

CONFORMED COPY

11 March 2015 5:00pm

OLSWANG

**AGREEMENT FOR THE SALE AND PURCHASE OF THE
ENTIRE ISSUED SHARE CAPITAL OF BHS GROUP
LIMITED**

- (1) TAVETA INVESTMENTS (NO. 2) LIMITED
- (2) RETAIL ACQUISITIONS LIMITED

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THIS AGREEMENT is made on 11 March 2015

BETWEEN:

- (1) **TAVETA INVESTMENTS (NO. 2) LIMITED**, a company incorporated in England and Wales (registered number 05137091) whose registered office is at Colegrave House, 70 Berners Street, London W1T 3NL (the "**Seller**"); and
- (2) **RETAIL ACQUISITIONS LIMITED**, a company incorporated in England and Wales (registered number 09320475) whose registered office is at c/o Calder & Co, 16 Charles II Street, London SW1Y 4NW (the "**Buyer**").

RECITALS:

- (A) The Company (as defined below) is a private company limited by shares. Further details about the Company are set out in Part 1 of Schedule 1.
- (B) The Seller wishes to sell and the Buyer wishes to buy all of the issued share capital of the Company on the terms of this Agreement.
- (C) The Deed of Release, [REDACTED] (all as defined below) have been executed by the parties thereto.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

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

"Accounts" means the annual audited accounts (within the meaning of section 471(1) Companies Act) of each Group Company for the financial year ended on the Accounts Date, together in each case with the notes, strategic report (if any), directors' and auditors' reports and all other statements incorporated in or annexed to them;

"Accounts Date" means 30 August 2014;

"Arcadia" means Arcadia Group Limited, a private company limited by shares incorporated in England and Wales with registered number 00237511 and whose registered office is at Colegrave House, 70 Berners Street, London W1T 3NL;

"Arcadia Group" means Arcadia and its subsidiary undertakings;

[REDACTED]



"Assurance" means any undertaking, indemnity or guarantee;

"BHS Business" means the BHS business as carried on by the Group Companies as at the Completion Date;

"BHS Loan" means a loan of £3.5 million made to the Company;

"BHS Money Purchase Scheme" means the group personal pension scheme with Legal and General;

"BHS Pension Scheme" means the pension scheme currently governed by a trust deed and rules dated 8 June 2008 entered into by and between BHS Limited and BHS Pension Trustees Limited, Margaret Downes and Arthur David Walford, as amended;

"BHS Senior Management Scheme" means the pension scheme currently governed by a trust deed and rules dated 10 June 2008 entered into by and between BHS Limited and BHS Pension Trustees Limited, Margaret Downes and Arthur David Walford, as amended;

"Business Day" means a day that is not a Saturday or Sunday or a public holiday in England;

"Buyer's Group" means the Buyer, any ultimate parent undertaking of the Buyer for the time being and all direct and indirect subsidiary undertakings for the time being of any such parent undertaking or, in the absence of any such parent undertaking, the Buyer;

"Buyer's Solicitors" means Olswang LLP of 90 High Holborn, London WC1V 6XX;

"Capital Injection" means the amount of £10,000,000 to be paid by the Buyer to the Company as a subscription for additional shares in the Company;

"Carmen" means Carmen Properties Limited, a private company limited by shares incorporated in Jersey with registered number 81511 and whose registered office is at Nautilus House, La Cour des Casernes, St. Helier, Jersey, JE1 3NH, Channel Islands, which is the tenant of several leases that have been sub-licensed to Group Companies;

"Carmen Seller" means the holder of all the issued shares in Carmen, being Nautilus Nominee Services Limited;

"Carmen SPA" means the share sale and purchase agreement between BHS Properties Limited and the Carmen Seller under which all the issued shares in Carmen are sold to the Company, with full title guarantee and free of all Encumbrances, in the agreed form;

“Certificate of Title” means the certificate of title in relation to North West House addressed to the Buyer and given by Berwin Leighton Paisner LLP on or about the date of this Agreement;

“Claim” has the meaning given in Schedule 9;

“Companies Act” means the Companies Act 2006, as amended;

“Company” means BHS Group Limited, a private company limited by shares incorporated in England and Wales with registered number 03858895 and whose registered office is at Colegrave House, 70 Berners Street, London W1T 3NL;

“Completion” means completion of the sale and purchase of the Shares in accordance with this Agreement;

“Completion Date” means the date on which Completion takes place;

“Completion Statement” has the meaning given in Schedule 10;

“Concession Agreements” means the five concession agreements between Wallis Retail Ltd, Dorothy Perkins Trading Ltd, Evans Retail Ltd, Burton Trading Ltd and Miss Selfridge Retail Ltd on the one hand and the Company on the other;

“CTA 2010” means the Corporation Tax Act 2010;

“Data Room” means the online data room established by the Seller in connection with the Transactions;

“Debt” means the principal, capital or nominal amount of any indebtedness for or in respect of:

- (a) overdrafts and any monies borrowed and debit balances at banks or other financial institutions;
- (b) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; and
- (c) any liability in respect of any guarantee or indemnity for any of the matters referred to in paragraphs (a) and (b) of this definition;

but the Group Companies' Debt shall:

- (d) exclude the BHS Loan and the Jersey Loan;
- (e) exclude the amounts owing by the Group Companies to the Seller's Group pursuant to the Net Inter-Group Payable; and
- (f) for the avoidance of doubt, disregard the items which comprise the Group Cash Amount;

"Deed of Release" means the deed dated the date hereof between the Company and Arcadia in relation to the release of monies owed as between the Group Companies and the Arcadia Group;

"Disclosure Letter" means the disclosure letter from the Seller to the Buyer, dated the date of this Agreement;

"Encumbrance" means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, retention of title arrangement or other third party right (but in each case excluding any non-exclusive licences of Intellectual Property granted in the ordinary course of business), interest or claim of any kind;

"Exchange Rate" means, with respect to the conversion of a particular currency into another currency on a particular date, the closing mid-point rate for conversion of the first currency into that other currency on that date or, if that date is not a Business Day, on the first Business Day after that date, in both cases as set out in the London edition of the Financial Times containing exchange rates applicable to that relevant Business Day;

"Fixed and Floating Charges" means the first ranking fixed charge over the property at Bristol Cribbs Causeway to secure a debt of £15 million owed by the Company to Arcadia and the floating charge over the non-property assets of the Group Companies to secure a debt of £25 million owed by the Company to Arcadia (which debts comprise the Net Inter-Group Payable);

"Freehold Properties" means the freehold properties listed in Part 1 of Schedule 7;

"Group" means the Buyer's Group or the Seller's Group, as the context requires;

"Group Cash Amount" means an amount of cash in the Group Companies equal to £23,660,000 comprising the matters set out in Schedule 3;

"Group Companies" means the Company and each of the Subsidiaries, and a reference to a **"Group Company"** is a reference to any one of them;

"Group Pension Contribution" has the meaning give in Schedule 8;

"Insolvency Proceedings" in relation to a person means:

- (a) the person entering into or resolving to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them in any relevant jurisdiction;
- (b) the person being unable to pay its debts when they are due or being deemed under any statutory provision of any relevant jurisdiction to be insolvent;
- (c) a liquidator or provisional liquidator being appointed to the person or a receiver, receiver and manager, trustee or similar official being appointed over any of the assets or undertakings of the person, or an event analogous with any such event occurring in any relevant jurisdiction; or

(d) an application or order being made or a resolution being passed for the winding up of the person (except for the purposes of a *bona fide* reconstruction or amalgamation);

"Jersey Loan" means the loan owing by BHS (Jersey) Limited to Lloyds bank;

"January 2015 Balance Sheet" means the unaudited balance sheet prepared by the Seller presenting the assets and liabilities of the BHS Business as at the January 2015 Balance Sheet Date;

"January 2015 Balance Sheet Date" means 24 January 2015;

"Leasehold Properties" means the leasehold properties demised by the Leases;

"Leases" means the leases listed in Part 2 of Schedule 7;

"Losses" means, in relation to any matter, all liabilities, losses, claims, costs, fees and expenses relating to that matter;

"Management Accounts" means the unaudited monthly management accounts of the BHS Business comprising a profit and loss account for the period which began on 31 August 2014 and ended on the Management Accounts Date;

"Management Accounts Date" means 24 January 2015;

[REDACTED]

"Net Inter-Group Payable" means the total net amount owed by the Group Companies to the Seller's Group as at Completion;

"North West House" means the property situated at 119 Marylebone Road, London W1;

"Occupational Leases" means, in respect of a Property, the leases, tenancy agreements, licences and other rights of occupation to which that Property is subject, as listed in Part 3 of Schedule 7, and in relation to an Occupational Lease, references to the landlord include the person on whom a licence or rights of occupation are binding and references to the tenant include the licensee or person with the benefit of those rights;

"Pension Schemes" means the BHS Pension Scheme, the BHS Senior Management Scheme and the BHS Money Purchase Scheme;

[REDACTED]

"proceedings" means any action or proceedings before a court or tribunal or a statutory, governmental or regulatory body (including an arbitration);

"Properties" means the Freehold Properties and the Leasehold Properties;

"Purchase Price" means the purchase price for the Shares as set out in clause 3;

"Relief" has the meaning given in Part 1 of Schedule 5;

"Seller's Group" means the Seller, any ultimate parent undertaking of the Seller for the time being and all direct and indirect subsidiary undertakings for the time being of any such parent undertaking or, in the absence of any such parent undertaking, the Seller, but excluding the Group Companies;

"Seller's Pension Contribution" has the meaning given in Schedule 8;

"Seller's Solicitors" means Linklaters LLP of One Silk Street, London EC2Y 8HQ;

"Senior Employee" means any person employed or engaged by any Group Company in a managerial or other senior position with a basic salary or fee in excess of £100,000 per annum on the Completion Date or any other person who held such a position during the period of 12 months ending on the Completion Date;

"Shares" means all the issued shares in the capital of the Company at Completion;

"Subsidiaries" means those subsidiary undertakings of the Company of which details are set out in Part 2 of Schedule 1, and a reference to a **"Subsidiary"** is a reference to any one of them;

"Tax" or **"Taxation"** has the meaning given in Part 1 of Schedule 5;

"Tax Authority" has the meaning in Part 1 of Schedule 5;

"Tax Claim" means a claim under the Tax Covenant or a Tax Warranty Claim;

"Tax Covenant" means the tax covenants given in favour of the Buyer set out in in Part 3 of Schedule 5;

"Tax Warranties" means the warranties and representations of the Seller relating to Tax given pursuant to clause 8.1 and set out in in Part 2 of Schedule 5;

"Tax Warranty Claim" means a claim in respect of any breach of any of the Tax Warranties;

"Transactions" means the transactions contemplated by this Agreement;

"Transitional Services Agreement" the transitional services agreement in the agreed form to be entered into between the Company and Arcadia;

"Trustees" has the meaning given in Schedule 8;

"UK GAAP" means Statements of Standard Accounting Practice and Financial Reporting Standards adopted or issued by the Financial Reporting Council Limited, Urgent Issues Task Force Abstracts and Financial Reporting Council Abstracts adopted or issued by the

Financial Reporting Council Limited and other UK generally accepted accounting practice;

"**VAT**" means value added tax as provided for in VATA, and any tax imposed in substitution for it;

"**VATA**" means the Value Added Tax Act 1994;

"**Warranties**" means the warranties of the Seller given pursuant to clause 8.1 and set out in Schedule 4, and the Tax Warranties, and a reference to "**Warranty**" shall be construed accordingly; and

"**Warranty Claim**" means a claim in respect of any breach of any of the Warranties other than a Tax Warranty.

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 use of the singular includes the plural and vice versa, and use of any gender includes the other genders;

1.2.2 any reference to "**this Agreement**" is a reference to this Agreement as from time to time amended, varied or extended in any way; and

1.2.3 "**undertaking**" shall have the meaning given by section 1161 Companies Act save that, for the purposes of this Agreement and for the avoidance of doubt, an undertaking shall include a limited liability partnership.

1.3 In this Agreement, unless expressly provided otherwise:

1.3.1 any reference to the parties or to a recital, clause or schedule is to the parties (and permitted assignees) or to the relevant recital, clause or schedule of or to this Agreement, and any reference in a schedule to a part or a paragraph is to a part or a paragraph of that schedule or, where relevant, to a paragraph of that part of that schedule;

1.3.2 any reference to a "**person**" includes an individual, firm, partnership, body corporate, corporation, association, organisation, government, state, foundation and trust, in each case whether or not having separate legal personality;

1.3.3 "**financial year**" shall be construed in accordance with section 390 Companies Act;

1.3.4 "**parent undertaking**" and "**subsidiary undertaking**" shall have the respective meanings given by section 1162 Companies Act;

1.3.5 any reference to a statute, statutory provision or subordinate legislation ("**legislation**") shall be construed as referring to that legislation as amended and in force from time to time and to any legislation which re-enacts, re-writes or consolidates (with or without modification) any such legislation;

- 1.3.6 any reference to an English legal term or concept or any court, official, governmental or administrative authority or agency in England includes, in respect of any jurisdiction other than England, a reference to whatever most closely approximates in that jurisdiction to the relevant English legal term;
- 1.3.7 any reference to an agreement includes any form of arrangement, whether or not in writing and whether or not legally binding; and
- 1.3.8 "**connected person**" shall have the meaning given to it in section 1122 Corporation Tax Act 2010.
- 1.4 In this Agreement, the clause, schedule and paragraph headings are included for convenience only and shall not affect the interpretation of this Agreement. The schedules and recitals form part of this Agreement and shall have effect as if set out in full in the body of this Agreement, and any reference to this Agreement includes the schedules and recitals.
- 1.5 Any reference in this Agreement to a document being "**in the agreed form**" means a document in a form agreed by the parties before the signing of this Agreement and either entered into on the date of this Agreement by the relevant parties or initialled by the parties or on their behalf, in the latter case with such amendments as they may subsequently agree.
- 1.6 In this Agreement, the words "other", "including", "includes", "include", "in particular" and any similar words, shall not limit the general effect of words that precede or follow them and accordingly, the *ejusdem generis* rule shall not apply.
- 1.7 Any sum in any currency which is required to be construed, for the purposes of this Agreement, as a sum in any other currency (for example, in construing for the purposes of Schedule 4 the amount of a Warranty Claim which is not denominated in pounds sterling) shall, unless expressly stated otherwise, be regarded as converted into that other currency at the Exchange Rate on the date of this Agreement.

2. **AGREEMENT FOR SALE**

- 2.1 Subject to the terms of this Agreement the Seller shall sell and the Buyer shall buy the Shares free from all Encumbrances and with all rights attaching to them at Completion, including the right to receive all dividends and other distributions declared, made or paid at or after Completion.
- 2.2 The Seller covenants that it has the right to sell the Shares on the terms of this Agreement.

3. **CONSIDERATION**

- 3.1 The Purchase Price shall be the sum of £1.00, which amount shall be satisfied in cash in accordance with clause 4.3.

4. **COMPLETION**

- 4.1 Completion shall take place at the offices of the Seller's Solicitors or such other place as the parties may agree immediately after the execution of this Agreement.
- 4.2 At Completion, the Seller shall:
- 4.2.1 procure that the Group Cash Amount is £23,660,000;
 - 4.2.2 procure the making of the BHS Loan;
 - 4.2.3 procure that the Group Companies' Debt is zero; and
 - 4.2.4 comply with its other obligations as set out in Part 1 and Part 2 of Schedule 2.
- 4.3 At Completion, the Buyer shall:
- 4.3.1 pay the Purchase Price to the Seller;
 - 4.3.2 procure that the Capital Injection takes place;
 - 4.3.3 procure that BHS (Jersey) Limited pays £5 million in part repayment of the Jersey Loan;
 - 4.3.4 procure that the Fixed and Floating Charges are granted; and
 - 4.3.5 comply with its other obligations set out in Part 3 of Schedule 2.
- 4.4 If either of the parties is unable to fulfil all of its obligations on Completion, the parties agree to proceed with Completion insofar as is possible and that the outstanding Completion obligations shall be fulfilled as soon as practicable thereafter and in any event no later than 3 Business Days after Completion.

5. **COMPLETION STATEMENT**

- 5.1 In order to confirm that the Group Companies have zero Debt at Completion, a Completion Statement shall be drawn up in accordance with Schedule 10. The Buyer and the Seller shall comply with their respective obligations under Schedule 10 pursuant to which the Completion Statement is to be prepared and become final and binding on the parties.
- 5.2 The Completion Statement shall set out the Debt of the Group Companies as at the Completion Date.
- 5.3 On the date falling ten Business Days after the Completion Statement becomes final and binding on the parties, if the amount of Debt is greater than zero, the Seller shall pay to the Company an amount equal to the difference and if the amount of the Debt is less than zero, the Company shall pay to the Seller an amount equal to the difference. The parties shall use reasonable endeavours to procure such payment is structured in a tax efficient manner to the extent possible (provided always that this does not give rise to any

disadvantage to any Group Company), which may include (inter alia) the Seller making payment for Group Relief which has been surrendered in respect of periods before Completion.

6. POST COMPLETION MATTERS

Buyer Covenants

- 6.1 Within 120 days from Completion, the Buyer shall put in place a senior management incentive plan with the senior management of the Group Companies.
- 6.2 The Buyer shall procure that:
- 6.2.1 all monies in or available to the Group Companies at Completion, including the Group Cash Amount, the Capital Injection and the BHS Loan shall be used for the sole purpose of the day-to-day running of the business of the Group Companies;
 - 6.2.2 all proceeds realised by the Group Companies from the sale of the Properties shall be retained by the Group Companies and used for the sole purpose of the day-to-day running of the business of the Group Companies until the compromise with the BHS Pension Scheme and the BHS Senior Management Scheme described in paragraph 1.1.1 of Schedule 8; and
 - 6.2.3 no steps are taken by the Buyer or the Group Companies that would reasonably be expected to adversely affect the ability of the Group Companies and the BHS Business to continue to operate as a going concern and to pay their debts as they fall due.

Seller Covenants

- 6.3 The Seller shall at its own expense conduct any rent reviews in relation to the Properties which are outstanding as at Completion (the “**Rent Reviews**”) in the name of, and on behalf of, the Buyer or member of the Buyer’s Group concerned and have conduct of any related proceedings, negotiations or appeals. The Buyer shall, and shall procure that any member of the Buyer’s Group shall, give (subject to their being paid all reasonable costs and expenses) all such information and assistance as the Seller may reasonably request in connection with the conduct of the Rent Reviews. Upon conclusion of the Rent Reviews, the Seller shall pay to the Company an amount equal to the additional rent payable by the Group Companies in respect of the period between the rent review date and Completion.
- 6.4 The Seller shall at its own expense conduct any discussions with landlords regarding service charge disputes in relation to the Properties which are outstanding as at Completion (the “**Service Charge Discussions**”) in the name of, and on behalf of, the Buyer or member of the Buyer’s Group concerned and have conduct of any related proceedings, negotiations or appeals. The Buyer shall, and shall procure that any member of the Buyer’s Group shall, give (subject to their being paid all reasonable costs

and expenses) all such information and assistance as the Seller may reasonably request in connection with the conduct of the Service Charge Discussions. Upon conclusion of the Service Charge Discussions, the Seller shall pay to the Company an amount equal to the service charge payable by the Group Companies in respect of the period until Completion.

7. RELEASE OF ASSURANCES

7.1 The Seller shall, at its own cost, use all reasonable endeavours to effect the release and discharge in full (on a non-recourse basis to the Buyer and the Group Companies) of any Assurance given by any Group Company to any person in respect of any obligation or liability of any member of the Seller's Group (other than any Assurance so given under or in connection with this Agreement). Pending each such release and discharge, the Seller shall pay to the Company on demand the amount of all Losses incurred by the Buyer and any Group Company arising directly or indirectly from or in connection with any such Assurance and the obtaining of any such release and discharge.

7.2 The Buyer shall, at its own cost, use all reasonable endeavours to effect the release and discharge in full (on a non-recourse basis to each member of the Seller's Group) of any Assurance which is given by any member of the Seller's Group to any person in respect of any obligation or liability of any Group Company subsisting at Completion (other than any Assurance so given under or in connection with this Agreement). Pending each such release and discharge, the Buyer shall pay to the Seller on demand the amount of all Losses incurred by the relevant member of the Seller's Group arising directly or indirectly from or in connection with any such Assurance.

8. WARRANTIES AND INDEMNITIES

8.1 The Seller warrants to the Buyer that, except as disclosed in the Disclosure Letter, each of the Warranties is accurate as at the date of this Agreement.

8.2 The only Warranties given:

8.2.1 in respect of the Properties are those contained in paragraph 7 of Schedule 4 and each of the other Warranties shall be deemed not to be given in respect of the Properties;

8.2.2 in respect of Intellectual Property are those contained in paragraph 10 of Schedule 4 and each of the other Warranties shall be deemed not to be given in respect of Intellectual Property;

8.2.3 in respect of employment matters are those contained in paragraph 8 of Schedule 4 and each of the other Warranties shall be deemed not to be given in respect of such matters;

8.2.4 in respect of pension matters are those contained in paragraph 9 of Schedule 4 and each of the other Warranties shall be deemed not to be given in respect of such matters;

- 8.2.5 in respect of the Environment are those contained in paragraph 6 of Schedule 4 and each of the other Warranties shall be deemed not to be given in respect of the Environment; and
- 8.2.6 in respect of tax matters are those contained in Part 2 of Schedule 5 and each of the other Warranties shall be deemed not to be given in respect of such matters.
- 8.3 A matter shall be regarded as disclosed in the Disclosure Letter for the purposes of clause 8.1 only to the extent that information about that matter is contained in the Disclosure Letter or in any of the documents listed in the index of disclosure documents attached to the Disclosure Letter or in the Data Room in sufficient detail to identify the nature of that matter. References in the Disclosure Letter to paragraph numbers shall be to the paragraphs in Schedule 4 (or, where applicable, to Part 2 of Schedule 5) to which the disclosure is most likely to relate. Such references are given for convenience only and shall not limit the effect of any of the disclosures, all of which are made against the Warranties as a whole. The provisions of this clause 8.3 shall prevail over any provision to the contrary in the Disclosure Letter.
- 8.4 Each of the Warranties is separate and is to be construed independently of the other Warranties and any other provisions of this Agreement.
- 8.5 The Seller acknowledges that the Buyer is entering into this Agreement in reliance on the Warranties.
- 8.6 The Seller shall not be liable in respect of any claim for breach of this Agreement to the extent that the facts, matters or circumstances giving rise to the relevant claim were known by the Buyer or by any of its directors, officers, employees or agents or financial, accounting or legal advisers involved in negotiating the acquisition of the Group Companies prior to signing this Agreement.
- 8.7 The Seller unconditionally and irrevocably waives any rights it may have against, and shall not make any claims against or pursue any action to join in as a third party or seek a contribution or indemnity from, in each case whether founded in negligence or otherwise, any Group Company, or any director, employee, officer or agent of any Group Company, on whom the Seller has or may have relied, in connection with preparing the Disclosure Letter or agreeing to any terms of this Agreement or any document to be entered into pursuant to it. Nothing in this clause 8.7 shall apply to restrict the Seller's ability to make any claim against any Group Company or any director, employee, officer or agent of any Group Company for fraud.
- 8.8 Paragraph 6 of Part 5 of Schedule 5 (in the case of a Tax Claim) and Schedule 9 (in the case of a Claim and, where specified, a Tax Claim) shall apply to limit or exclude, in accordance with their respective terms, any liability which the Seller might otherwise have in respect of any Claim or any Tax Claim. Nothing in Schedule 5 or Schedule 9 shall apply to limit any liability of the Seller arising out of or in connection with any fraudulent act or omission by or on behalf of the Seller or any Group Company. In the event of a

conflict between the provisions of this clause 8.8 and Schedule 5 or Schedule 9, this clause 8.8 shall prevail.

- 8.9 Any Warranty which refers to the awareness, knowledge or belief of the Seller, or analogous expression, shall, unless otherwise stated, be deemed to refer to the actual knowledge, information and belief of Sir Philip Green, Paul Budge, Adam Goldman, Siobhan Forey, Gillian Hague and Chris Harris.
- 8.10 The Buyer shall procure that all reasonable steps are taken and all reasonable assistance is given to avoid or mitigate any Losses which in the absence of mitigation might give rise to a liability in respect of any claim under this Agreement (including taking all reasonable steps to recover from a third party a sum which would compensate the Buyer or Group Company in respect of the liability).
- 8.11 The Seller shall not be liable to pay an amount in discharge of any claim under this Agreement unless and until the liability in respect of which the claim is made has become due and payable.
- 8.12 The parties agree that the Purchase Price shall not be determinative in assessing the Losses to the Buyer in relation to a Warranty Claim or a Tax Warranty Claim and that the Purchaser's Losses in relation thereto shall for the purposes of this Agreement be deemed to be the same as the Losses suffered by the Group Companies as a whole.
- 8.13 In respect of any Warranty Claim, Tax Claim or claim under clause 8, save as otherwise agreed any amount that is payable by the Seller in accordance with the terms of this Agreement shall be paid by the Seller to the Company. The parties shall use reasonable endeavours to procure such payment is structured in a tax efficient manner to the extent possible (provided always that this does not give rise to any disadvantage to any Group Company), which may include (inter alia) the Seller making payment for Group Relief which has been surrendered in respect of periods before Completion.

9. **BUYER'S WARRANTIES**

The Buyer warrants to the Seller that the statements set out in Schedule 6 are true and accurate as of the date of this Agreement.

10. **TAXATION**

- 10.1 The provisions of Schedule 5 shall apply with effect from the date of this Agreement save that the provisions in Part 5 of Schedule 5 shall apply with effect from Completion.
- 10.2 For the avoidance of doubt, the Disclosure Letter shall not qualify the Tax Covenant, or limit the liability of the Seller in respect of any claim brought by the Buyer under the Tax Covenant, or in any other way affect any right which the Buyer may have to bring such a claim.

11. **PENSIONS**

The provisions of Schedule 8 shall apply with effect from the date of this Agreement.

12. PROTECTION OF THE INTERESTS OF THE BUYER

- 12.1 The Seller acknowledges that the Buyer is buying the Shares in accordance with the terms of this Agreement and that the Buyer is therefore entitled to protect the goodwill of each Group Company. Accordingly, the Seller agrees, for the benefit of the Buyer, that it shall not, directly or indirectly, alone or jointly with any other person for a period of 12 months starting on the Completion Date, and to the detriment of any business of any Group Company carried on at Completion;
- 12.1.1 induce, or endeavour to induce, any present Senior Employee to leave his position, whether or not that person would commit a breach of his contract by so leaving. The placing of an advertisement of a post available to the public generally and the recruitment of a person through an employment agency shall not constitute a breach of this clause 12 provided that the Seller does not encourage or advise such agency to approach any such Senior Employee; or
- 12.1.2 induce or endeavour to induce any Supplier (excluding, for the avoidance of doubt, a member of the Arcadia Group) to cease to supply, or to restrict or adversely to vary the terms of supply to, that business.
- 12.2 The Seller shall not, at any time after the Completion Date, use in any manner in the course of any business, or (so far as is within its power) permit or encourage to be so used, the names BHS or British Home Stores or any confusingly similar name, mark, sign or logo, or present itself or permit itself to be presented as in any way having a current connection with any Group Company (save for (i) the press release in the agreed form to be issued by the Buyer at or shortly after Completion; (ii) the purpose of making any factually accurate statements, or (iii) where such use is in accordance with the Transitional Services Agreement) or interested in the Shares.
- 12.3 The Seller shall ensure that no member of the Seller's Group from time to time takes or omits to take any action which, if taken or omitted by the Seller, would constitute a breach of the foregoing provisions of this clause 12.
- 12.4 The restrictions in this clause 12 are considered by the parties to be reasonable in all the circumstances and, without prejudice to any other remedy which may be available to the Buyer, the parties agree that the Buyer shall be entitled to seek injunctive or other equitable relief in relation to any breach of clauses 12.1 to 12.3, it being acknowledged that an award of damages might not be an adequate remedy in the event of such a breach.
- 12.5 Each of the Seller and the Buyer acknowledges that it has entered into this Agreement on an arm's length basis and that it has taken independent legal advice in so doing.
- 12.6 Each of the obligations assumed by the Seller in this clause 12 is separate and severable and shall be construed and be enforceable independently of the others, and is assumed without prejudice to any other obligation of the Seller implied at law or in equity.

13. **PAYMENTS AND INTEREST**

13.1 Payments to be made to the Seller under this Agreement shall be made in pounds sterling by telegraphic transfer of immediately available funds..

13.2 Payments to be made to the Buyer under this Agreement shall be made in pounds sterling by telegraphic transfer of immediately available funds.

Payments to be made to the Company under this Agreement shall be made in pounds sterling by telegraphic transfer of immediately available funds.

13.3 The payment of any sum to a party's solicitors by or on behalf of any other party will discharge the obligations of that other party to pay the sum in question and that other party shall not be concerned to see the application of the monies so paid.

13.4 Interest shall accrue on monies which are not paid when due under this Agreement from the due date for payment (or, if there is no due date for payment, from the date payment is demanded) until the date of actual payment at the rate of 4 per cent above the base rate for the time being of Barclays Bank plc. Such interest shall accrue on a daily basis, both before and after judgment, and be compounded monthly and be payable on demand.

13.5 Each payment to be made by the Seller under this Agreement shall be made free and clear of all deductions, withholdings, counterclaims or set-off of any kind except for those required by law.

13.6 In the event that:

13.6.1 any deduction or withholding is required by law to be made from any sum payable by the Seller to the Buyer under this Agreement, the Seller shall be obliged to pay such increased sum as will, after the deduction or withholding has been made, leave the Buyer with the same amount as it would have been entitled to receive in the absence of such requirement to make a deduction or withholding; and

13.6.2 any sum paid or payable to the Buyer under this Agreement ("**original sum**") is or will be chargeable to Tax, the Seller shall be obliged to pay on demand such additional sum to the Buyer as will ensure that, after payment of the Tax, the Buyer is left with an amount equal to the original sum, and for these purposes a sum shall be regarded as chargeable to Tax in circumstances where it would have been chargeable to Tax but for a Relief available to the Buyer otherwise than as a result of the matter giving rise to the payment.

13.7 The Buyer shall claim from the appropriate Tax Authority any exemption, rate reduction, refund, credit or similar benefit (including pursuant to any relevant double tax treaty) to which it is entitled in respect of any deduction or withholding in respect of which a payment has been or would otherwise be required to be made pursuant to clause 13.6 and, for such purposes, shall, within any applicable time limits, submit any claims,

notices, returns or applications and send a copy of them to the Seller. If the Buyer receives a credit for or refund of any Tax payable by it or similar benefit by reason of any deduction or withholding for or on account of Tax then it shall reimburse to the Seller such part of such additional amounts paid to it pursuant to clause 13.6 as will leave it (after such reimbursement) in no better and no worse position than it would have been if the Seller had not been required to make such deduction or withholding.

- 13.8 Clause 13.7 shall not apply to the extent that the amount of the payment has already been increased to take account of the Tax deducted, withheld or chargeable on the payment.

14. FURTHER ASSURANCE

- 14.1 At or after Completion, the Seller and the Buyer shall at their own cost execute all such documents and do or cause to be done all such other things as the Seller or the Buyer (as applicable) may from time to time reasonably require in order to give full effect to this Agreement.

- 14.2 The parties acknowledge that certain employees of the Arcadia Group will be required to provide services to the Group Companies pursuant to the Transitional Services Agreement and that the employment of such employees shall not transfer as a result of the Transactions contemplated by this Agreement, but that any transfer of such employees shall be governed by the terms of the Transitional Services Agreement.

- 14.3 The Seller shall ensure that all books, records and other information relating to any Group Company or to their respective businesses as at Completion which are owned by the Seller, or any member of the Seller's Group from time to time and not transferred to the Buyer pursuant to this Agreement, are retained for a period of seven years starting on the Completion Date and that during that period, the Buyer is provided upon reasonable request with reasonable access to those books, records and information during normal working hours and on reasonable prior notice and is permitted at the Buyer's reasonable expense to make copies of them.

- 14.4 The Buyer shall ensure that all books, records and other information relating to any Group Company or to their respective businesses as at Completion which are owned by the Buyer or any member of the Buyer's Group from time to time and transferred to the Buyer pursuant to this Agreement, are retained for a period of seven years starting on the Completion Date and that during that period, the Seller is provided upon reasonable request with reasonable access to those books, records and information during normal working hours and on reasonable prior notice and is permitted at the Seller's reasonable expense to make copies of them.

- 14.5 In the event that any of the documents or information comprised within the books, records and information required to be disclosed by the Seller or the Buyer under clause 14.3 or 14.4 (as applicable) is legally privileged, the recipient of such documents or information agrees that:

- 14.5.1 the benefit of the privilege remains with the disclosing party (or the relevant member of its Group) as the disclosing party and the provision of the relevant privileged information to the recipient will not amount to any waiver of privilege;
 - 14.5.2 it shall keep the relevant privileged information confidential and (save to the extent required by the laws of any relevant jurisdiction) shall not disclose it to any other person without the consent of the disclosing party (or the relevant member of its Group), such consent not to be unreasonably withheld or delayed; and
 - 14.5.3 it shall inform the disclosing party (or the relevant member of its Group) as soon as reasonably practicable following the receipt of any request or order for the disclosure of the relevant privileged information (unless the recipient would be in breach of the laws of any relevant jurisdiction in doing so).
- 14.6 The Seller shall not remove any computer hardware located and used in the BHS stores in relation to the BHS Business at Completion.

15. AUTHORITY AND CAPACITY OF THE SELLER

- 15.1 The Seller has all necessary power and authority to enter into and perform its obligations under this Agreement and all agreements to be entered into by the Seller pursuant to this Agreement.
- 15.2 This Agreement, and all agreements to be entered into by the Seller under this Agreement or in connection with the Transactions, constitute (or will when executed constitute) binding and enforceable obligations on the Seller in accordance with their respective terms.
- 15.3 The entering into and performance by the Seller of its obligations under this Agreement and all agreements to be entered into by the Seller under this Agreement will not result in a breach of any provision of the constitution of the Seller.
- 15.4 The Seller is able to pay its debts as they fall due and has not stopped or suspended payment of its debts.
- 15.5 No Insolvency Proceedings have commenced against the Seller.
- 15.6 There are no circumstances which entitle or may entitle any person to commence any Insolvency Proceedings against the Seller.

16. AUTHORITY AND CAPACITY OF THE BUYER

- 16.1 The Buyer has all necessary power and authority to enter into and perform its obligations under this Agreement and all agreements to be entered into by the Buyer pursuant to this Agreement.
- 16.2 This Agreement, and all agreements to be entered into by the Buyer under this Agreement or in connection with the Transactions, constitute (or will when executed

constitute) binding and enforceable obligations on the Buyer in accordance with their respective terms.

- 16.3 The entering into and performance by the Buyer of its obligations under this Agreement and all agreements to be entered into by the Buyer under this Agreement will not result in a breach of any provision of the constitution of the Buyer;
- 16.4 The Buyer is able to pay its debts as they fall due and has not stopped or suspended payment of its debts.
- 16.5 No Insolvency Proceedings have commenced against the Buyer.
- 16.6 There are no circumstances which entitle or may entitle any person to commence any Insolvency Proceedings against the Buyer.

17. **ASSIGNMENT**

- 17.1 This Agreement shall be binding on and enure for the benefit of the successors and permitted assignees of the parties.
- 17.2 Except as provided in clause 17.3, no party and no third party referred to in clause 22 may assign or otherwise dispose of any rights under this Agreement, at law or in equity, including by way of declaration of trust. Any purported assignment in breach of this clause shall be void and confer no rights on the purported assignee.
- 17.3 Each of the parties may assign all or any of its rights under this Agreement to its lenders by way of security or to any member of its Group from time to time, provided that any such member of the Group shall cease to be entitled to exercise those rights, and shall reassign those rights to the Buyer or the Seller (as applicable) on ceasing to be a member of its Group and provided also that the liability of the Seller to any such assignee shall not be greater than its liability to the Buyer if that assignment had not occurred. In the event of any such assignment, references to the Buyer (other than in this clause) shall be construed as references to the holder for the time being of the Buyer's rights under this Agreement.

18. **ANNOUNCEMENTS**

- 18.1 No party may make, or allow any member of its Group to make, any press release or other public announcement about this Agreement or the Transactions contemplated by it except with the prior written consent of the other party.
- 18.2 Clause 18.1 shall not apply to a press release or other public announcement if and to the extent required by the laws of any relevant jurisdiction or requested by any competent regulatory or governmental body, Tax Authority or securities exchange in any relevant jurisdiction, whether or not the request has the force of law, provided that the party required (or whose Group member is required) to make such a press release or announcement shall take all such steps as may be reasonably practicable in the

circumstances to consult with the other party before the relevant release or announcement is made, and shall take into account their reasonable comments.

19. CONFIDENTIALITY

19.1 Subject to clause 19.2, each party shall treat the following information as confidential and shall not, and shall procure that each member of its Group shall not, disclose or use it:

19.1.1 details of the provisions of this Agreement and any agreement or arrangement entered into in connection with this Agreement;

19.1.2 information relating to the negotiations leading to the execution of this Agreement and any agreement or arrangement entered into in connection with this Agreement;

19.1.3 (to the extent obtained as a result of or in connection with entering into this Agreement) information relating to any other party and any other member of that party's Group.

19.2 Subject to clause 14.5, a party may disclose or use information otherwise required by clause 19.1 to be treated as confidential:

19.2.1 to the extent included in the press release in the agreed form referred to in clause 19.1;

19.2.1 if and to the extent required by the laws of any relevant jurisdiction;

19.2.2 if and to the extent requested by any competent regulatory or governmental body, Tax Authority or securities exchange in any relevant jurisdiction, whether or not the request has the force of law;

19.2.3 if and to the extent required to comply with any of its obligations under this Agreement or any other agreement entered into by it pursuant to or in connection with this Agreement;

19.2.4 to its professional advisers, auditors or bankers from time to time;

19.2.5 to members of its Group and to their professional advisers, auditors or bankers in each case from time to time;

19.2.6 if and to the extent required for the purpose of any judicial proceedings arising out of this Agreement;

19.2.7 if and to the extent the information is or comes into the public domain through no fault of that party or any member of its Group;

19.2.8 if and to the extent the other party has given prior written consent to the disclosure or use; or

19.2.9 to any permitted assignee or any prospective purchaser of the Shares after Completion.

Each party shall ensure that any person to whom confidential information is disclosed pursuant to clause 19.2.4, 19.2.5 or 19.2.9 is made aware of the obligations of confidentiality contained in this clause and complies with clause 19.1 as if binding on it directly.

20. COSTS

20.1 Each party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and performance of this Agreement and the documents referred to in it and the Transactions.

21. NOTICES

21.1 Any notice, consent or other communication given under this Agreement shall be in writing and in English, shall be signed by or on behalf of the party giving it, and shall be delivered by hand, fax, or sent by prepaid recorded or special delivery post (or prepaid international recorded airmail if sent internationally) or courier using an internationally recognised courier company in accordance with the details set out below or such other person or address as the Buyer or the Seller may notify from time to time (and, for the avoidance of doubt, may not be given by email):

to the Buyer:

For the attention of: Dominic Chappell

at

Address: c/o Calder & Co, 16 Charles II Street, London SW1Y 4NW

to the Seller:

For the attention of: Group General Counsel

at

Address: Colegrave House, 70 Berners Street, London W1T 3NL

with a copy (which shall not constitute notice) delivered by email to Paul Budge, Group Finance Director at paul.budge@arcadiagroup.co.uk.

21.2 Any party may from time to time notify the others of any other person, address or facsimile number for the receipt of notices or copy notices. Any such change shall take effect five Business Days after notice of the change is received or (if later) on the date (if any) specified in the notice as the date on which the change is to take place.

21.3 Any notice, consent or other communication given in accordance with clause 21.1 and received after 5.30 p.m. on a Business Day, or on any day which is not a Business Day,

shall for the purposes of this Agreement be regarded as received on the next Business Day.

- 21.4 The provisions of clause 21.1 shall not apply in relation to the service of process in any legal proceedings arising out of or in connection with this Agreement in relation to which the relevant provisions of the Civil Procedure Rules 1998 (as amended from time to time) shall apply. For the purposes of this Agreement, legal proceedings shall be regarded as having been served when the relevant step referred to in Civil Procedure Rule 7.5(1) has been completed.

22. **THIRD PARTY RIGHTS**

- 22.1 Each Group Company and the directors, officers, employees and agents of each Group Company may rely upon and enforce the terms of clause 8.7.

- 22.2 Any person to whom the Buyer may assign rights under clause 16 may rely upon and enforce the Warranties and the other undertakings given by the Seller in this Agreement.

- 22.3 The rights referred to in clauses 22.1 and 22.2 may be enforced by the third parties referred to in those clauses only with the prior written consent of the Buyer.

- 22.4 Notwithstanding any other provision of this Agreement, the Seller and the Buyer may by agreement in writing rescind or vary any of the provisions of this Agreement without the consent of any third party, and accordingly section 2(1) Contracts (Rights of Third Parties) Act 1999 shall not apply.

- 22.5 Without limiting clause 22.3, no third party may enforce any term of this Agreement unless it has first (and as a pre-condition of commencing any legal proceedings in relation to such enforcement) confirmed in writing to each of the parties to this Agreement that in doing so, it agrees to be bound by the terms of clause 29.

- 22.6 Except as otherwise stated in this Agreement, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement. This clause shall not affect any right or remedy of a third party which exists or is available apart from that Act.

23. **WAIVER**

In no event will any delay, failure or omission (in whole or part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this Agreement or by law, be deemed to be or be construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently.

24. **SEVERANCE**

- 24.1 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability

shall not affect the other provisions of this Agreement which shall remain in full force and effect.

- 24.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, restricted or limited in a particular manner, the provision in question shall apply with such deletions, restrictions or limitations as may be necessary to make it valid.

25. **NO DOUBLE RECOVERY AND NO DOUBLE COUNTING**

Nothing in this Agreement shall entitle more than one person to recover for the same loss or make a party liable for the same loss more than once and no amount shall be taken into account, set off or credited more than once under this Agreement or otherwise, with the intent that there will be no double counting under this Agreement or otherwise.

26. **NO MERGER**

The provisions of this Agreement shall remain in full force and effect notwithstanding Completion.

27. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument, and shall not be effective until each of the parties has executed at least one counterpart.

28. **ENTIRE AGREEMENT**

- 28.1 This Agreement, and the documents referred to in it, together constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this Agreement.

- 28.2 The Buyer agrees and acknowledges that, in entering into this Agreement and the documents referred to in it, it is not relying on any representation, warranty or undertaking not expressly incorporated into it.

- 28.3 Each party agrees and acknowledges that its only right and remedy in relation to any representation, warranty or undertaking made or given in connection with this Agreement and the documents referred to in it shall be for breach of the terms of this Agreement and each party waives all other rights and remedies (including those in tort or arising under statute) in relation to any such representation, warranty or undertaking.

29. **APPLICABLE LAW AND JURISDICTION**

- 29.1 The validity, construction and performance of this Agreement and any claim, dispute or matter arising under or in connection with it or its enforceability (including any non-contractual claims, disputes or matters arising out of or in connection with it) shall be governed by and construed in accordance with the law of England and Wales.

29.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising under or in connection with this Agreement or its enforceability or the legal relationships established by this Agreement (including non-contractual disputes or claims) and waives any objection to proceedings being brought in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inconvenient forum. Each party further irrevocably agrees that a judgment in any proceedings brought in the courts of England and Wales shall be conclusive and binding upon each party and may be enforced in the courts of any other jurisdiction.

29.3 Nothing in this Agreement shall affect the right to serve process in any manner permitted by law.

THIS AGREEMENT has been executed by or on behalf of the parties on the date at the top of page 1.

SCHEDULE 1

Part 1: Details of the Company

Date and place of incorporation:	Incorporated in England and Wales on 14 October 1999 under the Companies Act 1985
Registered number:	03858895
Registered office:	Colegrave House 70 Berners Street London W1T 3NL
Issued share capital:	2,000,000 ordinary shares of £0.25 each
Options/warrants:	Subject to due diligence
Directors:	Sir Philip Green Ms Michelle Jane Gammon Mr Richard Burchill Mr Paul Everard Budge
Secretary:	Mr Adam Alexander Goldman
Shareholders:	Taveta Investments (No.2) Limited – 2,000,000 ordinary shares
Auditors:	PricewaterhouseCoopers LLP Benson House 33 Wellington Street Leeds LS1 4JP
Accounting reference date:	31 August
Charges:	None outstanding

Part 2: Details of the Subsidiaries

Name of Subsidiary:	Davenbush Limited
Date and place of incorporation:	Incorporated in England and Wales on 30 January 1989 under the Companies Act 1985
Registered number:	02341207
Registered office:	Colegrave House 70 Berners Street London W1T 3NL
Issued share capital:	912 ordinary shares of £1 each
Options/warrants:	Subject to due diligence
Directors:	Mrs Sally Marion Wightman Mr Christopher Bryan Harris Mrs Gillian Hague Sir Philip Green Mr Richard Dedombal Mr Richard Burchill Mr Stephen Boyce
Secretary:	Rebecca Rose Flaherty
Shareholders:	BHS Group Limited - 912 ordinary shares
Auditors:	PricewaterhouseCoopers LLP Benson House 33 Wellington Street Leeds LS1 4JP
Accounting reference date:	31 August
Charges:	None outstanding

Name of Subsidiary:	BHS Limited
Date and place of incorporation:	Incorporated in England and Wales on 12 April 1928 under the Companies Acts 1908 to 1917
Registered number:	00229606
Registered office:	Colegrave House 70 Berners Street London W1T 3NL
Issued share capital:	214,530,881 ordinary shares of £0.25 each
Options/warrants:	Subject to due diligence
Directors:	Mr Christopher Bryan Harris Sir Philip Green Mr Ian Michael Grabiner Mr Paul Everard Budge Mr Stephen Boyce
Secretary:	Mr Adam Alexander Goldman
Shareholders:	BHS Group Limited - 214,530,881 ordinary shares
Auditors:	PricewaterhouseCoopers LLP Benson House 33 Wellington Street Leeds LS1 4JP
Accounting reference date:	31 August
Charges:	None outstanding

Name of Subsidiary:	BHS Properties Limited
Date and place of incorporation:	Incorporated in England and Wales on 10 June 1987 under the Companies Act 1985
Registered number:	02139762
Registered office:	Colegrave House 70 Berners Street London W1T 3NL
Issued share capital:	10,000,000 ordinary shares of £1.00 each
Options/warrants:	Subject to due diligence
Directors:	Mrs Sally Marion Wightman Mr Christopher Bryan Harris Mrs Gillian Hague Sir Philip Green Mr Richard Dedombal Mr Richard Burchill Mr Stephen Boyce
Secretary:	Rebecca Rose Flaherty
Shareholders:	BHS Group Limited - 10,000,000 ordinary shares
Auditors:	PricewaterhouseCoopers LLP Benson House 33 Wellington Street Leeds LS1 4JP
Accounting reference date:	31 August
Charges:	None outstanding

Name of Subsidiary:	BHS Pension Trustees Limited
Date and place of incorporation:	Incorporated in England and Wales on 25 May 2000 under the Companies Act 1985
Registered number:	04002330
Registered office:	Colegrave House 70 Berners Street London W1T 3NL
Issued share capital:	1 ordinary share of £1.00
Options/warrants:	Subject to due diligence
Directors:	Mr Philip John Kitchen Mr Jason Paul Hyde Ms Siobhan Forey Mr Richard Dedombal
Secretary:	Miss Margaret Mary Hannell
Shareholders:	BHS Limited – 1 ordinary share
Auditors:	PricewaterhouseCoopers LLP Benson House 33 Wellington Street Leeds LS1 4JP
Accounting reference date:	31 August
Charges:	None outstanding

Name of Subsidiary:	Lowland Homes Limited
Date and place of incorporation:	Incorporated in England and Wales on 15 September 2005 under the Companies Act 1985
Registered number:	05565259
Registered office:	Colegrave House 70 Berners Street London W1T 3NL
Issued share capital:	2 ordinary shares of £1.00 each
Options/warrants:	Subject to due diligence
Directors:	Mrs Sally Marion Wightman Mr Christopher Bryan Harris Mrs Gillian Hague Sir Philip Green Ms Michelle Jane Gammon Mr Richard Dedombal Mr Richard Burchill
Secretary:	Rebecca Rose Flaherty
Shareholders:	BHS Limited – 2 ordinary shares
Auditors:	PricewaterhouseCoopers LLP Benson House 33 Wellington Street Leeds LS1 4JP
Accounting reference date:	31 August
Charges:	None outstanding

Name of Subsidiary:	BHS Services Limited (dormant)
Date and place of incorporation:	Incorporated in England and Wales on 25 May 2000 under the Companies Act 1985
Registered number:	04002328
Registered office:	Colegrave House 70 Berners Street London W1T 3NL
Issued share capital:	1 ordinary share of £1.00
Options/warrants:	Subject to due diligence
Directors:	Mrs Sally Marion Wightman Mrs Gillian Hague Ms Michelle Jane Gammon Mr Richard Dedombal Mr Richard Burchill
Secretary:	Rebecca Rose Flaherty
Shareholders:	BHS Limited – 1 ordinary share
Auditors:	N/A
Accounting reference date:	31 August
Charges:	None

Name of Subsidiary:	BHS (Jersey) Limited ¹
Date and place of incorporation:	16 th September 1966, Jersey
Registered number:	2363
Registered office:	Nautilus House, La Cour des Casernes, St Helier, Jersey, JE1 3NH
Issued share capital:	160,009 ordinary £1 shares
Options/warrants:	Subject to due diligence
Directors:	Paul Howard Glazier David Edward Lawrence Voisin Jason Lee Cowleard Christopher Bryan Harris Janette Kenny
Secretary:	Nautilus Corporate Services Limited
Shareholders:	BHS Limited
Auditors:	PricewaterhouseCoopers LLP Benson House 33 Wellington Street Leeds LS1 4JP
Accounting reference date:	31 August
Charges:	[Jersey £20,000,000 loan]

¹ Jersey counsel to complete

Name of Subsidiary:	Epoch Properties Limited ²
Date and place of incorporation:	2 nd August 1999, Jersey
Registered number:	74753
Registered office:	Nautilus House, La Cour des Casernes, St Helier, Jersey, JE1 3NH
Issued share capital:	2 Ordinary £1 shares
Options/warrants:	Subject to due diligence
Directors:	Paul Howard Glazier David Edward Lawrence Voisin Jason Lee Cowleard Christopher Bryan Harris Janette Kenny
Secretary:	Nautilus Corporate Services Limited
Shareholders:	BHS (Jersey) Limited –
Auditors:	PricewaterhouseCoopers LLP Benson House 33 Wellington Street Leeds LS1 4JP
Accounting reference date:	31 August
Charges:	[Jersey £20,000,000 loan]

² Jersey counsel to complete

SCHEDULE 2

Part 1: Seller Completion Deliverables

At Completion, the Seller shall deliver or make available to the Buyer:

1. the Carmen SPA, duly executed for and on behalf of the Carmen Seller;
2. the Transitional Services Agreement, duly executed for and on behalf of each of Arcadia and the Company;
3. the Concession Agreements, duly executed for and on behalf of Wallis Retail Ltd, Dorothy Perkins Trading Ltd, Evans Retail Ltd, Burton Trading Ltd and Miss Selfridge Retail Ltd on the one hand; and the Company on the other;
4. a transfer of the Shares in favour of the Buyer (or any nominee specified by the Buyer for the purpose) in the agreed form, duly executed by the Seller;
5. the share certificates representing the Shares or an indemnity in a form satisfactory to the Buyer for any missing share certificates;
6. the resignation from their respective offices of each of the directors and the secretary of each Group Company (other than Philip John Kitchen and Jason Paul Hyde as directors, and Margaret Hannell as company secretary, of BHS Pension Trustees Limited) in the agreed form, duly executed as deeds;
7. a copy of a letter of resignation in the agreed form from the auditors of each Group Company together with the statement required by sections 516 and 519 Companies Act;
8. the seal (if any), statutory registers, certificate of incorporation (and any certificate of incorporation on change of name), minute books and share certificate books of each Group Company, complete and up-to-date up to (but not including) Completion; and
9. a copy of the minutes of a meeting of the directors of the Seller in the agreed form resolving that the Seller should complete this Agreement, and execute or sign each document to be executed or signed by it at Completion, and authorising the execution or signing of those documents by each person signing on behalf of the Seller.

Part 2: Board meeting of each Group Company

The Seller shall ensure that a board meeting or board meetings of the Company and, where required by the Buyer, of each other Group Company are held at Completion at which it is resolved that:

1. the people nominated by the Buyer are appointed as directors of the relevant Group Company with immediate effect;
2. the resignations referred to in paragraphs 8 and 7 of Part 1 of this Schedule 2 are accepted with effect from the close of the meeting; and
3. the transfer referred to in paragraphs 4 of Part 1 of this Schedule 2 is (subject only to their being duly stamped where necessary) approved for registration.

Part 3: Buyer Completion Deliverables

At Completion, the Buyer shall deliver to the Seller:

1. the Carmen SPA, duly executed for and on behalf of BHS Properties Limited;
2. a copy of the minutes of a meeting of the directors of the Buyer in the agreed form resolving that the Buyer should complete this Agreement in accordance with its terms, and execute or sign each other document to be executed or signed by it at Completion, and ratifying and/or (as the case may be) authorising the execution or signing of those documents by each person signing on behalf of the Buyer; and
3. evidence of payment of the first invoice issued by the Seller under the Transitional Services Agreement.

SCHEDULE 3

Agreed value items

Item	Agreed value
Proceeds from disposal of properties	£5,900,000
PAYE/NI relating to February payroll	£2,126,000
Insurance provision	£1,700,000
Tax in relation to the onerous lease unwind	£4,000,000
Tax Group relief	£3,000,000
Unredeemed gift cards	£3,315,000
Credit notes	£3,019,000
VAT	£5,500,000
Early payments to trade suppliers	(£500,000)
Cash in transit	(£4,400,000)
TOTAL	£23,660,000

SCHEDULE 4

Warranties

1. GENERAL

1.1 SHARES AND OTHER SECURITIES OF THE COMPANY

- 1.1.1 The issued share capital set out in Part 1 of Schedule 1 constitutes the entire issued share capital of the Company.
- 1.1.2 The shareholders of each Group Company listed in Part 2 of Schedule 1 are the legal and beneficial owners of that number of shares in the relevant Group Company as is set out against their names. The Seller is the legal and beneficial owner of the Shares.
- 1.1.3 No Group Company has in issue any bonds or any other security.
- 1.1.4 No person has the right or has claimed to have a right (whether exercisable now or at a future date and whether contingent or not) to subscribe for, convert any security into or otherwise acquire, any shares, bonds or other securities of any Group Company, including pursuant to an option or warrant.
- 1.1.5 There is no Encumbrance over any issued or unissued shares in the capital of any Group Company, there is no subsisting agreement to create any such Encumbrance and no person has claimed to be entitled to any such Encumbrance.

1.2 SUBSIDIARIES AND BRANCHES

- 1.2.1 No Group Company has any interest in or is under a subsisting obligation to acquire any interest in any shares, bonds or other securities of any other body corporate other than another Group Company.
- 1.2.2 No Group Company has any agency, branch or other place of business or permanent establishment outside the United Kingdom.

1.3 MATERIAL INFORMATION

- 1.3.1 The information set out in the recitals and Schedule 1 is complete and accurate.

2. THE ACCOUNTS

2.1 ACCOUNTS

- 2.1.1 When prepared, the Accounts complied with applicable law and UK GAAP.
- 2.1.2 The individual accounts included within the Accounts give a true and fair view of the state of affairs of each Group Company as at the Accounts Date and of the

profit or loss of each Group Company for the period ended on the Accounts Date.

- 2.1.3 The Accounts have been prepared applying accounting policies, practices, methods and procedures consistently and except as noted in the Accounts, the profits or loss of the Group Companies disclosed in the Accounts were not affected by any unusual or non-recurring items or transactions not on an arm's length basis.

2.2 ACCOUNTING RECORDS

Each Group Company's accounting records comply with applicable requirements of the Companies Act.

2.3 MANAGEMENT ACCOUNTS

The Management Accounts:

- 2.3.1 have been prepared in good faith and with due care on a consistent basis for each of the periods covered by the Management Accounts; and
- 2.3.2 fairly present the profit or loss, income and expenditure of each Group Company for the periods concerned.

2.4 DIVIDENDS AND DISTRIBUTIONS

All dividends or distributions declared, made or paid by any Group Company since its incorporation have been declared, made or paid in accordance with its articles of association and applicable provisions of the Companies Act.

2.5 JANUARY 2015 BALANCE SHEET

- 2.5.1 The January 2015 Balance Sheet fairly presents the assets and liabilities of the BHS Business as at the January 2015 Balance Sheet Date and was prepared with due care and, so far as the Seller is aware, as at such date the BHS Business had no material liabilities of a type which would normally appear on a balance sheet not disclosed in the January 2015 Balance Sheet.

2.6 POSITION SINCE THE JANUARY 2015 BALANCE SHEET DATE

- 2.6.1 Since the January 2015 Balance Sheet Date, each Group Company has carried on its business in the ordinary and proper course.
- 2.6.2 Without limiting paragraph 2.6.1, since the January 2015 Balance Sheet Date:
 - 2.6.2.1 no material customer/client or supplier of any Group Company has ceased to deal, or has indicated an intention to cease to deal or to deal on a smaller scale, with any Group Company, or has changed or indicated that it wishes to change the terms on which it deals

with any Group Company such that it materially adversely affects the Group Company's ability to run its business in the ordinary course;

- 2.6.2.2 no Group Company has disposed of or acquired, or agreed to dispose of or acquire, or is negotiating to dispose of or acquire: (a) any business of, or any shares, debentures or other securities in, a body corporate; or (b) any interest in, any business of or shares, debentures or other securities in, a body corporate; or (c) any other asset, or interest in any other asset; other than in the ordinary and proper course of business;
- 2.6.2.3 no Group Company has entered into, or agreed to enter into, any capital commitments exceeding £50,000 in the case of any one Group Company and £100,000 in aggregate by all Group Companies;
- 2.6.2.4 no payment for group relief has been made and no group relief has been surrendered by any Group Company;
- 2.6.2.5 no resolution of the shareholders of any Group Company has been passed or proposed or circulated to members;
- 2.6.2.6 the BHS Business has incurred no material liabilities other than in accordance with the ordinary course of business consistent with past practice; and
- 2.6.2.7 no Group Company has delayed the payment of any trade payables due in the ordinary course of business or the credit of any receipt or accelerated any expense payments in a manner which is not consistent with past practice.

3. COMPLIANCE AND LITIGATION

3.1 LICENCES

Each Group Company holds all material registrations, licences, authorisations and consents necessary to own and operate its assets and carry on its business in all jurisdictions in which it now carries on business, and those registrations, licences, authorisations and consents are all valid and subsisting.

3.2 PRODUCTS AND SERVICES

- 3.2.1 Other than in circumstances which would be common for a business of this nature and so far as the Seller is aware, none of the stock or work in progress of any Group Company contains any defect which could give rise to a liability to any third party if that stock, or a product incorporating it, were sold to a third party.

3.2.2 So far as the Seller is aware, no Group Company is subject to any liability or obligation (except as may be implied by law or provided in customer satisfaction guarantees which are typical for a business of this nature) to service, repair, maintain or take back or otherwise do anything in respect of any goods supplied by it.

3.3 **BOOKS, RECORDS AND RETURNS**

Since 31 December 2009:

3.3.1 the register of members, minute books, other statutory books and registers and all other records required to be kept by each Group Company under applicable law and regulation:

3.3.1.1 are in the possession and ownership or under the control of that Group Company;

3.3.1.2 are up-to-date and have been maintained on a consistent basis; and

3.3.1.3 contain complete and accurate details of the matters which should be dealt with in those books, registers and records in accordance with applicable law and regulation;

3.3.2 no claim has been made that any of the books, registers and records referred to in paragraph 3.3.1 is incorrect or should be rectified; and

3.3.3 all accounts, returns, particulars, resolutions and other documents required by applicable law or regulation to be given or delivered by any Group Company to the registrar of companies or any other governmental, regulatory or other authority of competent jurisdiction have been correctly made up and duly given or delivered on a timely basis.

3.4 **LITIGATION**

3.4.1 No Group Company is engaged, or has during the period of two years ending on the date of this Agreement been engaged, in any litigation, arbitration, mediation, conciliation, expert determination, adjudication or other dispute resolution process or criminal or administrative proceedings, whether as claimant or defendant or in any other capacity (except as claimant for the collection of debts in a sum not exceeding £50,000 in the case of any one debt).

3.4.2 So far as the Seller is aware, no Group Company is subject to any material investigation, inquiry or enforcement proceedings or other process (including any criminal investigation, inquiry, enforcement or other process) by any governmental, administrative, regulatory or law-enforcement body or agency nor is any Group Company in dispute with any such body or agency.

3.4.3 So far as the Seller is aware, there are no dispute resolution processes, proceedings and other processes, disputes, investigations or inquiries such as are referred to in paragraphs 3.4.1 and 3.4.2 pending or threatened by or against any Group Company and there are no circumstances which might give rise to any such dispute resolution processes, proceedings and other processes, disputes, investigations or inquiries.

3.4.4 So far as the Seller is aware, no officer or employee of a Group Company is, to the extent that (a) it relates to the business or assets of any Group Company, and (b) such officer or employee is acting in his capacity as an officer or employee of a Group Company, engaged in or subject to any of the matters mentioned in paragraphs 3.4.1 to 3.4.3 no such matter is pending or threatened against such person and, so far as the Seller is aware, there are no circumstances which might give rise to any such dispute resolution processes, proceedings and other processes or disputes, investigations or inquiries.

3.5 BRIBERY ACT

3.5.1 Each Group Company:

3.5.1.1 complies with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements); and

3.5.1.2 has not engaged in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

4. MATERIAL CONTRACTS

4.1 CONTRACTS

4.1.1 All material agreements under which a Group Company enjoys rights or by which a Group Company is bound at the date of this Agreement are valid, binding and enforceable in accordance with their terms, and no such agreement is voidable by any party to it.

4.1.2 There has been no material breach by a Group Company of any of the material agreements to which any Group Company is a party, and no Group Company has received notice alleging any such breach.

4.1.3 No threat or claim of any default has been made by or against any Group Company in relation to any material agreement and, so far as the Seller is aware, save as a result of the Transactions, there are no circumstances which might give rise to any such default or which might otherwise cause any such agreement to be terminated or rescinded by any party or allow any party to vary its terms.

4.1.4 No Group Company is a party to any agreement, and no Group Company has submitted an offer or tender which is capable of being converted into an agreement which is not in the ordinary course of business or which is not on arm's length terms.

4.1.5 So far as the Seller is aware, no claim has been made under any outstanding guarantee, indemnity, surety or other analogous or similar agreement given for the benefit of any Group Company and where such guarantee, indemnity, surety or analogous or similar agreement (save for any customer satisfaction guarantees which are typical for a business of this nature) has been given by a Group Company, no Group Company has received notice of any such claim.

4.2 EFFECT OF AGREEMENT

The sale of the Shares to the Buyer and the performance by the parties of their obligations under this Agreement will not result in the acceleration of any third party debt of any Group Company.

5. ASSETS

5.1 ASSETS SUFFICIENT FOR THE BUSINESS

The assets and rights owned by or licensed in writing to each Group Company, together with assets held under any finance lease, hire purchase and rental or credit sale agreements and the services being provided under the Transitional Services Agreement, comprise all assets and rights necessary for the continuation of the business of that Group Company as carried on at the date of this Agreement.

5.2 OWNERSHIP AND POSSESSION OF ASSETS

5.2.1 Save in relation to those matters dealt with in the Transitional Services Agreement, all assets used by any Group Company in the course of its business as carried on at the date of this Agreement or which are necessary for the continuation of its business (other than any asset held under a finance lease, hire purchase and rental or credit sale agreement or Intellectual Property licensed to any Group Company) are legally and beneficially owned by that Group Company free from Encumbrances, and no person has claimed to be entitled to an Encumbrance in respect of any such asset.

5.2.2 So far as the Seller is aware, all of the tangible assets owned by any Group Company, or which any Group Company has the right to use, are in the possession and ownership or under the control of that Group Company.

5.3 INSURANCE

5.3.1 Each Group Company maintains, and has at all material times maintained, adequate insurance cover as is typical for a business of this nature.

5.3.2 All premiums due on the subsisting insurance policies of each Group Company have been duly paid and all other material conditions of those policies have been performed and observed.

5.3.3 The Disclosure Letter contains complete and accurate details of all insurance claims made by any Group Company during the period of 18 months ending on the date of this Agreement, and, so far as the Seller is aware, there are no circumstances which would or might entitle any Group Company to make such a claim or which would or might be required under any of the policies to be notified to the insurers.

5.4 **STOCKS AND WORK IN PROGRESS**

5.4.1 The stocks of raw materials, packaging materials and finished goods held by each Group Company are not excessive and are adequate in relation to the current trading requirements of that Group Company.

5.4.2 So far as the Seller is aware, no Group Company is carrying materially higher levels of stock which is obsolete, unusable or unsaleable in the ordinary course of business in accordance with its current price list without rebate or allowance than would be typical for a business of this nature.

5.5 **CONDITION AND MAINTENANCE OF PLANT**

All material plant, machinery, vehicles and office and other equipment owned or used by each Group Company are (i) in good repair and condition (subject to fair wear and tear); and (ii) have been regularly maintained to a good technical standard and in accordance with safety regulations usually observed in relation to equipment of the relevant type, the provisions of any applicable finance leases and hire purchase, rental, credit sale and other similar agreements and all applicable safety laws and regulations currently in force.

5.6 **LEASED ASSETS**

So far as the Seller is aware, no Group Company has received notification in relation to any asset held by any Group Company under a finance lease or a hire purchase, rental, credit sale or other similar agreement by which the rental payable has been, or will be, increased.

5.7 **CHARGES**

All charges in favour of any Group Company and which require registration under applicable provisions of the Companies Act have been duly registered and are valid and enforceable.

6. **ENVIRONMENTAL MATTERS**

6.1 **DEFINITIONS**

In this part 6:

"Environment" means all or any of the following media: land including (without limitation) land covered with water, the air, including (without limitation) the air within buildings and other natural or man-made structures above or below ground, and any living organisms or systems supported by those media;

"Environmental Laws" means all national or local statutes, codes or other laws or legislation concerning health and safety or matters related to pollution or protection of the environment, and all decisions, rules, regulations, ordinances, orders, notices and directives of the European Union and the United Kingdom Parliament and other official bodies having jurisdiction to the extent they have force of law at Completion in respect of those matters which:

- (i) have as a purpose or effect the protection or enhancement of the Environment and/or relate to the presence, manufacturing, processing, treatment, keeping, handling, use, possession, supply, receipt, sale, purchase, import, export or transportation of Hazardous Materials or any event, activity, condition or phenomenon which alone or in combination with others is capable of causing harm or damage to property, to human beings or to any other living organism;
- (ii) relate to the release, spillage, deposit, escape, discharge, leak or emission of Hazardous Materials;
- (iii) relate to noise, vibration, radiation or common law or statutory nuisance or any other interference with the enjoyment or use of land;
- (iv) relate to the use of land or the erection, occupation or use of buildings or other natural or man-made structures above or below ground; or
- (v) relate to human health and safety;

"Hazardous Material" means any Substance or organism which alone or in combination with others is capable of causing harm or damage to property or to human beings or any other living organism or damaging the Environment or public health or welfare;

"Substance" means any natural or artificial matter whether in solid or liquid form or in the form of a gas or vapour and for this purpose includes electricity, heat or radioactive emissions.

6.2 ENVIRONMENTAL LAWS AND PROCEEDINGS

So far as the Seller is aware, no Group Company has any material liability under any Environmental Laws.

7. PROPERTY

7.1 INFORMATION

All written information relating to the Properties provided by or on behalf of the Seller (or any of its professional advisers) to the Buyer (or any of its professional advisers) and

which is listed in the Disclosure Letter was when given, and remains, complete and accurate and not misleading.

7.2 LIABILITIES

7.2.1 So far as the Seller is aware no Group Company has any liability (whether actual, future or contingent) to perform or observe any obligation in respect of any land or buildings formerly owned or occupied by it or related matter.

7.2.2 So far as the Seller is aware no Group Company has any liability as guarantor to perform or observe any obligation in respect of any land or buildings or related matter.

7.3 TITLE

7.3.1 The Properties comprise all the properties owned, occupied or otherwise used by the Group Companies and save where subject to an Occupational Lease they are all occupied solely by one or more of the Group Companies.

7.3.2 Each Group Company is the legal and beneficial owner of the Properties, against which its name appears in Part 1 and Part 2 of Schedule 7 and has in its possession or control all relevant title deeds and documents.

7.3.3 So far as the Seller is aware, the information contained in Schedule 7 is complete and accurate in all material respects.

7.3.4 Where any Lease was granted (but not assigned) to a Group Company the terms of such Lease were, at the time of its grant, negotiated at arm's length from the Landlord to the Lease.

7.3.5 So far as the Seller is aware, no written notices or complaints have been received by any Group Company from any competent authority, any landlord or any tenant under any Occupational Lease in relation to the Properties or their use which remains outstanding.

7.4 PLANNING MATTERS

In this paragraph "**Planning Acts**" means any legislation relating to town and country planning.

The current use of each of the Properties is a lawful use for the purposes of the Planning Acts.

7.5 ADVERSE ORDERS

So far as the Seller is aware, no compulsory purchase notices, orders or resolutions affecting any of the Properties have been received by any Group Company.

7.6 **TENANCIES**

7.6.1 The Properties are held subject to and with the benefit of the Occupational Leases, a complete list of which is set out in Part 3 of Schedule 7.

7.6.2 No occupational tenant of any of the Properties is currently in arrears of the rent due under its lease.

7.7 **COMMONHOLD**

None of the Properties is commonhold land.

7.8 **CERTIFICATE OF TITLE**

To the best of the Seller's knowledge, information and belief, the information contained in the Certificate of Title is complete and accurate in all respects.

8. **EMPLOYMENT**

References in this part 8 and 9 to "employees" shall be deemed to include officers and workers.

8.1 **SENIOR MANAGEMENT**

8.1.1 Service agreements for all Senior Employees are attached to the Disclosure Letter.

8.1.2 So far as the Seller is aware, all members of the Senior Employees will continue their employment with the Group following Completion and none have indicated that they propose to give notice.

8.1.3 None of the Senior Employees are to receive any bonus related to or on Completion.

8.2 **BONUS, PROFIT SHARING AND SHARE OPTION SCHEMES**

8.2.1 There are no schemes in operation by or in relation to any Group Company under which any employee of any Group Company is entitled to any remuneration calculated by reference to the whole or part of the turnover, profits or sales of any Group Company or to any other form of bonus or commission.

8.2.2 No Group Company operates any approved share option scheme, share incentive scheme, approved profit sharing scheme, enterprise management incentive scheme, employee share ownership plan or unapproved share scheme under which share benefits are provided, in respect of any person employed or engaged, or formerly employed or engaged, by any Group Company. No other company provides any such scheme or plan in respect of any Group Company's employees.

8.3 INDUSTRIAL DISPUTES, EMPLOYEE AND OTHER CLAIMS

8.3.1 No Group Company is, and no person employed or engaged by any Group Company is, involved in any industrial dispute and, so far as the Seller is aware, no person employed or engaged by any Group Company has threatened any industrial action against any Group Company.

8.3.2 There is no outstanding or threatened claim, dispute, legal proceeding or grievance against any Group Company by any person who is now or has been employed or engaged by, or an officer of, any Group Company, or any dispute between any Group Company and a material number or class of its employees, and no payments are due from any Group Company.

8.4 EMPLOYER'S LIABILITY INSURANCE

Each Group Company has adequate employer's liability and public liability insurance cover having regard to the activities carried out by it. No claims have been made or, so far as the Seller is aware, no claims are contemplated under such insurance policies.

8.5 TRADE UNIONS

There are no agreements between any Group Company and any trade union or other body representing employees, nor has any Group Company done any act which may be construed as recognition of any trade union or other body, nor have any requests for recognition, or arrangements for collective information and consultation whether under Schedule A1 Trade Union and Labour Relations (Consolidation) Act 1992 as amended, the Information and Consultation of Employee Regulations 2004 or otherwise, been received by any Group Company, nor are there any works councils, staff associations, pre-existing agreements, negotiated agreements and/or other arrangements with employee representatives in place.

9. PENSIONS

9.1 COMPLIANCE

9.1.1 The Pension Schemes are the only arrangements under which the Company or any of the Subsidiaries has or may have any legal obligation to provide or contribute towards pension, lump sum, death, ill-health, disability or accident benefits in respect of its past or present officers and employees.

9.1.2 Details of the Pension Schemes are set out in the Disclosure Letter.

9.1.3 All contributions, insurance premiums, tax and expenses due to and in respect of the Pension Schemes have been duly paid.

9.1.4 No contribution notice or financial support direction under the Pensions Act 2004 has been issued to the Company or any Subsidiary or to any other person in respect of any of the Pension Schemes.

- 9.1.5 In respect of the BHS Pension Scheme and/or the BHS Senior Management Scheme, so far as the Seller is aware, there is no amount that is treated as a debt due to the trustees of either Pension Scheme under section 75 or 75A of the Pensions Act 1995 (or its predecessor, section 144 of the Pension Schemes Act 1993).
- 9.1.6 So far as the Seller is aware, each of the BHS Pension Scheme and the BHS Senior Management Scheme has been designed to comply with, and, so far as the Seller is aware, has been administered in accordance with all applicable legal and administrative requirements (except that GMPs have not been equalised), and the Company has complied in all material respects with all its legal obligations in respect of the BHS Pension Scheme and the BHS Senior Management Scheme.
- 9.1.7 The BHS Money Purchase Scheme provides only money purchase benefits as defined in section 181 of the Pension Schemes Act 1993.
- 9.1.8 The Company has complied with its obligations to automatically enrol employees as required by the Pensions Act 2008.
- 9.1.9 Each of the Pension Schemes is registered under Part 4 of the Finance Act 2004.
- 9.1.10 BHS Limited is the sole employer in relation to the BHS Pension Scheme and the BHS Senior Management Scheme and no other Group Company has participated in those schemes.

9.2 **DISPUTES**

In relation to the Pension Schemes, there are no complaints, disputes or applications pending, threatened or in progress (or, so far as the Seller is aware, any circumstances likely to lead to such complaints, disputes or applications) under the internal dispute resolution procedure or before the Pensions Ombudsman, Pensions Regulator, Pensions Advisory Service, Employment Tribunal, any mediator or arbitrator or a court, and so far as the Seller is aware, there is no fact or circumstances likely to give rise to such action or proceedings.

10. **INTELLECTUAL PROPERTY**

10.1 **DEFINITIONS**

In this part 10:

"Applications" means applications for Registered Intellectual Property;

"Business Intellectual Property" means the Intellectual Property which immediately before Completion is used by the Group Companies in connection with the business of the Group Companies relating to the operation of retail stores;

"Intellectual Property" means all intellectual property rights, including (without limitation) patents, supplementary protection certificates, petty patents, utility models, Trade Marks, database rights, rights in designs, copyrights and topography rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all inventions, know-how, trade secrets, techniques and confidential information, customer and supplier lists and other proprietary knowledge and information, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world, in each case for their full term, and together with any renewals or extensions;

"Licence" means any licence, permission or consent in respect of the use of any Intellectual Property (including, without limitation, any unwritten and/or informal licensing arrangement) and any arrangement of which any licence, permission or consent forms part;

"Registered Intellectual Property" means patents, certificates of addition, supplementary certificates of addition, supplementary protection certificates, petty patents, utility models, registered copyrights, registered trade marks, domain names, registered designs, and all other registered intellectual or industrial property rights in any part of the world; and

"Trade Marks" means business names, domain names, registered and unregistered trade marks and applications for registration of any of the above.

10.2 OWNERSHIP

10.2.1 Either one of the Group Companies is the sole legal and beneficial owner of the Business Intellectual Property or, so far as the Seller is aware, each Group Company has a valid Licence to use all Business Intellectual Property which it uses.

10.2.2 All of the Registered Intellectual Property which is owned by any Group Company, and all of the Applications which are proceeding in the name of any Group Company or in the joint names of any Group Company and any other party(ies), are listed in the Disclosure Letter.

10.2.3 No Group Company has (i) authorised or otherwise permitted, expressly or by implication, any use whatsoever of the Business Intellectual Property owned by it, nor (ii) granted to any third party any right or interest in respect of the Business Intellectual Property owned by it, in each case, which permission to use or grant of rights or interests have materially restricted its ability to use the Business Intellectual Property owned by it.

11. INFORMATION TECHNOLOGY

11.1 DEFINITIONS

In this part 11:

"Hardware" means computer hardware or networks;

"IT Systems" means Hardware and Software; and

"Software" means computer software.

11.2 **ADEQUACY**

11.2.1 No Group Company has any material projects under way to change, replace, develop or update the IT Systems used by such Group Company or introduce any new information technology systems.

11.2.2 No Group Company has suffered any disruption or interruption to its business in the last 2 years due to any failure or breakdown of the IT Systems used by it (or any part of them) that had a material adverse effect on the Group Companies as a whole.

11.2.3 Each Group Company maintains and keeps up-to-date:

11.2.3.1 reasonably adequate physical and logical security processes and software to protect the IT Systems used by it and any data held on such systems;

11.2.3.2 reasonably adequate procedures to prevent unauthorised access or the introduction of viruses or similar destructive code;

11.2.3.3 reasonably adequate procedures for the taking and storing on-site and off-site of back-up copies of the Software used by it and any data held on the IT Systems; and

11.2.3.4 back-up systems and disaster recovery systems and procedures reasonably sufficient to enable it to continue to function without any material disruption or interruption in the event of a failure or breakdown of any part of the IT Systems used by it or the destruction, corruption or loss of access to any of the data held thereon.

SCHEDULE 5

Taxation

Part 1: Tax definitions and interpretation

1. Tax definitions

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

"Buyer's Tax Group" means the Buyer and each other company or companies (other than the Group Companies) which at any time is or has been treated as members of the same group as, or otherwise connected or associated in any way with, the Buyer for any Tax purposes;

"CTA 2009" means the Corporation Tax Act 2009;

"CTA 2010" means the Corporation Tax Act 2010;

"Event" means any act, omission, arrangement, transaction or other event whatsoever (including, without limitation, the entering into this Agreement, Completion, any person ceasing or having ceased to be a member of any group or associated with any other person for any tax purpose, ceasing to trade or to carry on one or more trades, any change in the residence of any person, the winding-up or dissolution of any person, the death of any individual, the provision or supply of goods or services to a Group Company by any person (including the employment of any person by a Group Company or any person holding an office of a Group Company) and the provision or the supply of goods or services by a Group Company to any person);

"Group Relief" means any loss, allowance or other amount eligible for surrender by way of group relief in accordance with the provisions of Part 5 CTA 2010, and any refund of Tax eligible for surrender pursuant to section 963 CTA 2010;

"Relevant Change in Law" means any change after Completion in the law (including any increase in the rates of Tax) or in the published interpretation or practice of any Tax Authority, in each case coming into force after Completion;

"Relevant Relief" has the meaning ascribed to it in paragraph 1.1.1 of part 5;

"Relief" means any loss, relief, exemption, allowance, deduction, credit or set-off in respect of Tax or relevant to the computation of Tax or the computation of income, profits or gains for Tax purposes and any right to repayment of Tax and:

- (a) any reference to the "use or set-off" of a Relief shall be construed accordingly;
- and

- (b) any reference to the "loss" of a Relief includes the absence, non-existence, reduction or cancellation of any such Relief or such Relief being wholly or partly unavailable; and
- (c) any reference to a "right to repayment of Tax" includes any right to repayment supplement or interest or other similar payment in respect of Tax;

"Representative Member" means Arcadia Group Limited, being the representative member of the Sellers' VAT Group at the date of Completion;

"Seller's VAT Group" means the group of companies registered as a group pursuant to section 43 VATA with VAT registration number GB169094336 of which the Representative Member is the representative member;

"Straddle Period" means a period of a Group Company relevant for Tax purposes which begins before and ends after Completion;

"Tax" or "Taxation" means all forms of taxation, duties, rates, levies, contributions, charges and imposts imposed in the United Kingdom or elsewhere including but not limited to:

- (a) amounts that are required to be accounted for in respect of tax withheld or deducted from payments;
- (b) social security contributions (including, in the United Kingdom, national insurance contributions);
- (c) taxes on receipts, sales or value added (including, in the United Kingdom, VAT (including input VAT as defined in section 24 VATA));
- (d) taxes and levies on documents or transactions (including, in the United Kingdom, stamp duty, stamp duty reserve tax and stamp duty land tax); and
- (e) any payment to a Tax Authority by way of settlement of or in respect of any Tax Demand or Tax Liability of the Company,

and all interest, penalties, charges and fines relating to any of the above, or the failure to make any return or payment or the making of any incomplete or incorrect return or the failure to maintain records or insufficient or late payment in respect of any of the above;

"Tax Authority" means HM Revenue & Customs and any other authority, body or official (whether in the United Kingdom or elsewhere) competent to assess, demand, impose, administer or collect Tax or amounts in respect of Tax or make any decision or ruling on any matter relating to Tax and any other person who has a statutory or contractual indemnity, power or right to demand or recover amounts of, or in respect of, Tax or a Tax Liability or holds any power to raise an amount of Tax by sale, mortgage or charge over any assets of or shares in a Group Company for any Tax purpose;

"Tax Demand" means includes any notice, demand, assessment, letter or other document issued (or any return or other document prepared or to be prepared by or on behalf of a Group Company) or other action taken by or on behalf of any person including a Tax Authority indicating that a Group Company or the Buyer has or may have, or will in the future have, a Tax Liability and in respect of which a Tax Claim may be made;

"Tax Liability" has the meaning ascribed to it in paragraph 2.1 of this part;

"TCGA" means the Taxation of Chargeable Gains Act 1992;

"TIOPA" means the Tax (International and Other Provisions) Act 2010; and

"TMA" means the Tax Management Act 1970

2. **Tax interpretation**

2.1 In this schedule reference to a **"Tax Liability"** includes:

2.1.1 a liability to make any actual payment or increased payment of or in respect of Tax (whether or not such liability is a primary liability of the payer and whether or not the person so liable has or may have any right of indemnity or reimbursement (statutory or otherwise) against any other person);

2.1.2 the loss of any Relief which has been taken into account in computing Debt in the Completion Statement;

2.1.3 the use or set off of any Relief which either (i) arises in respect of an Event occurring or period (or part) after Completion or any Relief arising to any member of the Buyer's Tax Group or (ii) has been taken into account in computing Debt in the Completion Statement where the use or set off of that Relief has the effect of reducing or eliminating any Tax Liability of a Group Company which the Seller would otherwise have been liable under part 3;

2.1.4 any mortgage or charge or power to sell, mortgage or charge any of the assets of or shares in the Company resulting from or in consequence of any liability to pay inheritance tax;

2.1.5 any liability to make a payment in respect of Tax to any person other than to another Group Company or Carmen or any subsidiary of Carmen under any indemnity, covenant, guarantee or legally binding agreement;

2.1.6 any liability of a Group Company to make a payment for or refund of a payment for Group Relief or for or in connection with the entering into of a joint election pursuant to the provisions of sections 171A or 179A TCGA or paragraph 66 of schedule 29 Finance Act 2002 or, for accounting periods ending on or after 1 April 2009, section 792 CTA 2009 or in connection with claims pursuant to paragraphs 56 or 57 of schedule 29 Finance Act 2002/sections 777 or 778 CTA 2009 (in each case, pursuant to an agreement entered into on or before

Completion and other than to another Group Company or Carmen or any subsidiary of Carmen);

- 2.1.7 any liability of a Group Company to make a payment or repayment in respect of VAT (including input tax as defined in section 24 VATA) to a member of a group (as defined for the purposes of section 43 VATA) of which the Company was a member prior to Completion (other than to another Group Company); and
- 2.1.8 any liability of a Group Company to make a payment or repayment in respect of corporation tax to a member of a group of companies (other than to another Group Company or Carmen or any subsidiary of Carmen) in connection with any arrangements with a Tax Authority pursuant to section 59F TMA (whereby one member of that group may discharge the liability of other members of that group to pay corporation tax),

provided that:

- 2.1.9 in any case falling within paragraph 2.1.2 of this part, the amount of the Tax Liability shall be treated as being equal to the amount of Tax which would have been saved but for the loss of the Relief;
 - 2.1.10 in any case falling within paragraph 2.1.3 of this part, the amount of the Tax Liability shall be treated as being the amount of the Tax Liability which is reduced or eliminated for which the Seller would have been liable under part 3 if the Relief had not been used or set-off;
 - 2.1.11 in any case falling within paragraph 2.1.4 of this part, the Tax Liability shall be treated as being equal to the greater of (i) the amount of inheritance tax which is or is liable to be paid out of the proceeds of enforcement or exercise of the mortgage, charge or power of sale together with the amount of any costs or expenses incurred in connection with such enforcement or exercise and (ii) any depletion in or reduction in value of the assets or increase of the liabilities of the Company or the Buyer (as applicable) arising as a result of such Tax Liability; and
 - 2.1.12 in any case falling within paragraphs 2.1.5 to 2.1.8 of this part, the Tax Liability shall be treated as being equal to the amount required to be paid or repaid.
- 2.2 In interpreting and applying this schedule:
- 2.2.1 references to a part are references to one of parts 1 to 5 of this schedule;
 - 2.2.2 any reference to any Event occurring or to anything being the case includes any Event which is deemed to occur or be the case for Tax purposes or by reference to which Tax is calculated or imposed;
 - 2.2.3 any reference to an Event occurring on or before Completion includes a series or combination of Events one or more of which occurred on or before

Completion provided always that the Event after Completion is either pursuant to a legal obligation created prior to Completion or is in the ordinary course of the Company's business as carried on prior to Completion;

- 2.2.4 any reference to income, profits or gains earned, accrued or received or having arisen includes income, profits or gains deemed to be or treated as earned, accrued or received or as having arisen for any Tax purposes;
- 2.2.5 any reference to any form of Tax, Relief, legislation, law or legal concept which exists in the United Kingdom includes a reference to any equivalent or substantially equivalent Tax, Relief, legislation, law or legal concept in any other relevant country or jurisdiction;
- 2.2.6 in determining (in connection with an inheritance tax liability) whether a charge on or power to sell, mortgage or charge any of the assets of or shares in the Company exists at any time and in determining the amount of the Tax Liability arising, the fact that any inheritance tax is not yet payable or may be paid by instalments shall be disregarded and such inheritance tax shall be treated as becoming due and a charge or power to sell, mortgage or charge as arising on the date of the transfer of value or other date or event on or in respect of which it becomes payable or arises;
- 2.2.7 the provisions of section 213 Inheritance Tax Act 1984 shall not apply to any payments falling to be made pursuant to a Tax Claim;
- 2.2.8 any reference to the last date on which a payment of Tax can be made shall be interpreted as meaning the last date on which a payment in respect of Tax can be made to the appropriate Tax Authority without incurring a liability (contingent or otherwise) to interest or a charge or penalty in respect of late payment of such Tax; and
- 2.2.9 any reference to a period of time for appeal shall exclude any extension of time which may be granted by special arrangement (being an arrangement not based on a strict and detailed application of the relevant legislation) or only at the discretion of a Tax Authority.

Part 2: Tax Warranties

1. Payments of Tax

Each Group Company:

- 1.1 has duly and punctually paid all Tax which it has become liable to pay;
- 1.2 has duly deducted, withheld or collected for payment (as appropriate) all Tax due to have been deducted, withheld or collected for payment; and
- 1.3 is not, and has not at any time within the last four years been, liable to pay any interest, penalty or surcharge in respect of any unpaid Tax or as a result of a default in respect of any Tax matter.

2. Tax returns

All returns, computations, information, accounts and notices which are or have been required to be made or given by a Group Company for any Tax purposes have been made or given both within the requisite periods and on a proper basis and were when made and remain true and accurate in all material respects and none of them is the subject of any enquiry, query or dispute with HM Revenue & Customs or other Tax Authority.

3. Compliance

Each Group Company has within the last seven years complied in all material respects with all material statutory requirements, regulations, notices, orders, directions and conditions relating to all relevant Taxes, including the terms of any agreement made with HM Revenue & Customs or any other relevant Tax Authority. Each Group Company has obtained, maintained and preserved complete, accurate and up to date records as required for all Tax purposes.

4. Tax disputes

No Group Company is, or has it been at any time within the last seven years, involved in any dispute with or investigation, audit or discovery by any Tax Authority nor, so far as the Seller is aware, is any such dispute, investigation, audit, discovery or enquiry is pending, planned, threatened or likely to arise.

5. **Position since the Accounts Date**

In respect of the period starting immediately after the Accounts Date, no Group Company has any liabilities for Tax other than Tax arising in the ordinary course of business of the Group Company and in respect of transactions contemplated by this Agreement.

6. **Secondary Liabilities**

No Group Company is or is likely to become, liable to pay, or make reimbursement or indemnity in respect of, any Tax (or amounts corresponding to Tax) in consequence of the failure by any other person to discharge that Tax within any specified period or otherwise including without limitation liability under sections 710, 713 and 829 CTA 2010, sections 189 and 190 TCGA, section 371UF TIOPA and section 795 CTA 2009, where that Tax relates to a profit, income or gain, transaction, event, omission or circumstance arising, occurring or deemed to arise or occur (whether wholly or partly) on or before the date of this Agreement.

7. **Group Payment Arrangements and Corporation Tax Instalments**

The Group Companies which are resident in the United Kingdom are party to a group payment arrangement under Section 59F TMA to which members of the Seller's Group are also party and of which Arcadia Group Limited is the nominated company. Members of the group payment arrangement are liable to pay corporation tax in accordance with the provisions of the Corporation Tax (Instalment Payments) Regulations 1998.

8. **Clearances and consents**

Copies of all clearances and consents obtained by a Group Company from any Tax Authority have been disclosed, together with the clearance application submitted with respect of the same. Such clearances and consents were based on full and accurate disclosure of all the facts and circumstances material to the decision of the Tax Authority. Appropriate clearances have been obtained from the relevant Tax Authority in relation to all transactions which have taken place in the last six years involving a reorganisation of the ownership of any Group Company, or advice was provided in writing by a suitably qualified tax advisor that no such clearance or consent was reasonably required.

9. **Inheritance Tax**

No Group Company is liable, and there are no circumstances in existence as a result of which it may become liable, to be assessed to inheritance tax or any other Taxation as donor or donee of any gift, or transferor or transferee of value and there are no other circumstances by reason of which any liability in respect of inheritance tax has arisen or could arise for a Group Company or any charge in relation to unpaid inheritance tax has arisen or could arise in respect of the assets of a Group Company or the Shares.

10. **Residence and presence outside the UK**

Each Group Company is and always has been resident in the United Kingdom and nowhere else for Tax purposes, save in the case of the Group Companies which are incorporated in Jersey which are and always have been resident in Jersey and nowhere else for Tax purposes. No Group Company has, or has ever had any branch, office, permanent establishment or other taxable presence in any other jurisdiction.

11. **Rollover/Hold-over relief**

No claims or elections have been made by a Group Company under Chapter 7 of Part 8 of CTA 2009 or section 827 of CTA 2009 in respect of any intangible fixed asset of a Group Company.

12. **Degrouping charges**

Neither the signing of this Agreement nor the sale of the Shares to the Buyer will result in any profit or gain being deemed to accrue to a Group Company for Tax purposes, whether pursuant to section 179 TCGA, section 780 CTA 2009 (Degrouping) or otherwise.

13. **Stamp Duty**

All documents in the possession of a Group Company or to the production of which it is entitled and which attract stamp duty in the United Kingdom or elsewhere have been properly stamped.

14. **Stamp Taxes – groups**

No Group Company has made in the last three years any claim for relief or exemption under section 42 Finance Act 1930, section 76 Finance Act 1986, section 151 Finance Act 1995 or Schedule 7 Finance Act 2003.

15. **Tax avoidance**

No Group Company has entered into any transaction or series of transactions, scheme or arrangement of which the main purpose, or one of the main purposes, was the avoidance of a Taxation liability.

16. **Intangible fixed assets**

No debits or credits would arise for a Group Company under Part 8 CTA 2009 (intangible fixed assets) if any intangible fixed asset of a Group Company was disposed of for a consideration equal to the book value shown in or adopted for the purpose of the Accounts.

17. **VAT**

No Group Company has agreed any special method of attributing, accounting or otherwise in relation to VAT with HM Revenue & Customs.

Part 3: Tax Covenant

1. **Covenant to pay**
- 1.1 Subject as provided in this schedule, the Seller covenants with the Buyer to pay to the Company an amount equal to any Tax Liability of a Group Company:
 - 1.1.1 arising in respect of any Event which occurred on or before Completion; or
 - 1.1.2 arising by reference to any income, profits or gains which were earned, accrued or received or which arose on or before Completion; or
 - 1.1.3 arising in consequence of a failure to discharge Tax by any company (other than another Group Company or Carmen or any subsidiary of Carmen):
 - 1.1.3.1 which has at any time (whether before or after Completion) been a member of a group (as defined for any relevant Tax purposes) of which the Group Company has at any time prior to Completion been a member; or
 - 1.1.3.2 which is or has at any time (whether before or after Completion) been under the control of the Seller or any person or persons that directly or indirectly controlled the Group Company prior to Completion; or
 - 1.1.3.3 with which the Group Company has otherwise been connected or associated at any time prior to Completion.
- 1.2 Without prejudice to the provisions of paragraph 1.1 of this part and subject as provided in this schedule, the Seller covenants with the Buyer to pay to the Company an amount equal to any Tax Liability of a Group Company or the Buyer where such Tax Liability relates to an amount of inheritance tax (save that any such Tax Liability of the Buyer must arise in connection with the shares in the Company) where the transfer of value (or deemed transfer of value) to which the inheritance tax liability relates occurred (or was deemed to occur) on or prior to Completion (whether or not such liability arises from the death of any person or the failure by any person to pay inheritance tax after Completion or otherwise).
- 1.3 Without prejudice to the provisions of paragraphs 1.1 to 1.2 of this part and subject as provided in this schedule, the Seller covenants with the Buyer to pay to the Buyer or the Company (only) as appropriate an amount equal to all costs and expenses reasonably and properly incurred or payable by the Buyer or a Group Company in connection with or in consequence of any matter for which the Seller is liable under this Schedule.

Part 4: VAT Group

1. **Payments**

1.1 The following provisions shall apply in the context of supplies of goods or services deemed to be made by or to the Representative Member in the period commencing immediately after the date of the last VAT return and ending on the date that the Group Companies are excluded from the Seller's VAT Group:

1.1.1 the Buyer shall procure that each Group Company pays to the Representative Member such amount as is equal to the VAT for which the Representative Member is accountable and which is properly attributable to supplies, acquisitions and importations (**Supplies**) made by the relevant Group Company (less any amount of deductible input tax that is attributable to such Supplies), such payment to be made in cleared funds on the day which is the later of three Business Days after demand is made for it and three Business Days before the day on which the Representative Member is required to make to HMRC a balancing payment for the VAT quarter current at Completion; and

1.1.2 the Sellers shall procure that the Representative Member shall pay to each Group Company such amount as is equal to any repayment of VAT due from HMRC by reference to an excess of deductible input tax over output tax that is attributable to Supplies made by the relevant Group Company while a member of the Sellers' VAT Group no later than three Business Days before the date on which the Representative Member is required to submit its VAT return for the period to which such amounts relate, but only to the extent that such repayment either was treated as an asset or otherwise taken into account in the Completion Statement or is attributable to Supplies made after Completion or is attributable to the Straddle Period.

1.2 No contribution shall be made by a Group Company under this paragraph 1 to the extent that is otherwise an amount in respect of which the Seller is liable to the Company under this Agreement.

1.3 The contribution to be made by the Group Companies (in aggregate) under this paragraph 1 in respect of supplies by the Group Companies prior to Completion where the due date for payment of the relevant VAT falls after Completion shall be £5.5 million.

1.4 The Seller shall procure that an amount equal to any payment made to the Representative Member under this paragraph 1 shall be promptly and duly accounted for to HM Revenue & Customs.

2. **Administration**

2.1 Immediately after Completion, the Representative Member shall make an application in the agreed form to HM Revenue & Customs (and shall send a copy of such application to the Buyer) for the exclusion of the Group Companies from membership of the VAT

Group, such exclusion being requested to take effect on 28 March 2015. If HM Revenue & Customs does not permit such exclusion to take effect until a date after 28 March 2015, such exclusion shall be requested to take effect at the earliest date permitted following 28 March 2015. If HM Revenue & Customs does not permit the Group Companies to continue as members of the VAT Group until 28 March 2015, the exclusion of the Group Companies from membership of the VAT Group shall be requested to take effect from the latest date permitted prior to 28 March 2015.

- 2.2 Pending the taking effect of such application and for so long thereafter as may be necessary, the Seller shall procure that the Representative Member and the Buyer shall procure that the Group Companies provide to the other such information in their possession or under their control as may be required to enable all VAT calculation, reporting and record-keeping obligations to be complied with.
- 2.3 The Seller shall procure that the Representative Member shall keep the Buyer and the Group Companies fully informed regarding the status of the application made pursuant to paragraph 2.1 above, including providing copies of all correspondence with HM Revenue & Customs relating to such application.

Part 5: Miscellaneous: including exclusions and limitations, conduct of claims and payments

1. Reliefs and Corresponding benefits

1.1 Where:

1.1.1 a Tax Liability of a Group Company has been discharged and has resulted in a Relief for a Group Company or the Buyer which would not otherwise have arisen (a "**Relevant Relief**"); and

1.1.2 the Seller has made a payment in accordance with this schedule 4 in respect of such Tax Liability pursuant to a Tax Claim,

the provisions of paragraph 1.2 of this part shall apply.

1.2 Where this paragraph 1.2 applies, then five Business Days after the later of:

1.2.1 a Group Company or a company to which the Relevant Relief is surrendered by way of Group Relief utilising the Relevant Relief (or receiving the Relevant Relief in the case of a repayment of Tax); and

1.2.2 the auditors for the time being of the Company certifying (at the request and cost of the Seller) the existence and quantum of the Relevant Relief,

an amount equivalent to the lesser of:

1.2.3 the amount of Tax which the Group Company (or company to which the Relevant Relief is surrendered by way of Group Relief) would have been liable to pay but for the utilisation of the Relevant Relief or the amount of the repayment of Tax obtained (less an amount equal to any costs and expenses reasonably incurred by the Buyer or the Group Company in obtaining the Relevant Relief); and

1.2.4 the amount paid by the Seller in respect of the Tax Liability giving rise to the Relevant Relief save to the extent that such amount constituted a reimbursement of the costs and expenses reasonably and properly incurred by the Buyer or the Group Company in obtaining the payment from the Seller and payment has not previously been made by the Seller in respect of such costs and expenses in respect of a Tax Claim under paragraph 1.3 of part 3,

shall first be set off against any payment then due from the Seller pursuant to a Tax Claim and secondly, to the extent that there is an excess, be refunded save to the extent that any amount paid by the Seller in respect of the Tax Liability in question has previously been refunded under any provision of this Agreement.

1.3 For the purposes of this paragraph 1 of this part, a company shall be regarded as utilising a Relevant Relief on the last date upon which the company would have been obliged to

make an actual payment of Tax (which it would otherwise have had to have paid but for the Relevant Relief) or, in the case of a Relevant Relief consisting of a right to repayment of Tax, the date on which a Group Company receives cleared funds in respect of such repayment.

1.4 Nothing in paragraph 1 of this part shall oblige any Group Company to utilise a Relevant Relief in priority to any other Relief then available to it or to maximise the amount of any Relevant Relief but, subject to the above, the Company shall use its reasonable endeavours to utilise and maximise any Relevant Reliefs.

1.5 If the Buyer or any Group Company discovers that a Relevant Relief has been utilised or obtained, the Buyer shall, or shall procure that the Group Company concerned shall, as soon as reasonably practicable give reasonable details to the Seller and the Buyer shall, or shall procure that the Group Company concerned shall, supply to the Seller such information as is available to the Buyer or Group Company that the Seller reasonably requires to verify the amount of the Relevant Relief.

2. **Third party recovery**

2.1 If the Seller has paid an amount in accordance with this schedule 4 in full discharge of a Tax Claim and a Group Company or the Buyer has received a payment or obtained a reimbursement, refund, credit or set-off from any person (other than the Buyer or a Group Company) in respect of the Tax Liability giving rise to the Tax Claim, an amount equal to the lesser of:

2.1.1 the amount paid by the Seller pursuant to the Tax Claim in respect of the Tax Liability in question save to the extent that such amount constitutes a reimbursement of the costs or expenses reasonably and properly incurred by the Buyer or the Group Company in obtaining such amount from the Seller and payment has not previously been made by the Seller in respect of such costs and expenses in respect of a Tax Claim under paragraph 1.3 of part 3; and

2.1.2 the amount received by the Buyer or the Group Company from the third party less:

2.1.2.1 any costs and expenses reasonably and properly incurred by the Buyer or Group Company in obtaining such amount from such third party; and

2.1.2.2 any Tax paid or which will be payable by a Group Company or the Buyer in respect of such receipt (or any Tax which would have been payable in respect thereof but for the availability of a Relief),

shall first be, set off against any payment then due from the Seller pursuant to a Tax Claim; second, to the extent that there is an excess, refunded to the Seller up to the amount of such excess; and third, to the extent that such excess is not exhausted, carried forward and set off against any payment becoming due from the Seller pursuant to a Tax Claim.

3. Due date for payment

3.1 Where the Seller becomes liable to make any payment pursuant to a Tax Claim, the due date for the making of the payment shall be:

3.1.1 where the payment relates to a liability of a Group Company or the Buyer to make an actual payment of Tax, the later of three Business Days prior to the last date on which that payment of Tax can be made and five Business Days after service of a notice of the Tax Demand on the Seller;

3.1.2 where the payment relates to the loss of a right to repayment of Tax, the later of the date on which the repayment would otherwise have become due and five Business Days after service of notice of the Tax Demand on the Seller;

3.1.3 where the payment relates to the loss of a Relief (other than a right to repayment of Tax), the later of three Business Days before a payment of Tax is due from the relevant Group Company which would not have been due had that Relief not been lost and five Business Days after service of notice of the Tax Demand on the Seller;

3.1.4 where the payment relates to the use or set off of a Relief, the later of three Business Days prior to the last date on which a Group Company would have been liable to make payment in respect of the relevant Tax but for such use or set off and five Business Days after service of notice of the Tax Demand on the Seller; and

3.1.5 in any other case, the date falling five Business Days after the date of service by the Buyer of a written notice on the Seller demanding payment.

3.2 If any payment required to be made by the Seller pursuant to a Tax Claim is not made by the due date then an amount equal to interest shall be payable in addition on the amount outstanding on a daily basis compounded quarterly from the due date specified in paragraph 3.1 until the date when payment is actually made at the rate specified in Clause 13.5 of this Agreement.

4. Conduct of Tax Demands

4.1 If any Tax Demand is received by or comes to the notice of the Buyer or a Group Company or the Buyer becomes aware of any other matter which could give rise to a Tax Claim the Buyer shall, as soon as reasonably practicable, give or procure to be given to the Seller written notice thereof. If any Tax Demand is received by or comes to the notice of the Seller, the Seller shall, as soon as reasonably practicable, give the Buyer notice of the Tax Demand.

4.2 As regards any Tax Demand, at the request in writing of the Seller the Buyer shall procure that the Group Company concerned shall take such action as the Seller may reasonably and promptly request to dispute, appeal or compromise the Tax Liability but subject to the Buyer and the Group Company being indemnified to their reasonable

satisfaction by the Seller against all losses, costs, damages and expenses which may be incurred as a result (including, for the avoidance of doubt and without limitation, any Tax that has to be paid before a Tax Demand can be appealed) **provided that:**

- 4.2.1 the Buyer shall not be required to delegate, or to procure that the relevant Group Company delegates, the conduct of such action to the Seller;
 - 4.2.2 the Buyer shall not be required to make or procure that the relevant Group Company makes a formal appeal to any tribunal, court, appellate body or judicial authority unless the Seller, at its own expense and after disclosure of all relevant information and documents, obtain and deliver to the Buyer an opinion from appropriate counsel, who has been approved for the purpose by the Buyer (such approval not to be unreasonably withheld or delayed) and who has specialised in relevant Tax matters for a minimum of ten years, that the appeal will, on the balance of probabilities, be successful;
 - 4.2.3 neither the Buyer nor any Group Company shall be required by this paragraph 4 to take any action (a "**Relevant Action**") which is materially different from the action that would have been taken by or on behalf of the Seller or Group Company in relation to the Tax Demand had there been no change of ownership of the Group Company, on the assumption that the cost of taking the Relevant Action would have been weighed against the likely consequences of the Relevant Action (including, but not limited to, Tax, financial and reputational consequences), judging such consequences in a reasonable and economically balanced way and also on the assumption that the same business continues to be carried on by the Group Company;
 - 4.2.4 no material written communication pertaining to the Tax Demand shall be sent to the relevant Tax Authority without the prior written approval of the Seller (such approval not to be unreasonably withheld or delayed).
- 4.3 The Buyer or the relevant Group Company shall, without reference to the Seller, be entitled to admit, compromise, settle, discharge or otherwise deal with a Tax Demand on such terms as it may, acting reasonably, think fit and without prejudice to any right or remedy under this schedule or this Agreement:
- 4.3.1 if the Seller has not made the request and provided the indemnity referred to in paragraph 4.2 by the date being ten Business Days prior to the last date on which an appeal may be made against the Tax Liability to which the Tax Demand relates provided that the Seller has had notice and a written reminder of the Tax Demand;
 - 4.3.2 upon the expiry of any period prescribed by applicable legislation for the making of an appeal against either the Tax Demand in question or the decision of any court or tribunal in respect of any such Tax Demand, as the case may be;

- 4.3.3 if any action or other step is taken or legal proceedings are started to put the Seller into liquidation, administration or receivership or to enter into arrangements with its creditors pursuant to part I Insolvency Act 1986.
- 4.4 The Buyer shall procure that the Seller and its duly authorised agents are (on reasonable notice in writing to the Buyer) afforded such reasonable access to the books, accounts, personnel, correspondence and documentation of the Group Companies and such other reasonable assistance as may be reasonably required to enable the Seller to exercise its rights under this paragraph 4.
- 4.5 The parties acknowledge that certain services in relation to Tax are to be provided by a member of the Seller's Group to the Group Companies under the terms of the Transitional Services Agreement. The parties acknowledge that a member of the Seller's Group may therefore satisfy or perform the actions or obligations of the Buyer and/or a Group Company under this paragraph 4 as agent of the same.
- 5. Filing of Tax returns**
- 5.1 Subject to the provisions of paragraph 4, this paragraph 5 and paragraph 7, the Seller or its duly authorised agents:
- 5.1.1 prepare and submit (or procure the preparation and submission all computations and returns relating to Taxation; and
- 5.1.2 prepare and submit (or procure the preparation and submission of all claims, elections, surrenders, disclaimers, statements, notices and consents for Taxation purposes; and
- 5.1.3 deal with all correspondence, enquiries or audits involving any Tax Authority relating to the above,
- (all documents referred to in paragraphs 5.1.1, 5.1.2 and 5.1.3 being "**Tax Documents**") in respect of all Tax periods of each Group Company ending on or before Completion (the "**Pre-Completion Tax Periods**").
- 5.2 Subject to paragraphs 5.3 and 5.4, the Seller or its duly authorised agents shall deliver all Tax Documents relevant to Pre-Completion Tax Periods ("**Pre-Completion Tax Documents**") that are required to be authorised and signed by any Group Company to the Buyer for authorisation and signing. If a time limit applies in relation to the submission of any such Pre-Completion Tax Document, the Seller shall ensure that the Buyer receives the Pre-Completion Tax Document within a sufficient period before the expiry of the time limit so as to provide the Buyer and/or its agents with a reasonable opportunity to review and comment upon the same, which in the case of a corporation tax return shall be no later than fifteen (15) Business Days before the expiry of the time limit.
- 5.3 The Buyer or its agents shall:
- 5.3.1 subject to paragraph 5.3.2 and 5.3.3 below, procure that each Group Company shall cause any Pre-Completion Tax Document delivered to it under paragraph

- 5.2 to be authorised and signed as soon as reasonably practicable by and on behalf of the relevant Group Company, and submitted to the appropriate Tax Authority as soon as reasonably practicable (and in any event within any relevant time limit provided that the Seller has complied with paragraph 5.2);
- 5.3.2 be entitled to request such further information from the Seller or its agents in relation to the Pre-Completion Tax Documents as may be reasonably required by the Buyer to enable it to reasonably determine the completeness or accuracy of the same but, for the avoidance of doubt, the Buyer shall be under no obligation to make any enquiry as to the completeness or accuracy of any Pre-Completion Tax Document and shall be entitled to rely entirely on the assumption that any Pre-Completion Tax Document prepared by the Seller or its agents is complete and accurate in all respects; and
- 5.3.3 be under no obligation to procure the authorisation, signing or submission to a Tax Authority of any Pre-Completion Tax Document delivered to it under paragraph 5.2 which it considers in its reasonable opinion to be fraudulent, false, misleading or not compliant with the law.
- 5.4 Subject to and in accordance with the provisions of this paragraph, the Seller shall procure that:
- 5.4.1 the Buyer is kept fully informed of the progress of all Tax matters for which the Seller is responsible under this paragraph 5;
- 5.4.2 the Buyer receives copies of, or the relevant extracts from, all material correspondence to, or from, any Tax Authority and all notes of any material meetings or calls with any Tax Authority relevant to the Tax matters for which the Seller is responsible under this paragraph 5;
- 5.4.3 the Buyer receives for its or its agents' review and comment drafts of any Pre-Completion Tax Documents which the Seller proposes are to be submitted to a Tax Authority and any reasonable written comments of the Buyer in relation to such documents are adopted. If a time limit applies in relation to the submission of any Pre-Completion Tax Document, the Seller shall ensure that the Buyer receives such drafts of the Pre-Completion Tax Document within a sufficient period before the expiry of the time limit so as to provide the Buyer and/or its agents with a reasonable opportunity to review and comment upon the same; and
- 5.4.4 the Buyer is consulted fully in relation to the matters referred to in paragraph 5.2 above.
- 5.5 The Buyer shall procure that any Pre-Completion Tax Documents received by it or a Group Company from a Tax Authority or any third party are sent to the Seller as soon as reasonably practicable.

- 5.6 Subject to the provisions of paragraph 4, this paragraph 5 and paragraph 7, the Buyer or its duly authorised agents (which, in accordance with paragraph 5.11, may include a member of the Seller's Group under the terms of the Transitional Services Agreement) shall:
- 5.6.1 prepare, submit and deal with all Tax Documents in respect of the Straddle Period ("**Straddle Period Tax Documents**"); and
 - 5.6.2 deal with all other matters which relate to Taxation including, without limitation, any correspondence, enquiry, dispute, audit, negotiation or settlement involving any Tax Authority in respect of the Straddle Period.
- 5.7 The Buyer shall procure that to the extent that the liability of a member of the Seller's Group under parts 2 or 3 of this Schedule or the right of a member of the Seller's Group to payment, set-off or credit under this Schedule may be affected:
- 5.7.1 the Seller is kept fully informed of the progress of all matters relating to the Taxation affairs of the Group Companies in relation to the Straddle Period;
 - 5.7.2 the Seller receives copies of, or the relevant extracts from, all material correspondence to, or from, any Tax Authority and notes of (or the relevant extracts from notes of) any material meetings or calls with a Tax Authority insofar as it is relevant to the matters referred to in paragraph 5.6 above;
 - 5.7.3 the Seller receives for its or its agents' review and comment drafts of, or relevant extracts from, any Straddle Period Tax Documents which the Buyer proposes are to be submitted to a Tax Authority and any reasonable written comments of the Seller in relation to such documents are adopted (but only to the extent that the liability of a member of the Seller's Group under parts 2 or 3 of this Schedule or the right of a member of the Seller's Group to payment, set-off or credit under this Schedule are reasonably likely to be affected by such documents). If a time limit applies in relation to the submission of any Straddle Period Tax Document, the Buyer shall ensure that the Seller receives such drafts within a sufficient period before the expiry of the time limit so as to provide the Seller and/or its agents with a reasonable opportunity to review and comment upon the same; and
 - 5.7.4 the Seller is consulted fully in relation to the matters referred to in paragraph 5.6 above and any reasonable written comments of the Seller are taken into account to the extent that the liability of the Seller under parts 2 or 3 of this Schedule or right to payment, set-off or credit under this Schedule may be affected.
- 5.8 The Seller shall procure that the Buyer and its duly authorised agents are (on reasonable notice in writing to the Seller) afforded such reasonable access (during normal working hours) to the books, accounts, personnel, correspondence and documentation of a company in the Seller's Group or as are in the possession of any member of the Seller's Group or their agents and (pursuant to the terms of the Transitional Services Agreement)

such other reasonable assistance as may be reasonably required to: (i) enable the Buyer to discharge its obligations or exercise its rights under this paragraph 5; [or (ii) enable the Buyer to ascertain the Tax consequences which would arise on the disposal or other realisation of any asset owned by a Group Company as at the date of Completion]³.

- 5.9 The Buyer shall procure that the Seller and its duly authorised agents are (on reasonable notice in writing to the Buyer) afforded such reasonable access (during normal working hours) to the books, accounts, personnel, correspondence and documentation of the Group Companies and such other reasonable assistance as may be reasonably required to enable the Seller to discharge its obligations or exercise its rights under this paragraph 5.
- 5.10 This paragraph 5 shall operate without prejudice to the provisions of paragraphs 4 and 7 of this part.
- 5.11 The parties acknowledge that certain services in relation to Tax are to be provided by a member of the Seller's Group to the Group Companies under the terms of the Transitional Services Agreement and that a member of the Seller's Group may therefore satisfy or perform the actions or obligations of the Buyer and/or a Group Company under this paragraph 5 as agent for the same. In performing such services, the parties acknowledge and agree that account shall be taken of the Seller's rights under this paragraph 5.
- 5.12 For the avoidance of doubt, paragraphs 5.6 and 5.7 shall not apply in respect of tax Documents and other matters relating to the Seller's VAT Group which shall be the responsibility of the Representative Member, subject to paragraph 2 of part 4

6. Exclusions and limitations

- 6.1 The Seller shall not be liable in respect of any Tax Claim unless written notice of such claim is given to the Seller prior to the expiry of the period of 15 Business Days following the sixth anniversary of the end of the accounting period of the Company current at Completion.
- 6.2 Subject to paragraph 6.3 of this part, the Seller shall not be liable in respect of any Tax Claim in respect of any Tax Liability to the extent that:
- 6.2.1 it was discharged prior to Completion and such discharge was taken into account in the Completion Statement;
- 6.2.2 provision or reserve for the Tax Liability is made in the Completion Statement or such Tax Liability is otherwise taken into account in the Completion Statement;
or

³ Subject to instruction

- 6.2.3 it arises or is increased as a result of any Relevant Change in Law other than a change intended to counter tax avoidance; or
 - 6.2.4 it arises as a result of a failure by the Buyer to comply with any of its obligations under this Agreement; or
 - 6.2.5 it arises in respect of the Deed of Release; or
 - 6.2.6 it arises in consequence of any change (including, for the avoidance of doubt, any change with retrospective effect) after Completion in any accounting policy or practice adopted by a Group Company, except where such change was necessary in order to comply with any applicable legal, regulatory, financial reporting, accounting or other requirement in force before Completion;
 - 6.2.7 the Tax Liability (or cost thereof) has been borne by a person other than a Group Company or the Buyer at no cost or loss to the Buyer or any Group Company; or
 - 6.2.8 save in the case of a claim under the Tax Warranties in paragraph 11 and 16 of Part 2, it would not have arisen but for a transaction entered into or other voluntary act on the part of the Buyer or a member of the Buyer's Group (at any time) or, after Completion, by a Group Company which is neither (a) in the ordinary course of the relevant company's normal business, (b) pursuant to a legally binding obligation entered into before Completion nor (c) at the written request of the Seller and the Buyer was aware or ought reasonably to have been aware (having made due enquiries) would give rise to the Tax Liability.
- 6.3 Notwithstanding any other provision in this Agreement, the limitations set out in paragraph 6.2.4 of this part shall not apply to limit the liability of the Seller arising pursuant to paragraph 1.1.3 of part 3.
- 6.4 The limitations in paragraph 6.2 shall also apply to costs and expenses within paragraph 1.3 of part 3, reading references in paragraph 6.2 to Tax Liability as references to costs and expenses. In addition, the Seller shall not be liable in respect of any Tax Claim in respect of any costs and expenses within paragraph 1.3 of part 3 to the extent that such costs and expenses have been taken into account in reducing a repayment under paragraph 1.2.4 or 2.1.1 of this part 5.
- 6.5 The Seller shall not be liable in respect of any Tax Claim in respect of any Tax Liability to the extent that it relates to any of the following (in respect of which amounts have been taken into account in the Group Cash Amount):-
- 6.5.1 the release of any onerous lease provisions;
 - 6.5.2 PAYE and secondary Class 1, Class 1A or Class 1B national insurance contributions in respect of the February 2015 payroll; or

6.5.3 VAT chargeable in respect of supplies by the Group Companies where the due date for payment of the relevant VAT falls after Completion.

7. Group Relief Surrenders and Transfer Pricing Adjustments

7.1 If the Seller so requires, the Buyer shall procure that all or any part of the Reliefs or Tax benefits which have not been taken into account in the Completion Accounts and which may be made available to the Seller's Group by way of Group Relief are made available to the Seller or any member of the Seller's Group for no payment to the extent that such Reliefs relate to a period ended on or before Completion. The Buyer shall procure that the relevant Group Company shall take without delay (and in any event within any applicable statutory time limit) all such steps as may reasonably be required by the Seller to effect any Group Relief. If it is not lawful for those Reliefs or Tax benefits to be made available to the Seller's Group for no payment (subject to paragraph 7.2), the parties shall co-operate in good faith (at the cost and expense of the Seller) with a view to implementing so far as possible economically equivalent measures which are lawful.

7.2 The Buyer shall procure that all or any part of the Reliefs or Tax benefits which have not been taken into account in the Completion Accounts and which may be made available to the Seller's Group by way of Group Relief in respect of the Straddle Period are made available to the Seller or any member of the Seller's Group. The Buyer shall procure that the relevant Group Company shall take without delay (and in any event within any applicable statutory time limit) all such steps as may reasonably be required by the Seller to effect any Group Relief. The parties acknowledge that payment has been made for such Group Relief in the amount referred to in Schedule 3. In determining whether a Relief or other tax benefit is attributable to the part of the Straddle Period ended on Completion, it shall be assumed that the Group Companies have an accounting period beginning on the first day of the Straddle Period and ending on (but including) Completion and the amount of Reliefs treated as being attributable to the part of the Straddle Period ended on Completion shall be the lesser of (i) the amount of Relief actually available pursuant to the relevant statutory provisions; and (ii) the amount that would constitute Reliefs or other tax benefits for such notional accounting period based on the actual results of, and transactions occurring or deemed to occur in, such period. In the event that the amount of Reliefs surrendered by way of Group Relief pursuant to this paragraph 7.2 is less than the amount referred to in Schedule 3, the balance shall constitute a payment for Group Relief for the previous period.

7.3 The Buyer shall procure that no voluntary administrative action is taken by any Group Company after Completion (whether by disclaiming any Relief, withdrawing or revoking any claim or consent or otherwise) which it knows or ought reasonably to know would or is likely either to prejudice or reduce the availability of any Group Relief which has been surrendered or allocated prior to Completion in respect of periods ended before Completion or which is to be surrendered or allocated to any member of the Seller's Group pursuant to paragraph 7.1 or paragraph 7.2.

7.4 If the profits arising in respect of any transaction to which any member of the Seller's Group and any Group Company are party are increased for Tax purposes (or the losses

are reduced) such that one of those parties (the “**Taxed Person**”) realises profits which are greater (or losses which are lower) for Tax purposes than it would otherwise have realised had the profits or losses been calculated by reference to the actual economic terms of the transaction:

7.4.1 the parties shall (and shall procure that the relevant members of the Seller’s Group or the Group Companies shall) co-operate and make all such claims and elections as may be necessary to ensure that, to the extent possible, any other of those parties who does not suffer the increased profits (or reduced losses) (the “**Relieved Person**”) is able to claim corresponding adjustments in respect of the increased profits (or reduced losses) suffered by the Taxed Person;

7.4.2 where the Relieved Person is a Group Company, the Buyer shall procure that such Group Company shall to the extent possible surrender to the Taxed Person for no payment such Reliefs as are equivalent to the Reliefs received by the Relieved Person as a result of the corresponding adjustments (a “**Corresponding Relief**”); provided that where it is not lawful for the Corresponding Reliefs to be surrendered for no consideration, the parties shall co-operate in good faith with a view to implementing so far as possible economically equivalent measures which are lawful; and

7.4.3 paragraph 7.3.2 shall not apply to the extent that the Corresponding Relief was taken into account in the Completion Accounts.

8. **Buyer’s Undertaking**

The Buyer undertakes to procure that it, each member of the Buyer’s Group and each Group Company shall pay when due any Taxation properly assessed on the relevant company and which is not primarily attributable to a member of the Seller’s Group in circumstances where failure to pay such Taxation results or will result in a member of the Seller’s Group becoming liable in respect of such Taxation; provided that the Buyer shall not be in breach of this undertaking to the extent that it relates to Tax which is either subject to a valid Tax Claim which has not been satisfied or could be the subject of any such valid Tax Claim.

SCHEDULE 6

Warranties given by the Buyer under Clause 9

1. Incorporation

The Buyer is validly existing and is a company duly incorporated under the laws of England and Wales.

2. Authority to enter into Agreement

2.1 The Buyer has the legal right and full power and authority to enter into and perform this Agreement and any other documents to be executed by it pursuant to or in connection with this Agreement.

2.2 The documents referred to in paragraph 2.1 will, when executed, constitute valid and binding obligations on the Buyer in accordance with their respective terms.

3. Authorisation

The Buyer has taken all corporate action required by it to authorise it to enter into and perform this Agreement, and any other documents to be executed by it pursuant to or in connection with this Agreement.

SCHEDULE 7

Properties

Part 1: Freehold Properties

Owner	Property description
Non-Operational	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Non-Operational	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Part 2: Leases

Owner	Property Description	Lease Expiry
Non-Operational		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]		
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]

Part 3: Occupational Leases

Property Description	Occupational Tenant	Lease Expiry
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	
[REDACTED] [REDACTED]	[REDACTED]	
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Non-Operational		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

SCHEDULE 8

Pensions

1. **Compromise**

1.1 The Buyer will use its reasonable endeavours to:

1.1.1 reach agreement with the trustees of the BHS Pension Scheme and the BHS Senior Management Scheme to compromise the liabilities of those schemes (the "**Compromise**"); and

1.1.2 agree and implement such a Compromise as soon as reasonably practicable following Completion.

2. **Pension Contributions**

2.1 The Seller agrees that it shall make available and pay to the trustees of the BHS Pension Scheme and the BHS Senior Management Scheme £5 million in each 12 month period following Completion (the "**Seller's Pension Contribution**"), which will form half of the current ongoing annual contributions to the schemes, up to a maximum payment of £15 million over a 36 month period.

2.2 The Buyer agrees that it shall procure that the employer company of the Group Companies makes available and pays to the trustees of the BHS Pension Scheme and the BHS Senior Management Scheme (the "**Trustees**") £5 million in each 12 month period following Completion (the "**Group Pension Contribution**"), which will form half of the current ongoing annual contributions to the schemes, up to a maximum payment of £15 million over a 36 month period.

2.3 If the Compromise is implemented within 36 months of Completion, the Buyer and Seller agree that the balance (if any) of any unpaid Seller's Pension Contributions shall immediately be paid to the trustees of the BHS Pension Scheme and the BHS Senior Management Scheme, in such proportions as directed by the Buyer as necessary to implement the Compromise.

SCHEDULE 9

Limitations on Seller's liability

1. Interpretation

- 1.1 Unless specifically provided otherwise and subject to paragraphs 1.2 and 1.3, references in this schedule to a "**Claim**" are to any claim under or in connection with this Agreement (save in relation to any Tax Claim and claim under clause 5).
- 1.2 In paragraphs 3, 4.1, 7.2 and 7.3, references to a Claim shall include a Tax Claim.
- 1.3 In paragraphs 2, 4.2, 6, 10 and 15.3 references to a Claim shall include a Tax Warranty Claim.

2. Financial limits

- 2.1 The Seller shall not be liable in respect of any Claim and the Buyer shall not be entitled to bring any Claim against the Seller, unless the liability of the Seller in respect of that Claim would exceed £500,000, excluding any liability for costs and interest. For the purposes of this paragraph 2.1, the Buyer may bring a single Claim which is based on a series of related events or circumstances which could otherwise give rise to a number of separate Claims.
- 2.2 The Seller shall not be liable in respect of any Claim unless its liability in respect of all Claims (excluding all Claims for which it has no liability by reason of paragraph 2.1) would exceed £1.5 million excluding any liability for costs and interest.
- 2.3 The aggregate liability of the Seller for all Claims including any liability for costs and interest shall not exceed £5 million.

3. Notices

If the Buyer becomes aware of any matter which, taking no account of paragraph 2.2 for these purposes, gives or might give rise to a Claim, the Buyer shall give written notice to the Seller as soon as reasonably practicable, and in any event on or before the date falling 10 Business Days after the date on which the Buyer becomes aware of that matter. The Buyer's notice shall specify the legal and factual basis of the Claim or potential Claim and the Buyer's best estimate of the amount of the Claim or potential Claim, provided that any failure by the Buyer to fulfil its obligations under this paragraph 3 shall be without prejudice to its entitlement to bring a Claim in respect of the relevant matter.

4. Time limits

- 4.1 The Seller shall not be liable in respect of any Claim unless notice of that Claim is received by it:

- 4.1.1 in the case of a Tax Claim, on or before the expiry of the period of 15 Business Days following the sixth anniversary of the end of the accounting period of the Company current at Completion; and
 - 4.1.2 in the case of any other Claim, on or before the first anniversary of the Completion Date.
- 4.2 The Seller shall not be liable in respect of any Claim (if not previously satisfied, settled or withdrawn) unless legal proceedings have been validly issued and served on the Seller on or before the date falling 180 days after the end of the period specified in paragraph 4.1.2 or, in the case of a Tax Warranty Claim, on or before the date falling 180 days after the end of the period specified in paragraph 4.1.1 or, in the case of a liability referred to in paragraph 10 and if later, 180 days after the date on which the liability becomes an actual liability of any Group Company which is due for payment and capable of being quantified.

5. **Losses**

The Seller shall not be liable under this Agreement in respect of any loss of profit, loss of goodwill or any indirect or consequential losses.

6. **Disclosure and knowledge**

The Seller shall not be liable in respect of any Claim to the extent that the matter giving rise to the Claim is disclosed in the Disclosure Letter or in any of the documents listed in the index of disclosure documents attached to the Disclosure Letter, in sufficient detail to identify the nature of the matter disclosed.

7. **Matters included in the Accounts, January 2015 Balance Sheet, Completion Statement or Schedule 3**

- 7.1 The Seller shall not be liable in respect of a Claim to the extent that the Accounts or the January 2015 Balance Sheet include any provision, accrual or other liability, reserve or allowance for any matter relating to the subject of the Claim or to the extent that any such matter is the subject of a note in the Accounts or January 2015 Balance Sheet.
- 7.2 The Buyer acknowledges that any claim it has in relation to the Group Companies' Debt shall be through the Completion Statement and not through the Warranties.
- 7.3 The Buyer and the Seller confirm that in agreeing the amount of the Group Cash Amount, they have agreed certain values in relation to particular items, as set out in Schedule 3. Following Completion there shall be no adjustments to the agreed values or amounts payable in relation to such items and the Buyer shall not be entitled to make any claims in relation to such items or the amounts payable in relation to them.

8. **Buyer's actions**

The Seller shall not be liable in respect of a Claim to the extent that the matter giving rise to the Claim results from:

- 8.1 any act or omission done or omitted to be done in accordance with the terms of this Agreement or otherwise, at the written request of or with the written approval of the Buyer or any other member of the Buyer's Group; or
- 8.2 any act or omission done or omitted to be done on or after Completion by or on behalf of the Buyer or any member of the Buyer's Group or the Buyer's successors in title to the Shares, in either case in circumstances where the Buyer knew or ought reasonably to have known that such act or omission would or might give rise to a Claim, other than any act or omission in the ordinary course of business or under a legally binding obligation entered into or which arose on or before Completion; or
- 8.3 any breach by the Buyer of its obligations under this Agreement; or
- 8.4 any change after Completion in the accounting policies or practices used in preparing any Group Company's Accounts or in the accounting reference date of any Group Company.

9. **Changes in law and regulation**

9.1 The Seller shall not be liable in respect of any Claim to the extent that the matter giving rise to the Claim results from:

- 9.1.1 any act, event, or omission after the date of this Agreement compelled by law; or
- 9.1.2 the enactment, amendment, or change in the generally accepted interpretation or application, of any legislation, rule or regulation, or any change in the practice of any governmental, regulatory or other body (including a Tax Authority) after the date of this Agreement (whether or not having retrospective effect) or the imposition of any Tax not actually in force at the date of this Agreement or any change, after the date of this Agreement, in the rates of Taxation or availability of any Relief; or
- 9.1.3 any change after the date of this Agreement of any generally accepted accounting principles, procedure or practice; or
- 9.1.4 any change in accounting for Taxation policy, bases or practice of the Buyer or any of the Buyer's Group introduced or having effect after the date of this Agreement.

10. **Contingent liabilities**

The Seller shall not be liable in respect of any matter which may give rise to a Claim until such matter constitutes or gives rise to an actual liability of any Group Company which is due for payment and is capable of being quantified. This paragraph shall not relieve the Buyer from any obligation to give notice of that matter in accordance with paragraph 3 or, in the case of a Tax Warranty Claim, in accordance with paragraph [●] of schedule [●].

11. **Third party claims**

11.1 If any third party asserts a claim against the Buyer or any Group Company which gives rise or might give rise to a Claim ("**Third Party Claim**") the Buyer shall, and shall ensure where appropriate that the relevant Group Company shall, consult with the Seller as soon as reasonably practicable with regard to any actual or proposed developments relating to the Third Party Claim in question, take reasonable account of the views of the Seller before taking action in relation to the same, and provide the Seller (on request from time to time) with a status report with regard to the matter.

12. **Buyer's remedies**

12.1 The Buyer irrevocably and unconditionally waives any right it may have to rescind this Agreement for any misrepresentation, whether or not contained in this Agreement, or to terminate this Agreement for any other reason other than in accordance with its express terms.

12.2 The Buyer irrevocably and unconditionally waives any right it may have to bring a claim or take any proceedings against the Seller or any of the Seller's advisers for misrepresentation, whether in equity, tort or under the Misrepresentation Act 1967, in respect of any misrepresentation, whether or not contained in this Agreement and whether innocently or negligently made. The Buyer's sole remedy in respect of any such misrepresentation shall be an action for breach of contract under the terms of this Agreement if and to the extent that the subject matter of the misrepresentation in question constitutes a breach of the Warranties.

13. **Fraud**

Nothing in this Schedule 9, part 2 of Schedule 5 (Tax Schedule) or elsewhere in this Agreement applies to limit or exclude the liability of the Seller or any remedy of the Buyer for fraudulent misrepresentation or any other fraud by the Seller, any member or the Seller's Group or any connected person of any such entity.

14. **Net financial benefit**

The Seller shall not be liable under this Agreement in respect of any Losses suffered by the Buyer or a Group Company to the extent of any corresponding savings by or net quantifiable financial benefit to any member of the Buyer's Group arising from such Losses or the facts giving rise to such Losses.

15. **General**

15.1 The Buyer acknowledges that the Buyer's Solicitors have explained to it the effect of paragraph 12 and accepts that those provisions are reasonable in all the circumstances.

15.2 The Buyer shall not be entitled to recover any loss or amount (including any amount claimed under any indemnity claim or the Tax Covenant) more than once under this Agreement.

15.3 Without limiting any obligations it may have at law or in equity, the Buyer shall mitigate, and shall cause each Group Company to mitigate, any loss or liability which may give rise to a Claim.

SCHEDULE 10

Completion Statement

Part 1: Preparation of the Completion Statement

1. DEFINITIONS

In this schedule the following words and expressions shall have the following meanings unless expressly provided otherwise:

"Completion Statement" means the statement of Debt of the Group Companies as at the Completion Date as agreed or determined in accordance with Part 1 of this Schedule 10;

"Disagreement Notice" has the meaning given in paragraph 2.2 of Part 1 of this Schedule 10;

"Draft Completion Statement" has the meaning given in paragraph 2.1 of Part 1 of this Schedule 10; and

"Expert Accountant" means PricewaterhouseCoopers LLP.

2. PREPARATION OF THE COMPLETION STATEMENT

2.1 The Seller shall ensure that a draft of the Completion Statement ("**Draft Completion Statement**") is prepared and delivered to the Buyer on or before the date falling 30 Business Days after Completion. The Draft Completion Statement shall be drawn up in accordance with the instructions and the accounting policies, practices, methods and proceedings set out in Part 2 of this schedule.

2.2 The Draft Completion Statement shall be deemed agreed by the Buyer on the date falling 10 Business Days after the date on which those documents are first received by the Buyer unless during that period the Buyer gives notice to the Seller ("**Disagreement Notice**") that it disagrees with the Draft Completion Statement. Any Disagreement Notice shall include reasonable details of the reasons for any disagreement and any suggested adjustment, together with reasonable supporting evidence for each adjustment, including any relevant working papers.

2.3 If a Disagreement Notice is validly served by the Buyer, the Seller and the Buyer shall attempt in good faith to resolve any matters in dispute and agree a final form of the Draft Completion Statement on or before the date falling 10 Business Days after the date on which the Seller receives the Disagreement Notice. In the absence of agreement between the Seller and the Buyer within that time period, an Expert Accountant shall be instructed in accordance with paragraph 3 to deliver a determination of the matters in dispute and a revised Draft Completion Statement adjusted to take account of the matters determined by him.

- 2.4 The Draft Completion Statement, as agreed, deemed agreed or determined in accordance with this Schedule 10, shall be final and binding on the parties for all purposes and shall then constitute the Completion Accounts and the Completion Statement for the purposes of this Agreement.
- 2.5 The Buyer and the Seller shall promptly provide to each other and/or each other's accountants and professional advisers access to and copies of all such documents and information as are in their possession or under their control (other than the working papers of any of their professional advisers), and access upon reasonable notice and during normal working hours to all relevant personnel as may in any case reasonably be requested for the purpose of preparing or reviewing the Draft Completion Statement and any Disagreement Notice. Nothing in this paragraph 2.5 shall require any party to disclose or provide access to any documents or information which are legally privileged or which that party is required by law or other legally binding obligation to keep confidential. However, where a document contains information only part of which is legally privileged or so required to be kept confidential, the Seller and the Buyer (as appropriate) shall be obliged to remove from that document such legally privileged or confidential information and shall supply such redacted document to the other party.

3. **APPOINTMENT OF THE EXPERT ACCOUNTANT**

- 3.1 The Buyer and the Seller agree to cooperate with each other in relation to the appointment of the Expert Accountant, including in relation to signing the reasonable terms of engagement of such Expert Accountant and (where relevant) agreeing to any terms and conditions required by the Institute of Chartered Accountants in England and Wales, in order for them to act as the appointing body under paragraph 2.3, and agree not to withhold or delay unreasonably their consent to the appointment of such Expert Accountant under this paragraph 3.
- 3.2 In making his determination, the Expert Accountant shall:
- 3.2.1 (save as set at below) decide on the procedure and timetable to be followed in the determination, save that such procedure shall allow both the Seller and the Buyer and their respective professional advisers to make written and oral representations to the Expert Accountant, shall require the Seller and the Buyer to provide each other with information and documents in accordance with paragraph and with copies of or access to any information or documents provided to the Expert Accountant under paragraph [●] at the same time as the same are provided or made available to the Expert Accountant, and shall permit each party to be present during any oral submissions made by the other party to the Expert Accountant;
 - 3.2.2 be entitled to take legal advice on any matter relevant to his determination; and
 - 3.2.3 be required to determine only those matters that this Agreement provides should be determined by him (which may include a determination as to the interpretation of this Agreement) and for the purposes of his determination, the Expert Accountant

shall not be entitled to take into account matters not referred to or taken account in the Draft Completion Statement and or the Disagreement Notice whether or not known about or discoverable at the date of the relevant document.

- 3.3 In giving his determination, the Expert Accountant shall act as an expert not as an arbitrator, shall not be obliged to give reasons for his determination and his determination (including any calculation, statement or accounts required to be provided by him by this Agreement) shall, save in the case of fraud or manifest error, be final and binding on all parties for all purposes. Other than in the case of fraud or manifest error, no right of appeal shall exist in relation to that determination and neither the Buyer, nor the Seller nor the Expert Accountant shall be entitled to appeal or bring any case (either on a point of law or fact) in relation to it before any court or other tribunal. Where there is a manifest error in any determination provided by the Expert Accountant under this Agreement, the relevant part of the determination shall be void and shall be referred back to the Expert Accountant for correction. The Expert Accountant shall be required to deliver his determination and any calculation, statement or accounts required to be provided by him by this Agreement to the Buyer and the Seller in writing as soon as reasonably practicable after his appointment.
- 3.4 The costs and expenses of the Expert Accountant together with VAT thereon ("**Costs**") shall, be borne as determined by the Expert Accountant in his sole discretion having regard to the relative merits of the arguments of each party and, in default of a determination by the Expert Accountant, as to 50% by the Seller and as to 50% by the Buyer.
- 3.5 The Seller and the Buyer shall each use all reasonable endeavours to co-operate with the Expert Accountant to enable him to reach his determination within the time period set by this Agreement including by co-operating with any timetable and procedure set by the Expert Accountant. In particular, the Seller and the Buyer shall:
- 3.5.1 each provide the Expert Accountant with access to the same documents, information and personnel as they are required to make available to each other pursuant to paragraph [●] (such documents, information and access to be on the same terms and subject to the same restrictions as provided for in paragraph [●]) and any other information as reasonably requested from time to time by the Expert Accountant in his absolute discretion; and
- 3.5.2 to keep all of their relevant accounting records, working papers, books and records up to date for such purpose.

For the avoidance of doubt, nothing in this paragraph 3.5 shall require any party to disclose to any person any information which is legally privileged or which that party is required by law or other legally binding obligation to keep confidential. However, where a document contains information only part of which is legally privileged or so required to be kept confidential, the Seller and the Buyer (as appropriate) shall be obliged to remove from that document such legally privileged or confidential information and shall supply

such redacted document to the Expert Accountant and the other party. In the event that either the Seller or the Buyer does not co-operate with or grant access to or supply any document or information within any time specified by the Expert Accountant, the Expert Accountant shall be entitled to make such assumptions for the purposes of making his determination (including any determination as to costs) as a result of that failure to co-operate, grant access or supply such document or information as he shall in his absolute discretion determine to be appropriate.

3.6 In the event that any Expert Accountant appointed under paragraph 3.1 becomes unwilling or incapable of acting then the matters to be determined by the Expert Accountant shall be referred for determination under this paragraph 3 to:

3.6.1 an independent chartered accountant whose identity is agreed between the Seller and the Buyer and whose terms of engagement are agreed to and signed by that accountant, the Seller and the Buyer; or

3.6.2 (if no such person is appointed and such terms of engagement are not so signed on or before the date falling 20 Business Days after the date on which an individual is first proposed by either party to the other for the purpose) such independent chartered accountant as shall be nominated on the application of either party by the President for the time being of the Institute of Chartered Accountants in England and Wales, who shall be appointed by the Buyer and the Seller on such terms of engagement as are agreed to by the Buyer, the Seller and that accountant.

Part 2: Basis of preparation of the Completion Statement

The Completion Statement shall be drawn up in accordance with the following:

1. the specific accounting policies, practices, methods, procedures and adjustments adopted by the Seller in preparation of the January 2015 Balance Sheet;
2. to the extent not covered by paragraph 1, in accordance with UK GAAP in force on the Completion Date;
3. to the extent not covered by paragraphs 1 and 2, the other accounting policies, practices, methods, procedures and estimation techniques (including in respect of the exercise of management judgement) adopted by the Seller in preparation of the Accounts.

SIGNED by a director on behalf of) *Signature*...P E Budge.....
TAVETA INVESTMENTS (NO. 2))
LIMITED) *Print Name* PAUL EVERARD BUDGE.....

SIGNED by a director on behalf of) *Signature*...Dominic Chappell
RETAIL ACQUISITIONS LIMITED)
) *Print Name*...D. CHAPPELL...
Signature... Lennart Henningson
Print Name...L. HENNINGSON...