

[Print on reverse side] [Insert Address]

EXCLUSIVITY AGREEMENT

To: <<Name of Buyer>> Limited
<<Address>>
<<Address>>
<<Postcode>>

<<Date>>

Dear Sirs

<<Name of Company being acquired>>

1. DEFINITIONS

In this agreement:

"the Assets"

all assets of the Target used in the Business;

"the Business"

the Business of the Target;

"the Exclusivity"

the exclusivity period on the part of the Target contained in clause 2;

"the Exclusivity Period"

the period beginning on the date of this Agreement and ending at midnight on the date of completion of the proposed acquisition of the [Shares] and Assets] by the Buyer;

"the Transaction"

Proposed

the proposed acquisition of the [Shares] and Assets] by the Buyer;

"the Buyer"

<<Name of Buyer>> Limited/PLC, a company registered in England under company number <<Insert company number>> whose registered office is <<Insert registered office address>>;

"Shares"

the share capital of the Target;

"the Target"

<<Name of Company being acquired>> a company registered in England under company number <<Insert company number>> whose registered office is at <<Insert registered office address>>; and

"the Sellers"

<<Insert names>>.

2. **EXCLUSIVITY**

In consideration of the Buyer engaging in negotiations regarding the Proposed Transaction and incurring costs in connection with its proposed review of the business, assets and affairs of the Target, the Sellers hereby agree (subject to clause 3) that during the Exclusivity Period, none of the Sellers will directly or indirectly:

- 2.1 solicit, initiate or encourage any inquiry, discussion or proposal;
- 2.2 continue, propose to negotiate with or hold discussions or negotiations; or
- 2.3 enter into any agreement or understanding with any other person for or in connection with the sale or other disposal of some or all of the Shares by the Sellers or of the whole or any substantial part of the Assets or the Business by the Target.

The Sellers further agree that during the Exclusivity Period neither of them will provide any information to or assist any person (other than the Buyer and its representatives and advisors) for the purpose of evaluating or determining whether to make or pursue any inquiry or proposal with respect to any such sale or disposal.

Nothing in this agreement shall prevent the Sellers or any of the directors, employees, agents or advisers of the Target from discussing the Proposed Transaction with all appropriate regulatory authorities as required by law whether in the United Kingdom or overseas.

3. **REVOCATION OF EXCLUSIVITY**

The Sellers reserve the right to revoke the Exclusivity and to negotiate with all interested parties in the following circumstances:

- 3.1 If any material issue is raised by the Buyer which has not been discussed with the Sellers prior to the date of this agreement which may, in the Sellers' reasonable opinion, have a material effect on the consideration payable to, or liabilities accepted by, the Sellers in respect of the sale of the [Shares] **OR** [Business and Assets];
- 3.2 The Buyer suggests any material change in the terms and conditions set out in the heads of terms dated <<Date>> ("the Heads of Terms");
- 3.3 If, in the reasonable opinion of the Sellers, negotiations between the Sellers and the Buyer are no longer being conducted in good faith by the Buyer;

- 3.4 If the Buyer decides to proceed with the Proposed Transaction it will immediately provide written notice of such fact to the Sellers on the day the notice is served in accordance with clause 8.2.
4. **BUYER NOT WISHING TO PROCEED**
- If the Buyer decides not to proceed with the Proposed Transaction it will immediately provide written notice of such fact to the Sellers on the day the notice is served in accordance with clause 8.2.
5. **DUE DILIGENCE INFORMATION**
- The Buyer will use reasonable efforts to review information made available to it as part of the Proposed Transaction process on a timely basis. The Sellers will respond to the Buyer's reasonable requests of the Buyer for information of information to it or them.
6. **COSTS**
- Each party agrees to bear its own costs and expenses incurred in connection with the performance of its obligations under this agreement.
7. **INDEMNITY**
- The Sellers acknowledge that the Buyer may incur significant costs, fees and expenses by relying on the Exclusivity, the Seller's representations and other remedies which the Buyer for an action for breach of the reasonable costs, fees, disbursements and expenses (including any applicable VAT) which have been or will be incurred by the Buyer in connection with the Proposed Transaction.
8. **END OF EXCLUSIVITY**
- Subject to the provisions of this clause, the Exclusivity shall end on the earlier to occur of:
- 8.1 The execution of the purchase agreement and other documents in connection with the Proposed Transaction; and
- 8.2 <<Date>>
- unless it is extended in writing between the Sellers and the Buyer. Clauses 6 and 7 shall survive the termination or expiry of the Exclusivity.
9. **ACKNOWLEDGEMENT**

- 9.1 The Seller shall acknowledge and confirm that:
- 9.1.1 the terms and conditions of the agreement are considered by them
- 9.1.2 the terms and conditions of the agreement to be legally binding on them;
- 9.1.3 in the event of a dispute, the arbitration provision of this agreement is held to prevail and the remaining provisions shall continue to have full legal effect and shall be legally binding.

10. NOTICES

- 10.1 Any notice shall be in writing delivered personally or by first class post or facsimile to the party to be served given herein or such other address as may be notified for this purpose.
- 10.2 Any such notice shall, if delivered by post, be deemed to have been served 24 hours after despatch and, if delivered by hand or sent by facsimile, shall be deemed to have been served at the time of such delivery or transmission.
- If, however, in the case of delivery by post a period of 24 hours after despatch shall apply or if, in the case of delivery by hand or facsimile, such delivery or transmission occurs on a Business Day or after 4.00 p.m. on a Business Day, it shall be deemed to occur on the next Business Day.
- 10.3 In proving compliance with the above, it shall be sufficient to prove, in the case of an agreement, that the document was properly stamped, addressed and, in the case of a facsimile, that the sender has produced a transmission report showing that the document was properly and fully made to the correct number.

11. LAW & JURISDICTION

This agreement (including any amendments made therefrom or associated with it) shall be governed by and interpreted in accordance with English law.

This agreement shall be governed by the law of England and Wales and any dispute arising under or in connection with it shall be referred to the jurisdiction of the English courts [exclusive] OR [non-exclusive]

Please confirm your agreement
acknowledgement on the enclosed

is agreement by signing the
g the duplicate to us.

Yours faithfully

.....

Director

S
A
M
P
L
E

We agree to the terms set out in [] this is a duplicate.

Dated <<Date>>

For and on behalf of

<<Name of Buyer>> Limited/PLC

.....

Director

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