

2015

MANAGEMENT SERVICES AGREEMENT

- (1) RETAIL ACQUISITIONS LIMITED
- (2) BHS GROUP LIMITED

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90 High Holborn
London WC1V 6XX
www.olswang.com

T +44 (0) 20 7067 3000
F +44 (0) 20 7067 3999
DX 37972 Kingsway

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THIS AGREEMENT is made on

2015

BETWEEN:

- (1) **RETAIL ACQUISITIONS LIMITED**, a company incorporated in England and Wales (registered number 09320475) whose registered office is at c/o Calder & Co, 16 Charles II Street, London SW1Y 4NW ("**Holdco**"); and
- (2) **BHS GROUP LIMITED**, a private company limited by shares incorporated in England and Wales (registered number 03858895) and whose registered office is at Colegrave House, 70 Berners Street, London W1T 3NL (the "**Company**"),

together the Parties, or each, individually, a Party.

RECITALS:

- (A) Holdco has agreed to provide certain management services to the Target Group.
- (B) This Agreement is entered into by Holdco and the Company to confirm the terms and conditions upon which Holdco will provide such services to the Target Group.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the following words and expressions shall have the following meanings unless the context requires otherwise:

"**Business**" means the business carried on by the Target Group from time to time;

"**Confidential Information**" means trade secrets and information relating to the business, products, affairs and finances of the relevant Party for the time being confidential to the relevant Party including, without limitation, technical data and know-how relating to the business of the relevant Party or any of its suppliers, clients, customers, agents, distributors, shareholders or management;

"**Group**" means in relation to a company, its subsidiaries, its holding company and their subsidiaries;

"**Quarter Day**" means 30 April, 31 July, 31 October and 31 January in each year or if such date falls due on a day that is not a business day on the immediately preceding business day;

"**Services**" means those services listed in Schedule 1 to this Agreement and such other services as may be agreed between Holdco and the Company from time to time;

"**Subsidiaries**" means every subsidiary of the Company;

"Target Group" means the Company and its Subsidiaries;

"Term" means the term of this Agreement which shall commence on the date of this Agreement and shall end on the date upon which this Agreement is terminated pursuant to clause 5.

1.2 The schedules and recitals form part of this Agreement and shall have effect as if set out in full in the body of this Agreement, and any reference to this Agreement includes the schedules and recitals.

1.3 In this Agreement, unless the context requires otherwise:

1.3.1 any reference to the Parties or a recital, clause or schedule is to the Parties or the relevant recital, clause or schedule of or to this Agreement;

1.3.2 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 Headings shall be disregarded in construing this Agreement.

2. THE SERVICES

2.1 The Company has appointed Holdco to provide the Services to itself and the other members of the Target Group in a form and manner agreed from time to time between Holdco and the Company.

2.2 Subject to the terms of this Agreement (including, without limitation, clause 3) Holdco shall provide, or cause to be provided, the Services to the Target Group, during the Term, to an appropriate business standard and exercising reasonable care and skill.

2.3 In providing the Services, Holdco shall:

2.3.1 at all times have regard to the terms of this Agreement and the reasonable instructions of the Company; and

2.3.2 use its reasonable care and skill and act in accordance with best practice as applied to businesses similar in size and scope to the Business.

2.4 Holdco shall where necessary provide the services of suitably qualified employees of Holdco to perform the Services.

2.5 The Services shall be provided by Holdco on a non-exclusive basis.

2.6 Holdco shall maintain records of the Services provided under this Agreement and shall provide the Company with such information as the Company may reasonably require in connection with the provision of the Services. The Company and its duly authorised agents may upon reasonable prior written notice to Holdco examine, audit and copy any and all of the books, records, files or other information held by Holdco concerning this

Agreement, the Services and any assets or investments of the Company. Upon termination of this Agreement, Holdco shall promptly deliver to the Company all such books, records, files and other information.

- 2.7 The Company undertakes to co-operate with Holdco and do all acts, matters and things which may be reasonably required to enable Holdco properly to carry out and perform its obligations under this Agreement.

3. FEES

- 3.1 In consideration for the provision of the Services by Holdco, the Company shall pay to Holdco in accordance with this clause 3 such fees as may be agreed from time to time between the Parties. The fees shall be payable quarterly in advance on each Quarter Day.

- 3.2 All direct costs and expenses associated with the business of the Company including all costs, charges, fees or expenses of any nature incurred and payable to any third party, agent or professional adviser in the course of providing the Services shall be for the account of the Company (unless otherwise agreed) which undertakes to pay and discharge such amounts as they are incurred and, for this purpose, Holdco shall be granted such mandates or authorities as the Parties may agree to be appropriate. To the extent that any such costs, charges, fees or expenses include VAT then the Company shall pay to Holdco an amount equal such VAT to the extent that Holdco is unable to recover such VAT as input tax.

4. PAYMENTS

All amounts payable to Holdco under this Agreement are stated exclusive of value added tax which shall, if applicable, be paid by the Company at the rate applicable from time to time against receipt from Holdco of a valid value added tax invoice.

5. TERM AND TERMINATION

- 5.1 This Agreement shall commence on the date of this Agreement and shall continue until terminated pursuant to clause 5.2 or 5.3.
- 5.2 Either Party shall be entitled to terminate this Agreement by giving not less than 3 months' prior written notice.
- 5.3 Either Party shall be entitled to immediately terminate this Agreement on written notice and require payment of any amounts due under this Agreement (without prejudice to its other rights and remedies) in the event that the other Party:
- 5.3.1 commits a material breach of the terms of this Agreement and, having received from the other Party written notice of such breach stating the intention to terminate the Agreement if the breach not remedied, fails to remedy the breach within 30 days;

5.3.2 becomes insolvent or unable to pay its debts (as defined in Section 123 of the Insolvency Act 1986), proposes a voluntary arrangement, has a receiver, administrator or manager appointed over the whole or any part of its business or assets, suffers the presentation of any petition, the making of any order shall or the passing of any resolution for its winding up (except for the purposes of a bona fide solvent amalgamation or reconstruction), bankruptcy or dissolution, otherwise proposes or enters into any composition or arrangement with its creditors or any class of them, ceases to carry on business or claims the benefit of any statutory moratorium.

5.4 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

6. CONFIDENTIALITY

6.1 Each Party undertakes not to disclose to any person any Confidential Information disclosed to it by the other Party concerning the business or affairs of the other Party except as permitted by clause 6.2.

6.2 Each Party may disclose the other Party's Confidential Information:

6.2.1 to its employees, officers, agents, consultants or sub-contractors ("**Representatives**") who need to know such information for the purposes of carrying out the Party's obligations under this Agreement, provided that the disclosing Party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 6 as though they were a Party to this Agreement. The disclosing Party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and

6.2.2 as may be required by law, court order or any governmental or regulatory authority.

6.3 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party or to be implied from this Agreement.

7. LIMITATIONS ON LIABILITY

7.1 The aggregate liability of either Party in respect of any loss or damage suffered by the other Party and arising out of or in connection with this Agreement, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the amount of the fees actually paid by the Company to Holdco under this Agreement.

7.2 Neither Party shall be liable, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way for:

- 7.2.1 any loss arising from or in connection with loss of revenues, profits, contracts, business or failure to realise anticipated savings; or
- 7.2.2 any loss of goodwill or reputation; or
- 7.2.3 any indirect or consequential losses,

in each case suffered or incurred by the other Party arising out of or in connection with this Agreement.

7.3 Nothing in this clause 7 shall limit either Party's liability for death or personal injury resulting from its negligence or for fraud.

7.4 The Parties acknowledge and agree that the limitations contained in this clause 7 are reasonable in all the circumstances.

8. ASSIGNMENT AND SUB-CONTRACTING

Neither Party may assign or transfer or sub-contract any of its rights, benefits nor obligations under this Agreement without the prior written consent of the other Party, except that either Party may assign, transfer or sub-contract its rights and obligations under this Agreement to another member of its Group.

9. NO AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way or to hold itself out in its advertising or otherwise in any manner which would indicate or imply any such relationship with the other.

10. NOTICES

Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant Party at its registered office for the time being or by sending it by fax to the fax number notified by the relevant Party to the other Party. Any such notice shall be deemed to have been received:

- 10.1 if delivered personally, at the time of delivery; and
- 10.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; and
- 10.3 in the case of fax, at the time of transmission.

11. FORCE MAJEURE

- 11.1 Neither Party shall be liable to the other Party for any delay in or failure to perform any or all of its obligations under this Agreement if the delay or failure is due to circumstances beyond its reasonable control including, without limitation, to the extent that these are beyond such control, industrial disputes, nuclear accident, war or terrorist activity, acts of God, civil commotion, compliance with any law or governmental order or regulation failure of technical facilities, or default of suppliers or sub-contractors ("**Force Majeure**").
- 11.2 A Party suffering an event of Force Majeure shall promptly notify the other Party of the nature and extent of the Force Majeure and if it prevails for a continuous or aggregate period of more than three months in total the other Party may terminate this Agreement forthwith by notice in writing to the Party so prevented in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

12. ENTIRE AGREEMENT

- 12.1 Each Party on behalf of itself acknowledges and agrees with the other Party that:
- 12.1.1 this Agreement together with any documents referred to in it constitute the entire agreement and understanding between Holdco and the Company in relation to the subject matter of this Agreement and supersedes any previous agreement between them relating to the Services (which shall be deemed to have been terminated by mutual consent);
 - 12.1.2 in entering into this Agreement neither they nor it has relied on any pre-contractual statement; and
 - 12.1.3 the only remedy available to it for breach of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other Party in respect of any pre-contractual statement.
- 12.2 Nothing in this Agreement shall, however, operate to limit or exclude any liability for fraud.

13. VARIATION AND WAIVER

No modification, variation or amendment to this Agreement shall be effective unless such modification, variation or amendment is in writing and has been signed by or on behalf of both Parties.

14. THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No person other than Holdco and the Company shall have any rights under it and it shall not be enforceable by any person other than Holdco and the Company.

15. GOVERNING LAW AND JURISDICTION

- 15.1 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) shall be governed by and construed in accordance with English law.
- 15.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

THIS AGREEMENT has been executed as a deed by the Parties on the date at the top of page 1.

SCHEDULE 1

The Services

1 GENERAL ADMINISTRATION

- 1.1 Advising, designing, instituting and supervising new or improved internal management procedures and assistance in the implementation thereof where applicable.
- 1.2 Assist and advise on organisational matters.

2 MARKETING

- 2.1 Provide market research studies and customer surveys.
- 2.2 Assist with public relations.
- 2.3 Assist and advise in the pitching for and conversion of new business.
- 2.4 Aid by providing information to assist in the development of public relations programs.
- 2.5 Assist and advise with respect to branding and rebranding.
- 2.6 Assist in the negotiation and distribution of customer and supplier contracts.

3 FINANCE

- 3.1 Assist and advise in the development of budget and management information systems.
- 3.2 Provide standards of performance and advice in preparation of sales forecast.
- 3.3 Assist and advise in financing in connection with customer requirements.
- 3.4 Assist in possible acquisitions and disposals.
- 3.5 Assist in capital expenditure and the purchase and sale of machinery and other equipment.
- 3.6 Assist with accounting issues generally.
- 3.7 Perform internal audits and assist in external audits.
- 3.8 Assist with the procurement of external auditors.

4 TREASURY

- 4.1 Provide foreign exchange and interest exchange management support.
- 4.2 Provide cash management support and help implement treasury management systems to manage cash flows.

4.3 Organise and manage banking relationships.

4.4 Provide sundry services in the area of Treasury and Insurance.

5 HUMAN RESOURCES

5.1 Assist in the preparation of organisation charts and job descriptions.

5.2 Assist and advise in the procurement of personnel.

5.3 Assist in training of personnel for various administrative, accounting, personnel and other required business functions.

5.4 Assist and advise in the development of incentive programs.

5.5 Assist and advise in connection with employment contracts and employment conditions.

5.6 Assist and provide administration (where necessary) of employee payroll services.

6 PROCUREMENT

6.1 Promote relationships with suppliers already represented.

6.2 Advise and assist in the search for new service lines.

6.3 Negotiate and distribute contracts.

7 TAXATION

7.1 Assist and advise in local and international tax matters.

7.2 Assist with local and international tax compliance issues (including appointing external advisers where necessary).

8 LEGAL

8.1 Assist and advise on legal matters such as vendor contracts, rent agreements and any other type of contracts.

8.2 Assist and advise on compliance with law generally (including appointing external advisers where necessary).

8.3 Advise and assist in planning corporate liability, product and other insurance coverage to safeguard corporate status.

8.4 Negotiating insurance cover on behalf of the Group and providing access to insurance agreements.

9 **SAFETY, HEALTH, ENVIRONMENTAL AND QUALITY**

- 9.1. Provide advice and assist with the evaluation of safe working practices throughout the Group.
- 9.2. Advise generally in relation to environmental matters, and quality control methods throughout the Group.

EXECUTED as a DEED
by **RETAIL ACQUISITIONS LIMITED**
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTED as a DEED
by **BHS GROUP LIMITED**
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

- v) to secure additional facilities for the general commercial purposes of the Target Group, by way of unsecured or secured debt and / or equity and or other financing structures / instruments

A. Debt advisory

RAL will be responsible for the following:

1. Providing debt funding advice, based on forecasts and assumptions provided by the relevant member, regarding strategic financing options.
2. Obtaining/negotiating draft term sheets and working with the relevant member to collate information and a banking case financial model.
3. Comparing key economic terms offered by different lenders and commenting generally on the merits of each loan indications.
4. Liaising with other advisors (including tax and due diligence advisors).
5. Advising on the key commercial terms of any facility and security documentation.

B. Debt documentation

RAL will also be responsible for the following:

1. Negotiating and settling finance documents so far as it relates to the commercial terms (including any facility agreement, intercreditor agreement and security documents).
2. Liaising with solicitors instructed by the relevant member in connection with the facility document, so as to assist in the process and its exchange/completion, as well as relating to conditions precedent/subsequent where appropriate.
3. Where required, obtaining waivers from Target Group's existing third party lenders so that the new finance documents can be entered into.
4. Dealing with security releases.
5. Negotiating and settling ancillary documents.
6. Where appropriate liaising with local counsel regarding any foreign ancillary documents to be entered into.
7. Assisting with signing and closing logistics.

Context

The relevant member acknowledges that RAL has the specialist skills, knowledge and network of contacts required to undertake the Additional Services. BHSG has a significant deficit on its balance sheet and been denied facilities previously by mainstream lenders. The procurement of finance and re-finance is often carried out under limited time restraints.

Value

It is anticipated that these additional services will add significant value to the BHS Group's activities and assets by virtue of (i) the replacement of existing indebtedness on better terms and (ii) the securing of additional facilities for the general commercial need of the relevant member/BHSG.

In order to align the provision of these services with the value added by the Additional Services, the amount of the fee payable is calculated by reference to the expected benefit to the Target Group as a result of the Additional Services. Entitlement to fees will be wholly contingent on the successful delivery of specified objectives.

Resources

In order to provide these services, RAL will make Michael Morris available to the relevant member, in addition to support from RAL directors, employees and consultants generally.

Deliverables

The outcomes which the relevant member wishes to achieve as a result of the performance of the Additional Services comprise execution of a concluded facility agreements and revised security within the target financings above.

Fees

2% of the total funds available under the relevant financing agreement payable upon first drawdown of funds under the relevant facility.

Fees are not inclusive of VAT.

Assumptions

We have made the following assumptions:

1. An agreed term sheet will be used as the basis for the main documentation.
2. The main documentation will be based on market standard finance documentation amended to incorporate the agreed term sheet.
3. Separate professional advice will be needed on pensions, tax, hedging or legal opinions.

4. There are no elements of the transaction or documents which are not governed by English law.
5. All the parties to the transaction co-operate in working towards completion and are reasonable and commercial in negotiations and in the settling of conditions precedent or other documents.

Attachment 2

Additional services record – Real Estate Services

To BHS Group Limited
From RAL

Effective Date : 1st July 2015

Subject Additional services – Real estate

The record below is effective from and speaks at 1st July 2015, but was agreed between the parties before 23 December 2015 so as to record the understanding from that earlier date.

Background

This record is made pursuant to the management services agreement between, inter alia, Target Group and Retail Acquisitions Limited ("**RAL**") dated 11 March 2015, as amended ("**MSA**").

Terms defined in the MSA are also used in this record.

Additional Services

Pursuant to clause 3.2 et seq. of the MSA, RAL has agreed to provide the following additional services to the relevant member (above) of the Target Group:

Scope

The scope of works below has been agreed in the context of properties comprised within the BHS estate. Essentially, there is potential to realise value if the properties are used most effectively. This may involve disposals of surplus properties or parts of properties, sub-letting, redevelopment and possibly joint ventures (hereinafter Property Transactions).

A. Appointment basis

RAL may be appointed from time to time on a non-exclusive basis to provide services in respect of Property Transactions relating to properties belonging to Target Group.

When appointed RAL will be responsible for the following:

- To assess the optimum realisation of value by means of a Property Transaction in relation to the relevant BHS properties.

- Identification of choices potentially available in relation to each property, whether by way of disposal or redevelopment and/or joint venture or sub-letting. The choices will take into account all legal constraints relating to specific property interests or otherwise.
- If appropriate (and with or without the engagement of any sales or letting agents) to assess the level of interest that may exist for any single property upon a sale or subletting.
- To undertake viewings of all relevant properties.
- To assist in the structuring and / or conclusion of any sale, joint venture, sub-letting or other transaction.
- Provide the satisfactory level of resources and quality of service throughout this instruction.

B. Documentation

RAL will be responsible for the following:

- To provide progress updates at agreed intervals.
- To monitor market performance and advise the relevant member accordingly.
- To negotiate Heads of Terms for any transaction identified and liaise with lawyers through to completion taking instructions from the relevant member on commercial and legal issues.

Context

The relevant member acknowledges that it would be difficult, for the relevant member to carry out these activities and functions without assistance from RAL, having regard to the specialist skill, knowledge and network of contacts required to undertake the Additional Services.

Value

It is anticipated that these additional services, if successfully delivered, will add significant value to the Target Group's activities and assets by virtue of (i) more appropriate retail space being available, including the disposal of surplus retail space, (ii) associated cost reductions, (iii) potential for income upon a sub-letting or other space sharing arrangement and (iv) disposal receipts upon a successful exit.

In order to align the provision of these services with the value added by the Additional Services, the amount of the fee payable is calculated by reference to the additional revenues or returns obtained, or costs saved, by the Target Group as a result of the Additional Services. Entitlement to fees will be wholly contingent on the successful delivery of specified objectives.

Resources

In order to provide these services, RAL may make available third party experts in addition to support from RAL directors, employees and consultants generally.

Deliverables

The outcomes which the relevant member wishes to achieve as a result of the performance of the Additional Services will depend upon negotiations thereafter with relevant parties.

Fees

- i) In relation to the sale of Atherstone - £150,000 (agreed fee)
- ii) In relation to the sale of Oxford Street – (as this is critical to fund the cash flow of the business in 2016 and has a high level of complexity) agreed fee as follows:
 - 1% of £60m (being the estimated market value as advised by DTZ/Cushman) where £60m represents the net sale proceeds after Transaction Costs (where Transaction Costs shall mean any marketing or professional costs directly associated with the relevant sale).
 - 10% of any realisation (after transaction costs) above £60m
- iii) In relation to any other Property Transaction, it is recognised that the fixed charge under the Management Services Agreement will normally cover the cost incurred by RAL in delivering these Services. In circumstances where such services are requested of RAL thus, unless otherwise agreed by the parties in writing the fees will be 10% of the slice of sale or other Transaction Proceeds where such proceeds (having first deducted the relevant Transaction Costs) are at least 25% above the fair market value of the relevant property.

All fees are exclusive of VAT (at the standard rate) and any direct marketing costs incurred on behalf of the relevant member (with prior written approval).

Assumptions in relation to other Property Transactions

1. It is not anticipated that RAL will often be called upon in regard as it is intended mainly for complex and / or high value and / or time critical situations rather than routine transactions.
2. An agreed term sheet will be used as the basis for the main documentation.
3. No substantial issues or legal difficulties arise which are not anticipated.
4. RAL will not advise on pensions, tax or issue legal opinions.
5. There are no elements of the transaction or documents which are not governed by English law.

6. All the parties to the transaction co-operate in working towards completion and are reasonable and commercial in negotiations and in the settling of conditions precedent or other documents.

EXECUTED as a DEED)
by **RETAIL ACQUISITIONS LIMITED**)
acting by two directors)
or one director and the Secretary:

Director

Director/Secretary

EXECUTED as a DEED)
by **BHS GROUP LIMITED**)
acting by two directors)
or one director and the Secretary:

Director

Director/Secretary

EXECUTED as a DEED)
by **BHS LIMITED**)
acting by two directors)
or one director and the Secretary:

Director

Director/Secretary

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4

EXECUTED as a DEED
by **DAVENBUSH LIMITED**
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTED as a DEED
by **BHS PROPERTIES LIMITED**
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTED as a DEED
by **LOWLAND HOMES LIMITED**
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTED as a DEED
by **BHS SERVICES LIMITED**
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTED as a DEED
by CARMEN PROPERTIES LIMITED
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTED as a DEED
by BHS (JERSEY) LIMITED
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTION DRAFT

MANAGEMENT SERVICES AGREEMENT

- (1) RETAIL ACQUISITIONS LIMITED
- (2) THOSE COMPANIES LISTED IN SCHEDULE 2

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THIS AGREEMENT is made on 11 May 2015 as amended and restated on [●] February 2016

BETWEEN:

- (1) **RETAIL ACQUISITIONS LIMITED**, a company incorporated in England and Wales (registered number 09320475) whose registered office is at 24 Hanover Square, Mayfair, London, W1S 1JD ("**Holdco**"); and
 - (2) **THOSE COMPANIES** listed in Schedule 2 each with a registered office at 129-137 Marylebone Road, London NW1 5QD (the "**Target Group**"),
- together the Parties, or each, individually, a Party.

RECITALS:

- (A) Holdco acquired direct and indirect control of the Target Group on 11 March 2015 and, following that acquisition, agreed to provide certain management services to the Target Group.
- (B) Holdco has continued to provide such services and the parties have agreed to amend and restate this agreement having taken third party advice and reached agreement in relation to the Agreed Fees (which was the subject of agreement in or about July 2015) and have also agreed certain Additional Services and the relevant Additional Fees (which was the subject of agreement by 23rd December 2015).
- (C) The bases upon which the Services, certain Additional Services and any supplementary Additional Services are to be provided are set out in the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the following words and expressions shall have the following meanings unless the context requires otherwise:

"**Additional Fees**" means the fees payable to Holdco for the provision of the Additional Services as set out in further detail in clause 4;

"**Additional Services**" has the meaning given to that term in clause 3;

"**Agreed Fees**" means the fees payable to Holdco for the provisions of the Services as set out in Schedule 3 for the Services;

"**Budget**" means an annual forecast of the budget of Holdco containing estimates of the costs expected to be incurred by Holdco in providing the Services a draft of which for the year 2016 is attached as Schedule 4;

"**Business**" means the business carried on by the Target Group from time to time;

"**Business Day**" means any day when banks are open for trading in the city of London other than a Saturday or Sunday;

"**Company**" means BHS Group Limited a private company limited by shares incorporated in England and Wales (registered number 03858895) with a registered office at 129-137 Marylebone Road, London NW1 5QD;

"**Confidential Information**" means trade secrets and information relating to the business, products, affairs and finances of the relevant Party for the time being confidential to the relevant Party including, without limitation, technical data and know-how relating to the business of the relevant Party or any of its suppliers, clients, customers, agents, distributors, shareholders or management;

"**Quarter Day**" means 28 February, 31 May, 31 August and 30 November in each year or if such date falls due on a day that is not a business day on the immediately preceding business day;

"**Services**" means those services listed in Schedule 1 to this Agreement;

"**Subsidiary**" means a subsidiary undertaking as that term is defined in section 1162 of the Companies Act 2006 and "Subsidiaries" has a corresponding meaning;

"**Target Group**" means those companies set out in Schedule 2 being the Company and certain of its Subsidiaries;

"**Term**" means the term of this Agreement which shall commence on the date of this Agreement and shall end on the date upon which this Agreement is terminated pursuant to clause 6; and

"**VAT**" means value added tax.

- 1.2 The schedules, recitals and attachments form part of this Agreement and shall have effect as if set out in full in the body of this Agreement, and any reference to this Agreement includes the schedules, recitals and attachments.
- 1.3 In this Agreement, unless the context requires otherwise:
- 1.3.1 any reference to the Parties or a recital, clause, schedule or attachment is to the Parties or the relevant recital, clause, schedule or attachment of or to this Agreement;
 - 1.3.2 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 Headings shall be disregarded in construing this Agreement.

2. THE SERVICES

- 2.1 Each member of the Target Group severally appoints Holdco to provide the Services to itself in a form and manner agreed from time to time between the Parties.
- 2.2 Subject to the terms of this Agreement Holdco shall provide, or cause to be provided, the Services to the Target Group, during the Term, to an appropriate business standard and exercising reasonable care and skill in return for the payment of the Agreed Fees as set out in more detail below.
- 2.3 In providing the Services, Holdco shall:
- 2.3.1 at all times have regard to the terms of this Agreement and the reasonable instructions of the Company who shall have the authority to bind each member of the Target Group in relation to the provision of the Services as shall be required and as shall be appropriate from time to time and each member of the Target Group acknowledges and agrees to appoint the Company as their agent for such purposes; and
 - 2.3.2 use its reasonable care and skill and act in accordance with best practice as applied to businesses similar in size and scope to the Business.
- 2.4 Holdco shall where necessary provide the services of suitably qualified employees of Holdco to perform the Services.
- 2.5 The Services shall be provided by Holdco on a non-exclusive basis.
- 2.6 Holdco shall maintain records of the Services provided under this Agreement ("**Records**") and shall provide any member of the Target Group with such information as such member may reasonably require in connection with the provision of such Services.
- 2.7 The Company, on its own behalf and on behalf of any member of the Target Group and its duly authorised agents may upon reasonable prior written notice to Holdco examine, audit (as to which see Schedule 3) and copy any and all of the books, records, files or other information held by Holdco concerning this Agreement, the Services and any assets or investments of the Company. Upon termination of this Agreement, Holdco shall promptly deliver to the Company all Records held on behalf of each member of the Target Group.
- 2.8 Each member of the Target Group undertakes to co-operate with Holdco and do all acts, matters and things which may be reasonably required to enable Holdco properly to carry out and perform its obligations under this Agreement.

3. ADDITIONAL SERVICES

- 3.1 The Target Group members requested that Holdco provide certain Additional Services (defined below) prior to the date of this amendment and restatement and the parties have agreed scope and terms in relation to such services.

- 3.2 From time to time following the date of this amendment and restatement, any member of the Target Group may request that Holdco provide further services above and beyond the Services (the "**Additional Services**") and, where Holdco agrees to provide such Additional Services. The terms set out below (to include the Schedules and Attachments hereto) shall prevail unless and until the parties agree to any different provisions in writing.
- 3.3 Additional Services fall into the following three categories:
- 3.3.1 services which involve Holdco procuring additional sources of finance for the Company and the Target Group, by way of debt or equity finance or otherwise and shall include, for the avoidance of doubt, procuring a refinance of existing debt (the "**Fundraising Services**");
 - 3.3.2 services which draw upon Holdco's specialist property services to enable BHS to generate or unlock additional value from within its existing real estate portfolio (the "**Real Estate Services**"); and
 - 3.3.3 any additional ad hoc services that, if and once provided, can have a transformative impact on the business of the Target Group as evidenced, for instance, if such services delivered an improved financial performance of more than £1 million per annum in respect of the net profit generated by the Target Group (the "**Material Benefit Services**").
- 3.4 In respect of all new Additional Services following the date of this amendment and restatement, the following apply:
- 3.4.1 As to any Fundraising Services, Holdco and the Company and the relevant Target Group members agree the Additional Services memorandum attached at Attachment 1 to this Agreement. ;
 - 3.4.2 As to any Real Estate Services, Holdco and the Company or relevant Target Group members agree the Additional Services memorandum attached at Attachment 2 to this Agreement; and
 - 3.4.3 As to any Material Benefit Services, Holdco and the Company or relevant Target Group members shall record the scope and the commercial terms (including any fees payable to Holdco) of such services and shall record such matters in an Additional Services memorandum substantially in the form set out in Attachment 3 to this Agreement.
- 3.5 The terms of Attachments 1 & 2 hereto and the terms of any memoranda agreed in the future in relation to this clause 3 shall be binding on the parties hereto and / or to such memorandum.

4. FEES

4.1 In consideration for the provision of (i) the Services or, if relevant, (ii) any Additional Services, Holdco shall prepare and deliver an invoice to the relevant Target Group member (or, where relevant, members) who was the recipient of such services for the Agreed Fees or, where relevant, the Additional Fees. Where such services were provided for the benefit of multiple Target Group members, the cost of the relevant services and thus the quantum of each relevant invoice shall be allocated fairly amongst the members, such allocation to be determined by Holdco and the Target Group members, at all times acting in good faith.

4.2 The:

4.2.1 Agreed Fees shall be calculated in accordance with the terms of Schedule 3 and shall be payable quarterly in advance on each Quarter Day; and

4.2.2 Additional Fees shall be payable within five Business Days of Holdco delivering a relevant invoice, or invoices, for having provided such Additional Services.

4.3 Upon receipt of a relevant invoice under clause 4.1, each recipient Target Group member shall be responsible for paying its relevant invoice. Should a different Target Group member pay an invoice or invoices on behalf of another recipient Target Group member, a relevant intercompany balance shall arise between such members.

4.4 All direct costs and expenses associated with the business of the Target Group including all costs, charges, fees or expenses of any nature incurred and payable to any third party, agent or professional adviser in the course of providing the Services shall be for the account of the Target Group (unless otherwise agreed) and such costs shall be included in any invoice rendered by Holdco in respect of the Services or any Additional Services, as the case may be. To the extent that any such costs, charges, fees or expenses include VAT then the relevant member of the Target Group responsible for meeting such costs, charges, fees or expenses shall pay to Holdco an amount equal to such VAT to the extent that Holdco is unable to recover such VAT as input tax.

5. PAYMENTS

All amounts payable to Holdco under this Agreement are stated exclusive of VAT which shall, if applicable, be paid by the member of the Target Group invoiced by the Company at the rate applicable from time to time against receipt from Holdco of a valid VAT invoice.

6. TERM AND TERMINATION

6.1 This Agreement shall commence on the date of this Agreement and shall continue until terminated pursuant to clauses 6.2 or 6.3.

6.2 The Company (on behalf of itself or any other member of the Target Group) or Holdco, as the case may be, shall be entitled to terminate this Agreement by giving not less than three months' prior written notice.

- 6.3 The Company (on behalf of itself or any other member of the Target Group) or Holdco, as the case may be, shall be entitled to immediately terminate this Agreement on written notice and require payment of any amounts due under this Agreement (without prejudice to its other rights and remedies) in the event that the relevant Target Group member or Holdco, as the case may be:
- 6.3.1 commits a material breach of the terms of this Agreement and, having received from the other Party written notice of such breach stating the intention to terminate the Agreement if the breach not remedied, fails to remedy the breach within 30 days;
 - 6.3.2 becomes insolvent or unable to pay its debts (as defined in Section 123 of the Insolvency Act 1986), proposes a voluntary arrangement, has a receiver, administrator or manager appointed over the whole or any part of its business or assets, suffers the presentation of any petition, the making of any order shall or the passing of any resolution for its winding up (except for the purposes of a bona fide solvent amalgamation or reconstruction), bankruptcy or dissolution, otherwise proposes or enters into any composition or arrangement with its creditors or any class of them, ceases to carry on business or claims the benefit of any statutory moratorium.
- 6.4 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of the Parties nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

7. CONFIDENTIALITY

- 7.1 The Parties undertake not to disclose to any person any Confidential Information disclosed to it by the other Party concerning the business or affairs of the other Party except as permitted by clause 7.2.
- 7.2 Parties may disclose another Party's Confidential Information:
- 7.2.1 to its employees, officers, agents, consultants or sub-contractors ("**Representatives**") who need to know such information for the purposes of carrying out the Party's obligations under this Agreement, provided that the disclosing Party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 7 as though they were a Party to this Agreement. The disclosing Party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
 - 7.2.2 as may be required by law, court order or any governmental or regulatory authority.

7.3 The Parties reserve all rights in their Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to other Parties or to be implied from this Agreement.

8. LIMITATIONS ON LIABILITY

8.1 The aggregate liability of Parties in respect of any loss or damage suffered by the other Party and arising out of or in connection with this Agreement, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the amount of the fees actually paid by such Parties to Holdco under this Agreement.

8.2 No Party shall be liable, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way for:

8.2.1 any loss arising from or in connection with loss of revenues, profits, contracts, business or failure to realise anticipated savings; or

8.2.2 any loss of goodwill or reputation; or

8.2.3 any indirect or consequential losses,

in each case suffered or incurred by another Party arising out of or in connection with this Agreement.

8.3 Nothing in this clause 8 shall limit a Party's liability for death or personal injury resulting from its negligence or for fraud.

8.4 The Parties acknowledge and agree that the limitations contained in this clause 8 are reasonable in all the circumstances.

9. ASSIGNMENT AND SUB-CONTRACTING

A Party may not assign or transfer or sub-contract any of its rights, benefits nor obligations under this Agreement without the prior written consent of the other Parties, except that a Party may assign, transfer or sub-contract its rights and or obligations under this Agreement to another member of its Group, it being further acknowledged that the Company may consent to any such matter for and on behalf of each member of the Target Group.

10. AUTHORITY

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties. The Company is authorised to act as agent for Target Group members and shall have authority to act in the name and on behalf of and otherwise may bind a Target Group member and the Target Group members acknowledge and agree to appoint the Company their agent for such purpose.

11. NOTICES

Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant Party at its registered office for the time being . Any such notice shall be deemed to have been received:

- 11.1 if delivered personally, at the time of delivery; and
- 11.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; and

12. **FORCE MAJEURE**

- 12.1 Neither Party shall be liable to the other Party for any delay in or failure to perform any or all of its obligations under this Agreement if the delay or failure is due to circumstances beyond its reasonable control including, without limitation, to the extent that these are beyond such control, industrial disputes, nuclear accident, war or terrorist activity, acts of God, civil commotion, compliance with any law or governmental order or regulation failure of technical facilities, or default of suppliers or sub-contractors ("**Force Majeure**").
- 12.2 A Party suffering an event of Force Majeure shall promptly notify the other Party of the nature and extent of the Force Majeure and if it prevails for a continuous or aggregate period of more than three months in total the other Party may terminate this Agreement forthwith by notice in writing to the Party so prevented in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

13. **ENTIRE AGREEMENT**

- 13.1 Each Party on behalf of itself acknowledges and agrees with the other Parties that:
 - 13.1.1 this Agreement together with any documents referred to in it constitute the entire agreement and understanding between the Parties in relation to the subject matter of this Agreement and supersedes any previous agreement between them relating to the Services (which shall be deemed to have been terminated by mutual consent);
 - 13.1.2 in entering into this Agreement none have relied on any pre-contractual statement; and
 - 13.1.3 the only remedy available to the Parties for breach of this Agreement shall be for breach of contract under the terms of this Agreement and no Party shall have a right of action against any other Party in respect of any pre-contractual statement.
- 13.2 Nothing in this Agreement shall, however, operate to limit or exclude any liability for fraud.

14. **VARIATION AND WAIVER**

No modification, variation or amendment to this Agreement shall be effective unless such modification, variation or amendment is in writing and has been signed by or on behalf of both Parties.

15. **THIRD PARTY RIGHTS**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No person other than Holdco, the Company and the members of the Target Group shall have any rights under it and it shall not be enforceable by any person other than Holdco and the Company.

16. **GOVERNING LAW AND JURISDICTION**

16.1 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) shall be governed by and construed in accordance with English law.

16.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

THIS AGREEMENT has been executed as a deed by the Parties on the date at the top of page 1.

SCHEDULE 1

The Services

1 GENERAL ADMINISTRATION

- 1.1 Advising, designing, instituting and supervising new or improved internal management procedures and assistance in the implementation thereof where applicable.
- 1.2 Assist and advise on organisational matters.

2 MARKETING

- 2.1 Provide market research studies and customer surveys.
- 2.2 Assist with public relations.
- 2.3 Assist and advise in the pitching for and conversion of new business.
- 2.4 Aid by providing information to assist in the development of public relations programs.
- 2.5 Assist and advise with respect to branding and rebranding.
- 2.6 Assist in the negotiation and distribution of customer and supplier contracts.

3 FINANCE

- 3.1 Assist and advise in the development of budget and management information systems.
- 3.2 Provide standards of performance and advice in preparation of sales forecast.
- 3.3 Assist and advise in financing in connection with customer requirements.
- 3.4 Assist in possible acquisitions and disposals.
- 3.5 Assist in capital expenditure and the purchase and sale of machinery and other equipment.
- 3.6 Assist with accounting issues generally.
- 3.7 Perform internal audits and assist in external audits.
- 3.8 Assist with the procurement of external auditors.

4 TREASURY

- 4.1 Provide foreign exchange and interest exchange management support.
- 4.2 Provide cash management support and help implement treasury management systems to manage cash flows.

4.3 Organise and manage banking relationships.

4.4 Provide sundry services in the area of Treasury and Insurance.

5 HUMAN RESOURCES

5.1 Assist in the preparation of organisation charts and job descriptions.

5.2 Assist and advise in the procurement of personnel.

5.3 Assist in training of personnel for various administrative, accounting, personnel and other required business functions.

5.4 Assist and advise in the development of incentive programs.

5.5 Assist and advise in connection with employment contracts and employment conditions.

5.6 Assist and provide administration (where necessary) of employee payroll services.

6 PROCUREMENT

6.1 Promote relationships with suppliers already represented.

6.2 Advise and assist in the search for new service lines.

6.3 Negotiate and distribute contracts.

7 TAXATION

7.1 Assist and advise in local and international tax matters.

7.2 Assist with local and international tax compliance issues (including appointing external advisers where necessary).

8 LEGAL

8.1 Assist and advise on legal matters such as vendor contracts, rent agreements and any other type of contracts.

8.2 Assist and advise on compliance with law generally (including appointing external advisers where necessary).

8.3 Advise and assist in planning corporate liability, product and other insurance coverage to safeguard corporate status.

8.4 Negotiating insurance cover on behalf of the Group and providing access to insurance agreements.

9 **SAFETY, HEALTH, ENVIRONMENTAL AND QUALITY**

- 9.1. Provide advice and assist with the evaluation of safe working practices throughout the Group.
- 9.2. Advise generally in relation to environmental matters, and quality control methods throughout the Group.

SCHEDULE 2

The Target Group Members

- BHS Group Limited
- BHS Limited
- Davenbush Limited
- BHS Properties Limited
- Lowland Homes Limited
- BHS Services Limited
- Carmen Properties Limited
- BHS (Jersey) Limited

SCHEDULE 3

Agreed Fees

From the date of this Agreement up to midnight on 29 February 2016, the Agreed Fees payable to Holdco for the provision of the Services shall be the actual cost to Holdco of engagement of any and all persons delivering services to the Target Group (pursuant to Clause 2.4) together with a 30% uplift on such cost.

From 12.01 pm on 1 March 2016 onwards, the Agreed Fees shall be calculated by reference to the Budget as supplemented by the the following provisions:

1. Within 20 Business Days from the conclusion of each financial year to which this Agreement applies, Holdco shall prepare and deliver to the Company a document that faithfully reconciles the budgeted costs for the provision of the Services for the financial year in question and the actual cost of such services indicating whether a difference exists between the two amounts (the "**Relevant Difference**") between the budgeted and actual costs together with such supporting evidence as is reasonably available to support such costs (the "**Costs Reconciliation**").
2. If the Relevant Difference is due to:
 - a. the budgeted costs being too low, then a balancing payment shall be due and payable to Holdco within five Business Days of the Costs Reconciliation being agreed or deemed agreed, as the case may be; or
 - b. the budgeted costs being too high, then a balancing payment shall be due and payable to the Target Group members in their respective proportions which payment may be satisfied by a repayment of cash or, alternatively by way of set off against the next Quarter Date payment due to Holdco.
3. The Company shall have the right, if so desired, during a 20 Business Day period following receipt of the Costs Reconciliation, to raise questions and seek further information and clarification in relation to the existence and where relevant quantum of a Relevant Difference according to the rights granted in clause 2.7. The cost of such an audit process shall be borne by the Company.
4. Unless the Company states otherwise, if no queries are raised by the conclusion of the period referred to in paragraph 3 above, the Costs Reconciliation shall be deemed agreed between the Company and Holdco and, where relevant, the Parties shall perform their obligations as set out in paragraph 2 above.

5. If the Company raises queries in respect of the Costs Reconciliation and / or the Costs Difference and an audit ensues, then the Cost Reconciliation and any relevant Relevant Difference shall be deemed agreed at the conclusion of the process outlined in paragraph 6 below.
6. During any relevant financial year, where Holdco reasonably anticipates that the actual cost of any of the individual line items in the Budget shall or is likely to exceed the amount forecast in the Budget by more than 20%, then Holdco shall as soon as reasonably possible notify the Company in writing giving details of such matters and the Company and Holdco shall discuss and, acting reasonably, agree prudent changes to the Budget as a result and, upon so doing, the Budget and the Agreed Fees due for the balance of the relevant year shall be adjusted accordingly PROVIDED that if at the end of the relevant financial year, there is a difference between a line item in the Budget and the actual amount that was not the subject of an early warning notice as envisaged by this paragraph 6, then the Company may, on behalf of itself and as agent for the Target Group members, approve and pay or approve the payment of such amount provided it is satisfied, acting reasonably, that the matter in question that resulted in the relevant overspend was for the benefit of the Company or a member or members of the Target Group.
7. The Company and Holdco shall at all times act in good faith in relation to the preparation and negotiation of the Costs Reconciliation, any Relevant Difference and any amendments to the Budget as referred to in paragraph 6 above. To the extent that they disagree on a relevant matter, upon request, Holdco shall provide the Company with evidence to substantiate any cost and upon the provision of such evidence, the relevant cost shall be deemed agreed. If, despite the previous sentence, the Company and Holdco still dispute a particular cost then the matter shall be referred in writing to their respective chief executive officers and if they are unable to reach agreement on the relevant dispute within 14 Business Days of such referral, the relevant dispute may be referred by either party to the Company's auditor who shall act as expert in determining the relevant dispute and, absent fraud or manifest error, the determination of the expert shall be binding on the parties.

EXECUTED as a DEED
by **RETAIL ACQUISITIONS LIMITED**
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTED as a DEED
by **BHS GROUP LIMITED**
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTED as a DEED
by **BHS LIMITED**
acting by two directors
or one director and the Secretary:

)
)
)

Director

Director/Secretary

EXECUTED as a DEED)
by **DAVENBUSH LIMITED**)
acting by two directors)
or one director and the Secretary:

Director

Director/Secretary

EXECUTED as a DEED)
by **BHS PROPERTIES LIMITED**)
acting by two directors)
or one director and the Secretary:

Director

Director/Secretary

EXECUTED as a DEED)
by **LOWLAND HOMES LIMITED**)
acting by two directors)
or one director and the Secretary:

Director

Director/Secretary

EXECUTED as a DEED)
by **BHS SERVICES LIMITED**)
acting by two directors)
or one director and the Secretary:

Director

Director/Secretary

EXECUTED as a DEED)
by **CARMEN PROPERTIES LIMITED**)
acting by two directors)
or one director and the Secretary:

Director

Director/Secretary

EXECUTED as a DEED)
by **BHS (JERSEY) LIMITED**)
acting by two directors)
or one director and the Secretary:

Director

Director/Secretary

Attachment 3

Additional Services Material Benefit

To BHSG Date []
From RAL
Subject Additional services – Material benefit

Background

This record is made pursuant to the management services agreement between, inter alia, BHS Group Limited (“**BHSG**”) and Retail Acquisitions Limited (“**RAL**”) dated 11 March 2015, as amended (“**MSA**”).

Terms defined in the MSA are also used in this record.

Additional Services

Pursuant to clause 3 of the MSA, Holdco has agreed to provide the following additional services to the relevant member (above) of the Target Group:

Services

Additional ad hoc services that, if and once provided, can have a transformative impact on the business of BHSG.

Deliverables

An improved financial performance of more than £1m Edbitda per annum.

Fees

To be agreed between the parties.

Assumptions

1. No substantive issues or legal difficulties arise which are not anticipated.
2. RAL will not advise on tax or provide legal advice.
3. All the parties to the transaction co-operate in working towards completion and are reasonable and commercial in negotiation and in setting of conditions precedent or other documents.

