

# A

shall have the meanings set

ame >> of << Insert firm's

a company (wherever  
company, any company of  
subsidiary (its holding company)  
subsidiaries of any such holding  
such company in a group is a  
group;

text otherwise requires, the definition of Group to any time will apply to the company

## Company's Earnings Before Interest

and comprising the Company's  
m <<Insert range of years e.g.  
ive)>>

Accountant agreed upon by or on behalf of the Seller(s) and the Buyer or, if they have not been nominated on the application at the time of the Seller(s) or of the Buyer by the time being of the Institute of Chartered Accountants in England and Wales, such accountant, and, if such President, in nominating the accountant to be borne as he may direct);

Company's EBIT shown by the Company's relevant financials during the Earn-Out Period, and in each case in accordance with the Schedule;

ame>> of <<Insert firm's

company wherever incorporated (any) means a "subsidiary" as defined in section 1159 of the Companies Act

# M

P



# F

2006 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company;

Unless the context otherwise requires, the application of the definition of Subsidiary to any company at any time will apply to the company as it is at that time.

## **2. Consideration**

### **2.1 Purchase price**

The purchase price for the Shares shall comprise the Initial Consideration and the Deferred Consideration.

### **2.2 Independent Accountant (Initial Consideration)**

Within <<Insert number of days>> of Completion, an Independent Accountant shall, for the purposes of paragraph 2.3, certify, in their opinion, the fair value of an [ordinary] share of << Insert nominal amount >> in the capital of the Buyer as between a willing buyer and a willing seller, contracting at arm's length terms as at Completion.

### **2.3 Initial Consideration**

The Initial Consideration shall be £<<Amount in figures>>, which shall be satisfied by the allotment at Completion to the Seller(s) of such number of [ordinary] shares of << Insert nominal amount >> in the capital of the Buyer (credited as fully paid) as shall, in aggregate, be equivalent in value to the Initial Consideration (the "Initial Consideration Shares"). Fractions of an Initial Consideration Share shall be disregarded in determining the number of Initial Consideration Shares to be allotted. The Consideration Shares shall be allotted within <<Insert number of days>> of receipt of the Independent Accountant's opinion under paragraph 2.2.

### **2.4 Independent Accountant (Deferred Consideration)**

Within <<Insert number of days>> days of the Accounts for the last financial year of the Earn-Out Period being agreed or determined, the Seller(s) and the Buyer shall agree upon the appointment of an Independent Accountant. Within <<Insert number of days>> of their appointment or nomination such Independent Accountant shall, for the purposes of paragraph 2.5, certify, in their opinion, the fair value of an [ordinary] share of << Insert nominal amount >> in the capital of the Buyer as between a willing buyer and a willing seller, contracting at arm's length terms as at Completion.

### **2.5 Deferred Consideration**

The Deferred Consideration shall comprise an amount equal to the average Profits for the Earn-Out Period, multiplied by <<Insert multiplier>>, less the Initial Consideration, such amount to be satisfied by the allotment to the Seller(s) of such number of [ordinary] shares of << Insert nominal

amount >> in the c  
aggregate, be equ  
“Deferred Consider  
Share shall be di  
Consideration Shar  
(if any) shall be allo  
Independent Accoun

2.6 **Events where De  
partially paid)**

If <<Name(s)>> ce  
member of the Buye

2.6.1 by reason  
of his/her/  
member of  
employed  
service ag  
Deferred  
and

2.6.2 save as p  
entitled to  
calculated  
proportion  
employed  
entitled to  
he/she/it/t

2.7 **Cap on Considerat**

The maximum ag  
Deferred Considera  
paid that amount  
Deferred Consider  
Agreement or volu  
payable by the Buy  
Deferred Considera

2.8 **Dividends**

The Initial Consider  
shall rank pari pass  
<< Insert nominal a  
carry the right to  
declared, made or  
that they shall not b  
to a record date prid

2.9 **Retention of Cons**

The Seller(s) under  
consent of the Buye  
the Initial Considera  
period of << Insert r

lited as fully paid) as shall, in  
Deferred Consideration (the  
s of a Deferred Consideration  
ng the number of Deferred  
Deferred Consideration Shares  
ber of days>> of receipt of the  
agraph 2.4 above.

**will not be paid (or only**

by the Company or by any  
nd of the Earn-Out Period:

udiatory breach or termination  
s) by the Company (or by any  
y which <<Name(s)>> is/are  
summary dismissal under such  
ler(s) will be entitled to the full  
under paragraph 2.5 above;

.1 above the Seller(s) shall be  
of the Deferred Consideration  
above which is equal to the  
which <<Name(s)>> was/were  
d he/she/it/they shall not be  
ferred Consideration to which  
e been entitled.

Initial Consideration and the  
t>>. Upon the Buyer having  
Initial Consideration and the  
t to the provisions of this  
ferred Consideration shall be  
this Agreement relating to the  
riod shall cease to apply.

ferred Consideration Shares  
e existing [ordinary] shares of  
capital of the Buyer and shall  
ends and other distributions  
their respective allotment save  
declared or paid by reference  
ective allotment.

ot, except with the prior written  
any Encumbrance over any of  
ed Consideration Shares for a  
ing the date of their respective

# S

# A

# M

# P

# L

# F

E

E

E

E

## E

E

## E

E

E

E

E

S

3.3.2 the Company shall ensure that the Accounts and relevant personnel for the purpose of preparing the Seller's Accounts as aforesaid save the Seller's Accounts are confidential to any person (other than a member of the Seller's Group or the Buyer's Accountants) or are legally privileged.

A

3.4 The amount of EBITDA for the relevant Agreement Period shall in each case in the absence of the service of a Dispute Notice") within the relevant Agreement Period by the Seller(s) on the Buyer disputing the amount so determined shall constitute the final and binding agreement between the Seller(s) and the Buyer as to the amount of the Profits respectively.

M

3.5 In the event that the Seller(s) and the Buyer have not been able to resolve the dispute within 10 Business Days of the date of the service of the relevant Dispute Notice, the determination of the amount of the Profits shall be referred to an independent professional valuer or, failing agreement, to the Arbitrator of the Institute of Chartered Accountants in England and Wales. Having appointed any such independent professional valuer, the Seller(s) shall have the right to make representations to the independent professional valuer as to the determination of the amount of the Profits. The independent professional valuer shall act as expert and not as arbitrator and his or her determination (in the absence of manifest error) be final and binding on the Seller(s) and the Buyer. The costs of any independent professional valuer appointed pursuant to clause 3.5 shall be borne between the Seller(s) and the Buyer in the absence of any such agreement. Unless either the Seller(s) or the Buyer notify the other in writing within any relevant opening balance is agreed between the parties.

P

#### 4. Earn Out Protection

4.1 The business of the Seller(s) shall be conducted commercially with a view to maximising Profits consistent with the interests of the Seller(s).

4.2 No business shall, during the Earn-Out Period be transferred from the Seller(s) to any member of the Buyer's Group without the consent of the Seller(s) (such consent not to be unreasonably withheld or delayed).

4.3 Goods and services of the Seller(s) shall be used only in the course of the business of the Seller(s) and not any other member of the Buyer's Group without the consent of the Seller(s) (such consent not to be unreasonably withheld or delayed).

E