

HEADS OF TERMS TO COVER THE FUTURE DEVELOPMENT AND MANAGEMENT OF THE EXETER SCIENCE PARK AT REDHAYES PINHOE EXETER

STATUS OF THESE HEADS OF TERMS

By a Grant Agreement dated 2 April 2008 (“The Grant Agreement”) between the SWRDA and DCC. DCC received £18 million for the purchase of hectares of land at Redhayes Exeter to develop a Science Park. It was an obligation under the Grant that the SWRDA and DCC would enter into a further agreement for future development marketing and management of the Science Park.

This document sets out the principal terms and conditions on and subject to which the parties will be willing to enter into a detailed legally binding agreement for the future development and management of the Exeter Science Park (“**the Science Park**”) with the overall aim of establishing facilities for knowledge based, scientific, technological, engineering and medicine related enterprises (“**STEM**”) within the South West Region subject to the agreement and signing by the parties of a detailed legally binding agreement (“**the Agreement**”) and associated land transfers documents.

This document is not exhaustive and is not intended to be legally binding between the parties except where specifically stated.

It is intended that these Heads of Terms shall replace the Grant Agreement dated 28th March 2008.

NB any live/relevant conditions, rights and obligations in the 2008 grant agreement and MOU will be transferred into this agreement

1. THE PARTIES

Devon County Council (DCC)

Exeter Science Park Limited (ESPL)

Exeter University (the University)

Add the other shareholders as signatories

Homes and Communities Agency (the HCA) as successor to the South West Development Agency (“SWDRA”)

2. TIME LIMITS

- 2.1** *The Parties agree to negotiate in good faith with a view to executing the Agreement by October 2012 or earlier if required to meet the GPF loan agreement completion.*
- 2.2** *Any party may at any time by notice to the others, in writing but not by email, terminate negotiations for and entry into the Agreement, without having to give any reasons for doing so or incurring any liability to any other party*

3. KEY ASSUMPTIONS

These heads of terms and the negotiations around them are on the basis

- 3.1** That the ESPL is successful in its bid for a loan for £4.5 million from the Growing Places Fund
- 3.2** That the contractual arrangements and land transactions intended to be put in place by the parties have been confirmed as acceptable by HMRC in relation to the recoverability of VAT on Construction Costs and that they represent the most tax efficient way in dealing with SDLT and Corporation tax and state aid compliance.

4. PURPOSE OF AGREEMENT

- 4.1** *To set out the parameters whereby the parties agree to work towards the establishment of the Exeter Science Park.*
- 4.2** *To agree the various contractual arrangements and land transactions.*
- 4.3** *To establish and oversee a development fund (“the Development Fund”) to procure and fund future services, buildings and infrastructure within the Science Park*

- 4.4** *Ensure the successful operation of the Science Park through the delivery of a marketing strategy, the appointment of a commercial operator and the development and implementation of the ESPL Business Plans as defined in the Shareholders Agreement dated day of (“the Shareholders Agreement “)*
- 4.5** *To ensure the operation of a Gateway Policy (to be attached to the Agreement) in a clear and transparent way and so as to satisfy the UKSPA Science Park Definition*
- 4.6** *To manage the Growing Places Loan*
- 4.7** *To set out arrangements for the estate management of the Science Park*
- 5. Science Park centre LAND TRANSACTIONS AND CONTRACTUAL AGREEMENTS and Growing Places Fund**
- 5.1** *Subject to contract DCC agrees to the transfer at open market value to ESPL the plot of land comprising of hectares designated for the Science Park Centre which is to be the hub building of the Science Park. However DCC shall not be required to deal or otherwise transfer land in a way which would bring it into conflict with an agreement dated 2nd April and made between DCC, Eagle One MMill and Eagle One limited (“the Development Agreement”)*
- 5.2** *ESPL shall enter into a construction contract and associated agreements for the construction of the Science Park Centre. The funding for which shall come from the Growing Places Loan [or any other loan/ source of finance] and ESPL. Any costs over-run (up to a capped limit of XX) shall be borne by the ESPL Shareholders in the Specified Proportions as are set out in the Shareholders Agreement*
- 5.3** *DCC shall on behalf of and as agents for ESPL using the South West Construction Framework procure the construction contractor for the Science Park Centre*

- 5.4 ***On completion of the Science Park Centre ESPL shall grant a [xxx year lease] of the Science Park Centre to the University at a market rent.***
- 5.5 ***The University will enter into a series of short leases and licences with tenants of the Science Park Centre any such disposals to be agreed by ESPL in accordance with the Gateway Policy. Any income received by ESPL shall be paid into the Development Account***
- 5.6 ***The University shall appoint an operator for the Science Park Centre.***
- 5.7 ***move this clause to section 6 DCC shall continue to work with Eagle One Limited on the development of remaining site of the Science Park in accordance with the terms of the Development Agreement.***

6 Land disposals and DEVELOPMENT ACCOUNT

6.1 ***A Development Account will be established in the name of DCC. All proceeds from all future land sales rents service charges and other income received in respect of the Science Park and the Science Park Centre shall be paid into that account and used for:***

- a) ***Estate management and the property development costs of the Science Park***
- b) ***Repayment of the Growing Places Fund loan and other loans***
- c) ***The future development of the Science Park in accordance with the Business Plan developed by ESPL and the Gateway Policy. (To be reviewed and an amended version to form a schedule to the Agreement.***

These need to be expressed in priority order

For the avoidance of doubt any income generated by the company from its own activities will not be placed in the development account

7 GROWING PLACES FUND add this to section 5 which covers SPC and GPF and put this section at end of agreement

7.1 ESPL has applied through the Local Enterprise Partnership for loan funding of £4.5 million from the Growing Places Fund towards the construction of the Science Park Centre. It is anticipated that the loan funding will be repaid from the Development Account. In the event that there is any shortfall, any monies still owing to the Growing Places Fund shall be borne by the ESPL. Shareholders in the Specific Proportions as are set out in the Shareholders Agreement.

7.2 ESPL shall enter into and comply with all the terms and conditions of the Growing Places Fund and nothing in the Agreement shall make any other party to the Agreement liable in respect thereof. ESPL shall provide such indemnities as are required to the other parties to ensure compliance with the Growing Places Loan conditions.

7.3 DCC shall provide ESPL with access to the Development Account in order that ESPL can (to the extent that there are monies available in the Development Account earmarked for that purpose) fulfil its obligations to repay the Growing Places loan.

7.4 ESPL shall establish and maintain a separate account through which it will receive and manage the Growing Places Loan utilising the loan to pay the building costs and other costs associated with the construction of the Science Park Centre

8 MANAGEMENT OF THE EXETER SCIENCE PARK

8.1 ESPL shall work with DCC, Eagle 1 or such other developers as may be appointed by DCC to develop the remaining areas of the Science Park.

8.2 The Business Plans and marketing plan required to be produced by ESPL shall be produced within two months of completion of the Agreement

8.3 ESPL shall be given access to the Development Account to enable it to procure future services, buildings and infrastructure and to fulfil the Business Plans. Provided that no decision of ESPL shall require DCC to deal with or otherwise transfer any land or carry out any developments which bring it into conflict with the Development Agreement or the Grant Agreement. This is subject to funds being available – see comment above about priority order of call on funds in development account.

8.4 DCC shall carry out the Estate Management function for the Science Park (excluding the Science Park Centre) for the first five years from the date of the Agreement. These functions shall include:

- a) Management of the service charge**
- b) Provision and maintenance of the primary site infrastructure**
- c) Acquisition and disposal of land and associated transactions**
- d) Negotiating further development agreements**
- e) Appointing and managing advisors and consultants in relation to the above**

After the first five years the estate management function will transfer to ESPL.

8.5 add this clause to section 6 DCC shall be responsible for the disposal of land, leases or licences for all parts of the Science Park, excluding the Science Park Centre, in accordance with the Gateway Policy managed by ESPL and under the direction of ESPL. All disposals which DCC proposes that fall outside of the Gateway Policy shall be approved by ESPL.

Procedure for land disposals- DCC will act as the single point of contact when negotiating land disposals with third parties. This is on the understanding that ESPL and DCC will have agreed prior the terms to be proposed in accordance with the Gateway Policy

HOMES AND COMMUNITIES AGENCY

9.1 By entering into the Agreement the HCA as the successor body to the SWRDA acknowledge that DCC are not in breach of any of its obligations under the Grant Agreement and that it complies with the requirements of clause 17 of the Grant Agreement.

9.2 The Agreement shall contain step in rights in favour of the HCA in the event of the insolvency /dissolution of ESPL.

9.3 The Agreement shall replace the Grant Agreement which shall be extinguished on the signing and completion of the Agreement.

10 PRIORITY OF DOCUMENTS

10.1 In respect of DCC and in the event of any conflict between the Development Agreement and the Agreement the Development Agreement shall take priority over any obligations DCC may have under the Agreement

10.2 In respect of ESPL and in the event of any conflict between the Shareholders Agreement and the Agreement the Shareholders Agreement shall take priority over any obligations ESPL may have under the Agreement.

11 COMPLIANCE WITH LAW

11.1 IN CARRYING OUT ANY OF THEIR OBLIGATIONS UNDER THE AGREEMENT THE PARTIES SHALL ENSURE THAT THEY WILL COMPLY WITH ALL APPLICABLE EU AND UNITED KINGDOM PROCUREMENT RULES AND REGULATIONS AND SHALL INDEMNIFY THE OTHER PARTIES TO THE EXTENT THAT THE OTHER PARTIES HAVE SUFFERED LOSS AS A RESULT OF THE PARTIES' FAILURE TO SO COMPLY.

12 MISCELLANEOUS

12.1 *Each party is responsible for its own costs in connection with the Agreement whether or not it proceeds (including without limitation the preparation and negotiation of these Heads of terms, the Agreement and any documents contemplated by it).*

12.2 *This letter, and the negotiations between the parties in connection with the proposed Deal and all disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by English law.*

12.3 *The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Heads of Terms or its subject matter or formation (including non-contractual disputes or claims).*

12.4 *These Heads of Terms are for the benefit of the parties to it and is not intended to benefit, or be enforceable by, anyone else.*

The above terms in paragraph 11 are intended to be legally binding

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Signed by [NAME OF AUTHORISED OFFICER] for and on behalf of
DEVON COUNTY COUNCIL

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Signed by [NAME OF DIRECTOR] for and on behalf of EXETER
SCIENCE PARK LIMITED

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Signed by [NAME OF AUTHORISED PERSON] for and on behalf of the
University of Exeter

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Signed by [Authorised Person] for and on behalf of the Homes and
Communities Agency