

Section 38 – Developer Guidance

Appendices

October 2015

Appendix A – Model Section 38 Agreement

DATED

20[]

SECTION 38 AGREEMENT UNDER THE HIGHWAYS ACT 1980

between

THE COUNCIL OF THE CITY OF NEWCASTLE UPON TYNE

and

[DEVELOPER]

and

[SURETY]

and

[MORTGAGEE]

ASSISTANT DIRECTOR LEGAL SERVICES

LEGAL SERVICES

CIVIC CENTRE NEWCASTLE UPON TYNE

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PARTIES

- (1) **THE COUNCIL OF THE CITY OF NEWCASTLE UPON TYNE** of Civic Centre Newcastle upon Tyne NE1 8QH (**Council**).
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Developer**).
- (3) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Surety**).
- (4) **[[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Mortgagee**).]

BACKGROUND

- (A) The Council is the local highway authority for the area in which the Land is situated.
- (B) The Developer owns the Land which includes the site of the proposed Road and all other land required for the Works.
- (C) The Developer has requested that after the Works have been completed and maintained, the Council shall adopt the Road as a highway maintainable at the public expense, which the Council has agreed to do on the terms and conditions of this agreement.
- (D) The Surety has agreed to enter into this agreement for the purposes set out in clause 21.
- (E) [The Mortgagee is the registered proprietor of the charge dated **[DATE]** referred to in entry no **[NUMBER]** of the charges register of Title number **[NUMBER]** and has agreed to enter into this agreement to grant the consent contained in clause 34.]

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Advance Payment Code: the advance payment code as defined in section 329(1) of the Highways Act 1980.

Assistant Director Legal Services: the officer of the Council holding that appointment for the time being or such suitably qualified person as may from time to time be nominated.

CDM Regulations: the Construction (Design and Management) Regulations 2015.

Client: the client as defined by the CDM Regulations.

Council's Street Lighting Provider: Scottish and Southern Electric Contracting Limited or such other body appointed by the Council and notified to the Developer in writing

CRC: the emissions trading scheme as defined in section 2(1) of the Carbon Reduction Commitment Order 2010.

CRC Costs: any costs, charges, fees, penalties or any other liability attributable to the participation by the Developer or the Council in the CRC and relating to the energy consumption of the Street Furniture.

Default Cost: all of the following:

- (a) the cost of carrying out the Default Work;
- (b) the cost of maintaining the Works for the Maintenance Period; and
- (c) the usual establishment charges of the Council.

Default Notice: written notice given by the Assistant Director Legal Services to the Surety under clause 21.1.

Default Work: work required to be carried out by or on behalf of the Surety so that the Works are constructed or completed in accordance with this agreement.

Drawings: the Drawings numbered [NUMBERS] attached to this agreement and signed by or on behalf of the parties.

Estimated Cost: the sum of £[AMOUNT] which, in the opinion of the Proper Officer, is the cost of carrying out the Works within the period specified in clause 2.1(f).

Final Certificate: the certificate to be issued on satisfactory completion of the Works under clause 12.

Health and Safety File: the health and safety file as required by the CDM Regulations.

[Land: the freehold land at [DESCRIPTION/ADDRESS] shown edged red on the Drawings being part of the land registered at HM Land Registry with absolute title under title number(s) [NUMBER[S]].

[Land: the freehold land at [DESCRIPTION/ADDRESS] shown edged red on the Drawings and being part of the land comprised within a conveyance dated [DATE] between [PARTY] and [PARTY]].

Maintenance Period: the maintenance period specified in clause 11.1(a).

Part 1 Certificate: the certificate to be issued under clause 8 on satisfactory completion of the Part 1 Works.

Part 1 Works: the works set out in Schedule 1.

Part 2 Certificate: the certificate to be issued under clause 9 on satisfactory completion of the Part 2 Works.

Part 2 Works: the works set out in Schedule 2.

Proper Officer: any officer of the Council for the time being appointed for the purposes of this agreement.

Road: the carriageway and footway of the private road shown coloured pink on the Drawings, including:

- (a) any off-site highway drainage shown coloured blue on the Drawings;
- (b) the footpaths, street lighting, all verges, service strips, service margins, vehicular crossings, road surface water drainage system (if any); and
- (c) all other ancillary items.

and **Roads** shall mean more than one of them.

Road Land: the freehold estate in the land comprising the Road.

Sewer Adoption Agreement: an agreement made under section 104 of the Water Industry Act 1991 or under any other statutory provision and which provides for the adoption of a sewer as a public sewer

Specification: the publication entitled Specification for Highway Works dated March 1998 published by the Department for Transport and all subsequent amendments together with the Design and Construction of Roads and Accesses Developer Guidance dated March 2011 published by the Department for Transport and all subsequent amendments.

Statutory Undertaker: a statutory undertaker, as defined in section 329(1) of the Highways Act 1980 and including:

- (a) persons authorised under any enactment to carry on an undertaking for the supply of electricity, gas, water and any sewerage undertaking;
- (b) the Environment Agency;
- (c) a holder of a licence to operate telecommunication systems;
- (d) the Civil Aviation Authority; and
- (e) the holder of a licence to supply cable television.

Street Furniture: objects and pieces of equipment installed for various purposes on the carriageway and footway of the private road shown coloured red on the Drawings including street lighting, traffic lights and traffic signs.

Surety's Counter Notice: written notice of the Surety's intention to carry out the Default Work.

VAT: value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement tax and any similar additional tax.

Working Day: a day (other than a Saturday, Sunday or public holiday) in England when banks in London are open for business.

Works: the Part 1 Works and the Part 2 Works.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.12 Documents in **agreed form** are documents in the form agreed by the parties and initialled by or on behalf of them for identification.
- 1.13 A reference to "this agreement" or to any other agreement or document referred to in this agreement is a reference to this agreement or such other document

or agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

- 1.14 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.15 An obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.16 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.17 This agreement is made under section 38 of the Highways Act 1980, section 111 of the Local Government Act 1972 and any other enabling powers of the Council.

2. DEVELOPER'S OBLIGATIONS

- 2.1 The Developer shall, at its own cost, carry out and complete the Works:
 - (a) in a good and workmanlike manner;
 - (b) using only good quality materials approved by the Proper Officer;
 - (c) in accordance with this agreement, the Specification (a copy of which has been received by the Developer) and the Drawings;
 - (d) to the Proper Officer's satisfaction;
 - (e) in compliance with all relevant British Standards, codes of practice and good building practice; and
 - (f) within 24 calendar months following the date of this Agreement
- 2.2 The Developer shall give to the Proper Officer not less than 20 Working Days written notice of the date of starting the Works.
- 2.3 The Developer shall maintain the Road until the date of issue of the Final Certificate.
- 2.4 The Developer shall not commence the Works until all of the following conditions have been satisfied:-
 - (a) all required statutory procedures have been completed
 - (b) all non-statutory consultation processes have been completed

- (c) the Proper Officer has provided written approval of all structures within or abutting the Road
- (d) all design checks by the Council have been satisfactorily completed
- (e) any required road safety audits have been completed up to Stage 2
- (f) all fees and payments due to the Council have been paid in accordance with this Agreement
- (g) the Council has received confirmation that an adequate bond has been provided for the Developer's liabilities under this Agreement
- (h) the Developer has complied with clause 20.3 of this Agreement
- (i) the Proper Officer has been provided with a copy of all approved drawings
- (j) the Council has given written approval of the contractor for the Works

3. DEVELOPER'S DECLARATION

The Developer declares and warrants to the Council that throughout the duration of this agreement the Developer has or will have full right, liberty and consent to carry out such works as may be necessary to connect the Road to a highway that is, or will be, maintainable at the public expense.

4. EXTENSION OF TIME TO COMPLETE THE WORKS

Without prejudice to any remedy of the Council, the Proper Officer may at any time, exercising absolute discretion grant an extension of time to complete the Works for a further period or periods by giving written notice to the Developer.

5. SUSPENSION OF THE WORKS

5.1 If the Developer intends to suspend construction of the Works for a period of more than 5 Working Days, the Developer shall notify the Proper Officer in writing of:

- (a) the intended suspension not less than 20 Working Days before the start of the suspension; and
- (b) the Developer's intention to re-commence construction of the Works not less than 20 Working Days before such re-commencement.

5.2 If the Developer fails to notify the Proper Officer under clause 2.2 and clause 5.1, the inspection fee referred to in clause 35 shall be increased by such amount as the Proper Officer, exercising absolute discretion, sees fit to

reimburse the Council any additional cost incurred by the Council in inspecting the Works because of such failure.

6. ACCESS TO THE LAND

- 6.1 During construction of the Works, the Developer shall give to the Proper Officer and any other Council officer free access to every part of the Works and Land for the purpose of inspecting the Works and all materials used, or intended to be used, for the Works.
- 6.2 While carrying out any inspection under clause 6.1, the Proper Officer and any other Council officer shall comply with any reasonable health and safety requirements notified to them by the Developer.
- 6.3 During construction of the Works, the Proper Officer may require the Developer to open up or expose any of the Works that have been covered up without previously being inspected by the Proper Officer. If the Developer fails to comply with any such request, the Council may take up or expose the relevant part of the Works causing as little damage or inconvenience as possible to or in respect of any other part or parts of the Works. The Developer shall pay the Council's costs of such taking up, exposure and reinstatement.

7. PROCEDURE FOR INSPECTION AND ISSUE OF CERTIFICATES

- 7.1 The Developer must apply to the Proper Officer in writing for a:
 - (a) Part 1 Certificate;
 - (b) Part 2 Certificate; and
 - (c) Final Certificate.
- 7.2 Within 10 Working Days following receipt of a written application from the Developer for the issue of a Part 1 Certificate or Final Certificate and within 20 Working Days following written application from the Developer for the issue of a Part 2 Certificate, the Proper Officer shall:
 - (a) inspect the Works to which the application relates; and
 - (b) provide the Developer (where necessary) with a definitive written list of any works required to be carried out to remedy any defect or damage to the Road before the issue of that certificate.
- 7.3 The Developer must carry out the works referred to in clause 7.2(b) without delay and at its own cost.

7.4 The works referred to in clause 7.2(b) shall be subject to the same inspection procedure detailed in this clause 7 until such time as the works have been completed to the satisfaction of the Proper Officer.

7.5 The Proper Officer shall issue the relevant certificate in accordance with clause 8, clause 9 or clause 12.

8. PART 1 CERTIFICATE

8.1 The Developer shall complete the Part 1 Works within six calendar months from the date of this Agreement

8.2 Within 20 Working Days following completion of the Part 1 Works to the satisfaction of the Proper Officer, the Proper Officer shall issue the Part 1 Certificate to the Developer.

9. PART 2 CERTIFICATE

9.1 The Developer shall complete the Part 2 Works within 18 calendar months of the date of issue of the Part 1 Certificate

9.2 Within 20 Working Days following completion of the Part 2 Works to the satisfaction of the Proper Officer, the Proper Officer shall issue the Part 2 Certificate to the Developer provided that the maintenance period of any sewer constructed on or under the Road in accordance with a Sewer Adoption Agreement is currently running or has expired.

10. CERTIFICATES FOR PART OR PARTS OF THE ROAD

10.1 The Developer can apply to the Proper Officer for a Part 1 Certificate or a Part 2 Certificate for any part of the Road (being the whole width of the Road between specified points to be agreed by the Proper Officer and defined in the application).

10.2 If the Proper Officer is satisfied that the part of the Road defined is suitable to be treated as a separate road for the purposes of construction and adoption under this agreement, the Proper Officer may issue a separate Part 1 Certificate or Part 2 Certificate, as the case may be, for that part of the Road.

10.3 The same procedures may then be taken in respect of the said part of the Road as if it were the subject of a separate agreement under which the terms of this agreement applied, but without affecting the application of this agreement to the remainder of the Road.

- 10.4 Following the date of issue of a Part 1 Certificate or a Part 2 Certificate, as the case may be, for part of the Road, the liability of the Surety shall be reduced as may be directed by the Proper Officer.

11. THE MAINTENANCE PERIOD

- 11.1 From and including the date of the Part 2 Certificate:
- (a) the Maintenance Period shall commence to run for a period of twelve (12) calendar months or, if construction vehicles continue to travel along the Road, such longer period as the Proper Officer may reasonably determine; and
 - (b) the Road shall become a highway open for use by the public at large, but shall not be regarded as a highway maintainable at the public expense.
- 11.2 During the Maintenance Period, the Developer shall, at its own cost and to the satisfaction of the Proper Officer:
- (a) maintain the Works, including all grassed and planted areas, and carry out routine maintenance of the Road, including sweeping, gully emptying and snow clearance; and
 - (b) clear all abandoned vehicles, rubbish, or other unauthorised materials from the Road.
- 11.3 During the Maintenance Period the Developer shall, at its own cost:
- (a) undertake routine maintenance of all Street Furniture; and
 - (b) be responsible for, the supply of energy and all associated costs including for the avoidance of doubt any CRC Costs for all the Street Furniture.
- 11.4 Before the Maintenance Period expires, the Developer shall, without delay and at its own expense reinstate and make good any defect or damage to the Road, which may have arisen from any cause or be discovered, during the Maintenance Period (including any defect in, or damage to, the road surface water drainage system) of which the Developer has been notified in writing by the Proper Officer, so that the Works comply with the Specification and the Drawings

12. FINAL CERTIFICATE

The Proper Officer shall issue the Final Certificate to the Developer provided that:

- (a) the Developer has paid to the Council all amounts due to the Council under this agreement including any commuted sum payable under clause 23;
- (b) any necessary reinstatement or other works notified in writing to the Developer in accordance with clause 11.4 have been completed to the satisfaction of the Proper Officer;
- (c) the Road connects directly to a highway maintainable at public expense;
- (d) the Developer has delivered to the Proper Officer each of the following:
 - (i) 14 sets of coloured drawings showing to a scale of 1:500 the Works as constructed, in a format specified by the Proper Officer;
 - (ii) 2 copies of the Health and Safety File; and
 - (iii) highways inventory data in a format specified by the Proper Officer.
- (e) The Developer has at its own expense provided the Proper Officer with verification that any sewers constructed on or under the Road, in accordance with a Sewer Adoption Agreement, have been adopted by a Statutory Undertaker;
- (f) the Developer has obtained and delivered to the Council all necessary deeds of easement under clause 19;
- (g) the Developer has procured that an independent safety auditor, approved by the Council, has undertaken road safety audit stages 1, 2, 3 and 4 (**Road Safety Audits**) on the Works in accordance with H.D 19/03 (Road safety audit volume 5: design manual for roads and bridges); and
- (h) The Developer has carried out, at its own expense, all the remedial works identified in the Road Safety Audits to the satisfaction of the Proper Officer;

13. ADOPTION

From and including the date of issue of the Final Certificate, the Road or any part of the Road, as the case may be, shall become a highway maintainable at the public expense.

14. MATERIALS SAMPLING AND TESTING

- 14.1 The Developer shall, if requested by the Proper Officer, make all necessary arrangements for an independent accredited testing facility, approved by the

Council, to test the materials proposed to be used in connection with the Works. The Developer shall bear the full cost of such testing and give to the Proper Officer, at no expense to the Council, copies of all material testing certificates.

- 14.2 Any material rejected by the Proper Officer acting reasonably, as a result of the tests carried out under clause 14.1 shall not be used by the Developer for any of the Works.

15. NEW ROADS AND STREET WORKS ACT 1991

Until the date of issue of the Final Certificate, the Developer shall:

- (a) appoint a supervisor qualified in accordance with the provisions of section 67 of the New Roads and Street Works Act 1991; and
- (b) remain the street manager of the Road under section 49(4) of the New Roads and Street Works Act 1991.

16. KEEPING THE EXISTING HIGHWAY CLEAN

The Developer shall:

- (a) before commencing the Works provide suitable vehicle and wheel cleaning apparatus on the Land; and
- (b) during construction of the Works ensure the cleaning apparatus is well maintained and used by all vehicles immediately before leaving the Land to prevent mud and other materials being deposited on the highway.

17. CONNECTING TO EXISTING SERVICES

- 17.1 Before connecting the Road to the carriageway of a highway maintainable at the public expense, the Developer shall give notice to the relevant Statutory Undertaker of any service or services laid in, on, or under the existing highway of the proposal to make such connection as if the connection were works for road purposes or major highway works as defined in section 86 of the New Roads and Street Works Act 1991.

17.2 The Developer shall:

- (a) carry out, at its own cost, any works or measures required by a Statutory Undertaker as a result of the Works; and
- (b) indemnify the Council for the cost of any works or measures carried out, as a result of the Works, by the Council at the request of the Statutory Undertaker.

18. OCCUPATION OF BUILDINGS

No buildings erected by or on behalf of the Developer that front, adjoin, abut or have access to the Road shall be occupied until:

- (a) the Proper Officer has issued the Part 1 Certificate for the Road, or the part of the Road that will provide the occupier with access to a vehicular highway;
- (b) a base course pedestrian access (where applicable) to such highway has been provided;
- (c) the Road or that part of the Road referred to in clause 18(a) has operational street lighting columns erected in accordance with the Specification and the Drawings; and
- (d) the Road or that part of the Road referred to in clause 18(a) has street name plates erected as agreed with the Proper Officer.

19. GRANT OF EASEMENTS

19.1 Before the Proper Officer issues a Final Certificate, the Developer shall, without cost to the Council, execute and complete or procure the execution and completion of:

- (a) any deeds of easement that are in the opinion of the Council necessary to secure for the Council full drainage rights to such parts of the surface water drainage system of the Road Land that are not within the Road Land; and
- (b) any other deeds of easement required by the Council for the future maintenance by the Council of any Street Furniture not within the Road Land.

19.2 The Developer shall pay the Council's proper and reasonable legal costs and disbursements in connection with the grant of any deeds of easement.

19.3 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the completion of any deeds of easement referred to in clause 19.1 or due to the subsequent use of the easement.

20. CDM REGULATIONS

20.1 The Developer elects to be treated for the purposes of the CDM Regulations as the only Client. The Council agrees with such election by the Developer.

- 20.2 The Developer agrees to undertake all the obligations of a Client and to ensure that the Works are carried out in accordance with the CDM Regulations.
- 20.3 Before commencement of the Works, the Developer shall ensure that the Works are properly notified to the Health and Safety Executive in accordance with the CDM Regulations and shall give the Council a copy of the notification and any acknowledgement from the Health and Safety Executive.
- 20.4 The Developer shall ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations.
- 20.5 The Developer warrants it has taken or shall take all reasonable steps to be satisfied that all contractors engaged on the Works are suitable and competent having regard to their responsibilities in relation to the Works and the CDM Regulations.
- 20.6 The Developer shall indemnify and keep the Council indemnified against any breach of the Developer's obligations under this clause 20.

21. SURETY'S OBLIGATIONS

- 21.1 If any of the default events listed in clause 31 occur, the Assistant Director Legal Services may, without affecting any statutory rights or powers or any other right, claim, or remedy under this agreement for such non-performance or non-observance, give to the Surety a Default Notice:
- (a) specifying the Default Work; and
 - (b) containing an estimate by the Proper Officer of the Default Cost. The Default Cost shall not exceed:
 - (i) the Estimated Cost;
 - (ii) [£ AMOUNT] being 50% of the Estimated Cost on and after the issue of the Part 1 Certificate;
 - (iii) [£ AMOUNT] being 20% of the Estimated Cost on and after the issue of the Part 2 Certificate; or
 - (iv) an amount to be determined by the Proper Officer, exercising absolute discretion, after the issue of either part of a Part 1 Certificate or part of a Part 2 Certificate.
- 21.2 Within 20 Working Days following the date of receipt of the Default Notice, the Surety shall:
- (a) pay the Default Cost to the Council; or

- (b) send the Surety's Counter Notice to the Council.
- 21.3 If the Surety, having sent the Surety's Counter Notice to the Council, fails to start the Default Work within 20 Working Days from and including the date of receipt by the Council of the Surety's Counter Notice, the Surety shall without delay, pay the Default Cost to the Council together with simple interest at a rate of 4% per annum above the base rate of the Lloyds Bank plc from time to time, calculated from and including the date on which the Default Notice was sent to the Surety to and including the date the payment is made.
- 21.4 If the Surety, having sent the Surety's Counter Notice to the Council, starts the Default Work, and the Default Work is not completed within one (1) calendar month from and including the date the Surety's Counter Notice was received by the Council, or within such further period or periods as may be agreed by the Proper Officer, the Surety shall forthwith on demand by the Assistant Director Legal Services, pay to the Council:
- (a) such sum as the Proper Officer may determine as being the cost of carrying out any Default Work not carried out by the Surety or the cost of maintaining the Works for a period of twelve (12) calendar months before the Road becomes maintainable at public expense (or the cost of both); and
 - (b) the amount determined by the Proper Officer and the Assistant Director Legal Services as representing the usual establishment charges of the Council.
- 21.5 The sum payable under clause 21.4 shall not exceed the Default Cost.
- 21.6 Following the issue of a Final Certificate for:
- (a) any part of the Road, the liability of the Surety shall be reduced by an amount as may be directed by the Proper Officer ; or
 - (b) all of the Road or the final part of the Road, the Surety shall be released from all liability under this agreement.

22. COUNCIL'S COVENANTS

The Council covenants with the Developer and the Surety for the benefit of each and every building plot fronting, adjoining, abutting, or having access to the Road:

- (a) to use its reasonable endeavours in consultation with the Surety to mitigate any loss or damage sustained because of any default by the Developer, by taking such reasonable steps as the Council thinks fit;

- (b) to use all monies received from the Surety pursuant to clause 21 towards the carrying out or completing the Works and maintaining and making good all defects for a period of 12 calendar months after completion of the Works. The amount received from the Surety shall be deducted from any sum that would otherwise be recoverable from the owners of premises fronting the Road under the Highways Act 1980;
- (c) if the sum paid by the Surety to the Council exceeds the cost of carrying out or completing the Works and maintaining and making good all defects as set out in this agreement (together with the amount of the Council's usual establishment charges) to repay to the Surety within 20 Working Days following the date of the Final Certificate, the amount of any excess; and
- (d) on the issue of the Final Certificate to give such notices and do whatever else may be required for securing that the Road or any part thereof, as the case may be, shall become a highway maintainable at public expense.

23. COMMUTED SUM

[Not used] [Prior to the issue of the Final Certificate the Developer shall pay to the Council the sums specified in the second column of Schedule 3 in respect of the future maintenance and/or replacement cost of the corresponding item described in the first column of Schedule 3.]

24. SPECIFICATION TO TAKE PRECEDENCE

If there is any conflict between the Specification and the Drawings, the Specification shall take precedence unless otherwise agreed in writing by the Proper Officer.

25. TECHNICAL ADVICE

If the Proper Officer determines that technical advice is required before any feature or structure included as part of the Works or that is under or over the Road can be approved, the Developer shall reimburse to the Council, within 20 Working Days following receipt of an invoice, all costs incurred by the Council in obtaining such technical advice.

26. TRANSFER OF ROAD LAND

- 26.1 Following the date of completion of this agreement, the Developer shall without delay and at its own cost, if requested by the Council, execute and complete,

or procure the execution and completion by all necessary parties of, a transfer to the Council of the Road Land with full title guarantee and at nil consideration.

- 26.2 The transfer of the Road Land shall be free from encumbrances, other than those created prior to the date of this agreement (with the exception of any purely financial charge), which are consistent with the use of the Road Land for highway purposes or the proper management and maintenance of the Road Land.
- 26.3 The Developer shall assist in any application to the Land Registry for the registration of the Council with title absolute in respect of the Road Land.
- 26.4 The Developer shall not, without the Council's prior written consent, make a disposal of the whole or any part of the Road Land to any other person or persons, or grant any rights over it, except a right of way for all purposes in accordance with any planning permission granted by the local planning authority in respect of the Road Land.

27. MAKING UP OF PRIVATE STREETS

If the Developer fails to perform any of its obligations under this agreement, nothing in this agreement shall prevent or restrict the Council from exercising its powers under the Private Street Works Code contained in Part XI of the Highways Act 1980 or any other statutory provision.

28. ADVANCE PAYMENT CODE

[Not used] [On the date of completion of this agreement, the Council shall in respect of those plots detailed in column 1 of Schedule 4:

- (a) refund to the Developer the sums shown in the second column of Schedule 4, paid by the Developer to the Council under the Advance Payment Code together with simple interest at the base rate of Lloyds Bank plc from time to time, calculated from and including the date of deposit to the date of this agreement;
- (b) release the security, shown in the fourth column of Schedule 4, given by the Developer to the Council under the Advance Payment Code.]

29. INDEMNITIES

- 29.1 The Developer shall indemnify the Council in respect of any actions, charges, claims, costs, losses, damages, demands, liabilities and proceedings arising out of any breach or non-observance of the Developer's obligations in this agreement including (but not limited to):

- (a) third party claims for death, personal injury or damage to property;
 - (b) statutory or other liability for the safety or security of the Land, working methods, employment practices, protection of the environment and control of pollution; and
 - (c) third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right.
- 29.2 The Developer shall indemnify the Council in respect of any claims for compensation under section 10 of the Compulsory Purchase Act 1965 and claims under the Land Compensation Act 1973 arising out of, in connection with or incidental to, the carrying out of the Works and their subsequent use, other than those arising out of or in consequence of any negligent act default or omission of the Council.
- 29.3 The indemnification referred to in clause 29.2 includes:
- (a) compensation payments under Part I of the Land Compensation Act 1973;
 - (b) all fees incurred by claimants, and those of the Council or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
 - (c) statutory interest payments to claimants and their professional advisors; and
 - (d) the Council's reasonable and proper legal costs in making the compensation, fees and interest payments under clause 29.3.
- 29.4 The Developer shall only be required to indemnify the Council in accordance with this agreement if:
- (a) the Council notifies the Developer as soon as reasonably practicable on becoming aware of any matter which becomes the subject of a claim for indemnity;
 - (b) the Council keeps the Developer reasonably informed of all progress of which it is, or becomes, aware of in connection with that matter and of any proposed settlement;
 - (c) where it is permitted by the Council's insurer, not settling or compromising that matter without the previous consent of the Developer, such consent not to be unreasonably withheld or delayed. Where the Developer does not consent it shall indemnify the Council against all costs incurred by the Council in litigating that matter and will assist the Council in such litigation by providing such witnesses

and other evidence as it is able to do relating to any matter in contention.

30. INSURANCE

From and including the date of completion of this agreement until the date of issue of the Final Certificate, the Developer shall maintain public liability insurance in the Developer's own name to cover claims for injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £5,000,000 for any one occurrence or series of occurrences arising out of the same event.

31. DEFAULT EVENTS

The Council may terminate this agreement (except for clause 1, clause 3, clause 7, clause 18, clause 19, clauses 21-23, clause 26 and clauses 32-42) immediately by written notice to the Developer without prejudice to any other rights the Council may have, if any of the following events occur:

- (a) the Developer is in fundamental breach of any of its conditions, stipulations or obligations and liabilities in this agreement; or
- (b) the Developer is in substantial breach of any of its conditions, stipulations or obligations and liabilities in this agreement and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Assistant Director Legal Services; or
- (c) where the Developer is a corporation:
 - (i) has an administrative receiver or receiver appointed over the whole or part of the Developer's assets or suffers the appointment of an administrator; or
 - (ii) any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or
 - (iii) an application is made for an administration order in relation to the Developer; or
 - (iv) in relation to the Developer, the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of notice of intention to appoint an administrator by the Developer or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - (v) a receiver or manager is appointed in relation to any property or income of the Developer; or

- (vi) a liquidator is appointed in respect of the Developer; or
 - (vii) a voluntary winding-up of the Developer is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
 - (viii) a petition is made for a winding-up order for the Developer; or
 - (ix) the Developer is struck-off from the Register of Companies; or
 - (x) the Developer otherwise ceases to exist; or
- (d) Where the Developer is an individual:
- (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or
 - (ii) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Developer.

32. COUNCIL'S POWER TO EXECUTE WORKS IN DEFAULT

- 32.1 Without affecting clause 2 and clause 31, if the Developer fails to carry out or complete the Works in accordance with the Developer's obligations under this agreement, the Council, after giving to the Developer [and the Surety] not less than 20 Working Days written notice, shall be entitled to carry out or complete the Works in default, using the Council's own employees, or by contractors or otherwise and to recover from the Developer or Surety the cost of carrying out or completing the Works as certified by the Proper Officer.
- 32.2 The Developer hereby grants to the Council and the Council's agents, contractors and employees full right and licence to enter onto and remain on the Land together with all machinery plant and materials in order to carry out or complete the Works and remedy any defects or damage to the Road pursuant to clause 32.1.

33. DISPUTES

If any dispute arises out of this agreement, the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Institution of Civil Engineers. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

34. [MORTGAGEE'S CONSENT]

[Not used][The Mortgagee consents to the terms of this agreement but without liability save in the event that the Mortgagee becomes successor in title to the Developer at any time before the Developer has fully performed all its obligations contained in this agreement.]

35. LEGAL AND OTHER COSTS

35.1 On the date of completion of this agreement or whenever demanded, within ten (10) Working Days of written demand, the Developer shall pay to the Council:

- (a) £[AMOUNT] in respect of the costs and expenses incurred or to be incurred by the Council in connection with the technical assessment and inspection of the Works being [7.5]% of the total of the Estimated Cost subject to a minimum fee of £[AMOUNT] [less any amount paid in advance by the Developer in respect of such costs prior to the date of this agreement]
- (b) the Council's legal costs and disbursements in connection with the preparation, completion and registration of this agreement;
- (c) any costs incurred by the Council in making and implementing any orders that regulate traffic which the Proper Officer deems necessary because of the Works and whether made or implemented before, during or after completion of the Works; and
- (d) [the Council's legal costs and disbursements in connection with the preparation, completion and registration of the transfer of the Road Land to the Council under clause 26]
- (e) the costs and expenses incurred or to be incurred by the Council in connection with the safety audit of the Works

35.2 Receipt by the Council of the payment of any sum shall not create any contractual relationship between the Council and the Developer, nor absolve the Developer from any liability or obligation imposed on the Developer by the terms of this agreement, or by statute or at common law.

36. ASSIGNMENT

The Developer may not assign this agreement without the prior written consent of the Council such consent not to be unreasonably withheld or delayed.

37. LOCAL LAND CHARGES REGISTER

As soon as practicable, following the date of completion of this agreement, the Council shall enter this agreement and its terms and conditions in the local land charges register.

38. SEVERANCE

38.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

38.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

39. NOTICES

39.1 Any notice required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address as set out below:

- (a) Council: Assistant Director Legal Services, The Council of the City of Newcastle upon Tyne, Civic Centre Newcastle upon Tyne NE1 8QH.
- (b) Developer: [NAME OF CONTACT] [ADDRESS].
- (c) Surety: [NAME OF CONTACT] [ADDRESS].
- (d) [Mortgagee: [NAME OF CONTACT] [ADDRESS].]

or as otherwise specified by the relevant party by notice in writing to each other party.

39.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00am on the second Working Day after posting; or

- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

39.3 A notice required to be given under this agreement shall not be validly given if sent by fax or e-mail.

39.4 The provisions of this clause 39 shall not apply to the service of any proceedings or other documents in any legal action.

40. THIRD PARTY RIGHTS

No person other than a party to this agreement, and their respective successors and permitted assigns, shall have any rights to enforce any term of this agreement.

41. GOVERNING LAW

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

42. STREET LIGHTING DESIGN

42.1 [The Developer shall procure the Council's Street Lighting Service Provider to design the street lighting for the Road or Roads.]OR [The Developer shall procure [] to undertake the design of the street lighting for the Road or Roads. The Developer shall at its own cost obtain the prior written approval of the Council's Street Lighting Service Provider to the design of the street lighting and shall not carry out any street lighting works until such approval is obtained.]

42.2 The Developer shall at its own expense obtain all necessary approvals and consents in respect of the street lighting works for the Road or Roads.

43. SPEED RESTRICTIONS

The Developer shall pay to the Council all costs incurred by the Council in relation to the making and the process of making any order pursuant to section 84 Road Traffic Regulation Act 1984 that is required to introduce a 20 mph speed restriction on the Road or Roads. For the avoidance of doubt such costs shall include any costs relating to signage or materials required to be placed or provided in the Road or Roads or on the Land in connection with and giving effect to any such order.

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

Schedule 1 Part 1 Works

- All highway drainage.
- All other drainage contained within the Road.
- All kerb foundations and where appropriate, kerbs including lowering at vehicle crossings, pram-ramps, sub-base and base course surfacing to pedestrian way.
- Carriageway sub-base, road base, vehicle crossings and any supporting structures to the same.
- Carriageway base course surfacing and all vehicle crossings where appropriate.
- Demarcation of sight lines and clearance of vision splays.
- Operational street lighting.
- Temporary street name plates.

Schedule 2 Part 2 Works

- All outstanding kerbing not completed as part of the Part 1 Works.
- Pedestrian ways and cycle ways.
- Carriageway wearing course and carriageway base course including (where appropriate) speed restraint measures.
- Vision splays, verges and service strips.
- All outstanding street lighting and street furniture.
- Street name plates.
- Road markings and traffic signs.
- All other works described in the Specification and shown in the Drawings.

Schedule 3 [Commuted sums]

[Item [DESCRIPTION OF ITEM]	Commuted Sum £[AMOUNT]]
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Schedule 4 [Advance payment code]

Plot number	Sum (£)	Date of Advance payment notice and reference	Form of security code and reference given
[PLOT NUMBER]	£[AMOUNT]	[DATE] [REFERENCE]	[CASH] [CHARGE]
[PLOT NUMBER]	£[AMOUNT]	[DATE] [REFERENCE]	[CASH] [CHARGE]

EXECUTED as a DEED by
**THE COUNCIL OF THE CITY OF
NEWCASTLE UPON TYNE** having
affixed hereto its Common Seal
in the presence of

Executed as a deed by

.....
[NAME OF DEVELOPER COMPANY]
acting by

.....
NAME OF FIRST DIRECTOR **BLOCK
LETTERS**, a director and

.....
SIGNATURE OF FIRST DIRECTOR

.....
NAME OF SECOND DIRECTOR OR SECRETARY
BLOCK LETTERS, [a director **OR** its
secretary]
OR

.....
SIGNATURE OF SECOND DIRECTOR OR
SECRETARY

Executed as a deed by

.....
[NAME OF DEVELOPER COMPANY]
acting by

.....
NAME OF DIRECTOR **BLOCK LETTERS**, a
director, in the presence of:

.....
SIGNATURE OF DIRECTOR

.....
SIGNATURE OF WITNESS

.....
NAME OF WITNESS IN **BLOCK LETTERS**

.....
.....
.....
ADDRESS OF WITNESS

.....
OCCUPATION]OF WITNESS

Executed as a deed by

.....
[NAME OF SURETY COMPANY]
acting by

.....
NAME OF FIRST DIRECTOR **BLOCK**
LETTERS, a director and

.....
SIGNATURE OF FIRST DIRECTOR

.....
NAME OF SECOND DIRECTOR OR SECRETARY
BLOCK LETTERS, [a director **OR** its
secretary]

.....
SIGNATURE OF SECOND DIRECTOR OR
SECRETARY

OR
Executed as a deed by

.....
[NAME OF SURETY COMPANY]
acting by

.....
NAME OF DIRECTOR **BLOCK LETTERS**, a
director, in the presence of:

.....
SIGNATURE OF DIRECTOR

.....
SIGNATURE OF WITNESS

.....
NAME OF WITNESS IN **BLOCK LETTERS**

.....
.....
.....
ADDRESS OF WITNESS

.....
OCCUPATION]OF WITNESS

Executed as a deed by

.....
[NAME OF MORTGAGEE COMPANY]
acting by

.....
NAME OF FIRST DIRECTOR **BLOCK LETTERS**, a director and

.....
SIGNATURE OF FIRST DIRECTOR

.....
NAME OF SECOND DIRECTOR OR SECRETARY **BLOCK LETTERS**, [a director **OR** its secretary]
OR

.....
SIGNATURE OF SECOND DIRECTOR OR SECRETARY

Executed as a deed by

.....
[NAME OF MORGAGEE COMPANY]
acting by

.....
NAME OF DIRECTOR **BLOCK LETTERS**, a director, in the presence of:

.....
SIGNATURE OF DIRECTOR

.....
SIGNATURE OF WITNESS

.....
NAME OF WITNESS IN **BLOCK LETTERS**

.....
.....
.....
ADDRESS OF WITNESS

.....
OCCUPATION]OF WITNESS

Appendix B – Fees and Charges

The information provided in the following table is extracted from the “Technical Services’ Fees & Charges” document, which is based upon the Association of Consulting Engineers (ACE), Agreement A(1) 2002, Civil/Structural Engineering – Lead Consultant and the accompanying Guidance document.

Table 1: Fee Basis

Task		Technical Services Design	Developer Design
Agreement Drafting and Monitoring		Time Charge	Time Charge
Brief / Options Development		Time Charge	n/a
Topographical Survey		Time Charge	n/a
Design	Project less than £50,000	Time Charge	n/a
	Project more than £50,000	See Table 2 below	n/a
Dealing with Statutory Undertakers		Time Charge	n/a
Consultation		Time Charge	Time Charge
Traffic Signals	Design	Time Charge	Time Charge
	Construction	Time Charge	Time Charge
Street Lighting	Design	Time Charge	Time Charge
	Construction	Time Charge	Time Charge
Soft Landscaping	Design	Time Charge	n/a
	Supervision	Time Charge	n/a
Administration of Other Functions		Time Charge	Time Charge
Road Safety Audit	All Stages	Time Charge	Time Charge
Design Check		n/a	Time Charge
Structures Technical Approval		n/a	Time Charge

Traffic Regulation Orders	Time Charge	Time Charge
Site Inspection	n/a	Time Charge
Site Supervision	Time Charge	n/a
Additional Design / Abortive Work	Time Charge	n/a

Appendix C – Commuted Sums

Calculating Commuted Sums

The cost of the developer's maintenance obligation is calculated using the following nationally recognised formula:-

$$\text{Commuted Sum} = \text{Sum (Mp)} / (1 + D / 100)^T$$

Where: **Mp** = Estimated Periodic Maintenance Cost
D = Discount Rate (effective annual interest rate) (%)
T = Time Period before expenditure will be incurred (years)

Definitions:

Maintenance Cost (Mp)

The maintenance costs are based on contract rates current at the time of calculation and the frequency of treatment or intervals of replacement, based on planned frequencies or historic information. A sum of 10% of the works will be added to cover our design and supervision costs.

Discount Rate (D)

The discount rate (effective annual interest rate) is worked out as follows :

$$\begin{aligned} D &= [(1 + \text{Interest Rate}) / (1 + \text{Inflation Rate})] - 1 \\ &= [(1 + 0.045) / (1 + 0.0225)] - 1 \\ &= 2.2\% \end{aligned}$$

Where: Interest Rate = 4.5 % based on long term neutral base rate,
Inflation Rate = 2.25% based on Retail Price Index (RPI-X).

Time period (T)

A period of 60 years is conventionally used as the life of all highway assets.

The exceptions to this are:

- Where highway assets have been constructed to serve a development that is intended to have a life of less than 60 years.
- Where the period until major maintenance / refurbishment maintenance of highway assets covered under a Section 278 agreement is less than 60 years.
- Where the highway asset is a structure because the Bridge Management Code recommends a life of 120 years.

Sample Calculation for illustration Purposes

Tegula Blockwork in Carriageway

Take up and relay blocks @ £31.10 per m²

Add cost of new blocks (10% of existing blocks replaced) @ £21.25 sq.m = £2.13 per m²

Total Cost of Lifting & Relaying Existing Blocks with 10% Block Replacement = £33.23 per m²

15% of total area treated in 10 years = £33.23 x 15% = £4.98 per m²

Estimated Periodic Maintenance Cost (£ at present values) **Mp** = 4.98

Interval between Periodic Maintenance (years) **T** = 10 years

Discount Rate (%) **D** = 2.2

Time Limit for Commutation (years) **T^{max}** = 60 years

Present Value of a future maintenance event = $Mp / (1 + D/100)^{nT}$

(where **n** is the number of the maintenance event - 1st, 2nd, etc., and **nT** does not exceed **T^{max}**.)

	n	nT	Present Value
Event Number	1	10 years	£4.01
	2	20 years	£3.22
	3	30 years	£2.59
	4	40 years	£2.09
	5	50 years	£1.68
	6	60 years	£1.35
Commuted Sum (total present value of future maintenance)			£14.94 per m²
Total Commuted Sum (incl. 10% design and supervision fees)			£16.43 per m²

Schedule of Commuted Sums

Highway Asset	Item / Material / Feature	Maintenance Level of Intervention (years)	Time Limit for Commutation (years)	Unit	Commuted Sum
Carriageway Surfacing	HRA Surface Course	20	60	Sq.m	TBC
	Thin Surface Course	20	60	Sq.m	TBC
	High Friction Surfacing	6	60	Sq.m	TBC
	HDM Binder	40	60	Sq.m	TBC
	HDM Base Course	60	60	Sq.m	TBC
	Block Paving	10	60	Sq.m	TBC
Carriageway and Footway Features	Kerbs	20	60	Lin.m	TBC
	Channels	20	60	Lin.m	TBC
	Edging	20	60	Lin.m	TBC
	Road Markings	10	60	Lin.m	TBC
	Road Studs	20	60	No.	Type Specific
Drainage	S.U.D.S	1	60	No.	Site Specific
	Gullies	30	60	No.	Type Specific
	Pipework / Connections	30	60	Lin.m	Type Specific
	Manholes	30	60	No.	Type Specific
	Combined Kerb Drainage Units	20	60	Lin.m	TBC
Footway Surfacing	HDM Surface Course	20	60	Sq.m	TBC
	HDM Binder	20	60	Sq.m	TBC
	Block Paving	10	60	Sq.m	TBC
	Concrete Flagging	10	60	Sq.m	TBC
	Natural Stone Flagging	10	60	Sq.m	TBC
Fences and Barriers	Safety Barriers	10	60	Lin.m	Type Specific
	Pedestrian Guardrail	10	60	Lin.m	Type Specific
Street Lighting	Standard	10	60	No.	TBC
	Architectural	10	60	No.	Type Specific

	Illuminated Signs	10	60	No.	Type Specific
Structures	Bridge		120	No.	Site Specific
	Subway		120	No.	
	Culvert		120	No.	
	Retaining Wall		120	No.	
	Sign Gantries/Cantilever Sign		120	No.	TBC
Street Furniture	Seating	10	60	No.	TBC
	Litter Bins	10	60	No.	TBC
	Metal Bollard	10	60	No.	TBC
	Recycled Plastic Bollard	10	60	No.	TBC
	Street Name Plates	10	60	No.	TBC
	Cycle Racks	10	60	No.	TBC
	Tree Grille	10	60	No.	TBC
Traffic Management	Non-Illuminated Traffic Signs	20	60	No.	Type Specific
	Variable Message Signs	20	60	No.	Type Specific
	Speed Hump / Table	20	60	No.	Type Specific
	Traffic Island / Pedestrian	20	60	No.	Type Specific
Traffic Signals	Traffic Signal Installation	5	60	No.	Site Specific
Verges and Landscape Areas		1	60	Sq.m	TBC
	Trees	1	60	No.	TBC
	Shrubs	1	60	No.	TBC
	Hedges	1	60	Lin.m	TBC
	Planters	1	60	No.	TBC

Appendix D – Design Checks and Technical Approval

The following information should be submitted on appropriate drawings for Technical Approval.

	Description
1	Layouts to be at 1:500 scale
2	Areas to be adopted as public highway – coloured Pink
3	Areas of existing highway to be improved – coloured Yellow
4	Areas to be adopted as Public Open Space – coloured Light Green
5	Street Lighting columns -coloured Red
6	Road Gullies and Highway Drainage – coloured Blue
7	Retaining structures – coloured Dark Blue
8	Sculpture / Artwork – coloured Light Brown
9	Ownership / Site Boundary – coloured Dark Green
10	Highway finishes coloured-up plan
11	Location of Street Nameplates – include No Through Road (diag 816.1)/ Cul de Sac as appropriate
12	Note instructing Contractor that Nameplates must be in position prior to first house occupation
13	Location of Pedestrian crossings – including Tactile Paved X-ings, max check 6mm
14	Street lighting specification – to be included on S-38 plan
15	Typical details of: Asphalt carriageway
16	Typical details of: Shared Surface
17	Typical details of: Pedestrian crossing points
18	Typical details of: Footpaths
19	Typical details of: Visitor parking bays
20	Typical details of: Car crossings of footpath
21	Typical details of: Car crossings of verge
22	Typical details of: Ramps
23	Typical details of: Kerb detail adj verge.
24	Typical details of: Kerb detail adj footpath
25	Typical details of: Traffic calming measures (plan/ section/ materials/ road signs)
26	Min pipe size under highway areas 150mm inc 'Lateral Drains'
27	Backfill to all trenches under adoptable areas to be Type 1 sub-base not "selected backfill".
28	Approved road gully grating? (minimum frame depth 100mm)
29	Kerb type suitable for 6mm check?
30	Beware steep drives.
31	Specify flag bond, if appropriate.
32	Check gully spacing – not more than 200 sq. m/gully
33	Check No fences within 500mm of adoptable parking bays
34	Turning areas suitable for panttechnicon/refuse.
35	Long sections of Roadways. (max gradient 1 in 20)
36	Levels along channel of existing highway
37	Levels on footpaths where remote from roadways – Positive drainage required
38	Road markings – White 'Give Way' lines

39	Footpaths close to properties? -not adoptable if house drains/service boxes have to be located in paths.
40	Manhole covers in carriageway areas must be Heavy Duty.
41	Traffic signs – 20mph zone – Signs to diag (674 & 675) x 2, mounted back to back – 2 no. posts at site entrance – Developer to pay councils costs to make a 20mph zone order

Appendix E – Client Roles & Responsibilities under CDM 2015 (HSE)

Commercial clients: roles and responsibilities

Construction (Design and Management) Regulations 2015 (CDM 2015)

CDM 2015 makes a distinction between commercial clients and [domestic clients](#). Client duties apply **in full** to commercial clients (for domestic clients the duties normally pass to other dutyholders).

A commercial client is any individual or organisation that carries out a construction project as part of a business.

Commercial clients have a crucial influence over how projects are run, including the management of health and safety risks. Whatever the project size, the commercial client has contractual control, appoints designers and contractors, and determines the money, time and other resources for the project.

For all projects, commercial clients must:

- make suitable arrangements for managing their project, enabling those carrying it out to manage health and safety risks in a proportionate way. These arrangements include:
 - appointing the [contractors](#) and [designers](#) to the project (including the [principal designer](#) and [principal contractor](#) on projects involving more than one contractor) while making sure they have the skills, knowledge, experience and organisational capability
 - allowing sufficient time and resources for each stage of the project
 - making sure that any principal designer and principal contractor appointed carry out their duties in managing the project
 - making sure suitable welfare facilities are provided for the duration of the construction work
- maintain and review the management arrangements for the duration of the project
- provide pre-construction information to every designer and contractor either bidding for the work or already appointed to the project
- ensure that the principal contractor or contractor (for single contractor projects) prepares a construction phase plan before that phase begins
- ensure that the principal designer prepares a health and safety file for the project and that it is revised as necessary and made available to anyone who needs it for subsequent work at the site

For notifiable projects (where planned construction work will last longer than 30 working days and involves more than 20 workers at any one time; or where the work exceeds 500 individual worker days), commercial clients must:

- [notify HSE in writing with details of the project](#)
- ensure a copy of the notification is displayed in the construction site office