# **COMHAIRLE CONTAE ÀTHA CLIATH THEAS**

## SOUTH DUBLIN COUNTY COUNCIL

**Proposed S183 Disposal - Terms and Conditions**

**Re: H – I (8) (a)**

**Proposed Disposal of 20.3 acres at Grange Castle Business Park to Microsoft Ireland Operations Limited.**

The Council at its meeting held on 9th July, 2007 noted a disposal of 18.9 acres or thereabouts at Grange Castle Business Park to Microsoft Ireland Operations Limited. Since then and with the approval of the Council a further 119.23 acres or thereabouts has been disposed to Microsoft Ireland Operations Limited. Minute H7b/0213 and H7e/0513 refers. Microsoft Ireland have developed their site on foot of a series of planning permissions granted since 2008, with Phase 1 of their development completed and officially opened in September, 2009.

Chief Executive Orders GC/16/16 and GC/15/18 provided for Licence Agreements to Microsoft Ireland Operations Limited for the use of two additional sites for temporary car parking and construction works purposes.

Microsoft Ireland Operations Limited have now applied to purchase the further area of 20.3 acres adjacent to their existing campus to meet ongoing demands in the data centre and cloud computing sector.

I recommend that the Council dispose of lands totalling 20.3 acres or thereabouts at Grange Castle Business Park to Microsoft Ireland Operations Limited, 70 Sir John Rogerson Quay, Dublin 2 in accordance with Section 211 of the Planning and Development Act 2000 and subject to the Provisions of Section 183 of the Local Government Act 2001 by way of a 999 year Lease.

and subject to the following terms and conditions:-

1 (a) That the lands being disposed of in the first instance comprise approximately 20.3 acres or thereabouts. A formal disposal map shall be prepared in due course by the Council for inclusion with the legal documents but in the interim a draft plan for identification purposes Drawing No ­­­­02\_028D\_9160 is annexed showing the site outlined in red.

1. The Council will retain a 5 metre wayleave area along the northern and western boundary, and a 5 metre wayleave along the southern boundary with the R134. These wayleaves are shown shaded yellow on Drawing No. 02\_028D\_9160. These wayleaves will be required within the perimeter of the lands being disposed of to facilitate the existing and future servicing by the Council of this site and any other lands.
2. That the consideration due to the Council shall be calculated on the basis of the sum of €600,000 (six hundred thousand euro) per acre (the “Purchase Price”), payable, as to the amounts described at (a), (b) and (c) below:-
	1. 10% of the Purchase Price on signing and exchange of a Contract for Sale / an Agreement for Lease in respect of the site. Such amount to be refunded in the event that the development proposed for the site does not receive full planning permission, and/or in the event of any of the terms and conditions of the disposal not having been satisfied.
	2. 80% of the Purchase Price shall be paid by the Purchaser on or before the signed/sealed Agreement for Lease is returned. The Council, on receipt of the consideration due under the Agreement for Lease and on receiving confirmation of payment from the Council's Finance Department, shall within ten (10) days return one part of the Agreement for Lease to the Purchaser. The return, by the Council, of one part of the Agreement for Lease shall enable the Purchaser to commence construction works on foot of the final grant of planning permission (provided that, for the avoidance of doubt, Microsoft Ireland Operations 10 Limited shall be entitled to carry out due diligence and engineering analysis activities (including, but not limited to geotechnical analysis and studies, soils testing, water analysis, site borings, environmental assessments, etc.) prior to the payment of this sum in accordance with conditions required by the Council.
	3. The remaining 10% of the Purchase Price on the grant of the Master Lease which shall occur at the time and in the manner set out in term no. 11 below.

The Council shall be entitled to charge interest at a rate of eight per cent (8%) per annum on any outstanding sums in the event of failure by Microsoft Ireland Operations Limited to pay the foregoing sums on the above dates. This interest rate penalty shall be calculated on a daily basis for any period of time deposits are outstanding without cause.

* 1. That Microsoft Ireland Operations Limited must apply for full planning permission (and if requested provide an Environmental Impact Statement) for the development the entire site not later than 6 months after the signing of final contracts or such other date as may be approved solely at the discretion of the Council. Microsoft Ireland Operations Limited shall forward to the Council within six months of the date of final grant of planning permission, and in any event, no later than one month prior to Microsoft Ireland Operations Limited commencing works on foot of the final grant of planning permission, a copy of the outline building programme for such works describing the key construction milestones.
	2. The Planning Application shall include in addition to the proposed data centre provision, the provision of an office building to the Southwest of the site of not less than 3000 m2, supporting a minimum staff of 120 persons. The construction of such office building shall form part of the first phase of development. The planning application should detail and meet design standards and landscaping appropriate to its location at an entrance to Grange Castle Business Park
	3. That: (i) if the construction works (meaning site preparation and shell and core construction) have not commenced within six months of the date of final grant of planning permission for the development, or such later date as may be agreed in writing with South Dublin County Council; or (ii) if shell and core construction works are not substantially completed in accordance with the final grant of planning permission within thirty (30) months from the date of commencement of such works then either party may by written notification on the other rescind the agreement for Lease / Contract for Sale. And further that, in the event that the final grant of planning permission is issued containing conditions which Microsoft Ireland Operations Limited considers to be onerous, Microsoft Ireland Operations Limited may by written notification to the Council rescind the agreement for lease / contract for sale. In event of rescission on any of the foregoing grounds, any monies paid to the date thereof under term no. 2 above shall be repaid to Microsoft Ireland Operations Limited without the payment of interest. It is acknowledged that construction of the office building and data centres may occur on a staged basis as will be evident from the building programme described in term no.4 above, and provided Microsoft Ireland Operations Limited have commenced and completed the first phase thereof within the time frames set out in this paragraph it will be deemed to have complied with its obligations herein.
	4. That the Council shall enter into an Agreement for Lease or Contract for Sale in respect of the sale of the site to Microsoft Ireland Operations Limited (by way of grant of the Master Lease), based on and to give effect to these heads of terms, and which Agreement / Contract shall contain a Licence authorising Microsoft Ireland Operations Limited to enter into the site from the date thereof prior to the grant of the Master Lease, to carry out due diligence and site analysis (including, but not limited to geotechnical analysis and studies, soils testing, water analysis, site borings, environmental assessments, etc.) prior to the grant of final planning permission, and after the issue of such permission, to construct the office building and data centres. The Agreement / Contract shall contain further reasonable obligations upon Microsoft Ireland Operations Limited with respect to that construction to ensure the satisfactory completion of the approved development on the site.
	5. Microsoft Ireland Operations Limited will be responsible for all planning levies and contributions payable in accordance with the Council’s Development Contribution Scheme made under the Planning and Development Act 2000, as amended, and agrees not to exercise any right to appeal against the financial contributions. The contributions under the Scheme are payable prior to entry on to the site or as otherwise agreed by the Council. Microsoft Ireland Operations Limited must satisfy themselves as to the capacity of all services to service the proposed development.

A special Arts contribution fixed at 50 cent per square foot of gross building areas shall apply and shall be payable no earlier than the grant of the Master Lease.

8. That all site investigations (including archaeological investigations), groundwork’s, overhead cable diversions, demolitions/site clearance/septic site removal (such works are subject to regulations and to obtaining the relevant statutory licences), services connections, development and associated costs incurred in the delivery of the entire completed development shall be borne by Microsoft Ireland Operations Limited.

9. That Microsoft Ireland Operations Limited shall undertake not to use the site for any purposes other than that of carrying out the proposed development, i.e. a data centre and related facilities and office accommodation which contain its substantial operations and subject to the terms of the “Master Lease” (see term no. 11 below). All buildings shall be occupied by the applicants or their tenants, agents, employees, invitees and/or assigns in accordance with the terms of the Master Lease.

10. That Microsoft Ireland Operations Limited shall build nothing (except with the prior written approval of the Council) on the site except the buildings shown on the approved drawings and for which Planning Permission has been granted, as outlined in term no. 4. Full ‘as constructed’ drawings shall be appended to the Master Lease. A maintenance Plan for the external areas and buildings shall be submitted to the Council.

11. That as soon as building works have reached eaves level (in other words the “topping-out” phase of construction, meaning that all foundations are in place, the structural system is erected and inspected, and the building is weather-tight with roof complete) in accordance with relevant planning permission(s) in the development on the site, and if the works have been carried out to the satisfaction of the County Architect acting reasonably, the Council will grant the applicants a Lease of that site. The Lease shall be for a term of 999 years (commencing from a date to be agreed upon, but no earlier than the date of Practical Completion of the buildings thereon) subject to a rent of €500 per annum (exclusive of rates, taxes, and outgoings in respect of the site) which will be reviewed at the end of every 5 years of the term in line with any changes in the Irish Consumer Price Index. The Council’s Solicitors shall draft the Lease for approval by Microsoft Ireland Operations Limited’s solicitors. The Lease granted shall be known as the Master Lease (“Master Lease”). The Master Lease shall provide that the Lessee shall become a member of the management company for the Business Park and shall pay the annual service charge described in accordance with the provisions of the Master Lease and appendices thereto.

* 1. That the Agreement to Lease or Contract for Sale is not to operate as a Lease and it shall not be transferable save in the case of a financial institution of good standing which has entered into a mortgage with the applicants specifically for the purposes of financing the applicants to undertake the development of the site.
	2. That South Dublin County Council reserves the right, only to be exercised by the Council acting reasonably, to re-enter on the site and resume possession thereof should the applicants fail to commence and complete the buildings within the period specified at term no. 5 above or in the event of the dissolution, receivership or liquidation of the applicants save in the case where a Financial Institution which has entered into a mortgage with the applicants for the purposes of financing the development of the site and enforces its security against the site. South Dublin County Council shall provide written notice of any intent to exercise this right and offer a 30 day cure period for rectification of any default on Microsoft Ireland Operations Limited part, including use of mediation/arbitration, or similar third-party intercession.
	3. That during the building period and pending the grant of the Master Lease, Microsoft Ireland Operations Limited will provide all reasonably required evidence of the ‘all risks’, public liability and employer’s liability insurance cover maintained by Microsoft Ireland Operations Limited for the construction period. It is acknowledged that following completion of the construction of the office building and data centres, the building and all insurable risks associated therewith will be included in Microsoft Ireland Operations Limited self-insurance programme. All insurance will be subject to the approval of the Councils insurance advisors, acting reasonably.

The insurance shall, be in the joint names of the Microsoft Ireland Operations Limited and the Council, or shall contain an indemnity to principals clause, and will be for such an amount as will provide cover for the full Reinstatement Value of so much of the building as is erected at any time together with a sum for Professional Fees and removal of debris charges

Microsoft Ireland Operations Limited shall also indemnify South Dublin County Council against any claim for compensation which might / may be made by any party arising out of building works being carried out on the site, or any working areas or on any access points thereto.

* 1. That the Council is and shall be carrying out extensive construction projects in the Business Park. Both parties shall use their reasonable endeavours to ensure that any interaction between respective contractors employed to carry out any works including, but not limited to building or road works, is carried out in an open and transparent manner with engineers and liaison officers such as to ensure that no additional contract costs accrue to either party.
	2. That no uncovered outdoor storage shall be permitted on the subject lands. All processing, packing, waste disposal or recycling and such like operations shall be carried out within suitable structures or equipment such as compactors located on the premises in accordance with any statutory regulations or requirements in that regard.
	3. That all car and commercial vehicle parking areas, loading areas and service areas must be suitably landscaped and screened from public view. In this regard Microsoft Ireland Operations Limited shall carry out at Microsoft Ireland Operations Limited costs such boundary and landscape treatment works as the Council may reasonably require, bearing in mind the nature of the Park and provided that such works are not substantially more than required of any other occupiers of the Park during construction. Such works may, only where reasonable, be in addition to similar works required under a planning permission for development of the subject lands. Microsoft Ireland Operations Limited shall submit a copy of its landscaping and security plan to the Council’s Development Department prior to the grant of the Master Lease for approval.
	4. That each party shall be responsible for their own professional (i.e. legal, engineering, architects, and other required consultants’) fees in this case.
	5. That Microsoft Ireland Operations Limited shall pay any V.A.T., stamp duty or taxes arising at any stage in the transactions (except where any lawful exemption or relief therefore applies), including on the creation of a Building Licence (if any), an Agreement to Lease or Contract for Sale, and a Master Lease.
	6. That the Councils Solicitor shall draft the Agreements, Contracts and Leases and may include further reasonable terms and conditions as deemed appropriate to give effect to the heads of terms set out herein, including provision for use of an expert or arbitrator process to settle any disputes arising, as appropriate, in order to achieve a reasonable balance in the protection of the parties’ respective interests in the matter. In the case of disputes concerning final measurement and valuation of the site for the purposes of calculating the Purchase Price, an arbitration clause shall refer to the appointment of a Chartered Valuation Surveyor to act as arbitrator. This person to be appointed by agreement of the parties or in default of agreement to be appointed by the President of the Society of Chartered Surveyors in the Republic of Ireland. The costs of any arbitration to be borne equally by the parties.
	7. That Microsoft Ireland Operations Limited shall satisfy South Dublin County Council (acting reasonably) prior to exchange of the Agreement for Lease/Contract for Sale, that sufficient funds are available for the payment of the sums set out in term no. 2 above, and prior to commencement of construction or the relevant phase thereof as appropriate.
	8. That the above proposal is subject to the necessary approvals and consents being obtained – in order to allow full construction activities.
	9. No agreement enforceable at law is created or is intended to be created until an exchange of contracts has taken place.

The lands being disposed of form part of lands acquired from Robert Beattie (2002) and Martin McNulty (2016) for the future development of Grange Castle Business Park.

**Daniel McLoughlin**

**Chief Executive Officer**