

**Consent to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 21 July 2016**

**Completed acquisition by Pulsant Bidco Limited (PBL) of Onyx Information Technology Holdings Limited (Onyx)**

We refer to your submission of 25 August 2016 and related discussions requesting that the CMA consents to certain derogations to the Initial Enforcement Order of 21 July 2016 (**the Order**). The terms defined in the Order have the same meaning in this letter.

Under the Order, save for written consent by the CMA and save to the extent that integration occurred prior to the commencement date of the Order, PBL and Pulsant Group Holdings Limited (PGHL) are required to hold separate the PBL business from the Onyx business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Order, based on the information received from you and in the particular circumstances of this case, PBL may carry out the following actions, in respect of the specific paragraphs:

**Paragraphs 5(a), 5(b), 5(e) and 5(g) of the Order**

1. The CMA consents to the combined Onyx and Pulsant sales, marketing and business development personnel continuing to market the products of both businesses subject to the following conditions:
  - (i) no attempt will be made to move Onyx or Pulsant customers to new contractual terms of the other company;
  - (ii) to the extent new contracts are entered into with customers (including contract renewals or the sale of additional service lines to a customer) and that customer was solely a customer of Onyx or Pulsant previously, reasonable endeavours will be made to sign the contract in the name of the same company (save for additional service lines where the relevant service is not provided by the same company or where a customer prefers the additional service line to be delivered by the other company);

- (iii) to the extent that new contracts (beyond those already in place) are entered into with customers who contracted with both Onyx and Pulsant previously, Pulsant is free to contract in the name of Onyx or Pulsant as preferred;
- (iv) in respect of colocation data centre services, two former Onyx individuals, [X] and [X] (the "Nominated Individuals"), may not sell Pulsant colocation services in Scotland, but instead, may only sell Onyx Edinburgh colocation services (such activity shall include the generation of new Onyx Edinburgh colocation sales, renewals of existing Onyx Edinburgh colocation contracts, and incremental sales of additional Onyx Edinburgh colocation services for existing Onyx customers). For the avoidance of doubt, the Nominated Individuals may sell other products and services offered by the PBL business and/or the Onyx business provided that these are provided absolutely separately from any Pulsant colocation services in Scotland, without any offer or provision of bundling.
- (v) the terms under which the Nominated Individuals received commission on sales prior to the acquisition of Onyx by Pulsant, and which incentivised them to, inter alia, make sales of Onyx Edinburgh colocation services, shall be as detailed in your submission of 25 August 2016 to the CMA for the duration of the Order;
- (vi) all calls or enquiries received by Pulsant from Onyx customers or potential customers about Onyx colocation services in Edinburgh shall be routed to the Nominated Individuals only;
- (vii) to the extent that Pulsant sales people receive enquiries from existing Onyx customers in connection with Onyx colocation services in Edinburgh, or from potential new customers in connection with Onyx colocation services in Edinburgh, those Pulsant sales people will immediately refer the relevant customers to the Nominated Individuals and not engage in any commercial discussions with these customers about the Onyx business;
- (viii) together with its compliance statement, on a fortnightly basis, PBL will provide the CMA with a report detailing: a) any matters escalated to [X] or [X]; and/or b) any decisions taken by them in relation to Onyx Edinburgh colocation services; and
- (ix) together with its fortnightly compliance statement, PBL will provide the CMA with a report containing a) details of all customer volumes won, or lost, or material changes to customer contracts in relation to Onyx Edinburgh colocation services; b) any changes in customer demand; and

- c) all changes in the Onyx Edinburgh colocation business's contractual arrangements or relationships with key suppliers, including any contact between Onyx customers and PBL regarding potential re-negotiation of existing contracts or proposals to transfer business from Onyx to PBL.
2. The CMA consents to sales managers with combined responsibility for both Onyx and Pulsant sales people continuing to have access to the customer records of each respective business subject to the following conditions:
- (i) separate customer records will continue to be kept and maintained so that the customers of each business can be separately identified in the event of a divestment of Onyx;
  - (ii) all current and future sales opportunities for Onyx will be recorded only in the existing Onyx CRM system;
  - (iii) the Onyx CRM system will be continuously maintained and kept separate from the Pulsant CRM system;
  - (iv) save for the managers referred to above, former Pulsant sales people shall be prevented from being able to access to the information stored in the Onyx CRM system;
  - (v) save for the managers referred to above, former Onyx sales people shall be prevented from being able to access to the information stored in the Pulsant CRM system; and
  - (vi) these sales managers will be named and will enter into and be bound by the terms of a non-disclosure agreement as set out in paragraph 3 below.

**Paragraph 5(l) of the Order**

3. The CMA consents to the following former Onyx and Pulsant personnel being able to access information relating to the other respective business (and as described in paragraph 5(l) of the Order), but only insofar as it is strictly necessary for those personnel to access that information in order to perform their combined role across the two businesses:
- (i) the individuals listed at Annex 1 to this letter with a) combined responsibility for both former Onyx and Pulsant sales and marketing personnel as at 21 July 2016; and b) sales and marketing responsibility for colocation services in Scotland;

- (ii) the individuals listed at Annex 2 to this letter with management responsibility across both the PBL business and the Onyx business as at 21 July 2016;
- (iii) the finance and HR personnel listed at Annex 3 to this letter.

The individuals listed in Annexes 1, 2 and 3 to this letter will enter into a non-disclosure agreement (NDA) in a form approved in advance by the CMA which governs their obligations to keep the relevant information confidential and not circulate that information more widely than is appropriate in the circumstances, and to store the relevant information in such a way that it could be identified and subsequently destroyed if necessary. The NDA shall include an obligation on the part of its signatories that any competitively sensitive information obtained during the course of carrying on the Onyx Edinburgh colocation business will not be used for the purposes of any Pulsant business.

## ANNEX 1



## ANNEX 2



## ANNEX 3

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