

**DATED**

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**LEGAL DUE DILIGENCE INFORMATION REQUEST:**

**[NAME/DESCRIPTION OF TARGET BUSINESS]**

SAMPLE

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## 1. Introduction

We are making this information request to assist our legal due diligence review in connection with the proposed purchase by [FULL COMPANY NAME] (**Buyer**) of the business of [DESCRIPTION OF BUSINESS] (**Business**) carried on by [FULL COMPANY NAME] (**Seller**) as a going concern, comprising the assets owned or used in connection with the Business [agreed to be purchased pursuant to heads of terms dated [DATE]] (**Assets**).

To the extent that the Business is conducted by other members of the group of companies including the Seller and its subsidiaries [and associated companies] (**Seller's Group**), references to the Seller below include, where the context permits, reference to such other members of the Seller's Group.

Responses to this information request list are not formal disclosures for the purposes of any warranties in the legal documents relating to the purchase of the Business.

When supplying copies of documents and other requested information, please comply with the following guidelines:

- 1.1 provide the appropriate documents or information, or an appropriate negative statement, as soon as is practicable;
- 1.2 do not wait until you have collected all the documents and information before responding to us - where you are unable to provide some answers or documents immediately, mark the question number with the words "to follow" and answer all remaining questions;
- 1.3 provide a written answer where the documents do not clearly explain the position;
- 1.4 where you are uncertain of the scope of any question, or the relevance of any information or document, please provide too much rather than too little information;
- 1.5 where appropriate, indicate the key documents and information that are of most importance to the operation of the Business and those which are of lesser importance;
- 1.6 where the same information and documents are to be supplied in response to two or more different questions, you need not repeat your response if all appropriate cross-references are made;
- 1.7 please update your responses as more information becomes available or if subsequent events make any earlier responses inaccurate; and

- 1.8 provide any documents requested in lever-arch files with an index, using the same headings and numbering system as this information request list.

[To assist in our legal due diligence, we may hold interviews with the management team.]

This is an initial request for information and we may ask for further information in due course.

[NAME OF FIRM]

[DATE]

Please provide the following information and documents:

## **2. Seller's capacity and corporate structure**

- 2.1 Details of the following information in relation to the Seller:

- (a) full company name;
- (b) any business name(s);
- (c) registered office address;
- (d) registered number;
- (e) date of incorporation;
- (f) place of incorporation; and
- (g) name under which it was incorporated and any subsequent name changes.

- 2.2 Details of the percentage of shares that the Seller holds or any interests that the Seller has in any other entity.

- 2.3 A chart of the Seller's Group.

- 2.4 Details of all branches, agencies or places of business of the Seller.

- 2.5 Copies of the Seller's annual returns for the last [five] years.

- 2.6 Copies of the Seller's memorandum and articles of association and any amendments to those documents.

- 2.7 Copies of the Seller's shareholders' resolutions passed in the last [five] years.

- 2.8 Copies of the minutes of all meetings of the Seller's board and board committees of the last [five] years [which are material to the Business].

- 2.9 The name of the Seller's company secretary (if it has one) and confirmation from him or her, or another officer of the company, that all of the Seller's corporate records are up-to-date.
- 2.10 Copies of the Seller's register of members[, register of people with significant control], register of allotments, register of transfers, register of directors, register of directors' interests, register of charges and minute books, or, if they cannot readily be copied, the address at which they can be inspected.
- 2.11 A list of the names, addresses of and positions held by the Seller's directors and copies of their contracts of employment.
- 2.12 A list of the names of the Seller's authorised signatories and the terms of their authority.
- 2.13 Details of the issued shares in the Seller, including:
- (a) legal and beneficial ownership;
  - (b) whether the shares are fully paid up;
  - (c) whether the shares are listed;
  - (d) classes of shares; and
  - (e) voting rights attaching to the shares.
- 2.14 Details of any insolvency proceedings and insolvency-related matters in relation to the Seller, including (without limitation) any:
- (a) order made, petition presented, meeting convened, or resolution passed for the winding up of the Seller;
  - (b) administrative or other receiver appointed or any writ or warrant of control issued in respect of, or any distress, execution or other process levied on, any goods or assets of the Seller;
  - (c) order that has been made by, or petition presented to, the court for the appointment of an administrator;
  - (d) composition in satisfaction of the debts of the Seller, any scheme of arrangement of its affairs, or any compromise or arrangement between it and any of its creditors or members (or any class of its creditors or members), which has been proposed, sanctioned or approved; and
  - (e) event that has caused, or which may on intervention or notice by any third party cause, any floating charge created by the Seller to crystallise over any of its assets, or become enforceable over any such assets, or details of any such crystallisation that has occurred and any such enforcement that is in process.

2.15 [Details of any guarantor of the Seller's obligations and liabilities in connection with any of the Assets or the sale of the Business (**Guarantor**).]

2.16 [The names of the Guarantor's authorised signatories and the terms of their authority.]

### **3. Business**

3.1 A full description of the Business including the nature of the Business, history of the Business and whether it has at all times been carried on as a going concern by the Seller.

3.2 Details of all branches, agencies or places of business.

3.3 Is the business name of the Business used by any other part of the Seller's Group?

3.4 Is the Business carried on for the benefit of any person (including a corporate or unincorporated body) other than the Seller?

### **4. Finance**

4.1 Copies of the Seller's audited accounts and directors' reports for the last [five] financial years, a statement of accounting policies adopted in the audited accounts and management accounts and details of any changes in accounting policies.

4.2 Copies of all other relevant financial information, including non-audited accounts, management accounts, financial statements and auditors' reports, notes and certificates for the last [five] financial years in relation to the Business.

4.3 The Seller's accounting reference date.

4.4 Details of any material change in the Business or its prospects occurring since the date of the last audited accounts of the Business, including the following:

- (a) any changes to the way in which the Business has been carried on ;
- (b) any debts outstanding which have been due for more than [four] weeks;
- (c) any unusual change in the stock levels, current assets or liabilities of the Business;
- (d) any loss of or material reduction in orders from any customer, or the loss of or material reduction in any source of supply, or any abnormal factor not affecting similar businesses to a similar extent, which has adversely affected the Business;

- (e) any alterations in the terms of employment or conditions of service of any employee, or in the pension or other benefits of any employee or any past officer or employee of the Business or any other dependants;
- (f) any changes in the fixed assets of the Business, including the loss, damage or destruction of any fixed assets;
- (g) any material adverse change in the financial position or trading prospects of the Business and whether any such material change is expected;
- (h) anything which the Seller has done or intends to do which will or might prejudicially affect the goodwill of the Business;
- (i) any acquisition or disposal of, or agreement to acquire or dispose of, any asset other than trading stock in the ordinary and usual course of business;
- (j) any capital commitments or material liabilities [in excess of £[AMOUNT]] that the Seller has assumed or incurred, or agreed to assume or incur, in connection with the Business;
- (k) any debtor in relation to the Business that has been released by the Seller on terms that it pays less than the book value of any debt and any debt that has been written off or has proved to be irrecoverable to any extent; and
- (l) any change in the manner or time of the issue of invoices or the collection of debts of the Business.

4.5 Name(s) and address(es) of the Business' bank(s).

4.6 Details and copies of documents relating to all bank facilities and accounts (including bank statements for the last [three] years and copies of all existing mandates) in relation to the Business.

4.7 Details and copies of documents relating to the current level of overdraft and other borrowings by the Seller from any source in relation to the Business, including details of any restrictions or events of default on the sale of the Business or any of the Assets.

4.8 Details and copies of documents relating to all guarantees, indemnities and comfort letters given by the Seller in respect of the Business.

4.9 Summaries and copies of all documents relating to intra-group loans, commitments and obligations outstanding and all intra-group agreements in the Seller's Group in relation to the Business.

4.10 Details of all loans in relation to the Business discharged in the last [five] years where the Seller was a debtor.

- 4.11 Details and copies of documents in relation to all liens, mortgages, encumbrances and security over the Assets (including but not limited to real property) together with statements of those encumbrances from the relevant land or other registries (or equivalent), if appropriate.
- 4.12 Confirmation that no notice requiring repayment has been served and that the Seller has not breached any covenant contained in any charge, debenture or guarantee, loan agreement, facility letter or similar document in connection with the Business.
- 4.13 Details and copies of all documents relating to any government grants, subsidies or financial assistance given to the Seller in relation to the Business.

## **5. Corporate agreements**

- 5.1 Details and copies of all share subscription agreements, shareholders' agreements, voting agreements and other relevant agreements governing the relationship of the Seller's [and Guarantor's] shareholders.
- 5.2 Details and copies of any joint venture agreements or arrangements to which the Seller is party and which are material to the Business or the Assets.
- 5.3 Details and copies of any share or asset purchase agreement to which the Seller is party and which is material to the Business or the Assets.

## **6. Commercial agreements**

- 6.1 Copies (or details where copies are not available) of any agreement, contract, transaction, obligation, commitment, understanding, liability or arrangement (written or oral) of the Seller in relation to the Business which:
  - (a) is material to the Business; or
  - (b) is entered into otherwise than in the ordinary and usual course of business; or
  - (c) is of an unusual or abnormal nature or not fully on an arm's length basis; or
  - (d) is for a fixed term of more than [six] months, or incapable of performance in accordance with its terms within [six] months after the date on which it was entered into or undertaken; or
  - (e) is incapable of termination in accordance with its terms by the Seller on [60 days'] notice or less with or without payment of compensation; or
  - (f) is likely to result in a loss to the Seller on completion of performance; or
  - (g) cannot readily be fulfilled or performed by the Seller on time without undue or unusual expenditure of money or effort; or

- (h) requires the Seller to pay or receive consideration in excess of £[AMOUNT]; or
  - (i) involves payment by the Seller by reference to fluctuations in the index of retail prices, or any other index, or in the rate of exchange for any currency [other than sterling]; or
  - (j) involves the supply of goods or services the aggregate sales value of which will represent in excess of [10]% of the anticipated turnover of the Business in the next [12] months.
- 6.2 Copies of all standard terms and conditions of sale or purchase currently used by the Business.
- 6.3 Copies of contracts for the sale of any product or the provision of any service by the Business [which have more than [six] months to run] or under which any discounts or special terms are being granted to customers.
- 6.4 Details of all credit arrangements in favour of any customer of the Business which has been granted a payment term of more than [30] days or any special discount.
- 6.5 A list of all major customers (that is, customers accounting for more than [PERCENTAGE]% of turnover of the Business) and details of agreements with those customers, including details of the value of sales in the last year and copies of any standard terms of business used by those customers.
- 6.6 Copies of all hire purchase, rental, leasing or similar agreements entered into by the Business or to which it is subject.
- 6.7 Copies of all guarantees (including product guarantees), agreements of surety or current indemnities given by the Business.
- 6.8 Copies of all licences, franchising, merchandising, marketing, purchasing, manufacturing, factoring, agency and distribution agreements entered into by [or on behalf of] the Business.
- 6.9 Copies of all material supply agreements entered into by [or on behalf of] the Business.
- 6.10 Details of any trading arrangements between the Business and any other part of the Seller's Group.
- 6.11 Details of whether the Seller, any persons connected with the Seller or any other member of the Seller's Group have any direct or indirect interest in any business which has a close trading relationship with the Business, or which is or is likely to become competitive with the Business.

- 6.12 Details of any negotiations of material importance to the Business that are currently in progress.
- 6.13 Details of any outstanding quotation or tender for a material contract made by or to the Seller in connection with the Business.
- 6.14 Copies of any contracts or arrangements currently in operation which are liable to termination or alteration on the sale of the Business or the Assets, or where the consent of third parties is otherwise required to the sale.
- 6.15 Details of any default or alleged default by the Seller or any party to any agreement relating to the Business.
- 6.16 Details of any products manufactured, sold or distributed by the Business which are or may become defective or which do not comply with any express or implied warranties given by the Business.
- 6.17 Details of any confidentiality undertakings given by the Seller in connection with the Business and whether those undertakings will be breached by providing the information requested in this information request list.
- 6.18 Copies of all long-standing and unusual agreements relating to the Business and other material contracts not covered by any of the preceding paragraphs.
- 6.19 Details of all onerous obligations contained in any agreements covered by the preceding paragraphs.
- 6.20 Details of any anti-competitive provisions contained in any agreements entered into by the Seller in respect of the Business.

## **7. Business assets (excluding real property)**

- 7.1 A list and details of all Assets including, in respect of each Asset, details of whether:
  - (a) the Seller has full legal and beneficial title to the Asset;
  - (b) the Seller has physical possession and control of the Asset;
  - (c) the Asset is fixed or capable of delivery and the location of the Asset; and
  - (d) any consents that are required in connection with the sale of the Asset.
- 7.2 [Details of any liabilities relating to the Business which it is proposed be acquired by the Buyer.]
- 7.3 Details of all assets [and liabilities] excluded from the sale of the Business to the Buyer.

- 7.4 A copy of any up-to-date inventory of the Assets.
- 7.5 Copies of any available asset registers of the Business.
- 7.6 Details and copies of the latest valuation and basis of valuation of each Asset.
- 7.7 Details of anything which the Seller has done or omitted to do, or of which the Seller is aware, that would materially reduce the value of any of the Assets since the date of the latest valuation of those Assets.
- 7.8 Details and copies of documents relating to any liens, mortgages, charges, security, claims, encumbrances, pledges, options, rights, leases, hire purchase agreements, retention of title, other restrictions or adverse rights of any description over the Assets or commitments and agreements to create any of the same over the Assets.
- 7.9 Details of any floating charge or guarantee given by the Seller, or by any person connected with the Seller, to which the Assets are subject or potentially subject.
- 7.10 Details of any arrangements between the Seller and any other member of the Seller's Group which affect or may affect the Business or the Assets.
- 7.11 Details of any outstanding notices served on the Seller which might have a material or adverse effect on any of the Assets.
- 7.12 Details of any Asset which is not:
- (a) adequate and fit for the purposes of the Business; or
  - (b) in good repair and condition; or
  - (c) in satisfactory working order; or
  - (d) properly serviced and regularly maintained; or
  - (e) used exclusively for the Business.
- 7.13 Details of the present stock of the Business, including any inventory, stock lists and work-in-progress schedules.
- 7.14 Details of whether the current stock is sufficient for the normal requirements of the Business.
- 7.15 In the case of completed goods, details of whether the stock is capable of being sold in the ordinary course of business in accordance with current price lists and without rebate or allowance to a buyer.

- 7.16 Details of the relevant import quota restrictions and licences for imported stock, including whether the quota has ever been exceeded in respect of each category of goods and how much of the quota has been used in the current quota period.
- 7.17 Confirmation that the work-in-progress of the Business is at its normal level.
- 7.18 Details and copies of documents relating to all motor vehicles (which form part of the Assets) owned or hired by the Seller in connection with the Business, including log books and insurance arrangements.
- 7.19 Details of whether the motor vehicles are the subject of a Seller's Group fleet scheme or a stand-alone scheme of the Seller.
- 7.20 Confirmation that the Assets comprise all assets:
- (a) that are used in the Business; and
  - (b) that are necessary for the continuation of the Business without assistance from any other person.
- 7.21 Does the Business depend on the use of assets owned by or facilities provided by the Seller or any other member of the Seller's Group which are not being acquired by the Buyer?
- 7.22 Have all documents which in any way affect the right, title or interest of the Seller in or to any of the Assets and which are liable to stamp duty been stamped within the requisite period for stamping?
- 7.23 Details of the Seller's rights against third parties, including all rights under any warranties, conditions, guarantees or indemnities or under the Sale of Goods Act 1979 relating to any of the Assets.
- 7.24 Details of all sums to which the Seller is entitled from third parties or insurers in respect of loss or damage to the Assets.
- 7.25 Details of any approvals or third party consents required for any of the Assets to be transferred to the Buyer which are not covered by any of the preceding paragraphs.

## **8. Real property**

- 8.1 A schedule of all freehold properties owned by the Seller and occupied, used or controlled in relation to the Business (together with official copies and copies of title deeds), including the following details in respect of each property:
- (a) short address of the property;

- (b) description of the property;
- (c) title number (if relevant);
- (d) site plan;
- (e) rights benefiting the property;
- (f) third party rights to which the property is subject;
- (g) current use; and
- (h) value.

8.2 A schedule of all leasehold properties owned by the Seller and occupied, used or controlled in relation to the Business and all licences to occupy such property held by the Seller in relation to the Business (together with official copies and copies of title deeds including all leases, head leases, subleases and licences), including the following details:

- (a) short address of the property;
- (b) description of property and the lease or licence;
- (c) name of the freehold owner;
- (d) title number (if relevant);
- (e) site plan;
- (f) rights benefiting the property;
- (g) third party rights to which the property is subject;
- (h) current use;
- (i) term and term commencement date of any lease or licence and details of any break clause;
- (j) annual rent or fee payable;
- (k) consent(s) required to assign the lease or licence to the Buyer;
- (l) rent review dates (if relevant);
- (m) evidence of all past rent reviews (if relevant);
- (n) rent deposits given to, or by, the Seller;
- (o) value; and
- (p) service charge accounts for the last three years (if relevant).

8.3 Details of, and copies of documents relating to, any other real property occupied, used or controlled by the Seller in relation to the Business or in respect of which the Seller has any estate, interest, right or liability (whether contingent, secondary or otherwise).

- 8.4 Copies of any replies to preliminary enquiries and requisitions on title relating to any of the Properties acquired within the last [three] years. (In paragraph 8, **Properties** means any properties owned, occupied, used or controlled by the Seller in relation to the Business or in respect of which the Seller has any estate, interest, right or liability (whether contingent, secondary or otherwise)).
- 8.5 A copy of the latest valuations for each of the Properties [with a valuation in excess of £[AMOUNT]].
- 8.6 Details and copies of documents relating to any rights of way, easements or other rights over land that the Seller does not own or have any interest in, but which are required for the current use of the Properties.
- 8.7 Details of all occupiers, including:
- (a) copies of documents relating to any leases, tenancies or licences to occupy granted by the Seller in respect of any of the Properties;
  - (b) details of any third party rights over the Properties; and
  - (c) receipts for all rent paid by any lessee, tenant or licensee.
- 8.8 Details of the benefits of necessary utility services that supply the Properties.
- 8.9 Details of any mortgage, debenture, charge, lien or other right in the nature of security or any option, right of pre-emption or right of first refusal affecting any of the Properties.
- 8.10 Details of and receipts for all outgoings (including, but not limited to, rates, charges, service expenses, rent and mortgage payments) for the Properties.
- 8.11 Details of any covenants, restrictions, stipulations or other encumbrances (whether of a private or public nature) affecting the Properties which are of an onerous or unusual nature, or affect their value, or which conflict with the current use of the Properties.
- 8.12 Details of all covenants, restrictions, stipulations and other encumbrances affecting the Properties (including any covenants under any leases or any consents or approvals obtained under them) and confirmation of observance and performance of them by the Seller [and its predecessors in title] and any lessee, tenant, licensee or occupier of the Properties.
- 8.13 Details of any express or implied waiver by the Seller (or anyone on its behalf) of any breach by any tenant or other person of any covenant, agreement, restriction, stipulation or obligation relating to the Properties or any part of them, or of which the Properties or any part of them has the benefit.

- 8.14 Details of any matters which are registered as local land charges in relation to the Properties or, although not registered, are capable of registration as local land charges.
- 8.15 Details of any circumstances which (with or without taking other action) would entitle any third party to exercise a right of entry to, or take possession of, all or any part of the Properties, or which would in any other way affect or restrict the continued possession, enjoyment or use of any part of the Properties.
- 8.16 Details of the state of repair and condition of the Properties and whether they are fit for their current use.
- 8.17 Details of any substance or material known or suspected to be unsuitable for its purpose, unstable, hazardous or deleterious to health and safety that has been used in the construction, alteration or repair of any of the Properties[, including high alumina cement, woodwool, calcium chloride, sea-dredged aggregates and asbestos material].
- 8.18 Details of any flooding, subsidence, heave or structural or drainage defects affecting the Properties now or in the past.
- 8.19 Details of any adverse report received by the Seller from any engineer, surveyor or other professional relating to any of the Properties and whether the Seller is aware of any predecessor in title having received the same.
- 8.20 Confirmation that the current use of the Properties is the permitted use for the purposes of planning legislation.
- 8.21 Copies of all necessary planning permissions and building regulation consents obtained for the current use of the Properties and any alteration and improvements to them.
- 8.22 Confirmation that the Seller has complied with all applicable statutory and bye-law requirements relating to the Properties and their current use.
- 8.23 Details and copies of any licences or permits required to use or develop any of the Properties.
- 8.24 Details of any development works, redevelopment works or fitting-out works outstanding in respect of any of the Properties.
- 8.25 Details of any notices, complaints or requirements that have been issued or made (whether formally or informally) by any competent authority or undertaking exercising statutory or delegated powers in relation to any of the Properties, the current use of the Properties or any machinery, plant or equipment in them, and whether the Seller is

aware of any matter which could lead to any such notice, complaint or requirement being issued or made.

8.26 Details of any claim or liability outstanding under planning legislation in respect of the Properties, or any agreement affecting the Properties under section 106 of the Town & Country Planning Act 1990 (as amended).

8.27 Details of any notice, order or resolution that has been issued, made or passed by any local county or other competent authority for the compulsory acquisition, closing, demolition or clearance of the Properties or any part of them, and whether the Seller is aware of any matter or circumstance which would lead to any such notice, order or resolution.

8.28 Details of any existing disputes, claims, actions, demands or complaints:

- (a) relating to the Properties or to any rights enjoyed with the Properties or to which the Properties are subject; or
- (b) between the Seller and the owner or occupier of any other premises adjacent to or neighbouring the Properties,

and whether the Seller expects or is aware of any circumstances which may give rise to any such dispute, claim, action demand or complaint.

8.29 Details of, and copies of all documents relating to, any notices that have been given or received and which affect or concern any of the Properties or any neighbouring properties.

8.30 Details of any Properties which the Seller intends to exclude from the sale of the Business to the Buyer.

## **9. Employees**

9.1 An anonymised list of all employees and directors employed by the Seller in the Business, showing the following details:

- (a) job title;
- (b) place of work;
- (c) age;
- (d) start date and length of continuous employment;
- (e) total annual remuneration, broken down by basic salary and variable remuneration including bonuses, commission, shift and other allowances;
- (f) pay grade;

- (g) rate of employer pension contributions;
  - (h) entitlement to benefits including private medical insurance, life assurance, permanent health insurance, company car and any other benefits;
  - (i) hours of work, including whether employed on a full-time, part-time, permanent, fixed-term or any other basis;
  - (j) paid holiday entitlement (including bank and public holidays); and
  - (k) notice period to be given by either party for termination of employment and/or date of expiry of fixed term.
- 9.2 Copies of the service agreements for all executive directors employed or engaged by or in the Business and any other documents recording the terms of all other agreements and arrangements (including all particulars of employment required under section 1 of the Employment Rights Act 1996) which affect any executive director's service contract, whether as an employee or otherwise.
- 9.3 Copies of the letters of appointment for all non-executive directors employed or engaged by or in the Business, copies of any other documents which record the terms of their engagement and details of their current fees.
- 9.4 Anonymised details and copies of the contracts of any person employed or engaged by or in the Business (including all particulars of employment required under section 1 of the Employment Rights Act 1996):
- (a) Whose contract is terminable on [three] months' notice or more;
  - (b) Who is regarded as a key worker.
- 9.5 An anonymised list of any self-employed consultant or contractor who provides services to the Business (excluding agency workers), showing the following details:
- (a) description of role;
  - (b) total annual remuneration;
  - (c) length of time they have been providing services to the Business;
  - (d) bonus or incentive arrangements and all other benefits;
  - (e) notice period for termination of contract or expiry of fixed term;
  - (f) whether they are included on the Seller's payroll;
  - (g) paid holiday entitlement if any (including bank and public holidays);
  - (h) whether engaged via a service company;
  - (i) whether they have provided a tax indemnity; and

- (j) whether they are subject to the Commercial Agents (Council Directive) Regulations 1993.
- 9.6 Anonymised copies of any consultancy agreement or other agreement for the provision of services to the Business by workers, consultants or contractors.
- 9.7 Details of any person working in the Business who is employed or engaged by an employment business (as defined under the Employment Agencies Act 1973) or a temporary work agency (as defined under the Agency Workers Regulations 2010 (SI 2010/93)), including details of the terms on which they are supplied, the roles they are performing, how long they have been engaged and the expected end dates of each assignment (if known).
- 9.8 An anonymised list of any person engaged in the Business who is not an employee of the Seller (excluding agency workers, service providers and self-employed consultants), showing the following details:
- (a) job title or description of the role;
  - (b) name of employer (if appropriate);
  - (c) type of worker (for example, bank staff, zero hours worker, secondee, freelancer, apprentice)
  - (d) place of work;
  - (e) age;
  - (f) start date and length of continuous employment or time engaged by or in the Business;
  - (g) total annual remuneration, broken down by basic salary (where appropriate), fees or hourly rate, monetary benefits and any variable remuneration, including any incentives, bonuses, commission or allowances);
  - (h) pay grade;
  - (i) entitlement to benefits including private medical insurance, life assurance, permanent health insurance, company car and any other benefits;
  - (j) hours of work, including whether engaged on a full-time, part-time, permanent, fixed-term or any other basis;
  - (k) paid holiday entitlement (including bank and public holidays);
  - (l) notice period to be given by either party for termination of employment or engagement or date of expiry of fixed term; and
  - (m) whether they are included on the Seller's payroll.

- 9.9 Details of any offers of employment or engagement made by the Seller or the Business, which are still outstanding or which have been accepted but the employment or engagement has not yet commenced.
- 9.10 Anonymised details of any person employed or engaged by or in the Business who requires permission to work in the UK together with anonymised copies of the materials showing that they have permission to work in the UK in the job in which they are employed or engaged.
- 9.11 Anonymised details of any person employed or engaged by or in the Business who has been absent due to sickness or incapacity for a period of [21] days or more (whether or not consecutive) in any [six] month period within the last [three] years.
- 9.12 Anonymised details of any person employed or engaged by or in the Business who is receiving or is due to receive payment from the Seller, under a permanent health insurance scheme or otherwise in respect of any sickness, incapacity and/or disability, and any pending or threatened claims for such payment.
- 9.13 Anonymised details of any person currently employed or engaged by or in the Business who is on secondment, maternity or other leave, who has been absent due to sickness or incapacity for a period of [three] months or more, or who has a right to return to work for any reason.
- 9.14 A copy of the standard contract (or contracts) for all those employed or engaged by or in the Business (whether as an employee or worker), together with all particulars of employment required under section 1 of the Employment Rights Act 1996 in relation to those individuals.
- 9.15 Anonymised details of any person employed or engaged by or in the Business (whether as an employee or worker) but not employed or engaged on a standard contract, together with all particulars of employment required under section 1 of the Employment Rights Act 1996 and copies of their contracts.
- 9.16 A copy of any staff or employee handbook and any other policies, procedures or other materials (including, but not limited to, disciplinary and grievance procedures), and a summary of any unwritten policies or procedures, whether or not contractual, which apply to any person employed or engaged by or in the Business.
- 9.17 Details of any benefits provided by the Seller [or any other member of the Seller's Group] to any person employed or engaged by or in the Business, including details of any which could not be transferred to or replicated by the Buyer.

- 9.18 Details of (and copies of any relevant documents relating to) any existing or proposed bonus, incentive or profit sharing scheme, share option scheme, share incentive scheme, commission scheme or any other scheme or arrangement under which any person employed or engaged by or in the Business is or would be entitled to variable remuneration or to participate in the profits of the Business [or any member of the Seller's Group] or acquire shares in the Seller [or any other member of the Seller's Group] and the annual cost to the Business of each such scheme or arrangement in respect of each of the last [three] years.
- 9.19 Details of (and copies of any relevant documents relating to) any existing or proposed scheme (whether contractual or not) to provide payments or benefits on redundancy (or other termination) to any person employed or engaged by or in the Business.
- 9.20 Details of any loans made to, or guarantees provided by, the Seller [or any other member of the Seller's Group] for the benefit of any person employed or engaged by or in the Business.
- 9.21 Details of (and copies of any relevant documents relating to) any person employed by or in the Business who has entered into or been offered an agreement to become an employee shareholder for the purposes of section 205A(1)(a) of the Employment Rights Act 1996.
- 9.22 Details of any pay grading structure, job evaluation studies, equal pay, gender pay, ethnic minority pay or national minimum wage audits or investigations which have been carried out in relation to remuneration within the Business.
- 9.23 [Anonymised copies of the records the Seller is obliged to keep in respect of any person employed or engaged by or in the Business under regulation 59 of the National Minimum Wage Regulations 2015.]
- 9.24 Anonymised details of any person employed or engaged by or in the Business who works more than 48 hours a week, together with copies of any agreements to opt out of regulation 4(1) of the Working Time Regulations 1998.
- 9.25 Details of any existing or proposed overtime arrangements (including whether such arrangements are compulsory, voluntary or guaranteed), shift premia or allowances and the total annual cost to the Business of each such arrangements, premia or allowances in respect of each of the last [three] years.
- 9.26 In the case of voluntary overtime, information on whether overtime which is offered is routinely accepted, and whether there is any expectation that overtime will be accepted and worked, despite the lack of a contractual obligation on the part of the employees or workers.

9.27 Details of how holiday pay:

- (a) is calculated, both during employment and on termination;
- (b) has been calculated over the last [two][six] years;
- (c) has been recorded over the last [two][six] years;

for all employees, workers and directors employed or engaged by or in the Business, including details of which elements of remuneration are taken into account in calculating holiday pay.

9.28 Details of employees, workers and directors employed or engaged by or in the Business whose normal remuneration is such that their holiday pay routinely includes, or has in the past included, one of the following: overtime pay (including non-guaranteed overtime), uplifts for working particular shifts, productivity or incentive bonuses, emergency call-out payments, commission, standby/disturbance allowances, travel allowances, on-call allowances, bonuses or any other elements of remuneration that may count as normal remuneration for the purposes of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (the "Working Time Directive").

9.29 Details of whether any distinction is or has been made between holiday pay for holiday taken under regulation 13 of the Working Time Regulations 1998, holiday under regulation 13A of the Working Time Regulations 1998 and contractual holiday, and if so how such distinction has been recorded.

9.30 Details of any grievance, complaint, dispute, claim or legal proceedings (whether arising under contract, common law, statute, in equity or otherwise) brought or threatened against the Seller in the last [two] years by any person currently or previously employed or engaged by or in the Business in relation to the failure to pay holiday pay, or payments in respect of accrued untaken holiday, at the correct rate or at all, or any such grievance, complaint, dispute, claim or legal proceedings that the Seller has reasonable grounds to believe may be brought against the Seller, together with details of any payments or costs incurred (or likely to be incurred), including by way of settlement or proposed settlement of such matter.

9.31 Details of any offers, promises or agreements, whether oral or in writing (and whether or not regarded as binding), to any future variation in any contract of any person employed or engaged by or in the Business.

9.32 Details of any current negotiations for an increase in the remuneration or benefits of any person employed or engaged by or in the Business or any such negotiations that are likely to take place in the next [NUMBER] months.

- 9.33 Details of any person employed or engaged by or in the Business who has received or has given notice, or is likely to give notice, to terminate their contract, whether in connection with the sale of the Business or otherwise, including details of the reasons for such notice.
- 9.34 Details of any planned or proposed dismissal of any person regarded as a key worker employed or engaged by or in the Business.
- 9.35 Details of any dispute, claim or legal proceedings (whether arising under contract, common law, statute, in equity or otherwise) brought against the Seller by any person currently or previously employed or engaged by or in the Business or any trade unions, staff association, staff council, works council or other organisation formed for a similar purpose in the last two years or that the Seller has reasonable grounds to believe may be brought against the Seller, together with details of any payments or costs incurred (or likely to be incurred).
- 9.36 Details of any amounts outstanding pursuant to any court or employment tribunal awards or promised under any settlement (including any COT3 agreement, settlement agreement or other contract) to any person employed or engaged by or in the Business and any liability incurred by the Business as a result of any court or tribunal order which remains undischarged.
- 9.37 Details of any person previously employed or engaged by or in the Business who as a result of any dispute, claim or legal proceedings has a right to return to work or a right to be reinstated or re-engaged or to any other compensation.
- 9.38 Details of any disciplinary procedures taken against any person employed by or in the Business or any grievance procedures taken by any such person (in each case, whether formally or not and whether or not in accordance with the Acas Code of Practice on Disciplinary and Grievance Procedures), or any Acas early conciliation procedure undertaken in the last two years.
- 9.39 Details of any inquiries or investigations existing, pending or threatened into the Business or affecting any person employed or engaged by or in the Business by the Equality and Human Rights Commission or any other similar authority or any facts that the Seller is aware of that might give rise to the same.
- 9.40 Details of any relevant transfer (for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any predecessor regulations) in the last [ten] years, to which the Business or Seller (or any predecessor or owner of part or all of the Business) has been a party, that affected any person currently or previously employed or engaged by or in the Business, including details of:
- (a) any variation of any such person's terms of employment following the transfer;

- (b) any failure to comply with obligations to inform or consult in connection with such a transfer or any redundancy affecting any such person; and
  - (c) any right to an early retirement pension on redundancy or dismissal existing prior to such a transfer or affecting any such person.
- 9.41 Details of any trade union, staff association, staff council, works council, information and consultation body and other worker representatives relating to any person employed or engaged by or in the Business ("representative body").
- 9.42 Copies of all regulations or agreements and details of any unwritten understanding or arrangement (whether binding or not) with any representative body.
- 9.43 Details of the existence of and compliance with any obligations to inform and consult with any representative bodies over the past [two] years.
- 9.44 Copies of any notes or minutes of negotiations, meetings or collective bargaining with any representative body in the last [two] years.
- 9.45 Details of any ongoing negotiations with any representative body which might affect terms and conditions, working arrangements, redundancy or severance payments.
- 9.46 Details of current and historic industrial action within the Business including any current, past or threatened strikes, disputes or other disturbances in the past [two] years.

## **10. Pensions**

- 10.1 Details and copies of relevant documents relating to any pension scheme(s) that the Seller operates in connection with the Business, including:
- (a) trust deeds and rules (including any draft amendments);
  - (b) employee booklets and notices;
  - (c) name(s) of the pension scheme(s), its present trustees and actuary;
  - (d) the most recent actuarial valuation, copies of any agreed deficit funding plan, the most recent schedule of contributions and the statement of funding principles;
  - (e) trustees' annual reports and audited annual accounts for the last [two] years;
  - (f) details of the current rate of the employer's and employees' contributions to the scheme(s) and any proposed alterations to the current arrangements;
  - (g) details of insurance premiums, taxes and expenses paid in relation to the scheme(s);

- (h) a list of all existing members of the pension scheme(s) (and those likely to become members within the next [six] months) including sex, date of birth, date of joining the scheme(s), current pensionable salary and any additional benefits granted or additional contributions made;
- (i) details of any ex gratia or unapproved pension arrangements granted to employees;
- (j) a copy of the HM Revenue & Customs approval letter(s) and evidence of registration with HM Revenue & Customs for the pension scheme(s) and details of any reason as to why the scheme(s) may cease to be registered;
- (k) all reports relating to the investment of the assets of the pension scheme(s) during the last year and a complete list of the assets of the pension scheme(s) and their current market value;
- (l) all agreements with any person for the provision of services relating to the pension scheme(s); and
- (m) all insurance contracts relating to the pension scheme(s).

10.2 In respect of the employer auto-enrolment requirements under the Pensions Act 2008, please provide:

- (a) any documents relating to the Seller's staging date, as well as confirmation of that date;
- (b) copies of any correspondence between the Seller and the Pensions Regulator regarding auto-enrolment, including details of its registration in accordance with regulation 3 of the Employers' Duties (Registration and Compliance) Regulations 2010;
- (c) copies of any enforcement or penalty notices issued by the Pensions Regulator;
- (d) copies of any records kept in accordance with regulations 5-8 of the Employers' Duties (Registration and Compliance) Regulations 2010 in respect of the employees;
- (e) if a personal pension scheme is being used, copies of any agreements between the provider and the jobholder under section 26 of the Pensions Act 2008;
- (f) if an occupational money purchase scheme is being used, a copy of any certification under section 28 of the Pensions Act 2008;
- (g) if an occupational defined benefit scheme is being used, a copy of the actuary's or employer's certificate that the scheme is a qualifying scheme; and
- (h) details of any employees who have opted out and copies of any opt-out letters in respect of those employees.

- 10.3 A list of any employees of the Seller in relation to the Business not participating in the pension scheme(s). If they do not belong to any pension scheme, please give reasons why, for instance because they are:
- (a) ineligible; or
  - (b) have chosen not to join; or
  - (c) have opted out.
- 10.4 Prior to 1 October 2012, did the Seller provide access to a designated stakeholder scheme for its employees in relation to the Business who were not members of the pension scheme(s)? If it did (and the employees remain as members of the scheme), please provide details of the scheme. If it has not, please give reasons why.
- 10.5 Have the trustees and the Seller in relation to the Business complied with all relevant pensions legislation and the rules of the pension scheme(s)? If they have not, please give details of any non-compliance.
- 10.6 Details of any claims or complaints that have been made or are pending or threatened in relation to the pension scheme(s) or in respect of the provision of (or failure to provide) pension, lump sum, death or ill-health benefits by the Seller in relation to any of the employees of the Business.
- 10.7 Details of any former pension scheme(s) that applied before the current scheme(s).

## **11. Intellectual property rights**

- 11.1 A list, details and, where relevant, copies of documents relating to all intellectual property rights including patents, [utility models,] rights to inventions, copyright and [neighbouring and] related rights, [moral rights,] trade marks [and service marks] business names and domain names, rights get-up [and trade dress], goodwill and the right to sue for passing off [or unfair competition], rights in designs, [rights in computer software,] database rights, rights to use, and protect the confidentiality of, confidential information (including know-how [and trade secrets]) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, and the benefit (subject to the burden) of any and all agreements, arrangements and licences in connection with any of the foregoing, owned, used, enjoyed, exploited or held for use by the Seller in, or in connection with, the Business (**IPR**) together with any IPR which are or have been used in the Business or which are required to fulfil any contracts of the Business.

- 11.2 Confirmation that all IPR are valid and subsisting and that all registrable IPR have been registered.
- 11.3 Details and a copy of the last intellectual property audit conducted by the Seller in relation to the Business.
- 11.4 Details of the annual costs of maintenance of all registered IPR (including any agents' fees) and receipts for payment of all renewal and registration fees for the protection of registered IPR.
- 11.5 Details of IPR which the Seller owns jointly or in common with any other person.
- 11.6 Details of any IPR that are shared with other members of the Seller's Group and how it proposes to deal with shared IPR in the asset purchase agreement.
- 11.7 A list, details and copies of documents in relation to all agreements, arrangements and licences of IPR which have been granted to the Seller by third parties and confirmation that those agreements are in full force and effect.
- 11.8 A list, details and copies of documents in relation to all agreements, arrangements and licences of IPR that the Seller has granted to third parties and confirmation that those agreements are in full force and effect.
- 11.9 Details of any prohibition on assignment of any IPR or any provision in an agreement between the Seller and a third party relating to IPR which will terminate, or be capable of termination, by reason of the purchase of the Business by the Buyer.
- 11.10 Details of any claims, liens, equities, encumbrances, licences and adverse rights of any description affecting the IPR.
- 11.11 Details of any disputes, complaints, objections, challenges or claims for infringement, subsistence, validity or ownership of IPR or any legal proceedings threatened or brought in relation to the IPR.
- 11.12 Details of any existing, suspected or alleged infringement of third party intellectual property rights by the Seller and/or the Business and any obligation on the Seller to pay any royalty, fee, compensation or any other sum in respect of that infringement.
- 11.13 Details of any outstanding or potential claims against the Seller, under any contract or relevant legislation, for employee compensation in respect of any IPR.
- 11.14 Confirmation that the Seller has in its exclusive possession and control all information, know-how and techniques used, enjoyed or exploited in the Business (or held with a view to such use, enjoyment or exploitation).

- 11.15 Details of the internal procedures for the protection of IPR and in particular for the disclosure of any confidential information either by or to the Seller's Group.
- 11.16 Confirmation that information of a confidential nature that has been developed or acquired by the Seller or any member of the Seller's Group for the purposes of the Business in the last [five] years has been kept strictly confidential and has not been disclosed otherwise than subject to an obligation of confidentiality being imposed on the person to whom that information was disclosed.
- 11.17 Details of any confidentiality undertakings, except in the ordinary course of business or with its employees, that the Seller has entered into with any third party in relation to IPR.

## **12. Computer system and data**

- 12.1 Details of all elements of the computer hardware, software, artificial intelligence technology and networks used in the Business (**Computer System**).
- 12.2 Details of any element of the computer system that incorporates any open-source software.
- 12.3 Details of any software used by the Business or hosted for the Business by a third party application service provider or cloud service provider, whether as a software-as-a-service, a platform-as-a-service or as an infrastructure-as-a-service arrangement.
- 12.4 Copies of all agreements relating to the supply, financing, maintenance and support of the Computer System, including all open-source software licences.
- 12.5 Details of any element of the Computer System owned by third parties and licensed or leased to the Seller for use in the Business, including copies of any relevant agreements.
- 12.6 Details and copies of any licence by the Seller of the Business' proprietary software to third parties.
- 12.7 Details of any elements of the Computer System that are shared with other members of the Seller's Group (including copies of any relevant agreements) and whether shared access is required or necessary.
- 12.8 Details of any assets or services in relation to the Computer System provided by the Seller's Group, or vice versa, and whether these arrangements are to continue following the sale of the Business.
- 12.9 Details of any agreements relating to the Computer System which preclude the manner in which any element of the Computer System is currently being used by the Business.

- 12.10 Details of whether the Computer System is date-change compliant. If not, what steps have been taken to resolve the issue and who will bear primary responsibility for the solution.
- 12.11 Details confirming the extent to which the Computer System is able to perform all of its monetary functions in the euro and in all national currencies necessary for the carrying on of the Business.
- 12.12 Details of any disaster recovery arrangements, facilities management, outsourcing, cloud computing and ongoing support arrangements, including details of service levels and charges.
- 12.13 Details of whether the Business is dependent on any third party for the maintenance of any element of the Computer System, including details of service levels and charges.
- 12.14 Details of and copies of documents relating to whether the Business has access, or rights of access, to the source code of the key licensed software in order to ensure adequate maintenance and updating of that software.
- 12.15 Details of procedures employed by the Business to monitor compliance with the terms of software licences used in the Business, including whether these procedures monitor the use of software by the Business to ensure that multiple copies of any software are not used in breach of the terms of the relevant licences.
- 12.16 Details of any disputes between the Seller and any third party in respect of any matter relating to the Computer System, or between the supplier of any element of the Computer System and a third party which may affect the continued use of that element in the Business.
- 12.17 Details of any circumstances of which the Seller is aware in which the Business may lose the benefit of any of the software licences it holds.
- 12.18 Details of anything that the Seller has done or omitted to do which might constitute a breach of, or grounds for termination of, any of the agreements relating to the Computer System.
- 12.19 Details of any recurring technical problems with the Computer System.
- 12.20 Details of any cyber security threats and attacks and data security breaches in relation to the computer system (**Cyber Events**). Details of any policies, procedures and systems in place to mitigate such risks.

- 12.21 Details and a copy of the last intellectual property audit conducted in relation to the Computer System and its operation.
- 12.22 Does the Seller own IPR (including copyright) in the design and content of the Business' website?
- 12.23 Details of any element of the Computer System for which the Seller owns the IPR, including details of the author of that element of the Computer System, whether the author was an employee or a consultant and the terms of employment or consultancy contract with the author.
- 12.24 Details of any IPR that have been registered in respect of any elements of the Computer System developed by the Seller.
- 12.25 Is all data used by the Business held on the Computer System?
- 12.26 Details of insurance cover in respect of any loss of the Business related to the Computer System, including any Cyber Event policies.
- 12.27 Details of the extent to which the Computer System has been developed in accordance with privacy-by-design principles and details of features that support these principles.

### **13. Data protection**

- 13.1 A copy of the written records of the Seller's processing activities in relation to the Business, together with copies of any data maps relating to such processing and details of the Seller's systems, policies and procedures for keeping such records up to date.
- 13.2 Details of any notification, registration or data protection fee required to be made or paid by the Seller in relation to the Business under Data Protection Legislation, together with evidence of the relevant registration, notification or payment. (In this paragraph 13, **DPA 1998** means the Data Protection Act 1998; **DPA 2018** means the Data Protection Act 2018; **UK Data Protection Legislation** means any data protection legislation from time to time in force in the UK including the DPA 1998 and the DPA 2018 or any successor legislation; and **Data Protection Legislation** means the UK Data Protection Legislation and (for so long as and to the extent that the law of the EU has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable EU regulation relating to data protection and privacy.)
- 13.3 Copies of:
- (a) privacy policies, privacy notices and fair processing notices used by the Seller in relation to its processing activities in connection with the Business;

- (b) all legitimate interests assessments carried out pursuant to Data Protection Legislation; and
  - (c) consents obtained from data subjects, including in respect of mailing lists.
- 13.4 Details of, and copies of any documents relating to, the Seller's policies, procedures, systems and processes for:
  - (a) ensuring its compliance with Data Protection Legislation in relation to the Business in connection with the collection, use, accuracy, retention and security of personal data;
  - (b) dealing with data subject notices or requests (such as requests to access their personal data, prevent the use of their personal data for direct marketing, require the erasure or rectification of their personal data, or exercising their rights to be forgotten, data portability or to object to the processing of their personal data); and
  - (c) conducting data protection impact assessments (**DPIAs**), together with copies of any DPIAs that have been carried out.
- 13.5 Details of, and copies of all documents relating to, any data protection officer appointed by the Seller in relation to the Business in accordance with Data Protection Legislation or otherwise, or any privacy manager or similar officer appointed to manage the Seller's privacy governance structure.
- 13.6 Details of any third-party processors appointed by the Seller in relation to the Business to process personal data on its behalf, including copies of the relevant contracts, details of all related security measures, and any due diligence or audits carried out on such processors both before and during their appointment, together with copies of the resulting reports.
- 13.7 Details of any personal data transferred outside the European Economic Area by the Seller in relation to the Business, together with evidence of compliance with Data Protection Legislation in respect of such transfers.
- 13.8 Details of, and copies of any documents relating to, the technical and organisational security measures of the Seller in relation to the Business to protect against the unauthorised or unlawful processing of, or accidental loss, destruction or damage to, any personal data, including all policies, procedures, systems and processes to:
  - (a) safeguard and back up data (including personal data) and keep it confidential; and
  - (b) respond to a data security breach, together with details of the frequency of testing of such measures.

- 13.9 Details of, and copies of any documents relating to, any:
- (a) [material] breaches of Data Protection Legislation by the Seller in relation to the Business in the last [six] years; and
  - (b) [material] data security breaches suffered by the Seller in relation to the Business in the last [six] years; and
  - (c) request, notices, complaints or claims received by the Seller in relation to the Business from any source regarding its compliance with Data Protection Legislation.

#### **14. Litigation**

- 14.1 Particulars of and copies of relevant documents relating to any ongoing or threatened litigation, arbitration, mediation or similar proceedings or disputes with third parties relating to or affecting the Business or the Assets [estimated to be in excess of £[AMOUNT] in value] [occurring in the last [NUMBER] years] including the following:
- (a) the names of the parties involved;
  - (b) the sum claimed;
  - (c) brief details of the issues;
  - (d) estimated costs incurred to date and likely to be incurred in the future; and
  - (e) brief details of the merits, any advice received and the likely outcome.
- 14.2 Details of any existing or pending judgments affecting the Business or the Assets.
- 14.3 Details of any general or specific provision made by the Business in relation to the recovery of outstanding book debts.
- 14.4 Details of anything which may give rise to any investigation, enquiry or enforcement proceedings or process in relation to the Business or the Assets by any governmental, administrative or regulatory body.

#### **15. Insurance**

- 15.1 Details of and copies of documents relating to all insurance arrangements for the Business and the Assets, including details of the nature and amount of cover, name and address of insurer, annual premiums (including evidence of latest premiums paid), renewal date and any outstanding claims.
- 15.2 Are the Assets, and have they been at all material times, insured to their full replacement or reinstatement value in accordance with generally accepted practice with a well-

established and reputable insurer against fire and all other risks customarily insured against?

- 15.3 Does the Seller have in place, and has it had in place at all material times, insurance giving adequate cover against accident, damage, injury, third party loss (including product liability) and all other risks normally insured against by persons carrying on a similar business to the Business?
- 15.4 Are any of the policies of insurance in relation to the Business or the Assets subject to any special or unusual terms or restrictions, or to the payment of any premium in excess of the normal rate?
- 15.5 Are there any circumstances likely to give rise to a claim under insurance policies held by the Seller in relation to the Business and the Assets and has anything been done or omitted to be done which has made or could make any policy of insurance void or voidable, its renewal refused or its premiums likely to be increased?
- 15.6 Is the assignment of any insurance policy for the Business or the Assets subject to the consent of any person other than the insurance company concerned?

## 16. Consents

- 16.1 Details and copies of all necessary licences, consents, concessions, registrations, approvals, permits, exemptions, agreements, arrangements and authorities (public and private) (**Consents**) required for the operation of the Business, including:
- (a) whether the Consents are valid and subsisting;
  - (b) dates for renewal of the Consents;
  - (c) any onerous conditions attached to the Consents; and
  - (d) any reason for the Consents to be suspended, cancelled or revoked.
- 16.2 Details of any reason why the benefit of the Consents should not continue to be enjoyed by the Buyer or other owner for the time being of the Business and the Assets or any part of them.

## 17. Competition

- 17.1 Details and copies of documents relating to any agreement, arrangement or practice in relation to the Business or the Assets to which the Seller is now a party or has been a party in the past, and any course of conduct or practice in which the Seller has been engaged which contains restrictions or other provisions which have given or could give rise to competition issues in any relevant jurisdiction.

- 17.2 Details of any "special sector" regulation to which the Business is subject.
- 17.3 Details and copies of documents relating to any competition law compliance programme run by the Seller in respect of the Business.
- 17.4 Details of any business which is competitive with that of the Business in which the Seller has an interest.
- 17.5 Details and copies of documents relating to any agreement, arrangement or practice, to which the Seller is party, which restrict the Seller's freedom to carry on the whole or any part of the Business in the manner in which it is now carried on or to use or exploit any of the Assets in any part of the world.

## **18. Environment**

- 18.1 Copies of all environmental reports, audits or other assessments relating to the Business and any of the Properties that were commissioned within the last [three] years. [Copies of any letters of reliance or collateral warranties to be provided by the relevant consultants and details of their professional indemnity insurance limits.]
- 18.2 Copies of any searches of environmental information held on the local authority's[, OR and] Environment Agency's [and Natural Resources Wales'] public registers that have been carried out by the Seller.
- 18.3 Details of activities that are being or have been carried out at the Properties, both by the Business and previous users of the Properties.
- 18.4 Details of any waste produced, treated, kept or disposed of by the Business and of the arrangements in place for disposal of waste from the Properties.
- 18.5 Details of any hazardous substances (such as oil, chemicals or radioactive substances) used or stored (whether above or below ground) at any of the Properties.
- 18.6 Details of any actual or suspected soil contamination or water (including groundwater) pollution at any of the Properties, and details of any actual or suspected migration of contamination to, or from, them.
- 18.7 Details of any asbestos present at any of the Properties and copies of all risk assessments and asbestos reports that are available.
- 18.8 Details and copies of any environmental policy or statement in relation to the Business.
- 18.9 Does the Seller have an environmental management system in place in relation to the Business (for example, ISO 14001)? If yes, please provide details.

- 18.10 Does the Seller report on environmental issues including climate change risks and impacts, either as part of its annual reports or voluntary reports? If yes, please provide details
- 18.11 Details of any contamination or pollution incidents at the Properties.
- 18.12 Copies of all current environmental permits (including any environmental consents, authorisations, registrations or licences) (**Environmental Permits**) relating to the Business and details of any pending applications for any new Environmental Permits or variations to existing Environmental Permits.
- 18.13 Details of any breach of relevant environmental laws or Environmental Permits, including details of any circumstances that could result in the relevant regulatory authority revoking any Environmental Permit necessary for the operation of the Business, or refusing the grant, renewal or transfer of any Environmental Permit.
- 18.14 Details of any complaints, enforcement action or legal proceedings threatened or taken by any regulatory authority or third party (including any neighbours or environmental action groups) in respect of any environmental matter relating to the Business or any of the Properties. Details of any current environmental investigations by, or discussions with, any regulatory authority relating to the Business or any of the Properties.
- 18.15 Details of whether the Business is required to carry out assessments under the current compliance period of the Energy Savings Opportunity Scheme (ESOS) either as part of the Seller's Group or independently.
- 18.16 Confirmation that the Business has met all of its obligations under the ESOS to date and by the relevant deadlines.
- 18.17 Details of the types of electricity meters that supply the Properties occupied by the Business, including a list of those meters and, for any settled half hourly meter, their identification numbers. Details of the amount of qualifying electricity supplied to the Business through each half hourly meter during the qualification year of the current phase of the CRC.
- 18.18 Does the Seller measure and report on its greenhouse gas (GHG) emissions in relation to the Business, and does it have a climate change strategy? If yes, please provide copies of the latest GHG emissions report and the climate change strategy.
- 18.19 Details of any environmental management system (for example, ISO 14001) operated by the Business and access to the relevant records.

- 18.20 Copies of any public reports on environmental issues whether part of an annual corporate report or published separately relating to the Business or the Properties.
- 18.21 Details of any material expenditure on environmental matters that is likely to be required in respect of the Business or the Properties (for example, any upgrade works necessary to comply with environmental laws or Environmental Permits). Details of any allocation made for this in the Seller's capital expenditure or accounts.
- 18.22 Details of any forthcoming environmental legislation that is likely to have a material impact on the Business' operations or the Properties.

## **19. Health and safety**

- 19.1 Copies of all health and safety reports, audits or other assessments relating to the Business and the Properties that were commissioned within the last [three] years. [Copies of any letters of reliance or collateral warranties to be provided by the relevant consultants and details of their professional indemnity insurance limits.]
- 19.2 Details of any safety management system that the Business operates.
- 19.3 Details of the health and safety training that the Business provides for its staff and contractors.
- 19.4 Details of any breach of any health and safety laws by the Business.
- 19.5 Details of the person in charge of health and safety for the Business and whether that person will be employed by the Buyer or the new owner of the Business (as appropriate) following the transaction or whether a new health and safety manager will need to be appointed.
- 19.6 Confirmation that all the necessary statutory health and safety risk assessments relevant to the Business have been carried out and all the necessary manuals and health and safety management policies and systems are in place. Copies of all health and safety manuals, logbooks, permits and records required by health and safety laws.
- 19.7 In respect of any health and safety matter, details of:
- (a) any notification or complaints to any regulatory authority;
  - (b) any enforcement action (such as enforcement and prohibition notices) or legal proceedings threatened or taken by any regulatory authority;
  - (c) any complaints or legal proceedings threatened or taken by any employee (including both current and former employees and contractors); and

- (d) any current investigations of the Business by, or discussions with, any regulatory authority.
- 19.8 Details of any employers' liability and public liability insurance cover in respect of the Business and the Properties and confirmation that no claims have been made or are contemplated under any such insurance in respect of the Business or the Properties.
- 19.9 Details of any material expenditure in respect of health and safety matters that is likely to be required in respect of the Business or the Properties (for example, any upgrade works to plant and equipment in order to comply with health and safety laws). Details of any allocation made for this in the Seller's capital expenditure or accounts.
- 20. Tax**
- 20.1 Copies of the tax and VAT returns filed by the Seller for the past three years.
- 20.2 Confirmation that the Seller has complied in all material respects with all statutory provisions, rules, regulations, orders and directions in relation to the Business concerning VAT, SDLT, PAYE and National Insurance contributions including the making on time of accurate returns and payments and the proper maintenance and preservation of records, and confirmation that the Seller has not been given any penalty, notice or warning regarding the same.
- 20.3 Details of and copies of correspondence relating to any outstanding dispute, investigations or enquiries by HM Revenue & Customs or any other appropriate fiscal authority, whether of the UK or elsewhere, concerning any matter likely to affect the Business or any of the Assets in any way other than routine enquiries of a minor nature following the submission of computation and returns.
- 20.4 Details of any dispensation or other special arrangements agreed with or concessions made by the relevant tax authorities in relation to taxation of the Business or Assets.
- 20.5 Confirmation that all documents (other than those which have ceased to have any legal effect) to which the Seller is a party and which relate to the Business, in the enforcement of which the Buyer may be interested, have been stamped where appropriate, that, where such documents are outside the UK, they will not attract stamp duty if brought into the UK and that all such documents are in the possession of the Seller or under its control.
- 20.6 Confirmation that paragraphs 11 and 12 of Schedule 17A to the Finance Act 2003 will not apply to the assignment of [the leases].

- 20.7 Copies of VAT registration documents relating to the Business and details of any disputed VAT returns and of existing or proposed arrangements for the settlement of any arrears due.
- 20.8 Details of any Assets subject to the VAT capital goods scheme, including the amount of total input tax that is subject to adjustment, the percentage of that input tax that was reclaimable on the capital item in the first interval applicable to it, the date of acquisition of the capital item and the number of remaining intervals in the remaining adjustment period.
- 20.9 Details of any existing or proposed option to tax by the Seller for VAT purposes in relation to the Properties.
- 20.10 Confirmation that all VAT payable on the importation of goods, and all excise duties payable to HM Revenue & Customs payable in respect of the Assets [including the stock], have been paid in full, and none of the Assets is liable to confiscation, forfeiture or distress.
- 20.11 Details of any discrepancies between the book value of the Assets and their acquisition cost or tax written down values.
- 20.12 Details of any fixtures in the Properties on which the Seller has incurred expenditure and is entitled to claim capital allowances, including whether the Seller has satisfied the pooling requirement (as defined by section 187A of the Capital Allowances Act 2001), the expenditure incurred on the fixtures, any allowances that have been claimed on the fixtures and the tax written down value of the fixtures.
- 20.13 Details of any tax avoidance schemes to which the Seller has been party in connection with the Business or the Assets which may fall within anti-avoidance provisions under statute or common law.

## **21. Compliance**

- 21.1 Details of any circumstance, event, act or omission which might give rise to the assertion that the Seller or any of its officers, agents or employees have done or omitted to do any act or thing which is or could be in contravention or breach of or the subject of inquiry, investigation or proceedings under the provisions of any statute, order or regulation made in any relevant jurisdiction giving rise to any fine, penalty, default, proceedings or other liability in relation to the Business or any of the Assets.
- 21.2 Details of whether all legislation and all orders, provisions, directions and conditions relating to the Assets or the conduct of the Business (including VAT) have been complied with in all respects.

21.3 Details of any impending legislative or regulatory changes of which the Seller is aware that may affect the Business.

## **22. [Bribery and corruption]**

22.1 Copies of the Seller's anti-corruption policies. When were the policies implemented and how often are they reviewed?

22.2 Copies of all anti-corruption training programmes. How and when is training conducted and to whom is it given? What tailored or further training is given to higher risk groups?

22.3 How are the Seller's anti-corruption policies monitored and compliance checked?

22.4 Who is responsible for corruption risk issues and compliance and what percentage of their role is focused in this area?

22.5 How far are senior management of the Seller involved in enforcing the anti-corruption policies?

22.6 Does the Seller have an internal reporting mechanism for employees to report potentially corrupt practices? If yes, please provide details of any reports made and any investigation or disciplinary action taken as a result.

22.7 Is the Business conducted through agents, intermediaries, consultants or other third parties or joint venture parties? If yes, please provide details.

22.8 How are any agents, intermediaries, consultants or other third parties appointed? What investigation is done before appointment or renewal?

22.9 What procedures does the Seller have in place to monitor any agents, intermediaries, consultants and other third parties through which they conduct their business?

22.10 Is the Seller a party to any contract, agreement or other arrangement with a public sector organisation? If yes, please provide details.

22.11 During the course of the Business, does the Seller or any of its agents or representatives have contact with foreign public officials? If yes, please provide details.

22.12 Has there been any actual or potential violation of anti-corruption laws or internal policies by the Seller or its employees, agents or other persons who perform or have performed services for or on behalf of the Seller?

- 22.13 Has the Seller or its employees, agents or other persons who perform or have performed services for or on its behalf been investigated by any law enforcement agency or customer in relation to corrupt practices?
- 22.14 Has the Seller or its employees, agents or other persons who perform or have performed services for or on behalf of the Seller been prosecuted or convicted for corruption in any jurisdiction?
- 22.15 Has the Seller ever been debarred from bidding for public contracts?
- 22.16 How are anti-corruption policies communicated throughout the Seller's Group and what training has been given to its employees, officers and agents on anti-corruption?
- 22.17 Details of the Seller's policies relating to gifts, hospitality and promotional expenditure. Is the giving and receiving of gifts and hospitality properly documented by the Seller?]

### **23. Final questions**

- 23.1 Are any customers or suppliers of the Business expected to withhold or reduce their dealings with the Business as a result of the proposed sale?
- 23.2 Is any [major] customer or client of the Seller in relation to the Business subject to a relevant insolvency procedure within the meaning of section 233B(2) of the Insolvency Act 1986?
- 23.3 Are there any subjects that have not been discussed but that are important for the operation of the Business and the proposed sale to the Buyer?
- 23.4 Are there any issues with regard to any of the above subjects that should be emphasised, considering the aim of the legal due diligence?