

**Clusta Limited– In Administration (“the Company”)
In the High Court of Justice No 0563 of 2013**

**Administrators’ Final Progress Report to Creditors in Accordance with Rule 2.110
of the Insolvency Rules 1986 (As amended)**

1. Introduction

- 1.1 As creditors are aware I was appointed Joint Administrator of the above company along with Wayne Harrison on 11 June 2013. The appointment was made by the director of the Company under paragraph 22(2) of Schedule B1 of the Insolvency Act 1986.
- 1.2 In accordance with rule 2.47 and rule 2.110 of the Insolvency Rules 1986 (as amended) I set out below a final progress report in respect of the Administration.
- 1.4 The following reports will be referred to throughout this report and are available to be viewed on our website using the links provided:
- Notice of Appointment of Administrators’, circulated on 14 June 2013
<http://www.ksagroup.co.uk/images/clusta-report-creditors.pdf>.
 - The Administrators’ proposals, circulated on 1 August 2013
<http://www.ksagroup.co.uk/images/clusta-proposals.pdf>
 - The Administrators’ progress report , circulated on 23 December 2013
<http://www.companyrescue.co.uk/documents/clusta-administration-report.pdf>

2. Statutory and Other Information

- 2.1 The following information has been taken either from the statutory books of the Company or from information held by the Registrar of Companies:

Company Name: Clusta Limited

Trading Name: Clusta Limited

Previous Names: None Known

Company Number: 04924804

Date of Incorporation: 7 October 2003

Registered Office C12 Marquis Court, Marquisway, Team Valley, Gateshead NE11 0RU.

Main Trading Address: 31-41 Bromley Street, Birmingham, West Midlands, B9 4AN

Principal Objectives: Software Consultancy and Supply

		<u>Date of Appointment</u>	<u>Date of Resignation</u>
Directors:	Russell Townsend	1 April 2012	-
Company Secretary:	Russell Townsend		
Authorised Share Capital:	95,000 Ordinary Shares of £0.01 each, all of which have been issued and fully paid.		
Shareholders:		<u>No of Shares</u>	
	Russell Townsend	47500	
	Matthew Clugston	47500	

Name and address of Administrators: Eric Walls and Wayne Harrison of KSA Group Ltd, C12 Marquis Court, Marquisway, Team Valley, Gateshead, NE11 0RU. In accordance with paragraph 100 of Schedule B1 of the Insolvency Act 1986 (as amended), the Administrators act jointly in respect of all matters pertaining to the Administration.

Date of Appointment: 11 June 2013

Court and Court Reference Number: High Court of Justice Newcastle upon Tyne District Registry Chancery Division No 0563 of 2013

Person making the Appointment: Russell Townsend, the director of the Company

3. Events leading up to the appointment of the Administrators

3.1 Creditors were made aware of the circumstances leading to the appointment of the Joint Administrators in the Joint Administrators proposals which were circulated to creditors on 1 August 2013. These proposals were accepted by creditors at a meeting held on 20 August 2013. At this stage, no other matters relating to the events leading to the Administration have come to light since 20 August 2013, which need to be disclosed to creditors

4. Events since the appointment of the Administrators

4.1 Solicitors acting on behalf of the Joint Administrators confirmed to the Administrators that their appointment was valid.

4.2 Prior to Administration, Charterfields International Asset Consultants were instructed to attend the Company's premises, value the Company's assets and advise the Joint Administrators on the most appropriate method of realising those assets.

4.3 It was felt that the possibility of securing funding to trade the business for a period following Administration was remote. In order to achieve this, security would have had to be effected over the assets of the Company, or a guarantee would need to be given by the proposed Administrators. The assets were already subject to security held by two secured creditors. Due to the risks involved, pressing supplier and salary payments which needed to be made, and the threat of recovery action from creditors, it was deemed that trading the business in Administration was impractical.

4.4 In the four months prior to KSA's involvement with Clusta Limited, the Company had appointed agents to explore the possibility of a sale of the business as a going concern. During this marketing period, no interest was generated. However, an offer had been received from an unconnected third party to purchase the Company's business and intellectual property rights, including taking on the Company's employees, via an Administration process.

4.5 Our agents, Charterfields, recommended acceptance of this offer. Charterfields have confirmed that the offer represented a reasonable sum, particularly in the absence of any other offer. They also stated that they would not expect to exceed this offer should they undertake a short term marketing exercise. It was, in any event, unlikely this marketing process could be completed prior to the cessation of trade, given the staff salary position.

4.6 The sale of the assets of the Company to an unconnected party was concluded on 12 June 2013, shortly after our appointment.

4.7 The purchaser of the Company's business, its goodwill and its intellectual property is Krow Communications Limited. Krow Communications Limited is not connected to the Company in any way. However, the director of Clusta Limited has become an employee of the purchaser. As far as the Administrators are aware the director of Clusta Limited will not be a director or shareholder of the purchasing company.

4.8 Consideration for the sale was £22,000. The agreed sale, and the consideration paid for each item detailed in the sale agreement, was as follows:

	£
• Goodwill and Intellectual Property	5,000
• Other Assets	17,000

- 4.9 Having taken all matters into consideration, and due to the lack of any further interest in the business, my agents were able to unreservedly recommended acceptance of this offer. The consideration has been received in full.
- 4.10 In addition to the above, the purchaser has taken over responsibility for the Company employees, including outstanding wages for May 2013, which we believe to be in the region of £40,000.
- 4.11 In our professional opinion the points noted above detail the purpose of the Administration and how it has been achieved, however for the avoidance of doubt, the main points are:
- A better realisation of assets than would have been achieved in liquidation
 - Improved position as regards the general body of creditors
- 4.12 All monies received to date by the Joint Administrators, together with details of any expenses paid to date, are detailed on the attached receipts and payments account. As can be seen, in addition to the above sale consideration, book debts of £25,773.71, a rent deposit of £4,800 and a rates refund of £207.76 have been realised for the benefit of the administration. Our solicitor is currently negotiating the surrender of a lease relating to the company's former trading premises and we expect to receive a further sum on completion.

5. Receipts and Payments Account

5.1 Attached to this report (Appendix A) is a receipts and payments account for the periods:

- 11 June 2013 to 10 December 2013
- 11 December 2013 to 3 June 2014
- 11 June 2013 to 3 June 2014

6. Statement of Affairs

6.1 Following the appointment of the Administrators, formal notice requiring a statement of affairs was issued to the directors. The director has provided a formal statement of affairs for the Company and this was filed with the Registrar of Companies on 10 September 2013.

6.2 At this stage the Administrators have no further comments in respect of the statement of affairs save from:

- The estimated realisable values of the chattel assets are based on the sale price actually achieved.
- The amounts stated as being due to creditors have been taken from the books and records of the Company and from information supplied by the creditors themselves.
- The statement takes no account of the costs and expenses of the Administration.

7. Preferential Creditors

7.1 As a result of the comments noted above relating to the employees contracts of employment, there are no known preferential claims in this Administration.

8. Unsecured Creditors

8.1 The summary of the Company's financial position attached to my previous report lists the names and addresses of all known creditors and the amounts due to them.

8.2 It is anticipated that a minimal dividend will become payable to the unsecured creditors in this matter under the prescribed part, although at this stage I am not able to estimate the level or timing of any potential dividend.

8.3 Section 176A of the Insolvency Act 1986, provides that the Administrators shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts, and shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.

The prescribed part is calculated as follows:

- 50% of the first 10,000 of the net property of the company if the net assets are in excess of the £10,000.
- 20% of the net property thereafter, subject to a maximum of £600,000.

The prescribed part has been estimated to be approximately £7000.

- 8.4 The company's first secured creditor, Lloyds Bank Plc, has a fixed charge and qualifying floating charge dated 28 February 2008 and therefore the prescribed part will apply in this case. Monies will become due to this secured creditor from asset realisations subject to its charges.
- 8.5 In addition Birmingham city council has a qualifying floating charge dated 10 March 2012. Due to the relatively low level of realisations, no monies will become payable to this secured creditor.
- 8.6 It should be noted that any property belonging to the company which is subject to a valid fixed charge held by a secured creditors, is not included in the calculation of the prescribed part. In the case of this company the main assets subject to a fixed charge are goodwill and intellectual property. The sum of £13,000.00 has been repaid to Lloyds TSB under the terms of their fixed and floating charges. This equates to £5,000 under the banks fixed charge, and £8,000 under its floating charge a further payment will be made to the bank in due course.

9. Objective of the Administration

- 9.1 The Administrators of a Company must perform their functions with the objective of:
- a) rescuing the Company as a going concern paragraph (3)(1)(a) of Schedule B1 of the Insolvency Act 1986, or
 - b) achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in Administration) (paragraph 3(1)(b) of Schedule B1 of the Insolvency Act 1986), or
 - c) realising property in order to make a distribution to one or more secured or preferential creditors (paragraph 3(1)(c) of Schedule B1 of the Insolvency Act 1986)
- 9.2 As a result of the matters mentioned at section 4 of this report, it is the opinion of the administrators that the objective set out in paragraph 3(1) (a) of schedule B1 of the Insolvency Act 1986 has now been achieved.
- 9.3 As a result of the matters mentioned at section 8 of this report, it is the opinion of the Administrators that the objective set out in paragraph 3(1) (b) of Schedule B1 of the Insolvency Act 1986 has now been achieved.
- 9.4 As a result of the matters mentioned at section 4 of this report, it is the opinion of the administrators that the objective set out in paragraph 3(1) (c) of schedule B1 of the Insolvency Act 1986 has now been achieved.

10. The Proposals of the Administrators

- 10.1 As noted above, the proposals of the Administrators were approved at a meeting of creditors held on 20 August 2013. The proposals were as follows:
- a) That the Joint Administrators continue to manage the affairs of the Company in order to achieve the purpose of the Administration.
 - b) The Joint Administrators do all such things and generally exercise their powers as Administrators as they consider desirable or expedient in order to achieve the purpose of the Administration or to protect and preserve the assets of the Company or maximise realisation of those assets, or for any other purpose incidental to these proposals.
 - c) That the costs and expenses of the Administration are paid in full, including Administrators' remuneration in accordance with rule 2.67 of the Insolvency Rules 1986 (as amended).
 - d) Once the costs and expenses of the Administration have been settled, that any surplus funds be paid to any preferential creditors that may arise.
 - e) As soon as the Joint Administrators are satisfied that they have fully discharged their duties and that the purpose of the Administration has been achieved, the Administration will be brought to an end by a creditors' voluntary liquidation in accordance with paragraph 83 of schedule B1 of the Insolvency Act 1986 (as amended). It is proposed that Eric Walls and Wayne Harrison be appointed Joint Liquidators. In accordance with paragraph 83(7) of Schedule B1 of the Insolvency Act 1986 and Rule 2.117(3) of the Insolvency Rules 1986 creditors may nominate a different person as the proposed liquidator, provided that the nomination is made after the receipt of these proposals but before the proposals are approved.

- f) Should insufficient funds become available to make a distribution to the unsecured creditors, the administration will be brought to an end by moving to dissolution of the company in accordance with paragraph 84 of schedule B1 of the Insolvency Act 1986 (as amended).
- g) On the Joint Administrators ceasing to be administrators of the Company they will be discharged from liability in respect of any action of theirs as administrators, pursuant to paragraph 98 of Schedule B1 of the Insolvency Act 1986.

11. Ending of the Administration

- 11.1 As was detailed in the Administrators' proposals approved by creditors on 20 August 2013, as soon as the Administrators are satisfied that they have fully discharged their duties and that the purpose of the administration has been achieved, the administration will be brought to an end.
- 11.2 After Discussion with our solicitors, it was suggested that a better return to creditors will be achievable by placing the company into creditors voluntary liquidation in accordance with paragraph 83 of schedule B1 of the Insolvency Act 1986 (as amended) and, in accordance with the approved proposal, that Eric Walls and Wayne Harrison of KSA Group be appointed Joint Liquidators and would act jointly in all matters pertaining to the liquidation.
- 11.3 Accordingly, in our report dated 23 December 2013, the Administrators proposed to bring the Administration to a close, at the first available opportunity, by way of a creditors' voluntary liquidation in accordance with paragraph 83 of schedule B1 of the Insolvency Act 1986 (as amended) and, in accordance with the approved proposal, that Eric Walls and Wayne Harrison of KSA Group be appointed Joint Liquidators and would act jointly in all matters pertaining to the liquidation. No creditor has raised any objection to this proposed course of action.

12. Pre-appointment Fees

- 12.1 Creditors should be aware that KSA Group Limited received £5,828.56, including VAT, for work carried out in relation to the potential CVA. These funds were received prior to work commencing on the Administration.
- 12.2 Creditors should also note KSA Group Limited has received £5,000 plus VAT for work carried out in assisting the directors in placing the Company into Administration.
- 12.3 Legal fees of £2,500 plus VAT have been paid to Bond Dickinson for dealing with matters pertaining to the Administrators appointment. The firm was instructed due to its vast experience in insolvency matters. This fee is based on the time costs of that firm.
- 12.4 Agents/valuers fees of £2,500 plus VAT have been paid to Charterfields International Asset Consultants in respect of work carried out in valuing the Company's assets and advising the proposed Administrators on the sale referred to in this report.
- 12.5 Creditors should note that the payments referred to in points 12.2 to 12.4 were made from funds provided by the purchaser of the business. These funds were in addition to the consideration paid for the Company's assets referred to at section 4.8 of this report. These funds were provided on the basis that there was no guarantee of any nature that the business and assets would be sold to the purchaser.

13. Administrators' Remuneration

- 13.1 In accordance with Rule 2.106(2)(b) of the Insolvency Rules 1986 (as amended), it was proposed to the meeting of creditors held on 20 August 2013, that the remuneration of the Joint Administrators shall be fixed by reference to the time properly given by the insolvency practitioners and their staff in attending to matters arising in the Administration. It was agreed that the Administrators have authority to draw remuneration as and when they feel it is appropriate to do so. The sum of £13,000 plus Vat has been drawn to date.
- 13.2 In accordance with Statement of Insolvency Practice 9 as issued by the Association of Business Recovery Professionals an analysis of the time costs incurred to date in dealing with this Administration is attached at Appendix B. It is the policy of our firm that all members of staff dealing with the Administration of this case charge the time they have spent directly to the case.
- 13.3 Therefore, as can be seen from the attached receipts and payment account the sum of £13,000 plus Vat has been drawn to date. The level of remuneration drawn, and the legal fees referred to below, have been agreed with the floating charge holder referred to at section 8.4.

13.4 The charge out rates currently levied by this firm in respect of staff likely to deal with this matter can be summarised as follows:

	Hourly Charge Out Rate
	£
Partners	200 – 350
Managers/Senior Administrators	120 – 200
Administrators/Support Staff	50 – 120

13.5 All disbursements incurred by the Joint Administrators' firm are reimbursed at direct cost to the case, save in the case of postage, stationery and telephone for which a charge of £7.50 per creditor will be levied, and motor travel where a charge of 50p per mile is made. Again, a resolution proposing this was agreed at the meeting of creditors held on 20 August 2013. To date, the only disbursements paid relate to the Joint Administrators' specific performance bond of £120.00 and statutory advertising of £238.75. This is shown on the attached receipts and payments account.

13.6 Other disbursements shown have also been paid from case funds and can be summarised as follows:

- Legal fees and disbursements paid to Bond Dickinson of £11,300.00 based on time costs plus £88.00 disbursements for dealing with matters pertaining to the administration. This firm was instructed due to its experience in insolvency matters.

13.7 In accordance with rule 2.48A creditors, with at least 5% in value of the unsecured creditors, may request in writing further information about the Administrators' remuneration and expenses within 21 days from receipt of this report. In addition, creditors, with the support of at least 10% of creditors' value, may challenge the level of Administrators' remuneration and/or expenses by an application to the court under rule 2.109 within 8 weeks from the date of our this report.

13.8 Prior to the Administration, KSA Group Ltd agreed a fee with the Company for the work to be undertaken and advice to be given in respect of the Administration process. A fee of £7,500 plus VAT was agreed on 30 May 2013. The parties to the agreement were KSA Group Limited and the Company, acting by its directors. No pre-administration expenses are to be paid to KSA Group Limited other than this agreed fee. Prior to Administration £5,000 plus VAT was paid to KSA Group Limited by a third party in respect of these costs. The balance of £2,500 plus VAT has been drawn from the Administration as agreed by resolution at the meeting of creditors held on 20 August 2013.

13.9 The agreed fee was to cover the costs incurred by KSA Group Limited in advising on the Company's financial position and to assist with the filing of the notice of intention and the making of the appointment. This also included assisting with negotiations with creditors, particularly HMRC, and to ensuring that all matters pertaining to the appointment of the Administrators were correctly implemented. Again, this was agreed by resolution at the meeting of creditors held on 20 August 2013.

14. E C Regulation

14.1 The E C Regulation 1346/2000 applies as the Company's registered office being the centre of its main interests is situated in a Member State of the EC and Administration is within the definition of insolvency proceedings under Article 2 of the Regulation. For the reasons stated herein it is considered that EC Regulation 1346/2000 on insolvency proceedings will apply and that these proceedings will be main proceedings as defined in Article 3 of the EC Regulations.

15 Review of the Trading of the Company and the conduct of the directors

15.1 I am able to confirm that I have complied with my statutory obligations under the Company Directors Disqualification Act 1986. Any report submitted to the Department for Business Innovation and Skills must remain confidential.

16. Conclusion

- 16.1 As detailed in section 11 above and in accordance with paragraph 83 of schedule B1 of the Insolvency Act 1986 (as amended), the Joint Administrators propose to end the administration by way of company voluntary liquidation with E Walls and W Harrison of KSA Group Limited appointed Joint Liquidators.

E Walls
Joint Administrator

3 June 2014