

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 20____

BETWEEN

- (1) **[INSERT COMPANY NAME]** incorporated and registered in England and Wales with company number **[INSERT NUMBER]** whose registered office is at **[INSERT ADDRESS]** (“**Seller**”); and
- (2) **[INSERT COMPANY NAME]** incorporated and registered in England and Wales with company number **[INSERT NUMBER]** whose registered office is at **[INSERT ADDRESS]** (“**Buyer**”)

BACKGROUND:

The Seller has agreed to sell, and the Purchaser has agreed to purchase, the Assets (as defined below) on the terms of this agreement.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement the following words and expressions have the meaning set out below:

“**Assets**” means the Fixed Assets and the Moveable Assets;

“**Business**” means the business being carried on by the Seller, namely the business of **[INSERT DESCRIPTION]**;

“**Business Day**” means any day other than a Saturday, Sunday or any day which is a public holiday in England;

“**Business Intellectual Property Rights**” means:

- (a) all Intellectual Property Rights owned, used or held for use by the Seller exclusively or predominantly in, or in connection with, the Business;
- (b) the right for the Buyer to sue and recover damages and other remedies in respect of the infringement of the Intellectual Property Rights referred to in paragraph (a) above which may occur or have occurred before, on or after the Transfer Date; and
- (c) all Domain Names.

“**Business Name**” means **[INSERT TRADE NAME]**;

“**Domain Names**” means all internet domain names used or owned by the Seller in connection with the Business;

“Employees” means the persons employed wholly or mainly in the Business at the Transfer Date;

“Fixed Assets” means 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 property as at the Transfer Date as set out in Part 2 of Schedule 2;

“Goodwill” means the right to use the Business Name, the Domain Names and the Website, telephone numbers, facsimile numbers and any other contact numbers reasonably required by the Buyer;

“Intellectual Property Rights” means all copyright, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, database rights, moral 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 for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“Moveable Assets” means all assets of the Business including the loose plant including moveable plant, machinery and equipment, fixtures and fittings, utensils, templates, tooling, implements, chattels, IT system, spare parts used or intended for use in connection with the Business as set out in Part 1 of Schedule 1;

“Stock” means the stock-in-trade of the Business as set out in Part 3 of Schedule 1;

“Transfer Date” means the close of business on the date of this agreement;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

“VAT” means value added tax chargeable under VATA 1994 and any similar replacement or additional tax;

“VATA 1994” means the Value Added Tax Act 1994;

“Warranties” means the representations and warranties referred to in clause 7 (Warranties) and set out in Schedule 2 and **“Warranty”** means any of them; and

“Website” means the Seller’s website to be found at [INSERT URL]

1.2 In this agreement and the background and the schedules:

1.2.1 reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted and to any regulation, order, instrument or subordinate legislation under the relevant statutory or statutory provision;

1.2.2 reference to the singular includes a reference to the plural and vice versa; and

1.2.3 reference to any clause, sub-clause or schedule is to a clause, sub-clause or schedule (as the case may be) of or to this agreement.

2. SALE AND PURCHASE

2.1 In consideration of the payment by the Buyer to the Seller of an amount equal to £[INSERT FIGURE] (“**Consideration**”), the Seller hereby sells and assigns with full title guarantee and the Buyer hereby purchases with effect from and as at the Transfer Date the following Assets of the Seller:

2.1.1 the Moveable Assets;

2.1.2 the Fixed Assets;

2.1.3 the right to use the Business Name;

2.1.5 the Business Intellectual Property Rights;

2.1.6 the Stock; and

2.1.7 the Goodwill.

2.2 As soon as is reasonably practicable after the Transfer Date, the Seller shall:

2.2.1 deliver to the Buyer physical possession of all Assets which are capable of transfer by delivery and which are in the Seller’s possession including all discs, materials, documents and source code in whatever medium that embody the Business Intellectual Property Rights and the IT system; and

2.2.2 deliver to the Buyer the assignments of ownership of the Domain Names.

2.3 Risk in the Assets shall pass to the Buyer upon the Transfer Date.

3. LICENCE OF BUSINESS NAME

The Seller hereby grants an irrevocable, worldwide, royalty free, transferable, exclusive licence to the Buyer to use the Business Name for any purpose that the Buyer sees fit.

4. VAT

4.1 The Consideration is exclusive of all and any VAT which may be payable and the parties to this agreement intend that section 49(1) of VATA 1994 and paragraph 5 of the Value Added Tax (Special Provisions) Order 1995 shall apply to the transfer of the Assets under this agreement and accordingly the Seller and Buyer agree to use all reasonable endeavours to procure that the transfer of the Assets under this agreement is treated as neither a supply of goods nor a supply of services for the purposes of VAT.

4.2 If, notwithstanding Clause 4.1 VAT is chargeable in connection with the transfer of the Assets under this agreement, the Buyer shall pay the Seller the amount of

that VAT immediately on receipt of the relevant VAT invoice together with a copy of confirmation from HM Revenue & Customs that VAT is payable.

5. THE EMPLOYEES

5.1 The parties acknowledge and agree that the sale pursuant to this agreement will constitute a relevant transfer for the purposes of TUPE and, accordingly, the contracts of employment of, and collective agreements relating to the Employees shall be transferred to the Buyer pursuant to TUPE with effect from the Transfer Date.

5.2 If any contract of employment of, or collective agreement relating to, any Employee is found or alleged not to have transferred to the Buyer at the Transfer Date the parties agree they shall take all necessary steps to ensure that such contracts of employment and collective agreements shall have effect from the Transfer Date as if originally made with the Buyer.

5.3 The Buyer agrees it shall be responsible for all costs, expenses, liabilities, claims, rights of action, compensation, awards, damages, fines, penalties, costs, expenses, interests arising from or in connection with the employment of the Employees, whether arising before or after the Transfer Date.

6. POST COMPLETION OBLIGATIONS

The Seller shall and shall procure that any other necessary party shall execute any necessary documents and do all such acts and things as may reasonably be required on or subsequent to the Transfer Date by the Buyer for securing to or vesting in the Buyer the legal and beneficial ownership of the Assets.

7. WARRANTIES

7.1 The Seller represents to the Buyer that each of the Warranties is true and accurate in all respects and not misleading at the date of this agreement, and will continue to be true and accurate in all respects and not misleading up to and including the Transfer Date.

7.2 Each of the Warranties is a separate and independent Warranty and shall not be limited by reference to any other Warranty or anything in this agreement.

8. NOTICES

8.1 Any notice or other written communication given under or in connection with this agreement may be delivered personally, sent by email or sent by first class post.

8.2 The address for service of any party shall be its address as set out in this agreement unless otherwise notified and the email address shall be the email address used by the parties at the Transfer Date unless otherwise notified.

8.3 Any such notice or other written communication shall be deemed to have been served if personally delivered, at the time of delivery or if posted, at the expiry of two Business Days after it was posted, or if sent by email, at the time of transmission.

9. MISCELLANEOUS

- 9.1 This agreement may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.
- 9.2 If at any time any term or provision in this agreement shall be held to be illegal, invalid or unenforceable, in whole or in part under any rule of law or enactment, such term or provision or part shall to that extent be deemed not to form part of this agreement, but the enforceability of the remainder of this agreement shall not be affected.
- 9.3 This agreement shall be binding on and enure for the benefit of each parties successors and personal representatives but shall not be assignable except that the Buyer may assign its rights under this agreement to any person to whom it may sell the Business and Assets.

10. LAW AND JURISDICTION

This agreement shall be governed by and construed in accordance with English law and each party to this agreement submits to the exclusive jurisdiction of the English courts.

This agreement has been entered into as a deed on the date stated at the beginning of this agreement.

SIGNED as a DEED by)
an authorised signatory of)
[INSERT NAME OF BUYER])
in the presence of:)

W Signature:
I Name:
T Address:
N
E
S
S Occupation:

SIGNED as a DEED by)
an authorised signatory of)
[INSERT NAME OF SELLER])
in the presence of:)

W Signature:
I Name:
T Address:
N
E
S
S Occupation:

SCHEDULE 1

Part 1

Moveable Assets

Part 2

Fixed Assets

Part 3

Stock

SCHEDULE 2

Warranties

The Seller represents and warrants to the Buyer as set out below:

1. Capacity

- 1.1 The Seller has the requisite power and authority to enter into and perform this agreement.
- 1.2 The Assets are sold by the Seller to the Buyer with such title as is available to the Seller.

2. Ownership of Assets

- 2.1 Each of the Assets is owned both legally and beneficially by the Seller free from any third party rights and, if capable of possession, is in its possession.
- 2.2 No option, right to acquire, mortgage, charge, pledge, lien (other than a lien arising by operation of law in the ordinary course of trading) or other form of security or encumbrance or equity on, over or affecting the Assets is outstanding and, apart from those set out in this agreement, there is no agreement or commitment to give or create any of them, and no claim has been made by any person to be entitled to any of them.

3. Intellectual Property

- 3.1 All Intellectual Property is either:
 - 3.1.1 in the sole legal and beneficial ownership of the Seller free from all licences, charges or other encumbrances; or
 - 3.1.2 the subject of binding and enforceable licences from third parties in favour of the Seller:
 - 3.1.2.1 of which no notice to terminate has been received;
 - 3.1.2.2 all parties to which have fully complied with all obligations in those licences; and
 - 3.1.2.3 in relation to which no disputes have arisen or are foreseeable;

and in either case nothing has been done or omitted to be done which would jeopardise the validity, enforceability or subsistence of any Intellectual Property or any such licences.

4. Employees

- 4.1 The Seller has maintained up to date, adequate and suitable records regarding the service and terms and conditions of employment of each of the Employees.
- 4.2 True and complete copies of all contracts of employment and other documents relating to the employment of the Employees have been made available to the

Buyer for inspection.

- 4.3 Other than salary for the current month and accrued holiday pay, no amount is owing to any Employee.