

DATED THE [] DAY OF [MONTH] 2015

EXCLUSIVITY OR OPTION AGREEMENT

relating to

SALE OF [NAME OF PROPERTY]

between

[PARTY 1]

and

[PARTY 2]

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THIS AGREEMENT is dated 15th January 2015

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Seller**).
- (2) XYZ Limited incorporated and registered in [] with company number [] whose registered office is at [address]. (**Agent**) (as Agent for the **Willing Buyer**).

BACKGROUND

- (A) The Agent and the Seller intend to enter into the Transaction.
- (B) The Seller does not intend to enter into the Transaction with anyone other than the Agent and ultimately the Willing buyer during the Exclusivity Period.
- (C) The Agent and the Seller are entering into this agreement in good faith and are relying on its terms.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1. Definitions:

Affiliate(s): in relation to a legal entity (1) its ultimate holding company (2) its subsidiaries and (3) all other subsidiaries of its ultimate holding company as the terms “subsidiary” and “holding company” are defined by Section 1159 of the Companies Act 2006 as amended.

Agent’s Bank Account: [details of bank account]

Agent’s Obligations: the obligations of the Agent set out in clause 3.

Agreement: this agreement.

Commission: ONE AND TWO TENTHS PER CENTUM (1.2%) of the Price, exclusive of VAT or TWENTY FIVE THOUSAND POUNDS (£25,000) STERLING, whichever is the higher.

Completion: the date upon which a Purchase takes place.

Confidential Information: any information (of whatever nature and however recorded or preserved) of a confidential nature which is disclosed by one person (the “Discloser”) to another person (the “Recipient”) (whether or not such information is expressly stated to be confidential or is marked or otherwise indicated as such); information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as confidential information.

Connected Persons: in relation to any person, any person or persons connected with such person within the definition of connected persons contained in section 1122 and 1123 of the Corporation Tax Act 2010 (but a person shall not be "connected" with another person solely by reason of them both being parties to and acting in accordance with the terms of this Agreement).

Copies: copies of Confidential Information including any document, electronic file, note, extract, analysis or any other way of representing or recording and recalling information which contains, reflects or is derived from Confidential Information.

Enhanced Commission: the figure equal to the amount by which the Price exceeds the sum of [] POUNDS (£ x) STERLING.

Exclusivity Period: the period starting at 5pm on 12th January 2015 and ending at 5pm on 27th April 2015.

Group: in relation to a company (wherever incorporated), that company, any company of which it is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company. Unless the context otherwise requires, the application of the definition of Group to any company at any time shall apply to the company as it is at that time.

Interest: four per centum (4%) per annum above the base rate from time to time in force of the Bank of England.

Party: Either the Agent or the Seller as the case may be and "Parties" shall mean both of them.

Price: the consideration paid by the Willing Buyer for the Property including any moveable items, stock and the value of any business and goodwill pertaining thereto; Declaring however that (One) if the Property is transferred to the Willing Buyer or a member of its Group or a Connected Person by way of a sale of shares in the company which holds title to the Property, then the Price shall be deemed to be the consideration paid for those shares and (Two) if the Property is Leased by way of a long Lease for nominal rental value, but in return for a price or grassum, then the Price shall be deemed to be such price or grassum and (Three) if the Property is Leased by way of a long Lease or interposed long lease without a grassum being paid, then the price shall be based on the investment value of such lease by taking the initial annual rent multiplied by 10 and taking 10% of that figure [(initial annual rent X 10) X 10%];

Property: [description of property inc address] or The list of Properties are set out in Annexe 1

Purchase: a completed sale of the Property or the shares in the company or companies which holds title to the Property where the owner of the Property transfers title to the Willing Buyer or a member of its Group or a Connected Person in return for the Price.

Recipient: a person or entity who or which receives information in terms of Clause 5 of this Agreement.

Seller's Obligations: the obligations of the Seller set out in clause 2.

Seller's Solicitors: [NAME OF SOLICITORS] of [ADDRESS] [DX NUMBER] (reference [REF]).

Subsidiary: in relation to a company wherever incorporated (a holding company) means a "subsidiary" as defined in section 1159 of the Companies Act 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 shall apply to the company as it is at that time.

Transaction: the sale of the Properties or the sale of the entire issued share capital of the company or companies which holds title to the Property.

Transaction Documents: a due diligence questionnaire, draft sale and purchase agreement and all title, property and local searches and other due diligence documentation and information to deduce title in accordance with the draft sale and purchase agreement.

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

Willing Buyer: the Agent has identified a Willing Buyer and will disclose the identity of the Willing Buyer on completion of this Exclusivity Agreement and "Willing Buyer" shall include any legal person, incorporation, partnership, unincorporated association, syndicate or individual introduced by the Agent to the Seller whether in person, face to face, by Fax, e-mail or by telephone, Skype or Social or other medium.

Willing Buyer's Solicitors: the solicitors representing the Willing Buyer whose identity is disclosed in writing to the Seller.

- 1.2. Clause headings shall not affect the interpretation of this agreement.
- 1.3. Except where a contrary intention appears, references to clauses are to the clauses of this agreement.
- 1.4. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6. A reference to **writing** or **written** includes fax and email.

2. SELLER'S OBLIGATIONS

2.1. In consideration of the Agent undertaking and incurring expenses in connection with the Agent's Obligations, the Seller undertakes:

- (a) by 5.30 pm on [DATE] to instruct the Seller's Solicitors:
 - (i) to send the Transaction Documents in accordance with clause 2.2 to the Willing Buyer's Solicitors on or before [DATE]; and
 - (ii) to answer promptly all enquiries raised by the Buyer's Solicitors relating to the Property or the Transaction, to respond promptly to any amendments to the draft sale and purchase agreement proposed by the Buyer's Solicitors and do all other work required to enable contracts for the Transaction to be exchanged within the Exclusivity Period;
- (b) to supply the Seller's Solicitors with all documentation, information and authority to enable the Seller's Solicitors to draft and negotiate the sale and purchase agreement and do all work necessary to enable contracts for the Transaction to be exchanged within [60/90] days from the end of the Exclusivity Period;
- (c) during the Exclusivity Period not to send, instruct or allow anyone else to send any Transaction Documents to anyone other than the Agent's or the Willing Buyer's Solicitors; and
- (d) during the Exclusivity Period, not to (nor instruct or allow anyone else to):
 - (i) conduct negotiations with any third party in relation to a proposed sale or lease of the Property;
 - (ii) allow any third party (other than those instructed by the Agent) to view or to undertake a survey or inspection of the Property;
 - (iii) enter into any commitment to deal or conduct negotiations with another party to have effect after the expiry or termination of the Exclusivity Period;
 - (iv) divulge the identity of the Willing Buyer to any other party who is or may be interested in negotiating for the acquisition of the Property;
 - (v) market the Property for sale or lease with any agents;
 - (vi) sell, alienate, lease, option, transfer, grant any rights over (including any Standard Security or mortgage, pledge, floating or fixed charge or debenture) or otherwise dispose of, deal with or treat or part with the Property or any part or parts thereof (including, but without prejudice to the foregoing generality, any sale, alienation, lease, option, transfer, grant of any rights over or otherwise disposal of or dealing or treating to, with or in favour of (as the case may be) any member of its Group or to any Connected Persons.

- (e) The Seller will use all reasonable endeavours to procure that its employees, agents and advisers comply with the restrictions operating under this agreement

- 2.2. The Seller must send the Transaction Documents to the Willing Buyer's Solicitors by first class post or by recognised document exchange or by hand to their address or document exchange number (as appropriate) and quoting their reference stated in this agreement.

3. AGENTS'S OBLIGATIONS

In consideration of the Seller undertaking the Seller's Obligations, the Agent undertakes by 5.30 pm on [DATE] to deliver a Letter of Intent and Proof of Funds from the Willing Buyer. The Agent will use his best endeavours to encourage the Willing Buyer's Solicitors to create a **Heads of Agreement**, investigate title to the Properties, carry out due diligence, negotiate the draft sale and purchase agreement, raise enquiries of the Seller and any third parties about the Properties and do any other work necessary to enable contracts for the Transaction to be exchanged within [60/90] days of the expiry of the Exclusivity Period.

4. GOOD FAITH AND LEGAL STATUS

- 4.1. Each Party acknowledges that (1) it owes to the other a duty of good faith and (2) both Parties are relying on the terms of this Agreement.
- 4.2. This Agreement does not commit either Party to the other to conclude a contract for the Transaction or any other commercial agreement concerning the Property and is not a contract for the lease, sale or other disposition of an interest in land.
- 4.3. The Agent is acting on behalf of the Willing Buyer as an agent only and shall not be personally liable for the purchase of the Property and/or the performance of any purchase and sale or other such agreement in relation to the Property.

5. CONFIDENTIALITY

- 5.1. The Parties will each treat as confidential all Confidential Information they obtain from each other under or in connection with this Agreement. They will not without the prior written consent of the other disclose any such Confidential Information to any person, or use the same, except as permitted by Clause 5.2.
- 5.2. Confidential information may be disclosed by the Recipient under this Agreement to the following persons:
 - (a) the Recipient's own employees, agents and contractors, to the extent that they need to know it for the purposes of this Agreement, and provided that

they are first made aware of the confidential nature of the Confidential Information and the Recipient's obligations in relation to it, and the Recipient agrees to enforce such obligations against such persons at the request of the Discloser;

- (b) the Recipient's auditors and other professional advisers; and
- (c) any person having a statutory, regulatory or other legal right to request and receive that information, including any court of competent jurisdiction.

5.3. Clause 5.1 does not apply to information which the Recipient can show by reference to documentary or other evidence that:

- (a) was in the Recipient's lawful possession prior to the disclosure; or
- (b) is already public knowledge or which becomes so at a future date (otherwise than as a result of a breach of this Clause); or
- (c) is received from a third party who is not under an obligation of confidentiality in relation to that information.

5.4. This Clause 5 shall survive termination of this Agreement for any reason.

5.5. Upon the expiry or other termination of this Agreement, the Recipient, shall return any Confidential Information in its possession to the Discloser, if requested. However, the Recipient shall be entitled to keep one copy of any Confidential Information of the other solely for the purpose of ensuring ongoing compliance with the terms of this Agreement.

6. Payment Conditions

6.1. On Completion, the Seller shall pay the Agent the Commission and any Enhanced Commission by CHAPS transfer to the Agent's Bank Account. Interest shall be payable on the Commission from Completion until paid.

6.2. The foregoing is an essential condition of the Agreement in respect of which time is of the essence.

6.3. the Seller shall not attempt to defeat or circumvent the terms of this Agreement by either (a) procuring the transfer of the shares in any company which holds title to the Property or (b) procuring the disposition or lease of the Property in either case to third party or company which then sells the shares in a company which holds title to the Property or sells or leases the Property to the Willing Buyer or a member of its Group or a Connected Person. In such an event, the Agent shall be entitled to Commission and Enhanced Commission from the Seller on Completion of the relevant transaction.

6.4. the Seller also agrees that neither the Seller nor any of the Seller's Connected Persons will contact, deal with, negotiate or participate in any transactions with a Willing

Buyer without the consent and approval of the Agent and any such authorised transaction will be without prejudice to the terms of this Agreement and in particular to the terms of this Clause 6.

- 6.5. the Seller nor any member of its Group shall not and the Seller's Connected Persons shall not, instruct their respective solicitors or other professional advisers to enter into negotiations with the Willing Buyer other than through the Agent. If the Seller or any member of its Group or the Seller's Connected Persons circumvent the Agent in contravention of any of the terms this Clause 6, whether directly and/or indirectly, without prejudice to the Agent's other remedies, the Agent shall be entitled to compensation equal to the Commission and any Enhanced Commission it could have reasonably expected to have realised from such a transaction plus any and all expenses, including any and all legal fees incurred in connection with the recovery of such compensation.
- 6.6. Without prejudice to any and all other rights and remedies that the Agent might have, the Agent shall be entitled to the remedies of interdict, specific performance and other equitable relief for any actual or threatened breach of the provisions of this Agreement.
- 6.7. The rights and remedies in this Agreement are cumulative and not exclusive of rights or remedies provided by law. Any failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

7. WHOLE AGREEMENT AND CONDUCT OF NEGOTIATIONS

- 7.1. This Agreement, and any documents referred to in it, constitute the whole Agreement between the Parties and supersede any arrangements, understanding or previous Agreement between them relating to the subject matter covered by the Agreement.
- 7.2. Confidential Information may not be accurate or complete and neither party is liable to the other or to anyone to whom the other discloses the information if it is relied upon.
- 7.3. Nothing in this clause operates to limit or exclude any liability for fraud.

8. ASSIGNATION

- 8.1. Except as provided otherwise, no person may assign any of its rights under this Agreement or any document referred to in it.

9. TERMINATION

- 9.1. The Agent may terminate this agreement with immediate effect by written notice to the Seller.
- 9.2. The Seller may terminate this agreement with immediate effect by written notice to the Agent if the Agent is in material breach of the Agent's Obligations.

10. REMEDIES

- (a) If during the Exclusivity Period the Seller breaches any of the Seller's Obligations and the Agent or the Willing Buyer chooses as a result to terminate this Agreement, the Seller must reimburse the Agent and the Willing Buyer all costs, fees, Commissions and any Enhanced Commission and expenses incurred by the Agent or the willing Buyer in connection with the Transaction together with any irrecoverable VAT incurred on them.

11. TIME OF THE ESSENCE

Time is of the essence for the purposes of this agreement.

12. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

13. GOVERNING LAW AND JURISDICTION

- 13.1. This Agreement and all disputes, causes and claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.
- 13.2. The parties irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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

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

Signed by [name of agent]
for and on behalf of XYZ Limited Director

ANNEX 1 to Exclusivity Agreement

LIST OF PROPERTIES