

13.2.1 Public Liability insurance having a minimum indemnity limit as set out in the Appendix for any one incident; and

13.2.2 Employer's Liability insurance having a minimum indemnity as set out in the Appendix covering any liability, loss, claim or proceedings in respect of the matters referred to in Clause 13.1 and that each such policy contains an indemnity to principals endorsements for the express benefit of the Funder, the Company and/or any other person nominated by the Company.

- 13.3 **Subcontractor Third Party Loss Insurance** Without prejudice to the matters stated at Clause 13.1 and 13.2 above, the Developer shall ensure that any sub-contractors or agents engaged in the Works have adequate public liability and employer's liability insurances and shall, if requested to do so, cause satisfactory evidence of such insurances to be furnished to the Company.

- 13.4 **Professional Indemnity Insurance** The Developer will procure that as conditions of:

13.4.1 the Building Contract,

13.4.2 any relevant Design Sub-Contract; and

13.4.3 the Letters of Appointment,

that each of, respectively:

13.4.4 the Building Contractor (if the Building Contract is a design and build contract or otherwise contains design obligations),

13.4.5 any Design Sub-Contractor; and

13.4.6 the members of the Developer's Professional Team,

shall be required to maintain professional indemnity insurance cover in relation to those parties' respective design responsibilities in respect of the Works with a reputable insurer. The insurance cover must (unless otherwise agreed between the Parties acting reasonably) be for the minimum indemnity limits specified in the Appendix for each of the above referenced parties (or if a relevant limit is not so specified then the Parties, acting reasonably and in good faith, shall agree an appropriate indemnity limit by reference to the risk implicit in the relevant third party's scope of work or service). The Developer shall procure that the Building Contractor, the relevant Design Sub-Contractors or members of the Developer's Professional Team shall be under an obligation to keep that insurance in force for the duration specified in the Appendix.

- 13.5 **All Risks Insurance** The Developer shall before commencing the Works, take out (or procure the taking out of) All Risks insurance in respect of the Works and shall maintain such insurance:

13.5.1 until the Date of Practical Completion (covering any loss or damage to the Works from

any cause whatsoever); and

- 13.5.2 during the Defects Liability Period (covering any loss or damage to the Works arising in the course of and pursuant to any Defect rectification work by or on behalf of the Developer);

for the full reinstatement value of the Works (inclusive of VAT) from time to time plus:

- 13.5.3 a reasonable allowance to cover for the cost of inflation during any period of rebuilding or reinstatement; and

- 13.5.4 in the rates/amounts as specified in the Appendix:

- (a) a percentage for professional fees; and
- (b) the cost of Site clearance.

- 13.6 **Parties to/Interests in Insurances** The Developer shall procure that:

- 13.6.1 the insurances referred to in Clause 13.2 shall be extended to provide an indemnity to principals specifically for the benefit of the Company and the Funder as principals; and

- 13.6.2 the All Risks insurance policy shall identify the Building Contractor, the Developer, the Funder, the Company and any other person as the Company may deem appropriate as co-insured.

- 13.7 **All Risks Loss Payee** The Developer shall procure that the All Risks policy taken out in respect of the Works provides that the Funder is to be named as the sole loss payee for any claim on the policy over the amount specified in the Appendix (**Major Claim**). Otherwise, the Parties shall procure that the monies received under the All Risks insurance policy (less the portion included to cover professional fees which shall be paid to the Developer) shall be paid into a bank account (**Joint Account**) in the joint names of the Developer and the Company to fund reinstatement works in accordance with the provisions of Clause 13.12.

- 13.8 **Identity of Insurers, Exclusions** The Developer shall procure that the insurance policies described in this Clause 13 shall be with reputable insurers and that the said policies shall contain only such exclusions as are normally permitted in the construction industry in Ireland and as are published from time to time by the Royal Institute of the Architects of Ireland, the Construction Industry Federation and the Society of Chartered Surveyors in the Republic of Ireland (provided always that with regard to the All Risks policy, no exclusion in respect of loss or damage due to design shall be permitted).

- 13.9 **Evidence of Insurances** The Developer will procure that at all times during the construction of the Works that the insurances provided for in the Building Contract, the Letters of Appointment and the Design Sub-Contracts are maintained. The Developer shall, prior to the commencement of the Works and otherwise when called upon by the Company, furnish to the Company evidence that those insurances are in full force and effect and that all premiums in respect thereof are paid up to date.

- 13.10 **Notice of Insured Loss** The Developer must give immediate notice in writing to the Company as soon as it is brought to the Developer's attention that the Works or any part thereof are damaged or destroyed by an insured risk prior to the Date of Practical Completion.

- 13.11 **Reinstatement of Damage to the Works** Where damage or loss is caused to the Works during the performance of any of the Developer's obligations under this Agreement, subject to Clause 13.12,

the Developer shall procure:

- 13.11.1 that any part of the Works damaged or destroyed be reinstated with due diligence;
- 13.11.2 the replacement or repair of any unfixed materials or goods damaged or destroyed; and
- 13.11.3 the removal and disposal of any debris;

and the Developer shall thereafter proceed with the carrying out and completion of the Works.

- 13.12 **Claims on the All Risks Policy** At the election of Funder, in the event of a Major Claim on the All Risks insurance policy, the proceeds from such claim may be applied by the Funder against amounts due to it from the Company pursuant to the Facility Agreement. In such circumstances, the Parties agree that a Variation shall be administered to the scope of the Works to omit any requirement for the Developer to undertake any necessary rectification works in accordance with Clause 13.11 (to reasonably reflect the extent to which the quantum of claim proceeds are applied in this manner) (a **Damage Rectification Variation**). Otherwise, subject to the consent of the Company (which consent shall not be unreasonably withheld (and where it is withheld a Damage Rectification Variation shall be administered by the Company to reasonably reflect the extent of the withholding)), the parties shall procure that the monies received under the All Risks insurance policy and paid into the Joint Account shall be paid out of the Joint Account to the Developer by instalments under certificates related to the proportion of the work done and materials and goods delivered upon the site for making good the loss, damage or destruction. If the proceeds from any claim on the All Risks insurance policy (which are not withheld by the Funder or the Company as contemplated under this Clause 13.12) are insufficient to cover the cost of reinstatement, replacement, or repair of any Works which have been damaged or destroyed (after taking account of any omitted scope pursuant to a Damage Rectification Variation) the Developer shall make good any deficiency out of its own monies.

- 13.13 **Definitions** For the purposes of Clause 13:

13.13.1 **Major Claim** means a claim on the All Risks policy in an amount in excess of the amount specified in the Appendix;

13.13.2 an **insured risk**:

- (a) is a risk which is insured or which should have been insured under any one or more of the policies required to be taken out or maintained pursuant to this Clause 13 (the **Agreement Policies**);
- (b) without limitation, will be deemed to include a risk which would have been insured under an Agreement Policy but for:
 - (i) any breach by the Developer (or any of its employees, agents, consultants and subcontractors) of either this Agreement or the relevant Agreement Policy terms and conditions;
 - (ii) the insolvency of the insurer under the relevant Agreement Policy;

14 RECORDS AND REPORTING

14.1 Requests for Information

The Company may, by written notice to the Developer, at any time after the Commencement Date,

submit to the Developer requests for information (**RFIs**) in respect of:

- 14.1.1 dealings with the issuers of any Relevant Consents;
- 14.1.2 dealings with adjoining owners and utility providers;
- 14.1.3 the progress of the Works and any impediments thereto;
- 14.1.4 dealings with the Developer's construction counterparties;
- 14.1.5 procurement of items of supply in respect of the Works; or
- 14.1.6 any other aspect of the Development.

Each such notice is to specify a return date (**RFI Return Date**) providing the Developer a reasonably period of time to procure and order any information necessary to respond to the RFI. The Developer shall issue a response to the RFI to the Company on or before the RFI Return Date. The content of the response shall be true and correct and contain such supporting documentation as the Company reasonably requires to understand the response.

14.2 **Records**

The Developer shall procure that proper and adequate management records for the Works are maintained which records shall include at least the following insofar as they relate to the Works:

- 14.2.1 copies of all written instructions and variation orders given to the Building Contractor or any Sub-Contractors;
- 14.2.2 minutes of all meetings with the Building Contractor, the Sub-Contractors and the members of the Developer's Professional Team attended by representatives of the Developer;
- 14.2.3 copies of all correspondence with the Building Contractor, the Sub-Contractors, the Developer's Professional Team and current drawings, specifications and other contract documents; and
- 14.2.4 particulars of any delays caused or claimed by the Developer, the Building Contractor or the members of the Developer's Professional Team and any substantial delays to the Works.

14.3 **Plans and Specifications**

- 14.3.1 The Developer shall issue to the Company a complete set of the plans and specifications for the Works as amended and revised from time to time in accordance with the provisions hereof. The Developer shall keep one copy of the plans and specifications on the Site and the Company's Representative shall at all reasonable times have access to those documents.
- 14.3.2 In addition to the obligations at Clause 14.3.1, the Developer shall provide access for the Company's Representative (and his or her delegates) to the project document management platform for the Works (if any). The Developer agrees that such platform will have a facility to notify users of updates to information and documents on that platform which will be made available to the Company for the duration of the Works and during the rectification of any Defects.

14.4 Reporting

- 14.4.1 The Developer shall prepare and submit to the Company on a monthly basis a report in respect of the progress of the Works addressing the matters set out in Schedule 8.
- 14.4.2 The Developer shall notify the Company's Representative in advance of the date and time of all Site meetings and all meetings concerning the progress and the technical aspects of the design and/or construction of the Works and to allow the Company's Representative (and his or her delegates) to attend all such meetings on reasonable written notice.

14.5 Programme

- 14.5.1 If not already provided, the Developer shall issue a programme for the construction and completion of the Works to the Company within 10 (ten) Working Days of the Commencement Date. The Programme shall include without limitation:

- (a) the identification and scheduling of all activities involved in the carrying out and completion of the Works (to include start and finish dates for each activity);
- (b) dependencies between activities;
- (c) the identification of all activities which are on the critical path for the completion of the Works;
- (d) due dates and particulars of action to be undertaken by the Company (if any);

and such programme shall constitute the **Programme**.

- 14.5.2 Without prejudice to Clause 14.4, the Developer shall keep the Company and the Company's Representative fully apprised of the progress of the Works and any material problems, delays or changes to the ordering of activities arising in the course of the Works. At the Company's request, the Developer shall report as to the progress of the Works as against each of the programmed activities identified in the most recent Programme.

- 14.5.3 The Developer will keep the Company's Representative furnished throughout the Works with the most up-to-date version of the Programme showing the impact of any problems, delays or changes to the ordering of activities arising. The Company may request in writing, and the Developer shall issue, a revised Programme where the existing Programme does not reasonably reflect actual progress of the Works on Site.

- 14.5.4 The Company, acting reasonably, may raise objection to any revised Programme issued pursuant to Clause 14.5.3 where any amendments to an existing Programme:

- (a) would:
 - (i) accelerate requirements for the Company to act for the purposes of the progress of the Works where the Company cannot reasonably undertake the necessary action within the time contemplated under the accelerated Programme (and within ten (10) Working Days of the issue of such revised Programme the Company shall provide written evidence to the Developer reasonably sufficient to demonstrate its inability to so act); or
 - (ii) cause it to incur additional costs in so acting; or
- (b) disclose activity dates, scheduling or interdependencies which do not reflect the then current state of the progress of the Works or the resourcing, timing and

duration of the activities required to complete the Works).

14.5.5 Save to the extent the Company has raised any reasonable objection (of a nature as referred to in Clause 14.5.4) within twenty (20) Working Days of the date of issue of any revised programme, a revised programme issued under Clause 14.5.3 shall become the "Programme" for the purposes of this Agreement.

14.5.6 The parties agree and acknowledge that the issue of any substitute or revised Programme shall be without prejudice to:

- (a) the Developer's obligation in this Agreement to bring the Works to Practical Completion by the Date for Completion; and
- (b) the Company's rights pursuant to any failure by the Developer to bring the Works to Practical Completion by the Date for Completion and/or by the Long Stop Date.

15 PAYMENT

15.1 Subject to the provisions referred to in Clause 15.2 below and the Payment Schedule, the Company shall pay to the Developer the value of Works it has completed on a monthly basis in arrears and in accordance with the Payment Schedule.

15.2 Without prejudice to any requirements in respect of payment in Schedule 2, the Developer's entitlement to any particular monthly payment shall be conditional upon the Developer having furnished to the Company:

15.2.1 the Collateral Warranties in accordance with Clause 6 (provided that in respect of Design Sub-Contractors, the necessary Collateral Warranties need only be furnished where any works carried out by those parties are included in the valuation of Works with the relevant monthly payment);

15.2.2 written evidence satisfactory to the Company that the Developer has complied with its obligations if any under its agreement with the local authority relating to bond conditions and financial contributions under the Planning Permission together with supporting documentary evidence in a form acceptable to the Company;

15.2.3 evidence of compliance by the Developer with its obligations to procure a performance security under Clause 17;

15.2.4 the draft and final Sectional Completion Plans if and when due in accordance with Clause 1.3.2;

and that otherwise the Developer has complied with its obligations under Schedule 2 in respect of any interim payment.

15.3 The Company may withhold an amount equal to 5% of any interim payment otherwise due to the Developer where the Developer has not submitted either the draft or the final Sectional Completion Plans in accordance with Clause 1.3.2. Such amount is to be returned to the Developer with the payment due from the Company in respect of the next interim payment application to be submitted by the Developer after the Developer has provided whichever of these documents had prompted the initial withholding under this clause.

16 TAX CLEARANCE, VALUE ADDED TAX AND RELEVANT CONTRACTS TAX ¹¹

- 16.1 This Agreement is a relevant contract as defined in Section 520 Taxes Consolidation Act 1997, as amended (the **1997 Act**) and the Company is a principal contractor for the purpose of the 1997 Act.
- 16.2 All payments due to be made by the Company to the Developer under this Agreement are exclusive of VAT unless indicated to the contrary. Where the Developer is liable to account for VAT on any amount payable by the Company to the Developer, then in addition to the relevant amount, the Company shall also pay the associated VAT amount to the Developer at the Applicable Rate, following receipt of a VAT invoice.
- 16.3 The Parties intend that, in accordance with 16(3) of the VAT Act the Company will be liable to account for VAT on receipt of the services to be provided by the Developer under this Agreement.
- 16.4 The Developer confirms that the total cost to the Company (i.e. all amounts payable to the Developer by the Company under this Agreement and any VAT amounts payable by the Company to the tax authorities in accordance with Section 16(3) of the VAT Act in respect of this Agreement) will not exceed the Maximum Amount Payable. Accordingly, in the event of an increase in the Applicable Rate such that the Contract Sum (inclusive of VAT) exceeds the Maximum Amount Payable, the Parties agree that the Contract Sum (exclusive of VAT) will be reduced pro-rata such that the Contract Sum (inclusive of VAT) shall be equal to the Maximum Amount Payable and so as to ensure correct payment to the tax authorities (unless otherwise agreed in writing between the parties).
- 16.5 Any payments to be made by the Parties under this Agreement are stated on a gross basis but the Parties may make any deduction or withholding on account of tax as is required under Chapter 2 of Part 18 of the Taxes Consolidation Act 1997. Where amounts have been withheld, the withholding tax paid over to the Irish Revenue shall be deemed a payment to the other party. The Party making the payment shall provide evidence (in the form of a deduction authorisation certificate which is issued by the Irish Revenue Commissioners) to the other party of the amount paid to the Irish Revenue.
- 16.6 The Party receiving any payment under this Agreement subject to any such deduction or withholding shall accept the net amount paid after deduction or withholding in discharge of the liability under this Agreement to the same extent as if the deduction or withholding had not been made.
- 16.7 The Parties shall co-operate to ensure that all obligations arising under Chapter 2 of Part 18 of the Taxes Consolidation Act 1997 in respect of this Agreement are dealt with in a manner that endeavours not to cause tax difficulties for either party.
- 16.8 For the avoidance of doubt, the Parties may also make any deduction or withholding on account of tax as required by law, including any deduction or withholding which does not arise under requirements of law at the date of entering into this Agreement but which may arise at any future date under any circumstances.
- 16.9 The Company may withhold payments to the Developer pursuant to this Agreement if the Developer does not produce a valid Tax Clearance Certificate as defined in Section 1095 of the 1997 Act, as amended, or if the Developer's Tax Clearance Certificate has expired at the time payment is to be made to it or is due to it.

¹¹ Subject to ongoing review and approval by the Company's tax advisors.

- 16.10 The Company may make any deduction or withholding on account of tax if notified by the Revenue Commissioners to do so under the law in Ireland (including Relevant Contracts Tax and Professional Services Withholding Tax) or as is required by the published practice of the Revenue Commissioners (whether such law or practice is in force at the Commencement Date or at any time in the future). The Developer will accept the net amount paid after such deduction or withholding as notified by the Revenue Commissioners in discharge of the Company's liability to make payment to the same extent as if the deduction or withholding had not been made. In the event that the Company is required to make any such deduction or withhold on account of tax, it shall provide to the Developer any documentation reasonably required by the Developer in order to enable it to recover the amounts withheld or deducted at no additional cost or expense to the Company.

17 PERFORMANCE SECURITY

- 17.1 The Developer shall procure that the obligations of the Building Contractor are guaranteed by a performance bond in the amount as identified in the Appendix as security the performance of the obligations of the Developer under this Agreement and in the form specified in Schedule 10. The Performance Bond shall be from an Irish bank or other financial institution acceptable to the Company (acting reasonably) with a credit rating acceptable to the Company and such bank or financial institution shall either:

17.1.1 hold authorisation from the Irish Financial Regulator to carry on non-life insurance business under the European Communities (Non-Life Insurance) Framework Regulations 1994; or

17.1.2 hold an authorisation from a competent financial regulatory authority in another EU member state and have notified the Irish Financial Regulator of its intention to passport into Ireland on either a freedom of services or freedom of establishment basis under the European Communities (Non-Life Insurance) Framework Regulations 1994.

- 17.2 Where the Performance Bond is issued by the Building Contractor, at the same time as the Developer delivers the original Performance Bond to the Company, it shall also deliver:

17.2.1 the Assignment of Performance Bond in the form set out in Schedule 11; and

17.2.2 a Notice of Assignment of Performance Bond signed by a duly authorised person on behalf of the Developer in the form set out in Schedule 12 notifying the surety of the assignment of the Performance Bond.

- 17.3 The Parties agree that any monies paid out by the surety under the Performance Bond shall be used in reduction of any liabilities of the Developer to the Company under this Agreement exclusive of any vouched costs reasonably incurred by the Company in enforcing the Performance Bond.

18 FORCE MAJEURE

- 18.1 A Party prevented, restricted or delayed from performing any obligation under this Agreement by reason of Force Majeure shall notify the other Party in writing of such setting out in any such notice:

18.1.1 particulars of the event of Force Majeure;

18.1.2 particulars of the impact on and estimated delay in performance resulting from the Force Majeure; and

18.1.3 the steps (if any) that it intends to take to mitigate such impact and delay;

such notice to be issued as soon as reasonably practicable after the occurrence of the Force Majeure event by the Party affected by that event (and in any event within 5 (five) Working Days of the date on which the affected Party first knew or ought reasonably to have known of the existence of Force Majeure).

- 18.2 Subject to its compliance with the notification requirements of Clause 18.1, a Party shall not be liable for any breach, non-performance or delay in performance of or under this Agreement (or deemed in breach of this Agreement) to the extent that such is due to Force Majeure.
- 18.3 The Company shall have the right to terminate this Agreement in circumstances where Force Majeure causing a cessation of a substantial portion of the Works continues to cause such cessation for a period in excess of 6 (six) months. In the event that the Company terminates this Agreement by reason of Force Majeure then the provisions of Clause 19.3 shall apply.
- 18.4 When Force Majeure ceases or no longer causes the Parties to be unable to comply with their obligations under this Agreement, the Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure.

19 TERMINATION

19.1 Termination by the Company:

The Company shall have the right to terminate this Agreement in any one of the following circumstances on giving to the Developer not less than 5 (five) Working Days' notice in writing (or such longer period as may be agreed between the Parties);

- 19.1.1 if the Developer shall at any time be in material breach of any of its obligations under this Agreement and the same is not remedied within 40 (forty) Working Days of the Developer receiving a notice in writing from the Company requiring the rectification of the breach complained of with particulars of that breach; or
- 19.1.2 if the Developer is Insolvent; or
- 19.1.3 the Date of Practical Completion has not occurred by the Long Stop Date; or
- 19.1.4 the Developer, without reasonable cause, shall wholly suspend the Works before completion; or
- 19.1.5 the Developer has failed to proceed with the Works in accordance with clause 10.1.1; or
- 19.1.6 the Developer by act or omission causes a breach by the Company of any of the Facility Agreement covenants extracted at Schedule 14 hereto where pursuant to such breach the "Lender" under and in accordance with the Facility Agreement has notified the Company in writing that it will:
- (a) cease making any further advances to the Company under the Facility Agreement; or
 - (b) require the Company to repay any moneys advanced to the Company under the Facility Agreement;

or where the Facility Agreement has otherwise been terminated pursuant to the breach of such covenants.

19.2 Suspension and Termination by Developer:

- 19.2.1 If the Company fails to pay any amount due to the Developer in accordance with Schedule 2 (Payment Schedule), the Developer may, on giving notice to the Company, in accordance with the CCA 2013, suspend execution of the Works until the amount has been paid in full. On receiving the payment or after notice has been served by either Party referring the Payment Dispute to Adjudication under the CCA 2013, the Developer shall resume execution of the Works.
- 19.2.2 The Developer shall be entitled to terminate the Developer's obligation to complete the Works by notice to the Company if the Developer has suspended the execution of the Works for 15 (fifteen) Working Days in accordance with Clause 19.2.1 and the Company has still not paid the amount due under Clause 19.2.1 and neither Party has served notice referring the Payment Dispute to Adjudication under the CCA 2013.
- 19.2.3 The Developer shall have the right to terminate this Agreement if the Company is Insolvent on giving to the Company and the Funder not less than twenty (20) days' notice in writing provided that the Developer shall not proceed with such termination if the Funder has, prior to the expiry of the said period, served notice in writing on the Developer exercising its step-in rights pursuant to the collateral warranty that the Developer is, under this Agreement, required to provide for the Funder's benefit.

19.3 Rights on Termination

- 19.3.1 Upon determination of this Agreement under Clauses 3.3, 18.3 or 19, without prejudice to the accrued rights of either Party, their respective rights, obligations and liabilities shall be as follows:
- (a) The Developer shall with all reasonable dispatch:
- (i) remove from the Site all goods, materials, machinery and plant brought to the Site by it or the Building Contractor or any Sub-Contractors (other than any goods or materials referred to at Clause 19.3.1(b)(ii) title to which has transferred to the Company);
 - (ii) at the Company's request, provide copies of all designs and other documents and materials in the Developer's possession or control pertaining to the Works and which are reasonably required by the Company to complete the Works.
- (b) The Developer shall be paid by the Company (to the extent not already paid to the Developer prior to the date of the termination):
- (i) the value of the work completed as at the date of such determination as aforesaid (the value of such work to be determined by the Company's Representative, acting reasonably);
 - (ii) amounts paid by the Developer or its contractors for materials or goods properly ordered and delivered to the Site for the Works or in respect of which he is legally bound to accept delivery, provide that:
 - a. on such costs being paid to the relevant supplier such materials or goods shall become the Company's sole property; and
 - b. those goods and materials remain on Site;

(and the Company may pay such amounts directly to the relevant supplier);

(iii) in respect of:

- a. a termination under Clause 19.2 only, the reasonable cost of removal from site as above provided;
- b. a termination under Clause 18.3 only, any loss or damage suffered by the Developer owing to such determination as aforesaid;

less an amount equal to the total of:

- (iv) in respect of a termination by the Company under clause 19.1, any additional costs that the Company incurs in procuring the completion of any Works outstanding as at the date of such termination (over and above what the Company would thereafter have paid to the Developer under this Agreement but for such termination and had the Developer completed those Works); and
- (v) any other amount(s) due to the Company (or which the Company is otherwise entitled at law to recover) from the Developer under or in connection with the Agreement pursuant to any act or omission of the Developer or those for whom the Developer is responsible (including pursuant to any breach the Agreement by, or the negligence of, the Developer);

and subject to Clause 19.3.2, such amount shall be paid to the Developer:

- (vi) in respect of a termination under clause 19.1, within 30 days of the date the earlier of (i) the date on which the Company abandons the Works; or (ii) the date on which the Company procures the completion of any Works outstanding as at the date of the termination; or
- (vii) in respect of a termination under Clauses 3.3, 18.3 or 19.2, within 30 days of the date of the termination.

19.3.2 Where the amount calculated pursuant to the provisions of clause 19.3.1 is negative (that is where the total of the amounts identified in sub-clauses 19.3.1(b) (i), (ii) and (where applicable) (iii) is less than the total of the amounts identified in sub-clauses 19.3.1(b) (iv) and (v)) the Developer shall pay the Company the amount so calculated within 20 days of a claim by the Company for such amount (and such amount shall be recoverable by the Company as a debt due).

19.3.3 The Developer entitlements referred to in subclauses 19.3.1 are the Developer's sole entitlements to compensation for termination of this Agreement under Clauses 3.3, 18.3 or 19.

19.3.4 The expiry or termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination.

20 DISPUTE RESOLUTION

20.1 Adjudication

The provisions of this clause 20 are without prejudice to the right of either Party to refer a "payment dispute" (as defined in the CCA 2013) to adjudication pursuant to section 6(1) of that act.

20.2 Referral of a Dispute

If a dispute arises out of or in connection with this Agreement, including, without limitation, any question regarding the validity, existence or termination of this Agreement (a **Dispute**) such Dispute shall be referred to the procedures set out in this Clause 20 for resolution. A referral of a Dispute through these procedures may be made by either Party by written notice (a **Referral Notice**) to the other Party.

20.3 Senior Management

Once a Referral Notice has been served in relation to a Dispute, that Dispute shall be referred to the Chief Executive Officer for the time being on behalf of the Company and the Chief Executive Officer for the time being on behalf of the Developer. Those representatives shall meet at the earliest convenient time and in any event within 5 (five) Working Days of the date of the service of the relevant Referral Notice and shall attempt in good faith to resolve the Dispute.

20.4 Mediation

If the Dispute has not been resolved within 20 (twenty) Working Days of the relevant Referral Notice, then the Dispute shall be referred to mediation within 5 (five) Working Days of a written notice being served by either Party. Both Parties shall abide by the CEDR Model Mediation Procedure (the **Mediation Procedure**) with a view to settling any such Dispute as quickly and fairly as possible.

20.5 Arbitration

20.5.1 If a settlement or resolution of a Dispute is not reached under the Mediation Procedure within 20 (twenty) Working Days of the appointment of a mediator (either by agreement or by CEDR upon request), then the dispute shall be resolved in accordance with the provisions of this Clause 20.5.

20.5.2 To initiate proceedings under this Clause, either Party may give to the other written notice that a Dispute has not been resolved and within 5 (five) Working Days of such notice being given 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 between the Parties within 10 (ten) Working Days of the aforementioned written notice having been served, as may be appointed on the request of either Party by the President for the time being of The Royal Institute of the Architects of Ireland, (who shall have due regard to any qualifications required of the arbitrator taking into account the nature of the Dispute involved).

20.5.3 The arbitrator shall have power to open up, review and revise any opinion, decision, requisition or notice under this Agreement, and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such opinion, decision requisition or notice had been given (and appoint any experts necessary to assist in either technical or legal matters, as the case may be, in consultation with the Parties to the Dispute). Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010.

20.5.4 The venue of any arbitration conducted under this Clause 20.5 shall be Dublin, Ireland.

- 20.5.5 Unless the Parties expressly agree in writing to the contrary, the Parties undertake as a general principal to keep confidential the referral to arbitration, all awards together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right, to take legal advice or to enforce or challenge an award in bona fide legal proceedings before a court or other judicial authority.
- 20.5.6 No Party shall be entitled to suspend performance of this Agreement merely by reason of the reference of a dispute to arbitration.
- 20.5.7 In the event that any dispute or difference of any kind whatsoever shall arise between either one of the Parties to this Agreement and any third party, which is substantially the same or connected with issues in any Dispute, either Party to this Agreement shall be entitled to require that such third party shall be joined as a party or parties to any arbitration pursuant hereto and the Parties shall permit and co-operate in such joinder. In such a case the arbitrator appointed under this Agreement shall have power to make such directions and all necessary awards (in the same manner as a High Court Judge) as to joining one or more defendants or joining co-defendants or third parties as parties to the arbitration.

21 CONFIDENTIALITY

- 21.1 The terms of this Agreement are confidential and none of the Parties and/or their agents or professional advisers may disclose such terms to any person except if required by law to do so or in confidence to their professional advisers provided that such professional advisers are made aware of this Clause 21.
- 21.2 Clause 21 shall not apply to:
- 21.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of the obligations of a party under this Agreement or otherwise in connection with the implementation or enforcement of this Agreement;
 - 21.2.2 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 21;
 - 21.2.3 any disclosure which is required by any applicable Laws or the rules or regulations of any applicable securities or stock exchange (including but not limited to any market announcements);
 - 21.2.4 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing Party;
 - 21.2.5 any provision of information to the Parties' professional advisers or insurance advisers;
 - 21.2.6 any registration or recording of any documents necessary to give effect to this Agreement with any governmental body; and
 - 21.2.7 any disclosure to the Revenue Commissioners.

22 SET-OFF

- 22.1 Notwithstanding any other provision of this Agreement whether expressed or implied, the

Company shall be entitled to set off against or deduct from any money otherwise due to the Developer from the Company under this Agreement, any amount due to the Company from the Developer under this Agreement as assessed by the Company, acting reasonably (including in respect of any liability of the Company to a third party which the Developer is responsible for discharging and which remains unpaid for 5 (five) Working Days' after notice from the Company issued to the Developer requesting payment).

- 22.2 Any amount set off under the provisions of this clause is without prejudice to the rights of the Company or Developer in any subsequent proceedings to seek to vary the amount claimed and set off by the Company under this clause.

23 DATA PROTECTION

- 23.1 In this Clause above, the following terms take the meanings ascribed to them below:

Data Protection Legislation means the data protection and information privacy laws of Ireland and the European Union including but not limited to, the Data Protection Acts 1988-2018, the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, the GDPR, and any legislation from time to time which implements or amends Directive 95/46/EC or Directive 2002/58/EC all as amended or replaced from time to time, and any other legislation, codes of practice, guidance, guidelines and/or opinions regarding data protection.

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

- 23.2 The Developer acknowledges that in carrying out its obligations under the Agreement, the Developer may process "personal data" (within the meaning set out in Data Protection Legislation) on behalf of the Company. In such circumstances, the Developer acknowledges that the Company is the "data controller" and the Developer is the "data processor" as each such term is defined in Data Protection Legislation.
- 23.3 The Developer shall only process such personal data in accordance with the documented instructions of the Company, including with regard to transfers of personal data to a third country or an international organisation and solely as strictly necessary for the performance of its obligations under this Agreement unless required to do so by European Union ("EU") or EU Member State law to which the Developer is subject and in such a case, the Developer shall inform the Company of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 23.4 The Developer shall ensure that appropriate technical and organisational measures including as set forth in this Agreement are taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. In assessing the appropriate level of security, the Developer shall take account in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.
- 23.5 The Developer shall assist the Company in ensuring compliance with the Company's obligations in respect of security of personal data under Data Protection Legislation including by doing the following:
- 23.5.1 The Developer shall make available to the Company all information necessary to demonstrate compliance with the obligations set out in this Clause and allow for and contribute to audits, including inspections, conducted by the Company or another auditor mandated by the Company to ensure compliance with the obligations laid down in this Clause, including the Developer's data security obligations under Data

Protection Legislation provided however that the Company is entitled, at the Company's discretion, to accept adherence by the Developer to an approved code of conduct or an approved certification mechanism to aid demonstration by the Developer that the Developer is compliant with the provisions of this Clause.

- 23.5.2 The Developer shall promptly (and in any event within 48 hours) inform the Company in the event of receiving a request from a data subject to exercise their data subject rights under the Data Protection Legislation and shall provide such co-operation and assistance in relation to such a request, without responding to that request unless otherwise authorised by the Company to do so.
- 23.5.3 The Developer shall assist the Company, including by implementing appropriate technical and organisational measures, to allow the Company to comply with requests from data subjects to exercise their rights under Data Protection Legislation.
- 23.5.4 The Developer shall ensure that access to the Company's personal data is limited to:
- (a) those persons who need access to the Company's personal data to meet the Developer's obligations under the Agreement;
 - (b) in the case of any access by such persons, such part or parts of the personal data as is strictly necessary for that person to perform its duties; and
 - (c) such persons authorised to process such personal data and who have committed themselves to binding and enforceable confidentiality obligations or are under an appropriate statutory obligation of confidentiality.
- 23.5.5 Where any sub-contractor of the Developer (of any tier) will be processing personal data on behalf of the Company, the Developer shall ensure that a written agreement exists between the Developer and the sub-contractor containing clauses equivalent to those imposed on the Developer in this Clause 23. In the event that such a sub-contractor fails to meet its data protection obligations, the Developer remains fully liable to the Company for the performance of the sub-contractor's obligations.
- 23.5.6 The Developer shall ensure compliance with this Clause by any sub-contractor of any tier and any other person acting under the Developer's authority who has access to such personal data.
- 23.5.7 The Developer without undue delay, and in any event within 24 hours, shall notify the Company:
- (a) of any suspected or actual breaches of the systems of the Developer or any of its sub-contractor (of any tier) which may put the personal data at risk of disclosure, unauthorised processing or accidental or unlawful destruction, loss, alteration, or access to personal data, including without limitation ransomware or denial of service attacks; and
 - (b) if any personal data is otherwise lost, stolen, misappropriated, destroyed or becomes damaged, corrupted or unusable, and the Developer shall provide the Company with such co-operation and assistance as may be required to mitigate against the effects of, and comply with any reporting obligations which may apply in respect of, any such breach.
- 23.5.8 The Developer shall keep accurate and up to date records of its processing of any personal data processed pursuant to this Agreement and share such records with the

Company immediately upon request.

- 23.5.9 The Developer, at the choice of the Company, shall delete or return all such personal data to the Company when the Developer ceases to provide services relating to data processing under this Agreement and shall delete all existing copies of such personal data unless EU law or the laws of an EU Member State require storage of the personal data.
- 23.5.10 If the Developer receives any complaint, notice or communication in respect of the carrying out of its obligations under the Agreement and which relates directly or indirectly to the processing of personal data and/or to compliance with Data Protection Legislation, the Developer shall immediately notify the Company in writing and provide the Company with full co-operation and assistance in relation to any such complaint, notice or communication.
- 23.5.11 The Developer shall ensure that no such personal data is transferred outside of the European Economic Area (EEA) by the Developer or any of its agents or sub-contractors without the prior written consent of the Company which consent may be subject to terms and conditions (including, without limitation, that the data importer enters into model clauses in the form approved by the European Commission and, where relevant, complies with the provisions regarding sub-processors contained in such model Agreements in respect of any sub-processors). The Developer shall comply with the requirements of Data Protection Legislation in respect of transfers of such personal data outside of the European Economic Area, to the extent that the Company consents to any such transfer.
- 23.6 The Developer indemnifies the Company and its officers, employees, servants, agents and sub-contractors (of any tier) against any and all losses, expenses (including reasonable legal fees), damages, costs, penalties and regulatory fines (**Loss**) incurred by the Company or for which the Company may become liable including:
- 23.6.1 civil claims where a final award of damages has been granted (including in relation to a court approved settlement) in favour of a data subject; and/or
- 23.6.2 administrative fines imposed by a supervisory authority and approved by a court of competent jurisdiction;

in each case, to the extent that such Loss arises from or is in connection with the Developer acting outside or contrary to the lawful instructions of the Company and/or any other breach by the Developer of its data protection obligations under this Agreement or the Data Protection Legislation.

24 GENERAL PROVISIONS

24.1 No Partnership

This Agreement does not create nor shall it in any circumstance be taken or construed as having created a partnership between the Company and the Developer.

24.2 Fees And Costs

Each party herein shall be liable for their own costs and fees incurred on foot of this Agreement

24.3 Company's Approvals And Reliance

24.3.1 No approval or consent by or on behalf of the Company under the terms of this Agreement shall affect the Developer's obligations to perform and observe the terms and conditions on its part contained in this Agreement.

24.3.2 The Company has and shall be deemed to have relied exclusively on the skill and judgement of the Developer, the Developer's Professional Team, the Building Contractor and any Sub-Contractors in relation to the design and construction of the Works.

24.4 **Company's Rights**

Nothing in this Agreement or in any undertaking and warranty furnished by the Developer, the members of the Developers Professional Team, the Building Contractor or any Sub-Contractor or any other party shall prejudice or affect the common law rights and remedies of the Company.

24.5 **Further Assurances**

The Parties hereto shall each do or cause to be done all acts and things and enter into any deed or document either severally or jointly with third parties which the Developer or the Company may reasonably consider necessary or desirable to give effect to this Agreement.

24.6 **Assignment**

24.6.1 The Developer shall not be entitled to assign its rights or obligations under this Agreement to any third party (other than by way of security) without the prior written approval of the Company (not to be unreasonably withheld or delayed).

24.6.2 Without limitation, the Company may assign the Company's rights under this Agreement to the Funder or its nominee, and the Company's obligations under this Agreement may be assumed by the Funder or its nominee, without any requirement for consent from the Developer.

24.7 **Notices**

24.7.1 Any notice, correspondence, demand or other communication required or permitted to be given or made under this Agreement to a Party shall be addressed or sent to the address set out for that Party in the Appendix or other such address or contact number as any Party, on the completion of a notice period of 10 (ten) Working Days, has notified to the other Party hereto in writing.

24.7.2 Any notice, correspondence, or demand required or permitted to be given or made under this Agreement shall be validly given or made if delivered personally or if despatched by pre-paid letter post addressed as aforesaid or sent by email addressed as aforesaid during the normal business hours of the recipient and shall be deemed to be given as follows:

- (a) if delivered personally – at the time of delivery;
- (b) if sent by pre-paid letter post – 3 (three) Working Days after the same shall have been posted; or
- (c) if sent by email – at the time of delivery of the email;

or at the earliest of the above timescales if more than one form of delivery was used.

24.8 Counterparts

This Agreement may be executed in one or more counterparts and when a counterpart has been executed by each party hereto all such counterparts taken together shall for all purposes constitute one and the same Agreement binding on all of the Parties hereto.

24.9 Severability

Each of the provisions of this Agreement is severable and distinct from the others and if at any time any of the provisions of this Agreement and any document to be entered into pursuant to this Agreement are or become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction neither the legality, validity and enforceability of the remaining provisions of this Agreement and the other documents to be entered into pursuant to this Agreement nor the legality, validity and enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired as a result.

24.10 Forbearance And Remedies Cumulative

- 24.10.1 The rights of a party will not be prejudiced or restricted by any indulgence or forbearance extended to the other party, and no waiver by a party of any breach will waive any other breach.
- 24.10.2 No delay by or omission on the part of a Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy by a Party shall not preclude any other or future exercise thereof or the exercise by that Party of any other right, power, privilege or remedy.
- 24.10.3 The rights, powers, privileges and remedies provided to the Company by this Agreement are cumulative and not exhaustive and are not exclusive of any rights or remedies provided by law.

24.11 Entire Agreement

- 24.11.1 Each Party agrees and accepts that no statement, measurement or description contained in any newspaper or other advertisement published by the other Party, its servants or agents, or any statement, description or measurement contained in any brochure or hand-out issued by the other Party, its servants or agents shall constitute a representation inducing that Party to enter into this Agreement or any warranty forming part of this Agreement and that any statement description or measurement contained in any such particulars or in any verbal form given on behalf of a Party its servants or agents, are for illustration purposes only and are not taken as matters of fact and that any mis-statement, mis-description or incorrect measurement given verbally or in form of any printed particulars by such Party its servants or agents, shall not give rise to any cause of action or claim for compensation against such Party or its servants or agents, or any right of rescission under this Contract.
- 24.11.2 This Agreement represents the entire agreement between the Parties and supersedes all other agreements or arrangements that may have existed between the Parties. Each Party confirms that in entering into this Agreement it has not relied upon any warranty, representation, agreement, statement or undertaking other than as are expressly set out in this Agreement. No Party will (in the absence of fraud) have any claim, right or remedy whatsoever arising out of any warranty, representation, agreement, statement or undertaking including, without limitation, any claim for rescission or

damages in respect of innocent or negligent misrepresentation.

24.12 Governing Law And Jurisdiction

- 24.12.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of Ireland.
- 24.12.2 Subject to Clauses 10.5 and 20, the Parties agree to submit to the exclusive jurisdiction of the Courts of Ireland as regards any claim or matter arising out of or in relation to this Agreement.

24.13 Continuation Of Agreement

This Agreement shall continue in full force and effect after the Date of Practical Completion in so far as anything then remains outstanding hereunder on the part of any of the Parties hereto and the covenants and conditions herein contained shall not, in any way, be extinguished or affected by Practical Completion of the Works.

25 [NON-RESIDENTIAL DEVELOPMENT SECURITY]¹²

25.1 On or before the Effective Date, the Developer shall deposit the Non-Residential Development Performance Security with the Escrow Agent.

25.2 It is agreed that the Developer is providing the Non-Residential Development Performance Security as security for the Developer's obligation to complete the Non-Residential Development (at the Developer's own cost) as part of the development of which the Works form part.

25.3 The Parties shall procure the release of the Non-Residential Development Performance Security as follows:

25.3.1 to the extent not otherwise already released, the Parties shall procure that the Escrow Agent release to the Developer the Non-Residential Development Performance Security on issue to the Escrow Agent of a certified copy of the Certificate of Practical Completion for the Works within 10 (ten) Working Days of the presentation of the relevant Certificate of Practical Completion to the Escrow Agent;

25.3.2 in the event that:

- (a) the Company terminates this Agreement in accordance with Clause 19; or
- (b) the Developer has a right to terminate in accordance with Clause 19 and the Funder has exercised a right to step into the Agreement pursuant to the collateral warranty issued to it by the Developer pursuant to this Agreement (the **Funder DA Warranty**);

then the Parties shall procure that the Escrow Agent shall, within 10 (ten) Working Days of being notified in writing of such termination or circumstance, release the Non-Residential Development Performance Security as follows:

- (c) to the Developer, an amount equal to the total value of the works completed in respect of the Non-Residential Development (as certified in a Chartered QS Recommendation which shall have the meaning defined and to be determined in the manner described in Schedule 2 of the Development Agreement for the

¹² This clause to be included where the development includes commercial or non-residential elements, otherwise delete.

purposes of interim payment applications, *mutatis mutandis*) up to the date of termination of or step in under this Agreement; and

(d) the remaining balance of the Non-Residential Development Performance Security to:

(i) the Company, in the event that sub-clause 25.3.2(a) has occurred; or

(ii) the Funder, in the event that sub-clause 25.3.2(b) has occurred;

25.3.3 in the event that the Developer has a right to terminate in accordance with Clause 19 and all step in rights under the Funder DA Warranty have expired, then the Parties shall procure that the Escrow Agent shall, within 10 (ten) Working Days of being notified in writing of such circumstances, release the Non-Residential Development Performance Security to the Developer.

25.4 Prior to the release of any portion of the Non-Residential Development Performance Security the recipient entitled to payment shall provide the Escrow Agent with confirmation of the relevant nominated bank account details as well as any and all other information that the Escrow Agent may reasonably require from a statutory or solicitor's regulatory compliance perspective in order to make such transfers.

25.5 If all or a part of the Non-Residential Development Performance Security is released to the Company in accordance with this Agreement, the Company shall be entitled to make use of such funds for the purpose of financing or procuring the completion of the Non-Residential Development. The Company will not be entitled to make use of the Non-Residential Development Performance Security for any other purpose.

25.6 In the event that the Company does make use of the Non-Residential Development Performance Security (or any part of it) to finance or procure the completion of the Non-Residential Development if there is any balance remaining of the Non-Residential Development Performance Security after all of the costs of completing the Non-Residential Development have been paid in full, that balance shall be returned by the Company to the Developer within 10 (ten) Working Days of the date on which the final payment for the Non-Residential Development is made.

25.7 If at any time after the date hereof, the costs of completing the Non-Residential Development (as estimated by the Company's Representative acting reasonably) exceed the value of the Non-Residential Development Performance Security, the Developer shall, within 10 (ten) Working Days of a written demand from the Company which shall include the relevant cost estimate from the Company's Representative, deposit with the Escrow Agent, the difference between the then current balance of the Non-Residential Development Performance Security, and the value of the Company Representative's estimate of the cost for completing the Non-Residential Development. For the avoidance of doubt, the Company may request the Developer to deposit additional funds on more than one occasion prior to completion of the Project but not more frequently than once per month.

25.8 In the event of a dispute between the Parties (or any of them) as to the costs of completing the Non-Residential Development and/or any additional funds to be deposited with the Escrow Agent under Clause 25.7, either Party may refer the matter to the Independent Architect by notice in writing (**Non-Residential Development Dispute Notice**) copied to the other Party to the said dispute. Within 5 (five) Working Days of the date of any Non-Residential Development Dispute Notice (or by any later date such as is agreed by the relevant Parties in writing) the Independent Architect shall issue a determination to the relevant Parties setting out:

25.8.1 the Independent Architect's reasonable assessment of the costs of completing the

Non-Residential Development; and

25.8.2 a statement as to whether any further deposit is due to be made by the Developer to the Escrow Agent.

The determination of the Independent Architect shall be binding on the Parties and the costs of the Independent Architect shall be borne by:

25.8.3 the Developer where the Independent Architect determines a further deposit is due to be made by the Developer to the Escrow Agent under Clause 25.7; or

25.8.4 the Company where the Independent Architect determines no further deposit is due to be made by the Developer to the Escrow Agent under Clause 25.7.

25.9 For the avoidance of doubt, in this Clause 25, the term “Non-Residential Development Performance Security” shall be deemed to include any additional amounts deposited with the Escrow Agent in accordance with Clause 25.7.

25.10 The Developer’s obligations under this Clause 25 shall survive any termination of this Agreement.]

IN WITNESS WHEREOF this agreement is duly executed as a deed the day and year first above written.

PRESENT when the Common Seal
of the **Company**
was affixed hereto:

Director

Director / Secretary

PRESENT when the Common Seal
of the **Developer**
was affixed hereto:

Director

Director / Secretary

DRAFT

Appendix

Relevant Provision	Item	Detail																
Parties Clause 24.7	Company	Address: Phone: Email: Attention: [Insert Company's notice details]																
Parties Clause 24.7	Developer	Address: Phone: Email: Attention: [Insert Developer's notice details]																
Clause 1.1 Clause 7	Development	[Insert a description of the Development including number of Units, etc]																
Clause 1.1 Clause 1.3	Section Particulars	Section 1 <table border="1"> <tr> <td>Description</td><td></td></tr> <tr> <td>Section Sum</td><td></td></tr> <tr> <td>Date for Completion</td><td></td></tr> <tr> <td>Liquidated and Ascertained Damages</td><td> In respect of all Social Units, the amount of €[Insert] per Unit per calendar week (or the prorated portion thereof per calendar day) In respect of all Cost Rental Units, the amount of €[Insert] per Unit per calendar week (or the prorated portion thereof per calendar day) </td></tr> </table> Section 2 <table border="1"> <tr> <td>Description</td><td></td></tr> <tr> <td>Section Sum</td><td></td></tr> <tr> <td>Date for Completion</td><td></td></tr> <tr> <td>Liquidated and Ascertained Damages</td><td>In respect of all Social Units, the amount of €[Insert] per Unit per</td></tr> </table>	Description		Section Sum		Date for Completion		Liquidated and Ascertained Damages	In respect of all Social Units, the amount of €[Insert] per Unit per calendar week (or the prorated portion thereof per calendar day) In respect of all Cost Rental Units, the amount of €[Insert] per Unit per calendar week (or the prorated portion thereof per calendar day)	Description		Section Sum		Date for Completion		Liquidated and Ascertained Damages	In respect of all Social Units, the amount of €[Insert] per Unit per
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Relevant Provision	Item	Detail	
			calendar week (or the prorated portion thereof per calendar day) In respect of all Cost Rental Units, the amount of €[Insert] per Unit per calendar week (or the prorated portion thereof per calendar day)
		Section 3 ... [Insert particulars of any Section of the Works]	
Clause 1.1 Clause 3	Planning Permission(s)	[Insert references to any Planning Permission(s) obtained in respect of the Works]	
Clause 1.1 Clause 15	Contract Sum	€	(exclusive of VAT) [Insert quantum of the Contract Sum exclusive of VAT]
Clause 1.1 Clause 3 of Schedule 2	Retention Percentage	%	[Insert the retention percentage to be withheld from each monthly payment entitlement]
Clause 1.1 Clause 17	Performance Security	A bond in the form of the document attached to this Agreement at Schedule 10 in the amount of % of the [Contract Sum]/[value of works under the Building Contract] inclusive of VAT. [Insert the %'age value of the Bond to be provided by the Developer as Performance Security – to be expressed on a VAT inclusive basis. A 10% value will apply to schemes where the Building Contractor is working on just the present scheme and 12.5% where the Building Contractor is working on two or more schemes]	
Clause 1.1 Schedule 2, Clause 1(i)c	Retained Funds	The Retained Funds shall be an amount of €.....to be released as follows - when the Works are 40% completed, the Developer shall be entitled to claim 30% of the total Retained Funds; - when the Works are 60% completed, the Developer shall be entitled to claim 20% of the total Retained Funds; - when the Works are 80% completed, the Developer shall be entitled to claim 20% of the total Retained Funds; and - when the Works are 100% completed, the Developer shall be entitled to claim 30% of the total Retained Funds; and for the purposes of this Clause 1(i)c. the percentage of Works completed shall be as certified by the Chartered Quantity Surveyor.	

Relevant Provision	Item	Detail								
		[Insert the quantum of the Retained Funds and the milestones for its release]								
Schedule 2, Clause 1(i)	Developer's Profit Allowance	An allowance for Developer's profit to be calculated at% of each interim payment amount shall be withheld from each interim payment to be repayable to the Developer on Practical Completion of each Section as follows: <table><tr><th>Section</th><th>Developer Profit Allowance (exclusive of VAT)</th></tr><tr><td>Section 1</td><td>€</td></tr><tr><td>Section 2</td><td>€</td></tr><tr><td>Section 3</td><td>€</td></tr></table> [Insert the quantum of the Developer's Profit Allowance applicable to each Section of the works]	Section	Developer Profit Allowance (exclusive of VAT)	Section 1	€	Section 2	€	Section 3	€
Section	Developer Profit Allowance (exclusive of VAT)									
Section 1	€									
Section 2	€									
Section 3	€									
Clause 1.1 Clause 25	Escrow Agent	Address: Phone: Email: Attention: [Insert the Escrow Agent's name and notice details]								
Schedule 2, Clause 1(i)	Payment claim date	Shall be the [25th] of each calendar month (or where in any month such date is not a Working Day, the next Working Day after such date). [Insert the date each month on which the Developer may submit a payment claim]								
Clause 1.1 Schedule 2, Clause 1(ii)	HFA Blackout Periods	There are two such periods running from: (i) [Date] until [Date] (the June Blackout Period) (ii) [Date] until [Date] (the December Blackout Period); or during such other or different periods as the HFA may specify (and the Company shall advise the Developer in writing with as much notice as is reasonably practical if other or different periods are specified by the HFA). [Insert the dates of the HFA Blackout Periods]								
Clause 1.1 Clause 2.3	Conditions Precedent Deadline Date	[Insert the date by which all Conditions Precedent must be satisfied or waived]								
Clause 1.1 Clause 3.3	Relevant Consent Deadline Date	[Insert the date by which all Relevant Consents must be obtained]								
Clause 10.1.1	Date for commencement of the	The Developer shall commence construction of the Works on or								

Relevant Provision	Item	Detail
	construction of the Works	before the date which is weeks after the Commencement Date. [Insert the period of weeks after the Commencement Date by which the Developer must commence construction of the Works]
Clause 1.1 Clause 7.7	Benchmark Unit(s)	Benchmark Unit(s) are/are not required (as specified in the Companys Requirements) All required Benchmark Unit(s) are to be constructed to an occupiable state with all proposed final finishes and fittings on or before the date which is six months after the Commencement Date or prior to such other date as the Parties may agree in writing. [Strike out "are" or "are not", as applicable, and where applicable insert the number(s) of Units that might be weatherproofed before the relevant Benchmark Unit must be constructed]
Clause 1.1 Clause 7.8	Show Unit(s)	Show Unit(s) are/are not required. Show Unit(s) for the following configurations of Cost Rental Units in the Development are required: a studio Unit (Social Unit/Cost Rental) (Strike the N/A) a one bed Unit (Social Unit/Cost Rental) (Strike the N/A) a two bed Unit (Social Unit/Cost Rental) (Strike the N/A) a three bed Unit (Social Unit/Cost Rental) (Strike the N/A) [Strike out "are" or "are not", as applicable and where applicable place an "X" next to each required Show Unit type (or "N/A" if no such Show Unit is required)]
Clause 1.1 Clause 7.8	Date for Show Unit Completion	Each Show Unit shall be completed and accessible for inspection by members of the public on or before the date which is calendar months prior to the Date for Completion. [Specify the number of months prior to the Date for Completion by which each Show Unit is to be complete and accessible (or "N/A" if no such Show Unit is required)]
Clause 7.8.6	Liquidated and Ascertained Damages (Show Unit)	€[Insert] per Show Unit per calendar week (or the prorated portion thereof per calendar day) [Specify the applicable rate(s) for LAD's to be expressed as a rate per Unit per week]
Clause 1.1 Clause 7.9	Management Suite	A Management Suite is/is not required. Where a Management Suite is required, it shall be located as follows: [Strike out "is" or "is not", as applicable and insert the location of any required Management Suite as provided for in the Company

Relevant Provision	Item	Detail
		Requirements or "N/A" if not applicable]
Clause 1.1 Clause 10.1.2	Date for Completion of the Works	The date which is weeks from the Commencement Date. [Insert the date by which all the Works must achieve Practical Completion (to be expressed as the date which is a period of weeks from the Commencement Date)]
Clause 10.3.1	Liquidated and Ascertained Damages (Works)	In respect of all Social Units, the amount of €[Insert] per Unit per calendar week (or the prorated portion thereof per calendar day) In respect of all Cost Rental Units, the amount of €[Insert] per Unit per calendar week (or the prorated portion thereof per calendar day) [Specify the applicable rate(s) for LAD's to be expressed as a rate per Unit per week]
Clause 1.1 Clause 19.1	Long Stop Date	 [Insert the longstop date for the Works to achieve Practical Completion]
Clause 1.1 Clause 4.7	Developer's Design	 [Insert the categories of design which the Developer must submit to the Company for review under clause 4.7]
Clause 1.1	Design Certifier	Name: Address: Phone: Email: [Insert the identity and contact details of the Design Certifier]
Clause 1.1	Assigned Certifier	Name: Address: Phone: Email: [Insert the identity and contact details of the Assigned Certifier]
Clause 1.1	Project Supervisor Design Process	Name: Address: Phone:

Relevant Provision	Item	Detail																		
		Email: [Insert the identity and contact details of the Project Supervisor Design Process]																		
Clause 1.1	Project Supervisor Construction Stage	Name: Address: Phone: Email: [Insert the identity and contact details of the Project Supervisor Construction Stage]																		
Clause 13.2.1	Public Liability Insurance Minimum Indemnity Limit [add non-negligence insurance if applicable]	€15,000,000 each and every claim [Specify the minimum indemnity limit for Public Liability Insurance – case by case]																		
Clause 13.2.2	Employers Liability Insurance Minimum Indemnity Limit	€13,000,000 each and every claim [Specify the minimum indemnity limit for Employers Liability Insurance]																		
Clause 1.1 Clause 5.1 Clause 13.4	Building Contractor (and its Professional Indemnity insurance requirements)	The Building Contractor is and its required minimum indemnity limit in respect of its professional indemnity insurance is €6,500,000 [each and every claim/ in the annual aggregate] ¹³ [Insert the identity of the Building Contractor and PI amount]																		
Clause 1.1 Clause 4.1 Clause 13.4	Developer's Professional Team (and Professional Indemnity insurance requirements)	<table border="1"> <thead> <tr> <th>Service</th><th>Party (if known)</th><th>Minimum PI Levels</th></tr> </thead> <tbody> <tr> <td>Architectural</td><td></td><td>€6,500,000 each and every claim</td></tr> <tr> <td>Civil & Structural Engineering</td><td></td><td>€6,500,000 each and every claim</td></tr> <tr> <td>Mechanical * Electrical Engineering</td><td></td><td>€6,500,000 each and every claim</td></tr> <tr> <td>Fire & DAC</td><td></td><td>€6,500,000 each and every claim</td></tr> <tr> <td>Landscaping</td><td></td><td></td></tr> </tbody> </table>	Service	Party (if known)	Minimum PI Levels	Architectural		€6,500,000 each and every claim	Civil & Structural Engineering		€6,500,000 each and every claim	Mechanical * Electrical Engineering		€6,500,000 each and every claim	Fire & DAC		€6,500,000 each and every claim	Landscaping		
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Landscaping																				

¹³ Subject to market availability and approval of HFA where each and every claim is not available.

Relevant Provision	Item	Detail												
		<table> <tr> <td>Acoustic</td><td></td><td></td></tr> <tr> <td>Design Certifier</td><td></td><td>€6,500,000 each and every claim</td></tr> <tr> <td>Assigned Certifier</td><td></td><td>€6,500,000 each and every claim</td></tr> <tr> <td>Quantity Surveying</td><td></td><td></td></tr> </table> [Identify the minimum levels of professional indemnity insurance to be carried by each member of the Developer's Professional Team]	Acoustic			Design Certifier		€6,500,000 each and every claim	Assigned Certifier		€6,500,000 each and every claim	Quantity Surveying		
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Assigned Certifier		€6,500,000 each and every claim												
Quantity Surveying														
Clause 1.1 Clause 13.4	Design Sub-Contractors (and Professional Indemnity insurance requirements)	<table> <tr> <th>Trade Package</th><th>Party (if known)</th><th>Minimum PI Levels</th></tr> <tr> <td></td><td></td><td></td></tr> <tr> <td></td><td></td><td></td></tr> <tr> <td></td><td></td><td></td></tr> </table> [Identify the Design Sub-Contractors (or the trade packages which contain a design element) and the minimum levels of professional indemnity insurance to be carried by the relevant Design Sub-Contractor]	Trade Package	Party (if known)	Minimum PI Levels									
Trade Package	Party (if known)	Minimum PI Levels												
Clause 13.4	Required duration of maintenance of Professional Indemnity Cover (all parties)	The Building Contractor, the Design Sub-Contractors and the Developer's Professional Team shall maintain their professional indemnity insurance cover for a period of years from the Date of Practical Completion of the Works. [Insert duration of PI insurance requirement – 12 years for schemes which include any apartments and 6 years for schemes which are houses only, subject to Funder requirements]												
Clause 13.5	All Risks Insurance	Required cover for: (i) professional fees is:% (ii) the Cost of Site Clearance is: € [Insert required parameters, such amounts inclusive of VAT to be included in the cover under the All Risks policy]												
Clauses 13.7, 13.12, 13.13.1	Major Claim limit	€250,000 [Specify the amount for a claim on the All-Risks policy above which the Funder shall be the sole loss payee]												
Clause 1.1 Clause 16.4	Maximum Amount Payable	€ (inclusive of VAT) [Insert quantum of the Contract Sum inclusive of VAT at the Applicable Rate]												
Clause 1.1 Clause 25	Non-Residential Development	<table> <tr> <th>Item</th><th>Description</th><th>Section</th></tr> </table>	Item	Description	Section									
Item	Description	Section												

Relevant Provision	Item	Detail												
		<table> <tr> <td>(i)</td><td></td><td></td></tr> <tr> <td>(ii)</td><td></td><td></td></tr> <tr> <td>...</td><td></td><td></td></tr> </table> [Insert details of any items of Non-Residential Development comprised within the Works and identify the Section of the Works in which each item is located]	(i)			(ii)			...					
(i)														
(ii)														
...														
Clause 1.1 Clause 25	Non-Residential Development Performance Security	<table> <tr> <th><u>Item</u></th><th><u>Quantum of Security</u></th><th><u>Release</u></th></tr> <tr> <td>(i)</td><td></td><td></td></tr> <tr> <td>(ii)</td><td></td><td></td></tr> <tr> <td>(iii)</td><td></td><td></td></tr> </table> [Insert details of any performance security for each item of Non-Residential Development identified in the row above and the release date for that security]	<u>Item</u>	<u>Quantum of Security</u>	<u>Release</u>	(i)			(ii)			(iii)		
<u>Item</u>	<u>Quantum of Security</u>	<u>Release</u>												
(i)														
(ii)														
(iii)														

SCHEDULE 1

Site¹⁴

DRAFT

¹⁴ Attach map of Site outlined in red.

SCHEDULE 2

Payment Schedule

1. Interim Certificates of Payment/Payment Dispute Certificates

- (i) Subject to Clause 1(ii) below, as and from the Commencement Date and up to the date of the issue of the Final Certificate, on a monthly basis on the day of each month as specified in the Appendix (each such date a **payment claim date**) the Developer may issue to the Chartered Quantity Surveyor an interim payment claim (each an **Interim Payment Application**) for payment in respect of amounts as follows:

The aggregate of:

- a. the total value of Works complete (such value to be ascertained by the Chartered Quantity Surveyor acting reasonably and in accordance with the provisions of Clause 2 of Schedule 2 below);
- b. the total value of any other entitlements the Developer may have arising under or in connection with this Agreement (such value to be ascertained by the Chartered Quantity Surveyor acting reasonably);
- c. any Developer entitlement to the return of any part of:
 - the **Retained Funds** which has fallen due for payment since the preceding Interim Payment Application in accordance with the staged release program for such amount as specified in the Appendix;
 - the **Developer's Profit Allowance** in respect of any Section for which the Certificate of Practical Completion has issued since the preceding Interim Payment Application (which allowances the parties acknowledge are to be of a quantum as set out in the Appendix); and
 - the **Retention Fund** the Developer's entitlements to which are as provided in Clause 3 of this Schedule 2 below;

but in all cases subject to any right the Company may have to withhold such funds;

Less the aggregate of:

- d. any Retained Funds which the Company is entitled to deduct to the extent such funds are not already withheld or set aside by the Company (including out of any sale proceeds from the Site) but such that the cumulative aggregate of Retained Funds withheld does not exceed the quantum of the Retained Funds identified in the Appendix;
- e. any applicable Developer's Profit Allowance which allowance is to be calculated at the percentage (as specified in the Appendix) of the aggregate of the amounts assessed pursuant to Clause 1(i) a. and b. above;
- f. any amount to be retained by the Company as provided in Clause 3 of this Schedule 2 below (calculated as the percentage specified in the Appendix on the aggregate of the amounts determined pursuant to Clause 1(i) a. and b. above); and
- g. any instalments previously certified under Clause 1 of this Schedule 2.

- (ii) No Interim Payment Application may be submitted during an **HFA Blackout Period** (either

the June Blackout Period or the December Blackout Period) as identified in the Appendix and any payment claim date occurring during such a period shall be delayed until the first Working Day after the conclusion of the relevant HFA Blackout Period.

- (iii) Each Interim Payment Application shall be accompanied by:
- a. interim certificates of compliance in respect of the Works in the form of that specified at:
 - Part 1 of Schedule 9 from the Developer;
 - Part 2 of Schedule 9 from the Building Contractor; and
 - Part 3 of Schedule 9 from each member of the Developer's Professional Team excluding the Assigned Certifier, the Design Certifier and the Project Supervisor Design Process; and
 - b. either:
 - written confirmation from the Building Contractor and the Developer's Professional Team that they have received payment from the Developer in respect of amounts claimed for their works or services the subject of the previous Interim Payment Application; or
 - a statement from either the Developer (or, where relevant, the Building Contractor) setting out particulars reasonably sufficient for the Company as to why amounts alleged to be due by the Building Contractor or the Developer's Professional Team have not been paid.

An Interim Payment Application shall be deemed not to have issued until the date on which all of the above items in relation to the Interim Payment Application have been issued by the Developer (save to the extent the Company agrees in writing to the contrary).

- (iv) The Developer shall procure that each Interim Payment Application specifies/particularises:
- a. the progress of the Works;
 - b. the amount claimed (even if the amount is zero), being the instalment of the Contract Sum that the Developer considers should, under this Agreement, be paid on an interim basis;
 - c. the amounts previously paid to the Developer pursuant to any Interim Certificate of Payment or any Payment Dispute Certificate;
 - d. the period, stage of work or activity to which the Interim Payment Application relates;
 - e. the subject matter of the Interim Payment Application;
 - f. the basis of the calculations of the amount claimed, using the Pricing Document; and
 - g. any supporting evidence the Chartered Quantity Surveyor requires.
- (v) The Chartered Quantity Surveyor will have 5 (five) Working Days from the date of receipt of the Interim Payment Application to undertake any inspections and/or to liaise with the Developer and/or the Developer's Architect to agree a reasonable valuation in respect of the

Interim Payment Application. Whether or not agreement is reached as to the Developer's entitlements in respect of the relevant Interim Payment Application, on or before the expiry of the 5 (five) Working Days period from the date of receipt of the Interim Payment Application by the Chartered Quantity Surveyor, the Company shall procure that on its behalf the Chartered Quantity Surveyor issues a written recommendation (the **Chartered QS Recommendation**) for payment in respect of the amounts claimed with the relevant Interim Payment Application. Each Chartered QS Recommendation shall state:

- a. a reasonable recommendation as to the appropriate valuation of the amount due to the Developer in respect of the relevant Interim Payment Application to be determined by reference to, without limitation, the principles set out in Clause 2 of this Schedule 2 (an **Undisputed Amount**); and
- b. the reasons for any difference between the quantum of the recommendation as against the valuation of the Works contained in the Interim Payment Application submitted by the Developer or otherwise advised to the Chartered Quantity Surveyor under this Clause 1(v) (and the aggregate amount of such difference is to be referred to as a **Disputed Amount**);

and for the avoidance of doubt the Chartered QS Recommendation may include any deductions to which the Chartered Quantity Surveyor is of the reasonable opinion the Company is entitled but which have not been included in the Interim Payment Application from the Developer.

- (vi) The 5 (five) Working Days period allowed to the Chartered QS in paragraph (v) above shall be extended to a 15 (fifteen) Working Day period in respect of the interim Payment Application to be issued following the Practical Completion of the Works.
- (vii) On or after the date of issue of the Chartered QS Recommendation, the Developer shall issue an Interim Certificate of Payment for the Undisputed Amount together with an invoice, both of which shall be addressed to the Company and the Funder and shall reflect the quantum of the relevant Chartered QS Recommendation.
- (viii) The Company shall make payment to the Developer in the amount properly specified in the Interim Certificate of Payment within 15 (fifteen) Working Days from the date the later of:
 - a. the date of issue of Interim Certificate of Payment; or
 - b. the date of issue by the Developer of the relevant invoice (if, contrary to Clause 1(vii) above, an invoice has not issued with the relevant Interim Certificate of Payment).
- (ix) At any time up to and including the date which is 5 (five) Working Days after the date of issue of the Chartered QS Recommendation (and no later), the Developer may refer any issue it has with a Disputed Amount (as identified in a Chartered QS Recommendation) to the Independent Architect by notice in writing (**Payment Dispute Notice**) copied to the Company. Each Payment Dispute Notice shall identify the basis on which each element of the Disputed Amount is disputed. The Company may issue a response to the Payment Dispute Notice (the **Company Payment Dispute Response**) to both the Independent Architect and the Developer within 3 (three) Working Days of the issue of the Payment Dispute Notice (the **Payment Dispute Response Period**).
- (x) Within 5 (five) Working Days of the date of any Payment Dispute Notice (but not prior to the expiry of the Payment Dispute Response Period), the Independent Architect shall issue a **Payment Dispute Certificate** to the Company and to the Developer setting out:

- a. the Independent Architect's reasonable assessment of the parties' respective entitlements in relation to the Disputed Amount, taking account of the content of the Payment Dispute Notice and any Company Payment Dispute Response and the terms of this Agreement;
- b. a statement as to whether any further payment is due to the Developer in respect of the relevant Interim Payment Application claim, and if so in what amount.

For this purpose the Independent Architect shall take into account sums already paid by the Company on foot of any previously issued Interim Certificate of Payment or Payment Dispute Certificate.

- (xi) Where a Payment Dispute Certificate indicates that further moneys are due to the Developer in respect of any relevant Disputed Amount, within 3 (three) Working Days of the issue of the Payment Dispute Certificate the Developer shall issue to the Company an invoice addressed to both the Company and the Funder reflecting the amount specified in the Payment Dispute Certificate. The Company shall make payment to the Developer in respect of the Payment Dispute Certificate within 10 (ten) Working Days from the date the later of:

- a. the date of issue of that Payment Dispute Certificate; or
- b. the date of issue by the Developer of the relevant invoice;

and the Company shall bear the Independent Architect's costs of the reference. Where a Payment Dispute Certificate indicates no further payment is due to the Developer, the costs of referring the matter shall be borne by the Developer.

- (xii) All Payment Dispute Certificates issued by the Independent Architect shall be binding on the parties pending any subsequent determination to the contrary under:
 - a. the procedures set out at Clause 20 of this Agreement; or
 - b. pursuant to the CCA 2013; or
 - c. otherwise pursuant to an order of a court of competent jurisdiction.

2. Assessment of Entitlements

- (i) Subject to Clause 1 of this Schedule 2, the amount payable in respect of any Interim Payment Application in relation to the value of Works complete shall be the total value of:

- a. Works duly executed on the Site; and
- b. materials and goods delivered upon the Site for use thereon as and from such time as they are, in the opinion of the Chartered Quantity Surveyor, reasonably, properly and not prematurely brought to or placed on the site of the Works and only if adequately stored and/or protected against weather or other casualties;

such value(s) to be ascertained by the Chartered Quantity Surveyor acting reasonably and by reference to the quantum of the Contract Sum and any relevant pricing and/or rates in the Pricing Document.

- (ii) Where in any Interim Certificate of Payment (of which the Developer has received payment) the Chartered Quantity Surveyor has included the value of any unfixed materials or goods intended for and placed on or adjacent to the Works such materials or goods shall become the property of the Company and they shall not be removed except for use upon the Works

without the authority of the Company's Representative in writing but the Developer shall remain responsible for loss or damage to them.

3. Retention

- (i) In addition to the withholding of the Retained Funds and the Developer's Profit Allowance (if the Agreement provides for such withholdings), the Company shall be entitled to retain from any interim payment to the Developer an amount equal to the percentage (specified in the Appendix) of the aggregate values of the amounts to be assessed pursuant to Clause 1(i) a. and b. above. The Company shall hold such amounts as the "**Retention Fund**".
- (ii) Subject to any right to withhold, call on or appropriate to its account the Retention Fund (or any part thereof) that the Company may have, the Company shall release to the Developer:
 - a. 50% of any Retention Fund then held by the Company on the achievement of Practical Completion of the Works, and the Developer may claim such amount with the next monthly Interim Payment Application to issue after the Date of Practical Completion; and
 - b. the balance of the Retention Fund then held by the Company with amounts due with the Final Certificate in respect of the Works, in accordance with Clause 6 of Schedule 2 below.

4. Company's Use of Amounts Withheld

- (i) Without prejudice to any other provision of this Agreement, where the Company has or may suffer cost, loss or damage by reason of a breach of this Agreement by the Developer, the Company may:
 - a. withhold a reasonable amount from any moneys which are Retained Funds, Developer's Profit Allowance or which are part of the Retention Fund and which are otherwise due to be returned to the Developer in accordance with this Schedule 2 pending ascertainment of the Company's loss pursuant to the breach (and upon ascertainment, Clause 4(i) b. shall apply, provided that the Company shall thereafter return to the Developer any excess so withheld); or
 - b. appropriate to its account any portion of the moneys which are held as Retained Funds, Developer's Profit Allowance or which are part of the Retention Fund that it properly holds which is required to make good any reasonably incurred, ascertained and vouched cost, loss or damage suffered by the Company by reason of the Developer's breach.
- (ii) In respect of any amounts retained by the Company from amounts otherwise due to the Developer (including in respect of the Retained Funds, Developer's Profit Allowance or any retention withheld pursuant to clause 3 of Schedule 2) as and from the Company's receipt or withholding of such amounts, all of those amounts so retained shall be held upon trust by the Company for the Developer without obligation to invest subject to the right of the Company to have recourse thereto from time to time for payment of any amount which it is entitled under the provisions of this Agreement to deduct from any sum due or to become due to the Developer.

5. Short Payments re Works

Where the Company has been given notice of a short or non-payment (**Short Payment**) in respect of the carrying out of any element of the Works at any contract tier from a party responsible for

carrying out those Works (the **Short Paid Party**):

- (i) the Company may give written notice to the Developer (a **Short Payment Notice**) of the existence of the allegation as to the Short Payment and identifying:
 - a. the quantum of the alleged Short Payment; and
 - b. the payer and payee alleged to be involved;
- (ii) the Developer shall include with the Subject Payment Claim evidence reasonably satisfactory to the Company that all payment obligations relevant to the notified Short Payment have been complied with and/or are otherwise the subject of a bona fide dispute (and, in the latter case, shall include particulars of the dispute);

such notice to issue on or before the date which is two weeks prior to the date for submission of the Interim Payment Application (the **Subject Payment Claim**) in respect of which the provisions of this Clause 5 are to operate.

- (iii) where evidence in respect of a Short Payment as required under paragraph (ii) above is not forthcoming with the Subject Payment Claim, the Company may deduct from any payment otherwise due in respect of that claim an amount equal to the quantum of the Short Payment (as set out in the Short Payment Notice);
- (iv) subject to paragraph (v) below, any amount deducted as contemplated under paragraph (iii) above shall be payable to the Developer with the amount due in respect of the Interim Payment Application submitted immediately subsequent to the issue by the Developer to the Company of evidence reasonably satisfactory to it:
 - a. as required under paragraph (ii) in respect of the relevant Short Payment; and/or
 - b. that applicable dispute resolution procedures in respect of the Short Payment under the relevant (sub-)contract are being duly complied with; and/or
 - c. as to the resolution of any dispute in respect of the Short Payment;
- (v) where the Developer has failed to provide evidence in respect of a Short Payment as set out in paragraph (iv) above within one calendar month of the date of the relevant Short Payment Notice, the Company may make a payment direct to the Short Paid Party to make good the Short Payment (and any such payment shall be deemed to be a payment to the Developer pursuant to this Schedule 2 and Clause 15 of the Agreement).

6. Final Certificate

- (i) Within three calendar months of the Date of Practical Completion of the Works the Developer shall furnish the Chartered Quantity Surveyor with all documents necessary for the purposes of assessing the Developer's aggregate entitlements to payment by the Company under this Agreement and which are to be included in a final certificate (the **Final Certificate**).
- (ii) No Developer's documents other than those furnished in accordance with Clause 6(i) above shall be taken into consideration by the Chartered Quantity Surveyor in the computation of the amount of the Final Certificate save in circumstances which are adjudged by the Chartered Quantity Surveyor to be exceptional or save for any additional documents which the Chartered Quantity Surveyor may at any time seek from the Developer.
- (iii) On compliance by the Developer with the requirement of Clause 6(i) above the measurement

and valuation of the Developer's entitlements shall proceed and shall be completed on or before the date (the **Final Measurement Date**) which is 3 months from the date of receipt of the last of the documentation provided by the Developer pursuant to Clause 6(i). The Chartered Quantity Surveyor shall issue to the Company and to the Developer a draft Final Certificate not later than the end of the said period.

- (iv) When due to exceptional circumstances the Developer does not furnish the documents as required by Clause 6(i) above the Chartered Quantity Surveyor at his discretion may extend the Final Measurement Date for furnishing the said documents.
- (v) So soon as is practicable but before the date which is 10 (ten) Working Days after:
 - a. the expiry of the Defects Liability Period; or
 - b. the date of rectification of all Defects notified by or on behalf of the Company during the Defects Liability Period; or
 - c. the date of the completion of all items of work or supply outstanding at Practical Completion; or
 - d. the Final Measurement Date

whichever is the latest, the Chartered Quantity Surveyor shall give notice to the Developer and the Company of the Chartered Quantity Surveyor's intention to issue the Final Certificate and unless the Chartered Quantity Surveyor receives notice of arbitration within 10 (ten) Working Days from the Company or the Developer, the Chartered Quantity Surveyor shall issue the Final Certificate.

- (vi) The Final Certificate shall state:
 - a. the sum of the amounts certified for payment under Interim Certificates of Payment and any Payment Dispute Certificate and the amount of the moiety of the retention money certified at time of Practical Completion;
 - b. the Contract Sum adjusted as necessary in accordance with the terms of these Conditions;
 - c. the difference (if any) between the two sums expressed as a balance due to the Developer from the Company or to the Company from the Developer as the case may be.

Subject to any deductions authorised under the Agreement, the said balance shall be, as from the date which is 10 (ten) Working Days after the issue of the Final Certificate, a debt payable as the case may be by the Company to the Developer or by the Developer to the Company.

- (vii) Without prejudice to any other requirement of the Developer under this Schedule 2, issue of the Final Certificate and payment thereunder shall at all times be subject to the Developer having delivered to the Company, the documents listed in Schedule 15.
- (viii) The Final Certificate shall be conclusive in any proceedings arising out of this Agreement (whether by adjudication or otherwise) only as to the balance due between the Developer and the Company and completed in accordance with the terms of this Agreement and that any necessary effect has been given to all terms of this Agreement which require an adjustment to be made to the Contract Sum, except and insofar as any sum mentioned in the

Final Certificate is erroneous by reason of fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the Final Certificate.

7. Nature of Certificates

Save as aforesaid in Clause 6(viii) of this Schedule 2, no payment certificate shall of itself be conclusive evidence that any works, materials or goods to which it relates are in accordance with this Agreement.

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SCHEDULE 3A

Company Requirements¹⁵

The Company Requirements are contained in the USB Stick attached to this Agreement and comprise the following documents:

- (a) [Accepted Developer Design documents as follows:
 - [List – this contemplates that certain of the Developer's design will be pre-approved before contract]
- (b) [the Respond Requirements – to be extracted from the Tender].
- (c) [the Developer's Tender][all relevant housing guidelines and guidance issued by the Department of Housing, Local Government and Heritage and similar departments/bodies, including but not limited to:

All Projects:

- National and Local Policy Documents (Latest Edition); refer to www.gov.ie; refer to Local Authority website.
- National Planning Framework - Ireland 2040 Our Plan (NPF); <https://www.gov.ie/en/publication/daa56-national-planning-framework-ireland-2040-our-plan-npf-2018/>
- Technical Guidance Documents (Latest Edition); <https://www.gov.ie/en/collection/d9729-technical-guidance-documents/>
- Design Manual for Urban Roads and Streets (DMURS) (Latest Edition); <https://www.gov.ie/en/publication/3360b1-design-manual-for-urban-roads-and-streets/>
- Urban Development and Building Height Guidelines (UD) (BHG) (Latest Edition); <https://www.gov.ie/en/publication/93d22-urban-development-and-building-height-guidelines-ud-bhg-2018/>

Residential:

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) (Latest Edition); <https://www.gov.ie/en/publication/a9965-sustainable-residential-developments-in-urban-areas-guidelines-for-planning-authorities/>
- Quality Housing for Sustainable Communities (Latest Edition); <https://www.gov.ie/en/publication/60868-quality-housing-for-sustainable-communities/>
- Employer's Requirements for Detail Design of Quality Housing (Revision 1 September 2020); <https://www.gov.ie/en/publication/2f78e-employers-requirements-for-detail-design-of-quality-housing/>
- Design Manual for Quality Housing (Latest Edition); <https://www.gov.ie/en/publication/b3e02-design-manual-for-quality-housing/>

¹⁵ To reflect specifics of each project

- Sustainable Residential Developments in Urban Areas (SRDUA) (Latest Edition); <https://www.gov.ie/en/publication/a9965-sustainable-residential-developments-in-urban-areas-guidelines-for-planning-authorities/>
- Design Standards for Apartments (DSFA); Guidelines for Planning Authorities (July 2025); <https://www.gov.ie/en/department-of-housing-local-government-and-heritage/publications/design-standards-for-apartments-guidelines-for-planning-authorities/>
- Sustainable Urban Housing: Design Standards for New Apartments (July 2023); <https://www.opr.ie/wp-content/uploads/2023/07/Design-Standards-for-New-Apartment-Amended-PGs-July-2023.pdf>
- Sustainable Urban Housing: Design Standards for New Apartments (December 2022); <https://assets.gov.ie/static/documents/sustainable-urban-housing-design-standards-for-new-apartments-guidelines-for-planning-.pdf>

Accessibility (where relevant):

- Irish Wheelchair Association's 'Best Practice Access Guidelines: Designing Accessible Environments' (Latest Edition); <https://www.iwa.ie/access-guidelines/best-practice-access-guidelines-4/>
- Universal Design Guidelines for Homes in Ireland (Latest Edition); <https://universaldesign.ie/built-environment/housing/>

Early Learning settings (where relevant):

- Universal design guidelines for early learning and care settings (Latest Edition) (and all key legislation and policy set out therein.); <https://aim.gov.ie/app/uploads/2021/05/universal-design-guidelines-for-elc-settings-introduction-1.pdf>
- Universal Design Self-Audit Tool for Early Learning and Care Settings (Latest Edition); <https://aim.gov.ie/app/uploads/2021/08/Universal-Design-Guidelines-for-ELC-Settings-%E2%80%93-Self-Audit-Tool-for-ELC-Settings-PDF.pdf>
- Early Years Quality and Regulatory Framework (Latest Edition); <https://www.tusla.ie/services/preschool-services/early-years-quality-and-regulatory-framework/>

Other relevant/appropriate international reference documents including, but not limited to:

- Site layout planning for daylight and sunlight: a guide to good practice (BR 209); <https://www.brebookshop.com/details.jsp?id=326792>
- Altered Estates 2: How to address changing priorities in estate regeneration; <https://www.levittbernstein.co.uk/research-writing/altered-estates-2/>

The above documents shall be read together in their entirety. If there is any ambiguity, inconsistency or conflict between the provisions of any of the documents then, unless otherwise stated, the documents shall take precedence in the above order (except to the extent that any provision of any of these documents imposes upon the Developer a higher standard, quality, level of service or greater quantum of work than another provision of any of these documents, in which case the higher standard, quality, level of service or greater quantum shall apply).]

SCHEDULE 3B

Developer's Pricing Document

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SCHEDULE 4

Developer's Professional Team

Assigned Certifier	
Design Certifier	
Developer's Architect	
Developer's Mechanical and Electrical Engineers	
Developer's Quantity Surveyor	
Developer's Civil and Structural Engineer	
Developer's Fire Services Engineer	

SCHEDULE 5

Form of Letters of Appointment

Dated the [●] day of [●] 20[●]

[●]

Employer

[●]

Consultant

CONSULTANT'S APPOINTMENT
For [●] Services in
Connection with [●]

Beauchamps LLP
Riverside 2
Sir John Rogerson's Quay
Dublin 2

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CONSULTANT'S APPOINTMENT

PARTIES

1. [●](Company No.[●], having its registered office at [●] (the **Employer**); and
2. [●] (Company No. [●]) having its registered office at [●] (the **Consultant**).

WHEREAS:

- A. The Employer is entering into a Building Contract in relation to [●] (the **Development**) and requires the performance of certain consultancy services.
- B. The Consultant is engaged in the business of offering the services required by the Employer, and has the requisite skill, knowledge and experience in that field.
- C. In reliance upon that skill, knowledge and expertise, the Employer wishes to engage the Consultant upon the terms and conditions set out below.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 The following definitions and rules of interpretation apply in this Contract:

2013 Act means the Construction Contracts Act 2013

Additional Fees means the amounts payable by the Employer to the Consultant for any Additional Services provided in accordance with this Contract;

Additional Services means any services in addition to the Services as are provided by the Consultant at the Employer's request in accordance with Clause 4;

Affiliate in relation to a person, each other person which directly or indirectly Controls, is directly or indirectly Controlled by or is under direct or indirect common Control with, that person from time to time.

Ancillary Certificate(s) means a certificate other than a statutory certificate of compliance as prescribed in the Building Regulations given by a competent person to confirm compliance of elements of the Development, design or works with the Building Regulations.

***[Assigned Certifier** means [●] appointed by the Employer to be the assigned certifier within the meaning of the Building Regulations or any other person assigned by the Employer to certify compliance with the relevant requirements of the Building Regulations.]*¹⁶

Beneficiary means Respond and any Funder, any Purchaser, or any Management Company, identified by the Employer in accordance with Clause 7 excluding individual house purchasers.

Building Contract means the building contract entered into or to be entered into by the Employer with a contractor for the construction of the Development;

¹⁶ Party to appoint Assigned Certifier to be confirmed by Respond

Building Contractor means the contractor appointed by the Employer to complete the construction of the Development;

Building Regulations means the Building Control Acts 1990 – 2007 and any and all subordinate legislation pursuant thereto (including but not limited to the Building Regulations 1997 - 2013, the Building Control Regulations 1997-2014 as may be amended, extended, or modified from time to time

Building Control Authority means a local authority to which Section 2 of the Building Control Act 1990 applies.

Collateral Warranty means a collateral warranty in the forms at Schedule 5 Part 1 and Part 2, or any other form that the Employer proposes and the Consultant approves (such approval not to be unreasonably withheld or delayed).

Control in relation to a person, the direct or indirect ownership of more than 50 per cent, of the voting capital or similar right of ownership of that person or the legal power to direct or cause the direction of the general management and policies of that person, whether through the ownership of voting capital, by contract or otherwise, and Controls and Controlled shall be interpreted accordingly.

Copyright means the entire copyright, design right, rental right, right to authorise or prohibit lending and database right, and all analogous rights subsisting now or created at any time in the performance of the Services under this Contract under the laws of Ireland or under the laws of any other jurisdiction world-wide and including all renewals, reversions, extensions and revivals.

Code of Practice means the Code of Practice for Inspecting and Certifying Building Works issued by the Department of the Environment, Community and Local Government pursuant to Article 20G of the Building Regulations.

Contract means this Consultant's Appointment entered into between the Employer and the Consultant;

Designer means a person appointed by the Employer to carry out Design;

Design Certifier means the person who signs the Certificate(s) of Compliance (Design) and appointed by the Employer to act as design certifier;

Development means design and construction of a residential development¹⁷ comprising [●] units and associated works including common areas and site works known as [●].

Documents means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, calculations, schedules, programmes, bills of quantities, budgets, consents, papers and other similar documents produced by the Consultant in connection with any Services, correspondence including emails and any other material or documents provided or prepared in connection with the Development and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating the Development

Fees mean the fees payable in accordance with Clause 6 and Schedule 4, by the Employer to the Consultant for the Services;

¹⁷ Amend as appropriate.

Funder means the Housing Finance Agency public limited company or such other bank or financial institution which provides or agrees to provide funds to the Employer to facilitate the design and/or construction of the Development or any mortgagee or bank or other person who takes a mortgage of the Development and/or the Property or any part thereof but not for the avoidance of doubt any mortgage of an individual house or unit forming part of the Development and/or the Property.

Insolvent means, in respect of a person, if:

- (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 570 of the Companies Act 2014 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
- (d) an application is made to court, or an order is made, for the appointment of a receiver or examiner, or if a notice of intention to appoint a receiver or examiner is given or if a receiver or examiner is appointed over it (being a company);
- (e) the holder of a qualifying floating charge over its assets (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 (ten) Working Days;
- (g) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (f) above (inclusive); or
- (h) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property means trademarks, service marks, trade names, logos (whether registered or not), patents, inventions, registered and unregistered design rights, copyrights (including rights in computer software), typography rights, rights of extraction relating to data bases, data base rights and all other similar proprietary rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registration;

Key Personnel means the Consultant's personnel identified in Schedule 2 as may be removed or replaced from time to time in accordance with Clause 13.

Law means any law applicable in Ireland and shall include without limitation, common law, rules of any court of competent jurisdiction, statute, delegated or subordinate legislation (including statutory instruments and bye-laws), directives, decisions, regulations or rules of the European Union and the European Courts.

Lead Consultant means the consultant identified by the Employer for the co-ordination of the Professional Team.

Management Company means a person appointed to manage the common parts of the Development and/or the Property.

Parties means the Employer and the Consultant and **Party** means either of them;

Permitted Uses means any uses relating to the Property and/or the Development including the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting out, advertisement, demolition, reinstatement, extension, building information modelling, and repair of the Property and/or the Development.

Practical Completion means practical completion of the Development pursuant to the Building Contract.

Professional Team means the Consultant, the organisations or individuals listed in Schedule 6 and any other organisations or individuals notified by the Employer to the Consultant.

Programme means the programme agreed by the Consultant and the Employer setting out key dates and time periods for;

- (a) Completing key activities;
- (b) Issuing documentation required pursuant to this Contract;
- (c) Providing information relating to the Development.

Property means the land situated at [●] and any addition, extension, or modification to the same.

Purchaser means each first person or persons to whom the Employer transfers or agrees to transfer its interest or any substantial part of its interest in the Property and/or the Development.

Required Standard means all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services on works similar in scope, size, complexity and character to the Development.

Services means the consultancy services to be provided by the Consultant pursuant to this Contract, as more particularly set out in Schedule 1 and any Additional Services and any other services which can reasonably be inferred as being required for the proper execution of the Contract;

Third Party Agreement means any Agreement between the Employer and a third party relating to the Development and of which:

- (a) a copy, or relevant extract, is attached at Schedule 7;

Or

- (b) the Employer notifies the Consultant in writing after the date of this Contract enclosing a copy of the relevant extracts.

Working Day means any day other than Saturday or Sunday or a bank or public holiday in Ireland.

1.2 In this Contract, a reference to:

- 1.2.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this Contract.
- 1.2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.2.3 The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules.
- 1.2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.2.6 Unless the context otherwise requires a reference to one gender shall include a reference to the other genders.
- 1.2.7 A reference to any party shall include a reference to that party's personal representatives, successors and permitted assigns.
- 1.2.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.9 Any reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
- 1.2.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.2.11 A reference to writing or written includes fax and e-mail.
- 1.2.12 References to clauses and schedules are to the clauses and schedules of this Contract and references to paragraphs are to paragraphs of the relevant schedule.
- 1.2.13 Unless this Contract expressly provides otherwise, a reference to the Property or the Development is to the whole and any part of it.
- 1.2.14 Any words following the terms including, include, in particular, for example, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. APPOINTMENT

- 2.1 The Employer appoints the Consultant to perform the Services and any Additional Services on the terms and conditions contained in this Contract, and the Consultant accepts such appointment.
- 2.2 This Contract shall take effect from the date when the Consultant begins performing the Services, regardless of the date of this Contract.
- 2.3 The Consultant represents and warrants to the Employer that the Consultant is and will continue to be a competent person to carry out its duties and will continue to provide sufficient resources to deliver the Services to the satisfaction of the Employer.
- 2.4 Without prejudice to the other provisions of this Contract, the Consultant shall use its best endeavours to be available at the Property or at meetings at the Employer's offices at all relevant times.

3. CONSULTANT'S OBLIGATIONS

- 3.1 Subject to Clause 3.2, the Consultant warrants and undertakes that it shall;
 - 3.1.1 comply with the terms of this Contract;
 - 3.1.2 not, without the Employer's prior consent in writing, make any material change to the designs or specifications for the Development after they have been settled or approved;
 - 3.1.3 comply with the Law.
- 3.2 The Consultant warrants and undertakes that it shall exercise the Required Standard:
 - 3.2.1 when performing the Services;
 - 3.2.2 not and will not specify for use of materials or substances which are not in accordance with current European 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 any such project in the particular circumstances in which same is used.
 - 3.2.3 insofar as it relates to the Services to be performed by the Consultant, to ensure that the Services comply with the Law;
 - 3.2.4 to perform the Services and prepare all Material for those elements of the Development for which the Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Development;
 - 3.2.5 not to cause or contribute to any breach by the Employer of any Third Party Agreement provided that, where the Employer notifies the Consultant of a Third Party Agreement after the date of this Contract, the Consultant is not required to act in any way that may increase the Consultant's liability in excess of that which was reasonably foreseeable at the date of this Contract.
- 3.3 The Consultant's duties and liabilities under this Contract shall not be negated or diminished by any approval or inspection or test of (or any failure to approve, inspect or test);

- 3.3.1 the Property or the Development; or
 - 3.3.2 any plans, drawings, designs or specifications for the Property or the Development or any work, goods, materials, plant or equipment therein,
- by or on behalf of the Employer.
- 3.4 The Consultant shall, on or by Practical Completion;
 - 3.4.1 procure the provision to the Employer of three sets of “as constructed” drawings, specification and other material produced as part of the Services and as required for O&M Manuals showing the Development in either stable negative form or in computer disk format.
 - 3.4.2 provide unqualified opinions on compliance to the Employer in the then current standard [Engineers Ireland]¹⁸ form (together with associated copies of the confirmations listed in the opinions on compliance with Building Regulations) to the effect that the Development has been designed and constructed in substantial compliance with any planning permissions (and any amendments thereto) and the Building Regulations.
 - 3.4.3 Provide evidence of the Consultant’s professional indemnity insurance in accordance with this Contract.
 - 3.5 The Consultant acknowledges that the Employer has appointed the Assigned Certifier and the Design Certifier for the Development and that it is aware of the obligations and role of the Assigned Certifier and the Design Certifier pursuant to the Building Regulations and the Code of Practice.
 - 3.6 The Consultant shall provide Ancillary Certificates if and when required to do so by the Assigned Certifier and/or the Design Certifier.
 - 3.7 The Consultant undertakes to the Employer that it will carry out the functions and perform the obligations of a Designer required by the Code of Practice and the Building Control (Amendment) Regulations 2014 (insofar as they relate to the Services) and will provide every assistance to the Assigned Certifier and Design Certifier in performing their statutory obligations including, without limiting the foregoing, providing any data they require for any certificate to be furnished to the Building Control Authority in a timely manner.

4. ADDITIONAL SERVICES

- 4.1 Either Party shall notify the other Party as soon as reasonably practicable if it becomes apparent that Additional Services are likely to be required, identifying the required services. As soon as reasonably practicable after such notification, the Consultant shall provide the Employer with a written estimate of the cost of the Additional Services, the proposed date for payment and its effect on the Programme.
- 4.2 The Consultant shall perform Additional Services only upon receipt of a written instruction to do so by the Employer.

¹⁸ Amend as appropriate for the opinion on compliance of each consultant’s professional body.

- 4.3 Unless the Parties agree otherwise, the Additional Fee shall be a reasonable amount agreed between the Parties as a fixed sum amount, provided that no Additional Fees shall be payable if the requirement for the Additional Services arises;
 - 4.3.1 from the Consultant's default or negligence; or
 - 4.3.2 as a result of a change in the scope, size or complexity or duration of the Development which was reasonably foreseeable at the date hereof.
- 4.4 Any Additional Fee shall be payable in the manner agreed by the parties pursuant to clause 4.3.

5. CO-OPERATION AND CO-ORDINATION

- 5.1 The Consultant shall, in preparing for the Services;
 - 5.1.1 Co-operate with the other members of the Professional Team;
 - 5.1.2 Comply with the reasonable instructions of the Lead Consultant.
 - 5.1.3 Notify the Employer if its performance of the Services is delayed, or is likely to be delayed, setting out the cause of the delay and its likely duration.

6. FEES AND PAYMENT

- 6.1 The Employer shall pay the Consultant the Fee in instalments as set out in Schedule 4 Part 2 on completion of the stages or elements of the Services.
- 6.2 The Fee is the Consultant's entire remuneration in connection with the Development. The Fee includes for all expenses and disbursements.
- 6.3 The Employer shall pay any value-added tax properly chargeable on the Services. Amounts in this Contract exclude value-added tax unless stated otherwise.
- 6.4 The first day of each month after a month in which the Consultant has completed a stage or element of the Services as listed in Schedule 1 (Services) is a payment claim date. On each payment claim date, the Consultant shall submit to the Employer an invoice for the appropriate interim or final instalment of the Fee, together with any supporting documents that are reasonably necessary to check the invoice. The invoice shall specify the sum that the Consultant considers earned for an instalment of the Fee, and the basis on which that sum is calculated.
- 6.5 If the Consultant sends the Employer an invoice not later than 5 days after the payment claim date, and the Employer contests that the amount claimed in the invoice is due, the Employer shall, within 21 days after the payment claim date, send the Consultant a response stating the amount that, in the Employer's opinion, should be paid, how it is calculated, and the reasons for the difference. 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.
- 6.6 The Employer shall pay the Consultant the amount due for Services performed within 28 days after receiving the Consultant's invoice.

- 6.7 If the Employer receives an invoice which it reasonably believes includes a sum that has not been earned or is not due, or in respect of which a set-off, abatement, or other deduction applies, the Employer shall notify the Consultant in writing within 21 days after receiving the invoice. The Employer shall not be required to pay amounts so disputed, but shall pay any undisputed portion of the amount invoiced by the due date under this clause 6.
- 6.8 Once a dispute has been resolved and the outcome is that a party is required to make a payment, it shall do so within 28 days after the resolution.
- 6.9 Amounts due under this Contract and not disputed carry interest at the rate of 4% per annum above the European Central Bank main refinancing rate from the day after the date on which payment was due to (and including) the date of payment.
- 6.10 The Consultant shall maintain records of all time spent by its personnel in providing the Services and of all Fees chargeable to the Employer. Upon the Employer's request, the Consultant shall allow the Employer (or its representative) to inspect those records and provide any copies the Employer requests. The Employer's right to inspect and demand copies will continue after the Consultant's engagement under this Deed has concluded or terminated.

7. COLLATERAL WARRANTIES

- 7.1 The Consultant shall execute a Collateral Warranty in favour of the Funder and the Beneficiary on the execution of this Contract in the form at Schedule 5 Part 1 and within five (5) Working Days of receiving a written request from the Employer, the Consultant shall enter into a Collateral Warranty in favour of any remaining Beneficiary identified by the Employer in a written request, substantially in the form at Schedule 5 Part 2. Such request may be made at any time before or after Practical Completion.
- 7.2 The Consultant's right to rescind or terminate its engagement under this Contract or to treat it as repudiated shall be subject to the rights of the Funder or the Beneficiary under its Collateral Warranty.

8. INDEMNITY

- 8.1 The Consultant hereby agrees to indemnify and hold harmless the Employer and the Employer's officers, employees and agents against all losses, damages, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by the Employer arising out of the Consultant's negligence in providing the Services.
- 8.2 Without limiting Clause 8.1, the Consultant agrees to indemnify, keep indemnified and hold harmless the Employer and its respective officers, employees and agents from and against all proceedings, actions, costs (including legal costs), charges, claims, expenses, damages, liability, losses and demands in respect of any disease or injury to, or the death of any person whatsoever, or in respect of any loss of or damage to any property, caused by or arising from any act, neglect, default or omission of the Consultant, its employees, sub-contractors or agents in connection with the performance of the Services or while present on the Employer's premises.

9. COPYRIGHT AND INTELLECTUAL PROPERTY

- 9.1 The Consultant warrants that it owns all intellectual property rights (including Copyright) relating to the Documents it produces.

- 9.2 The Consultant, as legal and beneficial owner, grants to the Employer, with immediate effect, a non-exclusive, irrevocable, royalty-free, world-wide licence to use, copy, alter, modify, have modified, maintain, have maintained any Documents prepared by, or on behalf of the Consultant for any of the Permitted Uses.
- 9.3 The licence in Clause 9.2 carries the right to grant sub-licences and is transferrable to third parties without the consent of the Consultant.
- 9.4 The Consultant shall not be liable for use of the Documents for any purpose other than that for which it was prepared and/or provided.
- 9.5 The Consultant agrees that the Employer may retain copies of the Documents on termination of this Contract for whatever reason. The Employer may, at any time (whether before or after completion of the Services, or after termination of the Consultant's engagement under this Contract), request a copy or copies of (some or all) of the Documents from the Consultant. To the extent that such request is made after the completion of the Services, the Employer will pay the Consultant's reasonable charges for providing the copy (or copies).
- 9.6 The Consultant warrants that:
- 9.6.1 it is the sole owner of the Copyright and all other rights in the Documents and has full power to enter into this Contract and to give the warranties and indemnity contained in this Contract;
- 9.6.2 the Documents does not infringe the Copyright, intellectual property right or any other rights of any person;
- 9.6.3 The Consultant will indemnify the Employer and keep the Employer fully and effectively indemnified against all costs, claims, expenses and liabilities of whatsoever nature arising directly out of or in connection with any claim, demand or action arising from or incurred by reason of any breach of any of the above warranties or out of a claim by a third party based on any facts which, if substantiated, would constitute such a breach.
- 9.7 The provisions of this clause will continue to apply notwithstanding the termination of this Contract for any reason and notwithstanding the completion of the performance of the Contract.

10. INSURANCE

- 10.1 The Consultant agrees to maintain the following insurances for the particular terms specified with insurers approved by the Employer.
- 10.1.1 professional indemnity insurance for 12 years after the completion of the Services with a limit of indemnity of not less than €6,500,000.00 (six million five hundred thousand euro) for each and every claim (subject to reasonable adjustment of cover for any exceptional increases in insurance market rates).
- 10.1.2 public liability insurance for bodily injury to, disease or death of any person (other than an employee of the Consultant) or loss of or damage to property resulting from a negligence act or omission of the Consultant with a limit of indemnity of not less than €6,500,000.00 (six million five hundred thousand euro) for each and every claim until completion of the Services or earlier termination of the Appointment.

- 10.1.3 employer's liability insurance for bodily injury to, disease or death of employees of the Consultant arising out of or in the course of their employment in connection with the Appointment with a limit of indemnity of not less than €13,000,000.00 (thirteen million euro) for each and every claim until completion of the Services or earlier termination of the Appointment.
- 10.2 At the request of the Employer the Consultant shall increase the agreed insurance limits or obtain additional coverage at the Employer's expense.
- 10.3 Prior to the execution of this Contract and at any time thereafter if requested by the Employer, the Consultant shall provide the Employer with such evidence as it shall require verifying that all insurance is in force for the periods specified.
- 10.4 The Consultant shall immediately notify the Employer on the Consultant becoming aware that the required professional indemnity insurance either ceases to be available at commercially reasonable rates or on cancellation, non-renewal or material reduction in the scope of cover provided by the insurances set out in Clause 10.1, so that the Consultant and the Employer can discuss how best to protect the respective positions of the Employer and the Consultant regarding the Development and the Property, without such insurances.
- 10.5 Any public liability and employer's liability policies shall include an "Indemnity to Principals" clause with the Employer, Funder and Beneficiary named as Principal. The Consultant shall procure that its Public Liability insurance and Employer's Liability insurance shall include provisions by which, in the event of any claim in respect of which the Consultant would be entitled to receive indemnity under the policy being brought and made against the Employer and its servants, the insurer will indemnify the Employer and its servants against such claims and any costs, charges and expenses in respect thereof. The policies shall not include terms or conditions to the effect that the consultant must discharge any liability before being able to recover from the insurers.
- 10.6 The Consultant agrees, represents and warrants to the Employer that the insurance policies set out in Clause 10.1 will also indemnify the Employer, Funder and Beneficiary against the acts, omissions, negligence or breach of any employees, sub-contractors or agents of the Consultant, or that such sub-contractors or agents will carry insurance to the same levels and on terms at least as favourable to the Employer as those required from the Consultant. The Consultant shall indemnify the Employer for any loss suffered by the Employer due to the failure of the Consultant to comply with this obligation.
- 10.7 If the Consultant fails at any time to take out and maintain the insurances required under Clause 10.1, the Employer may do so for the whole or part of the period for which such cover is required, without being under any obligation so to do, and may deduct any costs it incurs in obtaining such cover from any sums due to the Consultant under the Contract, or otherwise recover such sums from the Consultant.
- 10.8 The Consultant shall be liable to pay the full amount of any deductibles or excess amounts payable under the policies of insurance referred to in Clause 10.1 in the event of a claim under any of the policies.
- 10.9 Without the Employer's prior written consent, the Consultant shall not;
- 10.9.1 settle or compromise any claim with the insurers that relates to a claim by the Employer against the Consultant; or

10.9.2 by any act or omission lose or affect the Employer's right to make, or proceed with, that claim against the insurers.

10.10 The Insurances required under Clause 10.1 shall be written by reputable and well established insurers approved by the Employer (whose approval shall not be unreasonably withheld or delayed) and on customary and usual terms and conditions prevailing for the time being in the insurance market.

11 TERMINATION

11.1 The Employer may, (in its absolute discretion) terminate the Consultant's engagement under this Contract at any time by giving not less than five (5) Working Days' notice in writing to the Consultant.

11.2 Either Party may immediately terminate the Consultant's engagement under this Contract by giving written notice to the other Party if the other Party becomes Insolvent.

11.3 The Employer may terminate the Consultant's engagement under this Contract by giving written notice to the Consultant if the Consultant is in material breach of any of its obligations under this Contract and fails to remedy such breach within ten (10) Working Days of receiving written notice requiring it to do so.

11.4 If:

11.4.1 a suspension of the Services in accordance with Clause 12.1 continues for a continuous period of six months; and

11.4.2 the Employer does not instruct the Consultant to resume the Services within ten (10) Working Days of receiving a written notice from the Consultant requiring it to do so;

the Consultant may immediately terminate its engagement under this Contract by giving written notice to the Client.

11.5 If the Consultant's engagement under this Contract is terminated by the Employer in accordance with Clause 11.1 or by the Consultant in accordance with Clause 11.2 or 11.4 the Employer shall pay to the Consultant;

11.5.1 any amount properly due for payment under this Contract as at the date of termination; and

11.5.2 a fair and reasonable proportion of the next instalment of the Fees commensurate with the Services properly performed as at the date of termination.

11.6 If the Consultant's engagement under this Contract is terminated by the Employer in accordance with Clause 11.2 or 11.3 the Consultant shall reimburse the Employer on demand for all losses, costs and expenses in connection with such termination.

11.7 Payment under Clause 11.5 shall be the Consultant's sole entitlement to compensation for termination of its engagement under this Contract.

11.8 Except as set out in Clause 11.5 the Employer shall not be liable to the Consultant for;

11.8.1 any costs, expenses, disbursements or losses;

11.8.2 any loss of profits, loss of business, loss of fees, loss of reputation or goodwill business opportunity or similar losses, or anticipated saving; or

11.8.3 any indirect losses or consequential losses;

arising out of or in connection with the termination of the Consultant's engagement under this Contract.

11.9 Termination of the Consultant's engagement under this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

11.10 On termination of this Contract, the Consultant shall execute and deliver all documentation prepared by the Consultant and all other documentation in its custody or control relating to the Development to the Employer and shall take further steps as the Employer may reasonably require for the purpose of fully vesting in the Employer all rights and benefits of the Consultant arising therefrom.

12 **SUSPENSION**

12.1 The Employer may, at any time, suspend the performance of all or part of the Services by giving written notice to the Consultant. Subject to Clause 11.4 the Consultant shall resume performance of the Services as soon as reasonably practicable after receiving a written notice to do so from the Employer.

13 **KEY PERSONNEL**

13.1 The Consultant agrees that the Services will be provided by the Key Personnel who shall be devoted whole-time, or substantially whole-time, in the performance of the Services.

13.2 The Consultant agrees that no Key Personnel will be removed without the Employer's prior written consent (such consent not to be unreasonably withheld or delayed), except in the event of death, permanent incapacity, an illness making the relevant individual unavailable for work or the relevant individual leaving the Consultant's employment.

13.3 The Employer may at any time instruct the Consultant to remove any person engaged in performing the Services if, in the Employer's reasonable opinion, that person's performance or conduct is unsatisfactory. The Consultant shall remove any such person promptly.

13.4 Any personnel appointed by the Consultant to replace staff removed under Clause 13.2 or 13.3 shall be subject to the written approval of the Employer (such approval not to be unreasonably withheld or delayed).

14 **CONFIDENTIALITY**

14.1 The Consultant undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Employer or of any of its Affiliates except as permitted by Clause 14.2.

14.2 The Consultant may disclose the Employer's confidential information to the extent that disclosure is reasonably necessary for the purposes of this Contract:

14.2.1 to its employees, officers, contractors, sub-contractor permitted under this Contract or professional advisors who need to know such information for the purpose of carrying out the Consultant's obligations under this Contract. The Consultant shall ensure that its employees, officers, contractors, sub-contractors permitted under this Contract or professional advisors to whom it discloses the Employer's confidential information are made aware of and comply with the obligations of confidentiality in this Clause 14 as if such party was a Party to this Contract; and

14.2.2 as may be required by Law, a court of competent jurisdiction or any governmental or regulatory authority.

14.2.3 in circumstances where the information has come into the public domain otherwise than through a breach of this clause.

14.3 The Consultant shall not use the Employer's confidential information for any purpose other than to perform its obligations under this Contract.

15 ANNOUNCEMENTS

15.1 Subject to Clause 14, no announcement concerning the transaction contemplated by this Contract or any ancillary matter shall be made by the Consultant, without the prior written consent of the Employer.

15.2 Clause 15.1 does not apply to a public announcement, communication or circular to be made or sent by the Consultant, if it is required by law, or any securities exchange, or regulatory or governmental body, to which it is subject.

16 FURTHER ASSURANCE

Each Party shall, at its own cost, from time to time and being required to do so by the other Party, now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the other Party as the other Party may reasonably consider necessary, to give full effect to this Contract.

17 VARIATIONS

A variation of this Contract is valid only if it is in writing and signed by or on behalf of each Party.

18 WAIVERS AND ALTERNATIVE REMEDIES

18.1 No delay, omission or forbearance on the part of either Party to this Contract in exercising any right, power, privilege or remedy provided by law or under this Contract shall operate to or be construed or interpreted as operating to:

18.1.1 impair such rights, power, privilege or remedy; or

18.1.2 operate as a waiver thereof.

18.2 The rights, powers, privileges and remedies of the Employer provided in this Contract are cumulative and not exclusive of any rights, powers, privileges and remedies it would otherwise be entitled to under common law or statute.

- 18.3 Any payment due to the Consultant under this Contract is subject at all times to the Employer' right and entitlement (created and agreed in this clause), to withhold or deduct from or set-off against all or any part of such payment any sum or sums due to it from the Consultant under this Contract.

19 SCOPE OF AUTHORITY

- 19.1 Notwithstanding any other provision of this Contract, other than in the case of an emergency or with the prior written consent of the Employer, the Consultant has no authority to;
- 19.1.1 make (or instruct the Building Contractor or any member of the Professional Team to make) any material alteration to the Development or the relevant Professional Team members services;
- 19.1.2 vary, terminate or waive compliance with the terms of the Building Contract, the appointment of any member of the Professional Team or any Third Party Agreement, or enter into any contract, commitment or undertaking on behalf of the Employer without its prior written consent.

20 ASSIGNMENT/SUB-CONTRACTING/NOVATION

- 20.1 The Consultant shall not assign, transfer, sub-contract, mortgage, charge, create hold on trust, or dispose of any of its rights or obligations under this Contract to any other person.
- 20.2 The Consultant shall not sub-contract the performance of any of the Services without the Employer's prior written consent. The Consultant shall remain responsible to the Employer for the performance of all the Services notwithstanding any Services it sub-contracts to a third party.
- 20.3 Within five (5) Working Days of receiving a written request from the Employer, the Consultant shall, without being entitled to compensation, execute and deliver a deed of novation which novates the rights and obligations of the Consultant from the Employer to an Affiliate of the Employer, or to any person to whom the Employer transfers or agrees to transfer its interest or any part of its interest in the Property and/or the Development. The deed of Novation shall be in such form as the Employer may require. The rights of the Employer under this clause 20.3 shall not be limited by the number of novations. The Consultant shall execute and deliver a Collateral Warranty to the Employer in the form set out in Part 2 of Schedule 5 simultaneously with the delivery of the deed of novation.
- 20.4 The benefit of this Contract and/or any of the present or future rights interests and benefits of the Employer hereunder may be assigned by the Employer on two occasions without the consent of the Consultant, provided always that this restriction shall not apply to the benefit of this Contract being assigned in whole or in part to an Affiliate of the Employer. The Employer will give the Consultant prompt notice of any such assignment provided always that the giving of such notice will not be a precondition to the effectiveness of any assignment. Thereafter the benefit of the Contract and/or any of the present or future rights interests and benefits of the Employer hereunder may not be further assigned without the prior written consent of the Consultant, which consent shall not be unreasonable withheld or delayed.
- 20.5 An assignment to a Funder or a Beneficiary will not constitute an assignment for the purposes of this Clause 20.

21 NOTICES

21.1 A notice given to a party under or in connection with this Contract:

21.1.1 shall be in writing and in English;

21.1.2 shall be signed by or on behalf of the party giving it;

21.1.3 shall be sent to the party for the attention of the contact and at the address listed in Clause 21.2;

21.1.4 may be delivered as follows;

- (i) by hand or sent by pre-paid post, or
- (ii) sent by fax; and

21.1.5 unless proved otherwise is deemed received on delivery if hand delivered or at the expiration of three days from the date of posting if posted and prepared and sent in accordance with this clause and if sent by fax, deemed received when received in legible form during normal business hours or, if received outside normal business hours, at the start of the next Working Day.

21.2 The parties' addresses and contacts are set out in this table^[1]:

EMPLOYER:
CONSULTANT:
BENEFICIARY:

21.3 A party may change its details given in the table in Clause 21.2 by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

21.3.1 the date, if any, specified in the notice as the effective date for the change; or

21.3.2 the date five Working Days after deemed receipt of the notice.

21.4 A notice given under or in connection with this Agreement is not valid if sent by e-mail.

22 COUNTERPARTS

22.1 This Contract may be executed by the Parties in any number of counterparts and on separate counterparts, but shall not be so effective until each Party has executed at least one counter-part.

22.2 Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute but one and the same instrument.

23 SEVERANCE

^[1] Insert contact address for Employer, Consultant and Beneficiary.

Each of the provisions of this Contract is severable and if any provision of this Contract is held by any court or other competent authority to be illegal, void or unenforceable in whole or in part, the legality, validity and enforceability of the remaining provisions of this Contract shall not be affected or impaired thereby.

24 ENTIRE AGREEMENT

24.1 This Contract contains the entire agreement between the Parties and contains all the terms which the Parties have agreed with respect to its subject matter and this Contract supersedes and extinguishes all previous drafts, agreements, contracts and undertakings between the Parties.

24.2 Nothing in this clause 24 shall have the effect of limiting or restricting any liability of a Party arising as a result of any fraud.

25 LIABILITY PERIOD

No action or proceedings for any breach of this Contract shall be commenced against the Consultant after the expiry of 12 years from the Date of Practical Completion of the Development under the Building Contract.

26 GOVERNING LAW

This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall, in all respects be governed by and construed in accordance with the laws of Ireland.

27 DISPUTES

27.1 The parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation. Any mediation is to be conducted in accordance with the Engineers Ireland Mediation Procedure 2011.

27.2 Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, that same dispute shall not be referred to mediation.

27.3 If a dispute between the parties is referred to adjudication, any mediation relating to that dispute immediately adjourns. In the event that no decision is reached by the adjudicator, the parties may continue to resolve the dispute under the mediation from the date the dispute was referred to adjudication. In the event that a decision is reached by the adjudicator, the mediation for that dispute shall be terminated.

27.4 The Parties agree that any dispute under or in connection with this Contract is subject to the exclusive jurisdiction of the courts of Ireland.

28 JURISDICTION

Subject to Clause 27 each Party irrevocably agrees that the courts of Ireland have exclusive jurisdiction to hear and decide any suit, action or proceedings and to settle any disputes which may arise out of or are in connection with this Contract, and for these purposes, irrevocably submits to the jurisdiction of the courts of Ireland.

IN WITNESS WHEREOF this document has been executed on the day and date first herein written.

DRAFT

PRESENT when the common
seal of the Employer
was affixed hereto

Director

Director/Secretary

PRESENT when the common
seal of the Consultant
was affixed hereto

Director

Director/Secretary

SCHEDULE 1¹⁹
Services

DRAFT

¹⁹ Include list of services to be provided

SCHEDULE 2²⁰
Key Personnel

Name	Role/position

DRAFT

²⁰ Insert details of Key Personnel.

SCHEDULE 3
Notices

If to the Consultant, to:

Address: [●]

Tel: [●]

Marked for the attention of: [●]

If to the Employer, to:

Address: [●]

Tel: [●]

Marked for the attention of: [●]

DRAFT

SCHEDULE 4

Fees and Payment

PART 1 - Fees

Amount of Fees

€ [●], exclusive of VAT

PART 2 - Instalments

Instalment/milestone/key date	Amount/percentage of the Fee

SCHEDULE 5

PART 1 – Collateral Warranty to Funder

[insert form per schedule 7 of Development Agreement]

DRAFT

SCHEDULE 5

PART 2 – Collateral Warranty to Beneficiaries

[insert form per schedule 7 of Development Agreement]

DRAFT

SCHEDULE 6

Professional Team²¹

Name	Role
	Main Contractor, Project Supervisor Construction Stage
	Lead Consultant, Architect, Design Certifier, [Assigned Certifier] and Project Supervisor Design Process
	Civil and Structural Engineer
	Mechanical and Electrical Engineer
	Quantity Surveyor
	[Design Sub-Contractors]

²¹ Sample Professional Team

SCHEDULE 7

Copies of or extracts from Third Party Agreements

SCHEDULE 6

Building Contract

SCHEDULE 7

Forms of Collateral Warranty

Part 1 - Collateral Warranties from Contractor²²

CONTRACTOR'S COLLATERAL WARRANTY

[CONTRACTOR]

and

[DEVELOPER]

and

[BENEFICIARY]

relating to

**the development of [*insert number of units*] units at
[*insert name and address of development*]**

²² Separate collateral warranties required from Developer to Funder in addition to Contractor to Respond and Funder, where Contractor and Developer are separate entities

PARTICULARS

A.	[Type of finance being provided by the Beneficiary] ²³ / [Type of scheme] ²⁴	Please select with an 'x' the box next to the applicable option below: [The Beneficiary is]¹ / [The scheme is one which the Funder is]²: a) providing funding for completed units ☐ b) providing funding in respect of the design and construction of the units ☐ If an 'x' has been inserted in option a), for the purposes of this Agreement, the development is an Acquisition Finance Scheme and Clause 6 shall be excluded from and have no effect under this Agreement. If an 'x' has been inserted in option b) then for the purposes of this Agreement, the development is a Development Finance Scheme.
B.	"Approved Housing Body"	means Respond with registered company number 90576 and having its registered office at Airmount, Dominick Place, Waterford, Co. Waterford.
C.	Background	For a Development Finance Scheme, the following background applies: (A) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the Developer to carry out and complete the construction of the Development and for the Approved Housing Body to pay the Developer for performance of its obligations under the Developer and AHB Agreement; (B) the Developer has engaged the Contractor under the Main Contract for the Contractor to provide the Works; and (C) [the Beneficiary is providing funding to the Approved Housing Body for the Development]¹ / [Insert descriptions of the Beneficiary's interest in the Development]². For an Acquisition Finance Scheme, the following background applies: (A) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the sale of the Development; (B) the Developer has engaged the Contractor under the Main Contract for the Contractor to provide the Works; and (C) [the Beneficiary is providing funding to the Approved Housing Body for purchase of the Development or part thereof]¹ / [Insert descriptions of the Beneficiary's interest in the Development]².
D.	"Contractor"	means [insert legal entity name of Contractor] with registered company number [•] and having its registered office at [Insert Address]; or

²³ For HFA warranty

²⁴ For other Warranties

		if the Contractor is not a registered company, please insert details:
D1	"Beneficiary"	means [insert legal entity name of Beneficiary] with registered company number [•] and having its registered office at [Insert Address]; or if the Beneficiary is not a registered company, please insert details:
E.	Design	Please select with an 'x' the box next to the applicable option below: The Contractor is: a) carrying out design in relation to the Works [] b) not carrying out design in relation to the Works [] If an 'x' has been inserted in option a) then for the purposes of this Agreement, the Contractor is required to maintain the Professional Indemnity Insurance below in Particular L and Clause 2 shall apply. If an 'x' has been inserted in option b), for the purposes of this Agreement, the Contractor is not required to maintain the Professional Indemnity Insurance below in Particular L. Clause 2 is hereby removed from and will have no effect under this Agreement.
F.	"Developer"	means [Insert legal entity name of Developer] with registered company number [•] and having its registered office at [Insert Address]. if the Developer is not a registered company, please insert details:
G.	"Developer and AHB Agreement"	means the agreement between the Approved Housing Body and the Developer dated [insert date of the development agreement / or contract for sale – as applicable] as more particularly described in the Background.
H.	"Development"	means [Insert description of the Development] and all ancillary and associated works and services.
I.	Law	means any law applicable in Ireland (without further enactment), common law, civil code, statute, statutory instrument, proclamation, byelaw, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation.
J.	"Main Contract"	means the agreement between the Developer and the Contractor for the carrying out and construction of the Works dated [insert date of the Main Contract].

K.	“Practical Completion”	means: a) for Acquisition Finance Schemes, the date of completion of the sale under the Developer and AHB Agreement; or b) for Development Finance Schemes, the date of practical completion or equivalent under the Developer and AHB Agreement.															
L.	“Professional Indemnity Insurance “	means an amount of not less than € [Insert amount of professional indemnity insurance] for each and every claim See below guidance on the Housing Finance Agency requirements for professional indemnity insurance. <table border="1"> <thead> <tr> <th>HFA Loan Amount (for the overall Scheme)</th><th>Schemes that include apartments - Minimum indemnity level required</th><th>Schemes that do not include any apartments - Minimum indemnity level required</th></tr> </thead> <tbody> <tr> <td>Less than €3 million</td><td>€1 million each and every claim</td><td>€1 million each and every claim</td></tr> <tr> <td>€3 million to €5 million</td><td>€3 million each and every claim</td><td>€2.5 million each and every claim</td></tr> <tr> <td>€5 million to €10 million</td><td>€5 million each and every claim</td><td>€4 million each and every claim</td></tr> <tr> <td>Over €10 million</td><td>€6.5 million each and every claim</td><td>€6.5 million each and every claim</td></tr> </tbody> </table>	HFA Loan Amount (for the overall Scheme)	Schemes that include apartments - Minimum indemnity level required	Schemes that do not include any apartments - Minimum indemnity level required	Less than €3 million	€1 million each and every claim	€1 million each and every claim	€3 million to €5 million	€3 million each and every claim	€2.5 million each and every claim	€5 million to €10 million	€5 million each and every claim	€4 million each and every claim	Over €10 million	€6.5 million each and every claim	€6.5 million each and every claim
HFA Loan Amount (for the overall Scheme)	Schemes that include apartments - Minimum indemnity level required	Schemes that do not include any apartments - Minimum indemnity level required															
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€5 million to €10 million	€5 million each and every claim	€4 million each and every claim															
Over €10 million	€6.5 million each and every claim	€6.5 million each and every claim															
M.	“Term”	means: a) where the Works relate to apartments, the period from the commencement of the Works up to and including the day that is twelve (12) years from Practical Completion; or b) if paragraph a) above does not apply, the period from the commencement of the Works up to and including the day that is six (6) years from Practical Completion.															
N.	“Works”	means [Insert Description of the Works] for the Development															

THIS AGREEMENT IS DATED:

BETWEEN:

- (1) the Contractor;
- (2) the Developer²⁵; and
- (3) **[HOUSING FINANCE AGENCY PUBLIC LIMITED COMPANY** with registered company number 87513 and having its principal office at 46 Saint Stephen's Green, Dublin 2, D02 WK60]²⁶ / **[RESPOND** with registered company number 90576 and having its registered office at Airmount, Dominick Place, Waterford, Co. Waterford] / **[INSERT OTHER BENEFICIARY DETAILS]**²⁷ (the **Beneficiary**).

IT IS HEREBY AGREED in consideration of the payment of ten euro (€10.00) by the Beneficiary to the Contractor (receipt and sufficiency of which the Contractor acknowledges):

1. COMPLY WITH MAIN CONTRACT AGREEMENT

1.1 The Contractor hereby warrants to and undertakes with the Beneficiary that:

- (1) in the performance of the Works and in carrying out the Main Contract it has:
 - exercised and will continue to exercise the standard of skill, care and diligence reasonably to be expected of properly qualified persons providing works, services or supply comparable in value, size, scope, complexity and quality to that required under the Main Contract, having regard to the nature and timescale of the Works and the Development; and
 - used good and proper materials and the workmanship has been carried out in compliance with all applicable law, such that the Works when practically complete are fit for use as residential accommodation.
- (2) it has not broken and shall not break any express or implied term of the Main Contract.

1.2 The Contractor hereby undertakes and warrants to the Beneficiary that it has not and will not use materials or substances:

- (1) which are not in accordance with current Irish standards, European standards and any codes of practice known or ought reasonably to have been known to the Contractor insofar as they may be applicable, or
- (2) known to be deleterious to health or safety or the durability or suitability of any such project in the particular circumstances in which same is used.

2. INSURANCE

2.1 The Contractor warrants to and undertakes with the Beneficiary that it shall take out and maintain professional indemnity insurance in accordance with the applicable requirements in Part L of the Particulars for a period from the commencement of the Works to a date no earlier than the expiry of the Term.

²⁵ Applicable for Development Finance Schemes only – can be deleted for Acquisition Finance Schemes.

²⁶ For HFA Warranty

²⁷ For other Beneficiaries

13464290.1

- 2.2 The insurance required under Clause 2.1 shall be written by reputable and well-established insurers lawfully carrying on insurance business in the EU or in the United Kingdom provided it has the necessary regulatory authorisations to underwrite insurance in Ireland.
- 2.3 The Contractor shall notify the Beneficiary immediately on becoming aware of:
- (a) the cancellation, non-renewal, or reduction in cover available to the Contractor; or
 - (b) the cover no longer being available to the Contractor at commercially reasonable rates,
- and in any such circumstances the Contractor shall take out and maintain the best professional indemnity insurance that is available in the insurance market within the EU or United Kingdom at commercially reasonable rates until such time as the cover required by Clause 2.1 is available at commercially reasonable rates at which point the Contractor shall immediately take out and maintain such cover.
- 2.4 As and when reasonably requested by the Beneficiary, the Contractor shall produce for inspection documentary evidence that the insurance required by Clause 2.1 has been taken out and is being maintained as so required.
- 2.5 If the Contractor shall at any time fail to take out or maintain the insurance required under Clause 2.1 or, if applicable, 2.3, the Beneficiary may take out and maintain such insurance as the Beneficiary may in its discretion consider reasonable to protect its interest and the Contractor shall pay to the Beneficiary the amount of all costs and expenses properly incurred by the Beneficiary in so doing.
- 2.6 The policy shall not include terms or conditions to the effect that the Contractor must discharge any liability before being able to recover from the insurers.

3. **COPYRIGHT AND INTELLECTUAL PROPERTY**

- 3.1 The copyright in all designs, drawings, reports, specifications, bills of quantities, consents, papers and other similar documents produced by the Contractor in connection with any Works (the “**Documents**”) shall remain vested in the Contractor but the Beneficiary shall have a perpetual non-exclusive irrevocable and assignable royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Works and to any works related to future maintenance and alteration work. The Contractor shall not be liable for the use of any of the Documents for any purpose other than that for which they were prepared and/or provided.
- 3.2 The Beneficiary shall be entitled (at its own cost) to full and proper copies of the Documents in the possession or control of the Contractor and the Contractor will not claim copyright or a lien in respect of them against the Beneficiary.
- 3.3 The licence granted to the Beneficiary under this Clause 3 shall include a right for the Beneficiary to grant sub-licences.
- 3.4 The Contractor shall indemnify the Beneficiary from any claims brought by a third party against the Beneficiary for any alleged breach or infringement of any intellectual property rights in the Documents or arising out of or in connection with the Works.

4. **ASSIGNMENT**

The benefit of this Agreement and/or any of the present or future rights interests and/ or benefits of the Beneficiary hereunder may be assigned on two (2) occasions without the consent of the Contractor and thereafter with the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed) provided that no restriction whatsoever shall apply to any

assignment to an affiliate of the Beneficiary or to any assignment or charge in favour of any funder, bank or financial institution. The Beneficiary shall give the Contractor prompt notice of any such assignment by it provided always that the giving of such notice shall not be a precondition to the effectiveness of any assignment.

5. NOTICES

Any notice provided for in accordance with this Agreement shall be deemed to be duly given if delivered by hand or sent by registered post to the party named therein at the address of such party shown in this Agreement or such other address as such party may by notice in writing nominate for the purpose of service and if sent by registered post or delivered by hand shall be deemed to have been received when delivered.

6. STEP-IN

6.1 The Contractor will, if so required by notice in writing given by the Beneficiary, accept the instruction of the Beneficiary or the Beneficiary's nominee to the exclusion of the Developer in respect of the carrying out and completion of any Works upon the terms and conditions of the Main Contract (whereupon all the rights and obligations of the Developer under the Main Contract shall thereafter be performed and exercisable by the Beneficiary or its nominee). The Contractor shall not be in breach of the Main Contract by complying with the obligations imposed on it by this Clause.

6.2 The Contractor will not without first giving the Beneficiary not less than twenty one days prior notice in writing (accompanied by all of the information referred to in sub-clause 6.3 below) exercise or seek to exercise any right it may have to determine its employment under the Main Contract or to treat the same as having been repudiated by the Developer or to discontinue or suspend the performance of any duties or works to be performed by the Contractor pursuant thereto. The Contractor's right to determine its employment under the Main Contract, to treat the same as having been repudiated or to suspend or to discontinue performance shall cease if within twenty one days of receipt of such notice the Beneficiary shall give notice in writing to the Contractor requiring the Contractor to accept the instruction of the Beneficiary or its nominee to the exclusion of the Developer in respect of the carrying out and completion of the Works upon the terms and conditions of the Main Contract (whereupon all the rights and obligations of the "Developer" under the Main Contract shall thereafter be performed and exercisable by the Beneficiary or its nominee).

6.3 Following a notice under sub clause 6.1 or sub-clause 6.2 (as applicable), the Contractor shall, if so required by the Beneficiary at any time, provide the Beneficiary with particulars in writing of the amounts paid to the Contractor under the Main Contract, particulars of amounts due and unpaid to the Contractor, particulars of amounts remaining to be paid to the Contractor under the Main Contract but not yet due, and any information requested by the Beneficiary that is relevant to these amounts. All such information shall be provided within five (5) business days from the date of request.

6.4 In the event of a step-in under sub-clause 6.1 or sub-clause 6.2 (as applicable), any sums properly due and payable to the Contractor under the terms of the Main Contract that are unpaid prior to the date of service of the notice by the Beneficiary under sub-clause 6.1 or sub-clause 6.2 shall be payable by the Beneficiary, provided always that the Beneficiary's liability shall not exceed any amounts notified to the Beneficiary pursuant to sub-clause 6.3.

7. AMENDMENT OF THE MAIN CONTRACT

Save for any variation to the Works as may be permitted by the Main Contract, the Contractor shall not make any amendment, variation, supplement and/ or novation of or to the Main Contract

and/ or agree to any release and/ or waiver by the Developer of any term, provision and/ or condition of the Main Contract without the prior written consent of the Beneficiary.

8. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by, and construed in accordance with, the laws of Ireland and the parties irrevocably submit to the jurisdiction of the Irish Courts.

9. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties have affixed their Seals the day and date first hereinbefore written.

GIVEN under the **COMMON SEAL**
of **THE CONTRACTOR**

Director

Director/Secretary

GIVEN under the **COMMON SEAL**
of **THE DEVELOPER**

Director

Director/Secretary

GIVEN under the **COMMON SEAL**
of **THE BENEFICIARY**

Authorised Signatory

Authorised Signatory
/Company Secretary

Part 2 - Collateral Warranties from Design Sub-Contractor (carrying out construction of any Works)

SUB- CONTRACTOR'S COLLATERAL WARRANTY

[SUB-CONTRACTOR]

and

[CONTRACTOR]

and

[BENEFICIARY]

relating to

[[insert number of units] units at [insert name of Development]]

PARTICULARS

A.	[Type of finance being provided by the Beneficiary] ²⁸ / [Type of scheme] ²⁹	Please select with an 'x' the box next to the applicable option below: [The Beneficiary is]¹ / [The scheme is one which the Funder is]²: a) providing funding for completed units ☐ b) providing funding in respect of the design and construction of the units ☐ If an 'x' has been inserted in option a), for the purposes of this Agreement, the development is an Acquisition Finance Scheme and Clause 6 shall be excluded from and have no effect under this Agreement. If an 'x' has been inserted in option b) then for the purposes of this Agreement, the development is a Development Finance Scheme.
B.	"Approved Housing Body"	means Respond with registered company number 90576 and having its registered office at Airmount, Dominick Place, Waterford, Co. Waterford.
C.	Background	For a Development Finance Scheme, the following background applies: (A) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the Developer to carry out and complete the construction of the Development and for the Approved Housing Body to pay the Developer for performance of its obligations under the Developer and AHB Agreement; (B) the Developer has engaged the Contractor under the Main Contract for the Contractor to provide the Works; (C) pursuant to the Sub-Contract, the Contractor has engaged the Sub-Contractor to carry out the Sub-Contract Works, which form part of the Works; and (D) [the Beneficiary is providing funding to the Approved Housing Body for the Development]¹ / [Insert descriptions of the Beneficiary's interest in the Development]². For an Acquisition Finance Scheme, the following background applies: (E) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the sale of the Development; (F) the Developer has engaged the Contractor under the Main Contract for the Contractor to provide the Works; and

²⁸ For HFA warranty

²⁹ For other warranties

		(G) pursuant to the Sub-Contract, the Contractor has engaged the Sub-Contractor to carry out the Sub-Contract Works, which form part of the Works; and (H) [the Beneficiary is providing funding to the Approved Housing Body for the Development]¹ / [Insert descriptions of the Beneficiary's interest in the Development]².
D.	“Contractor”	means [insert legal entity name of Contractor] with registered company number [•] and having its registered office at [Insert Address]; or if the Contractor is not a registered company, please insert details:
E.	Design	Please select with an ‘x’ the box next to the applicable option below: The Sub-Contractor is: a) carrying out design in relation to the Works [] b) not carrying out design in relation to the Works [] If an ‘x’ has been inserted in option a) then for the purposes of this Agreement, the Sub-Contractor is required to maintain the Professional Indemnity Insurance below in Particular L and Clause 2 shall apply. If an ‘x’ has been inserted in option b), for the purposes of this Agreement, the Sub-Contractor is not required to maintain the Professional Indemnity Insurance below in Particular L. Clause 2 is hereby removed from and will have no effect under this Agreement.
F.	“Developer”	means [insert legal entity name of Developer] with registered company number [•] and having its registered office at [insert address]. if the Developer is not a registered company, please insert details:
G.	“Developer and AHB Agreement”	means the agreement between the Approved Housing Body and the Developer dated [insert date of the development agreement / or contract for sale – as applicable] as more particularly described in the Background.
H.	“Development”	means [insert description of the Development] and all ancillary and associated works and services.
I.	Law	means any law applicable in Ireland (without further enactment), common law, civil code, statute, statutory instrument, proclamation, byelaw, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court,

		instruments, or delegated or subordinate legislation.															
J.	“Main Contract”	means the agreement between the Developer and the Contractor for the carrying out and construction of the Works dated [insert date of the Main Contract].															
K.	“Practical Completion”	means: a) for Acquisition Finance Schemes, the date of completion of the sale under the Developer and AHB Agreement; or b) for Development Finance Schemes, the date of practical completion or equivalent under the Developer and AHB Agreement.															
L.	“Professional Indemnity Insurance “	means an amount of not less than € [Insert amount of professional indemnity insurance] for each and every claim See below guidance on the Housing Finance Agency requirements for professional indemnity insurance. <table border="1"> <thead> <tr> <th>HFA Loan Amount (for the overall Scheme)</th><th>Schemes that include apartments- Minimum indemnity level required</th><th>Schemes that do not include any apartments - Minimum indemnity level required</th></tr> </thead> <tbody> <tr> <td>Less than €3 million</td><td>€1 million each and every claim</td><td>€1 million each and every claim</td></tr> <tr> <td>€3 million to €5 million</td><td>€3 million each and every claim</td><td>€2.5 million each and every claim</td></tr> <tr> <td>€5 million to €10 million</td><td>€5 million each and every claim</td><td>€4 million each and every claim</td></tr> <tr> <td>Over €10 million</td><td>€6.5 million each and every claim</td><td>€6.5 million each and every claim</td></tr> </tbody> </table>	HFA Loan Amount (for the overall Scheme)	Schemes that include apartments- Minimum indemnity level required	Schemes that do not include any apartments - Minimum indemnity level required	Less than €3 million	€1 million each and every claim	€1 million each and every claim	€3 million to €5 million	€3 million each and every claim	€2.5 million each and every claim	€5 million to €10 million	€5 million each and every claim	€4 million each and every claim	Over €10 million	€6.5 million each and every claim	€6.5 million each and every claim
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€5 million to €10 million	€5 million each and every claim	€4 million each and every claim															
Over €10 million	€6.5 million each and every claim	€6.5 million each and every claim															
M.	“Sub-Contract”	means the sub-contract dated [•] made between the Sub-Contractor and the Contractor (appended at Schedule 1 hereto) in respect of the Sub-Contract Works.															
N.	“Sub-Contractor”	means [insert legal entity name of Sub-Contractor] with registered company number [•] and having its registered office at [insert registered address]; or															

		if the Sub-Contractor is not a registered company, please insert details:
O.	"Sub-Contract Works"	means the provision of [insert description of the sub-contract works] in relation to the Development.
P.	"Term"	means: a) where the Works relate to apartments, the period from the commencement of the Works up to and including the day that is twelve (12) years from Practical Completion; or b) if paragraph a) above does not apply, the period from the commencement of the Works up to and including the day that is six (6) years from Practical Completion.
Q.	"Works"	means [insert description of the Works] for the Development.

THIS AGREEMENT IS DATED:

BETWEEN:

- (1) the Sub-Contractor;
- (2) the Contractor; and
- (3) **[HOUSING FINANCE AGENCY PUBLIC LIMITED COMPANY** with registered company number 87513 and having its principal office at 46 Saint Stephen's Green, Dublin 2, D02 WK60]³⁰ / **[RESPOND** with registered company number 90576 and having its registered office at Airmount, Dominick Place, Waterford, Co. Waterford] / **[INSERT OTHER BENEFICIARY DETAILS]**³¹ (the **Beneficiary**).

IT IS HEREBY AGREED in consideration of the payment of ten euro (€10.00) by the Beneficiary to the Sub-Contractor (receipt and sufficiency of which the Sub-Contractor acknowledges):

1. COMPLY WITH SUB-CONTRACT

1.1 The Sub-Contractor hereby warrants to and undertakes with the Beneficiary that:

- (a) it has exercised and will continue to exercise all reasonable skill, care and diligence in the performance of its obligations and duties pursuant to the Sub-Contract and has not broken and shall not break any express or implied term of the Sub-Contract;
- (b) in the performance of the Sub-Contract Works and in carrying out the Sub-Contract, it has used good and proper materials and the workmanship has been carried out in compliance with Law, and
- (c) it binds itself to the Beneficiary in all respects as if the Beneficiary had appointed the Sub-Contractor to act prior to the commencement of any work by the Sub-Contractor to the extent that the Beneficiary shall be entitled to enforce all remedies against the Sub-Contractor by virtue of any breach by the Sub-Contractor of its obligations pursuant to the Sub-Contract.

1.2 The Sub-Contractor hereby undertakes and warrants to the Beneficiary that it has not and will not use materials or substances:

- (a) which are not in accordance with current Irish standards, European standards and any codes of practice known or ought reasonably to have been known to the Sub-Contractor insofar as they may be applicable, or
- (b) known to be deleterious to health or safety or the durability or suitability of any such project in the particular circumstances in which same is used.

2. INSURANCE

2.1 The Sub-Contractor warrants to and undertakes with the Beneficiary that it shall take out and maintain professional indemnity insurance in accordance with the applicable requirements in Part L of the Particulars for a period from the commencement of the Sub-Contract Works to a date no earlier than the expiry of the Term.

30 For HFA warranty

31 For other Beneficiary warranties

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- 2.2 The insurance required under Clause 2.1 shall be written by reputable and well-established insurers lawfully carrying on insurance business in the EU or in the United Kingdom provided it has the necessary regulatory authorisations to underwrite insurance in Ireland.
- 2.3 The Sub-Contractor shall notify the Beneficiary in writing immediately on becoming aware of:
- (a) the cancellation, non-renewal, or reduction in cover available to the Sub-Contractor; or
 - (b) the cover no longer being available to the Sub-Contractor at commercially reasonable rates,
- and in any such circumstances the Sub-Contractor shall take out and maintain the best professional indemnity insurance that is available in the insurance market within the EU or United Kingdom at commercially reasonable rates until such time as the cover required by Clause 2.1 is available at commercially reasonable rates at which point the Sub-Contractor shall immediately take out and maintain such cover.
- 2.4 As and when reasonably requested by the Beneficiary, the Sub-Contractor shall produce for inspection documentary evidence that the insurance required by Clause 2.1 has been taken out and is being maintained as so required.
- 2.5 If the Sub-Contractor shall at any time fail to take out or maintain the insurance required under Clause 2.1 or, if applicable, 2.3, the Beneficiary may take out and maintain such insurance as the Beneficiary may in its discretion consider reasonable to protect its interest and the Sub-Contractor shall pay to the Beneficiary the amount of all costs and expenses properly incurred by the Beneficiary in so doing.
- 2.6 The policy shall not include terms or conditions to the effect that the Sub-Contractor must discharge any liability before being able to recover from the insurers.

3. **COPYRIGHT AND INTELLECTUAL PROPERTY**

- 3.1 The copyright in all designs, drawings, reports, specifications, bills of quantities, consents, papers and other similar documents produced by the Sub-Contractor in connection with the Sub-Contract Works (the “**Documents**”) shall remain vested in the Sub-Contractor but the Beneficiary shall have a perpetual non-exclusive irrevocable and assignable royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Sub-Contract Works and to any works related to future maintenance and alteration work. The Sub-Contractor shall not be liable for the use of any of the Documents for any purpose other than that for which they were prepared and/or provided.
- 3.2 The Beneficiary shall be entitled (at its own cost) to full and proper copies of the Documents in the possession or control of the Sub-Contractor and the Sub-Contractor will not claim copyright or a lien in respect of them against the Beneficiary.
- 3.3 The licence granted to the Beneficiary under this Agreement shall include a right for the Beneficiary to grant sub-licences.
- 3.4 The Sub-Contractor shall indemnify the Beneficiary from any claims brought by a third party against the Beneficiary for any alleged breach or infringement of any intellectual property rights in the Documents or arising out of or in connection with the Sub-Contract Works.

4. **ASSIGNMENT**

The benefit of this Agreement and/or any of the present or future rights interests and benefits of the Beneficiary hereunder may be assigned on two (2) occasions without the consent of the Sub-Contractor and thereafter with the prior written consent of the Sub-Contractor (such consent not

to be unreasonably withheld or delayed) provided that no restriction whatsoever shall apply to any assignment to an affiliate of the Beneficiary or to any assignment or charge in favour of any funder, bank or financial institution. The Beneficiary shall give the Sub-Contractor prompt notice of any such assignment by it provided always that the giving of such notice shall not be a precondition to the effectiveness of any assignment.

5. NOTICES

Any notice provided for in accordance with this Agreement shall be deemed to be duly given if delivered by hand or sent by registered post to the party named therein at the address of such party shown in this Agreement or such other address as such party may by notice in writing nominate for the purpose of service and if sent by registered post or delivered by hand shall be deemed to have been received when delivered.

6. STEP-IN

6.1 The Sub-Contractor will, if so required by notice in writing given by the Beneficiary, accept the instruction of the Beneficiary or the Beneficiary's nominee to the exclusion of the Contractor in respect of the carrying out and completion of any Sub-Contract Works upon the terms and conditions of the Sub-Contract (whereupon all the rights and obligations of the Contractor under the Sub-Contract shall thereafter be performed and exercisable by the Beneficiary or its nominee). The Sub-Contractor shall not be in breach of the Sub-Contract by complying with the obligations imposed on it by this Clause.

6.2 The Sub-Contractor will not without first giving the Beneficiary not less than twenty one days prior notice in writing (accompanied by all of the information referred to in sub-clause 6.3 below) exercise any right it may have to determine its employment under the Sub-Contract or to treat the same as having been repudiated by the Contractor or to discontinue or suspend the performance of any duties to be performed by the Sub-Contractor pursuant thereto. The Sub-Contractor's right to determine its employment under the Sub-Contract, to treat the same as having been repudiated or to suspend or to discontinue performance shall cease if within twenty one days of receipt of such notice the Beneficiary shall give notice in writing to the Sub-Contractor requiring the Sub-Contractor to accept the instruction of the Beneficiary or its nominee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract (whereupon all the rights and obligations of the "Contractor" under the Sub-Contract shall thereafter be performed and exercisable by the Beneficiary or its nominee).

6.3 Following a notice under sub clause 6.1 or sub-clause 6.2 (as applicable), the Sub-Contractor shall, if so required by the Beneficiary at any time, provide the Beneficiary with particulars in writing of the amounts paid to the Sub-Contractor under the Sub-Contract, particulars of amounts due and unpaid to the Sub-Contractor, particulars of amounts remaining to be paid to the Sub-Contractor under the Sub-Contract but not yet due, and any information requested by the Beneficiary that is relevant to these amounts. All such information shall be provided within five (5) business days from the date of request.

6.4 In the event of a step-in under sub-clause 6.1 or sub-clause 6.2 (as applicable), any sums properly due and payable to the Sub-Contractor under the terms of the Sub-Contract that are unpaid prior to the date of service of the notice by the Beneficiary under sub-clause 6.1 or sub-clause 6.2 shall be payable by the Beneficiary, provided always that the Beneficiary's liability shall not exceed any amounts notified to the Beneficiary pursuant to sub-clause 6.3.

7. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by, and construed in accordance with, the laws of Ireland and

the parties irrevocably submit to the jurisdiction of the Irish Courts.

8. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties have affixed their Seals the day and date first hereinbefore written.

GIVEN under the **COMMON SEAL**
of **THE SUB-CONTRACTOR**

Director

Director/Secretary

GIVEN under the **COMMON SEAL**

of **THE CONTRACTOR**³²

Director

Director/Secretary

³² Applicable for Development Finance Schemes only – can be deleted for Acquisition Finance Schemes.
13464290.1

GIVEN under the **COMMON SEAL**
of **THE BENEFICIARY**

Authorised Signatory

Authorised Signatory /Company Secretary

SCHEDULE 1
SUB-CONTRACT AGREEMENT

Part 3 - Collateral Warranties from Consultant (carrying out design only)

CONSULTANT'S COLLATERAL WARRANTY

[CONSULTANT]

and

[DEVELOPER] / [CONTRACTOR] ³³

and

[BENEFICIARY]

relating to

[[insert number of units] units at [insert name of Development]]

³³ Developer only a party for Development Finance Schemes. Where Consultant remains contracted to the Developer, the Developer will be party. Where the Consultant Appointment has been novated to the Contractor, the Contractor will be counterparty

PARTICULARS

A.	Type of units	Are there apartments included in the Development? If not, then insert an 'x' in the below box: [] If an 'x' has been inserted, then 'No Apartments' shall apply.
B.	[Type of finance being provided by the Beneficiary] ³⁴ / [Type of scheme] ³⁵	Please select with an 'x' the box next to the applicable option below: [The Beneficiary is]¹ / [The scheme is one which the Funder is]²: a) providing funding for completed units [] b) providing funding in respect of the design and construction of the units [] If an 'x' has been inserted in option a), then for the purposes of this Agreement, the development is an Acquisition Finance Scheme and Clause 6 shall be excluded from and have no effect under this Agreement. If an 'x' has been inserted in option b), then for the purposes of this Agreement, the development is a Development Finance Scheme.
C.	"Appointment"	means the agreement between the Developer and the Consultant for the provision of the Services dated [insert date of the appointment].
D.	"Approved Housing Body"	means Respond with registered company number 90576 and having its registered office at Airmount, Dominick Place, Waterford, Co. Waterford.
E.	Background	For a Development Finance Scheme, the following background applies: (A) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the Developer to carry out and complete the construction of the Development and for the Approved Housing Body to pay the Developer for performance of its obligations under the Developer and AHB Agreement; (B) the Developer has engaged the Consultant under the Appointment for the Consultant to provide the Services;

³⁴ For HFA warranty

³⁵ For other warranties

		(C) [the Developer has novated the Appointment to the Contractor by way of a Deed of Novation dated [insert date of the appointment]]³⁶;and (D) [the Beneficiary is providing funding to the Approved Housing Body for the Development]¹ / [Insert descriptions of the Beneficiary's interest in the Development]². For an Acquisition Finance Scheme, the following background applies: (A) the Approved Housing Body and the Developer have entered into the Developer and AHB Agreement for the sale of the Development; (B) the Developer has engaged the Consultant under the Appointment for the Consultant to provide the Services; and (C) [the Developer has novated the Appointment to the Contractor by way of a Deed of Novation dated [insert date of the appointment]]³⁷;and (D) [the Beneficiary is providing funding to the Approved Housing Body for the Development]¹ / [Insert descriptions of the Beneficiary's interest in the Development]².
F.	"Consultant"	means [insert legal entity name of Consultant] with registered company number [•] and having its registered office at [Insert Address]
G.	"Developer"	means [insert legal entity name of Developer] with registered company number [•] and having its registered office at [Insert Address]
G1	"Contractor" ³⁸	means [insert legal entity name of Contractor] with registered company number [•] and having its registered office at [Insert Address]
H.	"Developer and AHB Agreement"	means the agreement between the Approved Housing Body and the Developer dated [insert date of the development agreement / or contract for sale – as applicable] as more particularly described in the Background.
I.	"Development"	means [Insert description of the Development] and all ancillary and associated works and services.
J.	Liability Cap Amount	means the "Amount" inserted in Item L (Professional Indemnity Insurance) of these Particulars.

³⁶ Only include where Consultant Appointment has been novated to the Contractor.

³⁷ Only include where Consultant Appointment has been novated to the Contractor.

³⁸ For completion only where Contractor undertakes design & build obligations and has taken a novation of the Appointment. Where Developer has retained the Consultants, this section to be completed with "Not Applicable"

L.	“Professional Indemnity Insurance “	means an amount of not less than € [Insert amount of professional indemnity insurance] (the “Amount”) for each and every claim See below guidance on the Housing Finance Agency requirements for professional indemnity insurance. <table border="1"> <thead> <tr> <th>HFA Loan Amount (for the overall Scheme)</th><th>Apartment Schemes - Minimum indemnity level required</th><th>No – Apartment Schemes Minimum indemnity level required</th></tr> </thead> <tbody> <tr> <td>Less than €3 million</td><td>€1 million each and every claim</td><td>€1 million each and every claim</td></tr> <tr> <td>€3 million to €5 million</td><td>€3 million each and every claim</td><td>€2.5 million each and every claim</td></tr> <tr> <td>€5 million to €10 million</td><td>€5 million each and every claim</td><td>€4 million each and every claim</td></tr> <tr> <td>Over €10 million</td><td>€6.5 million each and every claim</td><td>€6.5 million each and every claim</td></tr> </tbody> </table>	HFA Loan Amount (for the overall Scheme)	Apartment Schemes - Minimum indemnity level required	No – Apartment Schemes Minimum indemnity level required	Less than €3 million	€1 million each and every claim	€1 million each and every claim	€3 million to €5 million	€3 million each and every claim	€2.5 million each and every claim	€5 million to €10 million	€5 million each and every claim	€4 million each and every claim	Over €10 million	€6.5 million each and every claim	€6.5 million each and every claim
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Over €10 million	€6.5 million each and every claim	€6.5 million each and every claim															
M.	“Services”	means [Insert Description of the Services being provided] for the Development.															
N.	“Term”	means: a) where No Apartments applies in accordance with Particular A, the period from the commencement of the provision of the Services up to and including the day that is six (6) years from completion of all of the Services; or b) if paragraph a) above does not apply, the period from the commencement of the provision of the Services up to and including the day that is twelve (12) years from completion of all of the Services.															
O.	“Works”	means [insert description of the Works] for the Development.															

THIS AGREEMENT IS DATED:

BETWEEN:

- (1) the Consultant;
- (2) the [Developer] / [Contractor]³⁹; and
- (3) **[HOUSING FINANCE AGENCY PUBLIC LIMITED COMPANY** with registered company number 87513 and having its principal office at 46 Saint Stephen's Green, Dublin 2, D02 WK60]⁴⁰ / **[RESPOND** registered company number 90576 and having its registered office at Airmount, Dominick Place, Waterford, Co. Waterford] / **[INSERT OTHER BENEFICIARY DETAILS]⁴¹ (the Beneficiary).**

IT IS HEREBY AGREED in consideration of the payment of ten euro (€10.00) by the Beneficiary to the Consultant (receipt and sufficiency of which the Consultant acknowledges):

1. WARRANTY AND UNDERTAKING

1.1 The Consultant warrants and undertakes to the Beneficiary that it has exercised and will exercise the Required Standard:

- (a) in the performance of the Services; and
- (b) not to specify for use materials or substances that are:
 - (i) not in accordance with current Irish standards, European standards and any codes of practice known or ought reasonably to have been known to the Consultant insofar as they may be applicable to the Development, or
 - (ii) known to be deleterious to health or safety, or the durability or performance of other materials or substances used in the Development.

For the purposes of this Clause 1.1, the **“Required Standard”** shall mean all the reasonable skill, care and diligence that it is reasonable for a developer to expect from a member of the consultant’s profession providing services of similar nature to the Services and having regard to the nature of the Development and no contents of this Agreement amount to a guarantee by the Consultant of the suitability or purpose of the design or other Services.

1.2 The Consultant has not and shall not breach any term of the Appointment, or any duties or obligations arising under or in connection with the Appointment.

1.3 ⁴²In respect of any claim by the Beneficiary for breach of this Clause 1, the duty and/or liability (whether in duration, extent or nature) of the Consultant is to be treated as being no greater and no longer lasting than it would have been if the Beneficiary had been named as joint client with the [Developer]/[Contractor] to the Appointment and the Consultant shall be entitled in defence of any action or proceedings by the Beneficiary for breach of this Clause 1 to rely on any limitation

39 Applicable for Development Finance Schemes only – can be deleted for Acquisition Finance Schemes. Where Consultant remains contracted to the Developer, the Developer will be party. Where the Consultant Appointment has been novated to the Contractor, the Contractor will be counterparty.

40 For HFA warranty

41 For other Beneficiary warranties

42 Clause 1.3 is to be included in the collateral warranty where the HFA/Respond has reviewed the terms of the underlying appointment and confirmed same are acceptable to it. In reviewing the underlying appointment, the HFA will consider (amongst other provisions) all limitations on liability and exculpatory clauses (as against the HFA liability cap included in Clause 7). Note that where a liability cap is expressed as being in the aggregate in the underlying appointment, Clause 1.3 is to be deleted and Clause 7 shall apply.

or exclusion in the Appointment and to raise equivalent rights in defence of liability as it would have against the [Developer]/[Contractor] under the Appointment (save that the Consultant shall not be entitled to rely on any right of set-off or counterclaim).

2. INSURANCE

- 2.1 The Consultant warrants to and undertakes to the Beneficiary that it shall take out and maintain professional indemnity insurance in accordance with the applicable requirements in Part M of the Particulars for a period from the commencement of the Services to a date no earlier than the expiry of the Term.
- 2.2 The insurance required under Clause 2.1 shall be written by reputable and well-established insurers lawfully carrying on insurance business in the EU or in the United Kingdom provided it has the necessary regulatory authorisations to underwrite insurance in Ireland.
- 2.3 The Consultant shall notify the Beneficiary in writing immediately on becoming aware of:
- (a) the cancellation, non-renewal, or reduction in cover available to the Consultant; or
 - (b) the cover no longer being available to the Consultant at commercially reasonable rates,
- and in any such circumstances the Consultant shall take out and maintain the best professional indemnity insurance that is available in the insurance market within the EU or United Kingdom at commercially reasonable rates until such time as the cover required by Clause 2.1 is available at commercially reasonable rates at which point the Consultant shall immediately take out and maintain such cover.
- 2.4 As and when reasonably requested by the Beneficiary, the Consultant shall produce for inspection documentary evidence that the insurance required by Clause 2.1 (or Clause 2.3 as the case may be) has been taken out and is being maintained as so required.
- 2.5 If the Consultant shall at any time fail to take out or maintain the insurance required under Clause 2.1 or, if applicable, 2.3, the Beneficiary may take out and maintain such insurance as the Beneficiary may in its discretion consider reasonable to protect its interest and the Consultant shall pay to the Beneficiary the amount of all costs and expenses properly incurred by the Beneficiary in so doing.
- 2.6 The policy shall not include terms or conditions to the effect that the Consultant must discharge any liability before being able to recover from the insurers.

3. COPYRIGHT AND INTELLECTUAL PROPERTY

- 3.1 The copyright in all designs, drawings, reports, specifications, bills of quantities, consents, papers and other similar documents produced by the Consultant in connection with any Services (the “**Documents**”) shall remain vested in the Consultant but the Beneficiary shall have a perpetual non-exclusive irrevocable and assignable royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Services and to services related to future maintenance and alteration work. The Consultant shall not be liable for use of any of the Documents for any purpose other than that for which they were prepared and/or provided.
- 3.2 The Beneficiary shall be entitled (at its own cost) to full and proper copies of the Documents in the possession or control of the Consultant and the Consultant will not claim copyright or a lien in respect of them against the Beneficiary.
- 3.3 The licence granted to the Beneficiary under this Agreement shall include a right for the Beneficiary to grant sub-licences.

- 3.4 The Consultant shall indemnify the Beneficiary from any claims brought by a third party against the Beneficiary for any alleged breach or infringement of any intellectual property rights:
- (a) in the Documents; or
 - (b) arising out of or in connection with the Services.

4. ASSIGNMENT

The benefit of this Agreement and/or any of the present or future rights interests and/ or benefits of the Beneficiary hereunder may be assigned on two (2) occasions without the consent of the Consultant and thereafter with the prior written consent of the Consultant (such consent not to be unreasonably withheld or delayed) provided that no restriction whatsoever shall apply to any assignment to an affiliate of the Beneficiary or to any assignment or charge in favour of any funder, bank or financial institution. The Beneficiary shall give the Consultant prompt notice of any such assignment by it provided always that the giving of such notice shall not be a precondition to the effectiveness of any assignment.

5. NOTICES

Any notice provided for in accordance with this Agreement shall be deemed to be duly given if delivered by hand or sent by registered post to the party named therein at the address of such party shown in this Agreement or such other address as such party may by notice in writing nominate for the purpose of service and if sent by registered post or delivered by hand shall be deemed to have been received when delivered.

6. STEP-IN⁴³

- 6.1 The Consultant will, if so required by notice in writing given by the Beneficiary, accept the instruction of the Beneficiary or the Beneficiary's nominee to the exclusion of the Developer in respect of the carrying out and completion of any Services upon the terms and conditions of the Appointment (whereupon all the rights and obligations of the [Developer]/[Contractor] under the Appointment shall thereafter be performed and exercisable by the Beneficiary or its nominee). The Consultant shall not be in breach of the Appointment by complying with the obligations imposed on it by this Clause.
- 6.2 The Consultant will not without first giving the Beneficiary not less than twenty one days prior notice in writing (accompanied by all of the information referred to in sub-clause 6.3 below) exercise or seek to exercise any right it may have to determine its employment under the Appointment or to treat the same as having been repudiated by the [Developer] / [Contractor] or to discontinue or suspend the performance of any duties or services to be performed by the Consultant pursuant thereto. The Consultant's right to determine its employment under the Appointment, to treat the same as having been repudiated or to suspend or to discontinue performance shall cease if within twenty one days of receipt of such notice the Beneficiary shall give notice in writing to the Consultant requiring the Consultant to accept the instruction of the Beneficiary or its nominee to the exclusion of the [Developer] / [Contractor] in respect of the carrying out and completion of the Services upon the terms and conditions of the Appointment (whereupon all the rights and obligations of the "Employer" under the Appointment shall thereafter be performed and exercisable by the Beneficiary or its nominee).
- 6.3 Following a notice under sub clause 6.1 or sub-clause 6.2 (as applicable), the Consultant shall, if so required by the Beneficiary at any time, provide the Beneficiary with particulars in writing of the amounts paid to the Consultant under the Appointment, particulars of amounts due and unpaid

⁴³ Clause 6 is applicable for Development Finance Schemes only – the clause can be deleted for Acquisition Finance Schemes

to the Consultant, particulars of amounts remaining to be paid to the Consultant under the Appointment but not yet due, and any information requested by the Beneficiary that is relevant to these amounts. All such information shall be provided within five (5) business days from the date of request.

- 6.4 In the event of a step-in under sub-clause 6.1 or sub-clause 6.2 (as applicable), any sums properly due and payable to the Consultant under the terms of the Appointment that are unpaid prior to the date of service of the notice by the Beneficiary under sub-clause 6.1 or sub-clause 6.2 shall be payable by the Beneficiary, provided always that the Beneficiary's liability shall not exceed any amounts notified to the Beneficiary pursuant to sub-clause 6.3.

7. LIABILITY⁴⁴

- 7.1 Subject to Clause 7.2, the monetary amount of the Consultant's liability to the Beneficiary under or arising out of this Agreement shall not exceed the Liability Cap Amount for each and every claim.

- 7.2 The limitation in Clause 7.1 shall not apply to any claim, loss, damage, cost, expense or liability relating to:

- (a) death, personal injury or illness;
- (b) fraud or fraudulent misrepresentation;
- (c) wilful default;
- (d) third party property damage; or
- (e) a claim for which the Beneficiary is indemnified for by the Consultant in accordance with Clause 3.

8. AMENDMENT OF THE APPOINTMENT

Save for any variation to the Services as may be permitted by the Appointment, the Consultant shall not make or permit any amendment, variation, supplement and/ or novation of or to the Appointment and/ or agree to any release and/ or waiver by the [Developer] / [Contractor] of any term, provision and/ or condition of the Appointment without the prior written consent of the Beneficiary (such consent not to be unreasonably withheld).

9. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by, and construed in accordance with, the laws of Ireland and the parties irrevocably submit to the jurisdiction of the Irish Courts.

10. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

⁴⁴ Either:

(i) Clause 7 applies, and Clause 1.3 is removed from and has no effect under this Agreement; or

(ii) Clause 1.3 applies and Clause 7 and Particular J are to be removed and replaced with 'not used'.

If neither Clause 1.3 or Clause 7 is removed, Clause 7 is deemed to apply and Clause 1.3 is hereby removed from, and will have no effect under, this Agreement.

IN WITNESS WHEREOF the parties have affixed their Seals the day and date first hereinbefore written.

GIVEN under the **COMMON SEAL**
of **THE CONSULTANT**

Director

Director/Secretary

GIVEN under the **COMMON SEAL**

of **THE [DEVELOPER] / [CONTRACTOR]**

Director

Director/Secretary

GIVEN under the **COMMON SEAL**
of **THE BENEFICIARY**

Authorised Signatory

Authorised Signatory

/Company Secretary

SCHEDULE 8

Monthly Reporting Requirements

The Developer shall furnish the Company with a report on progress of the Works (in a form reasonably satisfactory to the Company) no later than the end of each calendar month, such report to include but not be limited to:

- (A) the status of the Works including a description of Works completed since submission of any previous monthly report supplied to the Company;
- (B) the expected date of achievement as against any Works milestones;
- (C) details of the numbers employed in connection with the Works on the Development Site distinguished by profession and trade
- (D) updates on any over-runs or over-budget expenditure and a report of the reason for such over-runs(s); or
- (E) a Health and Safety report
- (F) the Assigned Certifier's report for the preceding month
- (G) any other reports received by the Developer from its advisers or consultants in connection with the Works;
- (H) details of mitigation measures being implemented in respect of any delay(s), cost over-run(s) or supply chain delays;
- (I) any material concern(s) in relation to any consultant, contractor or sub-contractor involved in the Works;
- (J) update on any planning dispute processes;
- (K) any other material matters relating to the Works as the Company may reasonably request;

SCHEDULE 9

Form of Certificates

Part 1

Developer's Certificate of Compliance

WORKS: [●]

COMPANY: [●]

DEVELOPER: [●]

BUILDING CONTRACTOR: [●]

DEVELOPMENT AGREEMENT: Agreement for [●] entered into between the Employer and the Developer dated [●] 20 .

WORKS: [●] and all ancillary and associated services at [●⁴⁵] (the **Works**).

(1) **Respond** (Company No. 90576), having its registered office at Airmount, Dominick Place, Waterford (the **Company**); and

(2) [●] (the **Developer**);

Are the parties to the Development Agreement as read pursuant to the terms of the Development Agreement. The Developer hereby certifies that the Design and the construction of the Works achieved up to the date hereof which we have fully supervised are;

- (a) in accordance with good building practice and in Substantial Compliance with the Company Requirements (as defined in the Development Agreement); and
- (b) in Substantial Compliance with the Building Regulations and Relevant Consents (as defined in the Development Agreement).

Definitions

Design has the meaning assigned by the Building Control Act.

Substantial Compliance when applied to Design, means that the design of the Works is in accordance with the Building Regulations saving and excepting such deviations as would not in our opinion warrant the issue of enforcement proceedings as provided for in the Building Control Act.

Substantial Compliance when applied to Construction, means that such construction of the Works is in accordance with the Building Regulations, saving and excepting such deviations as would not in our opinion warrant the issue of enforcement proceedings as provided for in the Building Control Act.

SIGNED this [●] day of [●] 20

Director

⁴⁵ Description of works to be inserted to reflect what has been completed to date of Certificate

Part 2

Contractor's Certificate of Compliance

WORKS: [●]

DEVELOPER: [●]

BUILDING CONTRACTOR: [●]

DEVELOPMENT AGREEMENT: Agreement for [●] entered into between the Company and the Developer dated [●] 20 . (the **Development Agreement**)

WORKS: [●] and all ancillary and associated services at [●⁴⁶] (the **Works**).

The Developer and the Building Contractor are the parties to the Development Agreement.

As required pursuant to the terms of the Building Contract pursuant to the Development Agreement, we, [●] certify that the Construction of the Works achieved up to the date hereof, which we have fully supervised, are;

- (a) in accordance with good building practice and in Substantial Compliance with the Company Requirements (as defined in the Development Agreement); and
- (b) in Substantial Compliance with the Building Control Act, the Building Regulations and the Relevant Consents (as defined in the Development Agreement).

Definitions

Substantial Compliance when applied to Construction, means that such construction of the Works is in accordance with the Building Regulations, saving and excepting such deviations as would not in our opinion warrant the issue of enforcement proceedings as provided for in the Building Control Act.

SIGNED this [●] day of [●] 20

Director

⁴⁶ Description of works to be inserted to reflect what has been completed to date of Certificate

Part 3

Professional Team Certificate of Compliance

(Details of Professional Team member)

Certificate No [●]

Date [●]

Certificate of Design Compliance of Professional Team member

To: [●The employer●]

We refer to the [●⁴⁷] (the **Works**) achieved up to the date hereof carried out pursuant to a Development Agreement dated [●] (the **Development Agreement**), in respect of which we were engaged as [●] to provide services as set out in our appointment. Having exercised all reasonable skill and care, we certify that insofar as relates to our Services:

- (i) the Works are substantially compliant with the Company Requirements and all relevant Laws, Relevant Consents (as defined in the Development Agreement) and the Planning Permission relevant to the Works.
- (ii) the Design of the Works are in Substantial Compliance with the Building Control Act and the Building Regulations (as defined in the Development Agreement).

Definitions

Design has the meaning assigned by the Building Control Act.

Substantial Compliance when applied to Design, means that the design of the Works is in accordance with the Building Regulations saving and excepting such deviations as would not in our opinion warrant the issue of enforcement proceedings as provided for in the Building Control Act.

Signed _____

(Name of Professional Team member)

⁴⁷ Description of works to be inserted to reflect what has been completed to date of Certificate

SCHEDULE 10

Form of Performance Bond

PERFORMANCE BOND

Bond No: [●]

Bond Amount: [●]

THIS BOND is made on [●]

BETWEEN

1. [●]
whose registered office is at [●] ([Developer/Contractor])
2. [●]
whose registered office is at [●] (Surety)
3. [●]
whose registered office is at [●] (Employer)

BACKGROUND

- A. The Employer and the [Developer/Contractor] have or will enter into a contract for: [●]⁴⁸(the **Contract**)
- B. The [Developer/Contractor] has agreed to furnish a performance bond to the Employer.
- C. Terms defined in the Contract have the same meaning in this Bond.
- D. The Surety is an [●insurance undertaking●], incorporated in [●Ireland●] having its registered office at [●] and authorised by [the Central Bank of Ireland] to issue performance bonds in Ireland, and has a financial security rating of Standard & Poors A or equivalent.⁴⁹

IT IS AGREED AS FOLLOWS:

1. If the [Developer/Contractor]'s obligation to complete the Works is terminated under Clause [●]⁵⁰ of the Contract, the Surety will, subject to this Bond, pay the Employer any amount for which the [Developer/Contractor] is liable under Clause [●] of the Contract.
2. If the [Developer/Contractor] breaches the Contract the Surety will, subject to this Bond, pay the Employer any amount for which the [Developer/Contractor] is liable to the Employer as damages for breach of the Contract, as established under (or by reference to the relevant provisions of) the Contract, taking into account all sums due to the [Developer/Contractor] under the Contract.
3. In respect of any claim under the Bond notified to the Surety prior to the date of issue of the Certificate of Practical Completion, the liability of the Surety under this Bond will not exceed [●]. This amount will be reduced by half on issue of the Certificate of Practical Completion of the

⁴⁸ Insert Contract details

⁴⁹ Confirm required rating and any other pre-conditions with client.

⁵⁰ Insert relevant termination provision(s)

Works under the Contract in respect of any claim under the Bond notified to the Surety after the date of such issue.

4. No alteration in the Contract or in the extent or nature of the works to be done under it, and no allowance of time under the Contract, and no forbearance or forgiveness concerning the Contract by the Employer, will in any way release the Surety from liability under this Bond.
5. The Surety will be released from its liability under this Bond 450 days after the Certificate of Practical Completion of the Works has been issued, except in relation to any breach by the [Developer/Contractor] or termination that has occurred before that date, written notice (including particulars of the breach or termination) of which has been given to the Surety earlier than 4 weeks after this expiry date.
6. The [Developer/Contractor] undertakes to the Surety to perform its obligations under the Contract. This undertaking does not limit any rights or remedies of the Employer or the Surety.
7. The Employer may, but is not required to, provide to the Surety a copy of any notice that the Employer gives to or receives from the [Developer/Contractor] under Clause [●]⁵¹ of the Contract.
8. The decision of a court or arbitrator in a dispute between the Employer and the [Developer/Contractor] will be binding on the Surety as to all matters concerning a breach of the Contract, termination under the Contract and the [Developer/Contractor]'s liability.
9. The Surety shall not be discharged from any liability under this Bond due to:
 - (a) the insolvency, winding up, dissolution, receivership, examination, administration, incapacity, re-organisation or any analogous proceedings relating to the [Developer/Contractor]; or
 - (b) any change in the status, function, control or ownership of the [Developer/Contractor]; or
 - (c) any other circumstances, act, event, omission or provision of statute or law or otherwisewhich but for this clause might operate to discharge, impair or otherwise affect any of the obligations of the Surety under this Bond or by law shall in anyway release, reduce or affect the liability of the Surety under this Bond.
10. If the Surety is called on to pay the Employer's loss following a termination under Clause [18.1] of the Contract, the Surety may suggest a completion contractor to the Employer, provided the proposed completion contractor is acceptable to the Employer.
11. The Surety will not be liable under this Bond for a breach or termination caused solely and directly by war, invasion, act of foreign enemies, hostilities (whether war is declared or not), terrorism, civil war, rebellion, revolution or military or usurped power.
12. The Employer may assign the benefit of this Bond, without the Surety's or the [Developer/Contractor]'s consent, on written notice to the Surety.
13. This Bond is governed by and construed according to Irish law and the parties submit to the jurisdiction of the Irish courts to determine all matters concerning it.
14. Money payable by the Surety under this bond will be paid in euro in Ireland.

⁵¹ Insert relevant Clause number

15. The Surety appoints:-

Name of Agent:

Address of Agent:

as its agent for service of legal proceedings. The Surety confirms that the named agent has been irrevocably appointed and the failure of the agent to notify the Surety of receipt of a document will not invalidate any proceedings or the service of the document.⁵²

⁵² An address in Ireland is required when the Surety does not have a registered office in Ireland

GIVEN UNDER THE [DEVELOPER/CONTRACTOR]'S COMMON SEAL⁵³

Affix [Developer/Contractor]'s common seal

Signatories of persons authorised
to authenticate the seal

OR

SIGNED SEALED AND DELIVERED BY

Name of Attorney⁵⁴

Signature of Attorney

As lawful Attorney of the [Developer/Contractor] under a power of attorney dated

Affix Attorney's personal seal

In the presence of:

⁵³ If the [Developer/Contractor] is not incorporated in Ireland, execution will be in accordance with the law of the jurisdiction of incorporation for execution in Ireland and a legal opinion in a form acceptable to the Company shall be provided

⁵⁴ Certified copy Power of Attorney to be provided

GIVEN UNDER THE SURETY'S COMMON SEAL⁵⁵

Affix Surety's common seal

Signatories of persons authorised
to authenticate the seal

OR

SIGNED SEALED AND DELIVERED BY

Name of Attorney⁵⁶

Signature of Attorney

As lawful Attorney of the Surety under a power of attorney dated

Affix Attorney's personal seal

Name of witness

Signature of witness

Witness's occupation

Witness's address

⁵⁵ If the Surety is not incorporated in Ireland, execution will be in accordance with the law of the jurisdiction of incorporation for execution in Ireland and a legal opinion in a form acceptable to the Company shall be provided

⁵⁶ Certified copy Power of Attorney to be provided

GIVEN UNDER THE EMPLOYER'S COMMON SEAL

Affix Employer's common seal

Signatories of persons authorised
to authenticate the seal

OR

SIGNED SEALED AND DELIVERED BY

Name of Attorney

Signature of Attorney

As lawful Attorney of the Employer under a power of attorney dated

Affix Attorney's personal seal

In the presence of:

SCHEDULE 12

Form of assignment of Bond

DATED

20

Deed of Assignment of Performance Bond

relating to

Housing Development at [●]

between

[DEVELOPER]

and

RESPOND

BEAUCHAMPS LLP
Riverside Two
Sir John Rogerson's Quay
Dublin 2

This Deed is dated

20

PARTIES

- (1) [●] incorporated and registered in Ireland with company number [●] whose registered office is at [●] (**Assignor**); and
- (2) **Respond**, Company number 90576, having its registered office at Airmount, Dominick Place, Waterford (the **Assignee**).

BACKGROUND

1. The Assignor and the Assignee are parties to a Development Agreement, dated [●], relating a housing development at [●] (the **Development Agreement**).
2. It is a requirement of the Development Agreement that the Assignor enter into this Deed.
3. The Assignor has the benefit of a Performance Bond dated [●] between [●] as Contractor, the Assignor as Employer and [●] as Surety (the **Performance Bond**) and has agreed to assign all its rights, title, interest and benefit in the Performance Bond to the Assignee.

AGREED TERMS

1. Interpretation

The following rules of interpretation apply in this deed:

- 1.1 Clause and paragraph headings shall not affect the interpretation of this deed.
- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to every gender.
- 1.6 This deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors and permitted assigns, and references to a party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes fax but not email.
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

- 1.10 A reference to this deed or to any other agreement or document referred to in this deed is a reference to this deed or such other agreement or document as varied, assigned or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.11 References to clauses and schedules are to the clauses and schedules of this deed and references to paragraphs are to paragraphs of the relevant schedule.
- 1.12 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Assignment

- 2.1 The Assignor as beneficial owner hereby assigns with effect from the date hereof (the **Effective Date**) the full benefit of all of its interests, title and rights under the Performance Bond to the Assignee absolutely.
- 2.2 Without prejudice to clause 2.1, the Assignor assigns to the Assignee any and all interests, remedies, choses in action vested in the Assignor and rights for the Assignor to sue or take action under or in connection with the Performance Bond to hold the same unto the Assignee absolutely.

3. Notice of assignment

As soon as practicable and in any event within 10 days following the Effective Date, the Assignee shall give written notice of the assignment to each of the parties to the Performance Bond and shall send a copy of each of the notice to the Assignor.

4. General

If at any time any provision of this deed (or any part of a provision of this deed) is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:

- 4.1 The legality, validity or enforceability in that jurisdiction of any other provision of this deed (including the remainder of a provision, where only part thereof is or has become illegal, invalid or unenforceable); or
- 4.2 The legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

5. Governing law

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

6. Jurisdiction

Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle, hear and/or decide any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

7. Counterparts

This deed may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when executed and delivered shall constitute an original, all the

counterparts together constituting the same instrument. No counterpart shall be effective until each party has executed and delivered at least one counterpart. Transmission of an executed counterpart of this deed by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed and each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

This document has been executed as a deed and is delivered and takes effect on the date hereof.

PRESENT when the **Common Seal** of

RESPOND was affixed hereto

Director

Director/Secretary

PRESENT when the Common Seal of

[DEVELOPER] was affixed hereto

Director

Director/Secretary

SCHEDULE 12

Notice of Assignment of Performance Bond

[TO BE ON HEADED PAPER OF DEVELOPER]

[●SURETY NAME●]
[●SURETY ADDRESS●]

[●] 20

Re: Performance Bond relating to works at [●] dated [●] and made between [●] (the **Contractor**), [●] (the **Surety**) and [●] (the **Employer**) (the **Performance Bond**)

Dear Sirs

We hereby give you notice that we have assigned our rights, title, interest and benefit in the Performance Bond to Respond of Airmount, Dominick Place, Waterford, (**Respond**) its successors, transferees and assigns, with effect from the date hereof.

After your receipt of this notice we hereby request and notify you that you give Respond notice in writing:

- (a) if the Contractor proposes to cancel or gives notice of cancellation of the Performance Bond at least 30 days before such cancellation is to take effect;
- (b) of any material alteration or, the termination or expiry of any the Performance Bond at least 30 days before such alteration, termination or expiry is to take effect;
- (c) promptly of any default in the payment of any premium due to you under the Performance Bond and shall give Respond not less than 30 days in which to pay the defaulted premium without cancelling the Performance Bond during such 30 days period; and
- (d) of any monies due to be paid under the Performance Bond.

This letter shall be governed by and construed in accordance with Irish law.

Please sign the enclosed copy letter to acknowledge receipt of this notice and return by post to Beauchamps, Riverside Two, Sir John Rogerson's Quay, Dublin 2, reference RES12.

Yours faithfully

For and on behalf of [●DEVELOPER●]

Form of Acknowledgement for Surety

To: Respond
Airmount
Dominick Place
Waterford

Date:

cc: [●DEVELOPER●]

Dear Sirs

We confirm receipt from [DEVELOPER] (the **Developer**) of a notice dated [●] 20[●] (the **Notice**) of an assignment of a Performance Bond dated [●] and made between [●] (the **Contractor**), [●] (the **Surety**) and [●] (the **Employer**) (the **Performance Bond**) .

We confirm that we shall hereafter act in accordance with the Notice and that we have not received notice of any third party interests in the Performance Bond.

This letter shall be governed by construed in accordance with Irish law.

Yours faithfully

Authorised Signatory
for and on behalf of
[●SURETY●]

[TO BE ON HEADED PAPER OF DEVELOPER]

[●CONTRACTOR NAME●]

[●CONTRACTOR ADDRESS●]

[●] 20

Re: Performance Bond relating to works at [●] dated [●] and made between [●] (the **Contractor**), [●] (the **Surety**) and [●] (the **Employer**) (the **Performance Bond**)

Dear Sirs

We hereby give you notice that we have assigned our rights, title, interest and benefit in the Performance Bond to Respond of Airmount, Dominick Place, Waterford, (**Respond**) its successors, transferees and assigns, with effect from the date hereof.

After your receipt of this notice we hereby request and notify you that you give Respond notice in writing:

- (a) if the Surety proposes to cancel or gives notice of cancellation of the Performance Bond at least 30 days before such cancellation is to take effect;
- (b) of any material alteration or, the termination or expiry of any the Performance Bond at least 30 days before such alteration, termination or expiry is to take effect;
- (c) promptly of any default in the payment of any premium due to THE Surety under the Performance Bond and shall give Respond not less than 30 days in which to pay the defaulted premium without cancelling the Performance Bond during such 30 days period; and
- (d) of any monies due to be paid under the Performance Bond.

This letter shall be governed by and construed in accordance with Irish law.

Please sign the enclosed copy letter to acknowledge receipt of this notice and return by post to Beauchamps, Riverside Two, Sir John Rogerson's Quay, Dublin 2, reference RES12.

Yours faithfully

For and on behalf of [●DEVELOPER●]

Form of Acknowledgement for Contractor

To: Respond
Airmount
Dominick Place
Waterford

Date:

cc: [●DEVELOPER●]

Dear Sirs

We confirm receipt from [DEVELOPER] (the **Developer**) of a notice dated [●] 20[●] (the **Notice**) of an assignment of a Performance Bond dated [●] and made between [●] (the **Contractor**), [●] (the **Surety**) and [●] (the **Employer**) (the **Performance Bond**) .

We confirm that we shall hereafter act in accordance with the Notice and that we have not received notice of any third party interests in the Performance Bond.

This letter shall be governed by construed in accordance with Irish law.

Yours faithfully

Authorised Signatory
for and on behalf of
[●CONTRACTOR●]

SCHEDULE 13

Form of Letter re Criminal Offenses

Form of Letter of Confirmation

To: Housing Finance Agency plc
46 Saint Stephen's Green
Dublin 2

Date:

Re: Development at [•]⁵⁷ (the **Project**)

Dear Sirs,

We hereby confirm:

1. that we will promptly inform the Housing Finance Agency public limited company (**HFA**) of any genuine allegation, complaint or information with regard to Criminal Offences (as defined below) related to the Project;
2. that we will keep books and records of all financial transactions and expenditures in connection with the Project; and
3. that the HFA has a right, in relation to an alleged Criminal Offence, to review our books and records, in relation to the Project and to take copies of the documents to the extent permitted by law.

Criminal Offences for the purposes of this letter means any fraud, corruption, coercion, collusion, obstruction, money laundering, financing of terrorism.

Authorised Signatory
for and on behalf of
[•]⁵⁸

⁵⁷ Please insert address of the development

⁵⁸ Contractor entity

SCHEDULE 14

Facility Agreement Covenants

12.3 Construction covenants

- (a) The Borrower covenants with the Lender that, in respect of every Project involving construction works being funded by the Lender, it:
- (i) will ensure that all construction works will be diligently carried out and completed:
 - (A) in conformity with the relevant Construction Documents in respect of such Project; and
 - (B) in a good and workmanlike manner, using materials of good quality which are fit for their respective purposes;
 - (C) at least in accordance with the relevant Codes of Practice and the applicable Irish standards or if no Irish standards exist, the relevant European standards which are the most current and appropriate;
 - (D) in accordance with Safety, Health and Welfare at Work Act 2005-2014 (and all subordinate legislation thereto, including but not limited to the Safety, Health and Welfare at Work (Construction) Regulations 2013 and 2021) as may be amended, updated or replaced;
 - (E) without abandonment of any part of the Project;
 - (F) without suspension or interruption for a continuous period of 30 days or more;
 - (ii) will ensure that each Authorisation, all necessary consents of adjoining owners or occupiers and all necessary grants, releases, waivers, modifications, covenants and other matters desirable to enable the Project to be constructed and completed shall be obtained, maintained, complied with and remain effective without amendment for the benefit of the Project;
 - (iii) [REMOVED]
 - (iv) [REMOVED]
 - (v) will:
 - (A) [REMOVED]
 - (B) ensure (so far as this is within its control) that other counterparties exercise their rights and comply with their material obligations under each Construction Document, in a manner consistent with its obligations under the Finance Documents and in a proper and timely manner; and
 - (C) [REMOVED]
 - (vi) will supply the Lender with a report on progress of the Project (in a form satisfactory to the Lender) no later than the end of each calendar month (unless a report on progress has already been provided to the Lender in conjunction with a Utilisation Request requested by the Borrower during that calendar month) including but not limited to:
 - (A) the status of the Project including a description of works completed since submission of any previous report supplied to the Lender under this Clause 12.3 (a)(vi);
 - (B) the expected date of achievement as against the relevant milestone;

- (C) the costs of the Project by reference to the construction budget;
 - (D) details of the costs and expenses incurred in connection with the Project (including such details as may be required by the Lender to vouch that Advances or Instalments have been utilised to discharge such costs and expenses) in a format acceptable to the Lender;
 - (E) copies of all management accounts and cashflows in connection with the Project prepared by or for the Borrower;
 - (F) updates on any over-runs or over-budget expenditure and a report of the reason for such over-runs(s);
 - (G) any reports received by the Borrower from its advisers or consultants in connection with the Project;
 - (H) details of mitigation measures being implemented in respect of any delay(s), cost over-run(s) or supply chain delays;
 - (I) any material concern(s) in relation to any contractor or sub-contractor involved in the Project;
 - (J) update on any planning dispute processes;
 - (K) any other material matters relating to the Project as the Lender may reasonably request;
- (vii) [REMOVED]
- (viii) use reasonable endeavours to procure (in so far as it is within the Borrower's power of procurement) that (a) practical completion (howsoever defined) occurs no later than the required completion date as set out in the Construction Documents (as may be varied in accordance with the terms of such Construction Documents) and (b) any specific milestones specified in the Construction Documents, if applicable, are achieved;
- (ix) will not appoint or terminate a contractor, subcontractor, professional team member or advisor who has been engaged in respect to the Project, or change the terms of its appointment without the prior written consent of, and on terms approved by, the Lender.
- (x) must ensure that each required party to the Construction Documents:
 - (A) enters into a collateral warranty with the Lender in form and substance satisfactory to the Lender; and
 - (B) has effected the relevant insurances in accordance with this Letter and/or in accordance with the terms of the relevant collateral warranty;
 - (C) acknowledges to the Lender that it has notice of the security created by the Security Documents; and
 - (D) maintains the relevant insurances in accordance with this Agreement and/or in accordance with the terms of the relevant collateral warranty
- (xi) [REMOVED]
- (b) [REMOVED]

12.5 Project covenants

- (a) The Borrower covenants with the Lender that every Project involving the acquisition of land will be carried out in conformity with normal conveyancing practice and that the Borrower will acquire good and marketable title thereto.
- (b) The Borrower shall:
 - (i) [REMOVED]
 - (ii) [REMOVED]
 - (iii) insure all works and property forming part of the Project with an insurer acceptable to the Lender (acting reasonably) and provide to the Lender:
 - (A) a certificate of its insurers showing fulfilment of the requirements under this paragraph and if so requested, such other evidence that the relevant insurances are being maintained and
 - (B) if so requested:
 - (1) a list of policies in force covering the insured property forming part of the Project, together with confirmation of payment of the current premiums; and
 - (2) copies of all material correspondence with insurance brokers handling the insurance of a Project;
 - (iv) comply in all respects with all laws and regulations to which it or the Project is subject;
 - (v) maintain in force all rights of way or use and all Authorisations necessary for the execution and operation of the Project;
 - (vi) obtain all necessary consents, authorisations, licences or approvals of governmental or public bodies or authorities in connection with the Project and in order to lawfully comply with its obligations in connection with it and all such consents, authorisations, licences or approvals are in full force and effect and admissible in evidence;
 - (vii) implement and operate the Project in compliance with Environmental and Social Law;
 - (viii) obtain and maintain requisite Environmental and Social Approvals for the Project;
 - (ix) comply with any such Environmental and Social Approvals;
 - (x) [PARTIAL REMOVAL] unless the Lender has approved otherwise in writing, ensure that that any new build property forming part of a Project achieves an A2 Building Energy Rating ("BER") standard or better;
 - (xi) unless the Lender has approved otherwise in writing, ensure that any refurbishment property forming part of a Project achieves a C1 BER standard or better; and
 - (xii) ensure that the implementation of a Project will not give rise to a violation of the applicable laws on fraud, corruption, money laundering, financing of terrorism or any other unlawful use of funds.

For the purposes of the above Facility Agreement extracts, the following definitions shall apply to the capitalised terms included in the above extracts:

"Advance" means the amount (including each Instalment) being the entire amount lent or to be lent by the Lender to the Borrower in respect of a relevant Project under the Facility Agreement or so much thereof as is for the time being outstanding hereunder;

"Authorisation" means an authorisation, approval, permit, consent, approval, resolution, licence, exemption, filing, notarisation, registration or resolution;

"Borrower" means the Company;

"Construction Documents" means the building contract, development agreement, performance bond or other performance security, letter of appointment of consultants, collateral warranties, indemnities, assignments and any other relevant documentation relating to the particular Project which the Lender may require, in a form acceptable to the Lender;

"Environment" means the following, in so far as they affect human health and social well-being:

- (a) fauna and flora living organisms including the ecological systems;
- (b) land, soil, water (including marine and coastal waters), air, climate and the landscape (natural or man-made structures, whether above or below ground); and
- (c) cultural heritage (natural, tangible and intangible);
- (d) the built environment,
- (e) human health and wellbeing;

"Environmental and Social Approval" means any Authorisation required by Environmental and Social Law;

"Environmental and Social Law" means:

- (a) EU Law, including principles and standards;
- (b) the laws and regulations of Ireland; and
- (c) applicable international treaties,

in each case of which a principal objective is the preservation, protection or improvement of the Environment and/or the protection or improvement of Social Matters;

"EU Law" means the *acquis communautaire* of the European Union as expressed through the Treaties of the European Union, the regulations, directives, delegated acts, implementing acts, and the case law of the Court of Justice of the European Union;

"Instalment" means part of an Advance;

"Lender" means the Funder;

"Letter" means the Facility Agreement;

"Project" shall include the project constituted by the Works under this Agreement;

"Social Matters" means all, or any of, the following:

- (a) labour and working conditions;
- (b) occupational health and safety;
- (c) rights and interests of vulnerable groups;

- (d) rights and interests of indigenous peoples;
- (e) gender equality;
- (f) public health, safety and security;
- (g) avoidance of forced evictions and alleviation of hardship arising from involuntary resettlement;
and
- (h) stakeholder engagement;

“Utilisation Request” means a request for an Advance or an Instalment by the Company under the Facility Agreement

SCHEDULE 15

Items Required for Practical Completion

As a precondition to Practical Completion, the Developer shall furnish to the Company the following documents and things:

A. Legal Deliverables

- (i) For the Works, an Opinion on Compliance for each Block (as comprised in each Section and/or the Works, as applicable) with Planning Permission in standard RIAI form without qualifications (apart from those qualifications in the said standard form) together with all other documents referred to or relied upon therein (and where the Works comprise Sections, for Practical Completion of the last Section of the Works to achieve Practical Completion, the Developer shall procure such an Opinion on Compliance for the Works as a whole);
- (ii) For the Works (including but not limited to internal and external common areas, landscaping and infrastructural works required as part of the Works), an Opinion on Compliance for each Block (as comprised in each Section and/or the Works, as applicable) with Building Regulations in standard RIAI form without qualifications (apart from those qualifications in the said standard form) together with all confirmations, Fire Safety Certificates, commencement notices and other documents referred to or relied upon therein (and where the Works comprise Sections, for Practical Completion of the last Section of the Works to achieve Practical Completion, the Developer shall procure such an Opinion on Compliance for the Works as a whole)⁵⁹;
- (iii) Certified copies of the fully completed Certificate of Compliance on Completion for the entirety of the Works;
- (iv) Satisfactory evidence that Certificate of Compliance on Completion for the Works have been lodged with the Building Control Authority and relevant particulars thereof have been included on the register maintained under Part IV of the Building Control Regulations together with a certified copy of the documents submitted by the Assigned Certifier to the Building Control Authority pursuant to the Building Regulations;
- (v) Satisfactory evidence that the Planning Permission has been preserved / extended beyond the date of entry by the Building Control Authority of the particulars of the Certificate of Compliance on Completion on the register maintained under Part IV of the Building Regulations;
- (vi) Certified copies of the commencement notices lodged with the Building Control Authority and the BCMS notification of the entry onto the register;
- (vii) Fire Safety Certificates (if applicable);
- (viii) Disability Access Certificates (if applicable);
- (ix) Satisfactory evidence from local authority of compliance with all financial contributions, bond and Part V requirements in the Planning Permission as pertain to the Works;

⁵⁹ Separate opinion only required where BCAR does not cover the entirety of the Works to the satisfaction of the Company at PC

- (x) Evidence reasonably satisfactory to the Company that:
 - a. the LDI Policy is in force and cover under that policy has commenced (or will commence on issue of the Certificate of Practical Completion);
 - b. all premia due in relation to the LDI Policy have been paid and are up to date; and
 - c. the LDI Policy has been established with the Company and the Funder as insureds;
- (xi) Written evidence of up to date professional indemnity insurance for the Design Sub-Contractors and the members of the Developer's Professional Team, and where appropriate the Developer and the Building Contractor, and where such parties are a body corporate, certified copy Certificates of Incorporation and Memoranda and Articles of Association together with a letter from the insurance broker for the Developer, Building Contractor, Design Sub-Contractor and Developer's Professional Team confirming that all insurances required under this Agreement are in place;
- (xii) Tailte Éireann approved scheme map(s) for the Units including multi-storey and site location maps (as applicable);
- (xiii) Satisfactory evidence of agreement with the local authority to take the common areas, roads, access routes and services servicing the Units in charge together with an undertaking and indemnity from the Developer (in an agreed form) to maintain the common areas, roads, access routes and services and procure the taking charge of the common areas, roads, access routes and services at its own cost and indemnify the Company in relation thereto and maintain insurance over the common areas, roads, access routes and services until such time as taken in charge OR where applicable, evidence of full compliance with the Multi-Unit Developments Act 2011 (MUDS) and all requirements thereunder including but not limited to (i) executed deed of assurance of the common areas to the owners management company; (ii) satisfactory replies to MUDS requisitions with vouching documentation; and (iii) MUDS Schedule 3 documentation⁶⁰;
- (xiv) Confirmation of compliance from the local authority of the requirement under the Planning Permission to set up a management company for the Units (if applicable);
- (xv) Up to date Declaration of Identity in the agreed form reflecting the position of the Works as completed on the Site (and where the Works comprise Sections, for Practical Completion of the last Section of the Works to achieve Practical Completion, the Developer shall procure such Declaration of Identity for the Works as a whole);
- (xvi) Where not already provided:
 - a. Collateral Warranties from:
 - the Building Contractor, Design Sub-Contractors and Developer's Professional Team executed in favour of each the Company and the Funder;
 - the Developer in favour of the Funder;

in each case in accordance with the provisions of this Agreement;

⁶⁰ Where the Parties agree and it is supported by the planning authority that the Company shall perform obligations traditionally resting with an OMC and envisaged as such by the planning permission, MUDS Schedule 3 documentation must still be provided to the Company.

b. manufacturer's warranties in respect of:

- each large appliance installed in any Unit comprised in the Works; and
- any mechanical and electrical equipment services the broader development;

each of which warranties shall have at least 10 months validity as and from the Date of Practical Completion.

- (xvii) Confirmation by way of BER Certificate and Advisory Report from suitably qualified BER assessor that the Building Energy Rating of the Units conform to the minimum standards of A3 or better together with Part L and Dwellings Reports for each of the Units;
- (xviii) Where not already provided, certified copies of the Letters of Appointment of each member of the Developer's Professional Team, the Project Supervisor Design Process, the Project Supervisor Construction Stage, the Assigned Certifier and the Design Certifier (together with legal confirmation that such Letters of Appointment have been sealed or otherwise executed appropriately);
- (xix) Where not already provided, certified copies of the sub-contracts of each Design Sub-Contractor (together with legal confirmation that such Letters of Appointment have been sealed or otherwise executed appropriately);
- (xx) Written confirmation from each of the Developer, the Building Contractor and each of the Developer's Professional Team and each Design Sub-Contractor (in the form appended to Schedule 13) that it has complied with the requirement to promptly inform the Funder of a genuine allegation, complaint or information with regard to Criminal Offences related to the construction of the Units and that the Developer / Building Contractor / member of the Developer's Professional Team / Design Sub-Contractor has kept books and records of all financial transactions and expenditures in connection with this Agreement; and acknowledges that the Funder will have the right in relation to an alleged Criminal offence to review the books and records of the Developer / Building Contractor / member of the Developer's Professional Team / Design Sub-Contractor in relation to this Agreement and to take copies of documents to the extent permitted by law;

B. Technical Deliverables⁶¹

- (i) Certified copies of the fully completed Certificate of Compliance on Completion for the Works;
- (ii) Satisfactory evidence that Certificate of Compliance on Completion for the Works has been lodged with the Building Control Authority and relevant particulars thereof have been included on the register maintained under Part IV of the Building Control Regulations together with a certified copy of the documents submitted by the Assigned Certifier to the Building Control Authority pursuant to the Building Regulations;
- (iii) All relevant certificates, in hard and soft copy, required under the Building Control Regulations including Ancillary Certificates and (i) copies of all Ancillary Certificates issued for the Works and (ii) a signed statement listing all Ancillary Certificates provided or signed by any sub-contractor engaged by the Developer;
- (iv) Signed certificates of compliance from each member of the Developer's Professional Team in the forms appended to their respective appointments / or as otherwise agreed between

⁶¹ To be provided directly to the Company's technical team for approval

the Parties;

- (v) Certified copies of the commencement notices served on the local authority and the local authority's acknowledgements;
- (vi) Fire Safety Certificates (if applicable);
- (vii) Disability Access Certificates (if applicable);
- (viii) A certificate of compliance from the Developer in the form set out in Schedule 9 Part 2;
- (ix) Three copies of all "as built drawings" relating to the Works to include services and CCTV sewer survey in the form of stable negatives and on CAD disk(s);
- (x) A hard and soft copy of all relevant testing and commissioning certificates and operation and maintenance manuals received by the Developer and required for the installations comprised in the Works including without prejudice to the generality of the foregoing manuals explaining the operation of the boilers and heating and electrical installations in the Units⁶²;
- (xi) All information and documents in respect of:
 - the Safety File
 - the Developer's site specific Health and Safety Plan; and
 - the Developer's Safety Statement pursuant to Section 20 of the Safety, Health and Welfare Act, 2005;as is specified as required for Practical Completion pursuant to the provisions of Schedule 17;
- (xii) that term is defined in the Safety, Health, and Welfare at Work Legislation on CAD disk and in hard copy, the Developer's site specific Health and Safety Plan and the Developer's Safety Statement pursuant to Section 20 of the Safety, Health and Welfare Act, 2005;
- (xiii) All test certificates received from the sub-contractors, and approved by the relevant members of the Developer's Professional Team, confirming that all equipment and installations are performing to the design specifications and to the parameters stated in or reasonably to be inferred from the Company Requirements;
- (xiv) Copies of record drawings and operating manuals required for the installations comprised in the Works;
- (xv) An asset register of all appliances and similar items supplied by the Developer in each Unit such information to include:
 - a. Item description and model number;
 - b. Manufacturer;
 - c. Serial number;

⁶² Developer to confirm no other installations requiring commissioning

d. Purchase date;

e. Supplier;

and corresponding information in respect of any mechanical or electrical equipment provided to service the entirety of the development or multiple Units comprised therein.

SCHEDULE 16

Development of the Safety File

1. The provision of comprehensive and complete Safety File documentation is an important statutory requirement under the Safety, Health & Welfare at Work (Construction) Regulations but the specific requirements in respect of the contents and format of the documentation is not specified within the Regulations.
2. Through the delivery of projects of varying scale Respond have developed a set of requirements which set out the specific format and content of the Safety File requirements to satisfy both the statutory requirements and the requirements of our Asset Management team who will manage and maintain the asset over its lifecycle.
3. The Developer will conform to the Company's Safety File, medium, format and content structure. A summary of the format and contents is set out below with a more detailed description of requirements provided, by the Company to the Developer, prior to the commencement of the Works to facilitate early collation of documents from the outset of the construction phase.
4. Typical Contents List includes:
 - a. Project Information & Directory
 - b. Health & safety Information
 - c. Designs, Specifications, Drawings & Certificates
 - d. Fire Safety Provisions & Information
 - e. Disabled Access Provisions & Information
 - f. Demolitions & Site Clearance
 - g. Excavation & Disposal
 - h. Substructure
 - i. Utilities and Statutory Providers
 - j. Structure
 - k. Windows & Doors
 - l. External Façade
 - m. Electrical System Installations
 - n. Mechanical System Installations
 - o. Roof
 - p. Building Fall Arrest System
 - q. Insulation
 - r. Internal Partitions
 - s. Ceiling Finishes
 - t. Floor Finishes
 - u. Wall Finishes

- v. Fire Stopping & Damper Installations
- w. Airtightness
- x. Lift Installations
- y. Fittings & Furniture
- z. Signage & Wayfinding
- aa. Roads, Paths, Pavings
- bb. External Railings, Gates & Landscaping
- cc. Play Equipment
- dd. Internal Fabric, Finishes and Fittings (Non-Apartment, Creche & Amenity Spaces)
- ee. Fire Safety Installations (Certificates, etc for Fire Alarm, Emergency Lighting, Portable Fire Extinguishers & Hose Reels, AOV's, Emergency Voice Communication Systems, Sprinkler systems, Fire suppression systems. Fire Mains, Escape & Evacuation Plans)
- ff. Maintenance Log Documents (details of individual items requiring maintenance including names of installers, inspection timeframes, date of last inspection, warranty periods, etc)
- gg. BCAR Documentation
- hh. Other Important Information (including for example, Taking In Charge process/details, meter readings, client demonstration videos, Respond Asset Forms, etc)

The above list is non-exhaustive and is subject to change and review through an ongoing review and improvement process. The Company will inform the Developer of any changes or updates in requirements during the Works.

5. Whilst the full Safety File Documentation is required for the final completion of the project a draft set of documents should be collated and shared with the Company's Representative at least six months prior to final completion; it is acknowledged that this draft set of information will not be full, final or complete at this initial juncture but the initial draft will be updated and augmented throughout the latter stages of the project completion phase. The technicals contained in the Safety File form part completion documents, and as such the Developer will make available a final draft set four weeks prior to final Completion Date for final review and agreement by the Company's Representative.
6. An abridged version of the Safety File will be required for each Section of the Works and the content and format of this abridged document will be agreed at least three months in advance of the Date of Practical Completion of the relevant Section with the Company's Representative; the final version of the abridged document should similarly be available for final review by the Company's Representative four weeks in advance of the Date of Practical Completion of the relevant Section.
7. The Developer will provide the Company a GAP analysis of the Safety File as required by the Company from time to time throughout the construction period.
8. The Developer should allocate a specific resource to the administration, preparation and collation of the Safety File documentation in an efficient and effective manner.

9. The provisions of the Agreement in respect of the implications of failure to provide comprehensive and robust Safety File information are highlighted.
10. The Developer should provide the Safety File documentation in an electronic file format that is capable of being referenced and shared within the Company's team or upload directly to the Company's Asset Management Safety File software platform. The Company will advise the Developer of the preferred format of transfer at project commencement. In all instances the Developer will provide the Company with a USB key containing the completed Safety File as part of the Final Completion process.
11. The Company intends in the short term to migrate to a digital safety file platform with an approved platform provider, but this does not mitigate or relieve the Developer of the requirements and responsibilities outlined within the Agreement and above to provide resources to ensure delivery of comprehensive and complete Safety File documentation within the timeframes detailed.

Details of the preferred platform provider will be shared with the Developer by the Company.
12. All costs associated with the administration, preparation and collation of Safety File documentation and the requirements outlined within the Agreement as a whole will be borne by the Developer.
13. It will be the Developers whole responsibility to ensure the Safety File is complete and any gap analysis determined in advance of the Safety File being handed over to the Company's Representative at any handover juncture as prescribed in this Schedule. The Developer will provide all Safety File documentation, to conform with section, phase, or final completion as agreed by the contract programme.

SCHEDULE 17

Defects Liability Period - Rectification of Defects

1. Upon Practical Completion of a Section, the Company's Representative will identify by notice in writing to the Developer the start and end dates of the relevant Defects Liability Period, including the Company's standard form of **Defects Liability Period Process** for the logging, notifying, determining, classifying and rectifying of a defect.
2. The Company's Representative may issue to the Developer written instructions for the rectification of Defects at any time, and from time to time, up to the expiry of the Defects Liability Period in compliance with the Defects Liability Period Process. Any matters identified as Defects and notified to the Developer by the Company in writing before the expiration of the Defects Liability Period shall be made good by the Developer:
 - (a) within the period as outlined in the Defects Liability Period Process document;
 - (b) where notified subsequent to the date on which the relevant element of the Works achieved Practical Completion, in accordance with a programme in respect of each instruction to be agreed between the Developer and the Company's Representative (both acting reasonably) to include an access schedule, where required, setting out how and when access will be provided to relevant parts of the Works to enable the Developer or the Building Contractor (and any persons authorised by the Developer or the Building Contractor) to remedy or procure the remediation (as the case may be) of the notified Defects (each such programme shall be a "**Defect Rectification Programme**"); and
 - (c) to the reasonable satisfaction of the Company's Representative or, as applicable, the Independent Architect.
3. Without prejudice to the generality of the foregoing, within 2 months of the expiration of the Defects Liability Period, the Company's Representative shall inspect the Works and shall jointly prepare a final Defects schedule for the Works, identifying any remaining Defects in the Works (the **Final Defect Schedule**).
4. The Final Defect Schedule will be issued to the Developer no later than 70 days after the expiry of the relevant Defects Liability Period. This will be issued in electronic format, and it is agreed that the Developer will provide the Company's Representative with a weekly rectification programme update, or as otherwise agreed.
5. In respect of any Defect rectification work carried out after the date on which the Works have achieved Practical Completion, the Company shall ensure that access to the Site and/or the Works is made available to the Developer or the Building Contractor (and any persons they authorise) for the purposes of attending to any items of work notified as a Defect or on the Final Defects Schedule in accordance with the relevant Defect Rectification Programme (and where the Company is in breach of this obligation, Clause 6 of this Schedule shall apply).
6. Subject to Clause 5 of this Schedule, where the Developer has failed to remedy or procure the remediation (as the case may be) of any Defects in accordance with the performance requirements of the Defects Liability Period Process, the Company may procure others to carry out such work and the reasonable vouched cost thereof will be recovered from the Developer as a debt due.(or, where available, through the appropriation to the Company's account of any amounts held by way of retention).
7. Without prejudice to its liability for the rectification of any Defects, the Developer shall not

be deemed to have failed to remedy or procure the remediation of any Defects under Clause 4 of this Schedule where the Company has not provided the Developer or the Building Contractor adequate access, in accordance with the relevant Defect Rectification Programme for the remedying or procuring the remediation of any Defects. In such circumstances, as the sole remedy for such failure by the Company, the parties shall (both acting reasonably) agree a revised Defect Rectification Programme which shall apply for the rectification of the relevant Defects.

SCHEDULE 18

Site Access Plan⁶³

⁶³ TBC with appropriate delineations of Site within development specific to each project.

DATED

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RESPOND

(the Company)

[•]

(the Developer)

DEVELOPMENT AGREEMENT

in relation to the Housing Development at [•]



Riverside Two
Sir John Rogerson's Quay
Dublin 2