

State of [INSERT STATE]

ASSET PURCHASE AGREEMENT

Background:

This Asset Purchase Agreement (the "Agreement") is created and effective as of the [INSERT DATE] (the "Commencement Date").

The Agreement is between:

- a. [INSERT SELLER DETAILS] ("Seller")
- b. [INSERT BUYER DETAILS] ("Buyer")

Collectively the "Parties".

The Buyer and the Seller agree to the following terms with the intention to be legally bound:

Sale:

1. The Seller shall sell with full title guarantee and free from encumbrances [or, to the extent that it is not the owner thereof, shall procure the sale with full title guarantee and free from all encumbrances] and the Buyer, with a view to carrying on the Business as a going concern, shall purchase with effect from [INSERT COMPLETION DATE] ("Completion Date"):
 - a. the Goodwill;
 - b. the Properties;
 - c. the Fixed Assets;
 - d. the Moveable Assets;
 - e. the benefit (subject to clause 16) of the Business Contracts;
 - f. the Stock;
 - g. the Business Information;
 - h. the Records;
 - i. the Business Intellectual Property Rights [(including the Buyer's Shared Intellectual Property Rights but excluding the Seller's Shared Intellectual Property Rights)] and also including the Owned Business Intellectual Property Rights (which shall be transferred by way of the IP Assignments);
 - j. the Third Party Rights;
 - k. [the Book Debts;] [and]
 - l. 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 (whether described as being included or excluded) in this clause 1 but not the Excluded Assets.
2. The following assets shall be excluded from the sale under this agreement:
 - a. all the Seller's cash-in-hand or at bank or at any other financial institution;
 - b. [the Book Debts;]
 - c. the Seller's accounts and accounting records which do not relate exclusively to the Business; and
 - d. [the benefit of any and all insurance claims and repayments arising on or before the Effective Time in relation to the Business.]
3. The sale and purchase of each of the assets [other than the Leasehold Properties] is interdependent and shall be completed simultaneously.

4. Unless this Agreement has been terminated in accordance with its terms, Completion shall take place on the Completion Date.

Purchase Price:

5. The purchase price is the sum of \$[INSERT AMOUNT] this is inclusive of any sales tax ("Purchase Price"), which shall be paid by the Buyer to the Seller on the Completion Date.
6. The apportionment of the Purchase Price relates to the following assets:
 - a. \$[INSERT ASSET PRICE] [INSERT ASSET]
 - b. \$[INSERT ASSET PRICE] [INSERT ASSET]
 - c. \$[INSERT ASSET PRICE] [INSERT ASSET]
7. Payment of the Purchase Price shall be made by [cash] OR [personal cheque] OR [money order] OR [cashier's check] OR [credit or debit card] OR [bank transfer] OR [INSERT OTHER].
8. The payments shall be made in accordance with the following schedule:
 - a. [\$[INSERT AMOUNT] previously paid by the Buyer as a deposit.]
 - b. [\$[INSERT AMOUNT] paid on the Completion Date]
 - c. [\$[INSERT AMOUNT] in equal instalments payable on the [INSERT DATE] of each month until the Purchase Price paid in full.]
9. All payments to be made to the Seller under this agreement shall be made in sterling by electronic transfer of immediately available funds to [the Seller OR the Seller's Solicitors (who are irrevocably authorised by the Seller to receive the same)] [to the following account: [INSERT ACCOUNT DETAILS]].
10. [Payment to the Seller's Solicitors in accordance with this clause shall be a good and valid discharge of the obligations of the Buyer to pay the sum in question to the Seller, and the Buyer shall not be concerned to see the application of the monies so paid.]
11. The Buyer is responsible for filing and paying all applicable sales and use tax returns and any other expenses that arise in relation to the transfer of the Property.
12. The Seller is responsible for paying all personal property taxes associated with the ownership of the Property, accruing up until the Completion Date and this responsibility will pass onto the Buyer following the Completion Date.

Delivery:

13. The Buyer will be entitled to take possession of the Property on [INSERT POSSESSION DATE].
14. If the delivery is to be made at a date after the Completion Date, the Seller must ensure that the Property is delivered in the same condition as it was when last inspected by the Buyer.

Sellers and Buyers Obligations

15. [The Buyer shall:
 - a. with effect from the Completion Date, assume responsibility for the payment and performance of this Agreement; and
 - b. indemnify the Seller against all Losses suffered or incurred by the Seller arising out of or in connection with the Buyer's failure to comply with this clause 15.]
16. 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 the Completion Date in the course of or in connection with this Agreement and the Seller shall:
 - a. indemnify the Buyer against all Losses suffered or incurred by the Buyer, arising out of or in connection with any such thing; and

- b. perform any obligation falling due for performance or which should have been performed before the Completion Date,
- 17. The Seller agrees with the Buyer that it will, in accordance with its normal practice, pay, satisfy or discharge all debts, liabilities and obligations relating in any way to the Business which are not expressly assumed by the Buyer under this agreement.
- 18. If the Buyer becomes aware that the Seller has failed to discharge any such liabilities and believes that this failure may damage the goodwill of the Business as carried on by the Buyer after the Completion Date, it may give notice of that fact to the Seller. If the Seller does not provide evidence that the liability in question is disputed on reasonable grounds in a form reasonably satisfactory to the Buyer, the Buyer may satisfy such liability on the Seller's behalf and shall be entitled to immediate reimbursement from the Seller of the amount paid by the Buyer.

Warranties:

- 19. The Seller acknowledges that the Buyer is entering into this Agreement on the basis of the warranties.
- 20. The Seller represents and warrants that:
 - a. Unless otherwise disclosed, each warranty is true, accurate and not misleading on the date of this Agreement;
 - b. They have the good and marketable title to the Property and the full authority to sell the Property;
 - c. Represents that the Property is sold free from all encumbrances, liens, indebtedness, or liabilities;
 - d. Upon the Sellers request, provide the Buyer with a Bill of Sale for the Property;
 - e. Promptly notify the Buyer in writing if any event occurs that would or may constitute as a breach of this Agreement or their obligations under it. This shall include sufficient detail to enable the Buyer to make an informed assessment of the nature, scope and impact of the notified breach or anticipated breach.
- 21. The Seller makes no other representations or warranties concerning the Property, which is being sold and assigned "as is," and without any warranty of merchantability or fitness for a particular purpose.
- 22. The Seller explicitly disclaims any representations or warranties regarding the value, condition, functionality, or suitability of the Property for any particular purpose and the Buyer will have no recourse against the Seller for the Property.

Limitation of Liability:

- 23. The aggregate liability of the Seller for all Claims shall not exceed [£[AMOUNT] OR an amount equal to the Purchase Price].
- 24. The Seller shall not be liable for a Claim unless notice in writing summarising the nature of the Claim (in so far as it is known to the Buyer) and, as far as is reasonably practicable, the amount claimed, has been given by or on behalf of the Buyer to the Seller.
- 25. Nothing in this clause limitation of liability applies to exclude or limit the liability of the Seller:
 - a. if and to the extent that a Claim arises or is delayed as a result of dishonesty, fraud, wilful misconduct or wilful concealment by the Seller, its agents or advisers; or
 - b. in respect of a breach of any of the warranties.

Insurance:

26. The Seller shall maintain in force, up to and including the Effective Time, all the policies of insurance which have been Disclosed and shall procure that from the date of this Agreement, the interest of the Buyer under or pursuant to this Agreement in respect of the Fixed Assets, the Moveable Assets and the Properties is noted on all such policies effected by or for the benefit of the Seller in respect thereof.
27. [If any of the Fixed Assets, the Moveable Assets or the Properties are lost, destroyed or damaged prior to the Completion Date, the Buyer may, by notice in writing to the Seller, either:
- a. require the Purchase Price to be reduced [by the amount that the Asset in question is valued at in the Accounts]; or 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.]

[Shared Intellectual Property and Moral Rights:

28. If any Stock or other materials are supplied to the Buyer under this Agreement bearing any name or mark of the Seller or any other person, the Buyer is authorised by the Seller to sell or otherwise dispose of that Stock or to use that material until that Stock or material is exhausted.
29. The Seller shall indemnify the Buyer against all Losses suffered or incurred by the Buyer arising out of or in connection with any claim in respect of that name or mark, and against any claim that such sale, disposal or use infringes the rights of any person.]

Book Debts:

30. All trade and other debts and amounts owing to the Seller as at the Completion Date in respect of goods or services supplied by the Seller in the ordinary course of carrying on the Business (whether or not invoiced) prior to the Completion Date ("Book Debts").
31. [The Seller and the Buyer shall cause to be prepared from the accounting records of the Business, within [10] Business days of the Completion Date, a list of the Book Debts showing (amongst other things) the names of the debtors and the amounts owing to the Seller by each of the relevant debtors.]
32. 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. 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.
33. The Seller shall not seek to recover the Book Debts directly 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.
34. The obligations of the Buyer under this Clause to collect Book Debts shall cease absolutely [NUMBER] months after Completion, 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.
35. In consideration of the Buyer collecting the Book Debts, the Seller shall pay to the Buyer a commission of [PERCENTAGE]% 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 35.

Sellers Restrictive Covenants:

36. In this clause, the following words and expressions shall have the following meanings:

- a. [Prospective Customer: a person who is at Completion or has been at any time during the period of [NUMBER] months immediately preceding the Completion Date, in discussions with the Seller [or any other member of the Seller Group] with a view to becoming a client or customer of the Seller [or any other member of the Seller Group] [in respect of the Business].]
- b. Restricted Business: any business which is or would be in competition with any part of the Business, as the Business was carried on at the Completion Date.
- c. Restricted Customer: any person who is at Completion, or who has been at any time during the period of [NUMBER] months immediately preceding the Completion Date, a client or customer of, or in the habit of dealing with, the Seller [or any other member of the Seller Group] [in respect of the Business].
- d. Restricted Person: any person who is at Completion [or who has been at any time during the period of [NUMBER] months immediately preceding the Completion Date,] employed or directly or indirectly engaged by the Seller [or any other member of the Seller Group] [in respect of the Business] [in an executive, managerial, sales or technical role OR at an annual rate of remuneration [(including commission, if any,)] of not less than £[AMOUNT]].

37. The Seller covenants that it shall not (and shall procure that no other member of the Seller Group shall):

- a. at any time during the period of [NUMBER] years commencing on the Completion Date, [in any geographic area in which the Business (or any part of it) is carried on at the Completion Date OR [SPECIFY RESTRICTED TERRITORY]], carry on or be engaged, concerned or interested in, or in any way assist, a Restricted Business; or
- b. at any time during the period of [NUMBER] years commencing on the Completion Date: canvass, solicit or otherwise seek the custom of any Restricted Customer [or Prospective Customer] [with a view to providing goods or services to that Restricted Customer [or Prospective Customer] in competition with the Business (or any part of it) as it was carried on at the Completion Date]; or
- c. induce or attempt to induce a Restricted Customer [or Prospective Customer] to cease [or refrain from] conducting business with, or to reduce the amount of business conducted with or to vary adversely the terms upon which it conducts business with the Buyer or any member of the Buyer Group in connection with the Business, or do any other thing which is reasonably likely to have such an effect; or
- d. at any time during the period of [NUMBER] years commencing on the Completion Date, have any business dealings with a Restricted Customer [or a Prospective Customer] [in connection with the provision of goods or services to that Restricted Customer [or Prospective Customer] in competition with the Business (or any part of it) as it was carried on at the Completion Date]; or
- e. any trade or service mark, business or domain name, design or logo which, at Completion, was or had been used by the Seller or any other member of the Seller Group in connection with the Business; or
- f. [at any time after Completion, do or say anything which may be harmful to the reputation of the Business].

Confidentiality:

38. Each party undertakes that it shall keep secret and confidential the terms of this Agreement and all other agreements entered into pursuant to it and all confidential information, know how or trade secrets in its possession concerning the business, assets, affairs, customers, clients or suppliers of the Business.

Notices:

39. A notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to that party's address.

No Variation and Waiver:

40. No variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each party for the time being. A waiver of any right or remedy under this Agreement or by law is only effective if it is given in writing and is signed by the party waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.

Survival:

41. This Agreement (other than obligations that have already been fully performed) remains in full force after the Completion Date.
42. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 42 shall not affect the validity and enforceability of the rest of this Agreement.

Entire Agreement:

43. This Agreement (together with the documents referred to in it) constitutes the entire Agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements, and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement (and any documents referred to in it), he does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents. Nothing in this clause 43 shall limit or exclude any liability for fraud.

Assignment and Other Dealings:

44. No party shall assign, transfer, mortgage, charge, subcontract, declare a trust over a deal in any other manner with any or all of his rights and obligations under this Agreement (or any other document referred to in it) without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). Each party confirms that he is acting on his own behalf and not for the benefit of any other person.

Third Parties:

45. Except as expressly provided elsewhere in this Agreement, no one other than a party to this Agreement, its successors and permitted assignees, shall have any right to enforce any of its terms.

Governing Law and Jurisdiction:

46. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of [INSERT STATE]. Each party irrevocably agrees that the courts of [INSERT STATE] 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).

Disputes:

47. If a dispute arises under or in connection with this agreement ("Dispute"), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice ("Dispute Notice") of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 47. Disputes arising under this agreement shall be resolved by: (Insert those that apply)

- a. [Bringing proceedings in the courts of [INSERT STATE].]
- b. [Arbitration in accordance with the American Arbitration Association.]
- c. [Mediation. If the parties fail to come to an agreement by mediation, then it shall be resolved through arbitration.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Commencement Date.

Seller Name

Seller Signature

Buyer Name

Buyer Signature