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# Asset Purchase Agreement

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[Seller's Name]  
[Buyer's Name]

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Drafted by Solicitors

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**THIS AGREEMENT** is dated [DATE]

## **Parties**

- (1) [COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **OR** [NAME] of {ADDRESS} (**Seller**).
- (2) [COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **OR** [NAME] of [ADDRESS] (**Buyer**).

## **Background**

The Seller has agreed to sell and the Buyer has agreed to purchase the Business (together with the Assets) as a going concern on the terms and conditions of this agreement and in particular on the basis of the representations, warranties and undertakings set out in this agreement.

## **Agreed terms**

### **1. Interpretation**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Accounts:** the [audited financial statements of the Seller for the accounting period ending on the Accounts Date **OR** unaudited pro-forma accounts relating to the Business as at the Accounts Date, comprising a balance sheet, profit and loss account together with the notes thereon and a cashflow statement].

**Accounts Date:** [DATE].

**Affiliate:** in relation to a body corporate, any subsidiary, subsidiary undertaking or holding company of such body corporate, and any subsidiary or subsidiary undertaking of any such holding company for the time being.

**Assets:** the property, rights and assets of the Seller that comprise the Business (other than the Excluded Assets) set out in Schedule 1.

**Assumed Liabilities:** the obligations of the Seller at the Effective Time under the Contracts.

**Book Debts:** all trade and other debts and amounts owing to the Seller at the Effective Time in respect of the Business (whether or not invoiced).

**Business:** the business of [DESCRIPTION OF BUSINESS] carried on by the Seller [at the Effective Time].

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks are open for business.

**Business Information:** all information, know-how and techniques (whether or not confidential and in whatever form held) which in any way relate, wholly or partly, to the Business.

**Business Intellectual Property Rights:** Intellectual Property Rights owned, used or held for use by the Seller [or any member of the Seller Group] in, or in connection with, the Business.

**Business Name:** [NAME OF BUSINESS] or any name including the word [WORD] or any colourable imitation of it.

**Buyer Group:** the Buyer and each of its Affiliates.

**Buyer's Solicitors:** [NAME AND ADDRESS].

**Claim:** a claim under the Warranties and a Claim is **connected** with another Claim or Substantiated Claim if they arise out of the occurrence of the same events or relate to the same subject matter.

**Companies Acts:** the Companies Act 1985 and the Companies Act 2006.

**Completion:** the completion of the sale and purchase of the Business and the Assets pursuant to and in accordance with this agreement.

**Completion Date:** [the close of business on] [DATE].

**Connected:** has the meaning given in section 839 of the Income and Corporation Taxes Act 1988 (section 1122 of the Corporation Tax Act 2010).

**Contracts:** all contracts, arrangements, licences and other commitments relating to the Business entered into, on or before, and which remain to be performed by any party to them in whole or in part, at the Effective Time.

**Creditors:** all trade debts and accrued charges owing by the Seller at the Effective Time to the trade creditors of the Seller in the ordinary course of the Business [and set out in Schedule 9].

**Customers:** the customers of the Business.

**Customs:** HM Revenue & Customs.

**Demand:** any action, award, claim or other legal recourse, complaint, cost, debt, demand, expense, fine, liability, loss, outgoing, penalty and proceeding.

**Disclosed:** fully, accurately, clearly and fairly disclosed or deemed to have been Disclosed (with sufficient explanation and detail to identify clearly the nature, scope and full implications of the matters disclosed) in or under the Disclosure Letter.

**Disclosure Letter:** the letter written and delivered by or on behalf of the Seller to the Buyer on the same date as this agreement together with the bundle of documents (**Disclosure Bundle**), each in the agreed form.

**DPA:** the Data Protection Act 1998.

**Effective Time:** [[TIME] **OR** close of business] on [the Completion Date **OR** [DATE]].

**Employees:** the employees of the Business at the Effective Time whose details are set out in Schedule 5 .

**Encumbrance:** any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of

any kind, however created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.

**Environment:** the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other material or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Laws:** all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes which are legally binding and in force as at the date of this agreement in so far as they relate to or apply to the Environment or Environmental Matters, including Part IIA of the Environmental Protection Act 1990 and any regulations and guidance made or issued thereunder.

**Environmental Matters:** all matters relating to:

- (a) pollution or contamination of the Environment;
- (b) the presence, existence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of Hazardous Substances or Waste;
- (c) the exposure of any person to Hazardous Substances or Waste;
- (d) the health and safety of any person, including any accidents, injuries, illnesses and diseases;
- (e) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the Environment; or
- (f) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the Environment or any part of it.

**Excluded Assets:** the assets and rights of the Business set out in clause 2.2.

**Excluded Liabilities:** all the liabilities or obligations of or relating to the Business or Assets other than [the Assumed Liabilities] [and] [the Creditors].

**Fixed Assets:** all of the fixed plant and machinery, furniture, utensils, templates, tooling, implements, chattels and equipment wherever situated belonging to the Seller and used or intended for use in connection with the Business attached or fixed to the Properties as at the Effective Time.

**Freehold Properties:** the freehold properties, particulars of which are set out in Part 1 of Schedule 6.

**Goodwill:** the goodwill, custom and connection of the Seller in relation to the Business, together with the exclusive right for the Buyer and its successors and assigns to carry on the Business under the Business Name (and all other names associated with the Business) and respectively to represent themselves as carrying on the Business in succession to the Seller.

**Harm:** harm to the Environment, and in the case of man includes offence caused to any of his senses or harm to his property.

**Hazardous Substances:** any material, substance or organism which, alone or in combination with others, are capable of causing Harm, including radioactive substances and asbestos containing materials.

**Health and Safety Laws:** all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes which are legally binding and in force as at the date of this agreement in so far as they relate to or apply to the health and safety of any person, including the Health and Safety at Work etc. Act 1974, the Control of Asbestos Regulations 2006 and the Construction (Design and Management) Regulations 2007.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Interest Rate:** interest at a rate equal to [four]% per annum above the base lending rate from time to time of [NAME OF BANK].

**IT System:** all computer hardware (including network and telecommunications equipment) and software (including associated preparatory materials, user manuals and other related documentation) owned, used, leased or licensed by the Seller in relation to the Business.

[**Lease:** the lease (including any supplemental documents) under which each of the Leasehold Properties is held and **Leases** means all of them.]

**Lease Transfer Date:** in respect of each Leasehold Property, the later of:

- (a) the Completion Date; and
- (b) the day which is [five] Business Days after the date of the Licence (as defined in Part 4 of Schedule 6) is granted in respect of that Leasehold Property.

**Leasehold Properties:** the leasehold properties, particulars of which are set out in Part 2 of Schedule 6.

[**Management Accounts:** the unaudited management accounts of the [Seller **OR** Business], comprising a balance sheet as at [DATE] and a profit and loss account for the period which commenced on [DATE] and ended on [DATE], a copy of which is annexed to the Disclosure Letter.]

**Moveable Assets:** the loose plant including moveable plant, machinery and equipment, fixtures and fittings [(other than landlord's fixtures and fittings),] desktop computers, spare parts and tooling used or intended for use in connection with the Business.

**Properties:** the Freehold Properties and the Leasehold Properties.

**Purchase Price:** has the meaning given in clause 3.1.

**Records:** the books, accounts ([including **OR** excluding] the VAT Records and returns), lists of Customers and suppliers and all the other documents, papers and records relating to the Business or any of the Assets.

**Seller Group:** the Seller and each of its Affiliates.

**Seller's Solicitors:** [NAME AND ADDRESS].

**Stock:** the stock-in-trade of the Business at the Effective Time.

**Substantiated Claim:** is a Claim in respect of which liability is admitted by the Seller or which has been adjudicated on by a court of competent jurisdiction and no right of appeal lies in respect of such adjudication or the parties are prevented by passage of time or otherwise from making an appeal.

**Tax or 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.

**Tax Warranties:** the warranties set out in Part 6 of Schedule 7.

**Third Party Consent:** a consent, licence, approval, authorisation or waiver required from a third party for the conveyance, transfer, assignment or novation in favour of the Buyer of any of the Assets or Assumed Liabilities in terms acceptable to the Buyer.

**Transaction:** the transaction contemplated by this agreement or any part of that transaction.

**TULRCA:** the Trade Union and Labour Relations (Consolidation) Act 1992.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**TUPE 1981:** the Transfer of Undertakings (Protection of Employment) Regulations 1981.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

**VAT Records:** all records of the Seller relating to the Business referred to in section 49 of the VATA 1994.

**VATA 1994:** Value Added Tax Act 1994.

**Warranties:** the warranties, representations and undertakings set out in clause 5 and Schedule 7 (Warranties).

**Waste:** any waste, including any by-product of an industrial process and anything which is discarded, disposed of, spoiled, abandoned, unwanted or surplus, irrespective of whether it is capable of being recovered or recycled or has any value.

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or schedule to, this agreement. A reference to a paragraph is to a paragraph of the relevant schedule, and a reference to an appendix is to the relevant appendix to this agreement.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated.



- 1.6 Words in the singular include the plural and in the plural include the singular.
- 1.7 A reference to one gender includes a reference to the other gender.
- 1.8 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it. Provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.9 **Writing** or **written** includes faxes but not e-mail.
- 1.10 Documents in **agreed form** are documents in the form agreed by the parties to this agreement and initialled by them or on their behalf for identification.
- 1.11 A reference in this agreement to **other documents referred to in this agreement** is a reference to the following documents [SPECIFY ANY RELEVANT DOCUMENTS REFERRED TO, SUCH AS THE DISCLOSURE LETTER – IF THERE ARE NONE THEN DELETE THIS SUB-CLAUSE].
- 1.12 Where the words **include(s) including** or **in particular** are used in this agreement, they are deemed to have the words "without limitation" following them.
- 1.13 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 **Other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.15 References to any English legal terms, for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.
- 1.16 References to times of the day are, unless the context requires otherwise, to London time and references to a day are to a period of 24 hours running from midnight on the previous day.
- 1.17 Any amount expressed to be in pounds sterling shall, to the extent that it requires, in whole or in part, to be expressed in any other currency in order to give full effect to this agreement, be deemed for that purpose to have been converted into the relevant currency immediately before the close of business on the date of this agreement (or, if that is not a

Business Day, the Business Day immediately before it). Subject to any applicable legal requirements governing conversions into that currency, the rate of exchange shall be [Barclays Bank Plc's] spot rate for the purchase of that currency with sterling at the time of the deemed conversion.]

## **2. Agreement to sell and purchase**

2.1 Unless expressly provided in this agreement, the Seller shall sell with full title guarantee, or to the extent that it is not the owner thereof shall procure the sale with full title guarantee, and the Buyer, with a view to carrying on the Business as a going concern, shall purchase free from all Encumbrances and with effect from the Effective Time:

- (a) the Business and the Assets;
- (b) the Goodwill;
- (c) the Records;
- (d) all (if any) of the other assets, property or rights of the Seller relating to or connected with, or belonging to or required [or intended] for use in, the Business or in the Properties and which are not otherwise described in Schedule 1 but not the Excluded Assets; and
- (e) all of the Seller's rights against third parties, including rights under any warranties, conditions, guarantees or indemnities or under the Sale of Goods Act 1979 relating to any of the Assets.

2.2 There shall be excluded from the sale under this agreement:

- (a) the Excluded Liabilities;
- (b) [the Creditors;]
- (c) any right of action to which the Seller may be entitled (whether in contract, tort or otherwise) other than pursuant to or in connection with any Contract;
- (d) [all contracts and arrangements relating to the Business entered into outside the ordinary course of business;]
- (e) all the Seller's cash-in-hand or at the bank or at any other financial institution;
- (f) [the Book Debts;]
- (g) any Tax for which the Seller is liable, whether or not then due, and any liability for financing charges relating to the Business;
- (h) the Seller's accounts and accounting records which do not relate exclusively to the Business; and
- (i) the benefit of any and all insurance claims and repayments arising before the Effective Time in relation to the Business.

2.3 Subject to the Buyer's rights under clause 4.5, the sale and purchase of each of the Assets is interdependent and shall be completed simultaneously.

2.4 The Properties shall be sold to the Buyer in accordance with Part 3 and Part 4 of Schedule 6.

2.5 The Purchase Price shall be apportioned between the Assets in accordance with Schedule 1.

### **3. Purchase price and adjustment**

3.1 The Purchase Price for the Business and the Assets to be paid by the Buyer to the Seller pursuant to this agreement shall be the aggregate of the values attributed to the Assets as set out in Schedule 1 [less the Assumed Liabilities] and the amount to be attributed to the Stock as calculated in accordance with the provisions of Schedule 2 (together the **Purchase Price**).

3.2 The Purchase Price shall be paid in cash on Completion by the Buyer [TO ACCOUNT DETAILS **OR** AGREED METHOD OF PAYMENT].

3.3 The portion of the Purchase Price that is attributable to the Stock shall be calculated and agreed in accordance with Schedule 2, and when so agreed, an amount representing the value of the Stock shall be paid in the manner [and to the account] specified in clause 3.2 above.

3.4 The Purchase Price shall be deemed to be reduced by the amount of any payment made to the Buyer for a breach of any Warranty. The reduction shall be attributed as nearly as possible to the Assets to which it relates, or if that is not practicable or possible, in such manner as the Buyer shall decide.

### **4. Completion**

4.1 Completion shall take place on the Completion Date:

- (a) at the offices of [NAME OF PARTY]; or
- (b) at any other place agreed in writing by the Seller and the Buyer.

4.2 The Seller undertakes to the Buyer that the Business shall be conducted in the manner provided in Schedule 3 from the date of this agreement until Completion and gives the Buyer the undertakings set out in that Schedule.

4.3 At Completion, the Seller shall comply with its obligations set out in paragraph 1 of Schedule 4.

4.4 At Completion, and subject to the Seller having complied with clause 4.3, the Buyer shall:

- (a) pay the Purchase Price in accordance with clause 3;

(b) deliver to the Seller duly executed counterparts of the licences, agreements, assignments and other documents referred to in paragraph 1.1(d) and paragraph 1.1(e) of Schedule 4;

(c) [deliver to the Seller a certified copy of the resolution adopted by the board of directors of the Buyer authorising the execution and delivery by the officers specified in the resolution of this agreement, and any other documents referred to in this agreement as being required to delivered by it.]

4.5 If the Seller does not comply with clause 4.3 in any material respect, the Buyer may, without prejudice to any other rights or remedies it has (including the right to claim damages for breach of this agreement):

(a) so far as is practicable, proceed to Completion; or

(b) defer Completion to a date no more than 28 days after the date on which Completion would otherwise have taken place; or

(c) rescind this agreement.

4.6 Following Completion, the Buyer and the Seller shall each comply with their respective obligations set out in paragraph 2 of Schedule 4.

## **5. Warranties**

5.1 The Buyer enters into this agreement on the basis of, and in reliance on, the Warranties.

5.2 The Seller warrants and represents to the Buyer that each of the Warranties is true, accurate and not misleading except as Disclosed.

5.3 The Warranties are deemed to be repeated by reference to the circumstances prevailing at the time of repetition, on each day up to and including Completion and any reference made to the date of this agreement (whether express or implied) in relation to any Warranty shall be construed, in relation to any such repetition, as a reference to each such day.

5.4 The Seller shall ensure that nothing is done or omitted to be done which would, at any time before or at Completion, be materially inconsistent with any of the Warranties, breach any of the Warranties or make any of the Warranties untrue or misleading.

5.5 Without prejudice to the right of the Buyer to claim on any other basis or take advantage of any other remedies available to it, if any of the Warranties are breached or prove to be untrue or misleading, the Seller undertakes to pay to the Buyer on demand:

(a) the amount necessary to put the Buyer into the position it would have been in if such Warranty had not been breached or had been true and not misleading; and

(b) all costs and expenses (including, without limitation, damages, claims, demands, proceedings, costs, legal and other professional fees and costs, penalties, expenses and consequential losses) incurred by the Buyer (whether directly or

indirectly) or the Business as a result of the breach or of such Warranty not being true or being misleading (including a reasonable amount in respect of management time),

and a payment made in accordance with the provisions of this clause 5.5 shall include any amount necessary to ensure that, after any Taxation of the payment, the Buyer is left with the same amount it would have had if the payment was not subject to Taxation.

- 5.6 Warranties given **so far as the Seller is aware** are deemed to be given to the best of the knowledge, information and belief of the Seller after it has made all reasonable and due and careful enquiries.
- 5.7 Each of the Warranties is separate and, unless expressly provided to the contrary, is not limited by reference to any other Warranty or anything in this agreement.
- 5.8 With the exception of matters Disclosed, no information of which the Buyer and/or its agents and/or advisers has knowledge (actual, constructive or imputed) or which could have been discovered (whether by investigation made by the Buyer or made on its behalf) shall prejudice or prevent any Claim or reduce the amount recoverable thereunder.
- 5.9 The provisions of Schedule 8 shall limit the liability of the Seller in relation to any Claim. Provided that the limitations in Schedule 8 shall not apply to any claim arising as a result of a breach of clause 2.1 or any Claim arising as a result of a breach of the Warranties contained in paragraph 2 or paragraph 6 of Schedule 7.

## **6. Risk**

Subject to the provisions of Schedule 3, the Seller shall continue to carry on the Business for its own benefit and at its own risk up to the Effective Time. The Business and Assets shall be at the risk of the Buyer from the Effective Time.

## **7. Insurance**

The Seller shall maintain in force up to the Effective Time all the policies of insurance which have been Disclosed and shall procure that from the Effective Time the interest of the Buyer under or pursuant to this agreement in respect of the Fixed Assets and the Properties is noted on all such policies effected by or for the benefit of the Seller in respect thereof. If any of the Fixed Assets, the Moveable Assets or the Properties are lost, destroyed or damaged before the Effective Time, the Buyer at its option may either:

- (a) require the Purchase Price to be abated or adjusted; or
- (b) require that the insurance monies (if any) recoverable in respect thereof shall be paid to it and the Seller shall direct the insurance company accordingly, and in such event any such insurance monies received by the Seller shall be held by it on trust for the Buyer absolutely.

## **8. Apportionments and prepayments**

- 8.1 All periodical charges and periodical outgoings of the Business or related to the Assets shall be apportioned on a time basis so that such part of the relevant charges attributable to the period ending at the Effective Time shall be borne by the Seller and such part of the relevant charges attributable to the period commencing immediately following the Effective Time shall be borne by the Buyer. All rents, licence fees, royalties and other periodical receipts of the Business shall be apportioned between the Seller and the Buyer on like basis.
- 8.2 Within [ten] Business Days after the Completion Date the Seller and Buyer shall prepare and endeavour to agree a schedule (**Apportionments Schedule**) of the apportionments required to be made in accordance with clause 8.1.
- 8.3 If the parties fail to agree the Apportionments Schedule within [ten] Business Days, either party may request that the dispute is referred to an independent accountant (**Independent Accountant**). If the parties fail to agree who to appoint as the Independent Accountant within [five] Business Days, either party may apply to the President for the time being of the Institute of Chartered Accountants in England and Wales to appoint the Independent Accountant. The Independent Accountant shall act as an expert not as an arbitrator. The Apportionments Schedule (as adjusted in accordance with the Independent Accountant's determination) shall (in the absence of fraud or manifest error) be binding on the parties. The reasonable fees of the Independent Accountant shall be borne by the parties in such proportions as the Independent Accountant may determine.
- 8.4 Any sum due between the parties, pursuant to this clause 8 shall be paid in cash within [five] Business Days of the Apportionments Schedule being agreed or becoming binding on the parties pursuant to clause 8.3.

## **9. Liabilities of the buyer and the seller**

- 9.1 The Buyer shall:
- (a) with effect from the Effective Time assume responsibility for and indemnify the Seller against the payment or performance of the Assumed Liabilities and shall pay or perform the Assumed Liabilities in accordance with practice similar to the present performance of the Seller in the payment, or as the case may be, the performance of the Assumed Liabilities;
  - (b) use all reasonable endeavours to procure the cancellation of those securities or guarantees given in respect of the Assumed Liabilities by a member of the Seller Group which have been expressly specified in the Disclosure Letter; and
  - (c) pay, satisfy or discharge all debts, liabilities and obligations incurred by the Buyer in connection with the Business after Completion.
- 9.2 Nothing in this agreement shall pass to the Buyer, or shall be construed as acceptance by the Buyer of, any liability, debt or other obligation of the Seller, (whether accrued, absolute,

contingent, known or unknown) for anything done or omitted to be done before Completion in the course of or in connection with the Business or the Assets (save to the extent that any such liability is included in the Assumed Liabilities) and the Seller shall:

- (a) indemnify and hold the Buyer harmless against any and all obligations, liabilities and Demands arising therefrom, including, the Excluded Liabilities [and the Creditors]; and
- (b) perform any obligation falling due for performance or which should have been performed before Completion including, the Excluded Liabilities [and the Creditors].

## **10. Value added tax**

10.1 The Seller and the Buyer intend that article 5 of the Value Added Tax (Special Provisions) Order 1995 shall apply to the sale of the Assets pursuant to this agreement and agree to use all reasonable endeavours to secure that the sale is treated as neither a supply of goods nor a supply of services under that article.

10.2 If nevertheless, any VAT is payable on the sale pursuant to this agreement and Customs have so confirmed in writing after full disclosure of all material facts, the Seller shall promptly deliver to the Buyer a proper VAT invoice in respect of the VAT payable. Following receipt of the VAT invoice, the Buyer shall pay the Seller the amount of the VAT immediately on:

- (a) recovery of that VAT by the Buyer from HM Revenue & Customs; or
- (b) payment of the VAT by the Seller,

whichever is the earlier.

10.3 For the purposes of clause 10.2, VAT shall only be treated as payable if Customs have so confirmed in writing after full disclosure of all material facts.

10.4 Before sending any relevant letter to Customs, the Seller shall give the Buyer a reasonable opportunity to comment on it, and shall make such amendments as the Buyer reasonably requires.

10.5 In determining its obligations under clause 10.1 and clause 10.2, the Buyer is entitled to assume that no option to tax (within the meaning of Schedule 10 to the VATA 1994) has been made which applies to any Properties, and that the Properties do not fall within paragraph (a) of item 1 of Group 1 of Schedule 9 to the VATA 1994 (Freehold transfer of new or uncompleted building or civil engineering work) (**Item 1**). Accordingly:

- (a) notwithstanding clause 10.1, the Buyer is not obliged to make any option to tax ; and
- (b) notwithstanding clause 10.2, the Buyer is not liable to pay any amount in respect of VAT which would not have arisen but for the making of an option to tax or but for the supply of Properties falling within paragraph (a) of Item 1.

10.6 The Seller shall, on request, make available any information and documents in its control required to establish to Customs and any tribunal or court that no liability, or a reduced liability, arises on the Buyer or any other company under section 44 of VATA 1994 as a result of the sale of the Assets.

10.7 **EITHER**

[The Seller and Buyer intend that section 49 of VATA 1994 shall apply to the sale of the Assets under this agreement but they do not intend to make a joint application to HM Revenue & Customs for the Buyer to be registered for VAT under the VAT registration number of the Seller, pursuant to Regulation 6(1)(d) of the VAT Regulations 1995.]

10.8 **OR**

[The Seller and Buyer intend that section 49 of VATA 1994 shall apply to the sale of the Assets under this agreement and they intend to make a joint application to HM Revenue & Customs for the Buyer to be registered for VAT under the VAT registration number of the Seller, pursuant to Regulation 6(1)(d) of the VAT Regulations 1995. If HMRC registers the Buyer under the Seller's VAT registration number:

- (a) the Seller shall, on Completion, deliver to the Buyer all VAT Records;
- (b) the Seller shall not make any request to HM Revenue & Customs for the VAT Records to be preserved by the Seller rather than the Buyer;
- (c) the Buyer shall preserve the VAT Records for such period as may be required by law and, during that period, permit the Seller reasonable access to them to inspect or make copies of them; and
- (d) the Buyer may fulfil its obligations under clause 10.8(c) by procuring that any future transferee of the Business or any other person preserves the VAT Records and permits reasonable access as mentioned in that clause, in which case the Buyer shall notify the Seller of the name of that person.]

10.9 Subject to clause 10.2 if any VAT is chargeable on any supply by the Buyer to the Seller under this agreement, the Seller shall pay to the Buyer the amount of that VAT against issue of a proper VAT invoice.

10.10 If the Buyer pays the Seller an amount in respect of VAT under clause 10.2 and Customs note that all or part of it was not properly chargeable, the Seller shall repay the amount or relevant part of it to the Buyer. The Seller shall make the repayment promptly after the ruling, unless it has already accounted to Customs for the VAT. In that case, the Seller shall apply for a refund of the VAT (plus any interest payable by Customs), use reasonable endeavours to obtain it as speedily as practicable, and pay to the Buyer the amount of the refund and any interest when and to the extent received from Customs.



## **11. The employees**

11.1 The parties agree that the sale pursuant to this agreement will constitute a relevant transfer for the purposes of TUPE and, accordingly, that it will not terminate the contracts of employment of any of the Employees, which shall be transferred to the Buyer pursuant to TUPE with effect from the Effective Time.

11.2 The Seller undertakes to the Buyer:

- (a) that it has complied with and shall, up to the Effective Time, comply with all of its obligations and those of any of its predecessors (whether or not legally binding or in respect of which it would be expected to comply by any regulatory or other body which it is subject) due to or in connection with the Employees or any body representing them (or any of the said obligations the Seller would have had under or in connection with such contracts but for TUPE);
- (b) that it has paid and shall pay all sums due in relation to the Employees up to the Effective Time (whether arising under common law, statute, equity or otherwise) including all remuneration, expenses, national insurance and pension contributions, liability to Taxation and other sums payable in respect of any period up to the Effective Time;
- (c) that there are no sums owing to or from any Employee other than reimbursement of expenses for the current [month] and wages for the current salary period;
- (d) that it has complied and shall comply in all respects with its obligations under regulation 11 of TUPE; and
- (e) to fully indemnify and hold the Buyer harmless against all Demands (including legal and other professional fees and expenses) which the Buyer may suffer, sustain, incur, pay or be put to arising from or in connection with:
  - (i) any failure by the Seller to comply with its obligations under TUPE or this clause 11.2;
  - (ii) the employment of the Employees or the termination of their employment by the Seller before the Effective Time; and
  - (iii) any contract of employment or engagement or collective agreement not Disclosed to the Buyer.

## **12. The contracts**

12.1 The Seller shall, with effect from the Effective Time, assign to the order of the Buyer, or procure the assignment to the order of the Buyer, all the Contracts which are capable of assignment without a Third Party Consent.

12.2 If any of the Contracts cannot be assigned or novated without obtaining a Third Party Consent, then the Seller shall use all reasonable endeavours to obtain such consents.

- 12.3 Insofar as any of the Contracts cannot be assigned or novated to the Buyer without Third Party Consent and such consent is refused or otherwise not obtained or where any of the Contracts are incapable of transfer to the Buyer by assignment, novation or other means:
- (a) the Seller at the Buyer's request and cost shall use all reasonable endeavours with the co-operation of the Buyer to procure such assignment or novation;
  - (b) unless and until any such Contract shall be assigned or novated, the Seller shall continue its corporate existence and shall hold such Contract and any monies, goods or other benefits received thereunder as trustee for the Buyer and its successors in title absolutely;
  - (c) the Buyer shall (if sub-contracting is permissible and lawful under the Contract in question and to the extent that they are Assumed Liabilities), as the Seller's sub-contractor, perform all the obligations of the Seller under such Contract and where sub-contracting is not permissible, the Buyer shall perform such obligations as agent for the Seller; and
  - (d) unless and until any such Contract is assigned or novated, the Seller shall (so far as it lawfully may) [at the Buyer's cost] give all such assistance as the Buyer may reasonably require to enable the Buyer to enforce its rights under such Contract and (without limitation) shall provide access to all relevant books, documents and other information in relation to such Contract as the Buyer may require from time to time.
- 12.4 Nothing in this agreement shall be construed as an assignment or attempted assignment if such assignment or attempted assignment would constitute a breach of such Contract.
- 12.5 If Third Party Consent to assignment or novation of a Contract is refused, or otherwise not obtained on terms reasonably satisfactory to the Buyer within 60 Business Days of the Completion Date, the Buyer shall be entitled at its sole discretion to require the Seller to serve proper notice to terminate that Contract. The Seller shall indemnify and hold the Buyer harmless from and against all Demands (including legal and other professional fees and expenses and taking account of any sums paid by the Buyer in respect of the Contract) that the Buyer may suffer, sustain, incur, pay or be put to by reason of the termination of such Contract.
- 12.6 The Seller shall indemnify and hold the Buyer harmless from and against all Demands of whatsoever nature relating to and payable in respect of the Business or Assets which are attributable to the period up to the Effective Time, including any act or omission on the part of the Seller in relation to the Contracts or any defects in, or alleged defects in, goods supplied or services provided before the Effective Time and, in particular, any claim under any warranty or under the Sale of Goods Act 1979 or the Supply of Goods Act 1994.

### **13. Book debts and buyer's obligations after completion**

- 13.1 The Buyer shall not acquire the Book Debts which shall remain the property and responsibility of the Seller.

- 13.2 Notwithstanding that the Book Debts are Excluded Assets, the Buyer shall endeavour to collect the Book Debts on the Seller's behalf, but shall not be bound to take any legal proceedings or other steps to recover the same save as may be usual in the ordinary course of business. Subject to any express intention to the contrary on the part of the debtor, any money received by the Buyer in the course of collecting any Book Debts from a person who is also indebted to the Buyer shall be deemed to have been paid in or towards the discharge of the oldest debt.
- 13.3 The Seller shall not seek to recover the Book Debts direct and shall not do anything to hinder their collection by the Buyer and, in particular, the Seller shall not assign any of the Book Debts to any third party. The Seller shall inform the Buyer of any payments that may be made to the Seller in respect thereof.
- 13.4 If it becomes apparent that recovery of any Book Debt is not likely to be possible within a reasonable period unless legal proceedings are instituted, the Buyer shall advise the Seller in writing and furnish the Seller with full particulars of the steps taken by the Buyer to effect recovery. Where the debtor in question is a continuing debtor of the Business after the Effective Time, the Seller shall consult with the Buyer before instituting any legal proceedings and shall not take any action calculated or likely to affect the goodwill of the Business.
- 13.5 After the expiry of [six] months from Completion the obligations of the Buyer under this clause 13 to collect Book Debts shall cease absolutely, save that if thereafter any payments are made to the Buyer in respect of such Book Debts, the Buyer shall remit the same to the Seller less its reasonable costs and expenses.
- 13.6 In consideration of the Buyer collecting the Book Debts the Seller shall pay to the Buyer a commission of [PERCENTAGE] per cent of the Book Debts received by the Buyer and the Buyer shall be entitled to deduct the commission from any amounts which would otherwise be obliged to remit to the Seller under this clause 13.

#### **14. Data protection**

The Buyer undertakes to comply with the DPA in relation to its application to the Business and Assets after the Completion Date.

#### **15. Restrictive covenants**

- 15.1 The Seller undertakes that it shall not and that it shall procure that its Affiliates shall not:
- (a) during the period of [two] years beginning with the Completion Date, in any geographic areas in which the Business was carried on at the Completion Date, carry on or be employed, engaged or interested in any business which would be in competition with any part of the Business as the Business was carried on at the Completion Date;

- (b) during the period of [two] years beginning with the Completion Date, deal with or seek the custom of any person that is at the Completion Date, or that has been at any time during the period of [12] months immediately preceding that date, a client or customer of the Business;
- (c) during the period of [two] years beginning with the Completion Date:
  - (i) offer employment to, enter into a contract for the services of, or attempt to entice away from the Business, any individual who is at the time of such offer or attempt, and was at the Completion Date, one of the Employees holding an executive or managerial position with the Business; or
  - (ii) procure or facilitate the making of any such offer or attempt by any other person;
- (d) at any time after Completion, use in the course of any business:
  - (i) the words "[PROHIBITED WORDS]"; or
  - (ii) any trade or service mark, business or domain name, design or logo which, at the Completion Date, was or had been used by the Business,

or anything which is, in the reasonable opinion of the Buyer, capable of confusion with such words, mark, name, design or logo; and
- (e) during the period of [two] years beginning with the Completion Date, solicit or entice away from the Business any supplier to the Business who has supplied goods and/or services to the Business at any time during the [six] months immediately preceding the Completion Date if that situation or enticement causes or would cause such supplier to cease supplying, or materially reduce its supply of, those goods and/or services to the Business.

15.2 The undertakings in this clause 15 are intended for the benefit of the Buyer and apply to actions carried out by the Seller (or any of its Affiliates) in any capacity, and whether directly or indirectly, on the Seller's (or any of its Affiliates) own behalf, on behalf of any other person or jointly with any other person.

15.3 Nothing in this clause shall prevent the Seller from holding for investment purposes only:

- (a) any units of any authorised unit trust; or
- (b) not more than [PERCENTAGE]% of any class of shares or securities of any company traded on the London Stock Exchange.

15.4 Each of the covenants in this clause 15 is:

- (a) a separate undertaking by the Seller and shall be enforceable by the Buyer separately and independently of its right to enforce any one or more of the covenants in this clause 15; and
- (b) considered fair and reasonable by the parties but if any restriction shall be found to be unenforceable but would be valid if any part of it were deleted or the period or area of application reduced, the restriction shall apply with such modification as may be necessary to make it valid and effective.

- 15.5 The consideration for the undertakings contained in this clause is included in the Purchase Price.
- 15.6 For the purpose of this clause, an **Affiliate** of the Seller shall include a company or subsidiary undertaking which is an Affiliate of the Seller at the date of this agreement that subsequently ceases to be an Affiliate.
- 15.7 The Seller shall procure that each of its Affiliates complies with the terms of this clause 15.

## **16. Confidentiality and announcements**

- 16.1 The Seller undertakes to the Buyer to keep confidential all the information that it has acquired about the Buyer and the Buyer Group and all Business Information and to use such information only for the purposes contemplated by this agreement.
- 16.2 The Buyer undertakes to the Seller to keep confidential the terms of this agreement and all information that it has acquired about the Seller and the Seller Group and to use the information only for the purposes contemplated by this agreement.
- 16.3 Either party may disclose any information that it is otherwise required to keep confidential under this clause 16:
- (a) to such professional advisers, consultants and employees or officers of its group as are reasonably necessary to advise on this agreement, or to facilitate the Transaction, provided that the disclosing party procures that the people to whom the information is disclosed keep it confidential as if they were that party; or
  - (b) with the written consent of the other party; or
  - (c) to the extent that the disclosure is required:
    - (i) by law; or
    - (ii) by a regulatory body, tax authority or securities exchange;but shall use reasonable endeavours to consult the other party and to take into account any reasonable requests it may have in relation to the disclosure before making it.
- 16.4 No announcement, circular or other publicity in connection with the subject matter of this agreement (other than as permitted by this agreement) shall be made before Completion by or on behalf of the Seller and the Buyer without the approval of the other (such approval not to be unreasonably withheld or delayed).

## **17. Further assurance**

The Seller shall (at its own expense) promptly execute and deliver all 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 provisions of this agreement.

## **18. Assignment**

Except as otherwise provided in this agreement, no party may assign, or grant any Encumbrance over or deal in any way with, any of its rights under this agreement or any document referred to in it.

## **19. Whole agreement**

19.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

19.2 Nothing in this clause operates to limit or exclude any liability for fraud.

## **20. Variation**

20.1 A variation of this agreement shall be in writing and signed by or on behalf of each party.

20.2 Any waiver of any right under this agreement is only effective if it is in writing and signed by the waiving or consenting party and it applies only in the circumstances for which it is given and shall not prevent the party who has given the waiver from subsequently relying on the provision it has waived.

20.3 No failure to exercise or delay in exercising any right or remedy provided 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.

20.4 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.

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

## **21. Costs**

Unless otherwise provided, all costs and expenses in connection with the negotiation, preparation, execution and performance of this agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

## **22. Notice**

22.1 A notice given under this agreement:

- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

- (b) shall be sent for the attention of the person, and to the address or fax number, given in this clause 22 (or such other address, fax number or person as the relevant party may notify to the party); and
- (c) shall be:
  - (i) delivered personally; or
  - (ii) delivered by commercial courier; or
  - (iii) sent by fax; or
  - (iv) sent by pre-paid first-class post or recorded delivery; or
  - (v) (if the notice is to be served by post outside the country from which it is sent) sent by registered airmail.

22.2 The addresses for service of notice are:

- (a) [SELLER'S NAME]

Address:

For the attention of:

Fax number:

- (b) [BUYER'S NAME]

Address:

For the attention of:

Fax number:

22.3 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery; or
- (b) if delivered by commercial courier, at the time of signature of the courier's receipt; or
- (c) if sent by fax, at the time of transmission; or
- (d) if sent by pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
- (e) if sent by registered airmail, five days from the date of posting; or
- (f) if deemed receipt under the previous paragraphs of this clause 22.3 is not within business hours (business hours meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a Business Day), when business next starts in the place of receipt.

22.4 To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

22.5 A notice under this agreement shall not be valid if sent by e-mail.

**23. Interest on late payment**

Where a sum is required to be paid under this agreement but is not paid before or on the date the parties agreed, the party due to pay the sum shall also pay interest on that sum at the Interest Rate for the period beginning with that date and ending with the date the sum is paid (and the period shall continue after as well as before judgment). Interest shall accrue on a daily basis and be compounded quarterly.

**24. Severance**

24.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**25. Agreement survives completion**

This agreement (other than obligations that have already been fully performed) remains in full force after Completion.

**26. Third party rights**

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

**27. Successors**

The rights and obligations of the parties shall continue for the benefit of and shall be binding on their respective successors and assigns.

**28. 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 each party had signed the same document.

**29. Language**

If this agreement is translated into any language other than English, the English language text shall prevail.



**30. Governing law and jurisdiction**

- 30.1 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 30.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

## **Schedule 1   Assets and values**

The Assets included in the sale pursuant to this agreement and their respective values are as follows:

<b>ASSET</b>	<b>VALUE</b>
Goodwill	
Freehold Properties	
Leasehold Properties	
Fixed Assets	
Moveable Assets	
[Stock]	[Amount determined under Schedule 2]
Contracts	
Business Intellectual Property	
IT System	
Book Debts	
Cash	
[List any other assets]	

## Schedule 2 Stock valuation

1. The Seller and the Buyer shall procure that a joint physical stock-take of the Stock is carried out [as at the Completion Date **OR** Effective Time] (**Stock-take**) by the Seller's employees or agents in the presence of the representatives of the Buyer and as the Seller and the Buyer shall respectively [reasonably] require.
2. The Stock shall be valued at the lower of cost and net realisable value with proper provision being made for slow-moving, unusable, unsaleable or obsolete Stock.
3. The Buyer shall use its reasonable endeavours to procure that as soon as possible following the Stock-take and in any event within [five] Business Days, there is delivered to the Seller a schedule of the Buyer's valuation of the Stock (**Stock Schedule**).
4. The Seller shall notify the Buyer within [five] Business Days of receipt of the Stock Schedule (**Review Period**) whether or not it accepts the Stock Schedule.
5. If the Seller notifies the Buyer within the Review Period that it does not accept the Stock Schedule:
  - (a) It shall, at the same time, set out in a notice in writing (**Objection Notice**) its reasons in full for such non-acceptance and specify the adjustments which, in its opinion, should be made to the Stock Schedule in order to comply with the requirements of the agreement and deliver such notice to the Buyer; and
  - (b) The parties shall use all reasonable endeavours to meet and discuss the objections raised in the Objection Notice and to reach agreement upon the adjustments (if any) required to be made to the Stock Schedule.
6. If the Seller is satisfied with the Stock Schedule (either as originally submitted or after adjustments agreed between the Seller and the Buyer in accordance with paragraph 5 above) or the Seller fails to issue an Objection Notice by the end of the Review Period, then the Stock Schedule (incorporating any agreed adjustments) shall, in the absence of manifest error, be deemed agreed and shall constitute the value of the Stock (**Stock Value**) for the purpose of the Purchase Price.
7. If within [five] Business Days of receipt of an Objection Notice the Seller and the Buyer fail to agree the Stock Schedule (such failure to agree being referred to as a **Dispute**), the Dispute shall be referred for final decision to an independent chartered accountant (**Expert**).
8. The Expert shall be appointed by agreement between the Seller and the Buyer within [ten] Business Days of the Dispute arising or, failing agreement on the appointment of the Expert, on the application of either party to the President for the time being of the Institute of Chartered Accountants in England and Wales.

9. Each party shall provide or procure that the other provides the Expert with access to documents and comply with other reasonable requests and shall be entitled to make written representations concerning the Dispute to such Expert on one occasion only.
10. Any determination concerning the Dispute which is made by the Expert shall be made without liability on the part of such Expert other than for gross negligence or bad faith and except for any manifest error shall be conclusive and binding on the parties. In giving its decision, the Expert shall state what adjustments, if any, are necessary to the Stock Schedule in order for it to have been prepared in accordance with this agreement.
11. The Expert shall act as an expert and not as an arbitrator when making any such determination.
12. The costs and expenses of the Expert shall be borne by the parties in such proportion as the Expert shall direct having regard to the relative merits of each party's position in relation to the Dispute or, in the absence of such direction, equally by the Seller and the Buyer.
13. Any time period specified in this Schedule 2 may be extended by written agreement between the Seller and the Buyer.
14. When the parties reach (or are deemed to reach pursuant to paragraph 6 above) agreement on the Stock Schedule or when the Stock Schedule is finally determined at any stage in accordance with the procedures in this Schedule 2, the Stock Schedule so agreed or determined shall be final and binding on the parties for the purpose of the value of the Stock and the Purchase Price.

### **Schedule 3    Conduct between the date of this agreement and completion**

1. The Seller undertakes to the Buyer that from the date of this agreement to Completion it shall:
  - (a) operate the Business in its usual way so as to maintain the Business as a going concern and not discontinue or cease to operate all or a material part of the Business;
  - (b) not acquire or dispose of, or agree to acquire or dispose of, any asset except in the usual and ordinary course of its trade or assume or incur a liability, obligation or expense (actual or contingent) except in the usual and ordinary course of its trade and on normal arms length terms;
  - (c) not do, or allow to be done, any act or thing which may, adversely affect the Goodwill or the relationship of the Business with its customers, business contacts, suppliers and/or Employees; and
  - (d) not create, or agree to create, any Encumbrance over the Business or any Asset or redeem, or agree to redeem, any existing Encumbrance over the Business or any Asset.
  
2. The Seller undertakes with the Buyer that from the date of this agreement to Completion it shall not, without the prior written consent of the Buyer (such consent not to be unreasonably withheld or delayed):
  - (a) dismiss any of the Employees or engage or employ or offer to employ or engage any person in the Business other than the Employees;
  - (b) amend (or agree to amend) the terms of employment of any of the Employees;
  - (c) commit itself to any expenditure in excess of £[AMOUNT] in relation to the Business or any expenditure outside its usual and ordinary course in relation to the Business in excess of £[AMOUNT]; or
  - (d) commit itself to any borrowings [in excess of £[AMOUNT]] in relation to the Business;
  - (e) engage in any litigation in relation to the Business or any of the Assets; or
  - (f) [LIST ANY OTHER TERMS HERE].
  
3. The Seller shall immediately disclose to the Buyer in writing any matter or thing which arises or becomes known to it before Completion which is or might be a breach of, might reasonably be expected to cause or constitute a breach of or is inconsistent with or may render inaccurate or misleading any of the Warranties, or which is a breach of, or may otherwise give rise to a claim under, any other provision of this agreement or which is material to be known by a Buyer of the Business or the Assets.
  
4. The Seller shall immediately disclose to the Buyer in writing any matter or thing which arises or may arise or become known to it before Completion which has or is likely to have

a material and adverse effect on the Business as presently conducted, or on the financial or trading position or prospects of the Business or which is otherwise material to be known by a Buyer of the Business or the Assets.

5. The Seller shall procure that until Completion, the Buyer and its advisers shall be given promptly on request access at all reasonable times to:
  - (a) the Employees;
  - (b) the Properties;
  - (c) the Records; and
  - (d) such further facilities and information relating to the Business as they may reasonably require.

## **Schedule 4 Completion**

### **1. Actions and obligations at completion**

1.1 The Seller shall deliver, or procure delivery, to the Buyer of, or make available to the Buyer:

- (a) physical possession of all the Assets capable of passing by delivery, with the intent that title in such Assets shall pass by and upon such delivery;
- (b) duly executed conveyances, assignments, licences and other documents in the agreed form necessary to vest title in the Properties in, or transfer the Properties to, the Buyer or as the Buyer directs;
- (c) the title deeds relating to the Properties and all invoices, policies, premiums, receipts, maintenance contracts, health and safety files and other accounts relating to the Properties and certified copies of any documents held by mortgagees;
- (d) duly executed agreements in the agreed form for the assignment or novation of the benefit of the Contracts to the Buyer, or as the Buyer directs, and all requisite notices, consents and licences therefor;
- (e) duly executed assignments in the agreed form to vest the Goodwill and the Business Name in the Buyer or as the Buyer directs;
- (f) all such Third Party Consents as the Buyer may require to vest in the Buyer or as the Buyer may direct the full benefit of the Assets;
- (g) all documents of title and certificates for the lawful operation and use of, and all service documents pertaining to, the Assets and the Stock;
- (h) duly executed assignments and licences in the agreed form of the Business Intellectual Property Rights in the agreed form;
- (i) all documents of title, certificates, deeds, licences, agreements and other documents relating to the Business Intellectual Property Rights and all manuals, drawings, plans, documents and other materials and media on which the Business Information is recorded;
- (j) duly executed irrevocable written waivers in the agreed form of all moral rights in any works which are the subject of the Business Intellectual Property Rights to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- (k) the logbooks and test certificates of for any motor vehicles included in the Assets;
- (l) the Contracts and the books, accounts, reference lists of customers, credit reports, price lists, cost records, work tickets, catalogues, advertising and all other documents, papers and records in the possession or under the control of the Seller relating to the Business or any of the Assets duly written up to the Completion Date;
- (m) all such records as are referred to in section 49 of VATA 1994;

- (n) [original special resolution of the members of the Seller resolving to change its name to [FULL COMPANY NAME] or to another name approved in advance in writing by the Buyer, and a cheque payable to the Registrar of Companies for the sum of the Registrars' change of name fee which the Buyer shall file with the Registrar of Companies;]
- (o) releases or certificates of non-crystallisation duly executed by the [lender] in the agreed form in respect of all Encumbrances on or affecting any of the Assets;
- (p) the Records;
- (q) the Disclosure Letter duly executed by the [Seller **OR** Seller's Solicitors];
- (r) a written acknowledgement executed as a deed from the Seller [and each member of the Seller Group] that all arrangements to which the Seller [and any such member] is a party and which affect the Business or Assets [other than the Contracts] have been cancelled by mutual agreement and without any compensation or damages being payable by either party to the other;
- (s) all national insurance and PAYE records fully completed in respect of the Employees and showing that payments are up to date, and all records required to be kept under the Working Time Regulations 1998;
- (t) such irrevocable instruction to the bank(s) of the Seller as may be necessary to procure the automatic transfer to the Buyer of any payment that any customer of the Business may make to such bank(s) after the Completion Date; and
- (u) a copy of the minutes of a meeting of the directors of the Seller in the agreed form authorising the execution by the Seller of this agreement, and of any other documentation that may be necessary or desirable arising out of or in connection with this agreement or the transactions contemplated in them, and appointing the relevant signatory or signatories to execute this agreement, and any such other documentation on its behalf, endorsed with a certificate by the [company secretary **OR** Sellers Solicitors] that such copy minutes are a true and accurate record of the relevant meeting and that the authority conferred remains valid and outstanding as at Completion.

1.2 The Seller shall give the Buyer possession of the Properties in accordance with the provisions of Part 3 and Part 4 of Schedule 6.

## **2. Actions and obligations after completion**

2.1 As soon as practicable after Completion, the Seller and the Buyer shall each issue a statement in agreed form to the customers of, and suppliers to, the Business informing them of the transfer of the Business to the Buyer.

2.2 All correspondence, information, orders, enquiries and other documentation, items and all money relating to or connected with the Business or the Assets received by the Seller, or by any member of the Seller Group, on or after Completion shall be immediately passed or paid (as the case may be) to the Buyer or as it may direct.



- 2.3 On and at any time after Completion, the Seller shall give or procure to be given to the Buyer all such information and other assistance (including particulars of Customers, suppliers and others who have dealt with the Seller in connection with the Business) that the Buyer may reasonably require for the conduct of the Business and for the purpose of implementing the provisions of this agreement.
- 2.4 Not later than two Business Days after the Completion Date, the Seller shall send to each of the Employees a letter, in the agreed form, explaining that his employment has been transferred to the Buyer pursuant to TUPE.
- 2.5 The Seller shall, if so required by the Buyer on or at any time after Completion and at the Buyer's expense, send a circular (in a form provided by the Buyer) to persons who have had dealings with the Seller in connection with the Business, announcing the transfer to the Buyer of the Business and the Goodwill.
- 2.6 The Seller shall give to the Buyer reasonable access during business hours to the books, accounts, records and returns of the Seller relating to or in connection with the Business as the Buyer may require (including the right to take copies and extracts on reasonable advance notice) and shall keep them in good order.
- 2.7 The Seller shall promptly notify the Buyer of any Demand against the Seller brought by any third party in respect of any goods manufactured or services supplied by the Seller. The Seller shall not, without the Buyer's prior written consent, take any other steps in relation to such claims which might reasonably be expected to damage the commercial interests of the Buyer. If the Buyer considers that it is desirable to take preventative action with a view to avoiding such claims against the Seller, the Buyer shall consult with the Seller with a view to deciding what preventative action may be taken and if the Seller agrees with the Buyer the preventative action to be taken (such agreement not to be unreasonably withheld), the Seller shall bear the cost of that action.
- 2.8 The Seller shall (at its own expense):
- (a) provide that within [two] days after Completion, the name of the Seller [and any other member of the Seller Group] shall be changed so as to omit the word [WORD] or any confusingly similar word or name;
  - (b) provide that the Seller and each member of the Seller Group shall give the Buyer such assistance that the Buyer may reasonably require for the adoption by the Buyer, or any person connected with it, of any business name or trade mark including the words [WORDS]; and
  - (c) provide that [as soon as reasonably practicable after Completion, and in any event within [NUMBER] months after Completion,] the Seller Group shall cease in any manner whatsoever to use or display any trade or service marks or names, domain names or logos used in or otherwise associated or connected with the Business or any confusingly similar marks, domain names, names or logos, shall remove from any websites which it is retaining any reference to the Business, and shall delete

any hypertext links which connect any such websites to websites which relate to the Business.

- (d) procure that any company leaving the Seller Group observes, and continues to observe, the requirements of this paragraph 2.8.

- 2.9 During the period of six years after Completion (and without prejudice to any of the Warranties), if any Business Information is not in the possession of the Buyer or readily discoverable by the Buyer, but is in the possession or under the control of or available to the Seller or any other member of the Seller Group, the Seller shall, subject to regulatory requirements, immediately on becoming aware of such information, provide such Business Information to the Buyer.
- 2.10 The Seller shall permit and assist the Buyer to consult any of its employees, on reasonable notice and during normal business hours at the office at which the relevant employee is employed, for the purpose of obtaining knowledge, know-how or any other information possessed by such employee in relation to the activities and operations of, and the products and services supplied or to be supplied by, the Business at Completion and the Seller shall ensure that any such employee shall disclose all such information to the Buyer.
- 2.11 The Seller shall ensure that it maintains adequate insurance cover in respect of any loss or liability it may suffer or incur (whether to the Buyer under this agreement or otherwise) in connection with any act, event, omission or circumstance relating to the Business and occurring or arising at or before Completion.
- 2.12 The Seller shall promptly provide the Buyer with any information (including copies of all relevant documents and correspondence) that comes to the attention of the Seller after Completion in respect of the actual or potential loss, withdrawal or unavailability of any relief from stamp duty or stamp duty land tax which has been claimed by the Seller in connection with the grant of any lease which falls within the definition of the Leasehold Properties.
- 2.13 Subject to the DPA during the [six weeks] following Completion, the Seller shall (at its own cost) maintain in safekeeping and on request promptly provide the Buyer with all information in tangible form relating to the Business and the Assets and the Seller's operation of the Business which, following completion, remains in the Seller's (but not the Buyer's) possession.

**Schedule 5    The employees**

Job Title	Commencement date of continuous employment	Age	Salary (£)	Pension	Bonus	Holidays	Other benefits

## **Schedule 6    The properties**

### **Part 1. Freehold Properties**

[INSERT DETAILS HERE]

### **Part 2. Leasehold properties**

[INSERT DETAILS HERE]

### **Part 3. Conditions of sale: freehold properties**

[INSERT DETAILS HERE]

### **Part 4. Conditions of sale: Leasehold properties**

[INSERT DETAILS HERE]

### **Part 5. Transfer of Freehold Properties**

[INSERT DETAILS HERE]

### **Part 6. Transfers and assignments of Leasehold Properties**

[INSERT DETAILS HERE]

## **Schedule 7 Warranties**

### **Part 1. General warranties**

#### **1. Information supplied**

- 1.1 All information contained in this agreement, all matters contained in the Disclosure Letter and all other information relating to the Business given by or on behalf of the Seller to the Buyer, its advisers or agents are true, accurate and complete in every respect and are not misleading.
- 1.2 There is no information that has not been Disclosed which, if Disclosed, might reasonably affect the willingness of the Buyer to buy the Business and the Assets on the terms of this agreement.
- 1.3 The documents in the Disclosure Bundle are true and complete copies of the originals.

#### **2. Capacity of the seller**

The Seller has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this agreement and all agreements and documents entered into, or to be entered into, pursuant to the terms of this agreement.

#### **3. Records**

All financial and other Records in respect of the Business:

- (a) have been fully, properly and accurately prepared and have at all times been fully, properly and accurately maintained, and are properly written up to date;
- (b) are in the possession of the Seller;
- (c) constitute an accurate record of all matters that ought to appear in them;
- (d) do not contain any material inaccuracies or discrepancies; and
- (e) where such records are kept on computer, the Seller is the owner of all hardware and all software licences necessary to enable it to use any of those books, accounts and records in the manner in which they have been used before the date of this agreement, and the Seller does not share any such hardware or software with any other person.

#### **4. Accounts**

- 4.1 The Accounts:
  - (a) are true and accurate in all respects, comply with the requirements of the Companies Acts and other relevant statutes and generally accepted accounting

principles and standards in the United Kingdom at the date on which the Accounts were approved by the directors;

- (b) give a true and fair view, of the assets and liabilities and financial position of the Business and of its profit or loss and cashflow for the period ending on the Accounts Date and properly reflect the financial position, of the Seller as at the Accounts Date, and are not affected by any unusual or non-recurring items; and
- (c) have been audited by an auditor or firm or accountants qualified to act as auditors in the UK and the auditors' report required to be annexed to the Accounts is unqualified.

- 4.2 The Management Accounts have been properly prepared by the Seller in accordance with good accounting practice and on a basis consistent with that employed in preparing the Accounts, and give a true and fair view of the financial position of the [Seller **OR** Business] as at [DATE] and for the [NUMBER] month period then ended and, except as expressly disclosed in them, there were no unusual, exceptional, non-recurring or extraordinary items which materially affected such accounts.

## **5. Changes since the accounts date**

Since the Accounts Date:

- (a) the Business has been carried on in the ordinary and usual course without interruption both as regards the nature, scope and manner of conducting the Business and so as to maintain it as a going concern;
- (b) there has been no material adverse change in the financial or trading position or prospects of the Business so far as the Seller is aware nor is any such change expected; and
- (c) there has been no material reduction in the value of those Fixed Assets specified in the Accounts, to the extent still owned by the Seller.

## **6. Title to the assets**

- 6.1 The Assets comprise all assets now used in the Business and that are necessary for the continuation of the Business as now carried on without assistance from any other person.
- 6.2 The Seller has good and marketable title to each Asset (tangible and intangible), and each Asset is legally and beneficially owned by the Seller. There are no Encumbrances over any of the Assets, and the Seller has not agreed to create any Encumbrances over the Assets or any part of them.

## **7. The contracts**

- 7.1 The Contracts are the only contracts entered into, or which will have been entered into, before the Effective Time by or on behalf of the Seller in connection with the Business which at the Effective Time will remain to be performed in whole or in part.

- 7.2 The Contracts are valid and binding, and no act or omission has occurred which would (if necessary with the giving of notice or lapse of time) constitute a breach of any Contract.
- 7.3 None of the Contracts:
- (a) is likely to result in a loss to the Seller on completion of performance; or
  - (b) cannot readily be fulfilled or performed by the Seller on time without undue or unusual expenditure of money or effort; or
  - (c) involves or is likely to involve an aggregate expenditure in excess of £[AMOUNT]; or
  - (d) involves the supply of goods the aggregate sales value of which will represent in excess of [10]% of the anticipated turnover of the Business in the [12] months following Completion; or
  - (e) is the subject of any Claim, dispute or proceeding, whether actual, pending or threatened.
- 7.4 Except for the Contracts there are no contracts, arrangements, licences or other commitments involving obligations or liabilities in respect of the Business or the Assets which ought reasonably to be made known to the Buyer.

## **8. Condition of assets**

Where relevant, the Assets:

- (a) are in good repair and condition and in working order and will continue to be capable of doing the work for which they were designed;
- (b) have been regularly and properly maintained;
- (c) are not surplus to the requirements of the Business; and
- (d) are used exclusively in connection with the Business.

## **9. The stock and work-in-progress**

- 9.1 The Stock is sufficient for the normal requirements of the Business, relates exclusively to the Business and is in good condition.
- 9.2 The work-in progress of the Business is at its normal level.

## **10. Employees and agents**

- 10.1 No person is employed or engaged in the Business (whether temporary or permanent and whether under a contract of service or contract for services) other than the Employees and the Employees are all employed by the Seller and work wholly or mainly in the Business.
- 10.2 The Seller has Disclosed:

- (a) copies of all service contracts, handbooks, policies, notices of termination and other documents (whether binding or not) which apply to the Employees, identifying which applies to which employee;
- (b) full particulars of the current terms of employment or engagement and benefits of all Employees, whether or not recorded in writing, or implied by custom or practice or otherwise;
- (c) copies of all agreements or arrangements with any trade union, employee representative or body of employees or their representatives (whether binding or not) and details of any such unwritten agreements or arrangements which may affect the Employees;
- (d) details of any Employee who has given or received notice to terminate their employment or who intends or is likely to terminate their employment as a result of this agreement; and
- (e) details of any actual or threatened (official or unofficial) trade disputes affecting the Business in the [two] years preceding the date of this agreement and any relationship with anybody representing the Employee.

All such particulars are accurate and complete in all respects.

10.3 The Seller has provided the Buyer with the information required under regulation 11 of TUPE in relation to each of the Employees and shall notify the Buyer of any changes in that information before the Effective Time.

10.4 In respect of each of the Employees, the Seller has:

- (a) performed all obligations required to be performed by it (and has settled all outstanding Demands), whether arising under contract, statute, at common law or in equity or under any treaties including the Treaty on the Functioning of the European Union or laws of the European Union or otherwise;
- (b) abided by the terms of any agreement or arrangement with any trade union, employee representative or body of employees or their representatives (whether binding or not) which may affect the Employees;
- (c) fully complied with its obligations under regulation 13 of TUPE and section 188 of TULRCA, to inform and consult with trade union or other employee representatives on any matter concerning or arising from this agreement or affecting the Employees;
- (d) maintained adequate, suitable and up to date records relating to the Employees; and
- (e) paid or will have paid to Customs and any other appropriate authority all taxes, national insurance contributions and other levies due in respect of the Employees on account of their employment by the Seller up to the Effective Time.

10.5 The Seller has not offered, promised or agreed to any future variation in any contract of employment of any one of the Employees or any other person employed by the Seller in



respect of whom liability is deemed by TUPE to pass to the Buyer, and no negotiations for an increase in the remuneration or benefits of any Employee are current or likely to take place within the period of [six] months after Completion.

- 10.6 The Seller is not engaged or involved in any dispute, claim or legal proceedings (whether arising under contract, common law, statute or in equity) with any of the Employees or any other person currently or previously employed by or engaged in the Business or their dependants, and so far as the Seller is aware there is no event which could give rise to such dispute, claim or proceedings.
- 10.7 There are no agents or distributors of the Seller engaged in any work related to the Business.
- 10.8 In the period of [ten] years preceding the date of this agreement, the Seller has not (nor has any predecessor or owner of any part of the Business) been a party to any relevant transfer for the purposes of TUPE or TUPE 1981 affecting any of the Employees or any other persons engaged in the Business and no event has occurred which may involve such persons in the future being a party to such a transfer. No such persons have had their terms of employment varied for any reason as a result of or connected with such a transfer.

## **11. Statutory restrictions**

- 11.1 Neither the Seller nor any person for whose acts or defaults the Seller may be vicariously liable has committed or omitted to do any act or thing in relation to the Business which could give rise to any fine or penalty.
- 11.2 The Seller has not, in relation to the Business, received notice of any breach by it of competition, anti-trust, anti-restrictive trade practice or consumer protection law, rule or regulation anywhere in the world or of any investigation, enquiry, report or order by or by reference to any regulatory authority under any such law, rule or regulation.

## **12. Litigation**

- 12.1 Neither the Seller, nor any person for whose acts or omissions it may be vicariously liable, is engaged in, subject to or threatened by any:
  - (a) litigation, administrative, mediation or arbitration proceedings (except for debt collection in the ordinary and usual course of business, details of which have been Disclosed) in relation to the Business or the Assets or any of them; or
  - (b) is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body.
- 12.2 Details of all material claims, complaints or returns relating to the Business that have occurred during the 12 months preceding the date of this agreement have been Disclosed.

### **13. Insolvency of seller**

- 13.1 The Seller is solvent and able to pay its debts as they fall due.
- 13.2 No order has been made or petition presented, meeting convened or resolution passed for the winding up of the Seller, nor has any receiver been appointed or any distress, execution or other process been levied in respect of the Business or the Assets or any of them and no events have occurred which would justify any such proceedings.

### **14. Compliance**

- 14.1 All legislation and all orders, provisions, directions and conditions relating to the Assets or the conduct of the Business (including VAT) have been duly complied with in all respects.
- 14.2 All necessary licences, consents, permits, agreements, arrangements and authorities (public and private) have been obtained to enable the Seller to carry on the Business effectively in the manner in which it is now carried on and all such licences, consents, permits, agreements, arrangements and authorities are valid and subsisting. The Seller knows of no reason why any of them should be suspended, cancelled or revoked or the benefit of them should not continue to be enjoyed by the Buyer or other owner for the time being of the Business and the Assets or any part of them.

## **Part 2. Intellectual property and IT**

### **1. Intellectual property**

- 1.1 With the exception of rights in confidential information, no Intellectual Property Rights are owned, used, or held for use by the Seller in connection with the Business.
- 1.2 In relation to rights in confidential information:
  - (a) the Seller has not disclosed or permitted to be disclosed any such information (other than to the extent necessary in the ordinary course of business or for the purpose of disclosure to its professional advisers) to any person except the Buyer; and
  - (b) the Seller does not own rights in any confidential information which may be capable of patent protection or which, if disclosed other than subject to conditions of confidentiality, might have a material adverse effect on the Business.
- 1.3 None of the activities involved in the conduct of the Business infringe, have infringed or are likely to infringe any Intellectual Property Rights of any third party, or constitute, have constituted or are likely to constitute any breach of confidence, passing off or actionable unfair competition in any jurisdiction. No such activities give or have given rise to any obligation to pay any royalty, fee, compensation or any other sum.

## **2. IT**

- 2.1 The Seller is the owner of the IT System, free from Encumbrances and all other rights exercisable by third parties. The Seller has obtained all necessary rights from third parties to enable it to make exclusive and unrestricted use of the IT System, and such rights are freely transferable to the Buyer.
- 2.2 The elements of the IT System:
- (a) are functioning properly and in accordance with all applicable specifications;
  - (b) are not defective in any respect;
  - (c) have sufficient capacity and performance to meet the current and foreseeable requirements of the Business;
  - (d) have not been and will not be affected by any changes in dates (past, present or future); and
  - (e) are capable of performing functions in multiple currencies, including the euro.

## **Part 3. Pensions**

1. The Seller has no obligation (whether or not legally binding) to provide or contribute towards pension, lump sum, death, ill-health, disability or accident benefits in respect of the Employees, and no proposal or announcement has been made to any Employee about the introduction, continuance, increase or improvement of, or payment of a contribution towards any other pension, lump sum, death, ill-health, disability or accident benefit.
2. The Seller has facilitated access for the Employees to a designated stakeholder scheme as required by section 3 of the Welfare Reform and Pensions Act 1999.
3. The Seller has not discriminated against, or in relation to, any Employee on grounds of age, sex, disability, marital status, hours of work, fixed-term or temporary agency worker status, sexual orientation, religion or belief in providing pension, lump sum, death, ill-health, disability or accident benefits.
4. No claims or complaints have been made or are pending or threatened in respect of the provision of (or failure to provide) pension, lump sum, death, ill-health, disability or accident benefits in relation to any of the Employees and there is no fact or circumstance likely to give rise to such claims or complaints.

## **Part 4. Property**

1. The particulars of the Properties set out in Part 1 and Part 2 of Schedule 6 are true, complete and accurate.

2. All written replies given by or on behalf of the Seller, or any company within the Seller Group, in response to any written enquires raised by or on behalf of the Buyer in relation to the Properties were complete and accurate at the date they were given.

## **Part 5. Environmental and health and safety**

1. The Business has at all times been operated in compliance with Environmental Laws, and the Business and the Properties comply with all conditions, limitations, obligations, prohibitions and requirements contained in any Environmental Laws and there are no facts or circumstances which may lead to any breach of or liability under Environmental Laws.
2. The Seller has at all times operated the Business in compliance with Health and Safety Laws and there have been no claims, investigations or proceedings relating to Health and Safety Laws against the Seller or any of its directors, officers or employees and there are none pending or threatened, nor are there any facts or circumstances which may give rise to any such claim, investigation or proceedings.

## **Part 6. Taxation**

### **1. Stamp duty and SDLT**

All documents (other than those which have ceased to have any legal effect) to which the Seller is a party and which relate to the Business, in the enforcement of which the Buyer may be interested, have been duly stamped.

### **2. VAT**

- 2.1 Neither the Seller nor any relevant associate (for the purposes of paragraph 3(7) of Schedule 10 to VATA 1994) has elected to waive exemption or will before Completion elect to waive exemption for VAT purposes in relation to the Properties.
- 2.2 None of the Properties is a building or engineering work falling within item 1(a) of Group 1 Schedule 9 to VATA 1994.
- 2.3 The Seller is a registered and taxable person for the purposes of the VATA 1994.

## **Schedule 8 Limitations on claims**

1. This Schedule 8 limits the liability of the Seller in relation to any Claim.
2. The liability of the Seller for all Substantiated Claims when taken together shall not exceed [TOTAL LIABILITY].
3. The Seller shall not be liable for a Claim unless such claim becomes a Substantiated Claim and:
  - (a) the amount of such Substantiated Claim, or of a series of connected Substantiated Claims of which such Substantiated Claim is one, exceeds [CANNOT MAKE A CLAIM UNLESS IT IS FOR MORE THAN THIS AMOUNT]; and
  - (b) the amount of all Substantiated Claims that are not excluded under paragraph 3(a) of this Schedule 8 when taken together, exceeds [SELLER IS NOT REQUIRED TO PAY FOR ANY CLAIMS UNTIL THE TOTAL OF ALL QUALIFYING CLAIMS EXCEEDS THIS AMOUNT] in which event the whole amount of such Substantiated Claim, or series of connected Substantiated Claims, is recoverable (and not just the amount by which the limits are exceeded).
4. The Seller is not liable for any Claim to the extent that the Claim:
  - (a) relates to matters Disclosed; or
  - (b) relates to any matter specifically and fully provided for in the Accounts;
5. The Seller is not liable for a Claim unless the Buyer has given the Seller notice of the Claim, specifying (in reasonable detail) the nature of the Claim and the amount claimed:
  - (a) in the case of the Tax Warranties, within the period of [seven years] beginning with the Completion Date; and
  - (b) in any other case, within the period of [PERIOD] beginning with the Completion Date.
6. Nothing in this clause applies to a Claim that arises or is delayed as a result of dishonesty, fraud, wilful misconduct or wilful concealment by the Seller [or any member of the Seller Group] or employee (or former employee or officer), agent or adviser of the Seller [or any member of the Seller Group].
7. The Seller shall not plead the Limitation Act 1980 in respect of any claims made under the Warranties relating to Taxation up to seven years after the Completion Date.
8. The Seller irrevocably and unconditionally agrees that:
  - (a) it will not (and will procure that no member of the Seller's Group will) bring any contribution proceedings, claims or the like under the Civil Liability (Contributions)

Act 1978 against any person until after the final determination of any Claim and/or proceedings arising out of or in connection with this agreement or any agreement related to it; and

- (b) that it shall not be entitled to claim any right of set-off, or apply any form of stay of proceedings brought by the Buyer against the Seller arising out of or in connection with this agreement, in respect of any such Claim.

## **Schedule 9   Creditors**

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF  
SELLER]

.....  
Director

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF  
BUYER]

.....  
Director