

**DATED**                      **13 January**                      **2022**

**BUSINESS TRANSFER AGREEMENT**

made between

**DOUGLAS & GORDON LIMITED**

as Seller

and

**DOUGLAS & GORDON ESTATE AGENTS LIMITED**

as Buyer

and

**FOXTONS LIMITED**

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**THIS AGREEMENT** is made on the 13 day of January 2022

**BETWEEN:**

- (1) **DOUGLAS & GORDON LIMITED**, a private company incorporated and registered in England and Wales with company number 04385654 whose registered office is at 212 New Kings Road, London, England, SW6 4NZ (the "**Seller**");
- (2) **DOUGLAS & GORDON ESTATE AGENTS LIMITED**, a private company incorporated and registered in England and Wales with company number 09903325 whose registered office is at Building One, Chiswick Park, 566 Chiswick High Road, London, England, W4 5BE (the "**Buyer**"); and
- (3) **FOXTONS LIMITED**, a private company incorporated and registered in England and Wales with company number 01680058 whose registered office is at Building One, Chiswick Park, 566 Chiswick High Road, London, England, W4 5BE ("**Foxtons**").

**BACKGROUND**

- (A) The Seller has agreed to sell and the Buyer has agreed to purchase the Business as a going concern subject to and on the terms and conditions of this Agreement.
- (B) The Buyer and the Seller are wholly-owned subsidiaries of Foxtons and the Seller is a wholly-owned subsidiary of the Buyer.
- (C) Following Completion, the Buyer intends to transfer and distribute the Business to Foxtons and the Seller has agreed that Foxtons may benefit from this Agreement as if it were the Buyer.

**NOW IT IS AGREED** as follows:

**1. INTERPRETATION**

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

"**Assets**" means the property, rights and assets of the Business to be sold and purchased pursuant to clause 2.1;

"**Assumed Liabilities**" means those debts, liabilities and obligations of the Seller relating to the Business or the Assets including those liabilities as shown on the Business Balance Sheet, the Creditors and Customer Prepayments, but excluding always (i) the Non-Live Tenancy Liabilities and (ii) any liability of the Seller for Tax.

"**Bank Accounts Schedule**" means the schedule detailing those bank accounts of the Seller to remain under the control of the Seller following Completion and those bank accounts which will transfer to the control of the Buyer after Completion.

"**Book Debts**" means 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"** means the business of the rental and letting of residential properties as agent for third party landlords and the provision of property management services (including the receipt of commission payments from contractors carrying out property maintenance) in respect of such residential properties in each case as carried on by the Seller at the Effective Time and specifically excluding the Excluded Business.

**"Business Balance Sheet"** means the balance sheet of the Business at the Effective Time as delivered to the Seller in accordance with clause 6.3.

**"Business Balance Sheet Assets"** means the items listed as assets on the Business Balance Sheet.

**"Business Claims"** means all of the Seller's rights, entitlements and claims against third parties arising directly or indirectly out of or in connection with the operation of the Business or relating to the Assets.

**"Business Client Account Cash"** means those sums within the Sellers' client accounts which are referable to Live Tenancies.

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

**"Business Information"** means all information, know-how and techniques (whether or not confidential and in whatever form held) which relate to (a) all or any part of the Business or Assets; (b) any services rendered by the Business; (c) suppliers, distributors or agents of the Business; (d) the operations, management, administration or financial affairs of the Business (including any accounts, business plans or forecasts, information relating to future business development or planning and information relating to litigation or legal advice); and (e) the marketing of services rendered by the Business including all customer names and lists and marketing information.

**"Business Intellectual Property Rights"** means Intellectual Property Rights owned, used or held for use by the Seller in, or in connection with, the Business but excluding the Business Names and excluding the Trademark.

**"Business Names"** means "Douglas & Gordon", "D&G" and "Roystons" or any similar name.

**"Buyer's Group"** means the Buyer, any companies of which it is a subsidiary undertaking (its parent undertaking), together with all subsidiary undertakings of any such parent undertaking.

**"Carve-out Customers"** means those persons listed in Schedule 5.

**"Change of Control"** means a transaction or series of transactions in which a person or group of connected persons acquires from Shareholder(s) shares representing more than 50 per cent. of the outstanding voting power of any member of the Seller's Group after the Completion Date;

**"Clawback Period"** means the period of two years following the date of completion of the D&G SPA.

**"Completion"** means the completion of the sale and purchase of the Business comprising the Assets in accordance with this Agreement.

**"Completion Date"** means the date on which Completion occurs in accordance with clause 6.2 of this Agreement.

**"Contracts"** means all contracts, arrangements, licences and other commitments relating exclusively to the Business entered into by the Seller, on or before, and which remain to be performed by any party to them in whole or in part, at the Effective Time including but not limited to (a) those contracts as set out in the Contracts Schedule, and (b) the tenancy contracts as set out in the Tenancy Contract Appendix.

**"Contracts Schedule"** means the list of contracts delivered by the Buyer to the Seller in accordance with clause 6.3.

**"Creditors"** means the trade debts and accrued charges related to the Business owing by the Seller at the Effective Time to the trade creditors of the Seller.

**"Customers"** means the customers of the Business at Completion (comprising the landlords of the Restricted Properties).

**"Customer Prepayments"** means any payments, prepayments or deposits made by any Customer to the Seller prior to the Effective Time in relation to the Business and in respect of services to be provided after the Effective Time.

**"Data Room"** means the 'Douglas & Gordon Reorganisation' data room hosted by HighQ for the purpose of the Transaction.

**"D&G SPA"** means the share purchase agreement to be entered into on or around the date of this Agreement between the Buyer and Lochlan Holdings Limited in relation to the entire issued share capital of the Seller.

**"D&G VAT Group"** means the VAT group with VAT registration number 258 9048 64 of which, as at the date of this Agreement, the Buyer and the Seller are both members.

**"Disposal"** means the disposal of all or a substantial part of the business or assets of any member of the Seller's Group (whether by way of a single transaction or series of connected transactions) after the Completion Date.

**"Effective Time"** means 11.59 p.m. on the Completion Date.

**"Employees"** means the persons employed in the Business at the date of this Agreement being those persons whose details are set out in Schedule 4 to this Agreement.

**"Encumbrance"** means 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.

**"Excluded Assets"** means the property, rights and assets of the Seller set out in clause 4.1.

**"Excluded Balance Sheet"** means the balance sheet of the Excluded Business at the Effective Time as delivered to the Seller in accordance with clause 6.3.

**"Excluded Balance Sheet Assets"** means the items listed as assets on the Excluded Balance Sheet.

**"Excluded Business"** means the residential property sales business, the property valuations business, the property refurbishment business and any other business other than the Business carried on by the Seller at the Effective Time.

**"Excluded Client Account Cash"** means those sums within the Sellers' client accounts which are referable to Non-Live Tenancies.

**"Excluded Liabilities"** means all of the liabilities or obligations relating to the Business or Assets (other than the Assumed Liabilities) and outstanding on, or accrued or referable to the period up to and including, the Effective Time including but not limited to (i) the Non-Live Tenancy Liabilities, (ii) any liability of the Seller for Tax (whensoever arising); (iii) any liability of the Seller to third party agents relating to Non-Live Tenancies; and (iv) any liability of the Seller relating to the Property Leases.

**"Fixed and Tangible Assets"** means the furniture, fixtures and fittings and equipment owned by the Seller and used in relation to the Business as set out in the Fixed and Tangible Assets Schedule.

**"Fixed and Tangible Assets Schedule"** means the list of the furniture, fixtures and fittings and equipment owned by the Seller and used in relation to the Business as delivered by the Buyer to the Seller in accordance with clause 6.3 of this Agreement.

**"Glenthorne Retention"** has the meaning as set out in the Sapphire SPA.

**"Goodwill"** means the goodwill, custom and connection of the Seller in relation to the Business (but not including the right for the Buyer to carry on the Business under the Business Names) and the exclusive right of the Buyer to represent itself as carrying on the Business in succession to the Seller.

**"HMRC"** means Her Majesty's Revenue & Customs.

**"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

**"IT System"** means 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.

**"Live Tenancies"** means tenancies of the Business where the term of the tenancy has not expired at Completion.

**"Losses"** means all claims, liabilities, costs, expenses, damages and losses and all interest, penalties and legal costs and all other reasonable professional costs and expenses.

**"Motor Vehicles"** means the motor vehicles used by the Employees, which are described in the Motor Vehicles Schedule.

**"Motor Vehicles Schedule"** means the list of the Motor Vehicles used by the Employees as delivered by the Buyer to the Seller in accordance with clause 6.3 of this Agreement.

**"Non-Live Tenancies"** means tenancies of the Business where the term of the tenancy has expired at Completion.

**"Non-Live Tenancy Liabilities"** means all debts, liabilities and obligations of the Seller relating to Non-Live Tenancies.

**"Properties"** means the leasehold properties, particulars of which are set out in the table in Schedule 2 and "Property" means any one of them.

**"Property Leases"** means the leasehold documentation relating to the Properties.

**"Purchase Price"** has the meaning given in clause 5.1.

**"Records"** means: (a) the books, e-mails, accounts (including VAT records and returns), lists of Customers and suppliers and all the other documents, papers and records of the Seller relating to the Business or on which Business Information is recorded or stored (but only to the extent such documents, papers and records contain Business Information); (b) emails of the Relevant Employees relating to the Business created or sent within the 90 days prior to Completion; and (c) a copy of all information on the Seller's data system known as "CFP" in respect of the: (i) tenancies as set out in the Tenancy Contract Appendix and any other Live Tenancies; (ii) all historic tenancies in relation to those properties as set out in the Tenancy Contract Appendix.

**"Relevant Employees"** means Employees who at the time of Completion whose roles directly relate to (a) tenancy management, (b) property management, (c) lettings accounting and (d) front office services as agreed between the Seller and Buyer at Completion.

**"Relevant Transaction"** means a Disposal or Change of Control.

**"Relevant Transaction Amount"** means the consideration actually received by the relevant Shareholder(s) and/or by the relevant member of the Seller's Group in respect of the Relevant Transaction.



**"Restricted Properties"** means the properties listed in the Tenancy Contract Appendix (and any other Live Tenancies to the extent not listed thereon for whatever reason).

**"Retained Cash"** means the cash sum of £3,715,000 owned by or held by the Seller (including cash credited to an account with a financial institution and unrepresented cheques drawn in favour of the Seller) as at the Effective Time.

**"Sapphire SPA"** means the share purchase agreement dated 1 March 2021 between (1) Paul David Talbot Willcox and others and (2) Foxtons Limited for the purchase of the entire issued share capital of Douglas & Gordon Estate Agents Limited.

**"Seller's Group"** means the Seller, any companies of which it is a subsidiary undertaking (its parent undertaking), together with all subsidiary undertakings of any such parent undertaking.

**"Seller Prepayments"** means all prepayments and payments relating to the Business made by the Seller prior to the Effective Time in respect of products or services to be provided to the Buyer or Foxtons after the Effective Time.

**"Shareholder"** means a shareholder of any member of the Seller's Group from time to time.

**"Shares"** means the shares held by the Seller in Roystons Estate Agents Limited and OnTheMarket PLC.

**"Tax"** means all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction; and any penalty, fine, surcharge, interest, charges or costs relating thereto; and **"Taxation"**: means the same.

**"Tenancy Contract Appendix"** means the schedule specifying all of the Business' Live Tenancies as delivered by the Buyer to the Seller in accordance with clause 6.3 of this Agreement.

**"Third Party Consent"** means 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.

**"Trademark"** means the trademark owned by the Seller details of which are set out in Schedule 3.

**"Transaction"** means the transaction contemplated by this Agreement or any part of that Transaction.

**"Transitional Services Agreement"** means the transitional services agreement to be entered into by the Buyer and the Seller on or around the date of this Agreement.

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

"**TUPE Condition**" means the completion of the respective obligations of Buyer and Seller to inform and, if appropriate, consult with their respective employees including the Employees under TUPE.

"**VAT**" means value added tax chargeable under the VATA 1994 and any similar replacement or additional tax.

"**VATA 1994**" means the Value Added Tax Act 1994.

"**VAT Records**" means, in respect of the Business, all invoices, documents, records and information concerning VAT which relate to periods ended on or before Completion that by Tax statute the Seller is obliged to maintain.

"**Warranties**" means the warranties set out in clause 7.

- 1.2. References to clauses and Schedules are to the clauses of, and Schedules to, this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.3. A "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.
- 1.5. A reference to a "**company**" shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. A reference to "**writing**" or "**written**" includes fax but not email (unless otherwise expressly provided in this Agreement).
- 1.7. Any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. Where the context permits, "**other**" and "**otherwise**" are illustrative and shall not limit the sense of the words preceding them.
- 1.8. References to a document in "**agreed form**" is to that document in the form agreed by the parties and signed by them or initialled by them or on their behalf for identification.
- 1.9. A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force as at the date of this Agreement. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.10. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## **2. AGREEMENT TO SELL AND PURCHASE**

2.1. The Seller shall sell and transfer and the Buyer shall buy, with effect from the Completion Date, the Business as a going concern comprising the assets listed below:

- 2.1.1. the Goodwill;
- 2.1.2. the Business Balance Sheet Assets;
- 2.1.3. the Fixed and Tangible Assets;
- 2.1.4. the benefit (subject to the burden) of the Contracts;
- 2.1.5. the Business Information;
- 2.1.6. the Book Debts;
- 2.1.7. the Seller Prepayments;
- 2.1.8. the Business Intellectual Property Rights;
- 2.1.9. the Records;
- 2.1.10. the Business Claims;
- 2.1.11. the Motor Vehicles;
- 2.1.12. all cash of the Seller other than the Retained Cash;
- 2.1.13. any benefit or amount relating to the Glenthorne Retention

and including any other assets exclusively used by the Seller in the conduct of the Business but not the Excluded Assets.

2.2. The transfer of each of the Assets shall be completed simultaneously.

2.3. Where any Records are comprised only of electronic information, the Seller shall transfer to the Buyer a copy of such electronic information only.

## **3. ASSUMED LIABILITIES**

3.1. Subject to clause 4.2, the Buyer shall with effect from the Completion Date:

- 3.1.1. assume responsibility for and pay, satisfy or perform the Assumed Liabilities; and
- 3.1.2. pay, satisfy or discharge all debts, liabilities and obligations incurred by the Buyer or Foxtons in connection with the Business after the Completion Date.

3.2. Subject to clause 4.2, the Buyer shall indemnify the Seller against all Losses suffered or incurred by the Seller arising out of or in connection with any failure by it to comply with clause 3.1.

#### **4. EXCLUDED ASSETS AND LIABILITIES**

4.1. The assets listed below shall be excluded from the sale under this Agreement:

4.1.1. the Seller's leasehold interests in the Properties;

4.1.2. the following assets:

- (a) the Retained Cash;
- (b) the Excluded Client Account Cash;
- (c) the Business Names;
- (d) the Shares;
- (e) the IT System;
- (f) the Trademark; and
- (g) the Excluded Balance Sheet Assets,

4.1.3. any right to any repayment of any Tax paid by the Seller from HMRC attributable to the period prior to the Effective Time.

4.2. Nothing in this Agreement shall pass to the Buyer, or shall be construed as acceptance by the Buyer of, the Excluded Liabilities.

4.3. The Seller agrees that the amount of the Purchase Price shall not in any way limit the Buyer's remedies or any amount recoverable by the Buyer under this Agreement.

4.4. The Buyer, the Seller and Foxtons shall take such action as may be required prior to Completion to procure that an amount equal to the Retained Cash is held by the Seller at Completion (including if required the settling in whole or in part of the existing inter-company receivable between the Seller and Foxtons).

#### **5. PURCHASE PRICE**

5.1. The consideration (exclusive of VAT) payable for the Business and the Assets shall be £1.00 (the "**Purchase Price**").

5.2. The Purchase Price shall be paid in sterling in cash on Completion to such account as the Seller shall have specified in writing to the Buyer.

#### **6. COMPLETION**

6.1. The obligation of the parties to proceed to Completion is conditional upon:

- 6.1.1. approval of the D&G SPA having been given by the shareholders of Foxtons Group plc, as required under Chapter 11 of the Financial Conduct Authority Listing Rules; and
  - 6.1.2. mutual written agreement between the Buyer and the Seller that the TUPE Condition has been satisfied (such agreement not to be unreasonably withheld or delayed).
- 6.2. Completion shall take place virtually on a date no later than three Business Days after the date on which the conditions in clause 6.1 have been satisfied or on such earlier date as may be agreed by the Seller and the Buyer (the "**Completion Date**").
- 6.3. Not later than three Business Days prior to the Completion Date, the Buyer will provide to the Seller:
  - 6.3.1. the Business Balance Sheet;
  - 6.3.2. the Excluded Balance Sheet;
  - 6.3.3. the Contracts Schedule;
  - 6.3.4. the Tenancy Contract Appendix;
  - 6.3.5. the Fixed and Tangible Assets Schedule;
  - 6.3.6. the Motor Vehicles Schedule; and
  - 6.3.7. the Bank Accounts Schedule,together the "**Schedules**".
- 6.4. The Buyer and the Seller agree that the Schedules as included in the Data Room are in an Agreed Form at the date of this Agreement and may require to be updated in the period to Completion in order to reflect the operation of the Business in the period between the date of this Agreement and Completion. Accordingly, the Seller shall work together with the Buyer in good faith to assist the Buyer in compiling the updated Schedules in good time in advance of Completion and in ensuring the accuracy of such Schedules. In the event that the Schedules are found to be inaccurate after Completion the parties shall agree any necessary amendments in good faith.
- 6.5. At Completion the Seller shall comply with its obligations set out in paragraph 1 of Schedule 1.
- 6.6. At Completion the Buyer shall:
  - 6.6.1. pay the Purchase Price to the Seller in accordance with clause 5;
  - 6.6.2. comply with its obligations set out in paragraph 2 of Schedule 1; and

6.6.3. procure that a resolution of its sole member is passed in order to change the Buyer's registered name to no longer include any Business Names or any combination of the words comprising the Business Names.

6.7. Within 3 business Days of Completion, the Seller shall deliver or procure delivery, to the Buyer of, or make available to the Buyer the Records.

## **7. WARRANTIES**

7.1. The Seller warrants to the Buyer that:

7.1.1. the Seller has good and marketable title to each Asset (whether tangible or intangible), and each Asset is legally and beneficially owned by the Seller;

7.1.2. 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;

7.1.3. the Seller has the requisite power and authority to enter into and perform this Agreement and the documents referred to in it (to which it is a party), and they constitute valid, legal and binding obligations on the Seller in accordance with their respective terms; and

7.1.4. the execution and performance by the Seller of this Agreement and the documents referred to in it will not breach or constitute a default under the Seller's articles of association, or any agreement, instrument, order, judgement or other restriction which binds the Seller.

## **8. PASSING OF TITLE AND THIRD PARTY CONSENTS**

8.1. This Agreement shall constitute an assignment to the Buyer of the benefit of all of the Contracts which are capable of assignment without any Third Party Consent, in each case, with effect from the Completion Date.

8.2. If any Third Party Consent is required to transfer an Asset to the Buyer and such Third Party Consent has not been obtained prior to Completion, the Buyer and the Seller shall use their respective reasonable endeavours after Completion to obtain such consent as soon as possible following Completion and to effect any transfer or assignment or novation of that Asset at the request of the Buyer after receipt of the Third Party Consent.

8.3. In so far as any Assets are not delivered or formally transferred, novated or assigned to the Buyer at Completion and until such time as they are formally transferred, novated or assigned to the Buyer, to the extent permissible under law or the terms of any relevant agreement:

8.3.1. subject to the Buyer complying with its obligations under clause 8.3.2, the Seller shall use reasonable endeavours to procure at the Buyer's cost that the Buyer shall be entitled to the benefit, use and enjoyment of those Assets, to receive the income therefrom, and to have the right of enforcement of the Business Claims, if any, relating to those Assets; and

- 8.3.2. the Buyer shall perform all the obligations of the Seller in respect of such Assets which are Contracts.
- 8.4. If in respect of any Asset a Third Party Consent is refused or not obtained within three months of the Completion Date the parties shall each use reasonable endeavours to achieve an alternative solution pursuant to which the Buyer shall receive the full benefits of the relevant Asset and shall assume the associated obligations.
- 8.5. To the extent that the assignment or attempted assignment of the benefit of a Contract or a Business Claim would cause a third party to repudiate such Contract or Business Claim or would constitute a breach of such Contract, this Agreement does not constitute an assignment or an attempted assignment of that Contract or Business Claim.

## 9. VALUE ADDED TAX

- 9.1. All consideration paid or provided by the Buyer under this Agreement, including without limitation the Purchase Price is expressed exclusive of VAT. Subject to the following provisions of this clause 9, the Buyer covenants to pay to the Seller, in addition to the Purchase Price, the amount of VAT (if any) which is properly chargeable by the Seller to the Buyer on or in respect of the transfer of the Business or the Purchase Price.
- 9.2. Each of the Seller and the Buyer:
- 9.2.1. confirms to the other that it believes and intends that Article 5 of the Value Added Tax (Special Provisions) Order 1995 (**Article 5**) shall apply to the sale of all of the Assets under this Agreement so that the sale and purchase of the Assets is treated as neither a supply of goods nor a supply of services;
- 9.2.2. shall promptly notify the other of any query, ruling, assessment or other communication from HMRC concerning the VAT treatment of the sale and purchase of the Assets under this Agreement (the **VAT Query**);
- 9.2.3. shall promptly respond to the VAT Query by asserting to HMRC its belief that Article 5 applies to the sale and purchase of the Assets; and
- 9.2.4. shall promptly provide to the other party a copy of the VAT Query and all related communications sent to or received from HMRC.
- 9.3. If HMRC communicate in writing that any VAT is payable on the sale of some or all of the Assets under this Agreement (the **VAT Ruling**), then:
- 9.3.1. the party in receipt of the VAT Ruling shall promptly provide a copy of the VAT Ruling to the other party;
- 9.3.2. in accordance with the VAT Ruling, the Seller shall issue a valid VAT invoice to the Buyer; and
- 9.3.3. the Buyer shall promptly pay to the Seller the amount of VAT shown in such invoice.

- 9.4. The Buyer warrants and undertakes to the Seller that:
- 9.4.1. the Buyer has made an application to be registered for VAT as a member of the VAT Group of which Foxtons is the representative member (“**Buyer’s VAT Group**”);
  - 9.4.2. the representative member of the Buyer’s VAT Group is a taxable person (as defined in section 3 of VATA 1994);
  - 9.4.3. the Buyer is buying the Business and all of the Assets as sole beneficial owner; and
  - 9.4.4. the Buyer or a member of the Buyer’s VAT Group will after Completion use the Assets in carrying on the same kind of business (whether or not as part of an existing business) as that carried on by the Seller.
- 9.5. The Seller and the Buyer do not intend to make a joint application to HMRC for the Buyer to be registered for VAT under the VAT registration number of the Seller, under regulation 6(1)(d) of the VAT Regulations 1995 (SI 1995/2518).
- 9.6. Any penalty, interest and/or surcharge imposed on the Seller by reason of late payment to HMRC of VAT payable in accordance with the VAT Ruling shall be borne by the Buyer and the Buyer shall, on demand, reimburse the Seller accordingly within five Business Days of receipt of such demand.
- 9.7. Foxtons:
- 9.7.1. shall procure that the Buyer shall comply with its obligations under this clause 9, including but not limited to the obligation of the Buyer to pay any amount of VAT to the Seller as required under clause 9.1; and
  - 9.7.2. covenants to pay an amount of such VAT to the Seller should the Buyer fail to do so for whatever reason in a reasonable period following receipt of a valid VAT invoice in respect thereof.
- 9.8. The Buyer undertakes that, at Completion, both the Buyer and the Seller will be members of the group (both under the definition given by section 764 CTA 2009 and the definition given by section 170 TCGA 1992) of which Foxtons Group PLC is the principal company.

## **10. CAPITAL ALLOWANCES AND TAX LOSSES**

- 10.1. The Buyer and the Seller acknowledge that the transfer of the Business contemplated by this Agreement is one to which the provisions of Chapter 1 of Part 22 of the Corporation Tax Act 2010 (“CTA 2010”) (*Transfers of Trade Without a Change of Ownership*) will apply.
- 10.2. Within 12 months of the end of the accounting period of the Seller in which Completion takes place, the Seller shall provide to the Buyer details of the tax written down value of any plant and machinery qualifying for capital allowances (being allowances under the provisions of the Capital Allowances Act 2001) being transferred as part of the Business, calculated to the Completion Date in accordance with section 948 of CTA 2010.



- 10.3. The Seller and the Buyer shall, in their respective tax returns for the accounting period in which the Completion Date occurs include the value notified by the Seller in accordance with clause 10.2 as the corresponding disposal value and acquisition value respectively for the purpose of capital allowances.
- 10.4. The Seller and the Buyer acknowledge that there are no losses for tax purposes relating to the Business to which any of sections 944, 944A, 944B, 944C, 944D or 944E of CTA 2010 will apply.

## **11. EMPLOYEES**

- 11.1. 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 the Employees shall be transferred to the Buyer pursuant to TUPE with effect from the Completion Date.
- 11.2. If any contract of employment of any Employee is found or alleged not to have transferred to the Buyer at the Completion Date the Seller shall use all reasonable endeavours to ensure that such contracts of employment shall have effect from the Completion Date as if originally made with the Buyer.
- 11.3. The Seller will:
- 11.3.1. ensure that all of the Employees have received all emoluments (including all salary, bonuses and commissions, deferred or otherwise), due or accrued at the Completion Date;
  - 11.3.2. comply with its obligations under Regulations 11 and 13 of TUPE;
  - 11.3.3. not at any time serve on the Buyer in respect of any of the Employees or any other employee or former employee of the Seller such notice as is referred to in Regulation 15(5) of TUPE; and
  - 11.3.4. at its own expense, provide to the authorised representatives of the Buyer, in relation to any of the Employees, details and as applicable copies of personnel and employment records including such information or documents as the Buyer may reasonably require relating to the terms and conditions of employment, pension and life assurance arrangements, health, welfare or any other matter concerning such Employees or their employment in the period prior to Completion.
- 11.4. If any contract of employment of a person who is not listed as an Employee has effect, or is alleged to have effect, as if originally made between the Buyer and such person as a result of the application of TUPE:
- 11.5. the Buyer shall notify the Seller as soon as reasonably practicable and in any event within five working days of becoming aware of the application, or alleged application, of TUPE to such contract;

- 11.5.1. the Buyer shall give the Seller the opportunity to offer employment to such person and/or otherwise resolve any such claim during a period of 21 days immediately following the notification referred to in clause 11.5 above;
  - 11.5.2. thereafter, if an offer of employment with the Seller or an offer of settlement is not accepted, the Buyer will be entitled to give notice to such person to terminate such contract; and
  - 11.5.3. the Seller shall indemnify and keep indemnified the Buyer from and against any actions, proceedings, costs (including any costs relating to settlement), expenses (including legal costs and expenses), claims, demands, liabilities, losses, damages or awards (including sums paid in settlement of the same) ("Indemnified Claims") arising out of or in connection with such allegation or termination, or Indemnified Claims arising out of or in connection with such contract to the date of such termination.
- 11.6. The Buyer agrees that it will assume and discharge all of its obligations as transfer to it pursuant to TUPE in respect of the Employees and it shall be responsible for and shall indemnify and keep indemnified the Seller against all Losses suffered or incurred by the Seller arising out of or in connection with:
- 11.6.1. the employment of the Employees, arising after the Completion Date;
  - 11.6.2. any failure by the Buyer to assume and discharge its obligations under this clause 11.6;
  - 11.6.3. any claim for constructive unfair dismissal under Regulation 4 (11) or deemed dismissal under Regulation 4(9) of TUPE, by reason of any actual or proposed measures or changes by the Buyer in connection with the transfer;
  - 11.6.4. any failure by the Buyer to comply with its obligations under Regulation 13 as a transferee.
- 11.7. The Seller shall indemnify and keep indemnified the Buyer from and against any Indemnified Claims arising out of or in connection with:
- 11.7.1. any of the terms and conditions of employment of any of the Employees being different as at Completion from those expressly disclosed by the Seller to the Buyer prior to Completion (whether arising out of or in connection with any claim brought by any of the Employees under the Equal Pay Act 1970 or the Equality Act 2010 before or after Completion, or otherwise);
  - 11.7.2. any failure by the Seller to comply with any obligations relating to the provision of information and/or consultation pursuant to TUPE;
  - 11.7.3. any failure by the Seller to comply with the obligation to notify employee liability information pursuant to Regulation 11 of TUPE;

11.7.4. any act or omission by the Seller, or any act or omission, the liability for which transferred to the Seller by virtue of TUPE, or any event, occurrence or obligation in connection with the employment or termination of the employment:

- (a) of the Employees during the period up to and including the Completion Date; and/or
- (b) whether on, before or after the Completion Date, of all persons (other than the Employees) employed or otherwise engaged or formerly employed or otherwise engaged by the Seller,

in each case including, but not limited to, those relating to redundancy (whether pursuant to statutory requirements or otherwise), breach of contract, wrongful dismissal, unfair dismissal, discrimination by reason of sex, sexual orientation, race, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity or disability, equal pay, health and safety (including industrial injury) and in each case whether under UK or European legislation or otherwise.

## 12. POST COMPLETION OBLIGATIONS

- 12.1. As soon as practicable after Completion, the Seller and the Buyer shall issue jointly a letter in the agreed form to each Employee explaining that his or her employment has been transferred to the Buyer pursuant to TUPE.
- 12.2. The Seller shall promptly refer to the Buyer all enquiries relating to the Business and shall promptly pass to the Buyer all material correspondence, information, orders and other documentation relating to or connected with the Business or the Assets in each case which it receives after the Completion Date for a period of 12 months from the date of this Agreement.
- 12.3. The Seller shall give the Buyer such reasonable access during business hours to the books, accounts, records, e-mails 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).
- 12.4. The Seller shall provide and shall procure that its employees provide the Buyer with such information relating to the activities and operations of, and the products and services supplied or to be supplied by, the Business at Completion as the Buyer may reasonably request in writing, for a period of 12 months from the date of this Agreement.
- 12.5. The Buyer shall give the Seller (and any professional advisors of the Seller) such reasonable access to the Records for inspection by representatives of the Seller during business hours as the Seller may reasonably require (including the right to take copies and extracts on reasonable advance notice).
- 12.6. In order to facilitate the operation of this clause 12, the Seller has designated [REDACTED] [REDACTED] (or [REDACTED]) in his absence) as the primary point of contact for the Buyer in respect of any requests for information

from the Buyer under this Clause 11 (including with respect to the Records). The Seller shall procure and facilitate compliance with such requests as required.

- 12.7. The Seller and the Buyer further agree that in the event that the Buyer receives any requests for information or notification of any issues or claims in relation to any tenancy contracts other than those listed in the Tenancy Contract Appendix that these shall be referred to Anthony Twist (or such person as the Seller may direct in writing).

### **13. RETAINED CASH CLAWBACK**

- 13.1. In the event of a Relevant Transaction occurring during the Clawback Period, the Seller shall:

13.1.1. within five Business Days of the Relevant Transaction occurring, notify the Buyer of such Relevant Transaction specifying the Relevant Transaction Amount; and

13.1.2. within ten Business Days of receipt of the Relevant Transaction Amount by the relevant person pay to the Buyer a sum equal to 50 per cent. of the Relevant Transaction Amount (up to a maximum value which is equal to the Retained Cash).

- 13.2. This clause 13 shall apply to every Relevant Transaction that occurs in the Clawback Period until a sum equal to the Retained Cash has been received by the Buyer as a result of this clause 13.

- 13.3. For the purposes of calculating whether a Relevant Transaction has occurred during the Relevant Period, it shall be deemed to have occurred upon the date of exchange of legally binding documents (including if completion thereunder is subject to conditions) to give effect to the Relevant Transaction provided always that it shall not be a Relevant Transaction if completion does not subsequently take place.

- 13.4. This clause 13 shall not apply to any bona fide restructuring of the Seller's Group provided that in the event of such a restructuring the provisions of this clause 13 shall apply to any Change of Control or Disposal of any entity acquiring the business of or shares in any member of the Seller's Group.

- 13.5. Any amounts paid pursuant to this clause 13 shall be inclusive of VAT.

### **14. BANK ACCOUNTS AND CLIENT MONIES**

The Seller and the Buyer agree that the Business Client Account Cash and the Excluded Client Account Cash and the accounts relating to the Business listed on the Bank Accounts Schedule shall be dealt with in accordance with the Transitional Services Agreement.

### **15. RESTRICTIVE COVENANTS**

- 15.1. In this clause 15, the "**Relevant Period**" shall be the period of four years beginning with the Completion Date.

- 15.2. The Seller covenants with the Buyer, for itself and as trustee for the Buyers' Group, that it shall not (and shall procure that no other member of the Seller's Group shall):

- 15.2.1. at any time during the period of 12 months following Completion, offer employment to, enter into a contract for the services of, or attempt to entice away from any member of the Buyer's Group, any Employee, save with the consent of the Buyer or Foxtons; or
  - 15.2.2. at any time during the Relevant Period, deal with any Customer (whether or not in relation to any business which would be in competition with all or any part of the Business), provided that this restriction shall not apply to the Seller dealing with Carve-Out Customers in relation to properties other than the Restricted Properties; or
  - 15.2.3. at any time during the Relevant Period, canvass, solicit or otherwise seek the custom of any Customer (whether or not in relation to any business which would be in competition with all or any part of the Business), provided that this restriction shall not apply to the Seller canvassing, soliciting or otherwise seeking the custom of a Carve-Out Customer in relation to a property other than the Restricted Properties; or
  - 15.2.4. at any time during the Relevant Period, deal in any way with any owner or landlord of any Restricted Property; or
  - 15.2.5. at any time during the Relevant Period, induce or attempt to induce a 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 Buyers' Group, or do any other thing will to have such an effect; or
  - 15.2.6. at any time during the Relevant Period, induce or attempt to induce a supplier to the Business to cease or refrain from conducting business with, or to reduce the amount of business conducted with the Buyer or any member of the Buyers' Group, or do any other thing which has such an effect; or
  - 15.2.7. at any time after Completion, use in the course of any business the word "Foxtons" or present itself or permit itself to be presented as connected in any capacity with the Business; or
  - 15.2.8. at any time after Completion, do or say anything which may be harmful to the reputation of the Business.
- 15.3. The covenants in this clause 15 are intended for the benefit of the Buyer and apply to actions carried out by the Sellers in any capacity and whether directly, subject to clause 13.4, or indirectly, on the Seller's own behalf, on behalf of any other person or jointly with any other person.
- 15.4. Each of the covenants in this clause 15 is a separate undertaking by the Seller in relation to himself and his interests and shall be enforceable by the Buyer separately and independently of its right to enforce any one or more of the other covenants contained in this clause 15. Each of the covenants in this clause 15 is considered fair and reasonable by the parties, but if any restriction is 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 modifications as may be necessary to make it valid and enforceable.

- 15.5. The consideration for the undertakings in this clause 15 is included in the Purchase Price and in the assumption of the Assumed Liabilities.
- 15.6. The Buyer covenants with the Seller, for itself and as trustee for the Seller's Group, that it shall not (and shall procure that no other member of the Buyer's Group shall) at any time during the period which is 12 months from the date of this Agreement, offer employment to, enter into a contract for the services of, or attempt to entice away from any member of the Seller's Group, any persons employed by the Seller at the date of this Agreement that is not an Employee, save with the consent of the Seller.
- 15.7. The Buyer agrees, and shall procure that Foxtons shall, not to at any time after Completion, do or say anything which may be harmful to the reputation of the Seller or use in the course of any business any Business Name or present itself or permit itself to be presented as connected in any capacity with the Seller, provided that nothing in this clause 15.7 shall prevent Foxtons from using the Business Name in a factual manner in internal or external communications.

## **16. FURTHER ASSURANCE**

The Seller shall (at its own expense), and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents, perform such acts and do such things as the Buyer may reasonably require from time to time for the purpose of giving full effect to this Agreement.

## **17. ASSIGNMENT**

- 17.1. Subject to the further provisions of this clause 17, neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over, or deal in any other manner with any or all of its rights and obligations under this agreement (or any other document referred to in it).
- 17.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.3. Each party may assign or subcontract any or all of its rights and obligations under this agreement to:
- 17.3.1. another member of their Group. The assigning party shall procure that such assignee (or any subsequent assignee within their Group) assigns such rights back to it in accordance with this clause 17 or to such other member of the Group as the assigning party may nominate immediately before it ceases to be a member of the Group; or
  - 17.3.2. in respect of the Buyer, any person to whom the Business or Assets are sold or transferred by the Buyer following Completion.
- 17.4. The Buyer may grant security over, or assign by way of security, any or all of its rights under this agreement for the purposes of, or in connection with, the financing (whether in whole or in

part) by the Buyer of the Transaction or any of its working capital or other requirements. On the enforcement of any security of a kind referred to in this clause 17.4, the Buyer, or any administrative receiver of the Buyer or any person having the benefit of such security may assign any or all of the relevant rights to any person, but the Seller's liability to any assignee in respect of those rights shall not be greater than if no assignment had taken place.

17.5. The Buyer, the Seller and Foxtons agree that on the transfer of the Business and Assets by the Buyer to Foxtons all of the Buyer's rights, obligations and liabilities under this Agreement shall be novated to Foxtons (the "**Novation**") and:

17.5.1. Foxtons agreed to perform this Agreement and be bound by its terms in every way as if it were the Buyer; and

17.5.2. the Seller acknowledges and agreed that following the Novation all obligations owed to it under this Agreement shall be owed by Foxtons alone and it will have the right to enforce this Agreement and pursue any claims and demands under this Agreement (whensoever arising) against Foxtons as though it were the original party to the contract in place of the Buyer.

## **18. CONFIDENTIALITY**

18.1. Except so far as may be required by law, and in such circumstances only after prior consultation with the other party:

18.1.1. the Seller and the Buyer each undertake to the other that they shall (and shall procure that the members of their respective Group's shall):

- (a) keep confidential the terms of this Agreement; and
- (b) not disclose any of the information referred to in clause 18.1.2 in whole or in part to any third party;

18.1.2. the Seller undertakes to the Buyer that they shall (and shall procure that the members of the Seller's Group shall):

- (a) keep confidential all confidential information and trade secrets in its possession concerning the business, affairs, customers or suppliers of the Business and any member of the Buyer's Group; and
- (b) not make use of any confidential information or trade secrets concerning the Business, save to the extent required in order for it to comply with its obligations under this Agreement.

18.2. The Seller shall make no internal or external announcements in relation to the Agreement or its subject matter without the prior written consent of the Buyer, such consent not to be unreasonably withheld or delayed.

## **19. ENTIRE AGREEMENT**

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 and understandings between them, whether written or oral, relating to its subject matter.

## **20. VARIATION AND WAIVER**

- 20.1. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.2. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under this Agreement or by law is only effective if it is in writing.
- 20.3. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **21. NOTICES**

- 21.1. A notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post, recorded delivery or special delivery, in each case to that party's registered office, or by email to the following email addresses:
  - 21.1.1. for the Buyer: [REDACTED]; and
  - 21.1.2. for the Seller: [REDACTED].
- 21.2. Delivery of a notice is deemed to have taken place if delivered by hand, at the time the notice is left at the address, or if sent by email, at the time of transmission, or if sent by post on the second Business Day after posting, unless such deemed receipt would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), in which case deemed receipt will occur when business next starts in the place of receipt (and all references to time are to local time in the place of receipt).
- 21.3. This clause 21 does not apply to the service of any proceedings or other documents in any legal action.

## **22. SEVERANCE**

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 shall not affect the validity and enforceability of the rest of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**24. THIRD PARTY RIGHTS**

No one other than a party to this Agreement shall have any right to enforce any of its terms.

**25. GOVERNING LAW AND JURISDICTION**

25.1. 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 England and Wales.

25.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising 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

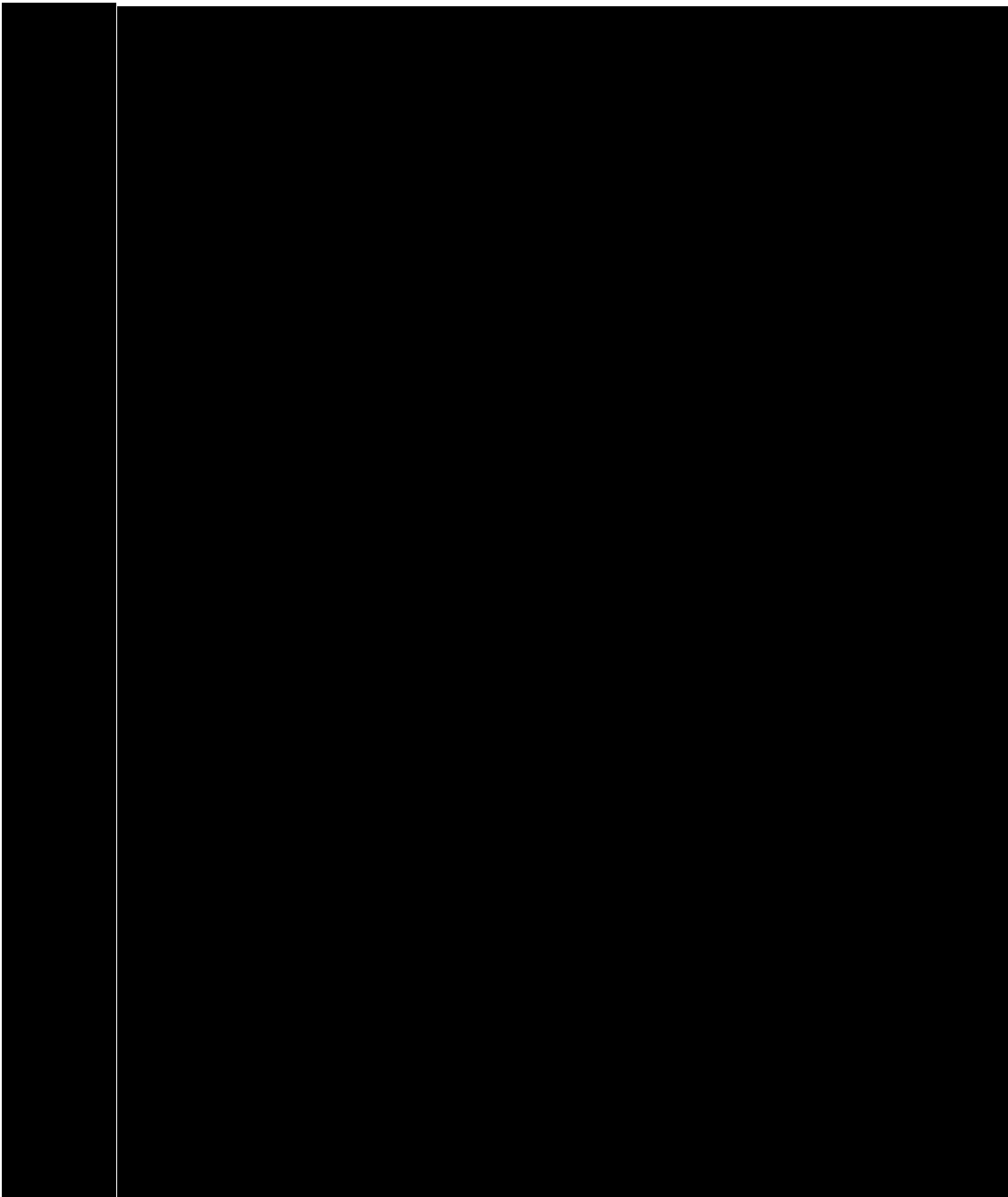
### ACTIONS AND OBLIGATIONS AT COMPLETION

1. The Seller shall deliver, or procure delivery, to the Buyer of, or make available to the Buyer:
  - 1.1. 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;
  - 1.2. the Transitional Services Agreement duly executed by the Seller;
  - 1.3. all national insurance and PAYE records in respect of the Employees, and all records required to be kept under the Working Time Regulations 1998;
  - 1.4. 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;
  - 1.5. a copy of the minutes of a meeting of the board of directors of the Seller authorising the execution by the Seller of this Agreement and all other documents ancillary to it or the transactions contemplated herein, and authorising the relevant signatory or signatories to execute this Agreement and any such other documents on the Seller's behalf.
2. The Buyer shall deliver, or procure delivery, to the Seller of:
  - 2.1. evidence satisfactory to the Seller that applications have been made to HMRC to:
    - 2.1.1. appoint the Seller as the representative member of the D&G VAT Group;
    - 2.1.2. remove the Buyer from the D&G VAT Group;
    - 2.1.3. either:
      - (a) confirm that Douglas & Gordon (2) Limited (**D&G(2)**) is a member of the D&G VAT Group; or
      - (b) add D&G(2) to the D&G VAT Group; and
    - 2.1.4. add the Buyer to the VAT group of which Foxtons is a member (such application having been made by Foxtons or a company associated with Foxtons);

in each case with effect from a time no later than Completion.
- 2.2. the Transitional Services Agreement duly executed by the Buyer and Foxtons; and
- 2.3. a copy of the minutes of a meeting of the board of directors of the Buyer authorising the execution by the Buyer of this Agreement and all other documents ancillary to it or the transactions contemplated herein, and authorising the relevant signatory or signatories to execute this Agreement and any such other documents on the Buyer's behalf.


**SCHEDULE 2**

**THE PROPERTIES**



### SCHEDULE 3

### TRADEMARK

TERRITORY	MARK	REGISTRATION NUMBER	PROPRIETOR	FILING DATE	DATE OF REGISTRATION	RENEWAL DATE	CLASSES	STATUS
United Kingdom		UK00003312739	Douglas & Gordon Ltd	23 May 2018	17 August 2018	23 May 2028	36	Registered

**SCHEDULE 4**

**EMPLOYEES**

Employee Id	First Name	Last Name	Job Role
[REDACTED]			[REDACTED]

The image shows a large table with three columns. The left and right columns are completely redacted with solid black bars. The middle column contains a vertical grid of small, empty rectangular cells. The grid consists of approximately 25 rows and 2 columns of cells.

SCHEDULE 5

CARVE OUT CUSTOMERS

NAME	RELATED COMPANY NAME	NUMBER OF PROPERTIES CURRENTLY LET	ADDRESSES OF PROPERTIES CURRENTLY LET
------	----------------------	------------------------------------	---------------------------------------









**EXECUTION**

**SIGNED** and **DELIVERED** as a deed by **DOUGLAS & GORDON LIMITED** acting by a director in the presence of the following witness:

DocuSigned by:  
*Richard Harris*  
B3E53E466F6246D...

Director

DocuSigned by:  
*Chris Hough*  
B18B40C573A54E1...

Witness

Chris Hough

Full name

Foxtons Group plc  
Building 1  
Chiswick Park  
566 Chiswick High Road  
London  
W4 5BE

Address

**SIGNED** and **DELIVERED** as a deed by **DOUGLAS & GORDON ESTATE AGENTS LIMITED** acting by a director in the presence of the following witness:

DocuSigned by:  
*Richard Harris*  
B3E53E466F6246D...

Director

DocuSigned by:  
*Chris Hough*  
B18B40C573A54E1...

Witness

Chris Hough

Full name

Foxtons Group plc  
Building 1  
Chiswick Park  
566 Chiswick High Road  
London  
W4 5BE

Address

**SIGNED** and **DELIVERED** as a deed by **FOXTONS LIMITED** acting by a director in the presence of the following witness:

DocuSigned by:  
*Richard Harris*  
B3E83E486F8246D...  
Director

DocuSigned by:  
*Chris Hough*  
B18B40C573A51E1...

Witness

Chris Hough

Full name

Foxtons Group plc  
Building 1  
Chiswick Park  
566 Chiswick High Road  
London  
W4 5BE

Address