**Draft**

**………………………….. 20[    ]**

**[                  ] [LIMITED] [PLC]**

and

**[                  ] [LIMITED] [PLC]**

|  |
| --- |
| **AGREEMENTfor the acquisition of shares in[                         ] [LIMITED] [PLC]***[Short Form – Intra Group]* |

Herbert Smith Freehills LLP



**THIS AGREEMENT** is made on                                           20[  ]

**BETWEEN:**

1. **[                       ] [LIMITED] [PLC]**, a company incorporated in [              ] (registered number [            ]) and whose registered office is at [                       ] (the **"Seller"**); and
2. **[                  ] [LIMITED] [PLC]**, a company incorporated in [                    ] (registered number [                      ]) and whose registered office is at [                          ] (the **"Purchaser"**),

(together, the **"Parties"** or separately a **"Party"** (as the context requires)).

**RECITALS:**

1. The Seller has agreed to sell and transfer to the Purchaser and the Purchaser has agreed to purchase the [entire issued share capital of the Company] upon the terms and subject to the conditions set out in this Agreement.

**IT IS AGREED** as follows:

# INTERPRETATION

## In this Agreement, including the Recitals, each of the following words and expressions shall have the following meanings:

1. [**"the 1985 Act"** the Companies Act 1985;]
2. [**"the 2006 Act"** the Companies Act 2006;]
3. **"Business Day"** a day (other than a Saturday or Sunday) on which banks are open for general business in London;
4. **"Company"** [                       ] [Limited] [PLC] a company incorporated in [England] under the [1985 Act/2006 Act] with registered number [                             ][further details of which are set out in Schedule [●]];
5. **"Completion"** completion of the sale and purchase of the Shares;
6. **"Encumbrance"** any claim, option, charge (fixed or floating), mortgage, lien, pledge, equity, encumbrance, right to acquire, right of pre-emption, right of first refusal, title retention or any other third party right, or other security interest or any other agreement or arrangement having a similar effect or any agreement to create any of the foregoing;
7. **"Full Title Guarantee"** with the benefit of the implied covenants set out in Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 when a disposition is expressed to be made with full title guarantee; [and]
8. **"Shares"** the [                      ] issued ordinary shares of [                 ]p in the capital of the Company[[1]](#footnote-1).

## In this Agreement, except where the context otherwise requires:

### [any reference to this Agreement includes the Schedules [and Appendices] to it each of which forms part of this Agreement for all purposes;]

### a reference to an enactment, EU instrument or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment, EU instrument or statutory provision and is a reference to that enactment, EU instrument, statutory provision or subordinate legislation as from time to time amended, modified, incorporated or reproduced and to any enactment, EU instrument, statutory provision or subordinate legislation that from time to time (with or without modifications) re-enacts, replaces, consolidates, incorporates or reproduces it;

### words in the singular shall include the plural and vice versa;

### references to one gender include other genders;

### a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;

### a reference to a Clause, paragraph, Schedule (other than to a schedule to a statutory provision) [or Appendix] shall be a reference to a Clause, paragraph, Schedule [or Appendix] (as the case may be) of or to this Agreement;

### if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;

### references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;

### references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;

### a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";

### references to documents "in the agreed form" or any similar expression shall be to documents agreed between the Parties, annexed to this Agreement and initialled for identification by, or on behalf of, the Sellers and the Purchaser;

### the headings in this Agreement are for convenience only and shall not affect its interpretation; and

### references to this Agreement include this Agreement as amended or supplemented in accordance with its terms.

# SALE AND PURCHASE

[The Seller is the legal and beneficial owner of and shall sell and the Purchaser shall purchase the Shares on the basis that they are sold at Completion with Full Title Guarantee, free from any Encumbrance, and together with all rights attached to them at the date of this Agreement or subsequently becoming attached to them.]

***OR***

[The Seller shall sell and the Purchaser shall purchase such rights in the Shares as the Seller owns as at the date of Completion.[[2]](#footnote-2)]

# CONSIDERATION[[3]](#footnote-3)

The consideration for the sale of the Shares shall be [the sum of £[         ] which shall be [payable in cash at Completion] [left outstanding as an interest free debt payable on demand] [satisfied by the allotment to the Seller, credited as fully paid, of [        ] ordinary shares of [               ] each in the capital of the Purchaser]]

# COMPLETION[[4]](#footnote-4)

## Completion shall take place [immediately upon the signing of this Agreement] [as soon as practicable following the signing of this Agreement].

## At Completion the Seller shall deliver or cause to be delivered to the Purchaser:

### [a copy of [or extract from] the minutes of a meeting of the directors of the Seller authorising the Seller to enter into and perform its obligations under this Agreement[, certified to be a true and complete copy or extract by a director or the secretary of the Seller];]

### transfers of all the Shares each duly executed by the Seller in favour of the Purchaser or its nominee together with definitive share certificates for them;

### any power of attorney or other authority under which this Agreement is executed on behalf of the Seller;

### to the extent not in the possession of the Company, the certificate of incorporation, common seal and all statutory and minute books of the Company, together with all unused share certificate forms;

### any waivers, consents or other documents required to vest full legal and beneficial ownership of the Shares in the Purchaser and enable the Purchaser to procure them to be registered in the name of the Purchaser or its nominees; and

### [evidence of the satisfaction or waiver of any restrictions on transfer (including pre-emption rights) which may exist in relation to the Shares, under the articles of association of the Company, any shareholders' agreement or otherwise.

**[*Consider whether any other documents should be delivered by the Seller at Completion, eg, books of account, tax records, material records, insurance policies, licences, consents, permits and authorisations, employee records, cheque books, title deeds.*]**

## At Completion the Seller shall procure that at a meeting of the directors of the Company the directors of the Company shall approve registration of the transfers of the Shares to the Purchaser or its nominee and the entry of the transferee[s] in the register of members of the Company [, subject only to the transfers being subsequently presented duly stamped] [or adjudicated or certified as being exempt from ad valorem stamp duty][[5]](#footnote-5).

## At Completion the Purchaser shall:

### [deliver to the Seller a copy of [or extract[s] from]the minutes of a meeting of the directors of the Purchaser authorising the Purchaser to enter into and perform its obligations under this Agreement [, certified to be a true and complete copy or extract by a director or the secretary of the Seller];]

### [*draft to reflect clause 3 eg,*][pay by electronic transfer to the Seller's account the sum of £[         ]] [deliver to the Seller share certificates in the name of the Seller for [            ] ordinary shares of [       ] each in the capital of the Purchaser].

# MISCELLANEOUS

## Assignment

Neither Party may assign or transfer any of its rights, benefits or obligations under this Agreement without the prior written consent of the other.

## Third Party Rights

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

## Entire Agreement

Each of the Parties to this Agreement confirms that this Agreement [together with the agreed form documents[[6]](#footnote-6)], represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

## [Each Party confirms that:

### in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out [or referred to] in this Agreement [or the agreed form documents]; and

### in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement [or with any of the agreed form documents] are pursuant to this Agreement [or such agreed form document], and for the avoidance of doubt and without limitation, neither Party has any right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Agreement).]

## Unenforceable provisions

If any provision or part of this Agreement is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect. ***[This clause does not include an agreement to agree replacement provisions because this would be unenforceable in a court.]***

## Effect of Completion

So far as it remains to be performed, this Agreement shall continue in full force and effect after Completion. The rights and remedies of the Parties shall not be affected by Completion.

## [Taxation of payments[[7]](#footnote-7)

Any payment made by or due from the Seller under, or pursuant to the terms of, this Agreement shall be free and clear of all taxation whatsoever save only for any deductions or withholdings required by law.

## Payments net of tax

If any deductions or withholdings are required by law, or any payments made by or due from the Seller under this Agreement are liable for taxation, or would have been liable for taxation but for the utilisation of any tax relief in respect of such liability, the Seller shall be liable to pay to the Purchaser such further sums as shall be required to ensure that the net amount received by the Purchaser will equal the full amount which would have been received under the relevant provisions of this Agreement in the absence of any such deductions, withholdings or taxation liabilities.]

## No set off, deduction or counterclaim

Every payment payable by the Seller under this Agreement shall be made in full without any set off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the Seller under this Agreement.

## Variation

No variation of this Agreement shall be valid unless it is in writing (which, for this purpose, does not include email) and signed by or on behalf of each of the Parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

## Counterparts

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

## Further Assurance

The Seller shall after Completion execute all such deeds and documents and do all such things as the Purchaser may [reasonably] require for perfecting the transactions intended to be effected under or pursuant to this Agreement and for giving the Purchaser the full benefit of the provisions of this Agreement, including vesting in the Purchaser the legal and beneficial title to the Shares.

# NOTICES

## A notice (including any approval, consent or other communication) given in connection with this Agreement and the documents referred to in it must be in writing and must be given by one of the following methods:

### by hand (including by courier or process server) to the address of the addressee;

### by pre-paid [first class post] [recorded delivery] [or airmail if posted [to or] from a place outside the United Kingdom] to the address of the addressee; or

### by facsimile to the facsimile number of the addressee,

### being the address or facsimile number which is specified in Clause 6.2 in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number [in the United Kingdom], or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this Clause.

## The relevant address, facsimile number and specified details of each Party at the date of this Agreement are:

**Seller**

Address: **[*Consider* *whether* *address and fax number must be in the United Kingdom*]**

Facsimile:

For the attention of:

**Purchaser**

Address:

Facsimile:

For the attention of:

## Subject to Clause 6.4, a notice is deemed to be received:

### in the case of a notice given by hand, at the time when the notice is left at the relevant address;

### in the case of a notice given by posted letter, on the [third] day after posting or, if posted [to or] from a place outside the United Kingdom, the [seventh] day after posting; and

### in the case of a notice given by facsimile, at the time of production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

## [*Either*] [A notice received or deemed to be received in accordance with Clause 6.3 on a day which is not a Business Day, or after 5pm on any Business Day, shall be deemed to be received on the next following Business Day] [*or*] [A notice received or deemed to be received on a day which is not a business day in the place of receipt, or after 5pm on any business day in the place of receipt, shall be deemed to have been received on the next following business day in the place of receipt (and for the purposes of this Clause a business day in the place of receipt shall mean a day (other than a Saturday or Sunday) on which banks are open for general business in that place)]. [*Use first option if only UK addresses are permitted and use second option if you want to cater for service in multiple jurisdictions – note if you instead change the Business Day definition in the Definitions section of this agreement to this multi-location concept then you will need to check if that concept works in each place it is used in this agreement*].

# GOVERNING LAW AND JURISDICTION

***[Please refer to Model Form C75 and Model Note CN75A for further information on the issues related to governing law and jurisdiction.]***

## This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

***[It is possible in certain circumstances for commercial parties to choose the governing law which will apply to non-contractual obligations (such as a tort). See Model Note CN75A, Section A, for more information***.

***See the commentary on the entire agreement clause in Model Note CN17 for a discussion of the relevance of Rome II in agreements which contain an entire agreement clause.]***

## Each Party irrevocably agrees [for the benefit of [HSF client]] that the Courts of England shall have [exclusive] [non-exclusive] jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).

***[Read the discussion in CN75A on exclusive and non-exclusive jurisdiction. The words in square brackets are only appropriate in a one-way clause (ie, where only one Party is bound by exclusive jurisdiction and the other party is free to bring proceedings anywhere). They should therefore be deleted where the clause provides for non-exclusive jurisdiction or exclusive jurisdiction binding on both the parties.***

***If, instead, it is considered that arbitration would be a more suitable method for the resolution of disputes, do not include this standard jurisdiction clause but use model C75B1.]***

## Each Party irrevocably waives any right that it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

## [The submission to the jurisdiction of the Courts of England shall not (and shall not be construed so as to) limit the right of [the Purchaser] [any Party] to bring or pursue legal proceedings in any other court of competent jurisdiction including the courts having jurisdiction by reason of [any other Party's] [any Party's] domicile irrespective of whether proceedings have already been initiated by any Party in England. Legal proceedings by [the Purchaser] [any Party] in any one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether by way of substantive action, ancillary relief, enforcement or otherwise.]

***[If exclusive jurisdiction (binding on all Parties) is selected in clause 7.2, then clause 7.4 should be deleted].***

## [Regardless of whether the courts of any country other than England have jurisdiction to consider a dispute falling within clause [7.2] [name party(ies) other than HSF client] [each Party] irrevocably undertakes that it will neither issue or cause to be issued originating or other process in respect to such a dispute in any jurisdiction other than England.]

***[This undertaking has been added as a deterrent and may provide a more solid basis of bringing a claim for damages if breached. See Model Note CN75A for further explanation. If non-exclusive jurisdiction (rather than exclusive or "one-way" jurisdiction) is selected in sub-clause 7.2 then this sub-clause 7.5 should be deleted.]***

## [In the event that [name party(ies) other than the HSF client] [either Party] commences an action in the courts of any country other than England (a "foreign action"), the Party which commenced the foreign action shall indemnify [HSF client] [the other Party] in respect of any and all costs and liabilities which it has incurred in connection with the foreign action, whether or not those costs and liabilities would be recoverable apart from the provisions of this clause.]

***[If non-exclusive jurisdiction (rather than exclusive or "one-way" jurisdiction) is selected in sub-clause 7.2, then this sub-clause 7.6 should be deleted. Please refer to Model Form C75 and Model Note CN75A for further information.]***

## Each Party agrees that without preventing any other mode of service, any document in an action (including, but not limited to, [a claim form or any other document to be served under the Civil Procedure Rules [*for English Court proceedings only*]] or [any claim form or other originating process or any third or other party notice [*includes tribunal proceedings and arbitration*]]) may be served on any Party by being delivered to or left for that Party at its address for service of notices under clause [6] and each Party undertakes to maintain such an address at all times in the United Kingdom and to notify the other Party in advance of any change from time to time of the details of such address in accordance with the manner prescribed for service of notices under clause [6].

***[If there is to be a delay between exchange and completion or if there is to be an on-sale consider whether any further boilerplate provisions are required – See C17A]***

This Agreement has been duly executed by the Parties (or their duly authorised representatives) on the date specified at the beginning of this Agreement.

**SIGNED** by )

**[NAME OF PERSON AUTHORISED TO** ) **SIGN]** )

duly authorised for and on behalf of )

**[SELLER]**[[8]](#footnote-8) ) ………………………………….

**SIGNED** by )

**[NAME OF PERSON AUTHORISED TO** ) **SIGN]** )

duly authorised for and on behalf of ) ………………………………….

**[PURCHASER]** )

1. DETAILS OF THE COMPANY

Registered number:

Company status: [private limited company] [public limited company]

Country of incorporation:

Registered office:

Issued share capital:[[9]](#footnote-9)

Directors:

Secretary (if any):

Auditors:

Outstanding charges:

1. Consider whether there are other classes of share eg, preference shares. [↑](#footnote-ref-1)
2. Use this option for a bare transfer without any title guarantee. [↑](#footnote-ref-2)
3. Significant tax consequences can flow from the way the consideration is structured and drafted - even in an intra-group scenario. Please always involve a member of the tax group. For example, different consequences can arise if you issue loan notes as opposed to leaving inter company debt. [↑](#footnote-ref-3)
4. This short form agreement assumes that tax clearances, other third party consents etc, will already have been obtained or will be dealt with after completion under the further assurance clause. Speak to the Tax Group early to cover any tax issues. [↑](#footnote-ref-4)
5. Please consult the Tax Department as intra group relief is likely to be available. [↑](#footnote-ref-5)
6. These will need to be defined in the Agreement. [↑](#footnote-ref-6)
7. There may be situations where it is inappropriate to include such wording in an intra-group share sale agreement so you should speak to a member of the tax group. [↑](#footnote-ref-7)
8. These clauses are suitable for a contract under hand. You must always consider whether there is any reason why the Agreement needs to be executed as a deed – e.g. does it contain a power of attorney? Or do you wish to ensure claims can be brought after the standard contractual limitation period?
Ensure that there is an appropriate signature block for every party and insert the names as indicated. If there is uncertainty about who will be authorised to sign on behalf of a company leave a blank space and insert the name in block capitals on signing. [↑](#footnote-ref-8)
9. Check the company's articles. The concept of authorised share capital has been abolished under the Companies Act 2006. However for existing companies (ie, those formed under the 1985 Act, or an earlier Act), the statement of authorised capital from the memorandum automatically moved into the articles on 1 October 2009 and then applies as a limit on the maximum number of shares that can be allotted until an ordinary resolution is passed, or the articles are amended, to remove the limit (see CN1Q for further details). [↑](#footnote-ref-9)