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DATED: 28 APRIL 2000
5CT/X49656/GYS : LN:4504F4_7(2)

Business Acquisition Agreement

WE HEREBY CERTIFY THIS TO BE A TRUE COPY
SIMMONS & SIMMONS
21 WILSON STREET
LONDON EC2M 2TQ

between

Utilyx Limited
as the Company

and

The Owners
as Owners

relating to

the terms on which the Company will acquire all the intellectual property rights and interest in the Business from its Owners

E3ZABQTK
ED5 0080
COMPANIES HOUSE 26/05/00

WE HEREBY CERTIFY THIS TO BE A TRUE COPY
SIMMONS & SIMMONS
21 WILSON STREET
LONDON EC2M 2TQ

SIMMONS & SIMMONS

21 Wilson Street London EC2M 2TX
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WE HEREBY CERTIFY THIS
TO BE A TRUE COPY
SIMMONS & SIMMONS
21 WILSON STREET
LONDON EC2M 2TQ

THIS AGREEMENT is dated

BETWEEN:

(1) **Utilyx Limited**, ("the Company"), registered in England and Wales as company number 0392283 and having its registered office at 94 Crouch Hill London N8 9ED; and

(2) **The Owners**, ("the Owners"), whose respective names and addresses appear in column (1) of Schedule 1.

Background:

(A) Certain investor(s) have agreed to make an investment in the Company on the condition that all the Intellectual Property rights and interest in the Business are transferred to a separate corporate entity by the Owners.

(B) The Owners are currently the owners of all the Intellectual Property rights and interest in the Business.

(C) The Owners have agreed to transfer ownership of all the Intellectual Property rights and interest in the Business to the Company in return for the issue of shares in the capital of the Company to them.

(D) The Agreement is the legally binding document that sets out the steps for the acquisition of the Business by the Company.

THE PARTIES AGREE as follows:-

1. **Definitions**

In this Agreement, unless the context otherwise requires the following words and expressions shall have the following meanings:-

"Act"	means the Companies Act 1985 as amended by the Companies Act 1989;
"Assurances"	means the statements which are set out in schedule 2 about the the Business that the Owners will give to the Company;
"Board"	means the board of directors of the Company;
"Business"	means the business or business concept which the Owners wish to exploit through the Company and which is described in detail in the Business Plan including all Intellectual Property associated with it;
"Business Plan"	means the business plan for the Company which is annexed to this Agreement as schedule 3;
"Completion"	means the process for the transfer of the Business to the Company and the issue of shares in the Company to the Owners by carrying out the steps set out in Clause 4;
"Intellectual Property"	means all patents, trade marks, service marks, rights (registered or unregistered) in any designs; applications for any of those kinds of intellectual property protection; trade or business names; copyright (including rights in computer software); secret formulae

	and processes; lists of suppliers and customers and other confidential knowledge and information; rights protecting goodwill and reputation anywhere in the world and all rights under any licences and consents to use intellectual property or other business or confidential information which is needed to carry on the Business;
"The Company's Solicitors"	means the solicitors appointed by the Company to provide legal advice to the Company in relation to this Agreement; and
"Shares"	means ordinary shares in the capital of the Company which have the rights and restrictions set out in the Articles.

2. **How to understand this agreement**

2.1 This Agreement has been written in plain English with the aim of ensuring that each party understands clearly what rights and obligations it has. If a party has difficulties understanding any part of this Agreement, it should not sign it until such difficulties have been resolved. This is important because, by signing the Agreement, each party is entering into a legal obligation with the other parties.

2.2 This Agreement contains headings which are included to make the Agreement easier to understand, but they are not intended to have any legal meaning. When the Agreement refers to "clauses" or "schedules" these are references to the clauses and schedules of this Agreement unless it is clear that they refer to another document or agreement.

2.3 The Agreement does not distinguish between singular and plural or male and female, if the Agreement refers to one and not the other this is a form of shorthand and it is understood that the other is also meant to be included. Where the Agreement refers to "persons" this means not only people but also companies and partnerships.

2.4 Sometimes legislation, in the form of Acts of Parliament, is changed or replaced. If this happens, everyone intends that the reference should read as if the reference in the Agreement had been changed to refer to the new legislation or the updated version of it.

2.5 Where there are several Owners, any obligation on those persons shall be read as an obligation on each and every one of them unless it is clear that this is not the case.

3. **First Steps**

Before the transfer of the Business can take place the Company's Solicitors must be satisfied as to exactly what assets and Intellectual Property must be transferred to the Company in order that it can carry on the Business.

4. **Making the investment**

4.1 Once the Company's Solicitors are satisfied that all necessary preliminary steps have been taken to identify what assets and Intellectual Property needs to be transferred to the Company and the manner in which these transfers will be made:-

(A) the Owners agree that all the assets and Intellectual Property specified in schedule 4 are transferred to the Company;

(B) the directors of the Company then hold a board meeting of the Company (the minutes of which will be prepared by the Company's Solicitors) to:

(1) issue the Shares to the Owners in consideration for the transfer of all the Intellectual Property rights and interest to the Business to the Company;

(2) agree that the Company will sign this Agreement and be bound by its terms;

(3) do any other business that is required to give effect to the transfer of all the Intellectual Property rights and interest in the Business to the Company which are specified in the minutes of the meeting.

4.2 Once the parties are satisfied that the matters set out in clause 2.1 have been dealt with satisfactorily, this Agreement and all the other documents are signed by all the parties who need to sign them.

4.3 The Company's Solicitors complete all the forms needed to record the issues of Shares and send them to Companies House and arrange for the Owners to be issued with share certificates for their Shares.

5. **Assurances given by the Owners**

5.1 The Owners agree that the information that they have given to the Company has formed the basis of the Company issuing the Shares to them and has been relied on by the Company and that the Company is likely to suffer a loss if any of the information is untrue or misleading.

5.2 In order to support the decision of the Company to issue the Shares, the Owners give the assurances to the Company that are set out in schedule 2 and understand and accept that in the event that assurances turn out to be untrue that may be responsible for compensating the Company and agree that the Company may pass the benefit of the assurances that the Owners have given to future investors in the Company.

5.3 If the Company suffers a loss as a result of the assurance being untrue when it was made, the Owners agree to pay an amount of money to the Company to put the Company into the position which would have existed if the assurances had not been broken and had been true or were not misleading, which sum shall in no circumstances exceed the nominal value of the Shares issued to the Owners pursuant to this Agreement.

5.4 Where an assurance is given "so far as the Owners are aware", the assurance is given to the best of the knowledge, information and belief of each of the Owners. This means that the Owners made all reasonable enquiries to make sure that it was true when it was given.

6. **Undertaking by the Owners to protect the Business**

6.1 Each of the Owners agrees and undertakes with the Company that he will do any thing or execute any document that the Company's Solicitors instruct him to do or execute both now or in the future in order to ensure that the Company has full and complete ownership of the assets and Intellectual Property that it requires to carry on the Business as is anticipated by the Business Plan.

7. **Costs and Fees**

Each of the parties to this Agreement shall be responsible for their own costs and expenses in connection with the preparation of this Agreement and the ancillary documentation

8. **Announcements**

No announcements shall be made by any party about any of the transactions provided for in this Agreement without the prior written consent of the Investors. Such consent shall not be unreasonably withheld or delayed.

9. **Notices**

9.1 Any notice or other document to be given or sent to any company must be sent by first class registered post or delivered or sent by facsimile to its registered office (marked for the attention of "The Secretary") and to any individual must be delivered or sent by first class registered post to the address set out in schedule 1.

9.2 Notice and other documents are deemed to have been served, in the case of delivery, at the time of delivery; in the case of posting, seventy-two hours after the envelope containing the item was put into the post or if sent by facsimile, twelve hours after it was sent.

If it is necessary to prove that the notice was given or the document sent it will be sufficient to prove that delivery was made, or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class registered letter or that the facsimile was properly transmitted to the correct facsimile number.

10. **Other general matters**

10.1 This Agreement cannot be changed or altered unless the change or alteration is in writing and is signed by or on behalf of everyone who signed the original agreement.

10.2 This Agreement takes precedence if there is any provision in this Agreement which conflicts or contradicts the Company's memorandum and Articles.

10.3 If any term or condition of this Agreement is rendered or declared illegal, invalid or unenforceable for any reason, then that term or condition shall be deemed to have been deleted from the Agreement. However, the rest of the Agreement will continue to bind the parties.

11. **Law of the Agreement**

This parties agree that this Agreement shall be governed by and interpreted in accordance with English law and further agree that any dispute will be referred to the English courts.

The parties or their duly authorised representatives agree that this document reflects the agreement that they have reached and that the Agreement was reached on the date written on the front cover.

SCHEDULE 1:THE OWNERS

Name and Address

Bowden, Christopher
23B Belsize Avenue
London
NW3 4BL

Bradley, Scott Kevin
Flat 3 14 Saint Quintin Avenue
London
W10 6NU

SCHEDULE 2: THE ASSURANCES

1. **The Business Plan**

1.1 The Business Plan has been prepared carefully and to the best of the ability of the Owners.

1.2 The factual matters in the Business Plan concerning ownership of all the rights and assets (including Intellectual Property) required to carry on the Business are a true and accurate reflection of the factual situation.

2. **Assets of the Owners**

2.1 The assets of the Owners (if any) which are described in the Business Plan and any assets which the Owners have acquired or agreed to acquire for the purpose of the Business:-

(A) are all the assets, property and rights which are owned or used or needed for the purpose of carrying on the Business; and

(B) are owned by the Owners and are not subject to any finance agreements.

2.2 The Owners does not own or have any interest in any other business entity and does not, nor has it ever had, any rights, options or obligations to acquire any such interest which might prevent the Owners transferring the assets to the Company or might result in any other person claiming a right to them or any part of them.

3. **The Business**

3.1 The Owners have not carried on the Business in a way which might infringe any proprietary right or interest of any other person and has no liability to pay any royalty or similar sum to any person which is material in the context of the Business.

3.2 The Owners have all licences, permissions, permits, consents and authorisations required for the carrying on of the Business and is not in breach of the terms or conditions of any such licences, permissions, permits, consents and authorisations and the Owners are not aware of any other reason why any of them should be suspended, threatened or revoked or be invalid.

3.3 The Owners (save for the purpose of carrying on the Business in the ordinary course) have not disclosed, or authorised the disclosure or use of, any trade secrets, technological or confidential information concerning the Business.

4. **Contractual Obligations**

There is not outstanding:-

4.1 any contract to which the Owners are a party which is onerous (onerous meaning for these purposes involving expenditure in excess of £10,000 in any 12-month period) and which cannot be terminated, without payment of compensation, by less than 180 days' notice; or

4.2 any agreement or arrangement under which any person has the exclusive right to supply any type or description of goods or services to the Owners in connection with the Business or, as its agent or distributor, to sell or supply any description of goods or services sold or supplied by the Business within any geographical area.

5. **Intellectual Property Rights**

5.1 The Business Plan contains details of all Intellectual Property owned by the Owners used by them in connection with the Business.

5.2 No Intellectual Property is used in the Business which belongs to any third party. The Business does not need any Intellectual Property (including copyright in software), other than that owned by the Owners.

5.3 Where the Owners are registered as the proprietor of any Intellectual Property, all fees, expenses, charges, duties and other payments have been paid promptly and are up-to-date and the Owners are not aware, having made no express enquiries, of any outstanding obligation or claim which might affect the validity of such registration.

5.4 The Owners have not licensed or authorised any other person, firm or company to use in any way the Intellectual Property owned by the Owners and no person has or has had access to the source code of any Intellectual Property, and so far as the Owners are aware, no third party has copied the source code of any Intellectual Property without their permission or the permission of the Company.

5.5 The Owners have not disclosed any of their know-how, trade secrets or customer lists to any other person, firm or company otherwise than in the ordinary course of business and where such disclosure has been made, this has been subject to confidentiality obligations. All of its past and present senior employees and consultants are subject to appropriate confidentiality undertakings and non-compete covenants.

5.6 The Business Plan contains details of all agreements and arrangements relating to Intellectual Property to which the Owners are party.

5.7 The Owners have not received written notice that any of the services, processes, products or activities of the Business infringe, in any material respect, the Intellectual Property of any other person, firm or company or involve the unlicensed or unauthorised use of information confidential to third parties.

5.8 None of the Intellectual Property owned or used in the Business is the subject of any dispute, claim or action which is capable of adversely affecting the use of the Intellectual Property and, so far as the Owners are aware, there are no grounds which might give rise to any claim, dispute, action, opposition, infringement or other restriction or arrangement of any nature in respect of the Intellectual Property which would affect its validity or enforceability.

6. **Legal Proceedings**

The Owners is not engaged or involved in:-

6.1 any litigation, prosecution, arbitration or other legal proceedings (whether as claimant, respondent or third party), except for normal debt collection;

6.2 any proceedings or enquiries before any tribunal, board of enquiry, commission or any other administrative or judicial body;

6.3 any dispute with the Commissioners of Inland Revenue or the Commissioners of Customs and Excise; or

6.4 any industrial dispute or action, whether official or unofficial;

and so far as the Owners are aware, there are no circumstances which are reasonably likely to give rise to any such claim.

7. **Insolvency**

7.1 None of the Owners is or has ever been made bankrupt or is subject or has been subject to a statutory arrangement with his creditors.

8. **VAT**

If the Owners are registered for VAT, they have complied in all material respects with such legislation and has maintained and obtained full, complete, correct and in all material respects up-to-date records, invoices and other documents (as the case may be) appropriate or requisite for the purposes thereof.

9. **Owners**

9.1 Each of the Owners and the Company is free without any impediment whatsoever to enter into this Agreement and there is no other form of agreement or binding obligation or fact or matter subsisting in relation to the Owners which might prevent him or it from entering into the same or which might entitle any third person, firm or company to bring a claim in relation to the subject matter of this Agreement.

9.2 None of the Owners holds any shares in any company, other than the Company, whether as legal or beneficial owner, save for shares not exceeding 5% of the capital of any company quoted on a recognised stock exchange.

9.3 No order has been made against any of the Owners pursuant to the Company Directors Disqualification Act 1986 and none of the Owners is aware of any circumstances which could lead to such an order being made against him pursuant to such Act.

SCHEDULE 3 : BUSINESS PLAN

SCHEDULE 4: THE ASSETS AND INTELLECTUAL PROPERTY

AS WITNESS the hands of the parties to this Agreement or their duly authorised representatives the day and year first above written

SIGNED by)
CHRIS BOWDEN) C. S. Bowden
on behalf of)
The Company)

SIGNED by)
Scott Bradley)

SIGNED by)
Chris Bowden) C. S. Bowden