

## **Public procurement: Market consultation - questions for the supplier market.**

An exciting opportunity to develop a 1.21 acre town centre site in a thriving community.

Closing date for Expressions of Interest: 14<sup>th</sup> February 2022

### **PURPOSE OF DOCUMENT**

The purpose of the document is to facilitate market consultation in connection with the proposed delivery of housing in accordance with this note. The aim of the market consultation is to help Ivybridge Town Council understand what the market can deliver and what constraints or opportunities can arise from outsourcing.

### **INTRODUCTION TO THE ITC**

This market consultation exercise is being undertaken by Ivybridge Town Council (ITC)

### **INTRODUCTION TO THE PROCUREMENT PROJECT**

#### *Subject to contract*

ITC purchased the site known as Butterpark (postcode PL21 0AX) (“the Site”) in 2017 with the desire to see the Site used for the benefit of the town by providing good quality affordable housing for residents with learning disabilities to live independently as well as meeting general housing needs. The Site can be seen on the plan annexed to this document.

The Site is located within 350m of Ivybridge town centre shops and facilities, which includes including “The Watermark”, which features a cinema and library. There is good road and pedestrian access and close proximity to a twice hourly bus to Plymouth and Torquay.

There is understood to be mains gas, water, electricity and drainage to the Site however the capacity of these services is subject to confirmation by any deliverer of the Project.

The Site was purchased from Devon County Council (DCC) in 2017 and it is subject to a number of legal covenants that sit with the land as described more fully in the attached form TR01.

The Site is currently best described as “Brownfield.” It is currently occupied by a building formerly used as a residential home.

The Site is split into two parcels:

- Parcel 1: the ‘Ivybridge Town Council Land’ (outlined in dark blue on the plan) – this is land which has a covenant to ensure it must be used for creating a total of 7 dwellings consisting of: six 1 bedroom apartments and an adjacent 3 bedroom house. These are to be used as homes and ancillary facilities for adults with learning disabilities.

- Parcel 2: the 'Development Land' (outlined in red on the plan) – this land can be used for any purpose subject to planning, but is subject to an overage covenant which may inform the structure of any proposed contract. It also includes a public footpath at the west/southwest edge in blue.

The plan attached shows the two parcels of land, and the public footpath that is included. The total area of the Site is approximately 1.21 acres (0.486 ha). The existing building has an approximate internal gross area of 16,250 sq ft (1,510 sq m).

The Site does not have planning permission. Any deliverer will therefore need to be responsible for all applicable planning and related infrastructure and S106 contributions. ITC understands that the Site is, however, identified as being suitable for infill housing development, and is a brownfield site.

#### **PROJECT BRIEF**

ITC has an ambition to see housing built on the Site that will serve the community. In particular, this will include:

- Seven units of accommodation on Parcel 1, suitable for those with learning disabilities, comprising of one three bed house and six one- bed units. ITC views this as the most important requirement for Parcel 1, as this fits with the covenant that DCC has on the land that the learning disability units are provided. ITC and South Hams District Council (SHDC) have an identified need for this type of accommodation in Ivybridge.
  - Those expressing an interest may be interested in taking on these units as a suitable housing provider or they may not, and if so they will remain in the ownership of Ivybridge Town Council.
  - The three bed house would need space on the ground floor to double up as a 'common room' area for those residing in the six 1 bed units, and be connected to the units to enable a 'sleep in' support worker to be on site when needed.
- Affordable housing on Parcel 2
  - The ITC is looking to maximise the amount, type and tenure of affordable housing on the site in order to best meet local needs.

ITC envisages that the deliverer would take ownership of the freehold of the Parcel (or Parcels)

ITC at present has an open mind as to how its aims will be met as long as this demonstrates a high quality development in accordance with applicable procurement rules. The successful deliverer will be expected to fully design and implement the scheme, from the present brown field site without the benefit of planning to a fully implemented development meeting the needs set out above.

ITC would welcome comments on how this may be delivered.

- For example, deliverers may propose to develop the 'Ivybridge Town Council Land' properties at their expense, and this could be counted as a contribution to affordable housing in the area.

- The proposals for the land could come forward as two separate parcels or as one.
- ITC would welcome innovative proposals that use modern techniques such as off-site prefabrication or re-use of the existing structure.

Site visits are possible by appointment with the Town Clerk. Strictly no site admittance without prior arrangement.

## **GENERAL INFORMATION**

### **1. Queries**

Any queries relating to this document must be e-mailed to: [townclerk@ivybridge.gov.uk](mailto:townclerk@ivybridge.gov.uk). ITC will respond to all reasonable queries as soon as possible. All queries and responses will be dealt with by e-mail only. ITC reserves the right to issue a response to any query to all parties who have expressed an interest in the project.

### **2. Process for responding and deadline for receipt of responses**

Responses to this document must arrive at the email address [townclerk@ivybridge.gov.uk](mailto:townclerk@ivybridge.gov.uk) no later than 14<sup>th</sup> February 2022 (“Deadline”).

The ITC may subsequently invite those participating in this market consultation process (“Participants”) to an interview, to take place during March 2022.

Any response received after the Deadline shall not be opened or considered. ITC may, however, in its own absolute discretion extend the Deadline and in such circumstances ITC will publicise the extension on [www.gov.uk/contracts-finder](http://www.gov.uk/contracts-finder).

### **3. Warnings and disclaimers**

While the information contained in this document is believed to be correct at the time of issue, neither the ITC, its advisors, nor any other awarding authorities will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability in relation to any statement, opinion or conclusion contained in or any omission from, this document (including its appendices) and in respect of any other written or oral communication transmitted (or otherwise made available). This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the ITC.

If a Participant proposes to subsequently enter into a contract with the ITC, it must rely on its own enquiries and on the terms and conditions set out in the contract(s) (as and when finally executed), subject to the limitations and restrictions specified in it.

Neither the issue of this document, nor any of the information presented in it, should be regarded as a commitment or representation on the part of ITC (or any other person) to enter into a contractual arrangement.

#### **4. Confidentiality and Freedom of Information**

All information supplied by ITC (including this questionnaire and all other documents relating to the Project), whether in writing or orally, is supplied on condition that it be kept confidential by the recipient; it must not be copied, reproduced, distributed or passed to any other person at any time (except to professional advisors, consortium members or subcontractors for the sole purpose of enabling the recipient to respond to this document) unless the information is already in the public domain.

As a public body, ITC is subject to the provisions of the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (SI 2004/3391) (EIR) in respect of information it holds (including third party information). Any member of the public or other interested party may make a request for information. ITC is also subject to various public sector transparency policies and legal requirements, including the placing of contract award notices on the Contracts Finder database which identify the contract values and successful supplier.

There is also a duty on contracting authorities such as ITC to take appropriate measures to ensure that where a candidate in any procurement has been involved in the preparation of that procurement procedure, competition is not distorted by the participation of that candidate. "Appropriate measures" will depend on the situation, but might (for example) include the communication to the other candidates of relevant information resulting from the involvement of the candidate in the preparation of the procurement procedure.

Those responding to this document should therefore be aware that information provided in connection with this Project, or in connection with any contract awarded, may be disclosed by ITC, unless ITC decides (in its absolute discretion) that one of the statutory exemptions under the FOIA or the EIR applies. Requests for information and application of any exemptions shall be considered on a case by case basis. By responding to this questionnaire, participants agree to such disclosure or publication by ITC.

Participants may designate any information supplied as part of their response or otherwise in connection with the Project as confidential or commercially sensitive by clearly identifying it as such to the ITC in the template provided at Schedule 1. Blanket protective markings applied to the whole document will not be sufficient. While designating material as confidential or commercially sensitive or equivalent does not guarantee non-disclosure, the ITC will consider this as part of any disclosure decision.

#### **5. Publicity**

No publicity regarding the Project will be permitted unless and until ITC has given express written consent to the relevant communication.

#### **6. Participant conduct and conflicts of interest**

Any attempt by Participants or their advisors to influence the contract award process in any way may result in the Participant being disqualified. Specifically, Participants shall not directly or indirectly at any time:

- Devise or amend the content of their response in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance.
- Enter into any agreement or arrangement with any other person as to the form or content of any tender in connection with the Project, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other tender.
- Enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a tender.
- Canvass ITC or any employees or agents of ITC in relation to this procurement.
- Attempt to obtain information from any of the employees or agents of ITC or their advisors concerning another Participant or this Project.

Participants are responsible for ensuring that no conflicts of interest exist between the Participant and its advisers, and ITC and its advisers. Any Participant who fails to comply with this requirement may be disqualified from the procurement at the discretion of ITC.

## **7. ITC's rights**

ITC reserves the right to:

- Waive or change the requirements of the Project from time to time without prior (or any) notice being given by ITC.
- Seek clarification or documents in respect of a Participant's submission
- Withdraw this document at any time, or to re-invite Participants on the same or any alternative basis.
- Choose not operate any tender process or award any contract as a result of this current process.
- Make whatever changes it sees fit to the timetable, structure or content of any procurement process, depending on approvals processes or for any other reason.

## **8. Costs**

ITC will not be liable for any costs, expenditure, work or effort incurred by a Participant in proceeding with or participating in this document, including if the consultation process envisaged by it is terminated or amended by ITC.

**Process:**

The attached question response document should be completed and submitted to [townclerk@ivybridge.gov.uk](mailto:townclerk@ivybridge.gov.uk) by 14<sup>th</sup> February 2022.

Any requests for clarification or further information will need a response within 14 days.

Any queries should be raised with the Town Clerk by the deadline of 14<sup>th</sup> February 2022.

Any information that is commercially sensitive should be detailed in Schedule 1 and submitted with the question response document.

## CONSULTATION QUESTIONS

### 1. Experience of providing similar services

	ANSWERS:
<p>1.1 Are you currently providing services or works similar to the Project to any public authority or private sector customer? If so, please describe the key features of those contracts, including:</p> <ul style="list-style-type: none"><li>(a) The contract duration and value.</li><li>(b) Which services or works are included.</li><li>(c) Whether any transformation of the services or works was required and, if so, the nature of the transformation and the timescale for implementation.</li></ul>	
<p>1.2 What approach are your customers taking to sourcing these sorts of services or works?</p>	

1.3	What, in your view, are the strengths and weaknesses of these sourcing approaches?
1.4	What do your customers think of the services or works they are receiving?
1.5	What do your customers regard as important in the provision of these services or works?

**2. Scope of services**

	<b>ANSWERS:</b>
2.1	<p>The Project consists of two elements, as comprised within Parcel 1 and Parcel 2 as set out above.</p> <p>Is this a logical proposal, or should any additional services or works be considered for inclusion? If so, what</p>



	would be the benefit of including these additional services, specifically and overall?	
2.2	What would you envisage the full Project time table for the project would be?	
2.3	How would you ensure that the Parcel 1 learning disability element is prioritised within the build?	
2.4	Are you a registered provider or how do you manage your affordable properties?	
2.5	South Hams JLP policy states a minimum of 30% affordable on an infill/allocated site, ITC would like to see as much affordable housing as possible, how would you propose to do this and roughly what percentage	

	would you aim for in order to maintain viability?	
2.6	ITC wish to see a mix of tenures and unit sizes, with a good local demand for 1 and 2 bed properties, and a need for more than the minimum units of homes for adults with learning disabilities. What would your proposed mix be?	
2.7	How you propose to carry out community consultation in the context of planning?	
2.8	ITC, SHDC and DCC have declared a Climate Emergency. How you propose to minimise the carbon footprint of the development, or even make the units net zero carbon?	

2.9	How you will future proof the homes e.g. through choice of heating systems?	
2.10	How you plan to sympathetically integrate the development with the surrounding area?	
2.11	How you will encourage sustainable transport options?	
2.12	What the significant obstacles you can foresee with this opportunity?	

**3. Attractiveness of opportunity**

	<b>ANSWERS:</b>
3.1	Which aspects of the proposed Project appeal to your business and why?

3.2 Which aspects of the proposed Project appeal to your business and why?	
3.3 Which aspects of the proposed Project appeal to your business and why?	
3.4 Which aspects are less appealing and why?	
3.5 What are your main business drivers? How does this opportunity fit with those drivers?	
3.6 What are the major risks for you in the opportunity?	

3.7	What factors would encourage you to bid or discourage you from bidding for an opportunity to deliver these services or works?	
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**4. Service development**

		<b>ANSWERS:</b>
4.1	How do you see the Project developing over time?	
4.2	Are there any innovations that may affect the delivery of the Project in the near future?	

**5. Pricing**

	<b>ANSWERS:</b>
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5.1	What are the biggest cost drivers for you in determining the costs of developing the Site?	
5.2	What sort of investment is likely to be required either before Project commencement or after?	
5.3	How would that investment be funded (for example, through the contract price as an initial cost, over the life of the contract, or by the ITC in advance of service commencement)? Would any Government funds be utilised?	

**6. Performance regime**

	<b>ANSWERS:</b>
6.1	How will the ITC know whether the activity is successful?

6.2	What are the core measures for evaluating performance?
6.3	Will completion stages be proposed and who will verify agreed stages are complete?

**7. Quality control**

	<b>ANSWERS:</b>
7.1	What do you think is important to ensure quality of the Project?
7.2	What mechanisms do you have in place to ensure quality and risk management?
7.3	How do you drive continuous improvement?

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**8. Sustainability and environmental protection**

	ANSWERS:
8.1 What do you consider to be the main sustainability or carbon footprint issues applicable to the delivery of the works or services?	
8.2 Do you have any goals regarding reducing the impact of these issues?	
8.3 How do these goals compare to the rest of the industry?	

**Part B: Developing a procurement strategy and specification for the tender process**



**9. Contract model and contractual issues**

	<b>ANSWERS:</b>
9.1 How would you envisage this Project being delivered?	
9.2 Is there a case for parcelling certain aspects of the Project into smaller contracts or lots? If so, which would be most appropriate to divide and how should this be done?	
9.3 What would be the effect on the contract price of a termination for convenience clause in favour of the ITC?	
9.4 What liability caps would you expect to see in a contract for this sort of Project?	

9.5	What contractual provisions would be likely to have a significant impact on the contract price?	
9.6	The ITC will seek to apportion risks to the party best able to manage them. Are there any risks that you consider should be retained by the ITC?	

**10. Varying or adding to the services during the life of the contract**

	<b>ANSWERS:</b>
10.1	The ITC would want the successful supplier to respond to changes within the ITC, as well as technological or market innovations. How can the contract be made flexible enough to allow for these changes while providing some certainty around cost and quality for the ITC?

**11. Timetable and procurement route**

	ANSWERS:
11.1 What procurement route and timetable would you suggest is used for this Project and why?	

**12. Consortium and subcontracting arrangements**

	ANSWERS:
12.1 Would your organisation be capable of delivering all the services as a single supplier, or would you propose to bid as part of a consortium?	
12.2 Would you propose to subcontract some services or works? If so, which services or works and to what extent would they be subcontracted?	

12.3 Are the terms of any contracts with sub-contractors industry standard? If so, which?	

**13. Pricing**

	<b>ANSWERS:</b>
13.1 What sort of investment is likely to be required either before Project commencement or after?	
13.2 How would that investment be funded (for example, through the contract price as an initial cost, over the life of the contract, or by the ITC in advance of service or works commencement)?	
13.3 What would be your approach to ownership of assets?	

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**14. Relationship management**

	ANSWERS:
14.1 How would you see the contract governance working?	
14.2 How would you interact with other key suppliers to the ITC?	
14.3 Which relationships are particularly crucial to the successful delivery of the proposed Project?	
14.4 What resources or access would you need from the ITC? For example, particular information, links to other services, quality control.	

**15. Performance regime**

	<b>ANSWERS:</b>
15.1 How many performance indicators would be usual in a contract for these works or services	
15.2 What sorts of performance indicators would incentivise the right behaviour?	
15.3 How are these performance indicators typically measured?	
15.4 What percentage of the contract price would you expect to put at risk for poor performance?	

**16. Sustainability, local employment and environmental protection**

	<b>ANSWERS:</b>
16.1 How will you minimise the embedded carbon in the building of the development?	
16.2 How might you ensure the properties are designed to be low carbon to run for the inhabitants?	
16.3 What do you consider to be the main sustainability and environmental protection issues applicable to the delivery of the project?	

Schedule 1: Commercially sensitive information.

Commercially sensitive information

- I declare that I wish the following information to be designated as commercially sensitive
  
- The reason(s) it is considered that this information should be exempt under FOIA is:
  
- The period of time for which it is considered this information should be exempt is until award of any contract in connection with the Project OR during the period of the contract OR for a period of [NUMBER] years until [MONTH], [YEAR]].

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

POSITION: \_\_\_\_\_

COMPANY: \_\_\_\_\_

DATE: \_\_\_\_\_



Annex 1: TR01

# Land Registry

## Transfer of whole of registered title(s)

# TR1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Give full name(s).

Complete as appropriate where the transferor is a company.

ve full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

1	Title number(s) of the property:  DN513303
2	Property:  Butterpark Nursing Home, Brook Road, Ivybridge, Devon PL21 0AX
3	Date:  20th December 2017
4	Transferor:  DEVON COUNTY COUNCIL  <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:  <u>For overseas companies</u> (a) Territory of incorporation:  (b) Registered number in the United Kingdom including any prefix:
5	Transferee for entry in the register:  IVYBRIDGE TOWN COUNCIL  <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:  <u>For overseas companies</u> (a) Territory of incorporation:  (b) Registered number in the United Kingdom including any prefix:
6	Transferee's intended address(es) for service for entry in the register:  Town Hall, Erme Court, Leonards Road, Ivybridge, Devon PL21 0SZ
7	The transferor transfers the property to the transferee

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

## 8 Consideration

- ☒ The transferor has received from the transferee for the property the following sum (in words and figures):

Two hundred and one thousand two hundred and fifty pounds (£201,250.00)

- ☐ The transfer is not for money or anything that has a monetary value

- ☐ Insert other receipt as appropriate:

## 9 The transferor transfers with

- ☒ full title guarantee

The covenants implied under the Law of Property (Miscellaneous Provisions) Act 1994 (the 'LPMA 1994') are modified so that:

- (a) the covenant set out in section 2(1)(b) of the LPMA 1994 will not extend to costs arising from the Transferee's failure to:

i. make proper searches; or

ii. raise requisitions on title or on the results of the Transferee's searches; and

- (b) the covenant set out in section 3 of the LPMA 1994 will extend only to charges or incumbrances created by the Transferor.

- ☐ limited title guarantee

## 10 Declaration of trust. The transferee is more than one person and

- ☐ they are to hold the property on trust for themselves as joint tenants

- ☐ they are to hold the property on trust for themselves as tenants in common in equal shares

- ☐ they are to hold the property on trust:

## 11 Additional provisions

### 11.1 Definitions


In this Transfer the following words and expressions have the following meanings:-

**Blue Land** means the land shown coloured blue on Plan No. 1 over which part of the Public Footpath crosses

**Hub:** means a Residential Unit to be constructed on the ITC Property to be used in connection with the Scheme as a training/learning house including any ancillary land and facilities




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Title: Butterpark		Project: Disposal plan		
 <p><b>NPS South West Ltd</b></p> <ul style="list-style-type: none"> <li>Head office: Venture House, 1 Capital Court, Bittern Road, Sowton Ind Est, Exeter, EX2 7FW</li> <li>South office: The Acorn Centre, Lee Mill Ind. Est. Ivybridge, PL21 9GP</li> </ul>	Scale: 1:1,250	Date: Dec 17	Contact: Chris Liversidge	
	File/ Deed:	OS Sheet:	Telephone:	
	Prep: CP	Checked:	Office: EXETER	
	BIS No:	Project No: 17001	Drwg No: Plan 1	Rev:






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Title: <b>Butterpark - Social Care Land</b>		Project: <b>Disposal plan</b>		
 <p><b>NPS South West Ltd</b></p> <ul style="list-style-type: none"> <li>Head office: Venture House, 1 Capital Court, Bittam Road, Sowton Ind Est, Exeter, EX2 7FW</li> <li>South office: The Acorn Centre, Lee Mill Ind. Est. Ivybridge, PL21 5GP</li> </ul>	Scale: <b>1:1,250</b>	Date: <b>Dec 17</b>	Contact: <b>Chris Liversidge</b>	
	File/ Deed:	OS Sheet:	Telephone:	
	Prep: <b>CP</b>	Checked:	Office: <b>EXETER</b>	
	BIS No:	Project No: <b>17001</b>	Drwg No: <b>Plan 2</b>	Rev:





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Title: Butterpark - Development Land		Project: Disposal plan		
 <p><b>NPS South West Ltd</b></p> <ul style="list-style-type: none"> <li>Head office: Venture House, 1 Capital Court, Bittern Road, Sowton Ind Est, Exeter, EX2 7FW</li> <li>South office: The Acorn Centre, Lee Mill Ind. Est. Lybridge, PL21 9GP</li> </ul>	Scale: 1:1,250	Date: Dec 17	Contact: Chris Liversidge	
	File/ Deed:	OS Sheet:	Telephone:	
	Prep: CP	Checked:	Office: EXETER	
	BIS No:	Project No: 17001	Drwg No: Plan 3	Rev:

for use in connection with the training/learning house

**ITC:** means Ivybridge Town Council

**ITC Property:** means that part or parts of the Property as shown edged blue on Plan No. 2 to be developed and used by the ITC for the purposes of the Scheme

**Permitted Use:** means the development and use of the ITC Property for the purposes of the Scheme to provide assisted living accommodation and associated training and the following ancillary uses:

- (a) uses required pursuant to an agreement entered into pursuant to Section 106 of the Town and Country Planning Act 1990; and
- (b) uses in connection with the an electricity sub-station gas governor pumping station surface water balancing area or other use in connection with services; and
- (c) uses in connection with the adoption and/or dedication as a public highway and/or to comply with the highways requirements of a relevant authority; and
- (d) temporary uses to carry out surveys, investigations or works.

**Plan No. 1:** means the plan annexed labelled Plan No. 1

**Plan No. 2:** means the plan annexed labelled Plan No. 2

**Plan No. 3:** means the plan annexed labelled Plan No. 3

**Public Footpath:** means that part of Ivybridge Footpath No. 3 which crosses the Blue Land

**Residential Unit(s):** means a house, flat or any other structure intended for residential use including any ancillary land and facilities for use in connection with that house, flat or other structure including (but not limited to) any car parking space and/or garage

**Social Care Unit(s):** means a Residential Unit(s) intended for use in connection with the Scheme

**Scheme:** means the ITC's scheme for the provision and use of Social Care Unit(s) and Hub for the purposes of assisted living accommodation and associated training

- 11.1.1 words importing one gender shall be construed as importing any other gender
- 11.1.2 words importing the singular shall be construed as importing the plural and vice versa
- 11.1.3 words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa
- 11.1.4 where any party comprises more than one person the obligations and liabilities of that party under this transfer shall be joint and several obligations and liabilities of those persons
- 11.1.5 the panel and clause headings do not form part of this transfer and shall not be taken into

- 11.1.6 account in its construction or interpretation any reference to a clause is to one so numbered in this panel unless otherwise stated
- 11.1.7 any reference to a colour or letter is to one on the Plans attached to this Transfer
- 11.1.8 a reference to this Transfer is a reference to this deed and any deed, consent, approval or other instrument supplemental to it
- 11.1.9 a reference to the Transferor and the Transferee includes a reference to their successors in title and assigns
- 11.1.10 unless the context otherwise requires, a reference to the Property shall be deemed to include references to all and/or any part or parts thereof

## **11.2 Matters Affecting the Property**

This Transfer is subject to and (where applicable) with the benefit of the rights and other matters (so far as they are subsisting and capable of taking effect) set out in the property and charges register of Title Number DN513303

## **11.3 Rights Reserved**

The following right is reserved for the benefit of the Transferor as highway authority for as long as the Public Footpath is located on the Property:

A right for the Transferor, in its capacity as Highway Authority, its successors in function, and those authorised by it or them including but not limited to, its employees, agents, workmen and contractors with or without vehicles, plant, machinery, appliances and equipment to enter onto and to pass and re-pass over and along the Blue Land in order to inspect the condition of, maintain, repair, renew, reconstruct, relay, alter, upgrade and replace the Public Footpath on the Blue Land but conferring no right to the Transferor to widen the width of the Blue Land and provided that this clause shall place no obligation on the Transferor to inspect, maintain, repair, renew, reconstruct, relay, alter, widen, upgrade or replace the Public Footpath

## **11.4 Covenants by the Transferee**

The Transferee covenants with the Transferor to observe and perform the covenants set out below:-

- 11.4.1 Not to transfer or grant a lease for a term equal to or exceeding seven (7) years of the ITC Property or any part or parts of it to any party or person without first ensuring that that party or person has executed, or will contemporaneously execute, a deed imposing upon him, her, it or them covenants in like terms (*mutatis mutandis*) as are contained in this clause and the following clauses below
- 11.4.2 To use reasonable endeavours to properly develop and construct on the ITC Property at least six (6) Social Care Unit(s) and one (1) Hub so the same is build complete and ready for occupation for the purposes of the Scheme within a period of five years from the date of this Transfer. Prior to commencement of



development of the ITC Property, the Transferee will provide to the Transferor copies of the planning permission and floor plans of the Scheme in order that the Transferor can ensure the Scheme comprises at least six (6) Social Care Unit(s) and one (1) Hub

11.4.3 Not to permit or suffer the ITC Property to be used for any purpose other than the Permitted Use but following completion of the construction of the Social Care Unit(s) and Hub the ITC Property may then be used by the ITC for purposes permitted under the Localism Act 2011 and purposes ancillary to the Permitted Use including casual hiring out of the ITC Property for income generation

11.4.4 To ensure:

- (a) any disposal of the Property or any part of it is in accordance with section 123 or section 127 of the Local Government Act 1972 (and any other relevant statutory regulations relating to a disposal of property owned by a local authority or town council); and
- (b) any proceeds from a disposal of the whole or any part of the Property are used in accordance with the proper governance of the Transferee or its successors in function

11.4.5 Subject to the provisions of clause 13, in the event the ITC disposes of the ITC Property it shall apply the proceeds to deliver social care in Devon

11.4.6 To observe and perform the covenants, restrictions and stipulations set out in the Property and Charges Registers of Title Number DN513303 and the fencing covenant contained in clause 3(i)(a) of the Conveyance dated 1<sup>st</sup> February 1971 made between John Luscombe and The County Council of the Administrative County of Devon

11.4.7 The Transferor and the Transferee hereby apply to the Chief Land Registrar to register a restriction in the Proprietorship Register of the Property in the following form:

"No disposition of the registered estate shown edged blue on Plan No. 2 of the Transfer dated [ 20th December ] 2017 made between Devon County Council and Ivybridge Town Council (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the County Solicitor, Devon County Council, County Hall, Topsham Road, Exeter, Devon EX2 4QD or by a conveyancer acting on behalf of a statutory successor in function that the provisions of clause 11.4.1 of the Transfer dated [ 20th December ] 2017 made between Devon County Council and Ivybridge Town Council has been complied with or that they do not apply to the disposition"

11.4.8 The Transferor shall procure that the certificate described in the restriction set out in clause 11.4.7 above is provided to the Transferee in connection with a disposition as soon as reasonably practicable after the Transferee has complied with clause 13.4.1 in respect of that disposition.

### **11.5 Indemnity**

The Transferee for the purpose of affording the Transferor a full and effectual indemnity but not further or otherwise hereby covenants with the Transferor that they and their successors in title will hereafter perform and observe all of the covenants and stipulations referred to in the property and charges registers relating to the Property hereby transferred so far as they are still capable of being enforced and will keep the Transferor fully indemnified against all reasonable and proper actions costs claims and demands arising from any breach non-observance or non-performance thereof

### **11.6 Agreements and Declarations**

The Transferor and the Transferee declare that:

11.6.1 For the purposes of section 6(2) of the Law of Property (Miscellaneous Provisions Act) 1994 all matters now recorded in registers open to public inspection are to be considered within the actual knowledge of the Transferee

11.6.2 They do not intend that any of the terms of this Transfer will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

11.6.3 This deed is made pursuant to section 7 of the Devon County Council Act 1972 and section 33 of the Local Government (Miscellaneous Provisions) Act 1982

### **12 Overage/Clawback on Disposal of Development Land**

12.1 For the purposes of this Clause 12 the following terms shall have the following meanings:-

“Development Land” means that part or parts of the Property shown edged red on Plan No. 3

“Development Land Overage” 70% of the Gross Receipt

“Expert” an independent expert approved by the Transferor and the Transferee or owners for the time being or (in default of agreement as to the appointment) appointed by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either of the parties

“Gross Receipt” means the gross financial proceeds received or receivable

	in respect of any Permitted Disposal of the whole or any part or parts of the Development Land
"Interest"	interest during the period from the date on which the payment is due to the date of payment both before and after any judgment at the yearly rate of 2% above the base rate published by Barclays Bank plc from time to time or if such rate is not published at any time such other comparable rate of interest as the Transferor may then in writing specify having regard to interest current at such time
"ITC"	Ivybridge Town Council
"Payment Date"	30 Working Days following the date of completion of the Relevant Disposal
"Permitted Disposal"	means: <ul style="list-style-type: none"> <li>(a) the transfer of the whole or any part of the freehold interest in the Development Land; or</li> <li>(b) the grant of a lease of the whole or any part of the Development for a term equal to or more than 999 years for a premium at a nominal rent</li> </ul> by the Transferee or their mortgagee
"Property"	the property described in Panel 2 of this Transfer registered at Land Registry under Title Number DN513303
"Relevant Disposal"	the Permitted Disposal of any part or parts of the Development Land on the relevant Trigger Date
"Relevant Period"	means the period expiring 80 years from the date hereof
"Transferee's Surveyor"	a chartered surveyor with not less than 10 years' experience
"Trigger Date"	the date of any and each Trigger Event
"Trigger Event"	the completion of the transfer or lease relating to a Permitted

## Disposal

"Working Day"

any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday

## 12.2 Interpretation

- 12.2.1 (a) The expression "Transferor" means Devon County Council or its successor in function. For the avoidance of doubt it does not include its successors in title
- (b) The expression "Transferee" includes their successors in title and assigns
- 12.2.2 Any covenant to do any act or thing includes an obligation to procure that it be done and any covenant not to do any act or thing includes a covenant not to allow such act or thing to be done by a third party
- 12.2.3 Where the Transferor or the Transferee for the time being are two or more individuals the terms of the Transferor and the Transferee include the plural number and obligations expressed or implied to be made by or with such party are deemed to be made by or with such individuals jointly and severally
- 12.2.4 Unless otherwise specified, a reference to legislation (including subordinate legislation) is to that legislation as extended, amended, modified, consolidated, or re-enacted from time to time and includes any instrument, order, regulation, permission, consent, licence, notice, direction, byelaw, statutory guidance or code of practice made or granted under such legislation

## 12.3 Overage

The Transferee covenants with Devon County Council to pay Development Land Overage in respect of any and each Trigger Event as set out below:-

- 12.3.1 Upon the happening of a Trigger Event (and on each and every occasion of a Trigger Event) during the Relevant Period the Transferee shall send notice by recorded delivery within two weeks of the happening of the Trigger Event to the Transferor accompanied by:-
- (a) a copy of the deed or document evidencing the consideration received by the Transferee for the Relevant Disposal; and
- (b) the Transferee's calculation of the Development Land Overage
- 12.3.2 If the Transferor reasonably disputes the Transferee's calculation of the Development Land Overage, it must within 20 Working Days after receipt of the Transferee's

notice (time being of the essence) serve a counter-notice on the Transferee stating the Transferor's calculation of Development Land Overage

12.3.3 If the Transferor and the Transferee have not agreed the amount of the Development Land Overage within 10 Working Days after service of the Transferor's counter-notice either party may require that the amount of the Development Land Overage be referred to the Expert for determination

12.3.4 If the Transferor fails to serve a counter-notice within the 20 Working Day period referred to in clause 12.3.2 it is deemed to have accepted the Transferee's calculation of Overage

12.3.5 If the Transferee fails to serve the notice required by clause 12.3.1 the Transferor may instruct a chartered surveyor (with not less than 10 years' experience) to undertake a reasoned calculation of the Development Land Overage and;

(a) such calculation is deemed to be the correct Development Land Overage for the relevant Trigger Event except in the case of manifest error or fraud; and

(b) the reasonable cost of preparation of such calculation must be reimbursed by the Transferee to the Transferor as soon as reasonably practicable.

12.3.6 Upon any and each Payment Date the Transferee must pay any Development Land Overage that is due to Devon County Council (or its successor in function).

12.3.7 On completion of the Relevant Disposal, the Transferor will apply for the withdrawal and/or modification (as the case may be) of the restriction registered against the Development Land as set out in clause 12.3.8 in respect of the relevant part or parts of the Development Land in respect of which the Relevant Disposal has occurred provided that any Development Land Overage arising from that Relevant Disposal has been paid by the Transferee for that Relevant Disposal.

12.3.8 The parties apply to the registrar for entry of a restriction on the register of the title to the Property in standard form L:

"No disposition of the registered estate shown edged red on Plan No. 3 of the Transfer dated [ 20th December ] 2017 made between Devon County Council and Ivybridge Town Council (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the County Solicitor, Devon County Council, County Hall, Topsham Road, Exeter, Devon EX2 4QD or by a conveyancer acting on behalf of a statutory successor in

function that the provisions of clause 12 of the Transfer dated [20th December] 2017 made between Devon County Council and Ivybridge Town Council has been complied with or that they do not apply to the disposition"

- 12.3.9 The Parties agree that should the area of land identified as Development Land be varied after the date of this Transfer, that the restriction referred above in clause 12.3.8 may be modified to reflect the area of Development Land as so varied
- 12.3.10 On completion of a Relevant Disposal the Transferee will cease to have any liability under this Clause 12 for any matter arising after the Relevant Disposal in respect of that part of the Development Land which is the subject of the Relevant Disposal provided that any Development Land Overage arising from that Relevant Disposal has been paid by the Transferee (but without prejudice to the Transferee's continuing liability for prior breaches).
- 12.3.11 The Transferee is only permitted to dispose of the Development Land by way of a Permitted Disposal.
- 12.3.12 The Transferor shall procure that the certificate described in the restriction set out in clause 12.3.8 above is provided to the Transferee in connection with a Relevant Disposal where the Transferee has complied with the provisions of this Clause 12 in respect of such Relevant Disposal.
- 12.3.13 The Transferee must pay all reasonable and proper professional and other costs, charges, fees and expenses incurred by the Transferor arising out of the operation of this Clause 12
- 12.3.14 The parties agree to act in good faith towards each other in a manner wholly consistent with the observance of their respective obligations under this Clause 12 and to achieve the objects and intentions of this Clause 12.

#### **12.4 Assignment by Transferor**

The benefit of the covenants contained in this Clause 12 may be assigned by the Transferor to a successor in function

#### **12.5 Interest**

The Transferee covenants to pay Interest on any money payable pursuant to this Clause 12 calculated from the Payment Date until payment.

#### **12.6 Expert**

Any dispute concerning any sums payable pursuant to this Clause 12 must be determined by the Expert in accordance with the following provisions:-

- 12.6.1 he will act as an expert and his decision will be final and binding on the parties save in the case

of manifest error or fraud;

- 12.6.2 he will be instructed to consider all written representations made on behalf of the Transferor and/or the Transferee which are delivered to him within such period or periods as he stipulates (having regard to the parties' wish for a quick determination);
- 12.6.3 he will be instructed to use all reasonable endeavours to give his decision as speedily as possible;
- 12.6.4 if he dies or refuses or is unable to act the procedure for appointment will be repeated as often as necessary;
- 12.6.5 his fees and the costs of his appointment will be payable by the parties in such proportions as he determines or in default of such determination by the parties equally;
- 12.6.6 if he is ready to make his determination but is unwilling to do so due to the failure of one party to pay its share of the costs in connection with the determination of the other party may serve upon the party in default of a notice requiring the party in default to apply such costs within 7 Working Days and if the party in default fails to comply with such notice the other party may pay the Expert the costs payable thereby the party in default and any amount so paid by the other party will be a debt due forthwith from the party in default to the other party together with Interest

## **12.7 VAT**

The sums payable pursuant to this Clause 12 are exclusive of any VAT. Accordingly the Buyer will in addition pay any VAT chargeable or payable in respect of such sums

## **13 Overage/Clawback on Disposal of the ITC Property**

"Acquisition Price"	Two hundred and one thousand two hundred and fifty pounds (£201,250.00)
"Cost Allowances"	costs permitted to be deducted from the Disposal Value in respect of the ITC Property as follows: <ul style="list-style-type: none"><li>(a) the Acquisition Price or a relevant proportion applicable to the Relevant Disposal</li><li>(b) legal and estate agent's fees and disbursements relating to the Relevant</li></ul>

	Disposal
	(c) sums reasonably expended by the ITC in carrying out any extensions or improvements subsequent to the ITC taking possession of the ITC Property following practical completion of the initial ITC Development (subject to details and supporting evidence being supplied to Devon County Council)
"Deed of Covenant"	a deed of covenant with the Transferor containing covenants in the same terms as those given by the Transferee in this transfer with such minor modifications as the Transferor may agree acting reasonably
"Disposal"	means: <ul style="list-style-type: none"> <li>(a) the transfer of the whole or any part of the freehold interest in the ITC Property; or</li> <li>(b) the grant of a lease of the ITC Property or any part thereof for a term equal to or exceeding Seven (7) years</li> </ul> except an Exempt Disposal by the Transferee or their mortgagee
"Disposal Value"	is the higher of either the Gross ITC Receipt or the Open Market Value
"Exempt Disposal"	a grant of easements or rights or transfer or lease of land required for service infrastructure to the appropriate statutory undertaker or other utility provider
"Expert"	an independent expert approved by the Transferor and the Transferee or owners for the time being or (in default of agreement as to the appointment) appointed by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either of the parties



"Gross ITC Receipt"	means the gross proceeds received or receivable in respect of any Disposal of the whole or any part or parts of the ITC Property
"Hub"	means a Residential Unit to be constructed on the ITC Property to be used in connection with the Scheme as a training/learning house including any ancillary land and facilities for use in connection with the training/learning house
"Interest"	interest during the period from the date on which the payment is due to the date of payment both before and after any judgment at the yearly rate of 2% above the base rate published by Barclays Bank plc from time to time or if such rate is not published at any time such other comparable rate of interest as the Transferor may then in writing specify having regard to interest current at such time
"ITC"	Ivybridge Town Council
"ITC Development"	means the development and construction on the ITC Property of the Social Care Unit(s) required in connection with the Scheme
"ITC Property"	means that part or parts of the ITC Property as shown edged blue on Plan No.2
"ITC Property Overage"	<p>means a sum calculated in accordance with the following formula:</p> $((A-B) \times 60\%)$ <p>Where:</p> <p>A = the Disposal Value</p> <p>B = Cost Allowances</p>
"Open Market Value"	means the price at which the ITC Property or the relevant part thereof might reasonably be expected to realise if sold on the open market by a willing seller to a willing buyer on the ITC Trigger Date (but including in the event of a sale of the property to the owner of a nearby property any special value or synergistic value

	to the owner of a nearby property) in which the provisions of this Transfer are disregarded but assuming:
	(a) the ITC Property has vacant possession;
	(b) no previous ITC Trigger Event has occurred that has reduced the open market value of the ITC Property or the relevant part thereof;
	(c) the ITC Property is assumed to be free from all encumbrances other than those existing at the date hereof;
	(d) any damage to or destruction of the ITC Property occurring after the date of this Transfer is assumed to have been fully reinstated; and
	(e) that there is the availability of suitable access and all necessary services to and from the ITC Property for the purposes of development to take place at no cost to the Transferee
"ITC Payment Date"	30 Working Days following the date of completion of the Relevant ITC Disposal
"Property"	the property described in Panel 2 of this Transfer registered at Land Registry under Title Number DN513303
"Relevant ITC Disposal"	the Disposal of any part or parts of the ITC Property on the relevant ITC Trigger Date
"Relevant Period"	means the period expiring 80 years from the date hereof
'Residential Unit(s)'	a house, flat or any other structure intended for residential use including any ancillary land and facilities for use in connection with that house, flat or other structure including (but not limited to) any car parking space and/or garage
'Scheme'	means the ITC's scheme for the provision and use of the ITC Property of at least Six (6) Social Care Unit(s) and One (1) Hub for

	the purposes of assisted living accommodation
'Social Care Unit(s)'	a Residential Unit(s) and Hub intended to be used in connection with the Scheme
"Transferee's Surveyor"	a chartered surveyor with not less than 10 years' experience
"ITC Trigger Date"	the date of any and each ITC Trigger Event
"ITC Trigger Event"	the completion of the transfer or lease relating to a Disposal
"Working Day"	any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday

## **13.2 Interpretation**

- 13.2.1 (a) The expression "Transferor" means Devon County Council or its successor in function. For the avoidance of doubt it does not include its successors in title
- (b) The expression "Transferee" includes their successors in title and assigns
- 13.2.2 Any covenant to do any act or thing includes an obligation to procure that it be done and any covenant not to do any act or thing includes a covenant not to allow such act or thing to be done by a third party
- 13.2.3 Where the Transferor or the Transferee for the time being are two or more individuals the terms of the Transferor and the Transferee include the plural number and obligations expressed or implied to be made by or with such party are deemed to be made by or with such individuals jointly and severally
- 13.2.4 Unless otherwise specified, a reference to legislation (including subordinate legislation) is to that legislation as extended, amended, modified, consolidated, or re-enacted from time to time and includes any instrument, order, regulation, permission, consent, licence, notice, direction, byelaw, statutory guidance or code of practice made or granted under such legislation.

## **13.3 Overage**

The Transferee with the intent to bind the ITC Property and each and every part thereof so far as legally may be for itself and its successors in title for the time being of the ITC Property or any part thereof hereby covenants with the Transferor as follows:-

13.3.1 Upon the happening of an ITC Trigger Event (and on each and every occasion of an ITC Trigger Event) during the Relevant Period the Transferee shall send notice by recorded delivery within two weeks of the happening of the ITC Trigger Event to the Transferor accompanied by:-

- (a) (i) a copy of the deed or document evidencing the consideration received by the Transferee for the Relevant ITC Disposal; or
- (ii) if higher, a reasoned valuation of the Open Market Value by the Transferee's Surveyor for the Relevant ITC Disposal;
- (b) evidence of the Cost Allowances (if applicable) reasonably and properly incurred by or on behalf of the Transferee in respect of the Relevant ITC Disposal; and
- (c) the Transferee's calculation of ITC Property Overage

13.3.2 If the Transferor reasonably disputes the Transferee's Surveyor's valuation or the Transferee's calculation of the ITC Property Overage, it must within 90 Working Days after receipt of the Transferee's notice (time being of the essence) serve a counter-notice on the Transferee stating the Transferor's valuation and/or calculation of the ITC Property Overage.

13.3.3 If the Transferor and the Transferee have not agreed the amount of the Overage within 30 Working Days after service of the Transferor's counter-notice either party may require that the amount of the ITC Property Overage be referred to the Expert for determination.

13.3.4 If the Transferor fails to serve a counter-notice within the 90 Working Day period referred to in clause 13.3.2 it is deemed to have accepted the Transferee's valuation and calculation of the ITC Property Overage.

13.3.5 If the Transferee fails to serve the notice required by clause 13.3.1 the Transferor may instruct a chartered surveyor (with not less than 10 years' experience) to undertake a reasoned valuation of the Open Market Value and;

- (a) such valuation is deemed to be the Open Market Value for the relevant ITC Trigger Event save in the case of manifest error or fraud; and
- (b) the reasonable cost of preparation of such valuation must be reimbursed by the Transferee to the Transferor as soon as reasonably practicable.

13.3.6 Upon any and each ITC Payment Date the Transferee must pay ITC Property Overage to Devon County

#### 13.4. Disposals

The Transferee covenants with the Transferor as follows:-

- 13.4.1 The Transferee will not make a Disposal (except an Exempt Disposal) without procuring on or prior to completion of such Disposal that the person in whose favour the Disposal is made executes and delivers to the Transferor a new Deed of Covenant (other than in respect of any sums which have been paid to the Transferor before such Disposal).
- 13.4.2 The parties apply to the registrar for entry of a restriction on the register of the title to the Property in standard form L:
- “No disposition of the registered estate shown edged blue on Plan No. 2 of the Transfer dated [ 20th December ] 2017 made between Devon County Council and Ivybridge Town Council (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the County Solicitor, Devon County Council, County Hall, Topsham Road, Exeter, Devon EX2 4QD or by a conveyancer acting on behalf of a statutory successor in function that the provisions of clause 13 of the Transfer dated [ 20th December ] 2017 made between Devon County Council and Ivybridge Town Council has been complied with or that they do not apply to the disposition”
- 13.4.3 The Parties agree that should the area of land identified as ITC Property be varied after the date of this Transfer, that the restriction referred above in clause 13.4.3 may be modified to reflect the area of ITC Property as so varied
- 13.4.4 Where all (if any) payments of ITC Property Overage in respect of any prior ITC Trigger Event have been paid and the Transferee complies with clause 13.4.1 the Transferee will cease to have any liability under this Clause 13 for any matter arising after the Disposal in respect of that part of the ITC Property which is the subject of the Disposal (but without prejudice to the Transferee's continuing liability for prior breaches).
- 13.4.5 The Transferor shall procure that the certificate described in the restriction set out in clause 13.4.2 shall be given in respect of a Disposal where the Transferee has complied with the provisions of clause 13.4.1 and clause 13.3 and in respect of an Exempt Disposal.

13.4.6 The Transferee must pay all reasonable and proper professional and other costs, charges, fees and expenses incurred by the Transferor arising out of the operation of this clause 13.4

13.4.7 The Transferor confirms that a Disposal of the ITC Property (or any part) to:

- (a) a company or charitable incorporated organisation whose objects are consistent with the objectives and purposes of ITC in connection with the ITC Property; or
- (b) a publicly funded body whose objectives and purposes are consistent with those of the ITC in connection with the ITC Property

shall not be an ITC Trigger Event provided:

- (i) the transfer price is for a sum equal to or less than £201,250.00; and
- (ii) the written consent of Devon County Council has first been obtained (such consent not to be unreasonably withheld or delayed); and
- (iii) the provisions of clause 13.4.1 has been complied with but the Deed of Covenant also includes a direct covenant with Devon County Council to observe and perform the same covenants on the part of ITC as set out in this transfer in respect of the ITC Property

13.4.8 The parties agree to act in good faith towards each other in a manner wholly consistent with the observance of their respective obligations under this Clause 13 and to achieve the objects and intentions of this Clause 13

### **13.5 Assignment by Transferor**

The benefit of the covenants contained in this Clause 13 may be assigned by the Transferor to a successor in function

### **13.6 Interest**

The Transferee covenants to pay Interest on any money payable pursuant to this Clause 13 calculated from the Payment Date until payment.

### **13.7 Expert**

Any dispute concerning any sums payable pursuant to this Clause 13 must be determined by the Expert in accordance with the following provisions:-

13.7.1 he will act as an expert and his decision will be

final and binding on the parties save in the case of manifest error or fraud;

- 13.7.2 he will be instructed to consider all written representations made on behalf of the Transferor and/or the Transferee which are delivered to him within such period or periods as he stipulates (having regard to the parties' wish for a quick determination);
- 13.7.3 he will be instructed to use all reasonable endeavours to give his decision as speedily as possible;
- 13.7.4 if he dies or refuses or is unable to act the procedure for appointment will be repeated as often as necessary;
- 13.7.5 his fees and the costs of his appointment will be payable by the parties in such proportions as he determines or in default of such determination by the parties equally;
- 13.7.6 if he is ready to make his determination but is unwilling to do so due to the failure of one party to pay its share of the costs in connection with the determination of the other party may serve upon the party in default of a notice requiring the party in default to apply such costs within 7 Working Days and if the party in default fails to comply with such notice the other party may pay the Expert the costs payable thereby the party in default and any amount so paid by the other party will be a debt due forthwith from the party in default to the other party together with Interest

#### **13.8 VAT**

The sums payable pursuant to this Clause 13 are exclusive of any VAT. Accordingly the Buyer will in addition pay any VAT chargeable or payable in respect of such sums.

#### **14. Variation**

In the event that the areas identified in this Transfer as Development Land and ITC Property respectively are varied after the date of this Transfer, the Parties will enter into a Deed of Variation to vary this Transfer in order that the provisions of this Transfer apply to the areas of land as varied. Each party shall bear their own legal and surveyors costs in respect of the Deed of Variation and within one month of completion of the Deed of Variation, the Transferee will send the Deed of Variation to the Land Registry for registration and shall provide a copy of the completed registration to the Transferor within one month of the registration being completed.