



Investment  
Property Forum

# Streamlining transactions

Improving liquidity in commercial  
real estate

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# Streamlining transactions

## Improving liquidity in commercial real estate

The purpose of this guide is to speed up the process for selling and buying real estate in the United Kingdom<sup>1</sup> and minimise execution risk. This will increase the liquidity of real estate, whilst reducing uncertainty and wasted costs.

The guide seeks to set out what is best practice within the sector but it is acknowledged that each transaction will be different depending on the complexity of the particular property and the circumstances. At the start of the transaction the onus lies with the seller to streamline the process but, as the transaction progresses, there is an expectation that both seller and buyer will facilitate the sale and acquisition process.

This guide is the latest edition of the publication formerly known as 'Readiness for Sale', which was first published in 1996.

### 1 Key principles

#### 1.1 Preparatory work

1.1.1 The main way to streamline transactions is for a seller to have real estate ready for sale. This means that before a property is put on the market, the seller and its advisers do the necessary work to understand it, including its title and management, as well as the seller's debt secured on it.

1.1.2 This process should actually begin as soon as the seller acquires the property. This is often the optimal time as the seller will have just completed their own acquisition due diligence; where issues were identified during the acquisition, it can be more efficient and cost effective to deal with them immediately following completion.

*Get real estate ready for sale*

1.1.3 Sellers should evaluate this information and consider preparing a list of key issues that may have a material impact on the property's value. The seller can then work with its advisers to formulate a strategy for dealing with any such issues.

#### 1.2 Offering full package

This preparatory work should enable the seller to offer the prospective buyer a full package of legal documentation and management information from the outset. This information is usually provided on an electronic data site.

#### 1.3 Improving efficiency

1.3.1 This 'readiness for sale' may be adopted as an ownership strategy and can lead to material improvements in transaction times and costs and benefits in the form of better management information.

<sup>1</sup> The guide covers England and Wales. Whilst much of what is said in the guide equally applies to transactions in Scotland and Northern Ireland, Appendix 5 outlines some differences in Scottish and Northern Irish transactions.

1.3.2 It also avoids nasty surprises for either party during the buyer's investigations and, therefore, eliminates or minimises the opportunity for renegotiation of the agreed price.

## 1.4 Understanding the property

The seller needs to work with its advisers fully to understand its property and where possible obtain all necessary documents and other information before the property is put on the market.

## 1.5 Indirect property investment

1.5.1 Properties may be sold indirectly by the disposal of interests in a corporate structure. In such cases, it is helpful to address certain key terms at the outset. Additional heads of terms and considerations for corporate transactions are included at the end of Appendix 3.

1.5.2 Where the corporate history is complex, early preparation and disclosure of seller's financial, tax and corporate due diligence may reduce the time spent on buyer's due diligence and could accelerate the transaction timetable.

## 1.6 Distressed assets

Where a sale involves a distressed asset and the seller is a bank or insolvency practitioner, there may be missing information and this may lead to the buyer accepting greater risk, which may be reflected in the terms of the sale, including the price.

## 1.7 Flowcharts

Key steps flowcharts for asset and corporate transactions are in Appendix 1.

*Obtain all documents and information before marketing*

# 2 Seller's actions in preparing for sale

## 2.1 Documents for buyer

2.1.1 Marketing material should include a tenancy schedule. This should be carefully checked for accuracy as errors may lead to mispricing and delays.

2.1.3 Where relevant, use the IPF Non-Disclosure Agreement (NDA), which deals with the confidentiality, permitted disclosure and retention of the information provided. A copy of the IPF NDA is included in Appendix 6 and can also be downloaded from the IPF website ([ipf.org.uk/publications](http://ipf.org.uk/publications)).

*Check marketing material to avoid mispricing and/or delays*

2.1.2 Make available to the prospective buyer a list of relevant documents (see Appendix 4) that can be included on a data site.

## 2.2 Financing

Ensure internal procedures and banking requirements are in hand.

## 2.3 Consents

Check if any third party consents (such as from a superior landlord) are required.

## 2.4 Checklist

Appendix 2 is a checklist, which will assist sellers to co-ordinate the relevant materials and information – it is available in spreadsheet format from the IPF website (ipf.org.uk).

## 2.5 Data sites

- 2.5.1 Typically sellers will utilise an electronic data site (rather than producing a hard copy sales pack) which speeds up the due diligence process.
- 2.5.2 For larger and/or more complex transactions, it is recommended that a data site for documentation is set up. This needs to be kept up to date, e.g. removing historic data.
- 2.5.3 Ensure the site has a logical structure (with an accurate index or schedule) and highlight when new documentation has been added, making it clear what has been added.
- 2.5.4 Depending on the nature of the transaction, in the early stages of marketing, give interested parties access to the site (or key parts of it) in order to carry out due diligence in anticipation of making a bid.
- 2.5.5 Make the site available not just to the buyer's solicitors but also the buyer and its other advisers, tailoring access where appropriate.
- 2.5.6 Ensure all information on the site is accurate and legible, (e.g. copies of plans are properly coloured).
- 2.5.7 Overloading the site or updating it late in the due diligence process should be avoided. It should not be used as a way of 'burying bad news'.

*The data site needs a logical structure. Highlight when new material is added to the site*

## 2.6 Property structure

- 2.6.1 Where appropriate, make available a structure chart to the buyer. This will be particularly relevant on corporate transactions.
- 2.6.2 Assess the tax implications of the relevant structure for different classes of buyer.
- 2.6.3 Consider the impact of any third-party rights such as those of residential tenants in mixed-use schemes.

## 2.7 Property inspection

- 2.7.1 Where possible, arrange an inspection of the property at an early stage (including advisers) and investigate further any matters of concern.
- 2.7.2 It may be prudent to undertake a further inspection shortly before issuing any sales particulars to check there are no changes.

## 2.8 CPSEs and certificate of title

- 2.8.1 Provide replies to the latest versions of the commercial property standard enquiries (CPSEs) together with supporting information including, where relevant, energy performance certificates (EPCs), asbestos records, employment contracts, value added tax (VAT) information, etc. (detailed further in Appendix 4).
- 2.8.2 The seller's and buyer's solicitors should agree a procedure for dealing with additional enquiries. Having an accurate record of what is outstanding helps keep transactions on track.
- 2.8.3 A certificate of title may be provided by the seller's solicitors as an alternative to legal due diligence and replies to CPSEs, often where external debt finance is involved.

*Agree a procedure for dealing with additional enquiries*

## 2.9 Survey/reports

- 2.9.1 Consider which surveys and reports are supplied to the buyer and whether letters of reliance will be available. While the seller is not obliged to volunteer adverse information, it must, if it chooses to respond, give accurate answers to any enquiries raised by the buyer.
- 2.9.2 Ensure that measured areas are accurate and up to date (particularly where alterations have taken place) and that a letter of reliance is available to the buyer in respect of any pre-sale measured survey.
- 2.9.3 If there is any possibility that the land may be contaminated or at risk of flooding, it would be prudent for the seller to arrange for an up-to-date environmental audit or flood risk assessment before marketing the property (the results of which may require further investigation). This reflects the fact that certain investors will be very sensitive to exposure to liability for such risks.
- 2.9.4 Ensure that the terms of any consultant's appointment provide for their report to be readdressed to the buyer and/or the buyer's funder or for a letter of reliance to be provided to them. Usually the seller will bear the cost.
- 2.9.5 Ensure there is an up-to-date EPC and consider the asset rating. A sub-standard rating will need to be managed as it could make a property unlawful to let under the minimum energy efficiency standards (MEES).

*Ensure the buyer can rely on any consultants' reports*

## 2.10 Construction documentation

- 2.10.1 Consider the construction documentation to ascertain whether the buyer can benefit from it.
- 2.10.2 Make clear and set out in the sale contract which rights (if any) under the construction documentation can be passed to the buyer.
- 2.10.3 Paragraph 4.2 of Appendix 4 sets out what should be disclosed.

## 2.11 Planning

- 2.11.1 Provide details of relevant permissions including, where appropriate:
  - (a) satisfaction of planning conditions; and
  - (b) section 106 obligations and community infrastructure levy (CIL).
- 2.11.2 Paragraph 4.6 of Appendix 4 lists the planning information, which CPSEs anticipate being disclosed.

## 2.12 Management information

Disclose the management information specified in paragraph 2.4 of Appendix 4.

## 2.13 Tax considerations

- 2.13.1 **Capital gains tax** – ascertain any CGT liability on the seller's part or potentially inherited gains for a buyer and, where relevant, its implications for a corporate transaction.
- 2.13.2 **Capital allowances** – assess the value of any capital allowances. If any, agree their treatment with the buyer.
- 2.13.3 **VAT** – will the transaction be subject to VAT or is it intended to be a transfer of a going concern? See the information specified in paragraph 4.12 of Appendix 4.
- 2.13.4 **Stamp duty land tax** – SDLT and any SDLT on VAT (where payable).

<sup>2</sup> The Anti-Money Laundering and Sanctions Expert Working Group, a specialised working group of the IBA Regulation of Lawyers' Compliance Committee, is in the process of updating the IBA Anti-Money Laundering Forum (<https://www.anti-moneylaundering.org/Default.aspx>). This is a global database that assists regulated professionals in dealing with their responsibilities in connection with anti-money laundering legislation and provides a useful starting point.

## 3 Negotiation and agreement of heads of terms

### 3.1 Heads of terms

Key business points should be dealt with at the heads of terms stage. Appendix 3 is a starting point for heads of terms for an investment transaction on an asset basis. It also sets out some additional heads of terms and considerations for a corporate transaction.

### 3.2 Know your client (KYC) and anti-money laundering (AML)

3.2.1 Agree with the buyer the logistics of dealing with any KYC, AML or other regulatory requirements. Counterparties to a transaction often have their own requirements and policies.<sup>2</sup>

3.2.2 Agree with the buyer the logistics of dealing with offshore entities.

3.2.3 Indirect property transactions often involve offshore targets. In this situation, identify at an early stage whether the buyer intends to take over or replace the existing local administration arrangements. Offshore administrators have their own AML and on-boarding requirements for new owners which can be time-consuming.

3.2.4 Agree the form of any required opinion letters or other documentation for offshore sellers or buyers. Such opinions are given by a solicitor qualified in the relevant jurisdiction and are normally required (and typical for bank financing).

### 3.3 Exclusivity

3.3.1 Heads of terms will sometimes provide an exclusivity period during which the seller will give the buyer a fixed period of time to carry out its due diligence. Whilst heads of terms indicate serious intent to enter into a transaction, and will give the buyer a degree of comfort, they are not generally legally binding.

3.3.2 Certain provisions may be stated to be legally binding (e.g. confidentiality, each party paying its own costs and exclusivity). Sometimes the seller and/or the buyer want a more formalised exclusivity agreement and in those situations consider using the IPF Exclusivity Agreement, a copy of which is included in Appendix 6 and also available on the IPF website ([ipf.org.uk/publications](http://ipf.org.uk/publications)).

### 3.4 Agreed timelines

3.4.1 It is important to have realistic timelines, e.g. for the carrying out of surveys, due diligence, satisfaction of conditions (such as obtaining board approvals) and confirmation of the buyer's financing arrangements, together with targets for exchange and completion. It can be helpful for the parties to expressly agree when 'the clock has started ticking' for the purpose of such milestones and targets (generally triggered on receipt of the full legal pack or when a data site is made available). Whilst timelines can sometimes slip, they are helpful in managing the progress of a transaction and maintaining momentum.

3.4.2 Some typical timeframes are set out in the flow charts in Appendix 1. However, in each case it is up to the parties to the transaction to negotiate the timelines they are happy with.

### 3.5 Negotiating documents

The seller and the buyer should ensure prompt instructions are issued to advisers to enable timely issuance of documents and negotiations.

## 4 Buyer's actions

Immediately post-sale, the buyer should carry out the actions set out in paragraph 1.1.2 on page 1. This is an efficient and cost-effective way to keep the property ready for sale in the future.

# Appendix 1:

## Key steps flowchart for an asset transaction



<sup>1</sup> The timeframe for the seller's pre-marketing stage may be longer for more complex assets, e.g. a shopping centre.





<sup>2</sup> Exchange and completion can be simultaneous on asset transactions.

<sup>3</sup> VAT registration, VAT election, section 198 election, non-resident landlord requirements, etc.

# Key steps flowchart for a corporate transaction



<sup>4</sup> The timeframe for the seller's pre-marketing stage may be longer for more complex assets and/or complex corporate structures.



<sup>5</sup> Often exchange and completion is simultaneous on corporate transactions.

# Appendix 2:

## Readiness for sale checklist

This checklist is available in spreadsheet format to download from the IPF website: [ipf.org.uk/publications](http://ipf.org.uk/publications).

Tick

| Applicable | Available | Complete   |
|------------|-----------|--|
|            |           | <b>1. Marketing material</b>   |
|            |           | 1.1 Brochure or particulars  |
|            |           | 1.2 Site plan  |
|            |           | 1.3 Floor plans (and independent measured areas)   |
|            |           | 1.4 Building specification   |
|            |           | 1.5 Verified tenancy schedule  |
|            |           | <b>2. Legal title and searches</b>   |
|            |           | 2.1 Land Registry official copies and plans  |
|            |           | 2.2 Relevant title documents   |
|            |           | 2.3 Headlease  |
|            |           | 2.4 Tenancy documents  |
|            |           | 2.5 Missing documents  |
|            |           | 2.6 Third party consents   |
|            |           | 2.7 Defective title insurance policies   |
|            |           | 2.8 Searches   |
|            |           | 2.9 Replies to commercial property standard enquiries (CPSEs) or certificate of title from seller's solicitors |
|            |           | 2.10 Any consents/authorities needed for transaction   |
|            |           | <b>3. Management information</b>   |
|            |           | 3.1 Managing agents' contact details   |
|            |           | 3.2 Most recent rent and service charge demands  |
|            |           | 3.3 Payment history and confirmation of status where consistent late payment                                   |
|            |           | 3.4 Arrears schedule and confirmation of status of all arrears   |
|            |           | 3.5 Service charge:  |
|            |           | 3.5.1 Current year's budget  |
|            |           | 3.5.2 Current year's apportionment (showing percentage and areas)  |
|            |           | 3.5.3 Full details of caps and fixed service charge, RPI uplift calculations                                   |
|            |           | 3.5.4 Last 3 years' service charge accounts  |
|            |           | 3.5.5 Reserve fund statement – and confirmation if it is allocated   |

Tick

| Applicable | Available | Complete |   |
|------------|-----------|----------|---|
|            |           |          | 3.5.6 Expenditure to date   |
|            |           |          | 3.5.7 Service charge collected to date  |
|            |           |          | 3.5.8 Details of major service charge expenditure in the last 3 years and any anticipated expenditure |
|            |           |          | 3.6 Insurance certificates  |
|            |           |          | 3.7 Last insurance valuation  |
|            |           |          | 3.8 Insurance claims history and details of any outstanding claims                                    |
|            |           |          | 3.9 Details of any disputes   |
|            |           |          | 3.10 Ongoing management transactions  |
|            |           |          | 3.11 Schedule of maintenance/service contracts (including notice periods)                             |
|            |           |          | 3.12 Details of employees where TUPE applies  |
|            |           |          | <b>4. Design and construction works undertaken</b>  |
|            |           |          | 4.1 Building contract and all appendices/specifications   |
|            |           |          | 4.2 Consultant details and professional appointments  |
|            |           |          | 4.3 Warranties/'Third Party Act' rights/guarantees/bonds  |
|            |           |          | 4.4 Status of contractor/consultants  |
|            |           |          | 4.5 Details of consultants' professional indemnity insurance  |
|            |           |          | 4.6 Practical completion/making good defects certificates   |
|            |           |          | 4.7 Health and safety file  |
|            |           |          | 4.8 Operation and maintenance manuals   |
|            |           |          | 4.9 Snagging outstanding  |
|            |           |          | 4.10 Payments (retention) outstanding   |
|            |           |          | <b>5. Utilities</b>   |
|            |           |          | 5.1 Supply contracts  |
|            |           |          | 5.2 Tariff arrangements   |
|            |           |          | 5.3 Any information regarding energy use  |
|            |           |          | <b>6. Planning/statutory agreements/infrastructure</b>  |
|            |           |          | 6.1 Planning applications   |
|            |           |          | 6.2 Planning permissions  |
|            |           |          | 6.3 Approval of reserved matters/conditions   |
|            |           |          | 6.4 Confirmation of established use and certificate where relevant                                    |
|            |           |          | 6.5 Any planning agreements (section 106/highways/infrastructure) or community infrastructure levy    |

Tick

| Applicable | Available | Complete |   |
|------------|-----------|----------|---|
|            |           |          | <b>7. Physical condition/environmental</b>  |
|            |           |          | 7.1 Asbestos survey and management plan   |
|            |           |          | 7.2 Measured/structural/mechanical and electrical surveys                               |
|            |           |          | 7.3 Environmental report  |
|            |           |          | 7.4 Environmental licences/notices  |
|            |           |          | 7.5 Energy performance certificate (EPC)  |
|            |           |          | 7.6 Fire risk assessment  |
|            |           |          | <b>8. Rates/outgoings</b>   |
|            |           |          | 8.1 Rating assessments  |
|            |           |          | 8.2 Any correspondence/appeals  |
|            |           |          | <b>9. Tax/financial</b>   |
|            |           |          | 9.1 Any capital allowance elections   |
|            |           |          | 9.2 Details of allowances claimed   |
|            |           |          | 9.3 VAT registration details  |
|            |           |          | 9.4 Option to tax and acknowledgement   |
|            |           |          | 9.5 Confirmation of anticipated transfers of business as going concern (TOGC) treatment |
|            |           |          | 9.6 Stamp duty land tax certificates  |
|            |           |          | 9.7 Any security and arrangements for discharge   |
|            |           |          | <b>10. Corporate transactions</b>   |
|            |           |          | 10.1 Constitutional documents   |
|            |           |          | 10.2 Company accounts   |
|            |           |          | 10.3 Any corporate or commercial agreements   |
|            |           |          | 10.4 Business assets/intellectual property  |
|            |           |          | 10.5 Details of any litigation  |
|            |           |          | 10.6 Tax computations and returns   |

# Appendix 3:

Listed below are recommended items to be included in heads of terms for an investment property sold on an asset basis. Not every item will be appropriate to each transaction.

The first draft of any heads of terms will usually be produced by the seller/its advisers. The buyer will have an opportunity to negotiate the terms but the points that can be negotiated will depend on the particular circumstances of each transaction.

## Recommended topics for inclusion in heads of terms

### 1. Parties

Names and addresses of the seller and buyer.

### 2. Guarantor

Name and address of any guarantor.

### 3. Know your client

Requirements to be satisfied within specified timeframe for buyer and any guarantor.

### 4. Property

Details with plan if necessary and where leasehold, brief terms of lease (e.g. length, rent etc.).

### 5. Price

Including brief details of any mechanism for price adjustment. Consider whether the price should be expressed as a monetary amount only, or whether a net initial yield is also shown. This may provide clarity if the net revenues are likely to change during the due diligence process.

### 6. Deposit amount

It will normally be assumed that the deposit is to be paid to the seller's solicitors as stakeholder (so held by the solicitors until completion); if the deposit is to be held as agent (so it can be paid to the seller at exchange), this should be stated.

### 7. Financing

Outline the buyer's financing arrangements and source of funds (where applicable).

### 8. VAT

State whether or not the sale is subject to VAT or a transfer of a going concern.

### 9. Timing

The proposed timetable for the disposal. In a simple case, it may be sufficient to detail the proposed date for exchange of contracts and the proposed date for completion. In a more complex case, it may be advisable to include a more detailed timetable for board approvals, survey reports, environmental investigations, the delivery of draft documents, dealing with enquiries, principal meetings to resolve issues, etc.

### 10. Consents

Responsibility for obtaining landlords' or other necessary consents.

### 11. Surveys

Agreed timetable for carrying out of measurement survey(s) etc, the buyer's survey(s) and (if applicable) environmental/flooding investigations and provision of any reliance letters.

## **12. Occupational leases**

If the property is sold subject to leases or other occupancies, brief terms (e.g. length, rent etc). Reference could be made to the marketing particulars or a copy of the latest tenancy schedule appended to the heads of terms. Sometimes if there are rental voids, rental top ups are included.

## **13. Apportionment**

Basis of apportionment of rents (whether annual or quarterly) and whether the seller or buyer is to receive rent for the day of completion.

## **14. Arrears**

Basis of dealing with arrears, i.e. which party bears the arrears initially.

## **15. Management**

Buyer controls between exchange and completion.

## **16. Capital allowances**

Availability of capital allowances, and any commitment on behalf of the seller to provide relevant information to assist the buyer with future claims.

## **17. Existing contracts**

Continuation or termination of contracts with managing agents, staff, and suppliers of services (cleaning, security, waste disposal, etc.), and (where applicable) responsibility for any termination costs.

## **18. Construction**

Where applicable, details of contracts relating to the design and construction of the property (or any major alterations or refurbishment), with a statement as to whether the benefit is to be assigned to the buyer or whether direct warranties or 'Third Party Act' rights are to be provided. Responsibilities and timetable for the provision of assignments/warranties/rights.

## **19. Legal due diligence**

Indicate whether the seller is to deduce title or its solicitors are to provide a certificate of title.

## **20. Confidentiality**

Include provisions where a non-disclosure agreement (NDA) has not been signed. A copy of the IPF NDA is included in Appendix 6. NOTE: Confidentiality provisions/NDAs are not subject to contract.

## **21. Exclusivity**

If applicable, with details of the period. A copy of the IPF exclusivity agreement is included in Appendix 6. NOTE: Exclusivity agreements are not subject to contract.

## **22. Agents**

Details of the parties' investment agents.

## **23. Solicitors**

Details of the parties' solicitors.

## **24. Special terms**

Any special terms or conditions agreed in relation to the particular transaction e.g. board approval.

## **25. Subject to contract**

Acknowledgement that the heads of terms are subject to contract with the exception of confidentiality and exclusivity, as mentioned above.



## Additional heads of terms for a corporate transaction:

1. How the sale will be structured (including full details of the target entity and of the shares/units/interests to be sold/acquired);
2. Whether exchange and completion are simultaneous or split. If split, any terms agreed with respect to the buyer's remedies for pre-completion breach of warranty or interim management provisions;
3. Warranties and tax covenant (if any) to be provided by the seller and on what basis (e.g. standard and reasonable taking into account structure and jurisdiction; whether to be provided at exchange and/or at completion; total cap on liability; whether there will be warranty and indemnity (W&I) insurance, which party will bear the cost of the W&I insurance and which party bears the risk if the W&I insurance does not cover all matters);
4. Any agreed specific accounting policies to be adopted in the preparation of the completion accounts, such as the treatment of deferred tax assets and liabilities; and
5. Any agreed specific transaction timetable milestones, e.g. agreeing estimated completion accounts and delivery of the draft disclosure letter.

## Further considerations for a corporate transaction:

1. Nature of target and structure;<sup>1</sup>
2. Local jurisdictional requirements which may have an impact on the transaction timetable or closing process;
3. How the purchase price is to be calculated;<sup>2</sup>
4. Ascertaining any embedded tax liability and considering the impact on price of any latent capital gains tax;
5. Where net asset value is being used to determine the purchase price, the process for producing and agreeing the completion accounts and the accounting policies to be adopted (even where the property has a fixed value, specific adjustments may need to be made to take account of the assets and liabilities of the target);
6. Any apportionments/adjustments to be provided for outside the completion accounts, for example, arrears and service charge;
7. Whether the seller is to stand behind any warranties given, or the buyer will be expected to take out W&I insurance;<sup>3</sup>
8. Whether the seller will provide a tax covenant;<sup>4</sup> and
9. Existing administration arrangements and whether these are to be left in situ or terminated. If left in situ, the administrator's on-boarding requirements in relation to the buyer.

<sup>1</sup> A number of different vehicles are commonly encountered on corporate transactions, but it is helpful to make a basic distinction between corporate entities having separate legal personality, such as companies, and tax transparent vehicles such as unit trusts and limited partnerships. The tax and structuring considerations are different for each.

<sup>2</sup> Commonly this will be the net asset value of the target immediately prior to completion calculated by reference to the headline property price, with any existing bank/shareholder debt being separately repaid by the buyer.

<sup>3</sup> The seller may commence initial discussions with a broker in respect of W&I insurance in order to speed up this process for the buyer.

<sup>4</sup> An indemnity from the seller for any pre-completion tax liabilities in the target company would be usual on sales of corporate structures and is often given on W&I insured sales of tax transparent vehicles, such as unit trusts.

# Appendix 4:

**Copy documents to be provided for the complete commercial property information package with regard to title/commercial property standard enquiries (CPSEs).**

**Confidential financial information that is not of relevance to the buyer may be deleted from the copy documents included in the package.**

## 1. Title

### 1.1 Registered title<sup>1</sup>

- 1.1.1 Official copies of the registered title and title plan.
- 1.1.2 All documents referred to in the registers (other than mortgages which are to be discharged on completion).

### 1.2 Rights adversely affecting or benefiting the property

- 1.2.1 Documents, plans and consents under any of the following:
  - (a) covenants;
  - (b) agreements;
  - (c) easements;
  - (d) restrictions; and
  - (e) any other rights.
- 1.2.2 Those that are registered should be contained in the title papers mentioned at paragraph 1.1 above. However, many are unregistered or informally arranged and they also have to be disclosed by supplying evidence as to entitlement with a plan showing the area affected.

### 1.3 Title policies

Any policy documentation for title indemnity insurance benefiting the property. This should include any correspondence or documentation relating to the policy and any claims made or instances of insurance being refused. Check insurer has no problem with disclosing existence of policy to people accessing data site.

## 2. Leases

### 2.1 Seller's leasehold and other occupational interests

- 2.1.1 All leases, authorised guarantee agreements, licences, concession agreements, franchise agreements and other documents conferring occupational interests on either the seller or any third party including official copies and title plans of any registered leases.<sup>2</sup>
- 2.1.2 Details of any informal (undocumented) interests under which the seller or any third party occupies property.
- 2.1.3 Any break notices and other notices served or received by the seller either as a tenant or a landlord in respect of any third party occupational interests.

<sup>1</sup> Occasionally there is an unregistered title: If so provide a full 'epitome' (summary) of the title deeds with copies of all relevant deeds (including complete and correctly coloured plans), and any necessary statutory declarations as to boundaries, defective title, missing deeds, etc.

<sup>2</sup> Carefully check any tenancy schedule is accurate to avoid repricing and delays.

- 2.1.4 Any rent deposit, guarantee or other security given by the seller as a tenant or to the seller as a landlord in respect of the obligations of any person having an occupational interest.

## 2.2 Rent review

- 2.2.1 All completed rent review memoranda and all rent review notices served or received.
- 2.2.2 Sufficient details of any current rent reviews.
- 2.2.3 Details of any area measurements agreed or determined for the purpose of any previous rent reviews of any third party occupational interests.
- 2.2.4 All determinations by a third party to settle any review.
- 2.2.5 All turnover rent accounts and calculations.

## 2.3 Licences

All licences for:

- 2.3.1 assignment;
- 2.3.2 underletting;
- 2.3.3 alterations, including all relevant drawings and specifications;
- 2.3.4 change of use; and
- 2.3.5 any other consents and variations.

## 2.4 Management information<sup>3</sup>

- 2.4.1 Full details of current rents and licence fees, including details of any special or temporary concessions negotiated with occupiers.
- 2.4.2 Service charge accounts for the last three accounting years, and, if possible, draft or working accounts for the current service charge year.
- 2.4.3 Schedule of rent and service charge arrears and, if possible, details of tenants' payment record over the last four rent quarters.
- 2.4.4 Details of:
- (a) insurance premiums paid and premium recovery from tenants (if not shown in the service charge accounts);
  - (b) any outstanding insurance claims relating to the reinstatement of damage or destruction caused by insured risks, and/or relating to loss of rent;
  - (c) current breaches of covenant by tenants;
  - (d) all management and maintenance contracts;
  - (e) any repair or refurbishment work being undertaken or proposed;
  - (f) any proposed capital improvements to the properties; and
  - (g) any employees of the seller or the managing agents whose contracts of employment will be transferred to the buyer under the TUPE Regulations,<sup>4</sup> with their periods of employment, salaries and pension arrangements.<sup>5</sup>

<sup>3</sup> Carefully check any tenancy schedule is accurate to avoid repricing and delays.

<sup>4</sup> The Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE Regulations').

<sup>5</sup> Ensure compliance with data protection legislation.

### 3. Searches

- 3.1 Replies to local searches and enquiries (likely to need updating if more than three months old).
- 3.2 Recent replies to all other relevant searches and enquiries of official bodies, utility companies, etc.

### 4. Further information required

There are several types of CPSE, however replies to CPSE 1 should be provided for almost all commercial property transactions, e.g. sale of freehold interests, assignments and grants of leasehold interest etc. The remaining categories are for the most part supplemental and replies to each should also be given for the following transactions:

CPSE 2: when the commercial property in question is subject to tenancies;

CPSE 3: for commercial property on the grant of a new lease; and

CPSE 4: for commercial property on the assignment of a lease.

These replies should include sufficient details to satisfy the buyer's solicitors' need for relevant information and the following additional copy documentation should be provided under CPSE 1 (where relevant).

#### 4.1 Boundaries, party walls and right to light

- 4.1.1 Agreements for the maintenance of any boundary feature, e.g. walls, fences, ditches, hedges etc.
- 4.1.2 Plans showing any parts of the property situated beneath or above adjoining premises and copies of any relevant licences, e.g. over-sailing licences.
- 4.1.3 Any notices, counter-notices, awards and agreements in relation to party structures under the Party Wall etc. Act 1996 or otherwise.
- 4.1.4 Any orders either granted for a third party to go onto the property or for the seller to access neighbouring land.
- 4.1.5 Agreement for the release of any right to light.

#### 4.2 Design and construction

- 4.2.1 The building contract and associated documents.
- 4.2.2 The contracts (and sub-contracts) of appointment of the architects, structural engineers, mechanical and electrical engineers and other professionals with design responsibilities or direct liability to the employer.
- 4.2.3 All bonds, guarantees, warranties, 'Third Party Act' rights and insurance policies that are subsisting to support the obligations of the persons mentioned in paragraphs 4.2.1 and 4.2.2 that are to be assigned to the buyer or enforced for its benefit.
- 4.2.4 Details of contractor's and professional team's professional indemnity insurance.
- 4.2.5 Certificates of practical completion, certificates of making good of defects and final certificates under the building contract. Include details of any retention.
- 4.2.6 Details of any disputes or arbitrations in relation to such design and construction.

#### 4.3 Plant and machinery and fixtures

- 4.3.1 Service and/or maintenance contracts, agreements, guarantees, warranties, insurance, bond etc. relating to any plant, machinery, fixtures and loose equipment.
- 4.3.2 The most recent maintenance manuals and reports for all such plant, equipment etc.

#### 4.4 Utilities

4.4.1 All supply contracts for the property and other relevant documents.

4.4.2 Any information regarding the energy use.

#### 4.5 Fire safety

Any agreements that authorise any emergency escape routes over any land other than the property or a public highway.

#### 4.6 Planning and building regulations

4.6.1 The following consents including conditions:

- (a) relevant planning permission;
- (b) approval of reserved matters;
- (c) building regulations approval;
- (d) building regulations completion certificate;
- (e) self-certification;
- (f) listed building consent and a copy of the listing particulars;
- (g) conservation area consent;
- (h) tree preservation orders; and
- (i) display of advertisements consent.

4.6.2 Any refusals and appeals in relation to the above and applications leading to the permissions/refusals, with relevant drawings, should also be included.

4.6.3 The following certificates:

- (a) established use certificate;
- (b) certificate of lawfulness of existing use or development; and
- (c) certificate of lawfulness of proposed use or development.

4.6.4 Any existing or proposed section 106 agreements or community infrastructure levy.

4.6.5 Letters or notices under any planning legislation which have been given or received in relation to the property.

4.6.6 Any other relevant planning information including pending applications (with plans).

#### 4.7 Statutory agreements, requirements and infrastructure

4.7.1 Any agreements relating to the property, its services and off-site works entered into with any highway, public authority or utilities provider.

4.7.2 Plans and drawings identifying such infrastructure, services and other matters mentioned at paragraph 4.7.1 above.

4.7.3 Any consultants' reports on the infrastructure and services to and within the property including all electrical, telephone and gas systems (if available).

4.7.4 Details of any stopping up, deviation or other change in the highway adjacent to the property or any road systems leading to or in the vicinity of the property.

4.7.5 Any other licences or consents required to authorise any activities currently carried out at the property, including any required under local legislation (e.g. London Building Act 1930).

4.7.6 A valid energy performance certificate (EPC) and the recommendation report (required to be commissioned/produced before marketing).

## **4.8 Physical condition and environmental issues**

- 4.8.1 The most recent asbestos survey or assessment.
- 4.8.2 A written plan to manage the asbestos.
- 4.8.3 Any measured and/or structural surveys.
- 4.8.4 All environmental reports prepared in relation to the property.
- 4.8.5 Any mechanical and electrical (M&E) reports.
- 4.8.6 Notices, licences and authorisations given in relation to the property under environmental law by a competent environmental authority and any details of applications pending.
- 4.8.7 Consents, agreements and correspondence in relation to how activities are currently carried out at the property, including storage of materials, water abstraction, discharges, emissions and management of waste.
- 4.8.8 Insurance policies specific for contamination or other environmental problems affecting the property.
- 4.8.9 Notices, correspondence, legal proceedings or disputes regarding perceived environmental problems affecting the property.

## **4.9 Occupiers and employees**

Any current contracts of employment, service agreements and (if applicable) service occupancy agreements for employees engaged in respect of the building.<sup>6</sup>

## **4.10 Insurance**

Any existing building insurance documentation that will remain in place post-completion or is to be relied upon by the buyer until completion, including schedule of insurance cover and relevant details of the insurance not covered by the schedule.

## **4.11 Capital allowances<sup>7</sup>**

- 4.11.1 Any election notices and details of any allowances claimed by the seller.
- 4.11.2 Any supporting evidence such as tax computations and/or capital allowances reports.

## **4.12 VAT**

- 4.12.1 Details of the seller's VAT registration number and group (if applicable).
- 4.12.2 Any option to tax and the notice of the option given to HM Revenue & Customs (HMRC).
- 4.12.3 Details as to whether or not the transfer of the property is intended to be treated as a transfer of a going concern.

## **4.13 Other licences, consents etc.**

All other relevant permits, licences, consents, approvals, certificates, applications, registrations and declarations in respect of the property (including any intellectual property and domain names) not covered above and details of any refusals and appeals.

## **4.14 Stamp duty land tax (SDLT)**

If any payment of SDLT was deferred, a copy of the original land transaction return and the certificate issued by HMRC certifying that the transaction was notified to them.

<sup>6</sup> Ensure compliance with data protection legislation.

<sup>7</sup> A capital allowances election is generally required to pass capital allowances to a buyer. This includes, if the seller has not claimed capital allowances, providing the buyer with a copy of any election entered into by the previous owner. Sellers should ensure they retain and have available copies of any such elections.

## 4.15 Some additional information that may be required on selling interests in corporate vehicles

### 4.15.1 Constitutional documents

- (a) Company searches on the seller and the target company.
- (b) Constitutional documents of the target company, i.e. memorandum and articles of association.
- (c) Statutory registers and minute books of the target company.
- (d) Copies of all resolutions, returns and documents required by law to be filed by the target company at the local registry.
- (e) Structure chart.

### 4.15.2 Finance documents/information to be supplied

- (a) The target company's statutory accounts for the last three financial years.
- (b) The target company's management accounts for the current financial year.
- (c) Details of the finance arrangements relating to the target company.
- (d) All shareholder loans, financing agreements, facilities, security documents, debentures, bank accounts, bank mandates and the latest bank account statement.
- (e) All guarantees or indemnities given in respect of the target company by third persons (including other members of the seller's group) or by the target company, including intra-group arrangements.

### 4.15.3 Corporate and commercial agreements

- (a) Copies (or particulars where not in writing) of all subsisting agreements to which the target company is party (other than occupational and management documents covered by paragraph 2 above).
- (b) Details of any trading or service provision arrangements between the target company and the seller or a member of the target's group, and any arrangements with persons directly or indirectly connected with the target company.

### 4.15.4 Employees<sup>7</sup> – details of:

- (a) All employees and consultants working in the target company, including the terms of employment and wage agreements and recent pay awards.
- (b) Anyone who is working for the target company but is not employed or engaged by it, and anyone who is employed or engaged by the target company but works for another organisation.
- (c) Remuneration, salaries, notice periods and restrictive covenants and copies of service agreements of management.
- (d) Any employees who have received or given notice to terminate their employment with the target company.
- (e) Any existing and potential claims, e.g. for breach of contract, unfair dismissal, discrimination or equal pay.
- (f) Any TUPE transfers that may have affected anyone employed by the target company.
- (g) Any employee share scheme arrangements.
- (h) Relevant pension scheme(s) (including trust deeds, rules, handbook and names of trustees).

<sup>7</sup> If applicable. For corporate wrapped property deals that do not involve an operating business, the buyer will generally just expect confirmation that the target company has no employees and no pension liabilities. Ensure compliance with data protection legislation.

**4.15.5 Intellectual property – details of:**

- (a) Intellectual property rights (IPR) owned by the target company and used in the target company's business which are registered, or for which applications for registration have been made.
- (b) All domain names used in connection with the target company's business.
- (c) Any challenges or disputes relating to IPR owned or used in the target company, including any challenges to the validity, subsistence or ownership of such rights.
- (d) Any suspected or alleged infringement of third party rights by the target company.

**4.15.6 Litigation – details of:**

- (a) Any existing and threatened arbitration or litigation, or similar proceedings or disputes relating to the target company or its assets, together with details of sums involved.
- (b) Any judgments affecting the target company or its assets.

**4.15.7 Insurance**

Details of all insurance arrangements, the basis of insurance and the claims history from all relevant jurisdictions.

**4.15.8 Anti-corruption policies**

Anti-corruption policies of the target company/group.

**4.15.9 Tax**

- (a) Details of any acquisition of any company, business or asset by the target company, including details of any tax warranties or indemnities given or received.
- (b) Copies of any SDLT return submitted by the target company in relation to any property which has been acquired by the target company, together with a copy of the SDLT certificate and details of how such acquisition was treated for VAT purposes.
- (c) Copies of all submitted tax computations and returns relating to the target company, including confirmation that all returns have been filed prior to the filing deadline and all tax due has been paid on time.
- (d) Correspondence in relation to outstanding enquiries by HMRC or other fiscal authority in relation to the tax affairs of the target company.
- (e) Any dispensation or other special arrangement agreed with, or concession made by, HMRC or other fiscal authority in relation to taxation.
- (f) Details of the VAT registration of the target company.
- (g) Details of related party transactions, e.g. shareholder loans and management charges, including copies of any transfer pricing documentation.
- (h) Any report on tax or related matters prepared in relation to the target company during the last three years.
- (i) Details of any capital allowances reports and claims made.
- (j) Details of the tax base cost of the property and any enhancement expenditure made.
- (k) Other basic tax information which may be applicable, for example:
  - the business case or other evidence of the target company's intention to hold the property as an investment;
  - (for non-UK entities) details of how the tax residence of the target company has been managed, including brief biographies of the directors and their tax residence;
  - (for non-UK entities) evidence that the target company is entitled to receive rental income gross under the UK Non-Resident Landlord Scheme;
  - registration documents under the Construction Industry Scheme (CIS) and copies of all CIS returns submitted.



# Appendix 5:

## Some differences when transacting in Scotland and Northern Ireland

### Scottish and Northern Irish equivalents to commonly-used English and Welsh property terms

| England and Wales                              | Scotland equivalent   | Northern Ireland equivalent   |
|--|---|---|
| Land Registry                                  | Land Register of Scotland   | Land Registry of Northern Ireland   |
| Stamp duty land tax (SDLT)                     | Land and buildings transaction tax (LBTT)   | Same as for England & Wales   |
| Commercial property standard enquiries (CPSEs) | Due diligence questionnaire   | CPSEs adopted for Northern Ireland  |
| Exchange of contracts                          | Conclusion of missives  | Same as for England & Wales   |
| Section 106 agreement                          | Section 75 agreement  | Section 76 agreement (formerly article 40)  |
| Community infrastructure levy (CIL)            | Although no CIL has been set up in Scotland, the local authorities can impose similar levies through section 75 planning agreements | Although no CIL has been set up in Northern Ireland, councils can impose similar levies through section 76 agreements to address impacts to communities caused by new developments  |
| Party Wall Act                                 | No Scottish equivalent  | No Northern Irish equivalent  |
| Authorised guarantee agreement                 | No Scottish equivalent  | No Northern Irish equivalent  |
| Covenants/easements/assignment/underletting    | Obligations/servitudes/assignments/subletting   | Same as for England & Wales   |
| Landlord and Tenant Act 1954                   | Does not apply in Scotland  | Business Tenancies (Northern Ireland) Order 1996 is the Northern Irish equivalent with some differences. Any business tenancy in excess of 9 months is protected and the tenant will have security of tenure/statutory right of renewal. Also, the parties cannot 'contract out' of the 1996 Order. |

### Deposit/risk

#### Scotland

Although the payment of a deposit at conclusion of missives (exchange of contracts) is becoming more popular, it is not standard in Scotland and therefore a matter for negotiation at heads of terms stage.

Similarly, it would be unusual for a buyer in Scotland to take on the risk of damage to, and therefore insure, a property from conclusion of missives (exchange of contracts).

## EPC/action plan

### Scotland

An EPC is also required to sell a property in Scotland. However, the MEES requirements do not apply. Instead, if a non-residential property is greater than 1,000 sq m and has an energy performance less than that set by the 2002 Building Regulations, then an action plan will be required. An action plan identifies targets for improvement of the energy performance of the building and how these targets would be met through physical improvements in the property. Once an action plan is finalised, the owner can choose to improve or defer improvements by reporting operational energy ratings on an annual basis.

### Northern Ireland

An EPC is also required to sell or lease property in Northern Ireland. There are currently no MEES requirements in Northern Ireland.

## Title

### Scotland

Most legal titles to property in Scotland are registered in the Land Register of Scotland. An up-to-date title sheet (with title plan) downloaded from the Land Register is equivalent in practice to an official copy.

Occasionally, a title is not registered in the Land Register of Scotland. The purchase will trigger registration in the Land Register so the seller should assemble all the relevant title deeds demonstrating its title to the property together with a plan in a form acceptable to the Land Register. Usually this will require the preparation of a new plan.

### Northern Ireland

The Registry of Deeds and the Land Registry are the two systems of registration relating to land in Northern Ireland.

The Registry of Deeds applies to unregistered land and provides for the registration of documents dealing with land. The purchase of unregistered land will trigger compulsory first registration so the seller should assemble all relevant title deeds demonstrating its title to the property together with a Land Registry compliant plan. Usually this will require the preparation of a new plan.

The Land Registry is the system for registered land. An up-to-date folio with folio map downloaded from the Land Registry is equivalent to an official copy. Whilst similar to the registration system in England and Wales, there are some differences including:

(a) only leases with a term exceeding 21 years are capable of registration; and (b) the registration process in Northern Ireland takes considerably longer than in England and Wales.

## Land and buildings transaction tax (LBTT)

LBTT is the Scottish equivalent of SDLT. The Scottish Government has control over the rates. It will be collected by Revenue Scotland, the Scottish Tax Authority, working with the Land Register. It is paid when the LBTT return is submitted rather than within 30 days as with SDLT. LBTT is a progressive tax with different rates being applied to various slices of the price.

## Appendix 6

Copies of:

(a) IPF Non-Disclosure Agreement  
for sales/purchases

and

(b) IPF Exclusivity Agreement for  
asset sales/purchases

**NOTE:** Guidance notes relating to these documents can be downloaded from the IPF website ([ipf.org.uk/publications](http://ipf.org.uk/publications)), together with equivalent documents for transactions in Scotland.



## NON-DISCLOSURE AGREEMENT FOR SALES/PURCHASES

### DATE

### PARTIES

- (1) [NAME OF COMPANY] (incorporated and registered in [England and Wales] under company registration number [COMPANY NUMBER]), the registered office of which is at [REGISTERED OFFICE ADDRESS]; and
- (2) [NAME OF COMPANY] (incorporated and registered in [England and Wales] under company registration number [COMPANY NUMBER]), the registered office of which is at [REGISTERED OFFICE ADDRESS].

### 1. DISCLOSURE

- 1.1 The parties wish to exchange information with each other relating to a direct or indirect interest in [DESCRIBE PROPERTY] (the **"Proposed Transaction"**).
- 1.2 In this agreement:
  - 1.2.1 **"Confidential Information"** means all information in whatever form (including, without limitation, in written, documentary or electronic form) relating to the Proposed Transaction which is, whether before or after the date of this agreement, supplied or made available, directly or indirectly, to the Recipient or its Professional Advisers;
  - 1.2.2 **"Professional Advisers"** means a party's lawyers, surveyors, accountants and other professional advisers;
  - 1.2.3 **"Provider"** means a party to this agreement which discloses or makes available directly or indirectly Confidential Information;
  - 1.2.4 **"Recipient"** means a party to this agreement which receives or obtains directly or indirectly Confidential Information.
- 1.3 In consideration of the Provider agreeing to disclose Confidential Information to the Recipient, the Recipient undertakes to the Provider that it shall:
  - 1.3.1 subject to clauses 3 and 4, hold the Confidential Information in strict confidence and accept that the Confidential Information is commercially sensitive and that its release otherwise than in accordance with the terms of this agreement may be detrimental to the Provider;
  - 1.3.2 not disclose or permit to be disclosed any of the Confidential Information to any person or make any announcement other than as permitted by this agreement and not to use the Confidential Information in any way, except for or in connection with, the Proposed Transaction; and
  - 1.3.3 keep confidential the existence and contents of this agreement and of any discussions or negotiations between the Recipient and the Provider in respect of the Proposed Transaction save where disclosure is permitted by this agreement.

### 2. TERM AND TERMINATION

- 2.1 The parties' obligations under this agreement shall terminate (save in respect of the obligations in clause 1.3 which shall continue in respect of any Confidential Information retained pursuant to clause 5.2) on the earlier of:
  - 2.1.1 two years after the date of this agreement; and



2.1.2 exchange of an agreement containing confidentiality provisions relating to the Proposed Transaction,

such termination shall be without prejudice to any antecedent breach of either party of its obligations in this agreement.

2.2 Clause 2.1 shall apply whether or not the Proposed Transaction proceeds.

### 3. PERMITTED DISCLOSURE

3.1 The Recipient may disclose or permit to be disclosed Confidential Information to:

3.1.1 where necessary in connection with the Proposed Transaction, any subsidiary or parent undertaking of the Recipient (whether direct or indirect), any subsidiary undertaking of such parent, any partnership interest in or of the Recipient (the "**Recipient Group**"), any partner, trustee, nominee, operator, funder or arranger of equity or debt or investment manager or investment adviser to and/or of the Recipient or the Recipient Group or any funds managed or advised by, or clients of, the Recipient or the Recipient Group in each case from time to time;

3.1.2 the Professional Advisers engaged by the Recipient or the Recipient Group in respect of the Proposed Transaction; and

3.1.3 any of its or any member of the Recipient Group's officers, directors and necessary employees in connection with the Proposed Transaction,

provided that it procures that each such person to whom the Confidential Information is disclosed complies with the obligations set out in this agreement as if they were the Recipient.

3.2 The Recipient shall inform the Provider as soon as reasonably practicable upon becoming aware that a person to whom disclosure of Confidential Information is not permitted under this agreement, has become aware of Confidential Information.

3.3 Each party may disclose the Confidential Information to the minimum extent required by:

3.3.1 any order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or taxation authority of competent jurisdiction;

3.3.2 the rules of any listing authority or stock exchange on which its shares or the shares of any member of the Recipient Group are listed; or

3.3.3 the laws or regulations of any country to which its affairs are subject,

provided always that the Recipient informs the Provider of the disclosure, to the extent legally permissible, as soon as reasonably practicable.

### 4. EXCLUSIONS

The obligations set out in clause 1 shall not apply, or shall cease to apply, to Confidential Information which the Recipient can show to the Provider's reasonable satisfaction:

4.1 is or becomes generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient in breach of this agreement; or

4.2 was in the Recipient's or any member of the Recipient Group's or any of its or their Professional Advisers' actual possession prior to the time of disclosure to the Recipient and which was lawfully acquired other than from the Provider or on behalf of it and that such source was not under any obligation of confidence in respect of that information; or

4.3 has been received or developed by the Recipient or any member of the Recipient Group or any of its or their Professional Advisers from a third party source that is not connected with the Provider and that such source was not under any obligation of confidence in respect of that information.



## **5. RETURN OF THE CONFIDENTIAL INFORMATION**

- 5.1 The Recipient shall as soon as reasonably practicable on receipt of a written request from the Provider return any Confidential Information received in hard copy to the Provider.
- 5.2 Nothing in clause 5.1 shall require the Recipient or any member of the Recipient Group or any of its or their Professional Advisers to destroy or, prohibit it from keeping a copy of, any Confidential Information:
  - 5.2.1 which is held on any back-ups or archives of any computer system containing or previously containing the Confidential Information where such back-up or archiving occurs in the usual course of operating that computer system and where it is not reasonably practicable to delete the Confidential Information so held;
  - 5.2.2 which the Recipient or any member of the Recipient Group or any of its or their Professional Advisers are required to retain for professional indemnity insurance purposes, internal audit processes or internal governance purposes; and
  - 5.2.3 which the Recipient or any member of the Recipient Group or any of its or their Professional Advisers are required to retain by any competent judicial, governmental, regulatory or similar body or the rules or regulations of any listing authority or stock exchange on which the securities of the Recipient are listed or traded or for the purposes of any audit, provided always that nothing in this clause 5 shall prejudice the Recipient's obligation contained in clause 1.3.

## **6. NO REPRESENTATION OR WARRANTY**

- 6.1 Each party acknowledges that the Confidential Information may not be accurate or complete and neither the Provider nor its Professional Advisers accept responsibility or liability for (or make any warranty or representation, express or implied, with respect to) the accuracy or completeness of the Confidential Information.
- 6.2 The Recipient acknowledges that damages alone may not be an adequate remedy for any breach of its obligations under this agreement and, accordingly, without prejudice to any other rights or remedies that the Provider might seek, the Provider shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this agreement.

## **7. MISCELLANEOUS**

- 7.1 The terms of this agreement may only be amended or modified by written agreement between the parties.
- 7.2 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 7.3 This agreement is personal to the parties and neither party shall assign, transfer, charge or deal in any other manner with this agreement or any of its rights under it nor purport to do any of the same.
- 7.4 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by the law of England.
- 7.5 The Provider and the Recipient irrevocably agree that the courts of England have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).



Signed by [FULL NAME OF INDIVIDUAL], )  
a duly authorised signatory for and on )  
behalf of [NAME OF COMPANY] )

.....

Position (in BLOCK CAPITALS)

Signed by [FULL NAME OF INDIVIDUAL], )  
a duly authorised signatory for and on )  
behalf of [NAME OF COMPANY] )

.....

Position (in BLOCK CAPITALS)

**Agreement to be dated once signed by both parties**

*Please refer to the IPF Non-Disclosure Agreement Guidance Note at: [ipf.org.uk/publications](http://ipf.org.uk/publications)*



## EXCLUSIVITY AGREEMENT FOR ASSET SALES/PURCHASES

### DATE

### PARTIES

- (1) [NAME OF COMPANY] (incorporated and registered in [England and Wales] under company registration number [COMPANY NUMBER]), the registered office of which is at [REGISTERED OFFICE ADDRESS] (the "**Seller**"); and
- (2) [NAME OF COMPANY] (incorporated and registered in [England and Wales] under company registration number [COMPANY NUMBER]), the registered office of which is at [REGISTERED OFFICE ADDRESS] (the "**Buyer**").

### RECITAL

This agreement relates to the property known as [ ] (the "**Property**") and this shall be deemed to include any interest deriving its value from the Property) and to the proposed sale of the Seller's interest in the Property (the "**Transaction**").

### IT IS AGREED AS FOLLOWS:

#### 1. EXCLUSIVITY PERIOD

This agreement begins on the date written above and, subject to clause 4, expires at 5 p.m. on [ ] (the "**Expiry Date**").

#### 2. SELLER'S OBLIGATIONS

2.1 In consideration of the Buyer's undertakings given in and expenses incurred in connection with this agreement, and until this agreement expires, the Seller shall not:

- 2.1.1 send out any sale contract, title or any other information in connection with any proposed disposal of the Property or the Transaction (nor authorise these to be sent out) to anyone other than to the Buyer's solicitors;
- 2.1.2 conduct any discussions or enter into any commitment with any third party in connection with any proposed disposal of the Property;
- 2.1.3 permit any person other than the Buyer (or a person acting on the Buyer's behalf) to view or obtain a survey of the Property;

and the Seller shall procure that no third party takes any steps prohibited by this clause 2.1 on its behalf.

2.2 The Seller shall:

- 2.2.1 immediately instruct its solicitors to promptly (and in accordance with any timetable set out in the heads of terms for the Transaction or as otherwise agreed between the parties):
  - (a) send the draft contract and title documentation to the Buyer's solicitors;
  - (b) deal with proposed amendments or additions to the contract; and





(c) provide answers to enquiries;

2.2.2 promptly provide its solicitors with all documents and information reasonably necessary to enable its solicitors to provide answers to the Buyer's enquiries.

### 3. BUYER'S OBLIGATIONS

3.1 In consideration of the Seller undertaking to comply with the Seller's obligations in this agreement, and until this agreement expires, the Buyer shall promptly (and in accordance with any timetable set out in the heads of terms for the Transaction or as otherwise agreed between the parties):

3.1.1 instruct surveyors to carry out a survey and/or valuation of the Property;

3.1.2 propose any required amendments or additions to the sale contract following receipt of the draft contract and title documentation by the Buyer's solicitors (but the Buyer will still be entitled to propose further amendments or additions in the light of documents or information received after that time); and

3.1.3 raise all substantive preliminary enquiries (but the Buyer will still be entitled to raise further enquiries relating to information or documents received after that time).

### 4. DURATION OF THIS AGREEMENT

4.1 For the purposes of clause 4.2.1, "**Business Day**" means a day other than Saturday, Sunday or a day on which banks are authorised to close in London for general banking business.

4.2 This agreement will expire on the earliest of the following:

4.2.1 the Buyer failing to comply with its obligations provided always that the Seller shall serve written notice on the Buyer specifying the non-compliance and the Buyer shall have three Business Days to remedy this (where the non-compliance is capable of remedy) to the satisfaction of the Seller acting reasonably;

4.2.2 the Buyer deciding that it no longer wishes to proceed with the Transaction (in which event the Buyer shall immediately inform the Seller by written notice of that decision); and

4.2.3 the Expiry Date.

4.3 On expiry of this agreement both parties will then be released from any further obligations but without prejudice to any antecedent breach of either party of its obligations in this agreement.

### 5. MISCELLANEOUS

5.1 The terms of this agreement may only be amended or modified by written agreement between the Seller and the Buyer.

5.2 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

5.3 This agreement is personal to the parties and neither party shall assign, transfer, charge or deal in any other manner with this agreement or any of its rights under it nor purport to do any of the same.



5.4 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by the law of England.

5.5 The Seller and the Buyer irrevocably agree that the courts of England have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by [FULL NAME OF INDIVIDUAL], )  
a duly authorised signatory for and on )  
behalf of [NAME OF COMPANY] )

.....

Position (in BLOCK CAPITALS)

Signed by [FULL NAME OF INDIVIDUAL], )  
a duly authorised signatory for and on )  
behalf of [NAME OF COMPANY] )

.....

Position (in BLOCK CAPITALS)

**Agreement to be dated once signed by both parties**

*Please refer to the IPF Exclusivity Agreement Guidance Note at: [ipf.org.uk/publications](http://ipf.org.uk/publications)*



**Investment  
Property Forum**

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Copies of this publication and supporting documentation can be downloaded from the IPF website: [ipf.org.uk/publications](http://ipf.org.uk/publications).

## **About the IPF**

The IPF is one of the leading specialist property industry bodies in the UK. It comprises an influential network of 2000+ professionals, all active in the commercial property investment market.

The IPF's mission is to enhance the understanding and efficiency of property as an investment, including public, private, debt, equity and derivatives, for its members and other interested parties, including government, by:

- undertaking research and special projects and ensuring effective communication of this work;
- providing education; and
- providing a forum for networking, discussion and debate amongst our members and the wider investment community.

**For further information about the IPF and its research/publications, contact Sue Forster, Chief Executive, email: [sforster@ipf.org.uk](mailto:sforster@ipf.org.uk), tel: 020 7194 7922 or visit [ipf.org.uk](http://ipf.org.uk)**



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