

S

1. Interpretation

In this Schedule the following terms shall have the meanings set out opposite each respectively

shall have the meanings set

“the Buyer’s Accountants”

name >> of << Insert firm's

“Buyer’s Group”

a company (wherever incorporated) or any company of which such company is a subsidiary (its holding company) or any subsidiary of any such holding company in a group is a group;

A

“EBIT”

Except otherwise requires, the definition of Group to any company will apply to the company;

M

“Earn-Out Period”

and comprising the Company’s financial year <<Insert range of years e.g. 2015 to 2017 (inclusive)>>

“Independent Accountant”

an independent accountant agreed upon by or on behalf of the Seller(s) and the Buyer or, if they cannot agree, shall be determined on the application at the time being of the Institute of Chartered Accountants in England and Wales by such accountant, and, if such President, in nominating the accountant to be borne as he may direct);

P

“Profits”

the Company’s EBIT shown by the Company’s relevant financial statements for the Earn-Out Period, and in each case in accordance with the provisions of this Schedule;

L

“the Seller(‘s)(s’) Accountants”

name>> of <<Insert firm's

“Subsidiary”

any company wherever incorporated (whether or not a company) means a "subsidiary" as defined in section 1159 of the Companies Act 2006;

E

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

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

## **2. Consideration**

### **2.1 Purchase price**

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

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

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

### **2.3 Initial Consideration**

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

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

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

### **2.5 Deferred Consideration**

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

S

amount >> in the c  
aggregate, be equ  
"Deferred Consider  
Share shall be di  
Consideration Sha  
(if any) shall be allo  
Independent Accou

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

2.6 **Events where De  
partially paid)**

will not be paid (or only

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

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

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

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

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

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

2.7 **Cap on Considerat**

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

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

2.8 **Dividends**

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

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

2.9 **Retention of Cons**

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

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

A

M

P

L

E

S

allotment.

2.10 **Cash Alternative**

At the Buyer's discretion, the Deferred Consideration may be paid in cash or by way of consideration or the Deferred Consideration may be paid in cash.

2.11 **Cash Payment**

Unless otherwise specified, the payment required to be made by the Buyer to the Seller(s) pursuant to paragraph 2 shall be made by way of a [banker's draft payable to the order of Seller(s)] [Seller('s)(s') Solicitors (whose receipt thereof shall constitute discharge to the Buyer)] OR [telegraphic transfer to the Seller(s)].

Bank: << >>

Branch: << >>

Sort Code: << >>

Account Name: <<

Account Number: <<

2.12 **Set Off**

Subject to Clause 6, the Buyer shall be entitled to set-off against the Deferred Consideration the amount of any claim under the Warranties or the Tax Covenant that is admitted or in respect of which judgment is obtained by the Seller(s), such that the Deferred Consideration shall be reduced accordingly.

3. **Profits**

3.1 For the purpose of this Agreement, the Buyer shall cause the Buyer's Accountants to prepare and deliver to each party and the Seller(s) draft Accounts as soon as practicable following the end of each financial year during the Earn-Out Period (respectively "Buyer's Accounts" and "Seller's Accounts").

3.2 The Seller(s) shall, within 5 days after receipt of each of such draft Accounts, cause the Seller(s) to review and agree to the draft Accounts as appearing in the Seller's Accounts.

3.3 The Buyer shall give to the Seller(s) and the Buyers' Accountants shall give, and each member of the Seller(s)' Accountants shall give to the Seller(s), the independent professional valuer appointed pursuant to Schedule reasonable and full access during normal business hours (and, in relation to tangible assets, copies of the following information, copies of):

3.3.1 the Buyer's financial statements; and

A

M

P

L

E

S

3.3.2 the Company for the purpose of the purchase of the Accounts to the extent that they are not a member of the Buyer's Group or are legally separated from the Buyer's Group.

and relevant personnel for the purpose of the purchase of the Accounts as aforesaid save for the Seller's Group and the Buyer's Accountants) and shall be confidential to any person (other than a member of the Seller's Group or the Buyer's Accountants).

3.4 The amount of EBITDA for the relevant Agreement Period shall be the amount so determined by the Seller and the Buyer respectively.

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

3.5 In the event that the Seller and the Buyer have not been able to resolve the dispute within 10 Business Days of the date of the Seller's Dispute Notice, the determination of the amount of EBITDA for the relevant Agreement Period shall be determined by the Seller and the Buyer respectively. In the event that the Seller and the Buyer have not been able to resolve the dispute within 10 Business Days of the date of the Seller's Dispute Notice, the determination of the amount of EBITDA for the relevant Agreement Period shall be determined by the Seller and the Buyer respectively. In the event that the Seller and the Buyer have not been able to resolve the dispute within 10 Business Days of the date of the Seller's Dispute Notice, the determination of the amount of EBITDA for the relevant Agreement Period shall be determined by the Seller and the Buyer respectively.

special year during the Earn-Out Period of the relevant Agreement Period. The Seller(s) shall make reasonable endeavours to resolve the dispute within 10 Business Days of the date of the Seller's Dispute Notice, the determination of the amount of EBITDA for the relevant Agreement Period shall be referred to an independent professional valuer or, failing agreement, the Institute of Chartered Accountants in England and Wales. Having appointed any such independent professional valuer, the Seller(s) shall have the right to make representations to the independent professional valuer as to the determination of the amount of EBITDA for the relevant Agreement Period. The independent professional valuer shall act as expert and not as arbitrator and his or her determination (in the absence of manifest error) shall be final and binding on the Seller and the Buyer. The cost of any independent professional valuer appointed pursuant to clause 3.5 shall be borne between the Seller and the Buyer in the absence of any such agreement. Unless either the Seller(s) or the Buyer(s) has any relevant opening balance in the relevant Agreement Period, the opening balance is agreed between the Seller and the Buyer.

A

M

P

**4. Earn Out Protection**

4.1 The business of the Company shall be conducted commercially and consistently with the interest of the Seller(s).

During the Earn-Out Period the Seller(s) shall have a view to maximising Profits.

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

During the Earn-Out Period the Seller(s) shall have a view to maximising Profits.

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

During the Earn-Out Period the Seller(s) shall have a view to maximising Profits.

E