

DATED _____ 20____

NATIONAL HOUSING CORPORATION

and

**[INSERT NAME OF THE DEVELOPER]
(the Developer)**

COMMITMENT AGREEMENT

THIS COMMITMENT AGREEMENT (this "Agreement") is made this day of 20.....

BETWEEN:

(1) **NATIONAL HOUSING CORPORATION**, a statutory body established under the Housing Act (Chapter 117, Laws of Kenya), whose address is Post Office Box Number 30257-00100, Nairobi, Kenya (hereinafter called "NHC" which expression shall where the context so admits include its successors in title and assigns) of the one part;

AND

(2) [**DEVELOPER**], a limited liability company incorporated under the [laws of the Republic of Kenya] under Company Registration Number [●] whose address is (hereinafter called "**Developer**" which expression shall where the context so admits include its successors in title and assigns) of the other part.

NHC and the Developer are individually referred to as a **Party** and collectively as the **Parties**.

WHEREAS:

- (A) NHC has on a non-exclusive basis been tasked by the National Government to facilitate and implement mass housing development of affordable homes across the country as part of 'GoK's Big Four Agenda', by working in partnership with the County Governments, financial institutions, private developers, manufacturers of building materials, cooperative societies and other entities and institutions.
- (B) NHC intends to initiate various housing developments across the country.
- (C) NHC invited bids for the Project (as hereafter defined) through tender number [describe tender including date and reference number].
- (D) The Developer was the successful bidder for the Project and has entered into the Project Agreement (as hereafter defined).
- (E) Pursuant to the Project Agreement, the Developer is required to commence and execute the Early Works (as hereafter defined) for the Project and to pay the Commitment Fee (as hereafter defined) which shall *inter alia* be used to cater for the expenses of the Early Works;
- (F) The Parties have agreed to enter into this Agreement to record the terms and conditions of their relationship in relation to the Early Works and the Commitment Fee.

NOW THIS AGREEMENT WITNESSETH as follows:

1. Definitions and Interpretations

1.1 Definitions

1.1.1 "**Authorisation**" means any approval, consent, licence, permit, authorisation or exemption, granted or to be granted by a Governmental Authority which is: (i) necessary for the validity or the exercise of rights or performance of obligations by a Party under this Agreement; or (ii) required in connection with the Early Works;

1.1.2 "**Audited Financial Model**" means the financial model titled "Audited Financial Model" prepared as at the date of execution of the Project Agreement;

- 1.1.3 "**Commitment Fee**" means ten per cent (10%) of the Project Cost which is to be deposited by the Developer into the Designated Escrow Account pursuant to Clause 3.2;
- 1.1.4 "**Default Rate**" means [two percent (2%) above LIBOR];
- 1.1.5 "**Designated Escrow Account**" means the bank account as may be notified by NHC to the Developer, in which the Developer shall deposit the Commitment Fee and from which NHC shall pay for the Early Works;
- 1.1.6 "**Development Framework Agreement**" means the Agreement entered into between NHC and the Developer setting out in detail the terms and conditions for the development and delivery of the Project;
- 1.1.7 "**Early Works**" means the works to be undertaken by the Developer in accordance with the Early Works Implementation Programme during the Term as set out in Schedule [1];
- 1.1.8 "**Early Works Completion Date**" means [*insert date*];
- 1.1.9 "**Early Works Implementation Programme**" means the early works implementation programme set out under Schedule [2];
- 1.1.10 "**Escrow Agreement**" means the agreement dated [•] entered into between NHC, the Developer and the Escrow Agent setting out the terms and conditions of their relationship in relation to the operation of the Designated Escrow Account;
- 1.1.11 "**Execution Date**" has the meaning ascribed to it in Clause 2 of this Agreement;
- 1.1.12 "**Expert**" has the same meaning ascribed to it under Clause [•] of the Project Agreement;
- 1.1.13 "**Force Majeure Event**" means those events set out in detail in Clause 11 of this Agreement;
- 1.1.14 "**GoK**" means the Government of the Republic of Kenya;
- 1.1.15 "**Good Industry Practice**" means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
- 1.1.16 "**Governmental Authority**": means GoK, Parliament or any legislative organ (either national or of any part of the Republic of Kenya), any ministry (department or division thereof), any authority or division thereof (including County Governments and any other regional authorities and any implementing executive or other branches of government), parastatals, any authority or division thereof (including any regional, County and local authorities of Kenya) or any agency or entity or other body owned or controlled by GoK and having statutory competence to regulate or promulgate rules and regulations governing or touching and concerning matters, transactions and issues contained or relating to this Agreement;
- 1.1.17 "**Independent Engineer**" means the independent engineer mandated to issue the completion certificate as more particularly set out in Clause 6;

- 1.1.18 **"Joint Venture Agreement"** means the Agreement entered into between NHC and the Developer setting out in detail the terms and conditions for the development and delivery of the Project;
- 1.1.19 **"LIBOR"** means in respect of any day, the London interbank offered rate per annum administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Dollars for a period commencing on such day and ending one (1) month later, displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters;
- 1.1.20 **"Legal Requirement"** means any statute, law, policy, regulation, treaty or other legislation, or any decree, order or written directive of any Governmental Authority, in each case, having jurisdiction in respect of either Party or this Agreement;
- 1.1.21 **"Project"** means the construction of houses, apartments, flats, floors, sections, delineated spaces, associated common use facilities, parkings, common areas, relevant infrastructure and other developments on Land Reference Number [●] situated in [●] County, based on the Specifications;
- 1.1.22 **"Project Agreement"** means the subsequent Agreement entered into between NHC and the Developer setting out in detail the terms and conditions for the development and delivery of the Project;
- 1.1.23 **"Project Agreement Effective Date"** has the meaning ascribed to it in Clause 2 of this Agreement;
- 1.1.24 **"Project Agreement Long Stop Effective Date"** means [●] or such other date as the Parties may agree in writing;
- 1.1.25 **"Project Cost"** means the total cost of the Project as set out in the Audited Financial Model which includes the construction costs (both onsite and offsite works), consultants' professional fees, statutory approvals, financing costs, Project related disbursements, contingencies and VAT (where applicable) and which for the avoidance of doubt, shall not include the value of the land;
- 1.1.26 **"Site"** means [the property Land Reference Number [●]]/[the portion of property Land Reference Number [●]] delineated and marked in red in Schedule [3], situate in [●] County, on which the Project is to be developed]¹;
- 1.1.27 **"Special Purpose Vehicle"** means, the limited liability company incorporated in Kenya by NHC and the Developer for the sole purpose of undertaking the Project; and
- 1.1.28 **"Subcontractor"** means any person appointed as a subcontractor, for a part of the Early Works and shall include, without limitation, youth under the Youth Enterprise Development Fund, women under the Women Enterprise Fund and special groups under the Access to Government Procurement Opportunities Policy Directive.
- 1.1.29 **"Term"** has the meaning ascribed to it under Clause 2.1.

¹ Please delete as appropriate

1.2 Interpretations

In this Agreement unless otherwise expressly provided or the context otherwise requires:

- 1.2.1 terms and expressions defined in the Project Agreement have the same meanings when used in this Agreement;
- 1.2.2 the headings or sub-headings in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.
- 1.2.3 unless a contrary intention clearly appears words importing:
 - i) any one gender includes all genders; and
 - ii) the singular includes the plural and *vice versa*;
- 1.2.4 references to a person and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include any successors, transferees and assigns;
- 1.2.5 the words **include** and **including** are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- 1.2.6 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.2.7 any reference to **day** shall mean a reference to a calendar day;
- 1.2.8 references to a **Business Day** shall be construed as a reference to a day (other than weekends, public holidays and recognised or gazetted holidays in Kenya);
- 1.2.9 any reference to **month** shall mean a reference to a calendar month;
- 1.2.10 references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
- 1.2.11 when any number of days is prescribed in this Agreement, the same shall be reckoned exclusive of the first and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.2.12 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.2.13 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this; and
- 1.2.14 the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.

2. **Term and Objective of Early Works**

- 2.1 This Agreement shall come into effect upon execution by the last Party signing ("**Execution Date**") which date shall be on or after the execution of the Project Agreement, and continue in full force and effect until the earlier of the Early Works Completion Date or the Project Agreement Effective Date ("**Term**").
- 2.2 The objective of the Early Works is to ensure early commencement of the Project and make effective use of the period between the execution of the Project Agreement and the Project Agreement Effective Date.

3. Developer Obligations

- 3.1 The Developer shall perform the Early Works set out in Schedule [1] using Good Industry Practice, either directly or using Subcontractors as may be agreed between the Parties from time to time provided that such sub-contracting shall not discharge or relieve the Developer of its liability in relation to the proper execution of the Early Works.
- 3.2 The Developer shall within seven (7) days of the signing of the Project Agreement, deposit the Commitment Fee into a Designated Escrow Account to be operated in accordance with the Escrow Agreement and used exclusively for the following:
 - 3.2.1 payment of all expenses in relation to the Early Works;
 - 3.2.2 engaging professional services, which is estimated at approximately four decimal five percent (4.5%) of the Project Cost.
- 3.3 The Developer shall ensure compliance with all Legal Requirements including in relation to local content requirements for the Project.
- 3.4 The Developer shall provide all the necessary information, documents and requirements for grant of the Authorisations.

4. NHC's Obligations

NHC shall:

- 4.1. enter into the Project Agreement;
- 4.2. provide the services required for the Site as set out in Schedule [•];
- 4.3. subject to Clause 4.2, upon the written request by the Developer, use all reasonable endeavours to expedite the obtaining, maintenance and renewal of Authorisations (listed in Schedule [4]) as may be relevant to the Early Works provided that prior to such request, the Developer has diligently applied for and been pursuing application(s) to obtain such Authorisations (which diligence shall include full and timely compliance with all procedural requirements relating to the issue of such Authorisations, and with all the laws of the Republic of Kenya which relate to the Early Works; and
- 4.4. provide the incentives set out in Schedule [•].

5. Performance of the Early Works

- 5.1 The Developer shall report on a [monthly] basis during the Term on its progress against the Early Works Implementation Programme.
- 5.2 The Developer shall, during the Term, ensure that NHC, its representatives and the Independent Engineer have unrestricted access to the Site.
- 5.3 The Developer shall apply for a completion certificate from the Independent Engineer upon satisfactory completion of the Early Works in accordance with the Specifications.
- 5.4 The Independent Engineer shall only issue the certificate of completion upon confirmation that the Early Works have been carried out in accordance with the Specifications.

6. Independent Engineer

- 6.1 The Independent Engineer appointed under clause [*insert clause*] of the Project Agreement shall be the Independent Engineer for purposes of the Early Works.
- 6.2 In the performance of its duties under this Agreement, the Independent Engineer shall exercise the same power, duties and authority set out in the Project Agreement.
- 6.3 The Independent Engineer shall have access to such parts of the Site as are required to perform his obligations under this Agreement.
- 6.4 [The costs of the Independent Engineer shall be borne equally by NHC and the Developer.]

7. Payment

- 7.1 NHC shall authorise payment to the Developer for the Early Works from the Designated Escrow Account in accordance with the payment plan set out in Schedule [2] of this Agreement.
- 7.2 The Developer shall send invoices to NHC accompanied with sufficient detail in respect thereof, to the address set out below or such other address as shall be notified by NHC to the Developer in accordance with Clause 27.
- 7.3 All payments to the Developer shall be made within thirty (30) days of receipt by NHC of the invoice, to the following account:

[*insert bank account details*]

8. Disputed Payments

- 8.1 NHC may in good faith dispute any sum or part of any sum shown on an invoice rendered by the Developer by written notification to the Developer, within [fourteen (14) days] of receipt of the invoice, whether or not payment has been made.
- 8.2 If any sum or part of any sum shown on an invoice rendered by the Developer is disputed by NHC in accordance with Clause 8.1, then the payment of undisputed sums or parts shall not be withheld on those grounds and shall be paid to the Developer when due. Payment of the disputed amount shall be paid

within fourteen (14) days following the Parties' agreement or if referred to an Expert, resolution of the dispute by the Expert.

- 8.3. For the avoidance of doubt, if the dispute is resolved in favour of NHC, the Seller shall, within seven (7) days of such determination refund any payment previously received of the disputed amount plus interest at the Default Rate, compounded monthly, from the date of receipt of the payment by the Developer to the date the refund is made.

9. Representations and Warranties of the Parties

The representations and warranties given under Clause [•] of the Project Agreement shall extend to this Agreement and are hereby incorporated *mutatis mutandis* as if fully set forth herein.

10. Insurance

The Developer shall take out appropriate insurance with respect to the Early Works including for comprehensive general liability, public liability property damage, and "all risks" peril, from a Kenyan licenced insurance provider approved by NHC, with primary limits of liability during the duration of this Agreement.

11. Force Majeure

11.1. A Force Majeure Event shall mean an exceptional event or circumstance which occurs after the Execution Date:

- (i) which is beyond a Party's control;
- (ii) which such Party could not reasonably have provided for before entering into this Agreement;
- (iii) which, having arisen, such Party could not reasonably have avoided or overcome; and
- (iv) which is not substantially attributable to the other Party,

and which may include, but is not limited to an act of God, epidemic, extreme adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site); or which directly cause either Party to be unable to comply with all or a material part of its obligations under this Agreement.

11.2. On the occurrence of a Force Majeure Event, the affected Party shall give notice to the other Party. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party, and any action proposed to mitigate its effect.

11.3. As soon as practicable after such notification, the Parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement

11.4. If as a result of a Force Majeure Event the Developer is unable to carry out the Early Works or comply with any of its other obligations arising from this Agreement, the Developer shall be entitled to apply for relief in the form of:

- 11.4.1 an extension of the term of this Agreement, provided that such extension shall not result in the extension of the Project Agreement Long Stop Effective Date;
 - 11.4.2 relief from enforcing its obligations; and/or
 - 11.4.3 relief from termination for breach.
- 11.5. The Developer shall only obtain such relief in circumstances where it has notified NHC and the Independent Engineer of the occurrence of the Force Majeure Event and the required relief and any other relevant information required in accordance with this Agreement. The Developer shall only be entitled to relief upon the Independent Engineer providing written notice stating that a Force Majeure Event has occurred.
- 11.6. The Parties shall recommence performance of the affected obligations as soon as is reasonably practicable after the Force Majeure Event ceases.
- 11.7. [If a Force Majeure Event has occurred and continues for a period of one hundred and eighty (180) days from the date of its occurrence, the Parties shall meet in good faith with a view to determining mutually acceptable terms for continuing this Agreement notwithstanding the effects of the event of Force Majeure provided that if at the end of ninety (90) days, no solution is found, either Party may terminate the Agreement.

12. Termination and Default

12.1. Non-Default Termination

This Agreement shall terminate automatically on the happening of any of the following events, unless it shall have been terminated earlier in accordance with its provisions:

- 12.1.1. termination of the Project Agreement;
- 12.1.2. completion of the Early Works; or
- 12.1.3. a Force Majeure Event leading to termination pursuant to Clause 11.7.

12.2. Default Termination

12.2.1. The Developer's Default

For the purposes of this Agreement, a Default by the Developer shall be:

- (i) failure to deposit the Commitment Fee in accordance with Clause 3.2;
- (ii) the breach of any of its obligations under this Agreement which breach has been notified by NHC to the Developer and not remedied to the satisfaction of NHC (acting reasonably) (or mitigated to the satisfaction of NHC (acting reasonably) if not capable of remedy) within [thirty (30)] days of notification;
- (iii) the occurrence of a Bankruptcy Event affecting the Developer;
- (iv) the dissolution of the Developer;
- (v) a change in control of the Developer which has not been approved in accordance with the Project Agreement; or

- (vi) any statement, representation or warranty made by the Developer herein proving to have been incorrect, in any material respect, when made or when deemed to have been made.

12.2.2. NHC's Default

For the purposes of this Agreement, a Default by NHC shall be:

- (i) the breach by NHC of any of its material obligations under this Agreement which breach has been notified by the Developer to NHC and not remedied (or mitigated if not capable of remedy) within [thirty (30)] days of notification; or
- (ii) any failure by NHC to pay any sum of money due and owing for one hundred and twenty (120) days or more from the date when such sum was first due and owing where such sum is not subject to a bona fide dispute pursuant to Clause 8 and such dispute has not yet been settled or determined).

12.3 Defaulting Party

For the purposes of this Agreement, the Developer is the defaulting Party in relation to the events of Default specified in Clause 12.2.1 and NHC is the defaulting Party in relation to the events of Default specified in Clause 12.2.2, and (in each case) the other Party is the non-defaulting Party.

12.4 Default Notice

Upon the occurrence of a Default, the non-defaulting Party may give notice to the defaulting Party of the occurrence of such Default. If:

- 12.4.1 the Default is not capable of remedy; or
- 12.4.2 the Default is capable of remedy and the defaulting Party does not, where such Default is capable of remedy within a thirty (30) day period, remedy the Default; or
- 12.4.3 the Default is capable of remedy but not within a thirty (30) day period, the defaulting Party does not furnish to the non-defaulting Party a detailed programme ("Remedial Programme") for the remedy as promptly as is practicable upon the occurrence of the Default and/or the defaulting Party fails to remedy the Default in accordance with the Remedial Programme,

then the non-defaulting Party may give notice to the defaulting Party that such Default is an "Event of Default". In the event that a Party issues a Default Notice to the other Party without the ability for the other Party to furnish a Remedial Programme in terms of Clause 12.4.2 above, the affected Party may challenge the determination that the Default is not capable of remedy by submitting the issue for determination by an Expert. Any Remedial Programme pursuant to Clause 12.4.2 shall be agreed between the Parties (such agreement not to be unreasonably withheld or delayed) and in the event of a dispute (including any dispute in relation to the Remedial Programme), it may be referred to an Expert.

13 Refund of Commitment Fee

- 13.1 Upon termination of this Agreement pursuant to a Force Majeure Event or NHC's default, NHC shall refund to the Developer the Commitment Fee.

13.2 In the event of a termination arising from the Developer's default, NHC shall retain the Commitment Fee and the Developer shall not be entitled to a refund.

13.3 Parties shall agree on how to treat the Commitment Fee for termination resulting from any other circumstance other than those envisaged under Clauses 13.1 and 13.2. If parties are unable to reach agreement within fourteen (14) days of such termination, the matter shall be referred to the Expert, whose decision shall be final.

14 Survival of Rights

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

15 Relationship of the Parties

Except as expressly provided in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall be construed as creating a partnership or agency relationship between the Parties, or authorise either Party to make any representations or warranties on behalf the other or pledge the credit or otherwise bind the other Party.

16 Waiver of Immunity

16.1 Each of the Developer and NHC irrevocably and unconditionally:

16.1.1 agrees not to claim any immunity from proceedings brought by any of them against it in relation to this Agreement and to ensure that no such claim is made on its behalf;

16.1.2 consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and

16.1.3 waives all rights of immunity in respect of it or its assets.

17 Dispute Resolution

17.1 Where, in the event of any dispute or difference of any kind between the Parties in connection with or arising out of this Agreement including the interpretation of this Agreement, its validity and any purported breach or termination ("**Dispute**"), the Parties shall seek an amicable settlement of that dispute by mediation. The mediation shall take place in accordance with the Nairobi Centre for International Arbitration – Mediation Rules as in force. The place of mediation shall be Nairobi, Kenya. All negotiations and proceedings shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections.

17.2 Subject to Clause 15.1 above, any Dispute, arising out of or relating to this Agreement shall be finally settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission in International Trade Law (UNCITRAL) in force on the date on which the proceedings are instituted.

17.3 The appointing authority shall be the the Secretary-General of the Permanent Court of Arbitration.

17.4 The number of arbitrators shall be three who shall be appointed in accordance with UNCITRAL Rules.

17.5 The seat of arbitration shall be Nairobi, Kenya.

17.6 The location of the arbitration shall be Kenya.

- 17.7 The language to be used in the arbitral proceedings shall be English.
- 17.8 The award rendered shall apportion the costs of the arbitration.
- 17.9 The award shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the tribunal's decision.
- 17.10 The award in such arbitration shall be final and binding upon the parties to this Agreement and judgment thereon may be entered in any Court having jurisdiction for its enforcement; and the parties to this Agreement renounce any right of appeal from the decision of the tribunal insofar as such renunciation can validly be made.

18 Expert

Where this Agreement provides that any matter shall be referred to an Expert or the Parties otherwise so agree, the provisions of Clause [[•] (*Expert*)] of the Project Agreement shall apply.

19 Further Assurance

Each Party shall take all such action and do, perform, execute and deliver all acts, deeds, documents as shall be necessary from time to time to cause the effective performance of its obligations, under this Agreement.

20 Conflict With Other Agreements

In the event of any discrepancy, ambiguity or inconsistency between the provisions of this Agreement and any of the other Project Document, in relation to Early Works and the Commitment Fee, this Agreement shall prevail to the extent of such discrepancy, ambiguity or inconsistency.

21 Amendments

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless reduced to writing and signed by both Parties.

22 Enforcement and Waiver

No failure to exercise, delay in exercising extension of time or waiver or relaxation of any of the provisions of this Agreement shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

23 Counterparts

This Agreement may be executed in any number of counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall constitute an original, but both counterparts shall together constitute one and the same instrument.

24 Entire Agreement

This Agreement contains the entire agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all prior agreements and understandings between the Parties with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected or referred to in the terms of this Agreement.

25 Severability

Should any clause or provision of this Agreement be found to be invalid or unenforceable in any way, such clause or provision shall be deemed to be separate and divisible from the remaining provisions of this Agreement, and the validity and enforceability of the remaining terms and conditions of this Agreement shall not be affected.

26 Assignment

26.1 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

26.2 The Developer shall not be entitled to transfer, assign or, establish or otherwise dispose of its rights or obligations to a third party without the consent of NHC.

26.3 NHC shall be entitled to assign its rights and obligations under this Agreement, provided it assigns them to a GoK assignee that possesses the legal capacity, power and authorisation to become party to and perform the obligations of NHC under the Project Agreement and has equivalent financial standing as NHC.

27 Notices

27.1 Any notice or communication between the Parties in connection with the matters contemplated by this Agreement shall be addressed as provided in Clause 27.2 and, if so addressed, shall be deemed to have been duly given or made as follows:

27.1.1 if sent by e-mail, upon confirmation of receipt by the intended recipient;

27.1.2 if sent by personal delivery upon delivery at the address of the relevant Party; and

27.1.3 if sent by post five (5) Business Days after the date of posting provided that proof is given that the notice was properly addressed and duly dispatched by post.

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside normal working hours in the place of service of the notice or other communication, it shall be deemed to be given or made at the start of normal working hours on the next Business Day.

27.2 The relevant address of each Party for the purposes of this Agreement, subject to Clause 27.3 is:

In the case of NHC:

Name:

Address:

Tel/Fax Number:

E-mail:

Marked for the attention of:

In the case of the Developer:

Name:

Address:

Tel/Fax Number:

E-mail:

Marked for the attention of:

27.3 A Party may notify the other of a change to its name or address for the purposes of Clause 27.2 provided that such notification shall only be effective on:

27.3.1 the date specified in the notification as the date on which the change is to take place; or

27.3.2 if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date falling five (5) Business Days after notice of any such change has been given.

28 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

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SCHEDULES

Schedule 1: Description of Early Works

[The details of the Early Works will be project specific and should be inserted once the projects are identified/procured. The Development Framework Agreement provides guidance on what Early Works shall consist of.]

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Schedule 2: Early Works Implementation Programme and Payment Plan

[please insert programme]

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Schedule 3: Site

[please insert plan]

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Schedule 4: Approvals

The following approvals are required for Early Works programme

	APPROVAL ITEM	REASON FOR APPLICATION	APPROVING AUTHORITY	APPLICANT
1	Master Plan (intention to plan/notice)	Legal requirement to permit development activity	NCCG	Land owner
2	National Environment Management Authority (NEMA) license	Early works	NEMA	Land owner
3	National Construction Authority (NCA) permit	Approval for early works construction	NCA	Developer
4	Water Resource Management Authority (WARMA) permit	Permission for borehole sinking	WARMA	Land owner
5	Application for temporary electricity connection	To permit site office electricity connection	KPLC	Developer
6	Application for water connection by Nairobi City Water and Sewerage Connection (NCWSC)	To permit water connection	(NCWSC)	Developer