

Form of Confidentiality Agreement

Dated

2016

- (1) HOLISTIC CAPITAL LTD
- (2) **[COUNTERPARTY TO INSERT NAME OF COMPANY AND ALL CONSORTIUM MEMBERS]**

Confidentiality Agreement

relating to the **[PROJECT DETAILS TO BE INSERTED]**

HOLISTIC CAPITAL - SAMPLE DOCUMENT

THIS AGREEMENT is made the _____ day of _____

2016

BETWEEN:

- (1) **[Insert Name of Company]**, a company registered in England and Wales (Company Registration Number **[Insert company number]** whose registered office is at **[insert registered office]** ("**the Counterparty**") and
- (2) **HOLISTIC CAPITAL LTD** of Kemp House 160 City Road, London, EC1V 2NX, UNITED KINGDOM PO ("**HCL**")

Note: Counterparty to insert details of the company and all consortium members to be collectively defined as the Counterparty

THE PARTIES AGREE THAT:

1. Definitions

1.1 In this Agreement, unless the context indicates otherwise:

1.1.1 "**Purpose**" means the consideration of all of the documents issued by the Counterparty or HCL during the process of either seeking the provision of investment capital or providing such capital, in connection with the Real Estate project referred to as **[Insert the name of the relevant project]** and

1.1.2 "**Confidential Information**" means all information of whatever nature (whether commercial, financial, technical or otherwise) that is disclosed to, or otherwise obtained by, the Bidder in connection with the Purpose. The Confidential Information may include, but is not limited to, information about current and future activities, tenants, clients, business plans and marketing plans. The Confidential Information may be contained in, or discernible from, any form whatsoever including data, drawings, films, documents and electronic and/or computer readable media, whether or not that information is marked or designated as confidential or proprietary. The Confidential Information may be communicated directly or indirectly, verbally, in document form, by demonstration in an electronic data room or otherwise to HCL through the counterparties employees, agents, advisors or contractors.

2. Confidentiality Obligations

2.1 In connection with the Purpose, the counterparty may disclose Confidential Information to HCL. In consideration of the counterparty disclosing the Confidential Information to the HCL, HCL agrees to be bound by the terms and conditions set out in this Agreement.

2.2 HCL acknowledges that the Confidential Information is of a proprietary and confidential nature and in consideration of the disclosure of the Confidential Information HCL undertakes for a period of two (2) years from the date of

receipt of the Confidential Information (except that the obligations in respect of any personal data (as defined in the Data Protection Act 1998) will continue indefinitely):

- 2.3 to treat all the Confidential Information as confidential, regardless of when it is disclosed or obtained and the form in which it is disclosed or obtained;
- 2.4 not without the counterparties prior written consent in each case to communicate or disclose any part of the Confidential Information to any person except:
 - 2.4.1 to directors, officers and employees of HCL on a need to know basis who are directly connected with the Purpose;
 - 2.4.2 to third parties engaged by HCL who are directly connected with the Purpose and who have been authorised in writing by the counterparty to receive the Confidential Information prior to disclosure; or,
 - 2.4.3 HCL's auditors and any other persons or bodies having a legal right or duty to know the Confidential Information in connection with the business of HCL;
- 2.5 to notify the counterparty as soon as possible if it is required to disclose the Confidential Information under clause 2.4.3 and to take account of the counterparties reasonable requirements in relation to such disclosure;
- 2.6 not to use or circulate the Confidential Information within its own organisation except solely to the extent necessary in connection with the Purpose or any other purpose authorised in writing by the counterparty;
- 2.7 not to use the Confidential Information in any way which would be harmful to the counterparty;
- 2.8 to ensure that all persons and bodies mentioned in clauses 2.4.1 to 2.4.3 inclusive are made aware, prior to the disclosure of the Confidential Information, of the confidential nature of that information, that they owe a duty of confidence to the counterparty, and they agree to hold that information in confidence in accordance with the terms of this Agreement. HCL must use all reasonable endeavours to ensure that such persons and bodies comply with such obligations;
- 2.9 to effect and maintain reasonable security measures in accordance with standard industry practice to safeguard the Confidential Information from unauthorised access, use and misappropriation;
- 2.10 to notify the counterparty promptly of any unauthorised use, copying or disclosure of the Confidential Information of which the Bidder becomes aware and to provide all reasonable assistance to the counterparty to terminate such unauthorised use and/or disclosure; and
- 2.11 to procure, at the request of the counterparty, for any of those persons and bodies referred to in clauses 2.4.1 to 2.4.3 inclusive to sign a separate confidentiality undertaking in such form as the counterparty may reasonably require prior to disclosure of the Confidential Information.

3. **Exceptions**

3.1 The obligations of confidentiality in clause 2 shall not apply where the Confidential Information:

- 3.1.1 is or has come into the public domain through no fault of HCL, its employees, agents or sub-contractors;
- 3.1.2 is lawfully received from an independent third party without any restriction and without any obligation of confidentiality;
- 3.1.3 is independently developed by HCL without access to, or knowledge of, or use of, the Confidential Information; or
- 3.1.4 is required by law or by order of a court of competent jurisdiction to be disclosed.

4. **Third Party Rights**

4.1 The parties do not intend that any term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties to the Agreement.

5. **Materials**

5.1 All material containing the Confidential Information, including, but not limited to, magnetic tapes, electronic document retention systems, documents, manuals, specifications, flowcharts, program listings and data file printouts ("**the Materials**"), are, and will remain, the property of the counterparty and must not be reproduced in whole or part without the counterparties prior written consent. All copies of the Materials are the counterparty's property and must include a notice stating that copyright and all other intellectual property rights in the Materials vest in the counterparty.

5.2 At the counterparty's request, and in any event upon the completion of the Purpose, HCL must promptly return to the counterparty all Materials supplied by the counterparty incorporating any Confidential Information and all copies of such information and destroy or erase any Confidential Information contained in any Materials prepared by or on behalf of HCL or recorded in any memory device. Within 14 days of such request.

6. **General**

6.1 HCL must not make or permit others to make any reference to its role in the Purpose, this Agreement, the Confidential Information, or use the name of the counterparty in any public announcements, media, promotional, marketing or sales materials or efforts without the prior written consent of the counterparty.

6.2 The Bidder acknowledges that damages may not be an adequate remedy for any breach of this Agreement and that (without prejudice to any other rights or remedies that the counterparty may be entitled to as a matter of law), the counterparty will be entitled to seek the remedies of injunction, specific performance, and other equitable relief to enforce the provisions of this Agreement.

- 6.3 If the Confidential Information includes any personal data (as defined in the Data Protection Act 1998), the Bidder undertakes to only process such data in accordance with instructions from the counterparty and to ensure that appropriate technical and organisational security measures in accordance with the Data Protection Act 1998 (and otherwise any additional measures reasonably specified by the counterparty in writing) are taken against any unauthorised or unlawful processing of such data and against accidental loss, destruction of, or damage to such data.
- 6.4 This Agreement does not constitute a licence to use the Confidential Information except to the extent that such use is necessary in connection with the Purpose or any other purpose authorised in writing by the counterparty.
- 6.5 The termination of this Agreement or the completion of the Purpose for any reason does not affect HCL's obligations or the counterparty's rights under this Agreement.
- 6.6 This Agreement constitutes the whole and only contract between the Parties relating to the Confidential Information and it supersedes and extinguishes the effect of any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the counterparty's disclosure of Confidential Information to HCL.
- 6.7 This Agreement shall be governed by and construed in accordance with English Law and is subject to the exclusive jurisdiction of the English Courts.

THIS AGREEMENT has been duly executed for and on behalf of the Parties the day and year written above.

Signed by
duly authorised for and on behalf of **HOLISTIC CAPITAL LTD**

Name: PAUL MARSH

Position: Chief Executive Officer

Signed by
duly authorised for and on behalf of **[Insert name of the counterparty company and replicate this signature block for all consortium members – each consortium member to sign individually]**

Name:

Position: