



# Project Genesis

## Structure Report

14 October 2013

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14 October 2013

Dear Sirs

### **Project Genesis – Structure Report**

In accordance with the terms of our engagement letter dated 24 September 2013 (the “Contract”), we enclose our Structure Report (the “Report”), prepared in connection with the proposed acquisition of the units in the unit trust which holds the St Enoch Shopping Centre, and the shares in a UK management company (the “Transaction”). The Report is confidential to the Beneficiaries (as defined in the Contract) and is subject to the restrictions on use specified in the Contract. No party is entitled to rely on the Report for any purpose whatsoever and we accept no responsibility or liability to any party in respect of the contents of this Report.

**By proceeding to read this report you and any other recipients confirm their understanding of, and agreement to, these conditions.**

This Report has been prepared for the exclusive use of you and/or those affiliates identified under the terms of our engagement as Beneficiaries and solely for the purpose stated by us. We draw your attention to our engagement letter dated 24 September 2013, in which we set out the scope of our work, sources of information and the limitations of the work undertaken. We also draw your attention to Section 1 of this Report which sets out the particulars of our work.

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- (iii) Tax advice on the UK tax treatment of any transactions to which the UK Tax Disclosure Rules apply; and,
- (iv) Tax advice which is subject to a reporting obligation when confidentiality conditions apply in any jurisdictions.

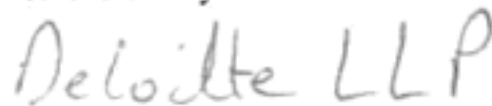
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The advice contained herein is based upon our understanding of the facts, assumptions, information, and our interpretation of the Internal Revenue Code of 1986, as amended (the "Code"), US Treasury regulations (the "Treas. Reg." or "regulations") promulgated there under, court decisions, rulings and procedures issued by the Internal Revenue Service (the "IRS" or the "Service"), and other tax authority in effect as of the date of this letter, which are subject to change. If the facts and assumptions are incorrect or change or the tax laws change, the conclusions and recommendations would likewise be subject to change.

Any US federal income tax advice contained herein was not intended or written to be used, and cannot be used by any person, for purposes of (i) avoiding any penalties that may be imposed by the US Internal Revenue Service or (ii) promoting, marketing or recommending to another party any transaction or matter contained herein. If this advice is used or referred to by any person in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any other person, then this advice was written to support the promotion or marketing of the transaction(s) or matter(s) addresses herein. All taxpayers should seek advice based on their own particular circumstances from an independent tax advisor.

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Yours faithfully



 Partner

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# Contents

Glossary .....	1
1 Overview and Assumptions .....	3
2 Acquisition Steps .....	5
3 Ongoing UK taxation .....	11
4 Ongoing Jersey taxation .....	22
5 Ongoing Luxembourg taxation .....	24
6 Ongoing US taxation .....	33
7 Future exit .....	35
Appendix I – Tax residence protocols .....	38
Appendix II – Luxembourg participation exemption .....	42
Appendix III – Tax & Financial Reporting Obligations .....	45
Appendix IV – Engagement Letter dated 24 September 2013 .....	49



# Glossary

AIA	Annual Investment Allowance, a CA term	CAP	chargeable accounting period
APA	Advance Pricing Agreement	CFC	Controlled Foreign Corporation
ATA	Advance Tax Analysis	CGT	Capital Gains Tax
Bank	GE Real Estate Loans Limited	CIS	Collective Investment Scheme for the purposes of section 235 of the Financial Services and Markets Act 2000
Bank Loan	Bank loan of £133 lent by the Bank to the Unit Holders which will be subsequently novated to the JPUT	CIT	Luxembourg Corporate Income Tax
Blackstone	The Blackstone Group International Partners LLP	CTA 2009	Corporation Tax Act 2009
BREP Funds	Blackstone Real Estate Partners (Offshore) VII L.P. Blackstone Real Estate Partners (Offshore) VII.TE.1 L.P. Blackstone Real Estate Partners (Offshore) VII.TE.2 L.P. Blackstone Real Estate Partners (Offshore) VII.TE.3 L.P. Blackstone Real Estate Partners (Offshore) VII.TE.4 L.P. Blackstone Real Estate Partners (Offshore) VII.TE.5 L.P. Blackstone Real Estate Partners (Offshore) VII.TE.6 L.P. Blackstone Real Estate Partners (Offshore) VII.TE.7 L.P. Blackstone Real Estate Partners (Offshore) VII.TE.8 L.P. Blackstone Real Estate Partners (Offshore) VII.F L.P. Blackstone Family Real Estate Partnership (Offshore) VII-SMD L.P. Blackstone Real Estate Holdings (Offshore) VII L.P. Blackstone Real Estate Holdings (Offshore) VII ESC L.P. (above fourteen entities together the "BREP VII Funds") Blackstone Real Estate Holdings Europe IV-NQ – ESC L.P. Blackstone Real Estate Partners Europe IV-NQ L.P. Blackstone Family Real Estate Partnership Europe IV-SMD L.P. (above three entities together the "BREPE IV Funds")	DTT	Double Taxation Treaty
		DTTP	Double Tax Treaty Passport, an HMRC scheme
		Due Diligence Report	Project Genesis Due Diligence Report dated 14 October 2013
		EUR or €	Euro
		GAAR	General anti-abuse rule
		Genesis Holdco	Genesis Holdco S.à r.l.
		Genesis Retail I	Genesis Retail I S.à r.l.
		Genesis Retail II	Genesis Retail II S.à r.l.
		Genesis Topco	Genesis Topco S.à r.l.
		HMRC	HM Revenue & Customs
Blackstone Advisors	Blackstone Real Estate Associates VII, and Blackstone Real Estate Associates Europe	IBL	Interest Bearing Loan
Master Luxco	BRE/Europe 7NQ Sarl	IFL	Interest Free Loan
CA	Capital allowances	ISE	International Service Entity

Ivanhoe	Ivanhoe Cambridge Inc.	Vendors	4259050 Canada Inc and 4352769 Canada Inc
JPUT	St. Enoch Centre Unit Trust	WDA	writing down allowance, a CA term
LITL	Luxembourg Income Tax Law	WHT	Withholding Tax
LTA	Luxembourg Tax Authorities		
Luxembourg Companies	Master Luxco, Genesis Topco , Genesis Holdco, Genesis Retail I and Genesis Retail II		
Lux Holdcos	Genesis Topco and Genesis Holdco		
Manco	Ivanhoe UK Management Services Ltd		
MBT	Luxembourg Municipal Business Tax		
NRL	Non Resident Landlord		
NRLS	Non Resident Landlord Scheme		
NWT	Luxembourg Net Worth Tax		
PFIC	Passive Foreign Investment Company		
PPL	Profit Participating Loan		
Property	St. Enoch Shopping Centre		
PTP	Publicly Traded Partnership		
Section 331	Internal Revenue Code Section 331 (US legislation)		
TOGC	Transfer of a Going Concern, a VAT term		
Trustee	St Enoch Trustee Company Ltd		
UBTI	Unrelated Business Taxable Income		
Unit Holders	Genesis Retail I and Genesis Retail II		
VAT	value added tax		
Vendor Debt	IBLs totalling £120m advanced by Ivanhoe to JPUT		

# 1. Overview and Assumptions

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## 1.1 Overview

- 1.1.1 We understand that it is your intention to acquire 100% of the units in the JPUT, which holds the Property, and 100% of the shares in Manco, which provides certain management services to the JPUT. This Report describes the anticipated tax consequences of the proposed acquisition structure and has been prepared in accordance with our engagement letter dated 24 September 2013 (the "Contract").
- 1.1.2 We understand that the principal commercial objectives of the structure are:
- (i) addressing structural requirements of the BREP Funds and Master Luxco;
  - (ii) facilitating effective security for and servicing of third party bank debt;
  - (iii) facilitating the repatriation of excess cash to the BREP Funds; and
  - (iv) facilitating potential future exit possibilities.
- 1.1.3 This Report sets out the UK, Jersey, Luxembourg and US tax analysis of the Transaction, including:
- i) Tax implications on acquisition;
  - ii) Ongoing taxation of the investment structure during the holding period;
  - iii) Taxation on the repatriation of surplus cash; and
  - iv) Taxation on the potential future exit.
- 1.1.4 It should be noted that there could be non-tax considerations (e.g. legal, security, financial assistance etc.) that will affect the optimal structure from a tax perspective. We are not responsible for identifying such issues, but are happy to work with other advisors, if requested, to overcome any negative tax effects of such issues as may arise.
- 1.1.5 This Report sets out the position as at 14 October 2013 and is subject to any matters which may arise after this date and may impact the comments set out below. In particular, it should be noted that all advice is based on legislation and practice of the relevant tax authorities as at 14 October 2013. Such legislation and practice may change in the future and certain aspects of the proposed structure may require negotiation with the relevant tax authorities as to their tax treatment.
- 1.1.6 We have no responsibility, unless separately engaged in due course, to update any of our advice for future changes in law or practice or to carry out such negotiations with the relevant tax authorities.
- 1.1.7 A transfer pricing review of the proposed investment steps is outside the scope of this Report.
- 1.1.8 The taxation of the Trustee is outside the scope of this Report.
- 1.1.9 This Report is solely addressed to and for the benefit of those persons to whom our Contract is addressed and who have agreed in writing the terms of the Contract. It may not be relied upon by any other person or entity without our prior written consent. Such other persons or entities should seek their own independent advice. Similarly, without our prior written consent this Report may not be quoted in whole or in part or otherwise referred to in any documents, copied or delivered to any other person or entity.
- 1.1.10 For the avoidance of doubt it should be noted that it is our responsibility only to advise the signatories to our Contract in respect of the Transaction.

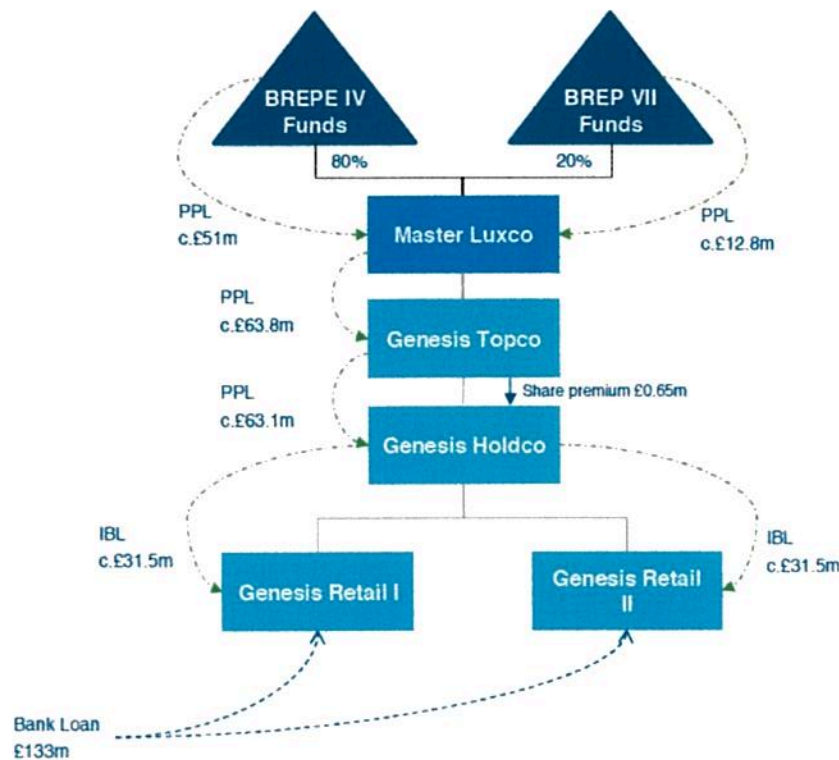
## 1.2 Assumptions

- 1.2.1 None of the parties involved in the Transaction has a main purpose of obtaining a tax advantage in entering into the Transaction as a whole or any individual transaction steps.
- 1.2.2 The Property will continue to be held by the JPUT for long-term investment purposes to benefit from rental income and capital appreciation. This is critical to the tax treatment set out in this report.
- 1.2.3 The entirety of the Property consists of retail property and, in particular, no part of the Property constitutes residential property for UK tax purposes.
- 1.2.4 All entities in this Report will be tax resident in their jurisdiction of incorporation. Please refer to Appendix I for guidance on maintaining tax residence.
- 1.2.5 All transactions steps contemplated are to be undertaken for commercial purposes and on an arm's length basis unless it is specifically stated otherwise in this Report.
- 1.2.6 The JPUT is properly constituted as a 'Baker' trust for UK tax purposes. This should be confirmed by your legal advisors.
- 1.2.7 The JPUT, prior to the Transaction, throughout the investment steps and during the holding period, has and will continue to constitute a valid CIS, as defined under section 235 FSMA 2000. We understand this will be confirmed by your legal advisors.
- 1.2.8 The BREPE IV Funds will invest 80% of the capital committed by the BREP Funds for this acquisition and the BREP VII Funds will invest the remaining 20%.



## 2 Acquisition Steps

### 2.1 Steps 1-7: Pre-acquisition and financing steps



(We understand that initially the structure described below and shown opposite will be established for the exchange of contracts and payment of a £25m deposit on 19 September 2013. We understand the £25m deposit will be funded by way of an undocumented interest-free intercompany loan from the BREP Funds to Master Luxco, which will be on lent as a short-term, undocumented interest-free intercompany loan from Master Luxco to the Unit Holders. The remainder of funds described in the steps below will be drawn down shortly before completion when the structure is fully capitalised, at which point the interest free loans will effectively be repaid.)

#### Master Luxco incorporates acquisition structure

2.1.1 **Step 1** – Master Luxco incorporates Genesis Topco, a Luxembourg Sarl, with share capital of the GBP equivalent of £25,000.

2.1.2 **Step 2** – Genesis Topco incorporates Genesis Holdco, a Luxembourg Sarl, with share capital of the GBP equivalent of £25,000, using the funds received in Step 1.

2.1.3 **Step 3** – Genesis Holdco incorporates Genesis Retail I and Genesis Retail II, both Luxembourg Sarls, each with share capital of the GBP equivalent of £12,500, using the funds received in Step 2.

#### Drawdown of BREP financing

2.1.4 **Step 4** – Master Luxco issues PPLs of c.£63.8m to the BREP Funds in accordance with their respective investment percentages.

2.1.5 **Step 5** – Genesis Topco issues PPLs of c.£63.8m to Master Luxco.

2.1.6 **Step 6** – Genesis Topco funds Genesis Holdco with c.£63.8m as follows:

- (i) Genesis Holdco issues PPLs of c.£63.1m; and
- (ii) Genesis Topco contributes cash of c.£0.65m to Genesis Holdco in exchange for share premium.

2.1.7 **Step 7** – Genesis Holdco advances funds of £31.5m to each of the Unit Holders in the form of IBLs.

#### **Drawdown of Bank financing**

2.1.8 **Step 8** – The Bank advances £133m to the Unit Holders in accordance with the terms of the Bank Loan. (This step is likely to occur immediately prior to completion).

#### **Vendors' pre-acquisition steps**

2.1.9 We understand that there are a number of pre-acquisition steps that will take place in the Vendors' group prior to the acquisition by the Unit Holders.

2.1.10 The tax implications of these steps are outside the scope of the Report. Please see the Due Diligence Report for the tax implications of the Vendors' pre-acquisition steps.

## 2.2 Tax analysis of Steps 1- 7

### **Luxembourg tax implications of Steps 1-7**

#### *Registration duty*

2.2.1 There is a nominal fixed registration duty of €75 payable on incorporation of each of the Luxembourg Companies. A further €75 will become payable on any subsequent modification to their by-laws (e.g. increase of share capital).

#### *Tax residence*

2.2.2 The Luxembourg Companies should be fully taxable Luxembourg tax resident companies from incorporation, on the basis that their statutory seat and place of effective management will be in Luxembourg. It should therefore be ensured that the Luxembourg Companies are effectively managed in Luxembourg to qualify as Luxembourg tax resident under domestic law and applicable DTTs (please refer to Appendix I for further comments on the above).

2.2.3 Specific substance requirements are also laid down by the Transfer Pricing Circular LITL n° 164/2, dated 28 Jan uary 2011, for companies carrying out financing activities with related parties.

#### *Foreign exchange exposures*

2.2.4 We understand that the share capital of Master Luxco is denominated in EUR and that the functional currency of such company is EUR. As a result, a foreign exchange exposure may be generated by the PPLs denominated in £.

2.2.5 To avoid taxable exchange gain movements arising in relation to the PPLs, we recommend that the PPLs issued by Master Luxco track any exchange movements on the underlying PPLs issued by Genesis Topco.

#### *Short-term interest free loan*

2.2.6 The LTA may require that Master Luxco recognises a taxable handling fee in respect of its back-to-back lending of IFL of £25m. The handling fee would be determined based on the amounts at stake, the functions performed and the risks incurred by Master Luxco. To the extent that this is the case, the accounting profit of Master Luxco should be adjusted for tax purposes to reflect the gross margin. It may be possible to shelter some of this income with (reasonable) deductible expenses arising in Master Luxco which are related to its financing activity. The arm's length nature of this fee, if required, will be formally agreed with the LTA in the written ATA (see 5.19). In any case, in light of the short period

between exchange and completion, we would expect any taxable income to be minimal.

2.2.7 The IFL should be de minimis for the purposes of the APA rules and therefore no APA should be required in respect of this fee.

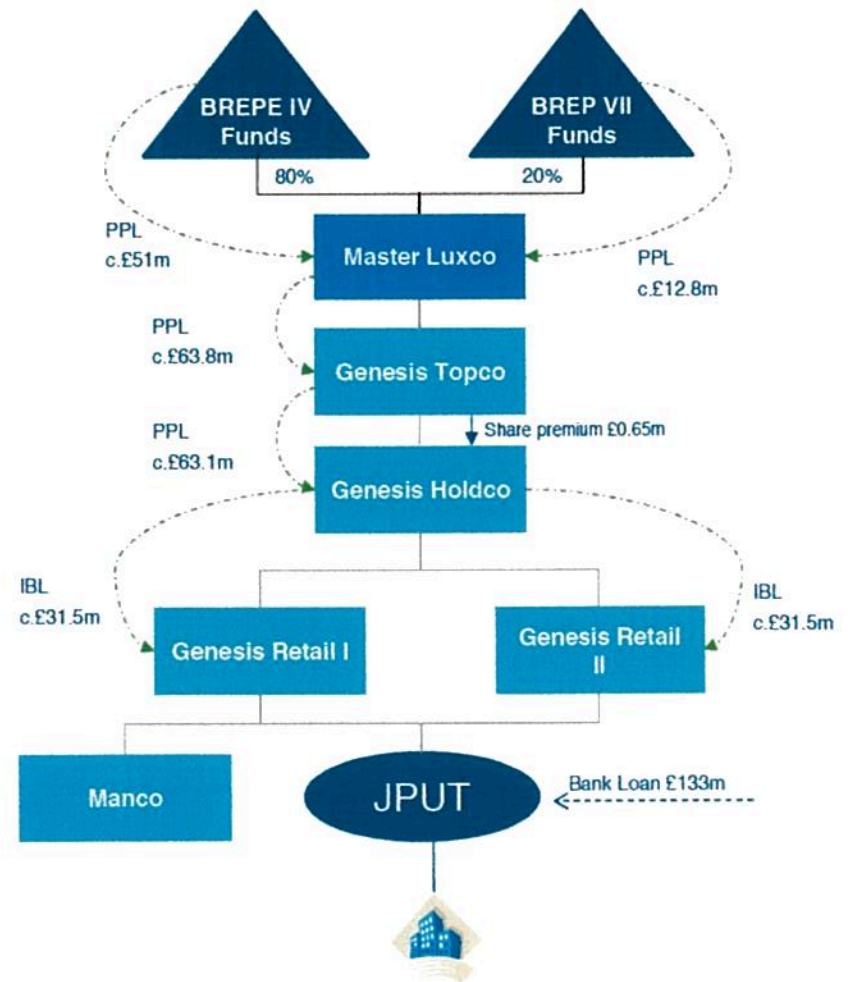
### US tax implications of Steps 1-7

2.2.8 Master Luxco has filed an entity classification election (i.e. Form 8832) to be treated as a partnership for US federal income tax purposes.

2.2.9 Each of the Luxembourg Companies should each file an entity classification election (i.e. Form 8832) to be treated as a disregarded entity for US federal income tax purposes, effective as of the date of incorporation.

2.2.10 The formation and capitalisation of the Luxembourg Companies should have no adverse US tax consequences.

## 2.3 Steps 8-13: Acquisition steps





### Acquisition of the JPUT and Manco

(In practice, we understand that at completion all cash will be transferred directly from the Bank and the Unit Holders to the Vendors and Ivanhoe Cambridge, as such Steps 10-13 below will be by accounting entry only)

- 2.3.1 **Step 8** – The Unit Holders each acquire 50% of the units in the JPUT from the Vendors for combined consideration of c.£70m, using £57m of the cash received in Step 7 and £13m of the cash received in Step 8.
- 2.3.2 **Step 9** – Genesis Retail I acquires 100% of the shares in Manco from Ivanhoe for a market value consideration of c.£31k.
- 2.3.3 **Step 10** – The Unit Holders advance £120m to the JPUT on intercompany account.
- 2.3.4 **Step 11** – The JPUT uses £120m received in Step 10 to fully repay the Vendor Debt.
- 2.3.5 **Step 12** – The JPUT repurchases units with a market value of £13m from the Unit Holders in equal proportions, for consideration of £13m to be left outstanding.

2.3.6 **Step 13** – The Unit Holders novate their liability of £133m under the Bank Loan to the JPUT in satisfaction of:

- i. the intercompany receivable of £120m created in Step 10; and
- ii. the consideration of £13m left outstanding in Step 12.

## 2.4 Tax analysis of Steps 8-13

### UK tax implications of Steps 8 -13

#### *SDLT*

- 2.4.1 In general, SDLT is not chargeable on the transfer of units in a unit trust as there is no transfer of an interest in UK land. It is irrelevant that the JPUT holds UK real estate assets as a unit trust is treated as opaque for SDLT purposes.
- 2.4.2 Section 101 Finance Act 2003 (“Section 101”) deems the trustees of a unit trust scheme to be a company for SDLT purposes and the units to be shares in that company.
- 2.4.3 Section 101 cross refers to section 237 of FSMA 2000 which defines a unit trust scheme as a “collective investment scheme”. As such, it is essential that the JPUT satisfies the requirements to be a CIS as defined in section 235 FSMA 2000.
- 2.4.4 If the JPUT does not qualify as a CIS, the units would represent interests in the underlying property such that the Unit Holders would be treated as acquiring an interest in the Property. In such a case, an acquisition of the units would attract a charge to SDLT at 4% of the VAT inclusive consideration paid or provided for the units, which would include the value of the indebtedness in the JPUT. Based on a headline consideration of c.£190m, the SDLT would be up to c.£7.6m.



- 2.4.5 We understand that your legal advisers have confirmed that the JPUT is and will continue to be regarded as a CIS and that the proposed steps will not change this analysis.

#### *Stamp Duty*

- 2.4.6 Stamp duty, which is chargeable on a transfer of shares or marketable securities (e.g. certain types of loan stock) does not apply to transfers of units in unit trusts. As such, no stamp duty should be payable on the acquisition of the units in the JPUT.
- 2.4.7 The acquisition of Manco should be subject to stamp duty at 0.5% of the amount or value of the consideration paid for the shares of Manco. This would be a liability of Genesis Retail I. On the basis that consideration of c.£31k will be paid for the shares in Manco, this would give rise to a stamp duty charge of c.£155.

#### *SDRT*

- 2.4.8 In general, SDRT is chargeable on an unconditional agreement to transfer chargeable securities. The term "chargeable securities" does not however include units in a unit trust scheme provided that all of the trustees under the scheme are resident outside the UK and the units are not registered in any register kept in the UK by or on behalf of the trustees under the scheme. Accordingly, on the basis that the JPUT is registered in Jersey and the units are not registered on any UK register, no charge to SDRT should arise on the transfer of the units.

#### *Income tax*

- 2.4.9 On the basis that the JPUT is a 'Baker' type Trust, the acquisition of the units of the JPUT will result in the Unit Holders coming within the charge to UK income tax in respect of their income from the Property. Each of the Unit Holders should register under the NRLS as set out in 3.1.10 below.

#### *Anti-avoidance*

- 2.4.10 There is, *prima facie*, a risk under the UK 'transactions in land' anti-avoidance legislation that the JPUT's repurchase of units may give rise to a UK income tax liability in the hands of the Unit Holders. However, on the basis that this repurchase will be at market value and this repurchase will take place immediately following acquisition of units in the JPUT by the Unit Holders, and therefore the Unit Holders should not make a gain on the disposal, the anti-avoidance provisions should not be in point. Please see section 7.4 for further details of the transactions in land provisions.

#### *WHT*

- 2.4.11 On repayment of the Vendor Debt, to the extent that this includes any accrued interest that has a 'UK source' (see 3.4 below), there is a risk that the JPUT may be required to withhold UK tax at the rate of 20% on this interest. We understand that this should not be the case and therefore no WHT obligation should arise, please see the Due Diligence Report for further details of whether such an obligation will arise.

#### *Capital allowances*

- 2.4.12 There are alternative views on the CA implications arising on the acquisition/disposal of units in a JPUT holding UK property and we see differing interpretations applied in practice.
- 2.4.13 We consider that the better view is that the trustees of the JPUT carry on the UK property business for UK tax purposes and, therefore, the disposal of units in the JPUT is not a disposal event for CA purposes. As such, on the acquisition of the JPUT, the Unit Holders should 'step in the shoes' of the Vendors, thereby inheriting their CA position. In this interpretation, as there is no disposal event, CAA 2001 section 198 elections ("s198 election") should not be required to transfer entitlement to claim CAs in respect of the pooled expenditure.

- 2.4.14 However, an alternative view that is also regularly taken by tax payers, is that the unitholders in the JPUT are considered to be carrying on the UK property business for UK tax purposes. We understand the Vendors have followed this alternative analysis and we are not aware of HMRC challenge around this view. Under this interpretation, the sale of units of the JPUT would be a disposal event for CA purposes and, as such, the Unit Holders and the Vendors would need to enter into s198 elections to allow the Unit Holders (and any future owners) to have entitlement to claim CAs in respect of pooled expenditure in relation to the Property. There are provisions in the SPA requiring the Vendors to enter into and submit a s198 election on the sale of the units in the JPUT, to provide the flexibility to follow this approach, if the first view was to be challenged by HMRC.
- 2.4.15 We understand that provisions in the SPA set out that up to £36.0m of CAs should be available to be claimed by either the Unit Holders or the Trustees post-completion.
- 2.4.16 We recommend that the first view is adopted (i.e. the CAs claims will be made at the level of the trustees and the Unit Holders will 'step in the shoes' of the Vendors). In addition to this being our better view of the technical position, there is a risk that c.£6m (being historically pooled capital expenditure and expenditure on tenant contributions) might not transfer to the Unit Holders if the alternative view were adopted.
- 2.4.17 Even adopting the first view, please note that there is still a slight risk in relation to the Unit Holders as we understand the Vendors filed on the basis of the alternative analysis. We understand that the SPA, therefore, provides flexibility for either view to be adopted.
- 2.4.18 VAT
- 2.4.19 The transfer of the units in the JPUT to the Unit Holders should be outside the scope of UK VAT.
- 2.4.20 However, as referred to in detail in our Due Diligence Report, the way that UK VAT has historically been dealt with in respect of the JPUT is unusual. The Vendors, rather than the Trustee, have registered for UK VAT and acted as if they made supplies in respect of the Property.
- 2.4.21 We understand that it is intended that, prior to completion of the acquisition of the units, the Trustee will have applied to register for UK VAT, opted to tax the Property and provided an anti-avoidance notice under Article 5(2B) of the Value Added Tax Regulations 1995 to the Vendor. Such steps would mean that any such deemed transfer of the Property should be capable of TOGC treatment and therefore outside the scope of UK VAT.
- Luxembourg tax implications of Steps 8 -13**
- 2.4.22 To the extent these steps are carried out on arm's length terms and are properly documented and booked in the accounts, there should be no adverse Luxembourg direct or indirect tax implications of Steps 8-13.
- Jersey tax implications of Steps 8 -13**
- 2.4.23 There should be no adverse Jersey indirect or direct tax implications of Steps 8-13.
- US tax implications of Steps 8 -13**
- 2.4.24 The JPUT should file a "protective" election (i.e. Form 8832) to be treated as a "flow-through" entity for US tax purposes, effective as of the date of acquisition.
- 2.4.25 There should be no adverse US direct or indirect tax implications of the Steps 8-13.



# 3 Ongoing UK taxation

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## 3.1 UK taxation of the JPUT and its Unit Holders

### Tax residence of the JPUT and the Trustee

- 3.1.1 The structure outlined in this Report relies on the JPUT, the Unit Holders and the Trustees being managed and controlled outside the UK in order that they are treated as non-resident for UK tax purposes.
- 3.1.2 There are important establishment and ongoing requirements to achieve and be able to demonstrate this position if queried by HMRC. Additional guidance on maintaining tax residence is set out in Appendix I.

### Taxable status of the JPUT

- 3.1.3 As set out in 2.4.9 above, on the basis that the JPUT is a 'Baker' trust, it should be treated as transparent for UK income tax purposes.
- 3.1.4 For CGT purposes, the JPUT is treated as a company under UK tax law and hence opaque. Accordingly, it is important that the Trustee manages and controls the JPUT outside the UK such that any investment gains realised on any direct asset disposal by the JPUT would be outside the scope of CGT in the UK. The key strategic decisions relating to the business of the JPUT must therefore be taken by the Trustee outside the UK. Please refer to Appendix I for more detail of tax residence protocols.

### Trading and investment activity

- 3.1.5 Section 5(2) CTA 2009 provides that a company (in this case the Unit Holders, in light of the JPUT's transparent nature) which is not tax resident in the UK is within the charge to UK corporation tax if,

and only if, it carries on a trade in the UK through a UK permanent establishment.

- 3.1.6 HMRC therefore distinguishes between assets held for 'investment' purposes and those assets held for 'trading' purposes. There is no statutory definition in UK tax law of what constitutes investment activities as opposed to trading activities; this has been developed through case law.
- 3.1.7 The structure outlined in this Report assumes the Property is held for long term investment purposes and the JPUT is not deemed to be 'trading in property'. To the extent that it is the intention of JPUT to continue to hold the Property for the long term yield on investment return, the risk that JPUT could be treated as having a trading motive is low.
- 3.1.8 As set out in the Due Diligence Report, the JPUT has held its interests in the Property since 2005 and 2007, and as such it is our view that the historic risk of this being considered a trading asset is very low. Furthermore, we understand the Property will continue to be held by the JPUT as an investment asset with the objective of benefiting from rental income and long term capital growth, and not with the sole or main objective of realising a gain from the disposal. On this basis, the JPUT should not be considered to be carrying on a trade in the UK and therefore the Unit Holders should be outside the scope of UK corporation tax in respect of their interest in the Property. Please see the Due Diligence Report for further details of the historic position in this regard.
- 3.1.9 Notwithstanding the above, it is important to ensure that the continued long-term investment intention for the acquisition is sufficiently documented, and consideration should be given to whether there are documents indicating any other intention.

### **Non-Resident Landlord scheme**

- 3.1.10 Where rental income from UK property is paid to a non-UK tax resident recipient, *prima facie*, UK income tax must be withheld on the UK source rental income by the tenant or the managing agent, at the basic rate (currently 20%). However, under the terms of the UK NRLS (as set out in the Taxation of Income from Land (Non-residents) Regulations 1995, SI 1995/2902), HMRC may confirm that such rental income may be paid free from UK WHT where certain conditions are fulfilled.
- 3.1.11 As a consequence of the transparency of the JPUT for UK income tax purposes, the net rental income arising to the JPUT should be treated as income arising to the Unit Holders from an interest in UK property. Therefore, for UK tax purposes, the Unit Holders should be treated as NRLs and should register on the NRLS. We understand that the Unit Holders will file NRLS applications prior to the acquisition of the units in the JPUT in step 8, as such there should be no requirement for any tax to be withheld on rental income from the Property.
- 3.1.12 Furthermore, on the basis that the JPUT is a Baker trust, from a practical perspective the registrations made by the Unit Holders to join the NRLS should be sufficient to ensure no NRL filing obligations arise to the Trustee. This approach has been consistently applied by HMRC and we consider it to be their settled practice.

### **UK income tax on property rental income**

- 3.1.13 The Unit Holders should be subject to UK income tax at the basic rate (currently 20%) on their net UK property rental income, after deducting certain expenses (please see 3.2-3.5 for a discussion of specific deductions).
- 3.1.14 UK income tax is self-assessed in each fiscal year (6 April – 5 April) and is payable on account in two equal instalments: on 31 January during the relevant fiscal year and on 31 July following the end of the relevant fiscal year. These payments on account are calculated as 50% of the tax payable in the previous fiscal year.

Any final balancing payment will be made on 31 January following the end of the relevant fiscal year. No payment on account should be required in respect of the first year in which the Unit Holders are within the charge to UK income tax (i.e. year ending 5 April 2014).

- 3.1.15 The Unit Holders should submit their income tax returns by 31 January in the year following the end of the period to which they relate (i.e. the return for the period ending 5 April 2014 should be filed by 31 January 2015).

## **3.2 Deduction of property costs**

### **Deductibility of management fees**

- 3.2.1 To the extent that the JPUT or the Unit Holders incur management fees wholly and exclusively for the purposes of the property rental business, and provided they are on arm's length terms and not of a capital nature, those fees should be tax deductible against the rental income arising from the JPUT.

### **Other costs**

- 3.2.2 In addition to management fees, the JPUT and the Unit Holders will also incur a range of administrative and estate management expenses. Where these are incurred wholly and exclusively for the purposes of the property rental business, and provided they are not of a capital nature, they should be tax deductible against rental income arising from the Property unless the expenditure is specifically disallowed.

## **3.3 Tax deductions for interest**

### **General**

- 3.3.1 Interest on funds borrowed for the purposes of a property business is, *prima facie*, deductible against the rental income arising from the Property. Subject to the anti-avoidance provisions noted below, interest should be tax deductible where it has been incurred



wholly and exclusively for the purposes of a UK rental business and is on “arm’s length” terms.

- 3.3.2 On this basis, a deduction should be available in principle for (i) interest on debt drawn down by the Unit Holders to acquire units in the JPUT and for (ii) interest on debt drawn down to refinance existing debt at the JPUT level, subject to complying with the UK transfer pricing provisions.
- 3.3.3 There is a risk that HMRC will challenge the deductibility of interest in relation to debt drawn down to fund the acquisition of units in the JPUT on the basis that it is not drawn down to fund the acquisition of the Property directly. However, we are aware that HMRC have permitted deductions for interest in many similar situations (where debt has been drawn down to finance the acquisition of units in a property owning unit trust) and believe this to be their settled practice. As such, it is our view that interest on this debt should be deductible in principle.
- 3.3.4 Furthermore, in relation to the £13m of the Bank Loan that is to be novated to the JPUT in Step 13, there is a risk that HMRC may contend that this debt was not drawn down wholly and exclusively for the purpose of the property rental business. This is on the basis that in the hands of the JPUT the debt was taken on to finance the repurchase of its own units, rather than for the purpose of the property rental business. However, we believe that there are strong technical arguments to support that, whilst this transaction taken in isolation may not have been for the purpose of the property rental business, the repurchase of units was undertaken to effectively refinance part of the Bank Loan at the level of the Unit Holders. In addition, we understand that commercially this step is being undertaken as the Bank requires its debt to be at the JPUT level. Therefore, on the basis that the £13m of Bank Loan in the hands of the Unit Holders was used to finance the acquisition of the units in the JPUT and therefore should be deductible (as set out in 3.3.2-3.3.3), it is our view that interest on this debt should also be deductible in principle.

### Timing of interest deductions

- 3.3.5 Taxable profits from a UK property rental business are computed under the same principles as for a trading business with interest expense being deductible on an accruals basis in line with UK GAAP/IFRS, to the extent it is incurred wholly and exclusively for the purposes of that rental business.

### Transfer pricing

- 3.3.6 Interest accrued on related party financing is subject to the UK Transfer Pricing legislation. Interest on the Bank Loan should not be subject to the UK Transfer Pricing legislation on the basis the debt is drawn down from an unrelated lender and is not subject to any related party security (such as a guarantee) that would bring the debt within the transfer pricing rules.
- 3.3.7 Interest on the IBLs advanced by Genesis Holdco to the Unit Holders should be tax deductible to the extent that it is advanced on arm’s length terms (i.e. the interest is not more than would accrue if the debt had been granted by a third party). This means that the tax deduction available for interest accrued on related party IBLs would be subject to adjustment if HMRC successfully determined that the related party debt was not made on arm’s length terms.
- 3.3.8 In determining whether related party debt is on arm’s length terms, it is necessary to consider:
- (i) The amount of the loan;
  - (ii) The interest rate;
  - (iii) The ranking of each loan within the overall security structure;
  - (iv) The overall security being provided by the borrower; and
  - (v) Any other relevant terms (e.g. repayment schedule, interest cover, arrangement/exit fees, etc.).
- 3.3.9 HMRC would typically consider the related party debt deductible if it would be agreed between the borrower and a wholly unconnected party (e.g. a third party bank).

3.3.10 On the basis that the acquisition is to be c.100% debt funded, this is unlikely to represent an arm's length quantum of debt. As such, the Unit Holders will need to be able to support the arm's length nature of the related party interest payments for which a UK income tax deduction is taken when the Unit Holders' UK income tax returns are submitted.

3.3.11 Furthermore, HMRC require entities to maintain documentation to support the transfer pricing of any related party transactions. Appropriate evidence of the arm's length pricing of a loan could include an offer or quotation for a similar level of debt (under similar terms) from one or more third party banks that has received credit committee approval. This should be obtained contemporaneously with the transaction if possible.

3.3.12 Alternatively, a transfer pricing study could be undertaken post-completion with reference to data relevant to the time of the Transaction.

#### **Unallowable purpose**

3.3.13 Section 809ZG ITA 2007 contains a general disallowance for interest payments made pursuant to a tax avoidance scheme. It provides that relief shall not be given for interest where a scheme has been affected or arrangements made where the sole or main benefit which might be expected to arise for the person paying the interest is a reduction in liability to tax.

3.3.14 On the basis that the debt drawn down by the JPUT and the Unit Holders is for the main purpose of acquiring an indirect interest in UK property and repaying existing indebtedness, our view is that the risk of this legislation applying is remote.

## 3.4 Withholding tax on interest

### **General**

3.4.1 In accordance with Chapter 3 ITA 2007, WHT is, *prima facie*, due on payments of 'yearly interest' arising in the UK (i.e. where it has a UK source) at the basic rate of UK income tax (usually 20%).

3.4.2 For these purposes, yearly interest is interest calculated by reference to a debt which will be, or which is intended to be, outstanding for a period of a year or more.

3.4.3 In determining whether an interest payment "arises" in the UK (and is therefore potentially subject to deduction of UK WHT) the case of *Westminster Bank Executor Trustee Company (Channel Islands) Limited v National Bank of Greece SA* sets out the criteria to be considered. Following this case, HMRC guidance stated that the factors set out below would support the existence of a UK source for interest. The most important factor was identified as being:

- (i) The residence of the debtor and the location of his/her assets.

Other factors to take into account are:

- (ii) The place of performance of the contract and the method of payment;
- (iii) The competent jurisdiction for legal action and the proper law of contract; and
- (iv) The residence of the guarantor and the location of the security for the debt.

3.4.4 HMRC guidance states that if all of the above mentioned factors are present then "it is likely" that the interest will have a UK source and thus be subject to UK WHT.

3.4.5 As explained in 3.4.3, HMRC view the residence of the debtor as the most important factor in determining whether it has a UK source. Therefore, on the basis of being non-UK resident, any



interest paid by the Unit Holders on the IBLs drawn down from Genesis Holdco should be outside the scope of UK WHT, subject to the limitations below.

- 3.4.6 However the location of the Property (being the UK), and the fact the interest will be paid out of rental income derived from UK property, could indicate a UK source. Furthermore, if the debt was secured on the underlying UK property, this would also indicate a UK source.

#### **Bank Loan**

- 3.4.7 We understand that the Bank Loan will be secured on the Property, and governed by English law. As such, the Bank Loan may be considered to have a UK source, and in our experience such loans are often treated as having a UK source.

- 3.4.8 We understand that the Bank is a UK company but is not a bank for the purpose of s.879 ITA 2007, and therefore is not able to benefit from the exemption on interest payments made to banks. However, in order for UK WHT to apply to UK source interest payments, under s.874 ITA 2007, the payments must be made by one of the following:

- (i) a company (excluding payments made in a fiduciary or representative capacity);
- (ii) a local authority (excluding payments made in a fiduciary or representative capacity);
- (iii) a partnership of which a company is a member; or
- (iv) any person to another person whose usual place of abode is outside the UK.

- 3.4.9 In this instance, the payments of interest will be made by the Trustees acting in their capacity as trustees of the JPUT, which we would consider to be a fiduciary capacity. As such, WHT should only apply if the payment is made to a person whose usual place of abode is outside the UK. We understand that the Bank is a UK

company and therefore there should be no requirement to withhold tax from interest payments from the JPUT to the Bank.

- 3.4.10 If HMRC were to contend that interest payments from the JPUT to the Bank should be subject to withholding tax, this would necessarily mean that they consider that the payment is being made by the Trustees in a non-fiduciary capacity. As such, it would follow that an exemption would be available under s.930 ITA 2007 such that no UK WHT would apply to payments of interest to the Bank (as it is a UK resident company) provided that it is beneficially entitled to the interest payment.

- 3.4.11 As set out in 3.4.8, an exemption from UK WHT applies on interest payments made to a UK bank or a UK branch of an overseas bank (section 879 ITA 2007). As such, to the extent that a future lender to the JPUT is a UK bank or a UK branch of an overseas bank, no UK WHT should apply to interest payments to that lender provided that it is beneficially entitled to the interest payment. Furthermore, to the extent that a future lender to the JPUT lends from outside the UK, from a jurisdiction that has concluded a DTT with the UK, any WHT liability may potentially be reduced under the relevant clause of the applicable DTT, subject to the meeting the relevant conditions of the applicable DTT.

#### **Related party financing**

- 3.4.12 Based on UK case law, in respect of the IBLs advanced by Genesis Holdco to the Unit Holders, assuming these are not governed by UK law, the interest will be paid from a Luxembourg rather than a UK bank account, and the debt is not secured on the UK property, it is our view that the risk that interest payments are deemed to have a UK source should be low. However the case law (and HMRC guidance) does not provide a bright line test and therefore there cannot be absolute certainty.

- 3.4.13 From a practical perspective in our experience it is extremely rare for HMRC to enquire into the WHT status of interest on loans with the above characteristics and we have no recent experience of HMRC successfully challenging this point.

- 3.4.14 If interest paid by the Unit Holders was considered to be UK source, *prima facie*, UK WHT of 20% would apply to the interest payment. If no tax were withheld and HMRC were subsequently successfully able to demonstrate a UK source exists then interest and penalties may be due on top of the WHT.
- 3.4.15 Notwithstanding the above, even if WHT were considered to apply, a claim may be able to be made under the UK - Luxembourg DTT. However, this would require consideration of whether Genesis Holdco was the beneficial owner of the interest.
- 3.4.16 The meaning of beneficial ownership is a complex area defined by case law. The most relevant case on the subject is *Indofood [2006] STC1195*. HMRC believe that this case supports an "international fiscal meaning" of beneficial ownership for UK domestic law purposes — i.e. a test which requires the recipient of interest to "enjoy the full privilege to directly benefit from the income". Moreover the granting of treaty benefits should be consistent with the purpose of double tax treaties. Granting reduced WHT to a company in a treaty country with limited powers, which in reality is acting as agent or fiduciary for the ultimate beneficiaries of the income, is not likely to be consistent with such purpose where a reduced rate would not otherwise be available.
- 3.4.17 Ultimately, whether Genesis Holdco is the beneficial owner of the interest income is a question of fact. In our experience HMRC do not seek to treat interest paid by a non-resident landlord under similarly structured loans as having a UK source. To the extent that HMRC did seek to treat the interest income as having a UK source, we would not expect HMRC to challenge any treaty claim made by Genesis Holdco to receive interest without UK WHT to the extent of the proportion of the ultimate investors in the BREP Funds that are resident in jurisdictions which provide for 0% WHT on interest paid from the UK. However, it is worth noting that in such a scenario HMRC may seek to recover interest and possibly penalties for any interest paid gross prior to any treaty clearance being made.

## PPLs

- 3.4.18 There should be no UK WHT liability in respect of payments under the PPLs by the Luxembourg Companies on the basis that we understand none of the features set out in 3.4.3 should be present (and in particular that the instruments are subject to Luxembourg law and the jurisdiction of the Luxembourg courts and are not secured on the underlying UK property).

## Repayment of loan principal

- 3.4.19 There should be no UK WHT on the repayment of loan principal by any of the entities in the structure.

## 3.5 Capital allowances

### General

- 3.5.1 In calculating the property rental profits chargeable to UK income tax, although no deduction is available for accounting depreciation, a deduction is sometimes available for notional depreciation of capital expenditure on the Property. This notional tax depreciation is known as a 'capital allowance'. Different rates of CAs apply to different types of capital expenditure. No CAs are available for expenditure incurred on land.
- 3.5.2 Section 2.4.12 et seq. outlines the CAs position of the Unit Holders on acquisition of the units in the JPUT. For completeness, we note that it is anticipated that the Unit Holders should be able to benefit from capital allowances in respect of the following qualifying expenditure (please see our Due Diligence Report for further details and associated risks):
- i) General pool allowances – c.£18.9m
  - ii) Special rate pool allowances - £17.1m
- 3.5.3 To the extent that the JPUT incurs additional capital expenditure post completion (e.g. on refurbishing and/or enhancing the



Property), and the expenditure meets two basic conditions, which are:

- i) the claimant must have incurred qualifying expenditure; and
- ii) the claimant must carry on a qualifying activity,

this expenditure should qualify for CAs.

3.5.4 To the extent the JPUT incurs expenditure on assets that qualify for CAs, to ascertain the timing of the tax relief, it will be necessary to determine whether the expenditure falls into the category of plant and machinery or integral features, as described below.

3.5.5 CAs should be available on qualifying expenditure incurred by the JPUT to reduce the Unit Holders net taxable income on the basis that the JPUT carries on the qualifying activity for capital allowances purposes.

#### **Plant and machinery**

3.5.6 Plant and machinery allowances are available on expenditure on 'plant and machinery' used in respect of the property business.

3.5.7 The term 'plant and machinery' is not defined by statute. Apart from a few types of expenditure specifically treated as plant by statute, the eligibility of expenditure on individual assets is a question of fact decided by reference to established precedent or case law, depending on the nature and context of the expenditure. Typical examples of qualifying machinery or plant might include canteen equipment, fire alarms and protection systems, sanitary installations and carpets.

3.5.8 Such expenditure is pooled, and each year a WDA is available on the balance of the pool. For plant and machinery, that does not constitute an integral feature, WDA are currently available at the rate of 18% per annum on a reducing-balance basis.

#### **Integral features**

3.5.9 For expenditure incurred after April 2008, a new classification and tax treatment for 'integral features' within buildings was introduced (as a subset of plant and machinery). Allowances are available, currently at a rate of 8%, and typical assets included within this classification include:

- i) Electrical systems (including lighting systems)
- ii) Cold water systems
- iii) Lifts, escalators and moving walkways
- iv) External solar shading

#### **Contribution allowances**

3.5.10 Expenditure incurred by the JPUT in respect of contribution payments towards plant and machinery installed by tenants at the Property, may be eligible for capital allowances. Any qualifying contribution payments should be separately pooled in the JPUTs tax returns and is given at the rates discussed above (dependant on the nature of the underlying assets).

#### **Other capital allowances**

3.5.11 An AIA, providing 100% WDA, is available in respect of £250,000 per annum of a group's expenditure on plant and machinery. The availability of the AIA depends on the date the expenditure has been incurred and must be claimed in the year of expenditure.

3.5.12 In broad terms, a group may be defined for these purposes as a parent and subsidiary undertaking, or as companies under common control (generally a 51% shareholding).

3.5.13 Expenditure incurred in excess of the AIA will be subject to the normal CA rules dependent upon on the type of asset (see above).

## 3.6 General Anti-Abuse Rule

- 3.6.1 On 17 July 2013 the GAAR received Royal Assent as part of the Finance Bill 2013. As such, there is now an overriding statutory limit on the extent to which taxpayers can go in trying to reduce their tax bill. For the purposes of the GAAR, this limit is reached when the arrangements go beyond anything which could be reasonably regarded as a reasonable course of action (known as the “double reasonableness” test). Notwithstanding the lack of precedent in how HMRC may seek to apply the GAAR, it is our view that the Transaction should be seen as a reasonable course of action and therefore the GAAR should not be in point.

## 3.7 UK VAT

### VAT registration

- 3.7.1 From our due diligence we understand that the Vendors are currently registered for VAT in the UK and have opted to tax the Property. As referred to at 2.4.21, we understand that it is intended that the Trustee will apply to register for UK VAT and opt to tax the Property prior to completion. Accordingly, the JPUT should charge UK VAT at the standard rate (currently 20%) on rent and service charges.
- 3.7.2 Provided that UK VAT is charged on all the income or capital proceeds received by the JPUT, the JPUT should be entitled to recover all of UK VAT incurred by it on related costs, subject to normal rules concerning recovery.

- 3.7.3 Please note that there are anti-avoidance rules that can disapply an option to tax. The anti-avoidance legislation needs to be addressed each time there is a grant of an interest in the Property (including the grant of an occupational lease and a lease variation). If the option to tax is disappplied in respect of a grant then supplies to the relevant tenant would be exempt from UK VAT, which would impact the JPUT’s ability to fully recover VAT incurred on costs. Broadly, provided that there is no connection (including a financial connection) between the Trustee and any of the tenants, such anti-avoidance rules would not be in point.

- 3.7.4 The Capital Goods Scheme applies to all capital expenditure (e.g. the acquisition of a property, redevelopment, refurbishment, etc.) where VAT exclusive costs exceed £250k.

- 3.7.5 Where the Capital Goods Scheme applies, the use of the asset needs to be monitored over a period of ten years from the date the input VAT was incurred. If there is a change in the use of the asset within this period (e.g. because an option to tax is disappplied under the anti-avoidance legislation or because a charity tenant seeks to disapply the option) then a proportion of the VAT previously recovered will need to be repaid to HMRC.

- 3.7.6 We would expect that the Trustee on behalf of the JPUT will continue to submit UK VAT returns on a quarterly basis.

- 3.7.7 Please see the Due Diligence Report for further details of the historic UK VAT position.

### VAT on acquisition costs

- 3.7.8 Provided that the Unit Holders are the proper recipients of the services invoiced as part of the transaction advisory costs and the services are not directly related to UK land, no UK VAT should be chargeable. This should apply, for example, to tax and corporate law advisory services.



- 3.7.9 Where the services are related to UK land, then UK VAT at 20% will be chargeable. Examples of land related services on which UK VAT would be due include the services of surveyors, engineers and similar professionals relating to UK land or buildings. This includes the management, conveyance, survey or valuation of property by a solicitor or surveyor (including for insurance or lending purposes).
- 3.7.10 If UK VAT is charged on services relating to UK land, then this is unlikely to be recoverable by the Unit Holders, unless these are correctly recharged to the JPUT. Consideration should therefore be given as to whether such costs could properly be borne by the JPUT by invoicing the Trustee on behalf of the JPUT, e.g. valuation fees relating to a subsequent refinancing. If the JPUT is the recipient of the services from a UK VAT perspective and the facts support this (e.g. the engagement letter and invoice are addressed to the Trustee on behalf of the JPUT) then the Trustee on behalf of the JPUT should be able to recover the associated UK VAT.
- 3.7.11 Please see 5.20 for details of the Luxembourg VAT analysis of acquisition costs.

## 3.8 Construction Industry Scheme

- 3.8.1 The Construction Industry Scheme is an HMRC arrangement which sets out the rules for how payments to subcontractors for construction work must be handled by their engager. Under the scheme, a contractor has a monthly reporting obligation for payments made for construction operations undertaken by a third party. There may also be an obligation to deduct tax, dependent upon whether the subcontractor has gross payment status.
- 3.8.2 Broadly speaking, after the JPUT has incurred an average annual cost of £1m or more over a three year period it should register with HMRC under the Construction Industry Scheme regime from the start of the accounting period after the accounting period during which it breached the threshold.

- 3.8.3 On breaching the threshold the JPUT may need to withhold a portion of the payments made to sub-contractors carrying out any construction activity. To determine whether any withholding is necessary, HMRC provides the JPUT with access to a list of registered subcontractors. To the extent that the subcontractors are present on the list, the JPUT will be able to make payments either with no withholding or with a 20% withholding (depending on the status of the subcontractor). If the subcontractor does not appear on the HMRC list, then the withholding will be 30%.
- 3.8.4 The JPUT will be able to deregister from the Construction Industry Scheme at the end of the accounting period during which less than an average of £1m has been spent on construction over that and the preceding two accounting periods (i.e. where there has been an average annual cost of less than £1m over a three year period). To the extent that it is probable that the JPUT will not incur significant construction costs in the future then it may be possible to de-register sooner, by concession from HMRC.
- 3.8.5 As stated above, whilst registered under the scheme the JPUT is required to submit monthly returns, failure to submit these returns during the period of significant spend could lead to significant penalties.

## 3.9 UK Taxation of Manco

### UK Corporation tax

- 3.9.1 A company resident in the UK is subject to UK corporation tax on its worldwide income and gains. Manco should be tax resident in the UK by virtue of being incorporated in the UK.
- 3.9.2 The current main rate of corporation tax is 23%, reducing to 21% from 1 April 2014. Furthermore, as announced in the Chancellor's Budget on 20 March 2013, this is expected to reduce to 20% from 1 April 2015.

3.9.3 If profits are less than the 'lower limit', the small companies' rate will be applied (currently 20%). If profits fall between the 'lower limit' and the 'upper limit', marginal relief will be available.

3.9.4 The 'lower limit' and 'upper limit' are currently £300k and £1.5m respectively. However this limit is divided equally between all worldwide associated companies, such that the main rate is likely to apply.

#### *Chargeable accounting periods*

3.9.5 The period for which a company prepares its financial statements is known as the period of account. This is usually for a period of twelve months. Corporation tax is assessed in respect of a CAP which must not exceed twelve months.

3.9.6 Historically, Manco has prepared its accounts to 31 December each year. To the extent that this continues, Manco should continue to file its corporation tax return for each year to 31 December.

#### *Computation of trading profit*

3.9.7 Trading profit is computed primarily from the company's financial statements, which are prepared in accordance with the statutory requirements under the Companies Acts.

3.9.8 The net profit (or loss) as per the financial statements is then adjusted to arrive at taxable trading profit.

3.9.9 Only expenses incurred wholly and exclusively for the purposes of the trade are allowable for tax purposes, provided they are not of a capital nature, or specifically disallowed by statute.

3.9.10 Costs incurred as a result of having company status are generally allowed, even though these are not specifically incurred 'for the purposes of the trade', e.g. audit costs, company administration fees, etc.

3.9.11 We understand that the majority of Manco's expenses will relate to staff salaries, which should be deductible for corporation tax purposes.

#### *Transfer pricing*

3.9.12 The UK Transfer Pricing legislation, as set out in Part 4 TIOPA 2010, requires that any transactions with relevant related parties, and in some instances third parties acting together with related parties in relation to the provision of finance arrangements, must be on arm's length terms. We understand that the majority of Manco's income will come from the JPUT and as such will be within the scope of the transfer pricing provisions. As such, it is important that sufficient documentation is retained that provides contemporaneous evidence to support the arm's length nature of these fees.

#### *Trading losses*

3.9.13 To the extent that Manco realises trading losses for corporation tax purposes, these can be offset against total profits in the current year and/or in the prior year, or can be surrendered for group relief.

3.9.14 Any unrelieved trading loss is carried forward indefinitely, and available for use against the first available trading profits of the same trade.

3.9.15 Please see the Due Diligence Report for details of Manco's historic trading loss position.

#### *Taxation of other profits*

3.9.16 Manco will be subject to corporation tax on any interest income under the loan relationship rules, as accounted for on an accruals basis in accordance with UK GAAP.

3.9.17 Manco will be subject to corporation tax on its chargeable gains, as computed under capital gains tax law (mainly TCGA 1992).



## **VAT**

- 3.9.18 Manco is VAT registered and should charge VAT on the services it provides. Please see the Due Diligence Report for further details of Manco's historic VAT position.

# 4 Ongoing Jersey taxation

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## 4.1 Taxation of the JPUT

- 4.1.1 Prima facie, under Jersey tax law the trustees of a Jersey resident trust are subject to Jersey tax on all of the income of the JPUT which arises to them in their capacity as trustees. However, under Concession M1 (formerly Concession 2) published by the Jersey Tax Office, those trustees are exempted from the liability to Jersey tax where (i) none of the unit holders/settlor of the trust are Jersey tax resident; and (ii) none of the income of the trust is Jersey source (excluding Jersey bank interest).
- 4.1.2 Furthermore, in the context of a Jersey unit trust, full exemption from tax on non-Jersey source income may be available notwithstanding the existence of Jersey resident unit-holders provided that the trustees do the following:
- i. submit a formal application for exemption to the Jersey Tax Office;
  - ii. undertake to deduct Jersey income tax from any distributions to such Jersey residents; and
  - iii. make potential Jersey resident investors aware, by means of a warning in the Prospectus, that Article 134A (the anti-avoidance provision) may be invoked in the case of an investment in an accumulation fund.
- 4.1.3 Where there are no Jersey-resident unit holders in the trust, the exemption of the trustees from tax on the income arising in the trust is automatic and notification does not need to be provided to the Jersey Tax Office.
- 4.1.4 On the basis that the Unit Holders will be non-Jersey resident, the exemption of the Trustee from tax on the income arising in the trust as mentioned above is automatic and notification does not need to be provided to the Jersey Tax Office.

## 4.2 Jersey GST

- 4.2.1 Jersey introduced GST with effect from 6 May 2008 which imposed a 3% rate of tax on the supply of a broad range of goods and services in Jersey by entities whose taxable turnover exceeds £300,000 (subject to a voluntary registration facility). This rate was subsequently increased to 5% with effect from 1 June 2011.
- 4.2.2 However, it also introduced a special regime for certain entities which meet the criteria to be an ISE whereby in exchange for an annual fee these entities are taken outside the scope of GST. Where an entity qualifies as an ISE, it should not be charged GST on its purchases and should not themselves charge GST on their supplies.
- 4.2.3 To qualify as an ISE a company must satisfy the requirements of Article 59 of the Goods and Services (Jersey) Law 2007, unless the company is regulated in Jersey (in which case the necessary conditions may differ). Article 59 requires that:
- i. either the company makes a direct application to the Jersey Controller of Taxes or the name of the company is entered onto the list of International Service Entities maintained by another international service entity which is:
    - a. authorised by the Jersey Comptroller of Taxes to maintain such a list; and
    - b. registered under the Financial Services (Jersey) Law 1998 to carry on trust company business;
  - ii. the prescribed fee has been paid to the Jersey Controller of Taxes; and

- iii. the following conditions are satisfied:
  - a. no more than 10% in value of all supplies of goods and services made by or to the company are made to individuals who belong in Jersey or, to the extent that the supplies of goods or services made by the company in Jersey exceed 10% of the value of all supplies of goods and services made by it, the supplies in Jersey are made only to an International Service Entity;
  - b. no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any asset owned or administered by the company; and
  - c. no individual who belongs in Jersey has the effective use, or the effective enjoyment, of any goods or services, supplied to or by the company.

4.2.4 For Jersey tax purposes, JPUTs are not recognised as legal entities and therefore cannot be charged GST nor register for GST as an ISE. Any charges associated with the JPUT should be invoiced to the Trustees. To the extent that significant GST is likely to be incurred on behalf of the JPUT, consideration should be given as to whether the Trustees, on behalf of the JPUT may qualify as ISEs under one of the specific conditions or, alternatively, whether a separate application to the Jersey Comptroller of Taxes could be made.

4.2.5 As noted above, if the Trustees qualify as ISEs the only requirement is to make an annual declaration and pay the appropriate annual fee. If they do not qualify as ISEs, but have an obligation to be registered for GST, prima facie quarterly returns will need to be completed and filed, but any GST incurred by the Trustees of the JPUT and the Unit Holders on its purchases should be reclaimable.

4.2.6 In our experience the Trustees acting on behalf of a JPUT can typically be registered as an ISE for an annual fee so GST should not be a cost to the Trustees of the JPUT. The annual ISE fee ranges from nil for trusts and trustees to £50,000 for banks. Most non-regulated vehicles, including we would expect the Unit Holders, will pay a standard annual fee of £200.

4.2.7 If the JPUT only makes supplies outside of Jersey but the Trustees do not register as an ISE on behalf of the JPUT, then the Trustees may not be eligible to register for GST on behalf of the JPUT, even under the voluntary facility. In this case, any GST incurred on purchases will be a real cost.



# 5 Ongoing Luxembourg taxation

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## Unit Holders

### 5.1 Direct taxation (CIT and MBT)

5.1.1 As Luxembourg tax resident companies, the Unit Holders should be subject to Luxembourg direct taxation on their worldwide income excluding certain items that benefit from an exemption under Luxembourg domestic law or a relevant DTT.

5.1.2 The aggregate effective CIT and MBT rate in Luxembourg is 29.22% (for financial year 2013), i.e. (i) 21% CIT, (ii) 7% contribution to the unemployment fund computed based on the corporate income tax due and (iii) 6.75% MBT rate for companies operating in Luxembourg city (after an allowance of €17,500 granted for MBT purposes only).

### 5.2 Thin capitalisation rules

5.2.1 There are no specific provisions in Luxembourg tax law that require a specific debt to equity ratio for a Luxembourg company holding real estate located outside of Luxembourg. However, pursuant to our experience of the LTA's administrative tax practice, the debt to equity ratio applicable is the ratio required by the country where the real estate asset is located. In the case at hand the UK tax legislation does not include thin capitalisation provisions, therefore no debt to equity ratio should be required for Luxembourg tax purposes. This should be confirmed in the written ATA (see 5.9 below).

5.2.2 In addition, with respect to Genesis Retail I's interest in Manco, please see 5.12 below for the Luxembourg technical thin capitalisation requirements with regards to this shareholding activity. In practice, given the nominal value of this shareholding, a

material increase in the share capital of Genesis Retail I should not be required.

### 5.3 Rental Income

5.3.1 The Unit Holders should be subject to Luxembourg taxation on their worldwide income, unless the income is exempt under Luxembourg domestic tax law or a DTT.

5.3.2 The JPUT should be considered as tax transparent for Luxembourg tax purposes to the extent that it has the same characteristics as a Luxembourg based FCP (i.e. no legal personality, managed by a third party, not subject to income tax, etc.). To the extent that this is the case, from a Luxembourg tax perspective, the Unit Holders should be deemed to hold the Property directly. We recommend that the tax transparency of the JPUT is agreed with the LTA in the ATA.

5.3.3 The Unit Holders should prepare a tax balance sheet to evidence the tax transparency of the JPUT and the deemed direct holding of the Property.

5.3.4 In accordance with the UK/Luxembourg DTT, income and gains derived from immovable property situated in the UK is exempt from taxation in Luxembourg. Accordingly, income derived from the Property (i.e. distributions from the JPUT) should be exempt from Luxembourg CIT and MBT. We recommend that this is agreed with the LTA in the written ATA.

5.3.5 Article 45 (2) of the LITL provides that expenses economically linked to exempt income (notably interest expenses on the IBLs, depreciation of the Property and any other expense incurred by the Unit Holders due to the holding of the Property) are not deductible for Luxembourg tax purposes.

5.3.6 To the extent that the Unit Holders have non-property related income (such as interest income on bank accounts) / expenses (such as general operating expenses incurred in relation to the conduct of the business of a Luxembourg company), these may be subject to taxation / tax deductible in Luxembourg.

5.3.7 The Luxembourg taxation of dividends received from Manco in the hands on Genesis Retail I should be as set out in 5.14 below. We note that to the extent that Manco is to be disposed of shortly after acquisition, it is unlikely that the conditions of the participation exemption will be met and, as such, any dividends or disposal proceeds would be taxable in the hands of Genesis Holdco as set out in 5.1 above. However, in this case we understand that proceeds from such a disposal/liquidation should be negligible.

## 5.4 Payments under the SPA

5.4.1 We understand, that to the extent any payments are made under the SPA in respect of the acquisition of the units in the JPUT, the shares in Manco, or the Trustee, these will be made by the Vendors to the Unit Holders.

5.4.2 On the basis that the JPUT should be considered transparent for Luxembourg direct tax purposes (see 5.3.2 above), payments in respect of the units in the JPUT should be considered an adjustment to purchase price of the Property in the hands of the Unit Holders and, as such, exempt from CIT and MBT in Luxembourg in accordance with the UK/Luxembourg DTT.

5.4.3 With regard to any payments under the SPA in respect of Manco and the Trustee, on the basis that minimal consideration will be paid in respect of these entities (and Genesis Retail I will not hold the shares in the Trustee), such receipts are unlikely to be considered an adjustment to purchase price in the hands of the Unit Holders. To the extent this is the case, these payments may be fully taxable in the hands of the Unit Holders. In practice, we understand that any such payments should be immaterial and therefore should not give rise to a significant tax charge.

## 5.5 Functional currency

5.5.1 We understand that the share capital of the Unit Holders may be denominated in GBP and that the majority of the other assets and liabilities of the company will be denominated in GBP.

5.5.2 To mitigate potential tax exposures arising from foreign exchange movements, the Unit Holders should apply to use GBP as their functional currency for Luxembourg tax purposes (CIT, MBT, and NWT). As a consequence, the Unit Holders should prepare their Luxembourg tax returns on the basis of their balance sheets in GBP converted into EUR in accordance with the GBP/EUR exchange rate applicable at year end. We recommend that this is agreed with the LTA in an ATA.

5.5.3 Please note that the Unit Holders may be requested by the LTA to commit themselves to this functional currency for the preparation of their Luxembourg tax returns for a minimum period of 5 years (unless they are liquidated).

## 5.6 NWT

5.6.1 The Unit Holders should be subject to an annual NWT at a rate of 0.5% on their "unitary value" which in practice should equal the net value of all assets (including cash and receivables) and liabilities held by the company. NWT is calculated based on this value at 1 January each year.

5.6.2 Prima facie, foreign (i.e. non-Luxembourg) real estate is taken into consideration at its market value. However, based on Article 23 and Article 25(2)(a) of the Luxembourg-UK DTT, real estate located in the UK should be exempt from NWT in Luxembourg. This treatment should equally apply to the Unit Holders' investment in the JPUT on the basis that this will be deemed to be a direct holding of UK real estate. Similarly, any debts that finance such tax exempt assets should not be deductible for Luxembourg NWT



purposes. We recommend that this is agreed with the LTA in an ATA.

- 5.6.3 The NWT implications of Genesis Retail I's shareholding in Manco should be as set out in 5.16 below, albeit in practice we understand this holding should have only nominal value.
- 5.6.4 Any excess cash held by the Unit Holders and/or upstream loans advanced by them should be taxable assets for NWT purposes to the extent they are financed with equity. It should be noted that, there is a minimum NWT liability of €25 per annum for Luxembourg tax resident companies (with the legal form of a S.à r.l.) which is payable even in case of a negative taxable basis.

## 5.7 Annual Minimum Flat Income Tax

- 5.7.1 On the basis that the Unit Holders have their legal seat and place of effective management in Luxembourg and that their balance sheet is composed of less than 90% of 'financial' items, i.e. financial assets (account 23 of the Luxembourg Standard Chart of Accounts – "SCA"), amounts owned by affiliated undertakings and by companies with participating interests (account 41 of the SCA), transferable securities (account 50 of the SCA) and cash (account 51 of the SCA), they should be subject to the annual minimum flat tax based on a progressive scale (i.e. €535 to €21,400 each inclusive of unemployment contribution for the financial year 2013).
- 5.7.2 However, the net accounting value of assets producing income exclusively taxable in another State by application of a DTT (which is the case for the Unit Holders) should be excluded from the total of the balance sheet. As such, depending on their other assets, the Unit Holders may then be subject to the flat tax of €3,210 or the progressive minimum tax based on the scale of €535 to €21,400. This should be confirmed on a case by case basis.
- 5.7.3 In practice, the minimum flat tax should be viewed as an advance payment of CIT when the Unit Holders are in a tax loss position or paying less than the minimum flat tax. In those cases, the amount

paid should be creditable against future CIT without time limitation (however any excess is non-refundable).

## 5.8 Chamber of Commerce contribution

- 5.8.1 All Luxembourg taxpayers that carry on commercial, financial or industrial activities in Luxembourg are in principle subject to an annual contribution payable to the Chamber of Commerce.
- 5.8.2 This contribution is levied on the taxpayer's profits as determined for tax purposes (excluding any tax losses carried forward) at a rate fluctuating between 0.025% and 0.2% with a minimum of €70 for an S.à r.l..
- 5.8.3 Companies whose main activities consist in holding activities are excluded from the application of the general system of calculation. These companies will instead be subject to an annual €350 lump sum contribution (i.e. flat contribution), irrespective of their taxable profits.
- 5.8.4 The Luxembourg companies which should benefit from such lump sum contribution are: (i) companies which mainly hold participations; and (ii) companies which are regarded as such according to the general nomenclature of economic activities in the European Community (i.e. NACE code), as implemented in Luxembourg.

## 5.9 ATA process

- 5.9.1 A written confirmation should be filed with the LTA in the form of an ATA to confirm the Luxembourg direct tax treatment of the proposed transactions at the level of Unit Holders (as described herein).
- 5.9.2 A sign off of the ATA is usually received within one month. Once received, the final ATA should be retained in Luxembourg and not circulated outside this jurisdiction.

## 5.10 Luxembourg VAT

5.10.1 From a VAT perspective, the JPUT should not be considered as transparent to the extent that for accounting purposes, the Property is not booked as an asset in the balance sheet of the Unit Holders and that the rental income deriving from the Property is not booked as income in the Unit Holders' P&L accounts (which we expect to be the case). The Unit Holders should accordingly be seen as only holding units in the JPUT for VAT purposes.

5.10.2 A pure shareholding activity is not an economic activity for Luxembourg VAT purposes. Therefore, the Unit Holders should not be able to recover input VAT in relation to the shareholding activity, to the extent that this is not recharged. However please see below in relation to input VAT incurred on costs subsequently recharged to the Unit Holders.

### **Unit Holders and transaction costs**

5.10.3 We understand that the Unit Holders have contracted with third party suppliers (who are predominantly UK based) in respect of all services relating to the acquisition of the units in the JPUT, and will recharge these costs to the JPUT.

5.10.4 On the basis that the Unit Holders will be making taxable supplies (being the recharge of taxable costs to the JPUT) the Unit Holders will have to VAT register in Luxembourg under the normal regime.

5.10.5 The Luxembourg VAT treatment of these recharged costs is considered further below.

### *Financing fees*

5.10.6 The financing services received by Unit Holders should be outside the scope of UK VAT and should benefit from a VAT exemption in Luxembourg (to be confirmed based on a detailed analysis of the actual services rendered).

5.10.7 If the exempt services are recharged by the Unit Holders they should not be subject to Luxembourg VAT.

### *Other advisory fees not directly related to UK property*

5.10.8 These advisory services received by the Unit Holders should be outside the territorial scope of UK VAT and subject to reverse charge VAT in Luxembourg at the standard rate of 15%.

5.10.9 If these services are recharged to the JPUT they should be outside the scope of Luxembourg VAT and outside the scope of UK VAT. The Unit Holders should be entitled to fully recover the Luxembourg reverse charge VAT as a result of being able to directly attribute the expense incurred to the corresponding recharge.

5.10.10 The amount of recoverable input VAT incurred by the Unit Holders on the services received is limited to the proportion of the amount actually recharged. Therefore, if the advisory services are recharged in full, the full amount of input VAT incurred on the advisory services recharged should be recoverable.

5.10.11 However, the input VAT incurred on services received by Unit Holders in relation to their shareholding activity and overhead costs remains non-recoverable, if these services are not recharged.

### *Other advisory fees directly related to UK property*

5.10.12 These advisory services received by the Unit Holders will be subject to UK VAT at the standard rate of 20%. If the services are not recharged then this VAT will be irrecoverable.

5.10.13 If the services are recharged to the JPUT they may be subject to UK VAT at the standard rate. In this case, the Unit Holders may need to register for UK VAT in order to recover the VAT incurred on the initial supply.



## Lux Holdcos & Master Luxco

### 5.11 Direct taxation (CIT and MBT)

- 5.11.1 The Lux Holdcos and Master Luxco should be Luxembourg tax resident entities, considering they have their statutory seat and place of effective management in Luxembourg, and therefore should be subject to CIT and MBT on their worldwide income as set out in 5.1.1 et seq. above.

### 5.12 Thin capitalisation rules

- 5.12.1 Based on Luxembourg tax administrative practice, Luxembourg companies performing a shareholding activity should comply with a maximum debt to equity ratio of 85:15.
- 5.12.2 At the level of the Lux Holdcos, the financing of the respective participations held should therefore, *prima facie*, include an additional small part of equity (equal to 15% of the shareholding held),
- 5.12.3 However, subject to confirmation with the LTA, we have good arguments to agree that the holding activities carried out by the Lux Holdcos should fall outside the scope of the 85/15 debt-to-equity ratio to the extent it is demonstrated to the tax authorities that the overall level of interest (fixed/variable) arising on the PPL financing will not exceed the level of interest that would have arisen had the relevant companies only financed their shareholding activities with 85% debt.
- 5.12.4 This argument is based on the understanding that (i) the 1% fixed interest on the PPL is significantly lower than the interest rate on certain 3rd party debt with medium/long maturity, (ii) economically speaking the PPL is linked to the IBLs issued by the Unit Holders and ultimately to the immovable property so that no variable interest on the PPL will be recognized if no return is effectively

generated on the immovable property and (iii) the variable component of the PPL will never result in Lux Holdcos being in a loss situation. On this basis, it should be possible to finance the holding activities carried out by the Lux Holdcos and Master Luxco using PPLs and nominal equity (subject to Genesis Holdco retaining 1% equity at risk in respect of its financing activities in accordance with the transfer pricing circular – see 5.13 below).

- 5.12.5 To the extent that interest expense arising on the PPLs is in accordance with the Luxembourg thin capitalisation rules, interest expenses incurred on the PPLs should in principle be tax deductible at the level of the relevant entity (unless connected with exempt income) and should not be subject to withholding tax in Luxembourg. Careful consideration should be given to the drafting of the PPLs to ensure that this is the case.
- 5.12.6 In any case, with respect to interest payments by Genesis Holdco and Genesis Topco, no WHT should apply on any deemed dividends on the basis that the conditions of the participation exemption for WHT should be met.
- 5.12.7 The exemption from the standard 85:15 debt to equity ratio and the tax treatment of the PPLs should be secured through a written ATA concluded with the LTA.

### 5.13 Financing activities

- 5.13.1 Since Master Luxco and the Lux Holdcos will provide debt financing, each company performs a financing activity for Luxembourg tax purposes. As companies performing a financing activity, Master Luxco and the Lux Holdcos would generally be expected to retain a taxable margin in accordance with Luxembourg transfer pricing principles.
- 5.13.2 In particular, since the total financing of the Lux Holdcos and Master LuxCo will exceed €25m, Lux Holdcos and Master Luxco would, *prima facie*, be required to comply with the provisions of the transfer pricing circular LITL n°164/2 of 28 January 2011, as

completed by the Transfer Pricing Circular LITL n°16 4/2bis dated 8 April 2011.

- 5.13.3 However, it should be possible to agree with the LTA in the written ATA (see 5.19) that, given the same funds are flowing from Master Luxco down to its Luxembourg subsidiaries, the financing activities carried out by those entities will be considered as being pooled at the level of Genesis Holdco and hence will be considered as a single transaction from a tax perspective. As a result:
- i. Master Luxco and Genesis Topco should be considered as agents from a transfer pricing circular perspective (i.e. they do not bear any risk with respect to their back-to-back position and they are acting as passive vehicles with respect to the financing activity);
  - ii. Master Luxco and Genesis Topco should not have to recognise any remuneration on their back to back financing activity;
  - iii. Only Genesis Holdco should have to recognise any remuneration on its financing activity; and
  - iv. A single arm's length commercial remuneration margin should be recognised at the level of Genesis Holdco.
- 5.13.4 Subject to the above, under the provisions of the transfer pricing circulars as interpreted and applied by the LTA, Genesis Holdco would be required to comply with certain economic and organisational substance requirements (additional detail in Appendix I), and the margin earned in respect of the financing activity would have to be arm's length, in line with the OECD's general guidelines and the Luxembourg Transfer Pricing Circulars.
- 5.13.5 In respect of economic substance, Genesis Holdco would need to (i) have equity at risk amounting to at least 1% of the aggregate nominal amount of the intra-group loans (i.e. IBLs) granted by Genesis Holdco (up to a maximum of the GBP equivalent of €2m), and (ii) to perform a transfer pricing analysis in accordance with the above circular to evidence that the margin retained on the total financing activities of Genesis Holdco is supportable as being

arm's length. The margin should be agreed with the LTA through an APA provided that the above requirements are met.

- 5.13.6 The arm's length commercial remuneration should be properly reflected in the legal documentation and should be taxable at the level of Genesis Holdco at the aggregate corporate income tax rate of 29.22% (for the financial year 2013). When calculating Genesis Holdco's taxable income for Luxembourg tax purposes, operating expenses incurred by Genesis Holdco in relation to its financing activity should be deductible from its income on the taxable margin (limited to the amounts forecast when calculating the margin). As part of the APA process consideration will be given to reducing the spread at the level of Genesis Holdco by a de minimis amount and instead applying this de minimis amount as a spread at the level of Genesis Topco.
- 5.13.7 The APA should be binding for a five-year period, and should be subject to the principle of good faith and compliance with the rules in matters of substance. An extension of the term of the agreement may be requested if the substantive characteristics of the transaction are unchanged at the end of the first five-year period.

## 5.14 Holding activities

- 5.14.1 For Luxembourg tax purposes, the Lux Holdcos will be performing a holding activity in respect of their shareholdings in their respective subsidiaries.
- 5.14.2 Dividends, liquidation proceeds and capital gains received by Lux Holdcos from their direct Luxembourg subsidiaries should be exempt from Luxembourg CIT and MBT in the hands of the parent company to the extent that the conditions of the Luxembourg participation exemption are met (see Appendix II).
- 5.14.3 Expenses in direct economic connection with such exempt dividends/liquidation proceeds, as well as any subsequent write-down of the shareholding, should not be deductible up to the amount of these exempt dividends/liquidation proceeds.



5.14.4 Any excess over exempt dividend/liquidation proceeds should remain deductible but subject to a claw back upon realisation of an exempt capital gain. The claw back should not have any adverse tax implications (due to the fact that tax losses resulting from the recaptured expenses can be carried forward) provided that the recaptured expenses have not been used to offset other taxable income of the relevant company (in which case the end result would be a tax deferral).

5.14.5 This should be confirmed in the written ATA (see 5.19).

## 5.15 Functional currency

5.15.1 We understand that the share capital of the Lux Holdcos may be denominated in GBP and that the majority of the other assets and liabilities of the companies may also be denominated in GBP, and therefore the Lux Holdcos may use GBP as their functional currency.

5.15.2 Please see 5.4 above for the implications of having a GBP functional currency.

## 5.16 NWT

5.16.1 The Lux Holdcos should be subject to NWT as set out in 5.6 above. This tax is not deductible for income tax purposes.

5.16.2 Shareholdings for each of the Lux Holdcos in their respective subsidiaries should be exempt assets for NWT purposes to the extent that the conditions of the Luxembourg participation exemption are met. Any debts (e.g. IBL, IFL and/or PPLs) that finance such tax exempt assets should not be deductible for Luxembourg NWT purposes. This should be agreed with the LTA in the written ATA (see 5.19).

5.16.3 The IBLs advanced by Genesis Holdco should be considered as taxable assets for NWT purposes. They will however be offset by

tax deductible PPL liabilities, with the exception of the small portion of the receivables that are financed by equity.

## 5.17 Annual Minimum Flat Income Tax

5.17.1 Master Luxco and the Lux Holdcos should be subject to the annual minimum flat tax as set out in 5.7 above. In particular, they should be subject to the annual minimum flat tax of €3,210 (for the financial year 2013) for companies which have at least 90% of their assets being 'financial' items, which should be the case.

## 5.18 Chamber of Commerce contribution

5.18.1 All Luxembourg taxpayers that carry on commercial, financial or industrial activities in Luxembourg are in principle subject to an annual contribution payable to the Chamber of Commerce. Please refer to Section 5.8 above for more details.

## 5.19 ATA and APA process

5.19.1 An ATA should be sought from the LTA to confirm the Luxembourg as set out in 5.9 above.

5.19.2 Genesis Holdco would also need to agree an APA and related transfer pricing documentation with the LTA in order to confirm that the margin to be realised on its intra-group financing activities is at arm's length.

5.19.3 Once received, the final ATA and APA should be retained in Luxembourg and not circulated outside this jurisdiction.

## 5.20 Luxembourg VAT

5.20.1 The granting of PPLs and IBLs is generally considered to be an economic activity in Luxembourg, giving the Lux Holdcos and



Master Luxco the status of taxable persons for VAT purposes. Therefore the Lux Holdcos and Master Luxco will need to register for Luxembourg VAT under the simplified regime to the extent that they receive services from outside of Luxembourg on which they are required to reverse charge Luxembourg VAT.

- 5.20.2 Furthermore, granting of loans to EU established entities, being a VAT exempt activity, does not give the Lux Holdcos and Master Luxco the right to recover input VAT. Thus, any input VAT incurred by the Lux Holdcos and Master Luxco (either charged by Luxembourg suppliers or self-assessed on services received from foreign suppliers) should constitute a final cost.

## 5.21 Cash repatriation

### Payments of interest

- 5.21.1 In accordance with Luxembourg domestic legislation, there should be no Luxembourg WHT on the payments of interest on the IBL by the Unit Holders to Genesis Holdco.

### Repayment of loan principal

- 5.21.2 In accordance with Luxembourg domestic legislation, there should be no Luxembourg WHT on the repayment of the IBL principal by the Unit Holders.

### Dividend payments

- 5.21.3 Luxembourg levies WHT on dividend payments at the rate of 15% on the gross amount (17.65% on the net amount), unless reduced under a DTT or if the Luxembourg domestic withholding tax exemption is applicable.
- 5.21.4 It is anticipated that dividend payments made by the Unit Holders and Lux Holdcos should qualify for the domestic Luxembourg WHT exemption and therefore no WHT should be levied on dividend

payments made by them provided all conditions of the Luxembourg participation exemption regime are met.

- 5.21.5 Any dividend distributions made by Master Luxco to the BREP Funds would be subject to Luxembourg WHT at a rate of 15%. It may be possible to reduce the rate of WHT to the extent that the tax transparency of the BREP Funds can be applied and the investors in the BREP Funds are resident in a jurisdiction with a DTT with Luxembourg and both parties can access the treaty. However, we understand profits of Master Luxco arising from this investment after the payment of interest under the PPLs are expected to be minimal (i.e. likely the net spread realised by Genesis Holdco after tax and distributed to Master Luxco). Additionally, these residual profits are likely be repatriated on final liquidation of Master Luxco in which case no Luxembourg WHT should apply.

### Payments via PPLs

- 5.21.6 On the basis that the PPLs are treated as debt instruments for Luxembourg tax purposes (subject to confirmation from the LTA), in accordance with Luxembourg domestic legislation, PPL payments made by the Lux Holdcos should not be subject to WHT in Luxembourg, as set out above. This should be confirmed in an ATA with the LTA.
- 5.21.7 Careful consideration should be given to the drafting of the PPLs to ensure that it is deemed to be debt for Luxembourg tax purposes and that an arm's length margin remains at the level of Genesis Holdco on an aggregate basis.
- 5.21.8 Typically, the PPLs should be considered as debt for Luxembourg tax purposes if they have the following characteristics:
- (i) Maturity date of maximum 30 years;
  - (ii) Fixed yield rate of 1%;

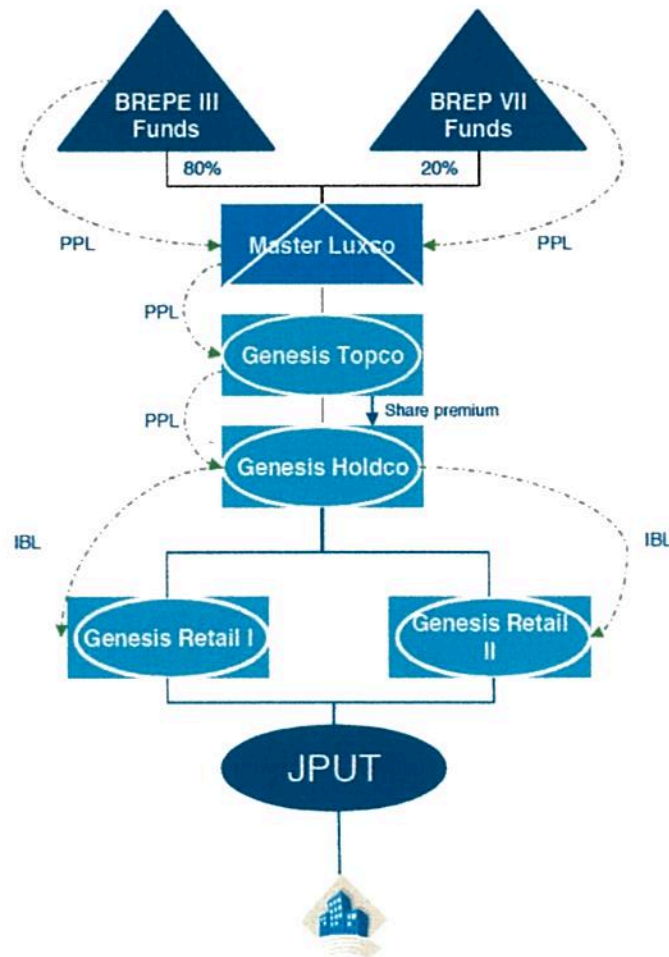
- (iii) Variable yield depending on net income (before tax) derived from the assets being tracked (less an appropriate margin for the PPL granted by Genesis Topco to Genesis Holdco and including any foreign exchange movements at the level of Master Luxco);
- (iv) Reimbursement at par value plus accrued and unpaid yield, if any;
- (v) Rank prior to ordinary shares but subordinated to all present and future obligations of the issuer; and
- (vi) No right to the liquidation proceeds of the issuer.

5.21.9 In accordance with Luxembourg domestic legislation, there should be no Luxembourg WHT on the repayment of PPL principal by the Lux Holdcos.



# 6 Ongoing US taxation

## 6.1 Investment structure for US tax purposes



## 6.2 Check the Box Elections

6.2.1 Please see 2.2.8 *et seq.* and 2.4.24 *et seq.* above for a discussion of the elections to be made by the Luxembourg Companies and the JPUT.

6.2.2 Because Manco is a management company and likely generates “active” income (i.e. bad income for PTP and US tax exempt purposes), Manco will remain a regarded entity for US tax purposes until its activities are moved to another entity. At that time, Manco will most likely be liquidated.

## 6.3 Unrelated Business Taxable Income

6.3.1 Rental income generated by the JPUT should not be viewed as UBTI for US tax purposes and therefore, should not need to be “blocked” from US tax exempt investors in the BREP Funds.

6.3.2 Because Manco will remain a regarded entity, any distributions from Manco will be considered a dividend to the extent of Manco’s E&P which should be “good” income for UBTI purposes.

## 6.4 Ongoing taxation

### US Taxable Investors

6.4.1 We understand all income generated by this investment over the investment period will consist of passive income (i.e. rental income). Therefore, a “total flow-through” structure will be utilised (since the JPUT (or the JPUT unit holders) would likely be a PFIC if rental income generated from the Property did not “flow-through” and be subject to current US taxation).

- 6.4.2 Rental income generated over the investment period will “flow-through” to the US taxable investors and will be subjected to US taxation at US ordinary income rates. In addition, US individuals, estates and trusts will likely also be subjected to the newly enacted US net investment income tax of 3.8% (in addition to their respective ordinary income tax rate).
- 6.4.3 Any underlying UK and/or Luxembourg taxes paid will “flow-through” to the US taxable investors and will be available as a foreign tax credit against the US taxable investor’s US tax liability on such income.
- 6.4.4 Because a “total flow-through” structure will be utilised and all income generated from the investment will be subject to current US taxation, there is no need to consider subpart F and/or PFIC rules (i.e. no need to make certain PFIC elections).
- 6.4.5 Because Manco will remain a regarded entity, any distributions from Manco will be considered a dividend to the extent of Manco’s E&P. US taxable investors should likely be subject to tax at the favourable US qualified dividend rates. In addition, US individuals, estates and trusts will likely also be subjected to the newly enacted US net investment income tax of 3.8%.

#### **PTP Investors**

- 6.4.6 PTP Investors can invest in the “total flow-through” structure (i.e. a non-blocked structure) provided all income generated over the investment period is passive income (i.e. rental income, interest income, dividend income, etc.).
- 6.4.7 Based on our review of the information provided, it appears that all income generated from the Property over the investment period will consist of “passive” rental income. Since the JPUT will pay a management fee to a third party to manage the property, it appears JPUT will hold the property assets as a “passive” investor and therefore such income should likely not be considered “active” income (which would be undesirable for PTP purposes). However, in order to conclude on this item, we would need to obtain more

detailed financial information with respect to the projected income the JPUT will earn with respect to the investment.

- 6.4.8 With respect to any income generated from underlying property, it is critical that no fees are received for services (e.g. parking garage or other similar services). If there is a significant risk of this, then those investments should be put into a “blocked” silo of the investment structure.
- 6.4.9 Any underlying Luxembourg and/or UK taxes paid will “flow-through” to the US taxable investors and will be available as a foreign tax credit against the US taxable investor’s US tax liability on such income.
- 6.4.10 Because a “total flow-through” structure will be utilised and all income generated from the investment will be subject to current US taxation, there is no need to consider subpart F and/or PFIC rules (i.e. no need to make certain PFIC elections).
- 6.4.11 Because Manco will remain a regarded entity, any distributions from Manco will be considered a dividend to the extent of Manco’s E&P which should be “good” income for PTP purposes.



# 7 Future exit

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The structure outlined in this Report allows flexibility on exit options, which may depend on eventual buyer preferences and potential law changes. The key options are outlined below.

## 7.1 Asset sale by the JPUT

### UK taxation

- 7.1.1 The JPUT is treated as a company for the purposes of UK tax on capital gains. Therefore on the basis that JPUT is tax resident in Jersey (and not the UK) and the Property is being held for investment purposes, the JPUT should not be liable to UK tax on capital gains realised on the sale of the Property. This is subject to the UK anti-avoidance provisions set out in 7.4 below.
- 7.1.2 The sale of the Property by the JPUT would be subject to UK SDLT at 4% of the VAT inclusive consideration provided by the purchaser. This would be a liability of the purchaser, rather than the JPUT, but may be factored into purchaser pricing.
- 7.1.3 On the basis that the Property has been (or will have been) opted to tax, a sale of it by the JPUT would potentially be subject to UK VAT. However, provided that the Property continues to be let, it should be possible for a disposal of it to qualify for UK VAT-free TOGC treatment - this should be considered at the time.
- 7.1.4 On the future disposal of the Property, a s.198 CAA 2001 election should be agreed with the purchaser to prevent a clawback of capital allowances and/or to enable capital allowances to pass to the buyer. If the disposal takes place after April 2014, then any qualifying expenditure incurred must be pooled prior to the sale to enable entitlement to pass to the buyer.

### Jersey taxation

- 7.1.5 There should be no tax payable in Jersey on any gains realised by JPUT on the disposal of the Property, on the basis that the JPUT should not be subject to tax in Jersey on non-Jersey source income (see 4.1).

### Luxembourg taxation

- 7.1.6 In accordance with the UK/Luxembourg DTT (see 5.3.4 above), there should be no tax payable in Luxembourg on any gains realised by JPUT on the disposal of the Property.

### US taxation

#### US Taxable Investors

- 7.1.7 Any gain generated on exit from the investment likely will be treated as a capital gain and, since a "total flow-through" structure is being utilised, such capital gains will flow-through to the US taxable investors and will be subject to US taxation at the US capital gains tax rates. In addition, US individuals, estates and trusts will likely be subjected to the US net investment tax rate of 3.8% (in addition to their ordinary federal income tax rate).

#### PTP Investors

- 7.1.8 The US tax treatment of any gain generated on exit from the investment for PTP investors will be similar to the US tax treatment for US taxable investors.
- 7.1.9 Any gains on exit should be treated as passive income and should not jeopardise PTP status.

## 7.2 Sale of units in the JPUT by the Unit Holders

### UK taxation

- 7.2.1 As the Unit Holders are non-UK tax resident, no UK tax on capital gains should arise on the sale of units in the JPUT provided that the Property and the units are held for investment purposes. This is subject to the application of the UK anti-avoidance provisions set out in 7.4 below.
- 7.2.2 The disposal of units in the JPUT should be outside the scope of UK SDLT provided that the JPUT is a CIS at that time. The disposal should also be outside the scope of UK SDRT on the basis that the Trustee is not UK resident, the unit register for the JPUT is not maintained within the UK and the JPUT qualifies as a valid CIS. Any stamp tax liability would, in any case, be a liability for the purchaser.
- 7.2.3 The sale of units in the JPUT by the Unit Holders should be outside the scope of UK VAT.
- 7.2.4 As per section 2.4.123.2 above, there are alternative views on the capital allowances position on the sale of units of a JPUT. It is likely a future buyer will want to enter into a s198 election to guarantee entitlement to any CAs.

### Jersey taxation

- 7.2.5 There should be no tax payable in Jersey on any gains realised by the Unit Holders on the disposal of units in the JPUT in accordance with Jersey domestic legislation.

### Luxembourg taxation

- 7.2.6 The disposal of the units in the JPUT should be treated as a direct disposal of the Property for Luxembourg direct tax purposes. As

such, there should be no tax payable in Luxembourg on any gains realised by the Unit Holders on the disposal of the units in the JPUT, as set out in 5.1.6 above.

### US taxation

- 7.2.7 The US taxation of a sale of the units in the JPUT should be the same as for a direct asset sale, as set out in 7.1.7-7.1.9 above.

## 7.3 Sale of the shares in the Unit Holders by Genesis Holdco

### UK taxation

- 7.3.1 As Genesis Holdco and the Unit Holders are non-UK tax resident, the disposal of the shares in the Unit Holders should be outside the scope of UK tax. This is subject to the applications of the UK anti-avoidance provisions set out in 7.4 below.
- 7.3.2 The disposal of the shares would be outside the scope of UK SDLT. The disposal should also be outside the scope of UK SDRT on the basis that the Unit Holders are not UK incorporated companies, the shares are not registered on any share register located in the UK and are not paired with UK shares at the time of transfer. Any stamp tax liability would, in any case, be a liability for the purchaser.
- 7.3.3 The sale of the shares in the Unit Holders should be outside the scope of UK VAT.

### Jersey taxation

- 7.3.4 There should be no adverse Jersey tax consequences as a result of the sale.



### **Luxembourg taxation**

- 7.3.5 Any gain on the sale of the shares in the Unit Holders should be exempt from tax under the Luxembourg participation exemption provided all conditions are met. Please see Appendix II for details of the Luxembourg participation exemption.
- 7.3.6 The Luxembourg recapture rule should also be considered. Please refer to section 5.14 for further details.

### **US taxation**

- 7.3.7 The US taxation of a sale of the shares in the Unit Holders should be the same as for a direct asset sale, as set out in 7.1.7-7.1.9 above.

## **7.4 Anti-avoidance provisions**

### **UK Transactions in Land**

- 7.4.1 Sections 752 et seq. ITA 2007 are widely drawn anti-avoidance provisions in UK legislation which apply where a gain of a capital nature is realised on the disposal of land, the land having been, inter alia, acquired or developed with the sole or main objective of realising a gain from its disposal. For these purposes "land" includes assets deriving their value from UK land such as shares in companies owning UK property.
- 7.4.2 These anti-avoidance provisions are directed specifically at property transactions. Their purpose is to prevent taxable property-dealing profits being disguised as tax-free capital gains.
- 7.4.3 The main defence against the application of these provisions is where an investor can demonstrate that the motive for the acquisition and / or development of UK land is to retain the asset for investment purposes and to generate rental income.

- 7.4.4 We understand that the JPUT has held an interest in the Property for 8 years, and throughout this period has held it as an investment asset, and will continue to do so. Furthermore, we understand that none of the Luxembourg Companies or the BREP Funds is acquiring an indirect interest in the Property with the sole or main objective of realising a gain from disposing of the Property (directly or indirectly). On that basis, these provisions should not apply to any gain realised on a direct or indirect disposal of the Property.

- 7.4.5 In practice, HMRC rarely seek to apply the transactions in land provisions to non-UK resident companies and, in our experience we have seen very few instances where they have done so.

### **Jersey anti-avoidance provisions**

- 7.4.6 Jersey does not have any specific anti-avoidance provisions relevant to this transaction. However Jersey tax law does include a general anti-avoidance provision that allows for raising additional tax assessments if the Jersey Tax Office considers that the main purpose or one of the main purposes of a transaction, or a series of transactions, is the avoidance or reduction of an entity's liability to income tax.
- 7.4.7 On the basis that the JPUT is treated as tax transparent in Jersey, it is considered highly unlikely that the Jersey Tax Office would seek to apply the general anti-avoidance provisions in these circumstances.

### **General Anti-Abuse Rule**

- 7.4.8 As set out in 3.6 above, on 17 July 2013 the GAAR received Royal Assent as part of the Finance Bill 2013 and, as such, there is now an overriding statutory limit on the Notwithstanding that lack of precedent in how HMRC may seek to apply the GAAR, it is our view that the GAAR should not be in point in the context of the Transaction.

# Appendix I – Tax residence protocols

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An entity that is incorporated in the UK, Jersey or Luxembourg is considered tax resident in that jurisdiction by virtue of its incorporation. However, if the entity is centrally managed and controlled outside of its jurisdiction of incorporation, there is a risk that the company may be deemed tax resident in two countries.

The practical steps below set out measures that should be taken to reduce the risk of the entities in the investment structure not being solely tax resident in their jurisdiction of incorporation.

The recommendations listed below are of a general nature and should be adapted on a case by case basis depending on the source countries at stake. In each case the 'relevant jurisdiction' is the jurisdiction of incorporation.

## 1. Board meetings

- 1.1 Board meetings should be initiated, held and chaired on a regular basis (at least annually and in all cases when strategic decisions are to be made) in the relevant jurisdiction.
- 1.2 A majority (both in terms of voting power and headcount) of directors who are to attend these meetings should attend physically in the relevant jurisdiction. A minority may occasionally join by conference call but the meetings should be convened from the relevant jurisdiction.
- 1.3 Discussions at board meetings should be substantial. The directors should not merely "rubber stamp" decisions taken elsewhere.

## 2. Board of Directors

- 2.1 Although the board may include some directors that are tax resident in alternative jurisdictions, the majority of directors should be tax resident

in the relevant jurisdiction. In any event the articles of association should state a majority of directors that are tax resident in an alternative jurisdiction cannot form a quorum at board meetings.

- 2.2 It is important that the composition of the board is in place from the formation of any company (or from the moment it is purchased "off the shelf"), to avoid the entity being resident in an alternative at its point of incorporation, as this could give rise to greater problems later in demonstrating that the company is tax resident in the relevant jurisdiction.
- 2.3 The Board's members should have the appropriate skills and experience to competently manage and control the business of the relevant company.

## 3. Authority of the individual directors

- 3.1 The Board of Directors must take all strategic decisions collectively in the relevant jurisdiction rather than merely "rubber-stamping" decisions made elsewhere. For this purpose, the directors should have the proper qualifications to take such decisions.
- 3.2 No single director that is tax resident in an alternative jurisdiction should be able to bind the board of directors in decision making.

## 4. Document signing

- 4.1 All material contracts and documents should be signed in the relevant jurisdiction by an authorised director.
- 4.2 The signatories for the company's bank accounts (which ideally should be in the relevant jurisdiction) should be members of the board and have appropriate power to authorise payments without the approval of any directors located outside of the relevant jurisdiction.



## 5. Strategic decision making

- 5.1 The management of the entity should consider proposals and make strategic decisions at board meetings. Accordingly, where the company is say, considering the sale of any of its material assets or considering re-financing arrangements, although the board may take advice from third parties under advisory agreements and take any such recommendations into account, any proposed transaction should be considered fully by the board of directors at a meeting in the relevant jurisdiction and it is the board that should make the decision.
- 5.2 Any recommendations proposed to the board (and any other documentation to be reviewed at the board meeting) should be presented to the directors sufficiently in advance of the meeting so that the directors have time to properly consider the relevant facts in advance of the meeting.

## 6. Evidence

- 6.1 Compliance with all the above must be supported with documentary evidence.
- 6.2 Books and records, files and correspondence should be maintained in the relevant jurisdiction at offices rented or owned for the company's business; accounts should be produced and filed in the relevant jurisdiction; AGMs should be held in the relevant jurisdiction.
- 6.3 All board meetings should be documented and the documentation should be drawn up in the relevant jurisdiction. Full minutes should be produced and should include starting and ending times, location, names of those attending and a summary of matters discussed.
- 6.4 Bank accounts should be maintained in the relevant jurisdiction.

## 7. Tax residence certificates

- 7.1 For many purposes, notably to gain access to treaty benefits, it can be necessary to be able to demonstrate that an entity is tax resident in the relevant jurisdiction.
- 7.2 The tax authorities generally issue certificates of tax residence upon request, provided that the relevant company is up to date with its tax reporting obligations.

## 8. Substance requirements

- 8.1 In addition to the general residence requirements, in order to be able to apply the EU Parent-Subsidiary Directive and relevant double taxation treaties in some jurisdictions it is necessary for entities to be able to demonstrate sufficient substance.
- 8.2 It is recommended that the entities should have the following in order to demonstrate their substance in the relevant jurisdiction:
  - Bank accounts should be located in the relevant jurisdiction;
  - Registration should occur in the relevant jurisdiction;
  - A fully-equipped operating address and telephone extension should be maintained in the relevant jurisdiction; and
  - The management of shareholdings and financing, book-keeping and reconciliation of accounts should be performed in the relevant jurisdiction.

## 9. Tangible business activity

- 9.1 In order to demonstrate sufficient substance, entities may also be required to have tangible business in the relevant jurisdiction. This means that the company should be operating using its own resources

and it will usually be expected to bear an element of risk in carrying on its activities.

9.2 This requirement is expected to become even more important in future as jurisdictions implement stricter anti-abuse rules relating to the application of Double Tax Treaties.

9.3 In order to ensure that the entities have sufficient business activity they should each have the following:

- Its own business premises with direct line telephone and facsimile; and
- Its own personnel.

9.4 Where entities use the same business address (such as shared office space) they must be in a position to demonstrate that they rent all or part of the office space and that a lease agreement is in place. This significantly strengthens the substance claims of the company.

## 10. Employee responsibilities

10.1 With regard to the activity of full time employees based in the relevant jurisdiction, consideration should be given to the nature of the work which they are responsible for. The activities and responsibilities of full time employees will need to be clearly defined as part of the recruitment process. If the majority of the responsibilities relate to administrative work, the evidence that the business is acting on its own account is significantly weaker. All reasonable endeavours should be made in maximising the decision making competence the employee has in negotiating and executing contracts and in negotiation with third parties. This will significantly increase the probability that the substance requirements are met.

10.2 A description of the suggested additional responsibilities of the persons to be employed is set out below:

- Drafting or commissioning up internal loan documentation;

- Managing interest on internal loans and checking compliance with covenants/thin capitalisation requirements;
- Accounting/book-keeping for the Management Company;
- Managing cashflows in respect of new acquisitions and incorporations;
- Initiating incorporation of new subsidiaries;
- Arranging company meetings including the AGM;
- Input into decision-making with regards to the corporate structure; and
- Assisting with the reconciliation of the consolidated accounts.

## 11. Luxembourg Transfer pricing circular

11.1 In January 2011, the LTA released a circular (“the Circular”) governing the application of transfer pricing requirements to Luxembourg entities carrying on a financing activity.

11.2 The Circular requires certain economic and organisational substance in Luxembourg in order to be eligible for a binding pricing agreement on the level of taxable spread to be retained in Luxembourg.

11.3 The Circular requires that:

- The majority of the board of managers members who are able to bind the company should be resident in Luxembourg or non-resident but performing their professional activity in Luxembourg and being taxable on at least 50% of their revenues.
- The company should have qualified employees able to execute the transactions done by the company. The company should be able to verify the work executed by their employees.



- Key decisions concerning the entity's management must be taken in Luxembourg.
- The company retains the use of a bank account located in Luxembourg.
- Before sending a request binding the Luxembourg tax administration, the company should comply with the requirements regarding the tax returns filing.
- The company should not be viewed as tax resident in another State.
- The entity engaged in intra-group financing transactions must own sufficient equity (at least 1% of the nominal value of the credit granted, but without exceeding €2m) to hedge transaction risks.

11.4 For the purposes of this Transaction, we consider that Genesis Holdco will be within the scope of the Circular.

# Appendix II – Luxembourg participation exemption

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## 1. Participation exemption on dividends and liquidation proceeds received by a Luxembourg company

- 1.1 Dividends and liquidation proceeds received by a Luxembourg company are in principle subject to CIT and MBT on profits at the overall standard rate of 29.22% if the company is located in Luxembourg City.
- 1.2 However, the LITL provides for special rules for parent companies and subsidiaries referred to as the “participation exemption”.
- 1.3 Under this article, the dividends/liquidation proceeds are exempt from tax in Luxembourg if all the following conditions are met:
  - i. At the date the dividends/liquidation proceeds are placed at the disposal of the recipient company, it holds or commits itself to hold a direct and continuous shareholding in the company paying the dividend/liquidation proceeds, for at least 12 months. This shareholding must represent at least 10% of the capital of the subsidiary, or its acquisition price must amount to at least EUR 1.2 million;

The distributing company is:

- An entity with a collective character listed in Article 2 of the Directive 2011/96/UE enacted on November 30<sup>th</sup>, 2011; or
- A fully taxable joint-stock company which is a resident of Luxembourg and which is not listed in the Annex of Article 166 (10) LITL; or
- A non-resident joint-stock company which is fully liable to a tax corresponding to Luxembourg corporate income tax. Regarding this condition, the Luxembourg tax

authorities generally apply a rule that the foreign effective tax rate must be at least 10.5% (in 2010) with the tax basis determined in a manner similar to that employed by Luxembourg.

- 1.5 As noted above, a qualifying shareholding means at least 10% of the distributing company's capital or a shareholding whose acquisition price is at least EUR 1.2 million.
- 1.6 Please also note that operating expenses that are in direct economic connection with such exempt dividend income/liquidation proceeds, as well as any value adjustment applied to the participation following the distribution of such income, are not deductible up to the amount of this exempt dividend income/liquidation proceeds. For example, if a Luxembourg company has financed the acquisition of the shareholding by debt, the dividends/liquidation proceeds received will be exempt and the interest expense on the debt will not be deductible to the extent of the dividend/liquidation proceeds received.

## 2. Participation exemption on capital gains realised by a Luxembourg company

- 2.1 According to Grand Ducal Decree of December 21st, 2001, the conditions for exemption of capital gains are in line with those applicable to dividends/liquidation proceeds, i.e. the conditions are the same as those described above for the dividend/liquidation proceeds exemption, except that the figure of EUR 1.2Mio mentioned above is EUR 6Mio in the case of the capital gains exemption.
- 2.2 As for the participation exemption on dividends/liquidation proceeds, there is a recapture rule i.e. the exemption of the capital gain realized upon disposal of a participation will be reduced by the amount of the expenses previously booked and deducted by the company and which directly relate to the qualifying participation.



2.3 In other words, part of the capital gain (which will be equal to the sum of all related depreciation, interest and other related expenses that have reduced the taxable basis of the company in the previous accounting years) would not be exempt. For instance, if the Luxembourg company acquires all or part of a shareholding by means of debt, or if other expenses in relation to the shares are tax deductible, the capital gains on the disposal of the shareholding can only be tax exempt for the part exceeding these deductible expenses. These expenses include any interest and value adjustments in connection with the shares that have been deducted for tax purposes in the current and any prior years.

2.4 It should be noted that the recapture rule should not have adverse tax implications provided that the expenses have not been used to offset other taxable income of the Luxembourg company. The tax losses due to the deduction of expenses in connection with the shareholding can be carried forward indefinitely and be offset towards the portion of capital gain which is taxable based on the recapture rule. For instance, in case interest expenses on the debt in connection with the participation are used to offset other taxable income, no tax on the other taxable income will in principle be payable on an annual basis. However, upon disposal of the shareholding by the Luxembourg company, the cumulative amount of the other taxable income will become taxable during the year of disposal under the recapture rule. This offers a tax deferral opportunity for the Luxembourg company.

### 3. Participation exemption for NWT purposes

3.1 For NWT purposes, shares in subsidiaries are not taken into consideration as “assets” when determining the “Unitary Value” (i.e. NWT basis) provided that all the conditions outlined under section 1 above are met.

3.2 The 12 month holding period requirement does not apply for NWT purposes.

3.3 Debts related to exempt assets are not deductible. However, this is only to the extent that the value of the debt does not exceed the value of the asset. If the debt exceeds the value of the asset, it is deemed not to be related to the asset, but to be a general debt. The amount in excess of the value of the exempt asset is therefore deductible for NWT purposes.

### 4. Participation exemption for WHT purposes

4.1 Dividends paid by a Luxembourg company are in principle subject to WHT at the overall standard rate of 15% on the gross payment (17.65% on the net payment). However, article 147 LITL provides for special exemption rules.

4.2 Under this article, the dividends are exempt from WHT if all the following conditions are met:

- i. At the date the dividends are placed at the disposal of the recipient company, it holds or commits itself to hold a direct and continuous shareholding in the company paying the dividend, for at least 12 months. This shareholding must represent at least 10% of the capital of the subsidiary, or its acquisition price must amount to at least EUR 1.2 million;
- ii. The dividend is distributed by:
  - A fully taxable entity with a collective character which is a resident of Luxembourg and which takes one of the forms listed in the annex of article 166 (10) LITL; or
  - A fully taxable joint-stock company which is a resident of Luxembourg and which is not listed in the annex of article 166 (10) LITL.
- iii. The dividend is received by:
  - An entity with a collective character listed in Article 2 of the Directive 2011/96/UE enacted on November 30<sup>th</sup>, 2011; or
  - A fully taxable joint-stock company which is a resident of Luxembourg and which is not listed in the annex of article 166 (10) LITL; or
  - A joint-stock company or a cooperative company which is resident in a State being part of the European

Economic Area (EEA) but other than a member state of the EU (i.e. Iceland, Liechtenstein and Norway) and which is fully liable to a tax corresponding to Luxembourg corporate income tax; or

- A Luxembourg or foreign permanent establishment of one of the above mentioned entities; or
- An entity with a collective character which is resident in a State with which Luxembourg has concluded a double tax treaty and which is fully liable to a tax corresponding to Luxembourg corporate income tax. Regarding this condition, the Luxembourg tax authorities generally apply

a rule that the foreign effective tax rate must be at least 10.5%, with the tax basis determined in a manner similar to that employed by Luxembourg; or

- A Luxembourg permanent establishment of an entity with a collective character which is resident in a State with which Luxembourg has concluded a double tax treaty and which is fully liable to a tax corresponding to Luxembourg corporate income tax.; or
- A joint stock company which is resident in Switzerland and which is subject to corporate income tax in Switzerland without benefiting from an exemption.



# Appendix III – Tax & Financial Reporting Obligations

Entity	Tax Reporting Obligations		Financial Statement Reporting Obligations		Filings required on set up of new entities	Other Filings
	US	Local	US	Local		
Unit Holders (Luxembourg)	<ul style="list-style-type: none"> <li>Form 8858 – Information Return of US Person with Respect to Foreign Disregarded Entities may be required and attached to Master Luxco’s Form 8865 – Return of US Persons with Respect to Certain Foreign Partnerships if such Form 8865 is required (will depend on the level of US investors in BREP Funds)</li> </ul>	<p><u>Luxembourg</u></p> <ul style="list-style-type: none"> <li>File Luxembourg corporate income tax return together with financial statements annually.</li> <li>File Luxembourg net worth tax calculation annually (net worth tax return every 3 years)</li> <li>File Luxembourg municipal business tax return annually.</li> <li>Periodical (monthly or quarterly) and annual VAT returns (in case of recharge of costs).</li> </ul> <p><u>UK</u></p> <ul style="list-style-type: none"> <li>File NRL2 application form before the receipt of first rental income after the acquisition of the units.</li> <li>NRL returns to be filed by 31 January for the previous fiscal year</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Preparation of financial statements annually.</li> </ul>	<ul style="list-style-type: none"> <li>Apply for a US employer identification number (EIN), and file check-the-box election Form 8832.</li> </ul>	<ul style="list-style-type: none"> <li>Luxembourg WHT return should be filed following distributions</li> </ul>

Entity	Tax Reporting Obligations		Financial Statement Reporting Obligations		Filings required on set up of new entities	Other Filings
	US	Local	US	Local		
Genesis Holdco (Luxembourg)	<ul style="list-style-type: none"> <li>Form 8858 – Information Return of US Person with Respect to Foreign Disregarded Entities may be required and attached to Master Luxco’s Form 8865 – Return of US Persons with Respect to Certain Foreign Partnerships if such Form 8865 is required (will depend on the level of US investors in BREP Funds)</li> </ul>	<ul style="list-style-type: none"> <li>File Luxembourg corporate income tax return together with financial statements annually.</li> <li>File Luxembourg net worth tax calculation annually (net worth tax return every 3 years)</li> <li>File Luxembourg municipal business tax return annually</li> <li>Simplified annual VAT returns, if receives services from foreign established suppliers, for which Luxembourg VAT needs to be self-assessed.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Preparation of financial statements annually.</li> </ul>	<ul style="list-style-type: none"> <li>Apply for a US employer identification number (EIN), and file check-the-box election Form 8832.</li> </ul>	<ul style="list-style-type: none"> <li>Luxembourg WHT return should be filed following distributions</li> </ul>
Genesis Topco (Luxembourg)	<ul style="list-style-type: none"> <li>Form 8858 – Information Return of US Person with Respect to Foreign Disregarded Entities may be required and attached to Master Luxco’s Form 8865 – Return of US Persons with Respect to Certain Foreign Partnerships if such Form 8865 is required (will depend on the level of US investors in BREP Funds)</li> </ul>	<ul style="list-style-type: none"> <li>File Luxembourg corporate income tax return together with financial statements annually.</li> <li>File Luxembourg net worth tax calculation annually (net worth tax return every 3 years)</li> <li>File Luxembourg municipal business tax return annually</li> <li>Simplified annual VAT returns, if receives services from foreign established suppliers, for which Luxembourg VAT needs to be self-assessed.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Preparation of financial statements annually.</li> </ul>	<ul style="list-style-type: none"> <li>Apply for a US employer identification number (EIN), and file check-the-box election Form 8832.</li> </ul>	<ul style="list-style-type: none"> <li>Luxembourg WHT return should be filed following distributions</li> </ul>



Entity	Tax Reporting Obligations		Financial Statement Reporting Obligations		Filings required on set up of new entities	Other Filings
	US	Local	US	Local		
Master Luxco (Luxembourg)	<ul style="list-style-type: none"> <li>Form 8865 - Return of US Persons with Respect to Certain Foreign Partnerships may be required depending on the level of US investors in BREP Funds)</li> </ul>	<ul style="list-style-type: none"> <li>File Luxembourg corporate income tax return together with financial statements annually.</li> <li>File Luxembourg net worth tax calculation annually (net worth tax return every 3 years)</li> <li>File Luxembourg municipal business tax return annually.</li> <li>Simplified annual VAT returns, if receives services from foreign established suppliers, for which Luxembourg VAT needs to be self-assessed.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Preparation of financial statements annually.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Luxembourg WHT return should be filed following distributions</li> </ul>
Trustee (on behalf of the JPUT)	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<p><u>UK</u></p> <ul style="list-style-type: none"> <li>UK VAT returns to be filed, and UK VAT paid, quarterly, by the 7<sup>th</sup> of the month following the end of the month after the end of the period .</li> <li>Treaty clearance to be applied for and obtained prior to payments of interest to any syndicated third party lenders relying on a specific treaty clearance to be paid gross of UK WHT.</li> <li>CIS registration to the extent required as per section 3.8</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Preparation of financial statements annually.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>

Entity	Tax Reporting Obligations		Financial Statement Reporting Obligations		Filings required on set up of new entities	Other Filings
	US	Local	US	Local		
Manco	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<p><u>UK</u></p> <ul style="list-style-type: none"> <li>Annual corporation tax returns within one year of the end of its accounting period.</li> <li>UK VAT returns to be filed, and UK VAT paid, quarterly, by the 7th of the month following the end of the month after the end of the period .</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Preparation of financial statements annually.</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>



# Appendix IV – Engagement Letter dated 24 September 2013

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## Deloitte.

A detailed scope of our work as well as exclusions from our scope is included in Appendix 2.

### Due Diligence

Our due diligence procedures include both financial and tax due diligence and our work will consist primarily of the following:

- Access to a controlled data room in order to consider information relevant to the Scope. Where appropriate, we will discuss and agree with you which information is to be considered at the due diligence phase.
- Access to certain senior members of the Subject Group's management (to be agreed) and
- Receipt of information, financial documents and reports made available by the vendor or Subject Group in relation to the Scope.

Our access to management and sources of information will be restricted to vendor controlled information flows. As a result of these restrictions, we may not identify all facts, explanations or information relevant to the Services. Accordingly, our findings in the Final Due Diligence Report should be considered in the light of these restrictions and we accept no responsibility for matters not covered by the Final Due Diligence Report or omitted due to the restricted nature of our access.

### Tax Structuring

Our tax structuring work will consist of discussions with you and your other advisers to determine a suitable acquisition structure, followed by the preparation of a detailed tax report (the Final Tax Structure Report).

We will also review the transaction documentation from a tax perspective.

### 2.3 Management representations and confirmation of facts

It is our normal practice to obtain management representations and we believe that it is an important part of the scope of our enquiry to do so. However, you have requested that we do not seek such representations from the Subject Group. Accordingly, we will note in the relevant Deliverable that we are unable to say to what extent the absence of being able to complete our normal procedures in respect of management representations may impact the reliability of that Deliverable.

### 2.4 Reporting and timetable

We will provide the Deliverables in accordance with a timetable to be agreed with you covering, as appropriate: (1) our work; (2) provision of information to us; (3) our access to people required to enable us to undertake our work; (4) any presentations; (5) the final draft of our Deliverables; and (6) issue of the final Deliverables.

We may at your request agree to make a presentation to a Potential Lender or Potential Equity Investor in advance of it entering into a No Duty Advice Agreement (as described in Sections 9 and 10 of the Terms of Business) provided you notify any such party that this will be for information purposes only and on the basis that (i) our agreeing to meet with such party does not create any duty or liability to such party on our part, or the part of auditors if we have had access to auditors and (ii) if such party places reliance on the presentation or any information or explanations we may provide, such party will do so at its own risk and have no recourse to the Deloitte Parties or any auditors to whom we have had access. Such a presentation is subject always to you also complying with the requirements of any Auditors' Release Letter.

We will discuss with you any difficulties we encounter with completing this work as and when any such problems arise.

## Deloitte.

### 2.5 Other services including potential conflicts of interest

As we have discussed, other firms from Deloitte or from other Deloitte Parties may have provided, may be providing or may in the future provide services to other parties (including to the Subject Group or the vendor) in connection with the Transaction, or a related transaction. We draw your attention to clause 4.6 of the Terms of Business in which you consent (on the terms set out therein) to separate teams from Deloitte or from other Deloitte Parties providing such services to such other parties.

### 3 Our Charges

Professional fees for our Services will be based on the amount of time our professional personnel devote to performing this engagement at initially agreed rates. The final determination of the professional fees relating to this engagement will be completed shortly after our work on this engagement is completed or the engagement otherwise ends.

Our fee estimate will be provided in separate correspondence.

The Principal will be responsible for paying our Charges (plus VAT where applicable) up to the date of termination or suspension of the Contract (if for example the Transaction does not complete) or until such time that the Transaction completes and becomes) assumes the obligation to pay our Charges. Out-of-pocket expenses will depend on the nature of the Services and, where appropriate, will include staff travelling, accommodation and subsistence charged in accordance with our normal personal policies.

We will render invoices for our Charges shortly after completion of the engagement otherwise ends.

These invoices are due for settlement within 14 days of receipt.

### 4 Terms of Business and Liability Provisions

The Terms of Business in Appendix 1 form an integral part of the Contract between us and you and attention is drawn to them. The following amendments to the Terms of Business have been agreed between us:

1. For the purpose of clause 6.4.5 in the Terms of Business, the aggregate liability of Deloitte for damage shall be limited to £25 million (twenty five million pounds sterling). Where the Damage arises from or in connection with the Tax structuring scope as described within Section A of Appendix 2 or the Sale and Purchase Agreement scope as described within Section B of Appendix 2, the aggregate liability of Deloitte for Damage shall be limited to £5 million (five million pounds sterling).
2. 6.5A claims and then only to the extent they have been finally and judicially determined (including the conclusion of any appeal) to have been caused by the final of any of the Deloitte Parties, such Recipient Party agrees to indemnify and hold harmless the Deloitte Parties against all losses, liabilities, damages, costs, charges or expenses of whatever nature and howsoever caused (including interest) which they incur in the defence and settlement (including meeting any judicially determined award of damages) of any Claim relating to our Tax structuring scope referred to within Section A of Appendix 2 brought by any third party whether or not such Claim is founded upon an allegation of our negligence.
3. After clause 4.14, insert a new subsection entitled "UK anti-corruption laws and regulations" and insert clause 4.15 as follows "We shall comply with all applicable laws and regulations of the United Kingdom on anti-corruption. In addition, in connection with this Contract and the performance by us of our obligations under it, we represent, and warrant that we have not paid or delivered, or offered or promised to pay or deliver, and will not pay or deliver, or offer or promise to pay or deliver, any fee or any other thing of value to any Government Official with the intention of corruptly influencing any act or decision of such Government Official in his or her official capacity to direct business to or otherwise secure any improper advantage for any of the parties to this Contract. The term "Government Official" in this paragraph means any officer or employee of a government or any governmental department or agency, or any public international organization, or any person acting in an official capacity for or on behalf of any such government or governmental department or agency or public international organization, or

**Deloitte.**

any political party or officer thereof, or any candidate for political office. We shall require our subcontractors under this Contract to comply with the foregoing."

4. In clause 5.5 insert "in connection with this Contract," after "shall bring any Claims" in the first sentence.

**5. Agreement to the Terms**

If, having considered the provisions of the Contract you conclude that they are reasonable in the context of the engagement and our proposed appointment and you wish to engage us on these terms, please confirm your written acceptance of the Contract by signing and returning the attached copy.

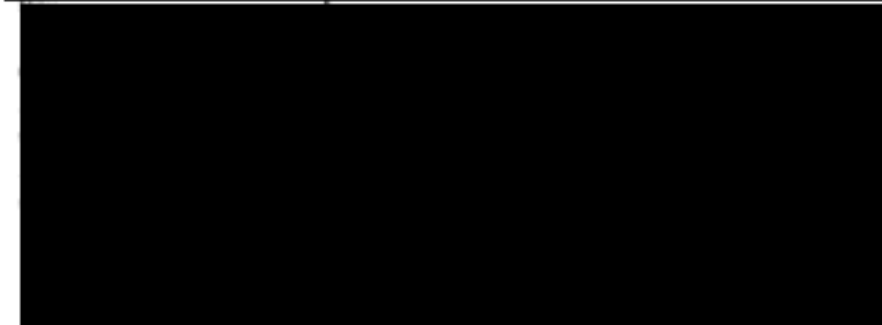
Yours faithfully

Deloitte LLP

**Deloitte.**

APPENDICES attached:

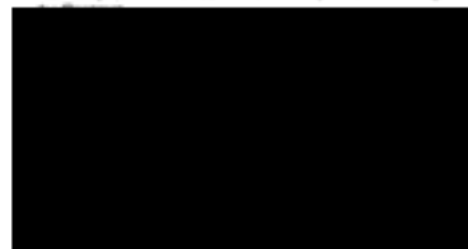
- Appendix 1 Terms of Business
- Appendix 2 Scope of work
- Appendix 3 No Duty Access Agreement
- Appendix 3A Beneficiary Access Agreement



Date: .....

Confirmation of the Contract by Newco(s)

I am duly authorized to, and do hereby confirm the agreement



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.....  
.....

DELOITTE LLP

TERMS OF BUSINESS FOR PRIVATE EQUITY TRANSACTION SERVICES

DEFINITIONS

<b>"Addressee(s)", "you"</b>	The addressee(s) of the Engagement Letter, together with Services, that confirm their acceptance of the Contract by signing a copy of the Engagement Letter.
<b>"Affiliate"</b>	In respect of each Recipient Party, any entity which is controlling, controlled by, or under common control with a Recipient Party.
<b>"Agreed Lenders"</b>	Those lenders who have accepted the terms of the Contract in accordance with clause 9.3 and thereby become Beneficiaries.
<b>"Auditors' Release Letter"</b>	The letter issued by auditors and/or tax advisers, and referred to in the Deliverables (or any of them) setting out the conditions under which access to information from the audit and/or tax working papers and/or explanations relating thereto may be given.
<b>"Assurance", "Audit"</b>	These words are used with the meanings they have in professional standards issued by the Auditing Practices Board in the United Kingdom.
<b>"Beneficiaries"</b>	The Agreed Lenders and/or Further Equity Investors, who (a) we and the Addressee(s) have agreed may have the benefit of and rely on the Deliverables (or any part of them) and (b) have accepted the terms of the Contract under written arrangements with us in accordance with the mechanisms set out in sections 9 and 10.
<b>"Charges"</b>	Our fees and out-of-pocket expenses plus VAT where applicable.
<b>"Claim"</b>	Any demand, action, claim or proceeding of any nature (whether in contract, tort, breach of statutory duty or otherwise and including, but not limited to, a claim for negligence) arising in any way in respect of or in connection with this Contract or relating in any way to the Services or the Transaction or the Funding.
<b>"Confidential Information"</b>	Information about or held by any Recipient Party or the Subject Group that comes into the possession of the Deloitte Parties or about the Deloitte Parties that comes into the possession of any Recipient Party during the performance of the Services and which is by its nature confidential or is designated as such by the other party providing the information (whether in writing or orally) other than any information which: <ul style="list-style-type: none"> <li>(i) is or becomes generally publicly available other than through a breach of the confidentiality obligations in the Contract, or</li> <li>(ii) was possessed by the recipient of the information prior to commencement of the Services without any obligation of confidentiality, or</li> <li>(iii) is lawfully received from a third party who the recipient of the information has no reason to believe is under an obligation of confidentiality, in respect thereof.</li> </ul>
<b>"Contract"</b>	The Engagement Letter and any separate letters or agreements referred to in the Engagement Letter as forming part of the Contract, these Terms of Business and any agreed addendum thereto.
<b>"Cut-off Date"</b>	In respect of each Deliverable, the date of the final signed Deliverable or, where applicable and earlier, the date expressly stated in the final signed Deliverable to be the date on which our work was completed.
<b>"Damage"</b>	Losses or damages (including interest thereon if any) and costs suffered or incurred, directly or indirectly, by all or any of the Recipient Parties under this Contract (in the same way as they may be attended or varied) or in connection with the Services or any Deliverables, prepared pursuant to it. <p>Solely for the purpose of clause 6.4.5, Damage also includes equivalent Damage suffered or incurred by the addressee or beneficiaries of any deliverables provided under the terms of other engagement letters expressly specified in the Engagement Letter or any agreed addendum to the Contract.</p>
<b>"Deliverables"</b>	The Final Reports, together with other outputs (if any), specified in Section 2.2 of the Engagement Letter as forming part of the Deliverables.

<b>"Deloitte", "we", "us"</b>	The United Kingdom limited liability partnership of Deloitte LLP.
<b>"Deloitte Parties"</b>	All entities (including Deloitte) that are members of Deloitte Touche Tohmatsu Limited ("DTTL") worldwide network and each of their subsidiaries, predecessors, successors, assigns and subcontractors, and all partners, associate partners, principals, members, owners, directors, employees and agents of all such entities. Deloitte (which for these purposes includes reference to its subsidiaries) uses the word partner in respect of its members and certain of its senior employees in its dealings with you to describe, respectively, a member and senior employee of Deloitte in their capacity as such. Deloitte gives a number of its employees the title of "senior", which denotes that they are senior employees and not that they hold the office of director for the purposes of the Companies Act 2006.
<b>"Engagement Letter"</b>	The engagement letter attaching these terms, together with its appendices and enclosures but excluding these Terms of Business.
<b>"Engagement Team"</b>	The individuals who perform the Services.
<b>"Final Report(s)"</b>	The reports defined as Final Report(s) in Section 2.2 of the Engagement Letter.
<b>"Funding"</b>	Any retail debt (including syndication in accordance with section 9) and/or equity, used to finance the Transaction.
<b>"Funds"</b>	The funds (if any) identified in Section 1 of the Engagement Letter.
<b>"Further Equity Investor"</b>	An equity investor that has become a Beneficiary, in accordance with clause 9.3, through signing and returning to us a Beneficiary Access Agreement (as defined in clause 10.3).
<b>"Lead Lender"</b>	A financial institution that has become a Beneficiary, in accordance with clause 9.3, through signing and returning to us a Beneficiary Access Agreement (as defined in clause 10.3).
<b>"Principal"</b>	The party or parties defined as the Principal in Section 1 of the Engagement Letter.
<b>"Prospective Financial Information" or "PFI"</b>	Any financial information about the future (e.g. forecasts, budgets or projections).
<b>"Purpose"</b>	The purpose for which the Services and/or Deliverables are provided as set out in the Engagement Letter or an applicable addendum to the Contract.
<b>"Recipient Parties"</b>	The Addressee(s) and the Beneficiaries (if any).
<b>"Scope"</b>	The scope of the Services as defined in Section 2.2 of the Engagement Letter and any further work agreed or modified in accordance with clause 2.2.
<b>"Service"</b>	The transaction support services to be provided by us, details of which are set out in the Contract.
<b>"Subject Group"</b>	The entity (whether a company, group or collection of companies, unincorporated business, division, or other entity, or any combination thereof) described in Section 1 of the Engagement Letter which is the subject of the Transaction, and in respect of which the Services are to be provided.
<b>"Subsequent Events"</b>	Both: <ul style="list-style-type: none"> <li>(1) those events (favourable or unfavourable) which occur subsequent to the Cut-off Date (including changes to the relevant tax legislation, case law and practice); and</li> <li>(2) those facts not known to us prior to the Cut-off Date which would have caused us to issue a different Deliverable had they been known to us prior to the Cut-off Date.</li> </ul>
<b>"Takeover Code"</b>	The City Code on Takeovers and Mergers issued by The Panel on Takeovers and Mergers.
<b>"Tax Services"</b>	The services in relation to tax (if any) as described in Section 2.2 of the Engagement Letter and/or Appendix 2 thereto.
<b>"Terms of Business"</b>	The terms of business set out in this Appendix.
<b>"Transaction"</b>	The transaction or proposed transaction described in Section 1 of the Engagement Letter.



# Deloitte

## 1. THE CONTRACT BETWEEN US

1.1 The whole of the contract between the Addressee and Deloitte is described in the Contract. Nothing discussed prior to your accepting the terms of this Contract (whether by signing the Engagement Letter or otherwise) and/or forms part of the Contract (including but not limited to any confidentiality agreements with you which, if any, you agree are superseded hereby) unless it is specifically set out in this Contract. No-one is authorised to agree any variations to the Contract unless such variations are also in writing and agreed in writing between you and us.

1.2 If we have already started work (e.g. by gathering information, project planning or giving initial advice) prior to your accepting the terms of this Contract then you agree that this Contract applies retrospectively from the start of our work.

1.3 The definitions set out in these Terms of Business and the Engagement Letter shall have the same meaning throughout this Contract. If there is a conflict between these Terms of Business and the Engagement Letter (save where the Engagement Letter or any agreed addendum thereto expressly modifies elements of these Terms of Business, these Terms of Business govern).

1.4 If any provision of this Contract is determined to be illegal, void or unenforceable in whole or in part, all other provisions together with the remainder of the affected provision shall remain in full force and effect.

### Contracting parties and assignment

1.5 The Contract is between you and Deloitte. You agree that your relationship is solely with Deloitte as the entity contracting with you to provide the Services. Notwithstanding the fact that the Services under this Contract are to be provided by individual partners and employees from Deloitte (and in some cases provided to Deloitte by other Deloitte Parties through service or other agreements), no such individual partner or employee nor any other Deloitte Party intends to assume responsibility (including responsibility in any personal capacity) for the Services under this Contract. Consequently, you agree that no Deloitte Party (except Deloitte) will have any liability to you in respect of the Services under this Contract. You further agree that you will not bring any Claim against any of the Deloitte Parties (except Deloitte) or Deloitte, remains responsible and liable to you for the acts or omissions of the Deloitte Parties in relation to the Services provided under the terms of this Contract.

1.6 This Contract does not make either of you or us an agent or legal representative of the other, nor does it create a partnership or joint venture and nor does it create a fiduciary relationship.

1.7 No party to this Contract may transfer or charge its rights or obligations under this Contract without the prior written consent of the other party(ies) except that any party may transfer its respective rights and obligations under this Contract to any partnership or legal entity authorised to take over all or substantially all of its business. Further, no party to this Contract will agree, directly or indirectly, to assign or transfer to any other person any Claim against the other arising out of, or relating to, this Contract or the Services.

### Third party rights

1.8 No person who is not a party to this Contract (other than the Deloitte Parties for the purpose of the benefit of clauses 1.5, 4.6, 5.4, 6.2 and 6.5) shall have any rights under the Contracts (Rights of Third Parties) Act 1999 in relation to any of its terms.

1.9 This Contract can be varied without any third party's consent.

## 2. OUR SERVICES AND RESPONSIBILITIES TO YOU

2.1 The Services and any Deliverables to be provided under this Contract together with our responsibilities for them will be limited solely to the Scope and responsibilities set out in the Contract and our Deliverables will include our significant findings related thereto. We will make no representations in respect of and will not consider any other matters.

2.2 We or the Addressee may request changes to the Scope. Changes must be agreed between us and the Addressee and will be subject to agreed adjustments to the Charges and timetable. Adjustments to the Scope in respect of any part of the Services will be reflected in the final Deliverable relating to that part of the Services and acceptance of that Deliverable will indicate acceptance of the adjusted Scope to set out therein. Unless expressly agreed in writing, any further work we may carry out in connection with the Services (whether or not agreed in writing) will be carried out as part of this Contract and subject to its terms.

# Deloitte

2.3 Our work and our findings shall not in any way constitute investment advice, or an assessment of the commercial merits of the Transaction, or recommendation as to whether or not the Transaction or the Funding should proceed. You agree that we have no responsibility for managing any aspects of your or the Subject Group's business, or for taking any decisions or operating any accounting, internal control or management information systems in connection with your or the Subject Group's business.

2.4 We will use reasonable efforts to carry out the Services in accordance with any timetable referred to in the Engagement Letter or otherwise agreed with you. You acknowledge and agree that our performance of the Services may be dependent on the timely and effective completion of your own activities and responsibilities in connection with this engagement. Unless otherwise specifically agreed in writing, all dates given by Deloitte or specified by you for the provision of the Services are intended for planning and estimating purposes only and are not contractually binding.

### Our enquiries

2.5 The Deliverables necessarily will be prepared from information supplied by and from responses to our enquiries of you or the management and staff of the Subject Group and, where included in the agreed Scope, its advisers and/or its officers. Except (i) as expressly set out in the Contract and/or (ii) to the extent otherwise stated in any Deliverable in respect of that Deliverable, we will not test, audit or verify any information. Further, our work will be carried out on the basis that all such information is, in all material respects, complete, accurate and not misleading.

2.6 We draw your attention to the fact that if we were to perform additional procedures or conduct an audit, other matters might come to your attention that might be relevant to your assessment of the Transaction or Funding. In particular, this engagement cannot be relied upon to detect fraud should it exist. We will raise with you all matters that we consider of significance in the context of the Services as they arise during the course of our work. However, the Services and the Deliverables should not be taken to supplant the additional enquiries and procedures that should be undertaken in your consideration of the Transaction or Funding.

2.7 Our Services under this Contract will not include an Audit or other Assurance services. Accordingly, we will not express an opinion or give any other form of Assurance on the financial statements or any other financial information (including PFI), or operating or internal controls of the Subject Group, except to the extent expressly agreed to the contrary, where we comment on key business processes we do so as providers of due diligence services rather than as information technology specialists. Where, as part of the agreed Scope, we are provided with access to the work papers of the Subject Group's auditors and/or tax advisers, it is agreed and understood that we:

- will review those work papers solely for the purpose of identifying, analysing and collating information relevant to matters within the agreed Scope; and
- will not check or review the adequacy of all or any part of the audit and/or tax work performed by the Subject Group's auditors and/or tax advisers, or express any opinion in relation thereto.

2.8 This clause only applies if the Engagement Letter specifies that the Services include commercial due diligence. The information provided by third parties will include their opinions which are necessarily subjective. Furthermore the choice of which parties to approach will also be subjective and therefore their opinions or the information they provide may not be representative of the wider population from which they are drawn. It is possible that had we spoken to other parties we might have been provided with different information from which we might have drawn different conclusions. Further, by reporting opinions and/or information provided by third parties, Deloitte will not be regarded as endorsing such opinions or verifying the accuracy of such information.

2.9 This clause only applies if the Engagement Letter specifies that the Services include operational due diligence. We will consider potential operational improvements and/or savings and we will comment on any views concerning such improvements and/or savings expressed by the existing or prospective management of the Subject Group which are made available to us for comment in the context of the Scope. Our comments will be provided in the light of the Engagement Team's business experience of operational matters but will not necessarily be based upon direct experience of operations in the specific industry or commercial sector concerned. Our comments may not represent the optimal solution and there may be other equally valid views.

### Forecasts, budgets and projections

2.10 Where our work relates to PFI, we will comment on the basis and assumptions underlying the PFI provided to us as contemplated in the Scope but accept no responsibility for the PFI or for the ultimate realisation of the PFI. Such bases and assumptions will have been determined by, and are the sole responsibility of, the senior management, directors, or prospective directors or such other persons who prepared such PFI and we expect such persons to formally approve such bases and assumptions together with the resulting PFI before the relevant Deliverables are finalised.

2.11 As PFI relates to the future and involves estimation, assumptions and uncertainties PFI is based on information available at the time of its preparation. Accordingly, the PFI will not include unanticipated events after the date on which it

## Deloitte.

was prepared, including, but not limited to, changes in law and regulations, changes in government policies and changes in accounting standards. The attainment of the predicted results depends upon successful implementation of the underlying strategies by management and the realization of the underlying assumptions including any operational improvements. Events and circumstances frequently do not occur as expected and actual results are likely to be affected by events beyond the control of management resulting in differences between the predicted and the actual results. Such differences are normal and may be material.

2.12 We will not prepare PFI. Where we offer an alternative view of the amount or timing of potential savings, or of other aspects of any PFI, this will be based upon our professional or business experience and judgement. We may present tables summarising the PFI, provided to us as contemplated in the Scope, aggregating quantified vulnerabilities or illustrating the impact of alternative assumptions. These tables are presented as a means of summarising our comments to assist in the communication of our findings and do not represent a restatement, revision, or endorsement, of the PFI.

### Spreadsheets and Computer Modelling

2.13 Whilst providing the Services, we may refer to spreadsheets and/or computer models that you give us or ask us to rely upon ("Your Models") or that we may have used or developed, solely for our internal use and incidental to our providing the Services ("Our Models"). All spreadsheets and computer models have limits and may not produce valid results for all possible combinations of input data; errors and potential errors may thus go unnoted. Unless otherwise expressly agreed in the Engagement Letter, we will not be responsible for reviewing or testing the logical integrity of, or detecting any errors in, any of Your Models and we will not be obliged to provide you with any of Our Models. However, it may be expected for us to give you a copy of one or more of Our Models. Without qualifying the Services and Deliverables, in giving you any of Our Models, we make no representation, warranty or undertaking (express or implied) in relation to, and accept no responsibility to you or any other party for, the accuracy, suitability, or adequacy of any of Our Models or for their use. Before manipulating or relying on Our Models or Your Models, you are advised to carry out appropriate checks upon them.

## 3 YOUR RESPONSIBILITIES

3.1 You are responsible for determining that the Scope is appropriate for your needs.

### Provision of information to us and support required by us

3.2 The Principal agrees to give to all the information within its control that is relevant for the performance of the Services and will use its reasonable endeavours to arrange the relevant access for us to perform the Services and fulfil the Scope and our work will be based solely on the information provided, or in which access is arranged. In this context, you agree we shall not be treated as being on notice of information given to us in the course of previous engagements. Where you wish us to access a web site or an electronic data sharing forum, you will discuss and agree with us the specific areas and the information which you require us to read.

3.3 You will to the extent reasonably practicable keep us promptly informed of any matters of which you are aware and which in your view are material to the performance of the Services unless you reasonably believe that we are already aware of those matters.

### Decision making and management of your business

3.4 You will apply your independent business judgement to evaluate the Deliverables including any advice or recommendations that we may give you. You will be responsible for (a) evaluating the adequacy and results of the Deliverables and any such advice or recommendations for your purposes and (b) deciding whether you wish to implement or act on them.

3.5 The Principal is solely responsible for, among other things: (a) making all management decisions and performing all management functions; (b) designating a competent employee to oversee our Services hereunder on its behalf (c) accepting responsibility for results of the Services other than performance of the Services; and (d) for implementing any recommendations including without limitation monitoring and control of ongoing activities together with the actions necessary to realise any expected benefits. In connection with the Services, Deloitte shall be entitled to rely on all such decisions and approvals.

### Legal agreements

3.6 Our Services may be conducted alongside your legal advisers, acting separately for you. Where specifically requested by you and agreed by us, we will read and make comments and suggestions on specific clauses of an accounting and/or taxation treaty or draft agreements prepared or being reviewed by your legal advisers but we are not qualified to provide legal advice. In particular, given its legal nature, any agreement is likely to reflect matters beyond our competence and, as a result, any comments and suggestions that we provide should not be relied upon as being suitable for incorporation into any agreement without further consideration by your legal advisers.

## Deloitte.

3.7 Any agreement is the product of negotiation between its parties and you acknowledge that it is your responsibility to decide whether in all the circumstances you are prepared to accept any proposed agreement.

3.8 If you are considering imposing or accepting a contractual term which would commit you to obtaining any report from us and/or providing such a report to a third party (for example, in connection with completion accounts or compliance with loan covenants), you agree to consult with us first so that we can advise on whether we would be prepared to undertake such work, the terms on which we would undertake it, and the scope and wording of any such report.

### Data protection

3.9 The Deliverables may contain Personal Data (as defined in the Data Protection Act 1998). You and we, in the event applicable, agree to comply with the Data Protection Act and in particular you and we each undertake to keep any Personal Data in the Deliverables confidential and secure. You and we agree not to use any Personal Data in the Deliverables for any purpose other than for the Purpose.

## 4 RESPONSIBILITIES TO EACH OTHER

### Confidentiality

4.1 Subject to clauses 5.3 and 5.4 which relate to the use and distribution of the Deliverables, we and each Recipient Party undertake, except as expressly stated otherwise in this Contract, (i) to keep Confidential Information confidential (it is not to be used in connection with providing and receiving the Services (including, where applicable, disclosure in the Deliverables and (ii), in the case of the Recipient Parties, use it only for the Purpose.

4.2 We and each Recipient Party will be entitled to disclose Confidential Information (i) to its legal advisers for their information solely in connection with the Purpose or Pending, provided that we each take reasonable steps to ensure that the legal advisers understand and accept that the Confidential Information is confidential and must not be disclosed to any other party without the prior written consent of the party providing the information and, in respect of Personal Data, they are required to comply with the Data Protection Act; or (ii) to comply with any applicable legal, professional or regulatory requirement (including the Takeover Code). The Principal (unless Newco has accepted the terms of the Contract, in which case Newco agrees to reimburse any costs we may incur in complying with any disclosure requirement relating to any of our Services imposed upon us in any proceedings or regulatory process not involving any substantive Claim against us, provided that we notify the Principal (or Newco, if it has accepted the terms of the Contract) promptly and, where reasonable and legally possible, prior to disclosure.

4.3 Each Recipient Party agrees that, if required for the performance of the Services, we may share Confidential Information with any Deloitte Party on the understanding that we will ensure that they will treat the information as Confidential Information in accordance with the provisions of this Contract. Nothing in this Contract will prevent or restrict us from using or sharing internally or with other Deloitte Parties for any purpose, any experience and skills of general application used in, gained or arising from performing the Services, subject to appropriate safeguards to preserve client confidentiality.

4.4 Unless you tell us otherwise, we may in the performance of the Services attend meetings (or otherwise communicate) with your other advisers to discuss matters arising in the performance of the Services and may do so openly, free from any obligation to you of confidentiality (including but not limited to the obligations imposed by clause 4.1) and shall not be liable for any use subsequently made of that information by such other advisers. However, you should not assume that information that we have, or have obtained through our performance of the Services, will be communicated to such other advisers.

4.5 Following the public announcement or completion of the Transaction we may disclose that we have acted for you to our clients and prospective clients as an indication of our experience.

4.6 You accept and agree that Deloitte and/or any other Deloitte Party, through separate teams, may have provided, may be providing, or may in the future provide other services (including due diligence or other services which are the same or similar to the Services, other transaction advisory services or other services including, but not limited to, tax, account, corporate finance advisory services or tax advisory services) in connection with the Transaction or a related transaction, to other parties (including (but not limited to) one or more of the Recipient Parties and/or their Affiliates, competing bidders, the vendor, the Subject Group, or any other party interested in the Transaction on either side). Such other parties may, and indeed are likely to, have interests that compete and/or are in conflict with your own. You agree that the team providing the Services will not be provided with, and will not disclose to you or use for your benefit, any information that other teams from Deloitte or from another Deloitte Party have obtained in the course of providing such services to other parties even though such information may be, and indeed is likely to be, relevant to the Services. You agree that you will not bring any claim against Deloitte and/or any other Deloitte Party, and that we and they shall not be liable for any losses, arising out of or in any way connected with the provision of services to other parties, as permitted by this clause, or the non-disclosure at you of information obtained in the course of providing such services. Nothing in this clause overrides our obligations to comply with the applicable professional standards or our obligations of confidentiality as set out in clause 4.1.

# Deloitte

## Conflicts of interest

4.7 It is our practice to check for conflicts of interest before taking on engagements. Deloitte Parties provide many different professional services to clients and we cannot be certain that we will identify promptly all situations where there may be a conflict with your interests although we will use reasonable efforts to do so.

## Electronic communications

4.8 We and you each agree that we may communicate electronically over the Internet (including by e-mail) and, to the extent required in order to perform the Tax Services, we may communicate electronically over the internet (including by e-mail) with the tax authorities on your behalf. We and you each recognise that e-mail and the internet are inherently insecure and that e-mails and data can become corrupted, are not always delivered promptly (or at all) and that other methods of communication may be appropriate. In addition, the internet is prone to viruses. We and you each recognise these hazards and so each of us will be responsible for protecting our own systems and interests and neither you nor we will be responsible to the other on any basis for any loss or damage in any way arising from the use of e-mail as a form of communication. The exclusion of liability in this clause shall not apply to any liability which arises out of the negligent (or other) addressing of an e-mail.

## Disclosure to Tax Authorities and Confidentiality of Tax Planning Advice

4.9 We are obliged to notify the UK tax authorities of certain types of arrangements which might secure a fiscal advantage and of proposals to implement such arrangements. The decision to make such a notification, its timing and content, is a matter that we reserve entirely to our sole discretion. However, we will inform you if we propose to make, or have made, any such notification that we believe may be relevant to the Tax Services. You recognise that under section 311ZA of the Finance Act 2004 we are obliged to notify HM Revenue & Customs on a quarterly basis of the users of disclosed arrangements. You may also have obligations under the same legislation to give notification of such arrangements. Where there are other current or future laws or regulations in any jurisdiction that require disclosure of our advice, we will also comply with those disclosure requirements.

4.10 In respect of any notification under clause 4.9, or to the extent that any confidentiality terms in this Contract result in an obligation to notify arrangements, such confidentiality terms shall not apply in respect of disclosure of any relevant scheme or arrangement. For the avoidance of doubt, this clause and clause 4.9 specifically apply in respect of compliance with Parts 2 and 7 of the Finance Act 2004 and associated regulations, regulations promulgated under the Social Security Administration Act 1992 and sections 6011 and 6111 of the US Internal Revenue Code and related Internal Revenue Service guidance.

4.11 In relation to Tax Planning Advice (as defined in clause 4.11) to SIC registrants, it is also acknowledged and agreed that nothing contained in this Contract shall be construed as limiting or restricting disclosure of the Tax Planning Advice or any significant tax feature thereof for the purpose of Rule 3501(c) (i) of PCAOB Release 2005-014.

4.12 It is also understood that none of the Addressee's other tax advisers will impose or have imposed any conditions of confidentiality with respect to the tax services or transactions associated with such Tax Planning Advice.

4.13 For the purpose of clauses 4.11 and 4.12, "Tax Planning Advice" covers any tax services and related advice that excludes any tax due diligence provided under this Contract to any Addressee which is a SIC registrant including their affiliates or associates.

4.14 The mere receipt of any Deliverable and other advice by any person pursuant to clauses 4.9 to 4.12 is not intended to create any duty of care, professional relationship or any present or future liability between those persons and Deloitte. As a consequence, if copies of the Deliverables or other advice (or any information derived therefrom) are provided to other persons under the above exclusions, it is on the basis that Deloitte owes no duty of care or liability to them, or any other persons who subsequently receive the same.

## 5 DELIVERABLES

### Drafts and oral discussions

5.1 In the course of providing the Services we may provide oral comments and/or drafts of the Deliverables and/or, inter alia, presentations, letters, schedules or hard or soft copies of spreadsheets (or drafts thereof). We do this on the basis that these are work in progress and are not our definitive findings and accordingly we will have no duty or liability to you in respect of any drafts or oral comments or advice unless their content is finalised and confirmed to you in writing to the final Deliverables. Accordingly, we will not be responsible if you choose to act, or refrain from acting, on the basis of any drafts or oral comments or advice. If you want to rely on or act on oral comments or advice, you will let us know in order that we may deal with them in the final Deliverables. The Deliverables may be made available to you in electronic as well as hard copy format. Multiple copies and versions of documents may therefore exist in different media. In the case of any discrepancy the final signed Deliverable is definitive.

# Deloitte

5.2 In view of the present and depending on the time frame over which the Services will be provided, we may have had and may in the future have discussions, including meetings and telephone conversations, regarding the Transaction and/or the results of our work hereunder where one or more of the Recipient Parties did not or will not participate. Without prejudice to clause 2.1, each Recipient Party agrees that we have no responsibility to disseminate the matters addressed during any such discussions, meetings or conversations to those not present whether or not such matters might be considered material by or to the Recipient Parties concerned.

### Use and distribution of, and reliance on, Deliverables

5.3 The Deliverables (and drafts thereof) and any other advice we provide to you are for your exclusive use and are to be used solely for the Purpose. They must not, save as expressly provided for in the Contract or as provided in clause 5.4, be used for any other purpose, be created or referred to in any document, or copied or made available (in whole or in part) to any other person, without our prior written consent, except as otherwise agreed herein. However, this restriction shall not prevent you from referring, in private documentation prepared for the purpose of the Transaction, to the fact that we have been engaged to provide the Services and/or to the fact that the Deliverables have been prepared by us. You acknowledge that were you to act in any way contrary to this restriction (and without limitation) this could expose us to a risk that a third party who otherwise would not have access to the Deliverable (or drafts thereof) or other advice, might claim to have relied upon the Deliverable or other advice to its detriment and might bring or threaten to bring a Claim against Deloitte and/or other Deloitte Parties.

5.4 Subject to it being permitted under the terms of any confidentiality agreement, Auditors' Release Letter or similar due diligence access agreement applicable to you in the context of the Transaction (or your first obtaining the express consent of all relevant auditors, tax advisers and counterparties), the Deliverables (and drafts thereof) (together the "Disclosure Information") may be disclosed:

- (1) where required by law, court order or regulatory authority; and/or
- (2) to your directors, officers, partners or employees; and/or
- (3) to your Affiliates involved in advising or providing administrative support to you in connection with the Purpose and their respective directors, officers, partners or employees (each an "Affiliate Party") on a need to know basis; and/or
- (4) to your legal advisers; and/or
- (5) to your professional and financial advisers; and/or
- (6) to your insurers (or the purpose of evaluating any claim or potential claim brought against you but not, for example, for the purposes of arranging warranty or other similar insurance in connection with the Transaction or Funding (as applicable); and/or
- (7) where necessary in connection with any defence any of you may wish to advance in judicial or arbitral proceedings or where it is necessary to do so for the purposes of resolving any actual or potential dispute or claim in relation to the Transaction or the Funding (as applicable) to which any of you is a party or a potential party.

provided that in the case of (2) to (7) above you take reasonable steps to ensure that such parties to whom the Disclosure Information is made available understand and accept that (a) the Disclosure Information is confidential and must not be disclosed to any other party, without our prior written consent, except where required by law, court order or regulatory authority, (b) in respect of Personal Data, they are required to comply with the Data Protection Act, (c) the Disclosure Information is provided for their information (but without creating any duty or liability to them on our part) solely for the purpose of advising you in connection with the Purpose or Funding or a Claim by you against us relating to the Services and must not be used by them for any other purpose (save in the case of (6) and (7) where they may be used solely for the purposes set out in (6) and (7) respectively), and (d) if they place reliance on the Disclosure Information they will do so at their own risk and have no recourse to the Deloitte Parties.

### Subsequent events

5.5 You agree that we shall have no responsibility after the Cut-Off Date: (1) to monitor or consider the Subject Group or to identify the occurrence of any Subsequent Event nor to assess the impact (if any) which any such Subsequent Event may have on the results of our work or our conclusions or recommendations; or (2) to update and we will not update our work or the Deliverable in respect of any Subsequent Event. Nothing in this clause is intended to affect our responsibility, prior to the Cut-Off Date, to perform the Services with reasonable skill and care in accordance with clause 6.1.

### Ownership and intellectual property

5.6 On payment of all of our Charges, we grant you a non-exclusive, perpetual, non-transferable licence to use, reproduce and distribute the Deliverables for your internal business purposes only. We retain rights in the Deliverables and associated



## Deloitte

materials, software, and in any know-how and/or methodologies that we may use or develop in connection with this Contract (other than materials provided to us by another party which retains intellectual and other property rights in those materials). In circumstances where we may hold certain documents on your behalf, you agree that we may destroy them (together with any other documents related to the engagement) at any time after 6 years from conclusion of the work to which those documents relate.

### 6 LIABILITY PROVISIONS

- 6.1 We will perform the Services with reasonable skill and reasonable care.
- 6.2 Deloitte neither owes nor accepts any duty or responsibility to any person other than the Recipient Parties. Except as otherwise expressly agreed in writing, no Deloitte Party shall be liable for any loss or damage suffered by any such person caused by that or any other person's act or reliance on our advice, Deliverables or drafts thereof.
- 6.3 Nothing in this Contract shall exclude or restrict (or prevent a Claim being brought in respect of) any liability arising from fraud, dishonesty or other liabilities which cannot lawfully be limited or excluded.
- 6.4 The Recipient Parties agree that we will not be liable to them for any Damage unless and then only to the extent that such Damage is determined to have resulted from our breach of contract, breach of statutory duty (not including negligence), or other act or omission by Deloitte subject always to the following provisions:
- 6.4.1 We will not be liable to any Recipient Party for any Damage arising out of its use of the Deliverables or our Services for a purpose other than the Purpose.
- 6.4.2 We will not be liable for Damage arising in connection with this Contract to the extent such Damage arises from the acts or omissions of any person other than (i) Deloitte or (ii) any other Deloitte Party that we may use to provide the Services.
- 6.4.3 We will not be liable for Damage arising as a result of the provision of false, misleading or incomplete information or documentation by, or the withholding or concealment or misrepresentation of information or documentation by, any person other than the Deloitte Parties unless and then only to the extent that such defect in the information or documentation or such withholding, concealment or misrepresentation was evident without further enquiry from the information or documentation provided to us and expressly required to be considered by us pursuant to the provision of the Services.
- 6.4.4 We will not be liable for any Damage arising by reason of our making (or not making) a notification under clause 4.9.

#### Liability Cap

- 6.4.5 The aggregate liability of Deloitte for Damage shall be limited to the amount specified in the Engagement Letter or, if no amount is specified there, £1 million (one million pounds sterling).
- 6.4.6 Where there is more than one Recipient Party the limit of liability specified above will apply to the aggregate of Deloitte's liability to all the Recipient Parties and will therefore have to be allocated between the Recipient Parties. It is agreed that such allocation will be entirely a matter for the Recipient Parties, who shall be under no obligation to inform Deloitte of it, provided always that if (for whatever reason) no such allocation is agreed, no Recipient Party shall dispute the validity, enforceability or operation of the limit of liability on the ground that no such allocation was agreed.
- 6.4.7 For the avoidance of doubt the aggregate of all such allocations shall not exceed the limit applicable pursuant to sub-clause 6.4.5.

#### Proportionality

- 6.4.8 Any liability which we may have to Recipient Parties under or in connection with this Contract for Damage suffered by Recipient Parties shall (so far as permitted by law) be limited to such an amount as is determined to be just and equitable, having regard to the extent of responsibility for the Damage of us, Recipient Parties (including directors, officers, employees or agents), and any person other than us who is jointly or severally liable to Recipient Parties for all or part of the same Damage, provided always that Deloitte's liability to Recipient Parties shall not under any circumstances exceed in aggregate the amount set out hereunder. Any limitation or exclusion or restriction on the liability of any such other person under any jurisdiction, whether arising under statute or contract or resulting from death, bankruptcy or insolvency, or any settlement of such liability agreed with any Recipient Party, shall be ignored for the purposes of determining whether that other person is liable and the extent of responsibility of that other person to Recipient Parties.

## Deloitte

### Provisions Separate

- 6.4.9 It is agreed that each of the foregoing sub-clauses 6.4.5 to 6.4.8 constitutes an entirely separate and independent provision and/or limitation of liability and the extent and application of each such provision and/or limitation is acknowledged to be reasonable for our protection in the circumstances of this engagement and consistent with our obligation to carry out our work with reasonable care and skill, but if any of the said sub-clauses 6.4.5 to 6.4.8 shall be adjudged by any court or authority of competent jurisdiction to be void or unenforceable, the remaining clause or clauses shall continue in full force and effect.
- 6.5 Each Recipient Party shall procure that none of its Affiliates (excluding any entity which is itself a Recipient Party) shall bring any Claim, whether or not such Claim is founded upon an allegation of our negligence, against a Deloitte Party.
- 6.6 Any Claim brought by any Recipient Party must be brought within six years of the cause of action arising.

### 7 TERMINATION

- 7.1 We and each of you may terminate this Contract without notice in the event that any other party to this Contract becomes the subject of insolvency proceedings or calls any meeting of its creditors. We and each of you may terminate or suspend this Contract on reasonable grounds at any time by written notice to the other party(ies) to this Contract. A termination notice shall not affect any of those parties' rights in connection with a breach of this Contract which may have occurred prior to the date of termination.
- 7.2 Deloitte may terminate this Contract, in whole or in part, with immediate effect and without penalty upon written notice to the Principal if Deloitte determines that (a) a governmental, regulatory, or professional entity, or an entity having the force of law, has introduced a new, or modified an existing, law, rule, regulation, interpretation, or decision, the result of which would render Deloitte's performance of any part of the Contract illegal or otherwise unlawful or in conflict with independence or professional rules, or (b) circumstances change (including, without limitation, changes in ownership of the Principal or actions taken by you) so that Deloitte's performance of any part of the Contract would be illegal or otherwise unlawful or in conflict with independence or professional rules or with Deloitte's reasonable interpretation of applicable law and practice. We will inform the Principal as soon as reasonably practicable after we become aware of any situation which could result in termination in accordance with this clause.
- 7.3 Any provisions of the Contract which either expressly, or by their nature, extend beyond the expiry or termination of this Contract including, for the avoidance of doubt, any accrued rights, obligations or liabilities of any party to the Contract shall survive such expiration or termination.

### 8 GENERAL TERMS OF BUSINESS

#### Quality of Service

- 8.1 If, at any time, you believe our service to you could be improved or if you are dissatisfied with any aspect of our services you should raise the matter with the partner responsible for providing the Services to you. If you would prefer to discuss the matter with someone other than that partner, or if you wish to make a complaint, please call or write to Timothy Mahapatra, Managing Director Corporate Finance.
- 8.2 We will investigate all complaints. You have the right to take any complaint up with the Institute of Chartered Accountants in England and Wales (the ICAEW). You may obtain an explanation of the mechanisms that operate in respect of a complaint to the ICAEW at [www.icaew.co.uk/complaints](http://www.icaew.co.uk/complaints) or by writing to the ICAEW. To contact the ICAEW write to the Professional Standards Office, Level 1, Metropolitan House, 321 Avestry Boulevard, Milton Keynes, MK9 2FZ.

#### Legal and other obligations

- 8.3 Nothing in this Contract precludes you or us from taking such steps as are necessary in order to comply with any legal or regulatory requirement or any professional or ethical rules of any relevant professional body of which you or we or any of your or our directors, officers, partners or employees is, at the time, a member.
- 8.4 Deloitte reserves the right, at its sole discretion, not to discuss with you tax schemes or arrangements which, in its sole opinion, it has decided not to promote (either at all, or to particular clients) on the grounds that either they might bring Deloitte or its clients into disrepute or they are not, for whatever reasons, appropriate to introduce to a particular client. In addition, the Principal gives its authority to correct errors made by the tax authorities, to the extent relevant for the Tax Services.

#### Circumstances outside the parties' control

- 8.5 No party to the Contract will be liable for any delays or failures in performance or breach of contract due to events or circumstances beyond its reasonable control.

## Deloitte

8.6. This paragraph is not used.

### Governing law and jurisdiction

8.7. The Contract and our relationship (including all contractual and non-contractual rights and obligations arising out of or relating thereto) are governed by English law and the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute that may arise in connection with this Contract and our relationship (including all contractual and non-contractual rights and obligations arising out of or relating thereto).

### Takeover Code Regulations

8.8. This clause applies solely where the Transaction to which the Services relate is subject to the Takeover Code. You agree and acknowledge that in such circumstances both you and we will comply with the provisions of the Takeover Code and will observe the terms of the Guidance Note published by the Institute of Chartered Accountants of England and Wales relevant to such services or transactions. In particular, you acknowledge that:

- if you or your advisers or agents fail to comply with the Takeover Code then we may withdraw from acting for you; and
- we are obliged to supply to the Panel any information, books, documents or other records concerning the Service or Transaction which the Panel may properly require.

### 9. LENDERS

9.1. This Section 9 applies in the event that you wish us to disclose the Final Report(s) (and/or drafts thereof) to debt financing institutions (each a "Potential Lead Lender") who may provide all or part of the Funding and/or act as arranger or agent in the primary syndication ("Syndication") of the Funding to be arranged by them (but excluding for the avoidance of doubt any sub-participation of lending commitments, or secondary debt market trades or other trades entered into after the close of primary syndication) and who may wish to use the Final Report(s) to assist them as part of their overall due diligence process solely in connection with such participation in the Funding.

9.2. Subject to it being permitted under the terms of any applicable Auditors' Release Letter, we will agree to the disclosure of the Final Report(s) and/or drafts thereof to a Potential Lead Lender provided that such financing institution first executes a no duty basis of access agreement ("No Duty Access Agreement") with us in a form acceptable to us. By such agreement, the Potential Lead Lender will agree that it will place no reliance on the Final Report(s) and/or drafts thereof or related communications and have no recourse to us.

9.3. Should such a Potential Lead Lender agree to participate in the Funding and/or act as arranger in the Syndication then, provided that such financing institution first executes an agreement with us in a form acceptable to us (the "Beneficiary Access Agreement") under which it accepts the terms of this Contract (subject to any changes agreed by us with them), such financing institution will be designated a Lead Lender and we will treat such party as a Beneficiary in accordance with this Contract and assume a duty of care to it in relation to the Final Report(s). You authorise us to agree these agreements with the Potential Lead Lenders and Lead Lender, as appropriate, without reference back to yourselves. We will also permit such Lead Lender to disclose the Final Report(s) to other debt financing institutions ("Potential Syndicate Members") to whom elements of the Funding may be initially syndicated and who may wish to use the Final Report(s) to assist them as part of their overall due diligence process solely in connection with such participation in the Syndication, on the terms set out in the Beneficiary Access Agreement. Provided such terms are complied with by the Lead Lender and the Potential Syndicate Member, we agree to treat any such Potential Syndicate Member who actually participates in the Syndication and who validly accepts the terms of the Contract on the basis set out in the Beneficiary Access Agreement (an "Actual Lender") as a Beneficiary. We will have no responsibility (i) to any financing institution that does not participate in the Syndication; nor (ii) to any Potential Syndicate Member participating in the Syndication that does not accept the terms of the Contract on the basis set out in the Beneficiary Access Agreement or that has not validly authorised the Lead Lender to accept those terms on its behalf.

9.4. The Lead Lenders and the Actual Lenders together will be the Agreed Lenders. Save to the extent (if any) expressly set out in the Beneficiary Access Agreement, the Agreed Lenders may rely on the Final Report(s) solely in their capacity as actual lenders participating in the Funding or Syndication.

### 10. FURTHER EQUITY INVESTORS

10.1. This Section 10 applies in the event that you wish to disclose the Final Report(s) (and/or drafts thereof) to other parties ("Potential Equity Investors") who may wish to subscribe for elements of the equity in connection with the Funding and who may wish to use the Final Report(s) to assist them as part of their overall due diligence process solely in connection with the acquisition of such equity.

10.2. Subject to it being permitted under the terms of any applicable Auditors' Release Letter, we will agree to the disclosure of the Final Report(s) and/or drafts thereof to the Potential Equity Investors provided that such parties first execute

## Deloitte

a no duty basis of access agreement (the "No Duty Access Agreement") with us in a form acceptable to us. By such agreement, the Potential Equity Investor will agree that they will place no reliance on the Final Report(s) and/or drafts thereof or related communications and have no recourse to us.

10.3. Should a Potential Equity Investor agree to subscribe for equity in connection with the Funding and then become a "Further Equity Investor" then, provided that such party first executes an agreement with us in a form acceptable to us (the "Beneficiary Access Agreement") under which they accept the terms of this Contract (subject to any changes agreed by us with them), we will treat such party as a Beneficiary in accordance with this Contract and assume a duty of care to it in relation to the Final Report(s). Other than to an Addressee as expressly set out in the Engagement Letter or the Funds where expressly agreed in the Engagement Letter, we will have no responsibility to any equity investor or other party acquiring equity that does not execute a Beneficiary Access Agreement with us.

10.4. Should an equity investor which is, or will be, a party to the Engagement Letter or Beneficiary Access Agreement wish to syndicate part of the equity investment on substantially the same basis as the syndication of lending described in Section 9 above, then providing the circumstances are explained to us in a timely manner before completion of the Transaction, we will consider permitting such equity investor to disclose Final Report(s) to potential syndicatees on substantially the same basis as Section 9 above.

SCOPE OF WORK

Section A: Due diligence and tax structuring

Financial due diligence scope

Except as expressly set out otherwise our work will involve consideration and analysis of information provided by management and discussion with management of that information.

Based on the current expected timetable we will analyse the unaudited management information up to the period stated below. To the extent further unaudited management accounts become available you may request that our work extends to subsequent unaudited management accounts. For the avoidance of doubt the period that we will analyse will be set out in Appendix 1 the "scope and basis of work appendix" to the Final Due Diligence Report.

Executive summary

- The executive summary will summarise our key findings.

1. Business overview

We will provide a brief introduction of the Subject Group, including a summary of the history of the business highlighting key events, acquisitions and disposals, etc.

2. Historical assets and liabilities

We will analyse the historical assets and liabilities of the St Enoch Centre Unit Trust's business with reference to the audited financial statements and the consolidated unaudited management accounts for the year ended 31 December 2012 and the unaudited management accounts for the 7 months ended 31 July 2013, focusing on:

- Summary of movement in key balance sheet categories from 31 December 2012 to 31 July 2013 and details of any material changes to accounting policies
- Summary of key assets and liabilities and expected cash unwind, including a profile of lease incentives, rent review debtors and deferred income
- Analysis of external and internal net debt including details of any hedging facilities in place together with terms of all facilities and trapped cash
- Details of any off-balance sheet contingent liabilities, including guarantees, commitments and contingencies

We will also undertake a high-level analysis of the last audited financial statements (if available) and latest balance sheets of Ivanhoe UK Managements Services Limited and St Enoch Trustee Company Limited with a focus on any off balance sheet or contingent liabilities.

3. Historical trading

We will analyse the historical performance of the St Enoch Centre Unit Trust's business with reference to the audited financial statements and the unaudited management accounts. We will focus on:

- Analysis of turnover by tenant commenting on the rent roll reconciliation to reported revenue for the two years ended 31 December 2012 and the 7 months ended 31 July 2013, with a specific focus on analysing the rents achieved and incentives granted on the top 25 units over that period.

- High-level analysis of administration expenses for the year ended 31 December 2012 and the 7 months ended 31 July 2013; and
- Analysis of significant non-recurring and non-operational income and expenses for the year ended 31 December 2012 and the 7 months ended 31 July 2013.

We will also undertake a high-level analysis of the last audited financial statements (if available) and latest income statements of Ivanhoe UK Managements Services Limited and St Enoch Trustee Company Limited.

4. Capital expenditure

In relation to refurbishment works and any other capital expenditure undertaken by the St Enoch Centre Unit Trust, we will focus on:

- Summary of the nature and level of capital expenditure undertaken by the St Enoch Centre Unit Trust since 2008, and
- Details of Management's forecast and/or budget relating to capital expenditure to be undertaken by the St Enoch Centre Unit Trust.

Tax due diligence scope

Our tax due diligence review will include a review of the following (subject to information being made available to us):

- Whether the St Enoch Centre Unit Trust should be regarded as a Bunker trust for UK tax purposes (please note this will not constitute a legal opinion, however we will work with your legal advisers to determine the tax treatment of the St Enoch Centre Unit Trust);
- The management of the Subject Group and the associated impact on its tax residence;
- The investment / trading nature of the St Enoch Centre Unit Trust's property activities;
- The tax basis of the property, for direct tax purposes;
- The written down value of capital allowances in respect of the St Enoch Centre Unit Trust's property that may be available to shelter future property income;
- The indirect tax status of the Subject Group's activities (including treatment on initial acquisition of the asset by the St Enoch Centre Unit Trust);
- The Construction Industry Scheme obligations of the Subject Group;
- Ongoing HMRC enquiries into the St Enoch Centre Unit Trust's UK tax affairs;
- Withholding tax on payments by the St Enoch Centre Unit Trust (including interest and distributions);
- A high-level analysis of the historic direct and indirect taxation of Ivanhoe UK Management Services Limited and St Enoch Trustee Company Limited;
- The UK employment tax implications of retaining existing employees (if relevant); and
- Any tax planning or mitigation schemes entered into by the Subject Group.

Commentary on any other taxes will be outside the scope of our report. Additionally, the following will be outside the scope of our report:

- A detailed capital allowances review; and
- Transfer pricing studies into related party transactions

To confirm, our report will be based on the information available to us and our scope will be limited accordingly.



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### Tax structuring scope

Whether or not the Subject Group is acquired will depend on satisfactory legal, financial and tax due diligence being completed. If the decision is made to acquire the Subject Group, we will work with you and your other advisers to identify a suitable acquisition structure.

#### Stage 1 - initial structuring

We will work with you, and your other advisers, to agree a suitable acquisition structure within the commercial constraints of the transaction. Among your other commercial objectives, the acquisition structure will take into consideration the following taxes (both on acquisition and on an ongoing basis):

- i) Transfer taxes arising on acquisition;
- ii) Taxes on future repatriation of surplus cash in the form of income or gains;
- iii) Income taxes on net rental income; and
- iv) Taxes on exit.

#### Stage 2 - detailed tax report

Once the structure for the transaction has been agreed, we will prepare a detailed tax report commencing on the following:

- i) Taxes on the acquisition of the Subject Group;
- ii) The on-going UK taxation of rental income;
- iii) An analysis of the UK tax deductibility of expenses against rental income (including property costs, management fees and interest expense);
- iv) The availability of capital allowances;
- v) A summary of any related UK trading risks in respect of the investment in the property;
- vi) The tax registration and administration of the asset owning companies;
- vii) An analysis of taxes on cash repatriation;
- viii) The UK VAT position in respect of the property;
- ix) A high-level summary of the UK direct and indirect taxation of Ivanhoe UK Management Services Limited;
- x) Local taxation of the Subject Group, and if applicable holding companies; and
- xi) A high level commentary of taxation on exit.

On request, we may also provide the following as part of the Tax structuring scope:

- i) Post-transaction ruling applications to Luxembourg tax authorities;
- ii) "Check-the-box elections" to the US tax authorities for any relevant holding structure entities;
- iii) Advice as to whether certain Funds, solely as a result of their investment made in The United Kingdom in the transaction known as Project Genesis:
  - a. Have a permanent establishment (or similar status) in The United Kingdom, where the real estate assets are primarily located, which causes them to become subject to tax in The United Kingdom, on all of the income from sources therein; and/or,
  - b. Are required to file tax returns in The United Kingdom (which does not include filings required to obtain refunds of amounts withheld or to avoid withholding).

#### Section B: Scope of other work for the benefit of the Addressees only

We will review transaction documents from a tax perspective (e.g. SPA, facility agreement etc) to ensure consistency with our tax advice.

## Deloitte.

### Sale and Purchase Agreement Scope

We will read certain sections of drafts of the Sale and Purchase Agreement (the "Agreement") that are provided to us in sufficient time to allow us to report. For each draft of the Agreement that we are asked to consider we will communicate to you our comments and suggestions on the accounting aspects of the Agreement.

We will only comment in detail on those specific clauses identified in our reports to you. Consequently there may be issues that are raised in the remainder of the Agreement which, were we able to consider them, might cause us to make additional points or revise some of our comments.

On the assumption that a completion accounts is adopted, we will:

- Consider the purchase price adjustment mechanism in the draft Agreement (for such drafts as are made available to the sale and purchase agreement team on a timely basis which permit reporting)
- Consider definitions of net assets or other account balances as required.
- Consider the suitability of accounting policies to be drafted for inclusion in the completion accounts schedule.
- Consider the mechanism in the sale and purchase agreement for the preparation and review of the completion accounts, including references to an independent expert in the event of a dispute.
- Consider the process to settle balances owed between the Subject Group and the Vendors.
- Consider general accounting warranties provided in respect of the statutory accounts, management accounts, or other financial information as required.

We are accountants, not lawyers, and hence the comments made in the outputs of the above work are based upon our experience of dealing with accounting issues that have arisen in M&A transactions. The Agreement is the sole responsibility of the Vendor and their legal advisers. It will reflect matters outside our expertise. Any comments or suggestions made by us should not be relied upon as being suitable for incorporation into any agreement without further consideration by your legal advisers.

Responsibility for the legal drafting remains with your legal advisers but we will work closely with them on the Agreement. The final Agreement will be the product of negotiation between the parties and, as such, will contain clauses which reflect the interests of the other party (as well as the interests and requirements of the Purchasers). It is a matter for the Purchasers to determine whether they are prepared to accept those clauses in all circumstances.

Our Deliverables are outputs of the above work that we inform you in writing are Deliverables.

#### Exclusions

For the avoidance of doubt, unless otherwise agreed, the Services will not include the following:

- i) Transfer Pricing opinions or documentary evidence in relation to the asset to be acquired;
- ii) Tax analysis of the impact of the proposed transaction steps, holding structure and cash repatriation structure for investors, limited partners, general partner and any carried interest partners in the fund structure; and
- iii) Modelling advice.

Appendix J

NO DUTY ACCESS AGREEMENT

To: Deloitte LLP -  
 Address: Athene Place  
 66 Shoe Lane  
 London  
 EC4A 3BQ

For the attention of: Matt Townsend

From: .....

Address: .....  
 (referred to below as the "Potential Beneficiary")

Dear Sir

Project Genesis

This agreement (the "No Duty Access Agreement" or "Agreement") sets out the basis upon which you (Deloitte LLP) are prepared to allow us (the "Potential Beneficiary") to have access to your Final Report(s) and/or drafts thereof (the "Reports") and/or to provide further information to us in connection with the Reports through oral discussions with you or your sub-contractors regarding your or your sub-contractors' work (should you or your sub-contractors agree to have such discussions) and/or through any other related communications (the Reports, together with such further information, if any, being referred to below as the "Information").

If not defined in this No Duty Access Agreement, terms or expressions which are capitalised have the meaning set out in your contract with the Principal dated 24 September 2013 (the "Contract"), a copy of which is attached as Attachment 1 to this Agreement. Sections 9 and 10 of the Terms of Business in the Contract set out the process under which access to the Information is to be provided.

We understand that you have been engaged by the Principal to conduct certain transaction support services and to prepare the Final Report(s) on the Subject Group setting out the results of those procedures. We acknowledge that your engagement is governed by the Contract and that the Reports were and/or will be prepared solely on the instruction of the Principal and for limited purposes which may not meet our requirements or objectives.

In order to inform the negotiation of the terms of our potential participation in, and/or arrangement of, the Funding, the Principal has requested you to make the Information available to us.

In consideration of your agreeing to provide us with the Information, we agree that we shall not be entitled to rely upon the Information for any purpose whatsoever. If, notwithstanding the terms of this Agreement, we choose to place reliance upon any matters included in the Information, we agree that we will do so at our own risk and without recourse to the Deloitte Parties. Accordingly, to the fullest extent permitted by law, we agree that the Deloitte Parties will have no duty or liability to us in any way in connection with or arising from the Information or the Services you have provided or will provide pursuant to the Contract.

You have advised us that, in carrying out your work, you have had access to the audit working papers of Grant Thornton UK LLP (the "Auditors"). The Auditors have issued an auditors' release letter (the "Auditors' Release Letter") which is included in Attachment 3 to the attached Beneficiary Access Agreement (as defined below). We confirm that we have read and understand the Auditors' Notice attached to the Auditors' Release Letter.

As a further condition of you providing the Information to us as a Potential Beneficiary, we expressly acknowledge and agree, for the benefit of the Auditors, that the Auditors have, to the fullest extent permitted by law, no responsibility or liability whatsoever and assume no responsibility to us or our advisers, whether in contract or in tort or under statute or otherwise (including in negligence), with respect to or in connection with the Information (that is, their audit working papers (the "Papers") and any information or explanations given by them in relation to the Papers or in connection with your review of the Papers).

If we do participate in, and/or arrange, the Funding in connection with the Transaction, we understand that you will agree to ensure a duty of care to us in respect of the Final Report(s), solely for the purpose of our decision whether to participate in the Funding, and to allow us to release the Final Report(s) to Potential Syndicate Members who may wish to use the Final Report(s) to assist them as part of their overall due diligence process solely in connection with such participation in the Funding, on condition that we first agree with you and execute an agreement substantially in the form of the attached agreement (the "Beneficiary Access Agreement") which will supersede this Agreement and which, inter alia, sets out the scope and nature of your work and the basis of your liability to us and the other Recipient Parties.

We agree that none of the Information, in whole or in part, will be recited or referred to in any document, or copied or made available (in whole or in part) to any other person, without your prior written consent, other than in accordance with clause 5.4 (except for (b) and (7)) of the Terms of Business in the Contract as if the Information were Disclosure Information under that clause 5.4. We acknowledge that were we to act in any way contrary to this restriction (and without limitation) this could expose you to a risk that a third party who otherwise would not have access to the Information, might claim to have relied upon the Information to its detriment and might bring or threaten to bring a Claim against Deloitte and/or other Deloitte Parties. We accept responsibility for any breach of the obligations set out in (a) to (d) of that clause 5.4 (together the "Recipient Obligations") by any such adviser (other than our legal advisers) or Affiliate, who has not countersigned this letter accepting the Recipient Obligations.

In the event that any of the terms or provisions of this Agreement are or shall become invalid, illegal or unenforceable, the remainder shall survive unaffected.

This Agreement and our relationship (including all contractual and non-contractual rights and obligations arising out of or relating thereto) are governed by English law and the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute that may arise in connection with this Agreement and our relationship (including all contractual and non-contractual rights and obligations arising out of or relating thereto).

We have considered the provisions of this Agreement and have concluded that they are reasonable in the context of the provision of the Information to us and we wish to receive them on these terms.

Yours faithfully

Duly authorised, for and on behalf of .....

Name: ..... Position: .....

Date: .....

Attachments:

- 1 The Contract
- 2 The Beneficiary Access Agreement

BENEFICIARY ACCESS AGREEMENT

To: Deloitte LLP
Address: Adems Place
66 Shoe Lane
London
EC4A 3HQ

For the attention of:

From: [Redacted] on our own behalf and on behalf of the Agreed

Address:

Dear Sir

Project Genesis

This agreement (the "Beneficiary Access Agreement" or "Agreement") sets out the basis upon which you (Deloitte LLP) are prepared to agree to treat us as a Beneficiary under your contract with the Principal dated 24 September (the "Contract"), a copy of which is attached to this Agreement.

This Agreement is being executed by us on our own behalf in the capacities set out in paragraph 2 below and on behalf of those Agreed Lenders listed in Attachment 2 hereto. We confirm that we have the requisite authority to enter into this Agreement on behalf of those Agreed Lenders.

If not defined in this Beneficiary Access Agreement, terms or expressions which are capitalised have the meaning set out in the Contract. Sections 9 and 10 of the Terms of Business in the Contract set out the process under which access to the Final Due Diligence Report and Final Tax Structure Report is to be provided.

In connection with our participation in, and/or arrangement of, the Funding the Principal has asked you to allow us to benefit from and rely on your Final Due Diligence Report and Final Tax Structure Report.

We acknowledge that your work in preparing and producing the Final Due Diligence Report and Final Tax Structure Report was governed solely by the terms of the Contract.

The terms of the Contract record the specific requirements for the scope of your work and the Final Due Diligence Report and Final Tax Structure Report as determined by the Principal who is responsible for providing your instructions including any tailoring of the scope of your work for the perceived needs of the Beneficiaries. Thus the Final Due Diligence Report and Final Tax Structure Reports may not necessarily meet our requirements or objectives or address the specific circumstances of the Transaction and/or the Funding. There may be other interests, needs or issues which are of importance to us as a Beneficiary in the context of our own assessment of (or procedures in relation to) the Transaction and/or the Funding and which are not addressed by the Final Due Diligence Report and Final Tax Structure Report. It will be for us to determine the extent to which the work undertaken and the Final Due Diligence Report and Final Tax Structure Report may be suitable for our purposes. In particular, we have noted those paragraphs of the Contract which set out the Scope and the basis on which the Final Due Diligence Report and Final Tax Structure Report were prepared, including the limitations and qualifications relating thereto, and explain how your aggregate liability to all Recipient Parties (including all Beneficiaries) in respect of any Damage is to be determined.

We also acknowledge that, as the scope of the Final Due Diligence Report and Final Tax Structure Report is limited to the Subject Group, the Final Due Diligence Report and Final Tax Structure Report are not suitable for use in connection with our funding, if applicable, of the rest of the Principal's group.

In consideration of your agreeing to assume a duty of care to us in relation to the Final Due Diligence Report and Final Tax Structure Report and treating us as a Beneficiary (as defined in the Contract), WE AGREE:

- 1. (a) subject to paragraph 3 below, to be bound as a Beneficiary by, and accept the terms of, the Contract and this Agreement which together govern the arrangements between us in relation to the Final Due Diligence Report and Final Tax Structure Report as if we were an Addressee, save for those provisions of the Contract which deal with the Addressee's responsibility to engage you, provide your instructions and to ensure that your fees and expenses are settled;
(b) that the Final Due Diligence Report and Final Tax Structure Report will not be addressed to us, and
(c) where appropriate, that references to the Transaction are to be read as references to the Funding.

The arrangements referred to at 1.(a) above include but are not limited to: (i) your responsibility and liability to us and all other Recipient Parties in relation to our use of, reliance on and/or distribution of the Final Due Diligence Report and Final Tax Structure Report; (ii) any oral discussions or other interactions between you and the Recipient Parties that have occurred or may in future occur in any way in connection with our consideration of the Transaction and/or the Funding; and (iii) the confidentiality of the Services including the Final Due Diligence Report and Final Tax Structure Report. We acknowledge the scope and limitations of your work as set out in the Contract. In particular, we agree that there may be events, developments or changes in circumstances subsequent to the date of your Final Due Diligence Report and Final Tax Structure Report, or Cut-off Date if earlier, which may affect the continuing validity of the Final Due Diligence Report and Final Tax Structure Report and we further agree that you have no obligation to update the Final Due Diligence Report and Final Tax Structure Report or to notify us of any such matters of which you have become or may become aware.

For the avoidance of any doubt, nothing in this Agreement shall entitle us to access to, or give rise to any duty owed by you to us in relation to, the work referred to in Section B of Appendix 2 of the Contract.

- 2. that you are providing the Final Report(s) to us, and we may benefit from and rely on the Final Report(s), solely in our capacity as an actual lender and/or arranger and/or agent (as applicable) in the Funding. Accordingly, we agree that you have no responsibility or liability to us in any other capacity or for any other purpose. We further agree that your responsibility and liability to us in the capacities other than as actual lender which are specifically mentioned above will be limited to the extent to which such capacities give us a responsibility or liability to the Agreed Lenders in respect of their participation in the Funding. We further agree that any claim we might bring in any of the capacities specifically mentioned above shall be limited to issues sustained by the Agreed Lenders. In particular, we agree that you will not have any responsibility or liability, directly or indirectly (including for the avoidance of doubt in respect of any responsibility or liability we may have or incur) in respect of costs or losses incurred by any party other than an Agreed Lender.
3. confirm that we have read and will comply with the confidentiality and other restrictions over the distribution of the Final Due Diligence Report and Final Tax Structure Report contained in the Contract.
4. and confirm that we are bound to the Auditors' Release Letter which is attached as Attachment 3.
5. that we will not release or provide access to the Final Report(s) to any Potential Syndicate Member unless we have first obtained the agreement of that Potential Syndicate Member (1) that such release or access will be on the same terms as, and it will be bound by, the No Duty Access Agreement; (2) that there may be events, developments or changes in circumstances subsequent to the date of your Final Report(s), or Cut-off Date if earlier, which may affect the continuing validity of the Final Report(s) and its/their suitability for use in deciding whether to participate in the Syndication; and (3) that, if subsequently such Potential Syndicate Member does participate in the Syndication, you will accept a duty of care to it in relation to the Final Report(s) and treat it as a Beneficiary on the same terms as, and it will be bound by, this Agreement (subject only to such amendments to this Agreement as are necessary to reflect its capacity as a syndicate member becoming an Agreed Lender); and



## Deloitte.

6. and following confirmation by you of your agreement to the same, that the following provisions of the Contract do not apply to us:
- (a) paragraph 4.2 of the Engagement Letter dated [\*]; and
  - (b) clauses 3.2, 3.3 and 3.5 of the Terms of Business.

This Agreement and our relationship (including all contractual and non-contractual rights and obligations arising out of or relating thereto) are governed by English law and the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute that may arise in connection with this Agreement and our relationship (including all contractual and non-contractual rights and obligations arising out of or relating thereto).

We have considered the provisions of this Beneficiary Access Agreement and have concluded that they are reasonable in the context of you assuming a duty of care to us in relation to the Final Due Diligence Report and Final Tax Structure Report and treating us as a Beneficiary, and we wish to receive and benefit from the Final Due Diligence Report and Final Tax Structure Report on these terms.

Yours faithfully

Duly authorised, for and on behalf of .....

Name: ..... Position: .....

Date: .....

### Attachments:

1. The Contract
2. List of Agreed Lenders on whose behalf this Agreement is executed by .....
3. Auditors' Release Letter referred to in 4 above