

4072096

DATED 4 July 2005

XOOMWORKS LIMITED (1)

4C ASSOCIATES LIMITED (2)

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SHARE ACQUISITION AGREEMENT

- RELATING TO -

4C XOOMWORKS LIMITED

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We hereby certify this to be a true copy  
of the original

*Laurence Stephens*  
Lawrence Stephens Solicitors



LAWRENCE STEPHENS SOLICITORS

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THIS AGREEMENT is made the 4th day of July 2005

**B E T W E E N:**

- (1) **XOOMWORKS LIMITED**, a company registered in England under number 3948354 whose registered office is at c/o Hillier Hopkins, Charter Court, Midland Road, Hemel Hempstead, Hertfordshire, HP2 5GE ("**the Vendor**"); and
- (2) **4C ASSOCIATES LIMITED** a company registered in England under number 4018096 whose registered office is at Brook House, 229-243, Shepherds Bush Road, London, W6 7AN ("**the Purchaser**").

**WHEREAS:**

- (A) 4C Xoomworks Limited ("**the Company**") was incorporated in England on 23 June 2004 with Company Number 5161362 under the Companies Act 1985 as a private company limited by shares and has at the date hereof an issued share capital of £2 divided into 2 Ordinary Shares of £1.00 each, of which 1 Ordinary Shares of £1.00 is held and beneficially owned by the Vendor.
- (B) The Vendor now wishes to sell and the Purchaser wishes to purchase the Share (as hereinafter defined) on the terms and subject to the conditions hereinafter contained.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 The following words and expressions where used in this Agreement have the meanings given to them below:

**"Business Day"** a weekday, other than a Saturday, on which clearing banks are ordinarily open for business in the City of London;

**"Completion"** the performance of the obligations to complete the sale and purchase of the Share in accordance with clause 4;

**"Completion Date"** the date of this Agreement;

**"Consideration"** the consideration for the sale and purchase of the Share as stated in clause 3;

**"Consideration Shares"** the 12,361 "D" Ordinary Shares of £0.01 each in the capital of the Purchaser (being not less than 10.04% of the issued share capital of the Purchaser by nominal value immediately

**"Listing"**

following completion of the Shareholders' Agreement) to be allotted to the Vendor in accordance with the terms of this Agreement; the admission of any part of the Purchaser's share capital to trading on the Official List of the London Stock Exchange, the Alternative Investment Market of the London Stock Exchange or any other recognised investment exchange (as defined by Section 285, Financial Services and Markets Act 2000 ("FSMA")) or the transfer of all or a majority of the Purchaser's issued share capital on terms open to all shareholders to a company ("Listco") the share capital of which is listed on a recognised investment exchange where all or part of the consideration received by the shareholders is an issue of new shares in the capital of Listco whether by way of scheme of amalgamation, arrangement, reverse takeover or other transaction;

**"Purchaser Shares"**

the ordinary shares of £0.01 each of whatever class in the capital of the Purchaser;

**"Purchaser's Solicitors"**

Lawrence Stephens of Watson House, 54 Baker Street, London W1U 7BU;

**"Sale"**

either (i) an agreement for the purchase of all the Purchaser Shares (to the extent not already owned by the purchaser or persons connected to or acting in concert with the purchaser) or the acceptance of an offer as a result of which the offeror becomes entitled or bound to acquire the remainder of such shares in accordance with the Companies Act 1985 (as amended) and/or the Articles; or (ii) the sale of all or a substantial part of the business carried on by the Purchaser;

**"Share"**

the 1 Ordinary Share of £1.00 in the capital of the Company held by the Vendor;

**“Shareholders’ Agreement”**

the subscription and shareholders’ agreement dated 8 June 2005 and entered into between shareholders of the Purchaser and Exel Holdings Limited;

**“Warranties”**

the warranties and representations to be provided by the Vendor as detailed in clause 5.

- 1.2 The headings in this Agreement are for convenience only and shall not affect its meaning.
- 1.3 Words importing one gender shall (where appropriate) include any other gender and words importing the singular shall (where appropriate) include the plural and vice versa.

**2. SALE OF SHARE**

- 2.1 The Vendor with full title guarantee shall sell and the Purchaser shall purchase the Share upon and subject to the terms and conditions of this Agreement.
- 2.2 The Vendor shall sell and the Purchaser shall purchase the Share free from all liens, charges, encumbrances, equities and claims whatsoever and together with all rights now or hereafter attaching to it including, without limitation, all rights to any dividends or other distributions declared, paid or made by the Company in respect of the Share after the Completion Date.
- 2.3 The Vendor hereby waives and agrees to procure the waiver of any pre-emption rights which may exist, and agrees to obtain all necessary third party consents which may be required, in relation to the transfer of the Share under the Articles of Association of the Company or otherwise.
- 2.4 The Vendor hereby waives any rights and cancels any liabilities in relation to any signed or unsigned shareholders agreement relating to the Company and hereby waives any rights and cancels any liabilities (other than any loans made prior to Completion) it may have against the Company whatsoever.

**3. CONSIDERATION**

The purchase consideration for the Share shall be the sum of £1,250,045 (one million, two hundred and fifty thousand, forty five pounds), which shall be satisfied by the allotment to the Vendor by the Purchaser at Completion of the Consideration Shares, which shall be allotted free from all liens, charges, options or encumbrances, credited as fully paid and ranking pari passu with all “D” Ordinary Shares in the Purchaser then in issue.

#### **4. COMPLETION**

Completion of the sale of the Shares shall take place at the offices of the Purchaser's Solicitors on the Completion Date when all of the following business shall take place:

- 4.1 the Vendor shall deliver to the Purchaser a duly executed transfer of the Share in favour of the Purchaser (or as it may direct) together with the relevant share certificate;
- 4.2 the Vendor shall deliver an irrevocable power of attorney executed by the Vendor enabling the Purchaser or its nominees, pending registration of the transfers of the Share, to exercise all voting and other rights attaching to the Share and to appoint proxies for such purpose;
- 4.3 the Vendor shall deliver the resignation of Malcolm Clark as a director of the Company containing a confirmation that he has no claims (whether statutory, contractual or otherwise) against the Company arising out of such resignation;
- 4.4 the Vendor shall deliver to the Purchaser a deed of adherence in the agreed terms, duly signed by the Vendor, pursuant to which the Vendor shall agree to be bound by the terms of the Purchaser's new subscription and shareholders' agreement;
- 4.5 the Vendor and the Purchaser shall procure the holding of a meeting of the board of directors of the Company at which the directors of the Company shall:
  - 4.5.1 approve (subject to due stamping) registration of the Purchaser as the holder of the Share in respect of which the transfer was handed over pursuant to clause 4.1;
  - 4.5.2 approve the execution and despatch to the Purchaser of a share certificate evidencing the Purchaser's entitlement to the Share;
  - 4.5.3 approve the resignation of Malcolm Clark as a director of the Company;
  - 4.5.4 approve the appointment of Edward Ainsworth as an additional director of the Company.
- 4.6 Following the matters set out in clauses 4.1 to 4.5 (inclusive) taking place, the Purchaser shall:
  - 4.6.1 allot the Consideration Shares to the Vendor, which Consideration Shares shall be allotted free from all claims, liens, charges and encumbrances, and credited as fully paid and ranking pari passu with all "D" Ordinary Shares in the Purchaser then in issue;
  - 4.6.2 convene a meeting of the board of directors of the Purchaser at which the directors shall (inter alia):
    - 4.6.2.1 approve the allotment and issue of the Consideration Shares to the Vendor and its entry in the register of members of the Purchaser in respect thereof;

4.6.2.2 seal and deliver to the Vendor a share certificate for the Consideration Shares so allotted to it.

## **5. WARRANTIES**

5.1 The Vendor represents and warrants to the Purchaser that:

- 5.1.1 the Share is not subject to any lien, charge, option, mortgage, pledge, restraint, right of pre-emption, third party right, interest, security interest or any other encumbrance whatsoever;
- 5.1.2 it is the legal and beneficial owner of the Share and is entitled to sell the Share without the consent of any third party;
- 5.1.3 it has the right, power and authority, and has taken all action necessary, to execute and deliver and to perform its obligations under this Agreement;
- 5.1.4 the execution and delivery of, and the performance by the Vendor of its obligations under, this Agreement will not result in a breach of any law or other judgment or decree of any Court or Government Agency to which the Vendor is a party or by which it is bound;
- 5.1.5 this Agreement when executed by the Vendor will constitute a valid and binding obligation of the Vendor.

5.2 The Purchaser represents and warrants to the Vendor that:

- 5.2.1 the Consideration Shares shall, upon their being issued and completion of the Shareholders' Agreement and the issue of all shares which are to be issued under the terms of the Shareholders' Agreement, represent all of the D Ordinary Shares of the Purchaser in issue and not less than 10.04% of the issued share capital of the Purchaser by nominal value; and
- 5.2.2 the Shareholders' Agreement and the articles of association of the Purchaser shall, upon completion of the Shareholders' Agreement, be in the same or substantially the same form as the form of the Shareholders' Agreement and the articles of association in agreed form annexed hereto and initialled by or on behalf of the parties.

## **6. ADDITIONAL OBLIGATIONS**

6.1 Upon Completion the parties will enter into the marketing and business development agreement in the form initialled by or on behalf of the parties.

6.2 In each calendar month following Completion the Vendor shall procure the provision to the Purchaser of an aggregate total of two days' services by either or both of Malcolm Clark and Steve Jackson in respect of support to the Purchaser in the provision of "Point of Sale" management services to Diageo. The Purchaser shall pay

to the Vendor £1,328.00 for each such day of services provided. Additional days may be agreed by mutual consent. Payments of the relevant fees will be made monthly.

- 6.3 The Purchaser shall use its best endeavours to procure that on Completion or as soon as practicable thereafter the Vendor shall be released from all obligations (including without limitation, guarantees) it may have to third parties in respect of the Company and pending such release or releases shall indemnify the Vendor against all claims made against the Vendor by such third parties. For the avoidance of doubt, however, the obligation for the Purchaser to use its best endeavours in the manner referred to above shall not require the Purchaser to discharge all or any of the Vendor's obligations to such third parties pending the release of the Vendor from these obligations (although the Purchaser may choose to do so), or require the Purchaser to make any additional payment to such third parties in order to secure the relevant release (although the Purchaser may again choose to do so).
- 6.4 As soon as practicable after Completion but in any event no later than the date which is ten Business Days after Completion, the Purchaser shall procure that the Company shall:
- 6.4.1 change its name so that it no longer contains the word "Xoomworks"; and
  - 6.4.2 change all materials (including without limitation letterhead and websites) containing the word Xoomworks so that they no longer contain such word.
- 6.5 After Completion and for so long as the Vendor is a shareholder in the Purchaser, the Purchaser shall provide to the Vendor management accounts of the Purchaser within 5 Business Days of their creation or production.

## **7. PURCHASER RESTRICTION**

- 7.1 The Purchaser hereby undertakes to the Vendor that, save in connection with or as part of a Sale or Listing, or to Exel Holdings Limited upon completion of the Shareholders' Agreement, the Purchaser will not, without the prior approval of the Vendor, allot or issue, or allow to be allotted or issued, any Purchaser Shares in the 12 month period immediately following the Completion Date.
- 7.2 In the event that the Purchaser commits a breach of the restriction in clause 7.1 above and, as a consequence, the Vendor's shareholding in the Purchaser falls below 10% of the aggregate issued ordinary share capital of the Purchaser carrying voting rights ("the Threshold"), then the Purchaser's liability to the Vendor for this breach shall include, without limitation, any tax benefit or saving that the Vendor shall have been entitled to receive had the Vendor's shareholding remained above the Threshold in the 12 month period immediately following the Completion Date, and

which the Vendor is therefore required to forfeit, or is no longer entitled to claim, as a result of the Vendor's shareholding in the Purchaser falling below the Threshold.

- 7.3 In the event that at any time while the Vendor remains the holder of any Purchaser Shares the Purchaser allots or issues, or allows to be allotted or issued, any Purchaser Shares, then the Purchaser shall promptly notify the Vendor of the number of Purchaser Shares so allotted or issued.

## **8. GENERAL**

- 8.1 This Agreement supersedes any previous agreement between the parties in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto and no variation hereof shall be effective unless made in writing.
- 8.2 This Agreement shall be governed by and construed in accordance with English law and the parties hereto submit to the non-exclusive jurisdiction of the English courts.
- 8.3 No failure or delay by either party in exercising any right or remedy that party may have under or by virtue of this Agreement shall operate as a waiver thereof or preclude the exercise of such right or remedy on any subsequent occasion.
- 8.4 Each of the parties shall do all such things as may reasonably be within that party's power and execute and deliver all such deeds and documents as may be necessary to give effect to this Agreement.
- 8.5 This Agreement shall enure for the benefit of and be binding on the personal representatives, estates and other successors in title and assignees of the parties hereto.
- 8.6 Unless expressly stated nothing in this Agreement will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 8.7 All the provisions of this Agreement shall (except for any obligation fully performed prior to or at Completion) continue in full force and effect after Completion.
- 8.8 The bringing of any legal action or proceedings in any jurisdiction will not preclude any party from bringing any such legal action or proceedings in any other jurisdiction.
- 8.9 This Agreement may be executed in two counterparts which shall constitute a single instrument.

## **9. NOTICES**

- 9.1 Any notice shall be in writing and signed by or on behalf of the person giving it. Except in the case of personal service, any notice shall be sent or delivered to the party to be served at the address set out above or such other address as is notified in



writing to the relevant party from time to time. Any alteration in such details shall, to have effect, be notified to the other parties in accordance with this clause.

9.2 Service of a notice must be effected by one of the following methods:

- 9.2.1 personally on a party and shall be treated as served at the time of such service;
- 9.2.2 by prepaid first class post (or by airmail if from one country to another) and shall be treated as served on the second (or if by airmail the fourth) Business Day after the date of posting. In proving service it shall be sufficient to prove that the envelope containing the notice was correctly addressed, postage paid and posted; or
- 9.2.3 by sending it by facsimile and shall be treated as served on the first Business Day after the date of such sending. In proving service by facsimile it shall be sufficient to prove that the facsimile was transmitted to the facsimile telephone number of such party.

**IN WITNESS** whereof the parties have executed this Agreement the day and year first before written

**SIGNED** by  
as an authorised signatory for  
**XOOMWORKS LIMITED**  
in the presence of:

}



Witness Signature:



Witness Name:

G.L. BUSBY

Address:

35 VINE STREET, LONDON EC3N 2AA

Occupation:

SOLICITOR

We hereby certify  
this to be a true copy  
of the original

Field Fisher Waterman  
04/07/05

SIGNED by  
as an authorised signatory for  
**4C ASSOCIATES LIMITED**  
in the presence of:

}

ESLt.

Witness Signature:

[Signature]

Witness Name:

[Name]

Address:

54, Baker Street, London W1

Occupation:

Director