

PENCILLYS
DATED

9 March

2011

- (1) EAST DEVON DISTRICT COUNCIL
- (2) BETTERMENT PROPERTIES (WEYMOUTH) LIMITED

SECTION 106 AGREEMENT

Land

At

**the former site of St Mary's Hospital Boxfield Road Axminster
and Land at Overdale Boxfield Road aforesaid**

THIS AGREEMENT is made the 9th day of March two thousand and eleven
BETWEEN

1. **EAST DEVON DISTRICT COUNCIL** of Council Offices Knowle Sidmouth EX10 8HL
("the Council")

and

2. **BETTERMENT PROPERTIES (WEYMOUTH) LIMITED** (Company Registration
Number 903201) whose registered office is at The Lupins Business Centre 1-3
Greenhill Weymouth Dorset ("the Owner")

1. **BACKGROUND :-**

- 1.1 The Council is the Local Planning Authority for the purposes of the 1990 Act for the area which includes the Property .
- 1.2 The Owner is the registered proprietor of the Property with Title Absolute under Title Numbers DN566125 and DN456686 subject to the entries disclosed on the Registers of the said Title but otherwise free from encumbrances
- 1.3 The Owner by the Planning Application applied to the Council for planning permission for the Development.
- 1.4 The Council has adopted policies requiring the provision of Affordable Housing as part of any substantial new housing development in East Devon and the Owner has agreed to provide Twenty-eight dwellings to satisfy that policy.
- 1.5 The Council in exercise of its powers under the 1990 Act has resolved to grant Planning Permission for the Development subject to completion of this Agreement which the Council considers is necessary for the satisfactory development of the Property.
- 1.6 The Owner has already entered into an Agreement with the Council dated 17 July

2009 dealing with its proposed development of the adjacent land which inter alia also deals with the Open Space requirement for the proposed development of the adjacent land and the same provisions in respect thereof are intended to apply to this Agreement save as modified herein

NOW THIS DEED WITNESSETH as follows:-

1. In this Deed unless the context otherwise requires the following words and expressions shall have the following meanings:-

1990 Act the Town and County Planning Act 1990 as amended by the Planning and Compensation Act 1991

2009 Agreement The Agreement entered into between the Owner and the Council dated 17 July 2009 as varied by a Deed of Variation between the same parties dated 17 November 2009

Access Rights The easements and other rights to be granted to the Council as described in the Transfer

Affordable Dwelling Each of the Twenty-eight dwellings comprising the Affordable Housing to be provided on the Property

Affordable Housing the units of Affordable Housing as determined under clause 4.1 of this Agreement to be provided and occupied within the meaning of Planning Policy Statement 3 or any guidance notes or circulars which may supersede them

Affordable Housing Provider a provider of Affordable Housing (other than an RSL) approved by the Council for the purposes of owning maintaining and managing the Affordable Dwellings (such approval not to be unreasonably withheld or delayed) or which has entered into a formal agreement with an RSL which

incorporates provisions enabling the RSL to manage the Affordable Dwellings on behalf of the Affordable Housing Provider on the same terms and in accordance with the same requirements for the provision of Affordable Housing as would have been implied if the RSL were the owner of the Affordable Dwellings

Affordable Rent Tenancy An assured tenancy (not being a shorthold tenancy) whereby an Affordable Dwelling is let to a designated person at a rent which does not exceed the Maximum Weekly Rent

Application the application for planning permission for the Development submitted by the Owner under the 1990 Act with number 09/2350/MFUL

Available for Occupation In respect of any dwelling means that the dwelling and its curtilage is complete and connected to services and fit for occupation as a residence

Commencement of the Development the carrying out of a material operation as defined in Section 56(4) of the 1990 Act pursuant to the Planning Permissions not being Exempt Works

Council Owner and Developer respectively includes their successors and assigns

Council's Agent The Council's Head of Economic Development and Property.

Deed of Covenant A Deed of Covenant to be entered into between the Owner and an intending purchaser of any dwelling on the Total Property

Development the development of the Property to provide seventy dwellings including roads, services and amenities in pursuance of the Planning Permission

Exempt Works the demolition of a building; site clearance; archaeological investigation; work for the purpose of assessing ground conditions or contamination; remedial action in respect of contamination and the erection of means of enclosure for the purpose of site security and/or the display of advertisements

Head of Housing and Social Inclusion The officer for the time being discharging the Council's housing functions

Local Connection a connection which shall be deemed to have been shown by someone demonstrating one or more of the following:

- a minimum continuous period of residence by a prospective owner or occupier of five years in the District immediately prior to the date on which a person is nominated for an Affordable Dwelling and whose existing accommodation is substandard or unsuitable for their present needs; or
 - employment in the District for a continuous period of at least five years; or
 - current employment in the District in an agricultural related activity, the emergency services, as a professional healthcare or social worker or as a qualified primary or secondary school teacher; or
- a person who has moved away but has strong

established and continuous links with the District by reason of birth or family and still have a parent or guardian living there.

Maximum Weekly Rent	a rent in accordance with the Housing Corporation's target rents or such other Housing Corporation rent regime which may be in force from time to time
Nomination Agreement	An agreement in a form which materially incorporates the terms of Schedule 2
Open Market Housing	the housing to be constructed on the Property other than the Affordable Housing
Open Space Land	That part of the Total Property shown outlined in green on the Open Space Plan which is intended to be laid out as public open space in relation to the Development of the Total Property
Open Space Plan	The Plan attached hereto and marked Open Space Plan
Open Space Works	The works to be carried out on the Open Space Land for the construction of the Public Open Space as defined in Schedule 4 of the 2009 Agreement
Person in Housing Need	a person who is registered on the Common Housing Register and is in housing need being circumstances where a household is currently occupying accommodation that is sub-standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation

appropriate to their circumstances on the open market.

Planning Permission

the planning permission in the form of the decision notices annexed as Schedule 1 granted by the Council pursuant to the Application and the expression Planning Permission shall include all approvals granted under that permission

Property

land at the former site of St Mary's Hospital Boxfield Road Axminster and land at Overdale Boxfield Road aforesaid more particularly edged red on the Site Plan and registered at HM Land Registry under Title Nos. DN566125 and DN456686

Public Art

The provision of Public Art in accordance with the requirements of Clause 7

Public Art Contribution

The sum of Five Thousand Pounds (£5000.00) to be paid by the Owner to the Council for a record of historical information to be presented in a format to be agreed by the Owner with the Council's Arts Development Officer

Public Subsidy

- (i) Funds from the Homes and Communities Agency the Council or any other public body for the provision of social housing; and
- (ii) The use of receipts from the sale or leasing of social housing

Shared

Ownership Lease

A lease (of not less than 99 years) of an Affordable Dwelling under which the tenant:

(i) purchases a minimum of 40 per cent of the equity of the dwelling with a right to purchase an increased percentage; and

(ii) pays a rent to the Owner in relation to the share of the equity retained by the Owner whereby the outgoings under the lease do not exceed the Maximum Weekly Rent under a scheme approved by the Council

Shared Ownership Unit

an Affordable Dwelling to be provided subject to a Shared Ownership Lease

Site Plan

the plan ref: 47:3:08 attached and so named

Social Rented Unit

an Affordable Dwelling to be provided subject to an Affordable Rent Tenancy

The Total Property

The Property and the land at the former site of St Mary's Hospital Boxfield Road Axminster more particularly shown edged red on the Open Space Plan

2. Covenants

The Owner and the Council each covenant with the other to perform their respective obligations under this Agreement

3. General Provisions

- 3.1 The covenants contained in this Agreement shall take effect upon the issue of the Planning Permissions by the Council or (if earlier) the Commencement of the Development
- 3.2 The planning obligations contained in this Agreement are enforceable by the Council
- 3.3 If the Planning Permissions should expire (without being renewed or extended) before the Development is commenced or shall at any time be revoked or modified by means of an opposed order under Section 97 of the 1990 Act this Agreement shall forthwith determine and cease to have effect
- 3.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permissions or any other permission granted pursuant to the Applications) granted (whether or not on appeal) after the date of this Agreement
- 3.5 This Agreement is a Local Land Charge and shall be registered as such
- 3.6 Nothing in this Agreement is or amounts to or shall be construed as a planning permission or approval
- 3.7 The County Court in whose district the Property is situate shall have full jurisdiction to hear and determine proceedings arising from or relating to this Agreement or for the enforcement of its terms or any of them
- 3.8 This Agreement is made pursuant to section 106 of the 1990 Act and section 111 of the Local Government Act 1972 and all other powers enabling the parties in that behalf with the intent to bind the interest of the Owner and its successors in title and all persons deriving title under the Owner to those parts of the Property such that all the obligations under this Agreement shall bind the Housing Land
- 3.9 Save as set out in Clause 3.10 below no person shall be liable for breach of any covenant contained in this Agreement occurring after he shall have parted with all interest in the Property or the part thereof to which the breach relates without prejudice to liability for any breach of covenant occurring prior to parting with such

interest and for this purpose an easement or the benefit of a restrictive covenant shall not be deemed to be an interest in the Property or any part of it.

3.10 For the purpose of this Agreement the Owner shall be deemed to have Commenced the Development pursuant to the Planning Permissions if it commences works referable to the Development amounting to a material operation as defined in Section 56(4) of the 1990 Act (not being Exempt Works or works for which planning permission is not required) on the Property whether or not:-

3.10.1 the Planning Permissions have been issued;

3.10.2 the Owner has satisfied all conditions precedent to commencement set out in the Planning Permissions;

3.10.3 those works are in accordance with the Planning Permissions.

3.11 Where in this Agreement the Owner is required to comply with any requirement prior to the Commencement of the Development or prior to first occupation of a specified number or proportion of dwellings the Owner shall either not Commence the Development or (as the case may be) not occupy, nor permit any other person to occupy any more than that specified number or proportion of dwellings (as the case may be) before the said requirement has been satisfied.

3.12 For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Agreement shall confer on any third party any right to enforce or any benefit of any term of this Agreement but for the avoidance of doubt it is further agreed that the exclusion of the application of the said Act shall not prevent all or any future successors in title to any of the parties to this Agreement from being able to benefit from or to enforce any of the obligations contained in this Agreement.

3.13 For the purposes of this Agreement:

3.13.1 the singular includes the plural and vice-versa

3.13.2 the masculine gender includes the feminine and neuter genders and vice

versa

3.13.3 references to persons include firms companies corporations authorities or other bodies and vice versa

3.14 Any reference in this Agreement to a statute or Act of Parliament shall be deemed to include reference to any subsequent statute or act re-enacting or replacing the same.

3.15 The Owner shall notify the Council in writing of the date of Commencement of the Development within 5 working days of its occurring and of the date of first occupation of one half of the Open Market Housing within ten working days of its occurring

4. Affordable Housing

4.1.1 The Owner shall construct twenty-eight Affordable Dwellings (as may be agreed between the Council and the Owner in writing) within the Site as part of the Development Proposal of which not less than seventeen shall be disposed of as Social Rented Units with the balance to be disposed of as Shared Ownership Units (unless otherwise agreed in writing by the Council) and thereafter the Owner shall transfer the completed Affordable Dwellings to an Affordable Housing Provider and the Affordable Dwellings shall be built to Eco Homes Standard Very Good

4.1.2 In relation to the Social Rented Units it is hereby agreed that the Maximum Weekly Rent shall be reviewed annually in accordance with the terms of the Affordable Rent Tenancy and on the basis that any increase shall be calculated in accordance with any increase in the Retail Price Index plus half a percent PROVIDED THAT in any event no increase shall result in the Maximum Weekly Rent exceeding 80% of the open market rental value of the respective property type from time to time

- 4.2 Subject to paragraphs 4.4 to 4.9 inclusive below the Owner shall not permit the Affordable Dwellings to be occupied other than by a Person in Housing Need
- 4.3 The Owner shall not occupy or permit to be occupied more than 50 per cent of the Open Market Dwellings until 50% of the Affordable Dwellings are made Available for Occupation by Persons in Housing Need
- 4.4 The Owner or the Affordable Housing Provider shall give three months written notice to the Council's Head of Housing and Social Inclusion of the date when the Affordable Dwellings (or any one of them) shall be Available for Occupation and any notice served under this paragraph shall include details of the offer made to an Affordable Housing Provider and state whether the Owner has exchanged contracts for the sale of the Affordable Dwellings (or any of the Affordable Dwellings) to an Affordable Housing Provider
- 4.5 The Head of Housing and Social Inclusion shall be invited to nominate in priority order and in writing within twenty working days of receipt of such notice up to four prospective Persons in Housing Need (in relation to each individual vacancy) to occupy any of the Affordable Dwellings subject to an Affordable Rent Tenancy but in relation to any Shared Ownership Unit the percentage of equity available to purchase shall be 50 per cent and the power to nominate prospective Persons in Housing Need will vest in South West Homes or any successor or equivalent body for that purpose PROVIDED THAT the cost of advertising any nominations either for Affordable Rent Tenancy or Shared Ownership under this clause shall be borne by the Owner or the Affordable Housing Provider
- 4.6 The Affordable Housing Provider shall within ten working days have the reasonable right of interview enquiry and (on reasonable grounds) ultimate rejection of any

prospective Person in Housing Need so nominated by the Head of Housing and Social Inclusion provided that:

4.6.1 in the event of rejection of all four Persons in Housing Need ; or

4.6.2 in the event that all four Persons in Housing Need nominated fail to accept (within five working days) or refuse an offer of tenancy or an offer to purchase made by the Affordable Housing Provider

the Affordable Housing Provider shall as soon as practicable so inform the Head of Housing and Social Inclusion and notify its reasons for rejection (if applicable) and in the case of any of the Affordable Dwellings in respect of which the Head of Housing and Social Inclusion has nominated such person in response to a notice served pursuant to paragraph 4.5 above the Affordable Housing Provider shall invite further nominations and the Head of Housing and Social Inclusion shall within five working days of notification nominate to the Affordable Housing Provider a further four prospective Persons in Housing Need in priority order and the Affordable Housing Provider shall within ten working days of such further notification inform the Head of Housing and Social Inclusion as to the identity of the Person in Housing Need (if any) who has accepted an offer to rent or purchase the Affordable Dwelling

4.7 In the event that the Owner or Affordable Housing Provider (as appropriate) is unable to allocate an Affordable Dwelling to a Person in Housing Need following the procedure set out in paragraph 4.6 within 3 calendar months of the service of notice pursuant to paragraph 4.6 the Owner or Affordable Housing Provider (as appropriate) shall offer to allocate that Affordable Dwelling to a person or persons nominated by the Head of Housing and Social Inclusion for the time being of the Council from the Council's list of persons of priority housing need within its administrative area but in the event that:

4.7.1 such nomination is not made within ten working days of notification by the Owner of a vacancy of the Affordable Dwelling; or

4.7.2 (in the case of a Social Rented Unit) no person nominated by the Council pursuant to this paragraph has entered into a tenancy agreement to occupy the Affordable Dwelling within fifteen working days of the date of nomination; or

4.7.3 (in the case of a Shared Ownership Unit) no person identified via South West Homes or any successor or equivalent pursuant to this paragraph or paragraphs 4.5 or 4.6 above has exchanged contracts for the purchase of the Affordable Dwelling within 3 months of nomination

then the Owner or Affordable Housing Provider (as appropriate) shall be entitled to allocate that Affordable Dwelling to any person with a Local Connection who is considered by the Owner or Affordable Housing Provider (as appropriate) to be in need of housing accommodation

4.8 In the case of a Shared Ownership Unit if the Owner or Affordable Housing Provider (as appropriate) shall have been unable to exchange contracts for the purchase of the Affordable Dwelling within 3 months of the Affordable Dwelling being offered to a person with a Local Connection the Owner or Affordable Housing Provider (as appropriate) shall give written notice to the Council's Head of Housing and Social Inclusion and the nomination procedures set out in Clauses 4.5 to 4.7 shall be applied in the same way save that the minimum equity available to be purchased shall be reduced to 40 per cent

4.9 If after a further period of 3 calendar months from the date of first marketing the Affordable Dwelling to those persons considered by the Owner or Affordable Housing

Provider (as appropriate) to be in need of housing accommodation pursuant to paragraph 4.7;

4.9.1 no tenant or purchaser of an Affordable Dwelling can be found to fulfil the criteria set out in this Schedule; or

4.9.2 no such tenant or purchaser has been willing or able (in the case of a Social Rented Unit) to enter into a tenancy agreement to occupy the Affordable Dwelling or (in the case of a Shared Ownership Unit) to exchange contracts for the purchase of the Affordable Dwelling

the Owner or Affordable Housing Provider (as appropriate) shall be free to dispose of that Affordable Dwelling by sale or otherwise and the Council shall upon request by the Owner or Affordable Housing Provider (as appropriate) issue a letter to the Owner or Affordable Housing Provider (as appropriate) discharging the relevant Affordable Dwelling from the obligations set out in this Schedule (such letter not to be unreasonably withheld or delayed) and at the same time note the register of Land Charges accordingly

Re-letting and Resale

4.10 In the case of a re-letting or resale of an Affordable Dwelling (i.e. the letting or sale of an Affordable Dwelling at any time after the dwelling has been first occupied by a residential occupier):

4.11 Before the sale or letting of an Affordable Dwelling (other than to an Affordable Housing Provider) the Owner and/or Affordable Housing Provider (as appropriate) shall give notice to the Head of Housing and Social Inclusion inviting the Head of Housing and Social Inclusion to nominate in priority order and in writing within ten working days of receipt of such notice four prospective Persons in Housing Need (in relation to each individual vacancy) to occupy any of the Affordable Dwellings

4.12 The Owner and/or Affordable Housing Provider (as appropriate) shall have the reasonable right of interview enquiry and (on reasonable grounds) ultimate rejection of any prospective Person in Housing Need so nominated by the Head of Housing and Social Inclusion provided that the Affordable Housing Provider shall as soon as practicable so inform the Head of Housing and Social Inclusion and notify its reasons for rejection (if applicable)

4.13 In the event that:

4.13.1 No nominations have been received by the Owner within ten working days of the date of the notice: OR

4.13.2 The Owner and/or Affordable Housing Provider (as appropriate) rejects all four persons nominated pursuant to paragraph 4.5 by the Head of Housing and Social Inclusion on reasonable grounds; OR

4.13.3 None of the persons nominated pursuant to paragraph 4.5 by the Head of Housing and Social Inclusion accept an offer to rent or purchase the relevant dwelling within ten working days of an offer being made; OR

4.13.4 None of the persons nominated pursuant to paragraph 4.5 by the Head of Housing and Social Inclusion have been willing or able (in the case of a Social Rented Unit) to enter into a tenancy agreement to occupy the Affordable Dwelling within ten working days of accepting an offer to occupy the dwelling or (in the case of a Shared Ownership Unit) to exchange contracts for the purchase of the Affordable Dwelling

within 3 months of accepting an offer to occupy the dwelling

then the Owner or Affordable Housing Provider (as appropriate) shall be entitled to allocate that Affordable Dwelling to any person with a Local Connection who is considered by the Owner or Affordable Housing Provider (as appropriate) to be in need of housing accommodation

4.14 after a further period of 2 calendar months from the date of first marketing the Affordable Dwelling to those persons considered by the Owner or Affordable Housing Provider (as appropriate) to be in need of housing accommodation pursuant to paragraph 4.11;

4.14.1 no tenant or purchaser of an Affordable Dwelling can be found to fulfill the criteria set out in this Schedule; or

4.14.2 no such tenant or purchaser has been willing or able (in the case of a Social Rented Unit) to enter into a tenancy agreement to occupy the Affordable Dwelling or (in the case of a Shared Ownership Unit) to exchange contracts for the purchase of the Affordable Dwelling

the Owner or Affordable Housing Provider (as appropriate) shall be free to dispose of that Affordable Dwelling by sale or otherwise and the Council shall upon request by the Owner or Affordable Housing Provider (as appropriate) issue a letter to the Owner or Affordable Housing Provider (as appropriate) discharging the relevant Affordable Dwelling from the obligations set out in this Schedule (such letter not to be unreasonably withheld or delayed) and at the same time note the register of Land Charges accordingly

5. Relaxation of Restrictions

5.1 After the date of any transfer of an Affordable Dwelling to an Affordable Housing Provider the affordable housing covenants in this Agreement shall not be enforceable against:

5.2 Any mortgagee or chargee in possession of any Affordable Dwelling exercising a power of sale in respect of default by an Affordable Housing Provider or by an occupier of an Affordable Dwelling or any person or body deriving title from such a mortgagee or chargee; or

5.3 Any person exercising the right to acquire; or

5.4 A lessee of a Shared Ownership Unit who has staircased to 100% and taken a transfer of the freehold reversion of the shared equity lease from the purchaser or from a mortgagee of the lessee

6. **Open Space Land**

6.1. The Owner shall carry out and complete the Open Space Works to the satisfaction of the Council's Agent

6.2 The Owner shall sell and the Council shall buy the Open Space Land for the sum of £1

6.3 Completion of the Transfer shall take place 28 days after the Council certifies that the Open Space Works have been satisfactorily completed and the Play Equipment has been provided (which in both cases shall be no later than 1 September 2012) and at the same time the Open Space Contribution shall be paid.

6.4 The Law Society's Standard Conditions of Sale Third Edition are incorporated in this Agreement for the purposes of this clause subject to the amendments set out in Schedule 3 Part A of the 2009 Agreement.

- 6.5 The Owner shall not occupy more than 21 of the Open Market Housing Units on the Total Property until the Council has certified that the Open Space Works have been satisfactorily completed.
- 6.6 The Owner shall complete the construction of the works required to allow the Council to exercise the Access Rights on or before the completion of the Open Space Works but it shall not be necessary for the Owner to lay the wearing course on any road to satisfy this requirement.
- 6.7 The Owner shall maintain the Open Space Land to the satisfaction of the Council for a period of twelve months after the date on which the Council certifies the Open Space Works have been completed to its satisfaction (whether or not during that period the Open Space Land is transferred to the Council) and during that period shall replace any plants or shrubs which fail or die. Prior to the transfer of the Open Space Land to the Council the Open Space Land shall be securely fenced and shall not be opened for use by the public
- 6.8 If the Owner does not maintain the Open Space Land to the Council's satisfaction as required under Clause 6.7 the Council may after giving the Owner 28 days written notice of the works it intends to carry out and the Owner failing to carry out the works within that period enter upon the land and carry out those works itself and recover the cost of those works from the Owner

7. **Public Art**

The Owner shall not occupy or permit to be occupied more than 75% of the Affordable Housing and the Open Market Housing on the Total Property until it has provided an appropriate site for Public Art secured access for the Council in relation to the provision of Public Art and paid to the Council the Public Art Contribution

8. The Council's Rights to Information

8.1 The Council may at any time serve notice on the Owner or any occupier of an Affordable Dwelling requiring that person to provide information as to the ownership and occupation of the dwelling and to produce any evidence reasonably required satisfying the Council that the dwelling is occupied by a Person in Housing Need.

8.2 Any request for information served under the above paragraph shall be deemed to be made under the provisions of Section 330 of the Act and the provisions of that section shall apply to any refusal to provide information so required or false statements made in reply thereto.

9. Deed of Covenant

The Owner shall require the Purchaser of every new dwelling constructed on the Total Property to enter into a Deed of Covenant and shall not complete the sale of any dwelling without doing so.

10. Council's Covenants

10.1 Forthwith upon the execution of this Agreement the Council shall grant the Planning Permission

10.2 Within 28 days of written notification by the Owner of the intended date of Commencement of the Development the Council shall appoint a suitably qualified person as the Council's Agent

10.3 The Council shall secure that the Council's Agent:-

10.3.1 expeditiously responds to all requests to carry out inspections or issue certificates or other documents required under this Agreement,

10.3.2 properly carries out his functions as Council's Agent.

11. Settlement Of Disputes

- 11.1 Any dispute arising out of the provisions of this Agreement shall be referred to a person having appropriate qualifications and experience in such matters ("the Expert") for the determination of that dispute PROVIDED THAT the provisions of Clause 11 shall be without prejudice to the right of any Party to seek the resolution of any matter relating to the Agreement to the Courts and/or in accordance with Section 106 (6) of the 1990 Act and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any Party to the Courts or to the provisions of Section 106 (6) of the 1990 Act for the resolution of any matter arising from the Agreement
- 11.2 The Expert shall be appointed jointly by the relevant parties to the dispute ("the Relevant Parties") or in default of agreement by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the Parties
- 11.3 The decision of the Expert shall be final and binding upon the Relevant Parties and the following provisions shall apply: -
- 11.3.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct
- 11.3.2 The Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision
- 11.3.3 The Expert shall be entitled to obtain opinions from others if he so wishes
- 11.3.4 The Expert shall make his decision within the range of any representations made by the Relevant Parties themselves
- 11.3.5 The Expert shall comply with any time limit or other directions agreed by the Relevant Parties on or before his appointment