

**DATED** \_\_\_\_\_ <<Date>>

**(1)** <<Name of Seller>> **LIMITED/PLC**

-and-

**(2)** <<Name of Buyer>> **LIMITED/PLC**

## **ASSETS SALE AND PURCHASE AGREEMENT**

-relating to-

<<Insert Name of Business>>

**THIS AGREEMENT** is made on <<Date>>

## **PARTIES**

- 1 <<Name of Seller>> **LIMITED/PLC** a company registered number <<Insert company number>>, whose registered registered office address>> ("the Seller"); and
- 2 <<Name of Buyer>> **LIMITED/PLC** a company registered number <<Insert company number>>, whose registered registered office address>> ("the Buyer").

## **AGREED TERMS**

### **1. INTERPRETATION**

In this Agreement:

#### **1.1** The following words and expressions shall have the following

"the Accounts"	the [un]audited financial statements consisting of the accounts of the balance sheet, profit and loss and the notes thereon, the cash flow Directors' reports;
"the Accounts Date"	<<Insert Accounts Date>>;
"Accruals"	the Seller's obligations in respect made to the Seller in connection [or the Property] <b>OR</b> [(but not the Transfer Time and, to the among "Creditors", all liabilities expenses incurred by the Seller the Business before the Transfer unpaid as at the Transfer Time;
"the Act"	the Companies Act 2006;
"the Applicable Data Protection Laws"	the Data Protection Act Telecommunications (Data Protection (Direct Marketing) Regulations 1
"the Assets"	the assets listed in clause 2;
"Associate"	has the meaning given by Insolvency Act 1986;
"the Bank"	<<Insert name of Bank>> Bank of Bank>> branch);
"Book Debts"	together all amounts owing connection with the Business

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	(whether or not invoiced before the Transfer Time) and whether or not due and payable at the Transfer Time) and all Prepayments, but excluding all amounts as are referred to in clause 10.1;
“the Books and Records”	the books and records maintained by the Seller relating to the Business, the Employees other than the Restricted Employees and the Records;
“the Business”	the business of <<Insert Description of Business>> carried on by the Seller at the Transfer Time and from the Property;
“Business Day”	a day (other than a Saturday or a public holiday) on which clearing banks are open for business in London;
“the Buyer’s Solicitors”	<<Insert Name of Buyer’s Solicitors>> successor firm;
“Completion”	completion of the sale and purchase of the Assets and the Assets in accordance with the Terms of Sale;
[“the Conditions”	the conditions set out in schedule 1 [“the Conditions”];]
“Confidential Information”	all secret or confidential commercial information, technical information, know-how, trade secrets, inventions, computer software and data in whatever form whatsoever and in whatever form whether disclosed orally or in writing or otherwise, and reproductions in whatsoever form or forms, in whole or part or parts of it;
“Contracts” (each a “Contract”)	all the contracts and agreements entered into by the Seller to the extent that they remain in force at the Transfer Time;
“Creditors”	all amounts owing by the Seller in connection with the Business [“the Liabilities”] [(but not the Property)] at the Transfer Time or not invoiced before the Transfer Time or not due and payable at the Transfer Time including wages and salaries of Employees at the Transfer Time and Accruals but excluding: <ul style="list-style-type: none"> <li>(a) all amounts owing to the Seller at the Transfer Time;</li> <li>(b) any liabilities for Taxation; and</li> </ul>

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	(c) any VAT payable to H M Revenue and Customs in respect of taxable supplies made by the Seller in connection with the Business during the Transfer Time.
“the Disclosure Letter”	the letter from the Seller[‘s Solicitors] with the same date as the Disclosure Letter described as the disclosure bundle of documents attached to the Disclosure Bundle”);
“the Disclosed Schemes”	the Life Assurance Scheme, the Personal Pension Scheme and the Stakeholder Scheme;
“Employee”	each person employed by the Seller at the time of the Business at the Transfer Time as set out in Schedule 2;
“Employment Legislation”	legislation applying in England and Wales in relation to contractual or other relations between employers and their employees or workers, including any amendment or re-enactment of such legislation arising under European treaty provisions which is enforceable against the Seller by or through the courts;
“Encumbrance”	any interest or equity of any person in any property, right to acquire, option or right of first refusal, mortgage, charge, pledge, hypothecation, security, interest in property, sub-lease, tenancy or right of occupancy, reservation, covenant, stipulation, wayleave, grant, restriction, easement or any agreement for any privilege in favour of any third party, security agreement or arrangement, whether monetary or not;
“the EPA”	the Environmental Protection Act 1990;
“FRS”	a financial reporting standard in force at the time as issued by the Accounting Standards Board;
“Goodwill”	the goodwill relating to the Business, including the exclusive right for the Buyer to use the name “<<Insert Name” in connection with carrying on the Business in such manner as to use the name “<<Insert Name” [and to use the name “<<Insert Name”];
“Hardware”	means any computer equipment, software, data or other tangible assets within the Assets or the Third Party Assets;

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	excluding all Software;
“ICTA”	the Income & Corporation Taxes
“Intellectual Property”	<p>(a) patents, trademarks, service marks, designs, applications and rights in those rights; trade, business and internet domain names and unregistered trademarks and copyrights, database rights, designs and inventions;</p> <p>(b) rights under licences, concessions or otherwise in relation to a right;</p> <p>(c) rights of the same or similar to those in paragraphs (a) and the future may subsist; and</p> <p>(d) the right to sue for past infringement of the foregoing rights;</p>
“Intellectual Property Agreements”	the agreements or arrangements (in whole or partly) to Intellectual Property use, assignment or patenting, discovery, improvement, process, know-how, and detailed at Part I
“Intellectual Property Rights”	all Intellectual Property owned, used by the Seller in connection with the business, including (without limitation) that set out at Part I of Schedule 3;
“Lease”	any lease under which any of the property is held by the Seller;
“Leasehold Property”	where the context so admits leasehold property comprised within
“Life Assurance Scheme”	means the <<Insert Name of Life Assurance Scheme>> underwritten by <<Insert Name of Life Assurance Provider>>;
[“the Management Accounts”	the unaudited balance sheet and profit and loss account of the Seller for the period from <<Insert a Date>>, prepared in accordance with generally accepted accounting practices, including all applicable laws and regulations, a copy of which is attached to the
“Notice”	includes any notice, demand or communication;

“Pension Scheme(s)”	means <<Insert name of scheme or occupational pension schemes)>>;
“Personal Pension Scheme(s)”	means <<Insert description of scheme used for personal pension scheme(s)>>;
“Plant”	all the plant, machinery, equipment and fittings, tools, vehicles and other tangible assets held on the Premises at the Time by or on behalf of the Seller in connection with the Business in the limitation, all the items listed in Schedule 5 excluding the Third Party Assets;
“Prepayments”	all prepayments made by the Seller with the Business [or the Property)]] before the Transfer Time;
“Property”	where the context so admits, all properties short particulars of value in Schedule 5 and each of them shall be part of each of them;
“the Property Conditions”	the Law Society’s Standard Conditions (<<Insert revision number>>);
“the Purchase Price”	means the consideration for the Assets as set out in Schedule 9;
“the Regulations”	the Transfer of Undertakings (Employment) Regulations 2006;
“Release”	any release, waiver or compromise or arrangement of any kind having legal effect;
“Relevant Business”	means any business which constitutes a material extent <<Specify nature of business>>;
“Restricted Area”	means <<Specify geographical area>>;
“the Retained Books and Records”	the accounting records relating to the Seller required to be kept by the Seller under the Act and books and records relating to the liabilities of the Seller not agreed to be assumed by the Buyer under the statutory books of the Seller;
“the Seller’s Solicitors”	<<Insert Name of Seller's successor firm>>;

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“Software”	means any set of instructions for execution by microprocessor used by or for the benefit of the Seller in relation to the Businesses at any time, irrespective of application, language or medium;
“SSAP”	a statement of standard accounting practice in force at any material time as issued by the Accounting Standards Committee and adopted by the Accounting Standards Board;
“Stakeholder Scheme”	means the stakeholder pension scheme designated by the Seller and underwritten by <<Insert Name of Provider>>;
“Stocks”	all the stocks of raw materials, components, work-in-progress, finished and unfinished goods, bought-in goods, consumables and packaging materials held by or on behalf of the Seller on the Property at the Transfer Time for use in the Business which have not been invoiced by the Seller before the Transfer Time;
“Taxation”	all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction, and any penalty, fine, surcharge, interest, charges or costs relating thereto, and Taxation shall have the same meaning;
“Taxation Authority”	any authority, whether of the United Kingdom or elsewhere, competent to impose, assess or collect Taxation, including HM Revenue & Customs;
“Tax Warranties”	the Warranties contained in paragraph 19 of Schedule 7;
“the Third Party Assets”	those assets which are used in the Business, are in the possession of the Seller subject to leasing, rental, hire or hire-purchase agreements and are listed in Schedule 6;
“the Transaction”	the sale and purchase of the Business and the Assets effected by this Agreement;
“the Transfer Time”	the close of business (which for this purpose shall be deemed to be 5.00 pm) on the date of this Agreement;
“VAT”	value added tax;

“the VATA”	the Value Added Tax Act 1994;
“VAT Records”	all of the books and records referred to in the VATA which relate to the business;
“the Warranties”	the warranties set out in Schedule 1; and each of them shall be any one of them.

- 1.2 Unless the context otherwise expressly requires, words and expressions which are otherwise defined in the Act shall have the same meaning as in the Act, but “company” shall mean “company” and “body corporate”, as in each case defined in the Act.
- 1.3 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force at the time of the Agreement, taking account of any amendment or re-enactment and including any statutory provision or subordinate legislation which it amends or replaces, or subordinate legislation for the time being in force made under it which it would not impose any new or extended obligation, liability or otherwise adversely affect the rights of, any party.
- 1.4 The Schedules form part of this Agreement.
- 1.5 A reference to any gender shall include the other and no reference to a “person” includes a reference to an unincorporated body (whether or not having separate legal personality).
- 1.6 The singular includes the plural and vice versa.
- 1.7 A document referred to as being in “the Agreed Terms” shall mean the document signed or initialled for identification by all the parties.
- 1.8 A person shall be deemed to be connected with another person if they are connected with such other within the meaning of section 944 of the Corporation Taxes Act 1988.
- 1.9 References to “indemnify” and “indemnifying” any person in any circumstance include indemnifying and keeping him indemnified against all liabilities, losses, claims, demands, damages, costs and expenses of interest which he may suffer or incur in connection with or in consequence of that circumstance.
- 1.10 The headings are inserted for convenience only and shall not be used for construction or interpretation of this Agreement.

## 2. AGREEMENT FOR SALE AND PURCHASE

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With effect from the Transfer Time and on and subject to [the Conditions] of this Agreement, the Seller shall sell with full title guarantee, free from Encumbrance, and the Buyer shall buy, the Business as a going concern, the following Assets:

- 2.1 the Goodwill;
- 2.2 the Stocks;
- 2.3 the Plant;
- 2.4 the benefit (subject to the burden) of the Contracts;
- 2.5 the Intellectual Property Rights;
- 2.6 the Property;
- 2.7 the Book Debts;
- 2.8 the Books and Records; and
- 2.9 all rights of the Seller against third parties (including with respect to warranties, representations and indemnities and under insurance) in respect of any of the assets specified in clauses 2.1 to 2.8 inclusive and in respect of any goods incorporated therein and any services performed in relation thereto.

### 3. EXCLUDED ASSETS

The following are excluded from the Transaction:

- 3.1 all and any shares or other securities in any companies held by the Seller;
- 3.2 all cash in hand or at bank and all cheques and other documents representing them, in each case as at the Transfer Time, and any, representing the Book Debts;
- 3.3 any right to any credit or refund of any Taxation in respect of the Seller or profits or gains made or deemed to have been made by the Seller, in each case before the Transfer Time;
- 3.4 the Retained Books and Records; and
- 3.5 the Third Party Assets.

For the avoidance of doubt, the amounts referred to in clauses 3.1 to 3.5 are regarded as Book Debts for the purposes of this Agreement.

### 4. PURCHASE PRICE

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4.1 The Purchase Price shall be as set out in Schedule 9.

## 5. **VALUE ADDED TAX**

5.1 The Purchase Price is exclusive of VAT.

5.2 The Seller warrants to the Buyer that it is duly registered for VAT purposes.

5.3 The Seller warrants to and undertakes with the Buyer that:

5.3.1 it has not made for VAT purposes any election under section 49 of the VATA in relation to the Property; and

5.3.2 there are no new (as defined in note 4 of its schedule 9 to the VATA) or incomplete first-hand buildings or civil engineering works included in the Property.

5.4 The Buyer warrants to the Seller [that it is duly registered for VAT purposes in the virtue of the Transaction liable to be duly registered] for VAT purposes.

5.5 The parties shall use reasonable endeavours to procure that the Transaction is deemed to be a transfer of a business as a going concern for the purposes of section 49 and paragraphs 8(1)(a) and 8(2)(b) of schedule 9 to the VATA and article 5(1) of the Value Added Tax (Special Provisions) Regulations 1995. The Transaction is treated neither as a supply of goods nor as a supply of services.

5.6 The Seller and the Buyer intend that section 49 of the VATA shall not apply to the Transaction [and] [but] they do [not] intend to make a joint application to HM Revenue and Customs for the Buyer to be registered for VAT purposes using the registration number of the Seller, pursuant to Regulation 4 of the Value Added Tax (Special Provisions) Regulations 1995.

5.7 If HM Revenue & Customs determines in writing that VAT is payable on the whole or any part of the Purchase Price, the Buyer shall pay the amount of VAT specified by HM Revenue & Customs within the Number of days>> days of receiving Notice of such determination from the Seller.

## 6. **COMPLETION**

6.1 Completion shall take place on the day of the Transfer Time [at the Seller's Solicitors] OR [such location as the parties shall agree in writing].

6.2 On Completion the Seller shall:

6.2.1 execute, or procure execution of (as the case may be), in favour of the Buyer:

6.2.1.1 a deed of assignment in the Assignment of the Goodwill, the Intellectual Property

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- Debts and the rights specified in clause 6.2.1.1;
- 6.2.1.2 a [transfer] **OR** [conveyance] in the respect of the Property;
  - 6.2.1.3 [a transfer] **OR** [an assignment] in the respect of the Leasehold Property;
  - 6.2.1.4 a licence to assign the Lease in duly executed by the landlord Property;
- 6.2.2 deliver duly executed releases and letters of notice of the Agreed Terms in respect of all fixed assets affecting any of the Assets;
  - 6.2.3 deliver the Disclosure Letter duly signed;
  - 6.2.4 grant vacant possession of the Property to the Buyer;
  - 6.2.5 deliver to the Buyer:
    - 6.2.5.1 the Books and Records; and
    - 6.2.5.2 possession of such of the Assets as are passing by delivery.
- 6.3 On Completion the Buyer shall pay the Purchase Price.
  - 6.4 The Buyer shall only be obliged to complete the purchase if the purchase of all of them is completed simultaneously.
  - 6.5 On Completion, the Seller and the Buyer shall enter into a deed of assignment under section 198 of the Capital Allowances Act 2001 in the Agreed Terms.
  - 6.6 If clauses 6.1 to 6.5 are not complied with in any respect by the Completion Date, then (without prejudice to any and all rights of action in law or equity on the terms of this Agreement or otherwise) the non-defaulting party may elect to:
    - 6.6.1 defer Completion to a date not more than 30 days after the Completion Date (and the provisions of this clause 6.6.1, shall apply to the deferred Completion Date);
    - 6.6.2 proceed to Completion so far as practicable; or
    - 6.6.3 rescind this Agreement by notice in writing to the other party.

## 7. WARRANTIES

- 7.1 The Seller warrants to the Buyer that each of the Warranties set out in the Schedule shall be true and correct at the time of Completion.

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accurate in all respects at the date of this Agreement.

7.2 Any Warranty qualified by the expression "to the best of the Seller's knowledge and belief" or "so far as the Seller is aware" shall be deemed to include knowledge, information and belief which the Seller has or which the Seller would have had if the Seller had made reasonable enquiries and includes the knowledge, information and belief of any person of whom it would be reasonable to make such enquiry if it is stated that such enquiry has been made.

7.3 The rights and remedies of the Buyer in respect of the Warranties shall not be affected by Completion or by any act or omission of the Buyer.

7.4 Each of the Warranties is separate and, unless otherwise provided, is not limited by reference to any other Warranty provision in this Agreement.

7.5 Without prejudice to the right of the Buyer to claim on any Warranty, in the event that a Warranty proves to be untrue, the Seller shall pay to the Buyer on demand the sum of

7.5.1 the amount necessary to put the Buyer into the position it would have been in if the Warranty had not been untrue; and

7.5.2 all costs and expenses (including, without limitation, all claims, demands, proceedings, costs, legal and professional fees and costs, penalties, expenses and costs of interest (whether directly or indirectly arising) incurred by the Buyer as a result of such breach or of the Warranty being untrue) of a reasonable amount in respect of management and professional fees and costs.

A payment made in accordance with the provisions of the Warranties shall include any amount necessary to ensure that, after such payment, the Buyer is left with the same amount it would have been in if the payment was not subject to Taxation.

7.6 Any payment by the Seller for breach of any of the Warranties shall be pound for pound a repayment of and reduction in the Purchase Price.

7.7 The Buyer shall notify the Seller in writing of any claim made by the Buyer or a third party which may give rise to a claim for breach of Warranty (including a claim relating to Tax) as soon as reasonably practicable but in any event such notice shall not affect the rights of the Buyer.

7.8 The Seller shall notify the Buyer forthwith if it becomes aware of any circumstance which constitutes or which may constitute a breach of the Warranties.

7.9 If any claim is made against the Seller by the Buyer under the Warranties or the Agreement, the Seller shall not make any claim against the Seller's Employee on which or on whom it may have relied before the claim is made.

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term of this Agreement or authorising any statement in the

7.10 With the exception of the matters disclosed in the Disclosure Statement, no information of which the Buyer and/or its agents are aware at the time of the Agreement, knowledge (actual, constructive or imputed) which is discovered (whether by investigation made by the Buyer or its agents on its behalf) shall prejudice or prevent a Claim or reduce any amount payable thereunder.

7.11 The provisions of clause 14 shall apply in respect of the liabilities of the Seller under the Warranties.

## 8. CREDITORS

8.1 The Buyer shall discharge the Creditors on the dates payable in the Disclosure Statement and shall assume responsibility for all Accruals.

8.2 The Buyer shall only take on or discharge the obligations of the Seller which it expressly agrees in this Agreement to take on.

## 9. CONTRACTS

9.1 Subject to clause 9.3, with effect from the Transfer Time the Buyer shall perform and fulfil the Contracts on its own account in place of the Seller.

9.2 If the assignment of the benefit of any of the Contracts requires the consent of a third party:

9.2.1 this Agreement shall not operate as an assignment of the benefit of such Contracts; and

9.2.2 the parties shall each use reasonable endeavours to obtain such required consents as soon as possible following the Transfer Time; and

9.2.3 from the Transfer Time and until such consents are obtained:

9.2.3.1 the Seller shall hold the benefit of such Contracts in trust for the Buyer;

9.2.3.2 the Buyer shall (at its own cost and expense) perform and fulfil such Contracts as and to the extent required;

9.2.3.3 the Seller shall promptly account to the Buyer for any sums received by it by way of deduction or set-off for any sums paid to or for the benefit of any third party in respect of such Contracts.

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9.3 Notwithstanding clause 9.1, the Seller shall remain liable in respect of all goods and services supplied by or to it pursuant to the Contracts concerned and generally to the extent that they have at the Transfer Time been performed, and shall be liable for any loss or damage to the extent that they have at the Transfer Time have been performed, and shall in any event be liable against any act or omission of the Seller prior to the Transfer Time to any of the Contracts.

9.4 At the request of the Buyer the Seller shall give reasonable assistance to the Buyer to enable the Buyer to enforce each of the Contracts against any party or parties to the respective Contract.

## 10. DEFECTIVE GOODS

The Buyer shall satisfy all legally valid claims which may be made against the Seller (and which are notified in writing to the Buyer together with sufficient evidence as to their validity) or against the Buyer for the replacement of, or for reimbursement of the price of, defective goods supplied by the Seller prior to the Transfer Time, and the Seller shall reimburse to the Buyer the cost to the Buyer of performing such obligations under this clause 10.

## 11. EMPLOYEES

11.1 The parties acknowledge that the sale of the Business pursuant to this Agreement is a relevant transfer under the Regulations and accordingly the employment of each Employee shall at the Transfer Time be transferred to and taken over by the Buyer under the Regulations.

11.2 The Seller shall indemnify the Buyer against all liabilities arising from or in connection with the employment of any Employee during the period of the Transfer Time or the employment at any time (whether or not the Seller) of any employee of the Seller who was employed by the Seller or of any former employee of the Seller;

11.2.1 the employment of any Employee during the period of the Transfer Time or the employment at any time (whether or not the Seller) of any employee of the Seller who was employed by the Seller or of any former employee of the Seller;

11.2.2 the termination before or at the Transfer Time of the employment of any Employee;

11.2.3 the termination at any time (and whether or not the Seller) of the employment of any employee of the Seller who was employed by the Seller or of any former employee of the Seller;

11.2.4 any act or omission of the Seller which is deemed to be an act or omission of the Buyer under the Regulations;

11.2.5 any industrial or other work-related illness or injury allegedly suffered by any Employee in respect of which the Seller is liable.

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- period ending on or before the Transfer Time;
- 11.2.6 any bonus payable to any Employee in respect of the year ended <<Insert a Date>> (which shall, as to the Seller, and the Buyer, remain the responsibility of the Seller);
- 11.2.7 any failure by the Seller to comply with its obligations under regulation 11 or regulation 13 of the Regulations of the Trade Union & Labour Relations (Consolidation) Act 1992 and/or otherwise arising by virtue of the Regulations;
- 11.3 The Buyer will indemnify the Seller against all liabilities in respect of employment or termination of employment of any Employee up to the Transfer Time.
- 11.4 Without prejudice to the provisions of clause 11.7, the Seller shall be liable for all wages, salaries and other emoluments payable to Employees in respect of all periods down to the Transfer Time and in respect of all entitlements as at the Transfer Time.
- 11.5 **EITHER (IF EMPLOYEES HAVE TAKEN HOLIDAY IN ADVANCE)**
- Without prejudice to clauses 11.3 and 11.4 the Buyer shall pay to the Seller without [deduction or set-off] on <<Insert a Date>> the sum of <<figures>> (<<Amount in words>> pound[s]) in respect of the sum of the entitlements of the Employees before the Transfer Time in advance of the sum of the entitlements falling due.
- OR (IF EMPLOYEES HAVE ACCRUED HOLIDAY ENTITLEMENTS)**
- Without prejudice to clauses 11.3 and 11.4, the Seller shall pay to the Buyer without deduction or set-off on <<Insert a Date>> the sum of <<figures>> (<<Amount in words>> pound[s]) in respect of the sum of the entitlements of the Employees due or accrued but not taken up to the Transfer Time.
- 11.6 The Seller warrants to the Buyer that it has provided, and shall provide, to the Buyer such information as the Buyer may from time to time request in writing in order to enable it to verify compliance with the provisions and regulations referred to in clause 11.2.7.
- 11.7 Schedule 8 shall apply in relation to pension arrangements for the Employees.
12. **PROPERTY**
- 12.1 The Property Conditions shall be deemed to be incorporated into the Property Conditions if they are not varied by or inconsistent with the terms of the Property Conditions [except that conditions <<Insert numbers of inapplicable Property Conditions>> shall not apply].

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- 12.2 Title shall be deduced by the Seller's Solicitors supplying to the Buyer copies of the deeds and documents of title listed in column 1 of the Schedule.
- 12.3 For the purposes of condition <<Insert condition number>> of the Conditions, the contract rate shall be <<Insert percentage>> of the base rate of the Bank from time to time in force.
- 12.4 The [transfer] **OR** [conveyance] of the Property to the Buyer shall be executed by the Buyer as well as by the Seller and shall be subject to the Terms.

### 13. **LEASEHOLD PROPERTY**

The following additional provisions shall apply in relation to the Leasehold Property:

- 13.1 the Leasehold Property shall be sold and assigned subject to the covenants reserved by and the covenants on the part of the tenant in the relevant lease; and the provisions contained in the relevant lease;
- 13.2 <<Insert Any further provisions relating to the Leasehold Property>>

### 14. **LIMITATIONS ON CLAIMS**

- 14.1 Other than in any cases of fraud, dishonesty or wilful non-compliance, no claim in relation to any breach of any of the Warranties (other than those set out in paragraph 1 of Schedule 7) shall be made unless a written claim has been given by or on behalf of the Buyer:
- 14.1.1 in relation to any breach of any of the Warranties set out in paragraph 1 of Schedule 7 (the Warranties), before the expiry of the period of <<Insert number>> years>> years after the Completion Date; or
- 14.1.2 in relation to any breach of any of the Tax Warranties, before the expiry of the period of six months after the end of the reference period of the Buyer during which the breach occurred or the Completion Date occurs.
- 14.2 The Buyer shall not be entitled to bring any claim in relation to any of the Warranties if the circumstances amounting to the breach have been fairly disclosed in the Disclosure Letter.
- 14.3 Other than in any cases of fraud, dishonesty or willful non-compliance, no claim in relation to any breach of any of the Warranties (other than those set out in paragraph 1 of Schedule 7) shall be made unless a written claim has been given by or on behalf of the Buyer:
- 14.3.1 the Seller's liability in respect of any claim by the Buyer in relation to any breach of any of the Warranties (except for claims in respect of the Warranties in paragraph 1 of Schedule 7) when aggregated together shall be limited to the sum of <<Insert amount>>.

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Purchase Price;

14.3.2 the Seller shall have no liability in respect of any claim made under the Warranties unless such claim:

14.3.2.1 equals or exceeds, £<<'X' amount in words>> pounds); and

14.3.2.2 would, when aggregated with all other claims made against the Seller of, £<<'X' amount in words>> pounds) or more than £<<'Y' amount in figures>> (<<'Y' amount in words>> pounds) in which case the whole amount of the claim (or the amount by which the limit in this clause has been exceeded) is recoverable by the Buyer.

and for the purposes of this clause 14.3 all claims arising out of the same subject-matter shall be treated as one single claim rather than as multiple claims.

14.4 The Seller shall not plead the Limitation Act 1980 in respect of any claim made under the Tax Warranties up to seven years after the date of Completion.

## 15. **CONFIDENTIAL INFORMATION AND USE OF NAMES**

15.1 With effect from Completion, the Seller shall keep secret and confidential all Confidential Information which relates to, or is used in, the Business and shall not use nor disclose to any person any such Confidential Information.

15.2 The obligations of confidentiality in this clause shall not extend to information which is in or becomes part of the public domain otherwise than as a result of a breach of the obligations of confidentiality in this Agreement. The Seller shall not be in breach of the obligations of confidentiality in this Agreement if the Seller receives from a third party independently entitled to disclose the information the Seller is required by law or regulatory authority to disclose.

15.3 The Seller shall not at any time after Completion use in or through the Business or trade or business any corporate name, trade name, logo, trade dress, e-mail address which is confusingly similar to "<<Insert Name>>"] or to any corporate name, trade name, logo, trade dress, e-mail address or e-mail address which is confusingly similar to any corporate name, logo, domain name or e-mail address used by the Buyer in connection with the Business, at any time during the period of 2 years after Completion.

## 16. **NON-COMPETITION**

16.1 The Seller covenants with the Buyer that it will not directly or indirectly, whether alone or in conjunction with, or on behalf of or by

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to, any other person:

- 16.1.1 at any time during the period of <<Insert number of months beginning with Completion, deal with any person who has been at any time during the period of 12 months immediately preceding that date, a client or customer of the Business; or
- 16.1.2 at any time during the period of <<Insert number of months beginning with Completion, canvass, solicit or seek the custom of any person who is at Completion, or who has been at any time during the period of 12 months immediately preceding that date, a client or customer of the Business; or
- 16.1.3 at any time during the period of <<Insert number of months beginning with Completion, solicit or employ or (directly or indirectly) offer consultancy to any person who has been at any time during the period of 12 months immediately preceding Completion, if that solicitation or employment causes or would cause such supplier to cease or materially reduce its supply of, those goods and services to the Business; or
- 16.1.4 at any time during the period of <<Insert number of months beginning with Completion, solicit or employ or (directly or indirectly) offer consultancy to any person who at, or at any time during the period of 12 months prior to, Completion was an employee of the Business and likely (in the reasonable opinion of the Buyer) to possess or influence the customer relationships or control of the Business; or
- 16.1.5 at any time during the period of <<Insert number of months beginning with Completion, except for an investment of less than 5% in nominal value of the paid up capital of a company whose shares are listed on a stock exchange (within the meaning of the Companies Act 2006 and Markets Act 2000) be engaged, concerned or involved in any business in the Restricted Area in any Relevant Business; or

16.2 Each of the undertakings in clause 16.1 is:

- 16.2.1 considered by the parties to be reasonable;
- 16.2.2 a separate undertaking by the Seller and is not to be taken into account by the Buyer separately and independently of its right to enforce or more of the restrictions in clause 16.1; and
- 16.2.3 given for the purpose of assuring to the Buyer the value of the Business and of the Goodwill and in consideration of the Buyer to acquire the Business and the Assets of the Business.

this Agreement.

Accordingly, if any restriction is found to be unenforceable if any part of it were deleted or the period or area of application of the restriction shall apply with such modifications as may be necessary to make it valid and enforceable.

- 16.3 Nothing in the undertakings set out in clause 16.1 shall be taken to prevent any action in respect of any business or part of any business (other than as a result of any breach of any of those undertakings) by the Seller) the Business and the Buyer and every other subsidiary of the Seller have ceased to be involved prior to any event giving rise to a claim, would but for this clause 16.3 give rise to a claim, under the law of England and Wales.

17. **NAME**

- 17.1 The Seller shall at Completion procure the passing of a resolution of the Seller to change its name to a name which does not contain the words “<<Insert Name>>” [or “<<Insert Other Name>>”];

- 17.2 the Seller shall lodge such resolution, together with the prescribed name fee, with the Registrar of Companies promptly after Completion.

18. **TITLE**

Property and title in and to the Assets shall, subject in the first instance to clauses 12 and 13 and, pass to the Buyer at the Transfer Time.

19. **BOOKS AND RECORDS**

- 19.1 The Buyer shall keep the Books and Records for a period of <<Insert number of years>> years after the Transfer Time in the manner of

- 19.2 During the period referred to in clause 19.1 the Buyer shall give the Seller and its authorised representatives such facilities to inspect the Books and Records and to take copies thereof as the Seller may require.

- 19.3 The Seller shall keep the Retained Books and Records for a period of <<Insert number of years>> years after the Transfer Time as bailee for value.

- 19.4 During the period referred to in clause 19.3 the Seller shall

- 19.4.1 at the Buyer's cost give the Buyer and its authorised representatives such facilities to inspect the Retained Books and Records and to take copies thereof as the Buyer may require.

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require; and

19.4.2 give such additional information or explanation of the Books and Records as the Buyer may reasonably require;

19.5 The provisions of this clause 19 shall not apply to the VAT

## 20. **THIRD PARTY ASSETS**

20.1 The parties shall each use reasonable endeavours to procure the assignment of the benefit of the leasing, rental, hire and hire-purchase agreements in which Third Party Assets are subject is assigned as soon as reasonably practicable after the Transfer Time with the written consent of each other party. The Buyer shall have no obligation to make any payment by any person as a condition of giving its written consent to the assignment.

20.2 Pending assignment of the benefit of each of the agreements referred to in clause 20.1, the Buyer shall comply with the terms and conditions (as disclosed in the Disclosure Letter) as if it were the Seller.

20.3 If no written consent to the assignment of any Third Party Assets is obtained within a period of three months following the Transfer Time, the Buyer shall be entitled at its option either:

20.3.1 to retain possession of such Third Party Assets and to comply with clause 20.1 in relation to it, or

20.3.2 return it to the Seller and have no further obligation in relation to it for the period following its return.

20.4 The Buyer shall indemnify the Seller against any failure to comply with any of its obligations under this clause 20.

20.5 The Seller shall indemnify the Buyer against any failure to perform its obligations under any agreement relating to any Third Party Assets during the period ending at the Transfer Time.

## [21. **GUARANTEES**

The Buyer undertakes with the Seller after Completion to use reasonable endeavours (but not actual payment of any money or the guarantee of any person other than the Buyer) to procure the Seller from the guarantees and/or indemnities listed below to be released from the Seller against any such liability arising after Completion to which this clause applies are:

<<Specify details of relevant guarantees>>]

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22. **THIRD PARTY RIGHTS**

22.1 This Agreement and the documents referred to in it are made for the benefit of the parties and their successors and permitted assigns and shall not be enforceable by, or be enforceable by, anyone else.

22.2 Each party represents to the other that their respective obligations under this Agreement are not subject to the consent of any person to whom the Agreement is made or to whom the Agreement is assigned.

23. **SUCCESSORS**

The provisions of this Agreement shall be enforceable by the successors and permitted assigns for the benefit of any successor in title to the Business or any of its assets.

24. **WHOLE AGREEMENT**

24.1 This Agreement, and any documents referred to in it, constitute the entire agreement between the parties and supersede any previous understanding or previous Agreement between them relating to the matter they cover.

24.2 Nothing in this clause 24 operates to limit or exclude any liability of a party in respect of any claim or damages.

25. **WAIVER**

25.2 Any Release is only effective if it is in writing and such Release is signed by the party to whom the waiver is addressed and to the party to whom it is given and shall not prevent the party who has given the Release from subsequently relying on the provision it has waived.

25.3 A party which gives a Release in relation to one party, or to a group of parties, does not affect its rights in relation to any other party.

25.4 No failure to exercise or delay in exercising any right or remedy under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

25.5 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.

25.6 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

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26. **PROVISIONS SURVIVING COMPLETION**

Any provision of this Agreement and any other documents in relation to any matter contemplated thereby which is capable of being performed but which has not been performed at or before Completion, and covenants and other undertakings contained in or entered into pursuant to this Agreement shall remain in full force and effect after Completion.

27. **GOVERNING LAW AND JURISDICTION**

This Agreement and any disputes or claims arising out of or in connection with its subject matter (including any non-contractual matter arising therefrom or associated therewith) shall be governed by the law of England and Wales and subject to the exclusive jurisdiction of the courts.

28. **FURTHER ASSURANCE**

The Seller shall (at its reasonable expense) promptly execute and deliver such documents, and do all such things, as the Buyer may from time to time reasonably require for the purpose of giving full effect to the terms of this Agreement and any document to which it refers and, in particular, at the request of the Buyer execute specific assignments in favour of the Buyer of specific Book Debts as the Buyer may from time to time require, and in such form as the Buyer may reasonably require.

29. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if the parties had signed the same document.

30. **COSTS**

Except where otherwise stated, each party shall pay its own costs and incidental to this Agreement and its subject-matter. In relation to the Buyer shall lawfully exercise any right hereby conferred by the Agreement, the Seller shall indemnify the Buyer against its costs incurred by it in connection with this Agreement and

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31. **SEVERANCE**

31.1 If any provision of this Agreement (or part of a provision) is or administrative body of competent jurisdiction to be invalid or illegal, the other provisions shall remain in force.

31.2 If any invalid, unenforceable or illegal provision would be valid and legal if some part of it were deleted, the provision shall stand as modified. If a modification is necessary to give effect to the commercial purpose of the parties.

32. **PUBLICITY**

32.1 The parties shall forthwith upon Completion make or procure a press announcement and announcements to the Employees, customers and suppliers of the Business in the Agreed Territory.

32.2 Each of the parties shall both before and after Completion, in accordance with clause 32.1, keep the contents of this Agreement and the Transaction confidential and shall not without the prior written consent of the other party (in the case of the Seller) or of the Seller (in the case of the Buyer) disclose the terms of this Agreement to any person or make any disclosure relating to the Transaction except to the extent required by law or that the parties shall be entitled to make references to the respective future annual reports and financial statements.

33. **NOTICES**

33.1 Any Notice relating to this Agreement shall be in writing and shall be delivered or sent by pre-paid first class post or electronic means to the address of each party to be served given herein or such other address as may be agreed for this purpose.

33.2 Any such Notice shall, if sent by post, be deemed to have been served 48 hours after despatch and, if delivered by hand or sent by electronic means, 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 would expire on, or if, in the case of delivery by hand or electronic means such delivery or transmission occurs on, a day which is not a Business Day after 4.00 p.m. on a Business Day, then service shall be deemed to have been made on the next following Business Day.

33.3 In proving service it shall be sufficient to prove, in the case of delivery by post, that such letter was properly stamped, addressed and placed in the post. In the case of a transmission by electronic means, it shall be sufficient to produce a fax transmission report showing that transmission was fully made to the correct number or an email delivery receipt.

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34. **CERTIFICATE OF VALUE**

It is certified that the Transaction does not form part of a l  
of a series of transactions in respect of which the amo  
aggregate amount or value exceeds the sum of [£1.  
[£500,000] <<Amount in words>>.

**SIGNED** by or on behalf of the parties the day and year first before w

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**SCHEDULE 1**

**Contracts**

<<List contracts>>

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**SCHEDULE 2**  
**Employees**

<<List employees and details>>

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### **SCHEDULE 3**

#### *Part I*

*Registered and Unregistered intellectual property  
and applications to register*

<<List (un)registered IP and details>>

#### *Part II*

*Intellectual Property Agreements*

<<List IP Agreements>>

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**SCHEDULE 4**

**Plant**

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**SCHEDULE 5**

**Property**

<b><u>Property</u></b>	<b><u>Title</u></b>	<b><u>Apportioned Purchase Price</u></b>
		£
		£
		£
		£
		£

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**SCHEDULE 6**

**Third Party Assets**

Agreement

<u>Asset</u>	<u>Owner</u>	<u>Description</u>	<u>D</u>

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## **SCHEDULE 7**

### **Warranties**

#### **1 THE BUSINESS AND THE SELLER**

- 1.1 The Seller has full power to enter into and perform the Agreement, which constitutes a binding agreement on the Seller in accordance with its terms.
- 1.2 The Seller is the beneficial owner of the Assets and has the right to transfer them to the Buyer or as it directs free from any Encumbrance and all rights now or hereafter attaching to them.
- 1.3 No commitment has been given to create an Encumbrance affecting the Assets.
- 1.4 None of the Assets have been the subject of a transfer at any time within the meaning of section 238 or section 239 of the Insolvency Act 1986 in the period of five years prior to the Transfer Time.

#### **2 [INSURANCE]**

- 2.1 The Disclosure Letter sets out full particulars of all policies of insurance effected by or on behalf of the Seller in relation to the Business, all of which are in force and effect and are not void or voidable.]

#### **3 [PENSIONS]**

- 3.1 The Disclosed Schemes are the only arrangements under which the Seller could have any liability to provide or contribute towards retirement benefits as defined in Chapter 2 of Part 6 of the Income Tax (Earnings & Pensions) Act 2003.
- 3.2 The Seller has supplied to the Buyer documents containing full and up-to-date details of each of the Disclosed Schemes and of the Seller's liabilities under it.
- 3.3 <<Insert additional pensions warranties, as necessary, to complete this position>>.]

#### **4 [TAX]**

- 4.1 The Seller has no material agreements with any Taxation Authority in relation to transactions entered into in the course of the Business pursuant to which such transactions will be subject to Taxation on a basis which differs from that in accordance with the relevant legislation.

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- 4.2 The Seller is not aware of any dispute or any circumstances of any dispute with any relevant Taxation Authority in connection with the Business.
- 4.3 The Seller does not conduct and has not conducted any part of the Business through a branch, agency or permanent establishment in the United Kingdom, and the Business has not involved the Seller acting as an agent of any person not resident for any taxation purpose in the United Kingdom.
- 4.4 No material sum of an income nature paid under any employment contract or commitment relating to the Business which will continue after the completion of the Business has been disallowed wholly or in part as a deduction or charge in computing the profits for Taxation purposes.
- 4.5 None of the Assets are subject to the provisions on long-life assets in sections 90 to 104 (inclusive) of the Capital Allowances Act 2001.
- 4.6 The Plant will not be given a disposal value in the capital allowances computation of the Seller which is less than the value set out therefor in the accounts in virtue of the operation of section 185 of the Capital Allowances Act 2001.
- 4.7 The amount of the consideration allocated to the Property in the accounts is not less than the eligible cost therefor for industrial buildings allowances purposes.
- 4.8 There is no P11D dispensation in force in relation to any of the Assets.
- 4.9 The Seller is not transferring any assets pursuant to this Agreement and the provisions of Part XV of the Value Added Tax Regulations 1995 applies.]

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**SCHEDULE 8**

**Pension arrangements**

<<Insert pension arrangements>>

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## SCHEDULE 9

### Purchase Price

1.1 The Purchase Price shall be the Buyer's undertakings Agreement in relation to Creditors and the payment by the of the sum of £<<Amount in figures>> (<<Amount in v which shall be paid in cash on Completion.

1.2 The Assets shall have the following values for the Transaction:

Goodwill	£<<Amount in figur
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Stocks	£<<Amount in figur
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Plant	£<<Amount in figur
-------	--------------------

Contracts	£<<Amount in figur
-----------	--------------------

Intellectual Property Rights	£<<Amount in figur
------------------------------	--------------------

Property*	£<<Amount in figur
-----------	--------------------

Book Debts	£<<Amount in figur
------------	--------------------

Books and Records	£1
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The rights referred to in Clause 2.9	£1
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\* apportioned as indicated in Schedule 5.

1.3 Unless otherwise specified, any payment required to be m the Seller pursuant to this Schedule 9 shall be made by draft in favour of the [Seller] [Seller's Solicitors (whose r be sufficient discharge to the Buyer))] **OR** [telegraph following account:

Bank: << >>

Branch: << >>

Sort Code: << >>

Account Name: << >>

Account Number: << >>]

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## SCHEDULE 10

### Conditions

#### 1. **Principal Conditions**

The provisions of clauses 2, 3, and 5 are conditional upon the following conditions not later than, and the continuance in effect of their fulfilment at, <<Date>> or such later date as may be in writing between the Seller and the Buyer:

1.1 the passing of an ordinary resolution in a general meeting approving the transaction set out in the Agreement;

1.2 the passing of an ordinary resolution in a general meeting approving the transaction set out in the Agreement;

#### 2. **The parties' endeavours**

Each of the parties shall use reasonable endeavours to ensure that the provisions of this Agreement become unconditional in accordance with the terms.

#### 3. **Non-fulfilment**

If any one or more of the Conditions are not fulfilled on or before the date of this Agreement shall thereupon become void and of no effect. In any event, and without prejudice to any and all rights of action, in the event of any prior breach of any of the provisions of this Agreement the parties shall promptly return to one another all documents and things already delivered in connection with the transaction hereby.

#### 4. **Waiver**

The Buyer shall be entitled at its option to waive any of the Conditions other than that set out in paragraph 1.2, and the Seller shall be deemed to have done so also. The Seller shall be entitled at its option to waive the Condition set out in paragraph 1.2, and the Buyer shall be deemed to have done so also.

#### 5. **Notice of fulfilment of Conditions**

5.1 When the Condition set out in paragraph 1.1 has been fulfilled, the Buyer shall forthwith give written notice to that effect to the Seller, and such notice shall be conclusive and binding on the parties as to the fulfilment of the Condition.

5.2 When the Condition set out in paragraph 1.2 has been fulfilled, the Seller shall forthwith give notice to that effect to the Buyer, and such notice shall be conclusive and binding on the parties as to the fulfilment of the Condition.

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Signed by <<Insert Name>>for and  
on behalf of <<Name of Seller>>  
**LIMITED/PLC**

Signed by <<Insert Name>> for and  
on behalf of <<Name of Buyer>>  
**LIMITED/PLC**

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