

ashurst

Agreement

6054477

Heven Newco Limited (in liquidation)

and

Stephen Blandford Ryman and Robert Derek Smailes

and

Foxtons Group Limited

and

Jonathan Hunt

and

Michael Brown

**CERTIFIED COPY**  
*Ashurst*

for the transfer of shares of Foxtons Limited and Alexander Hall  
Associates Limited pursuant to section 110 of the Insolvency Act 1986

10<sup>th</sup> May 2007

TUESDAY



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A57 19/06/2007 507  
COMPANIES HOUSE

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THIS AGREEMENT is made on 10 May 2007

**BETWEEN:**

- (1) **HEVEN NEWCO LIMITED** (No. 6072735) (in liquidation) whose registered office is at Building One, Chiswick Park, 566 Chiswick High Road, London W4 5BE acting by its Joint Liquidators (the "**Company**"),
- (2) **STEPHEN BLANDFORD RYMAN** and **ROBERT DEREK SMAILES** of Shipleys LLP, 10 Orange Street, London WC2H 7DQ (the "**Joint Liquidators**");
- (3) **FOXTONS GROUP LIMITED** (No. 6054477) whose registered office is at Building One, Chiswick Park, 566 Chiswick High Road, London W4 5BE (the "**Transferee**"); and
- (4) **JONATHAN HUNT** of 94 Palace Gardens Terrace, London W8 4RS and **MICHAEL BROWN** of 1 Ayres End Cottages, Ayres End Lane, Harpenden, Hertfordshire AL5 1AL (the "**Shareholders**");

**RECITALS**

- I. By an ordinary, special or extraordinary resolution of the Company (as appropriate) passed by written resolution on 10 May 2007 it was resolved that:

- (i) the Company be wound up voluntarily;
- (ii) the Joint Liquidators be appointed joint liquidators of the Company for the purposes of such winding-up;
- (iii) the Joint Liquidators be authorised pursuant to sections 110 and 111 of the Insolvency Act 1986 to enter into this agreement, and
- (iv) the Joint Liquidators be authorised under the provisions of section 165 of the Insolvency Act 1986 to exercise the powers laid down in part 1 of schedule 4 of the Insolvency Act 1986,

In order to effect the Reorganisation (as defined below).

- (A) The Company has agreed to transfer and the Transferee has agreed to receive certain of the assets of the Company comprising the entire issued share capital of each Target (as defined below), upon the terms and conditions set out below.

**THE PARTIES AGREE AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

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

"**Business Day**" means a day (excluding Saturdays) on which the banks generally are open in London for the transaction of normal banking business;

"**Completion**" means the completion of this agreement in accordance with clause 4;

"**Condition**" means the condition set out in clause 3,

"**Consideration Shares**" means the 10,001 A ordinary shares of £1 each and the 309 B ordinary shares of £1 each of the Transferee;

**"Encumbrances"** means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, trust, right of set-off or other such third party right or interest (legal or equitable) including any right of pre-emption, assignment by way of security, reservation of title or other security interest of any kind howsoever created or arising or any other agreement or arrangement (including a sale or repurchase agreement) having similar effect or restriction over or in respect of the use of the relevant security or right;

**"Related Section 110 Transfer Agreement"** means the transfer agreement to be entered into on the same date hereof and relating to the transfer by the Company to Heven Limited of the entire issued share capital of Heven Holdings Limited,

**"Reorganisation"** means the reorganisation of the Company and its subsidiaries pursuant to section 110 of the Insolvency Act 1986,

**"Subscriber Share"** means the A ordinary share in the capital of the Transferee registered in the name of Jonathan Hunt,

**"Targets' Shares"** means the entire issued share capital of each Target; and

**"Target"** means Foxtons Limited and/or Alexander Hall Associates Limited, as the case may be

- 1.2 The schedule hereto forms part of the operative provisions of this agreement and references to this agreement shall, unless the context otherwise requires, include references to the schedule.

## **2. TRANSFER**

- 2.1 Upon the terms and subject to the conditions of this agreement, the Company as beneficial owner and with full title guarantee shall transfer and the Transferee shall receive the Targets' Shares free from any Encumbrance, together with all accrued benefits and rights attached thereto.
- 2.2 In consideration of the Company transferring the Targets' Shares to the Transferee and subject to the due performance of clause 4.2, the Transferee, as hereby directed by the Joint Liquidators, shall allot and issue as fully paid the Consideration Shares to the Company or to the Shareholders in the proportions as set out in the schedule hereto (the Subscriber Share already being held by Jonathan Hunt).

## **3. CONDITION**

- 3.1 Completion is conditional upon the simultaneous completion of the Related Section 110 Transfer Agreement.
- 3.2 The Transferee and the Company may agree in writing to waive the condition contained in clause 3.1 in whole or in part

## **4. COMPLETION**

- 4.1 Completion shall take place, subject to the satisfaction or waiver of the Condition on the date hereof (or such other date as the parties shall agree) at such a place as the parties may agree
- 4.2 At Completion, the Company (acting by the Joint Liquidators), shall
- (a) deliver to the Transferee.
- (i) a stock transfer form duly executed under a power of attorney by the Company to the Transferee in respect of the transfer of the Targets' Shares

together with the share certificate(s) therefor (to the extent the Company is in receipt of such from the Target),

(ii) a copy of the minutes of a meeting of the directors of the Company authorising execution of this agreement and all other documents specified or referred to herein, and

(iii) the company books and statutory registers of the Target

4.3 The Company shall procure the passing of board resolutions of the Target sanctioning for registration the transfers in respect of the Targets' Shares

4.4 At Completion, the Transferee shall deliver to the Company a copy of the minutes of a meeting of the directors of the Transferee authorising execution of this agreement and all other documents specified or referred to herein

4.5 At Completion, the Transferee shall:

(a) (to the extent it is lawfully able) cause all necessary resolutions to be passed to give effect to the obligation in clause 2.2 hereof to allot and issue the Consideration Shares;

(b) at the direction of the Joint Liquidators, allot and issue the Consideration Shares at Completion and deliver the appropriate share certificate to the Company or the Shareholders; and

(c) as soon as reasonably practicable, make the appropriate entries in its Register of Members in respect of such allotment and issue.

## 5. EXCLUSIONS

The parties hereby agree that the Joint Liquidators are acting as agents of the Company solely in the capacity of Joint Liquidators and accordingly neither they, nor either of them, shall be obliged to perform any obligations hereunder save to the extent that they are able to do so in such capacity. Neither the Joint Liquidators nor their firm shall incur any personal liability under this agreement or under any document made to implement its terms

## 6. GENERAL

6.1 The terms of this agreement (insofar as not performed at Completion and subject as specifically provided otherwise in this agreement) shall continue in full force after and notwithstanding Completion

6.2 This agreement (together with any documents referred to herein) constitutes the entire agreement between the parties hereto in connection with the subject matter hereof

6.3 Neither the benefit nor the burden of this agreement shall be capable of assignment in law or in equity.

## 7. NOTICES

7.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by this agreement shall be in writing and shall be delivered personally or sent by prepaid first class post (air mail if posted to or from a place outside the United Kingdom) with regard to any party to the address specified in respect of that party at the beginning of this agreement and shall be deemed to have been duly given or made as follows:

- (a) if personally delivered, upon delivery at the address of the relevant party,
- (b) if sent by first class post, two Business Days after the date of posting, and
- (c) if sent by air mail, five Business Days after the date of posting,

provided that if, in accordance with the above provisions, any such notice, demand or other communication would otherwise be deemed to be given or made after 5 00 p m on a Business Day such notice, demand or other communication shall be deemed to be given or made at 9 00 a m on the next Business Day.

7.2 A party may notify the other party to this agreement of a change to its name, relevant addressee or address for the purposes of clause 7.1 provided that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date falling five Business Days after notice of any such change has been given.

#### **8. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Any person who is not a party to this agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms

#### **9. FURTHER ASSURANCE**

Following Completion the Company shall at its own expense from time to time forthwith upon request from the Transferee do or procure the doing of all acts and/or execute or procure the execution of all such documents necessary for the purpose of vesting in the Transferee full legal and beneficial title to the Targets' Shares and otherwise giving the Transferee the full benefit of this agreement, subject to the provisions of clause 5 (Exclusions) of this agreement

#### **10. COSTS**

Each party shall be responsible for its own costs

#### **11. COUNTERPARTS**

This agreement may be executed in any number of counterparts which together shall constitute one agreement. Any party may enter into this agreement by executing a counterpart and this agreement shall not take effect until it has been executed by all parties.

#### **12. INVALIDITY**

If any provision of this agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction

- (a) the validity, legality and enforceability under the law of that jurisdiction or of any other provision; and
- (b) the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision,

shall not be affected or impaired in any way

13 **VARIATIONS**

This agreement may be varied only by a document signed by each of the parties hereto.

14 **WAIVER**

14.1 A waiver of any term, provision or condition of, or consent granted under, this agreement shall be effective only if given in writing and signed by the waiving or consenting party and then only in the instance and for the purpose for which it is given.

14.2 No failure or delay on the part of any party in exercising any right, power or privilege under this agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14.3 No breach of any provision of this agreement shall be waived or discharged except with the express written consent of the Company and the Transferee

14.4 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

15. **GOVERNING LAW**

The parties hereby agree that this agreement shall be governed by and construed in accordance with English law and submit to the exclusive jurisdiction of the English courts.

**IN WITNESS** whereof this agreement has been executed on the date first above written

Signed by **HEVEN NEWCO LIMITED** )  
acting by Robert Derek Smailes )  
Joint Liquidator )

Signed by Robert Derek Smailes )  
for and on behalf of the **JOINT** )  
**LIQUIDATORS** )

Signed by for and on behalf of )  
**FOXTONS GROUP LIMITED** )  
)

Signed by **JONATHAN HUNT** )  
)  
)

Signed by **MICHAEL BROWN** )  
)

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This agreement may be varied only by a document signed by each of the parties hereto

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14.4 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

15 **GOVERNING LAW**

The parties hereby agree that this agreement shall be governed by and construed in accordance with English law and submit to the exclusive jurisdiction of the English courts.

**IN WITNESS** whereof this agreement has been executed on the date first above written.

Signed by **HEVEN NEWCO LIMITED** )  
acting by Robert Derek Smalles )  
Joint Liquidator )

Signed by Robert Derek Smalles )  
for and on behalf of the **JOINT** )  
**LIQUIDATORS** )

Signed by for and on behalf of )  
**FOXTONS GROUP LIMITED** )  
)

Signed by **JONATHAN HUNT** )  
)  
)

Signed by **MICHAEL BROWN** )  
)

The block contains three handwritten signatures. The top signature is in dark ink and appears to be 'R. Smalles'. The middle signature is also in dark ink and appears to be 'J. Hunt'. The bottom signature is in a lighter ink and appears to be 'M. Brown'.



**SCHEDULE 1**

**Consideration Shares**

<b>Name</b>	<b>Consideration Shares</b>
Jonathan Hunt	10,001 A ordinary shares
Michael Brown	309 B ordinary shares