



## Trust Deed

JZ Capital Partners Limited

as Company

and

The Law Debenture Trust Corporation p.l.c.

as Trustee

£38,861,140 6.00 per cent.  
convertible unsecured subordinated loan stock  
due 2021

30 July 2014

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**THIS TRUST DEED** is made on 30 July 2014

**BETWEEN:**

- (1) **JZ CAPITAL PARTNERS LIMITED**, a non-cellular company limited by shares under the laws of Guernsey under the Companies (Guernsey) Law 2008 (as amended) with registered number 48761, whose registered office is at PO Box 255, Trafalgar Court, Les Banques, St. Peter Port, Guernsey GY1 3QL, Channel Islands (the "**Company**"); and
- (2) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.**, a company incorporated under the laws of England and Wales with registered number 1675231, whose registered office is at Fifth Floor, 100 Wood Street, London EC2V 7EX, United Kingdom (the "**Trustee**", which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the trustee or trustees of these presents) as trustee for the CULS Holders (as defined below).

**WHEREAS:**

- (A) By resolutions of the Board of Directors of the Company passed on 10 July and 16 July 2014 and of a duly authorised committee of the Board of Directors of the Company passed on 18 July, 20 July and 25 July 2014, the Company has created and resolved to issue up to £38,861,140 in aggregate nominal amount of 6.00 per cent. convertible unsecured subordinated loan stock due 2021 (the "**Initial CULS**") to be constituted by this Trust Deed.
- (B) The Trustee has agreed to act as trustee of these presents for the benefit of the CULS Holders upon and subject to the terms and conditions of these presents.

**NOW THIS TRUST DEED WITNESSES AND IT IS AGREED AND DECLARED** as follows:

**1. DEFINITIONS AND CONSTRUCTION**

**1.1 Definitions**

In these presents unless there is anything in the subject or context inconsistent therewith, the following expressions shall have the following meanings:

**"Additional CULS"** means all further convertible unsecured subordinated loan stock of the Company issued pursuant to the provisions of Clause 2.4, or the nominal amount thereof for the time being outstanding or as the context may require a specific portion thereof;

**"Appointee"** means any attorney, manager, agent, delegate or other person appointed by the Trustee under these presents;

**"Articles"** means the articles of incorporation of the Company (as amended from time to time);

**"Auditors"** means the auditors for the time being of the Company or, in the event of their being unable or unwilling promptly to carry out any action requested of them pursuant to the provisions of these presents, such other firm of accountants as may be nominated or approved by the Trustee, provided that the Trustee shall have no obligation to appoint an Auditor unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction;

**"Business Day"** has the meaning ascribed to it in the Conditions;

**"Certificate"** means the certificate for CULS, in the form or substantially in the form set out in Schedule 1 (*Form of Certificate for the CULS*);

**"certificated"** or **"in certificated form"** means an Ordinary Share or unit of CULS (as appropriate), which is not in uncertificated form;

**"Certificated CULS"** has the meaning ascribed to it in the Conditions;

**"Conditions"** means the Conditions to be endorsed on the Certificates for the CULS in the form or substantially in the form set out in Schedule 1 (*Form of Certificate for the CULS*) as the same may from time to time be modified in accordance with these presents and any reference in these presents to a particular specified Condition or paragraph or sub-paragraph of such a Condition shall in relation to the CULS be construed accordingly;

**"Conversion Date"** has the meaning ascribed to it in the Conditions;

**"Conversion Period"** has the meaning ascribed to it in the Conditions;

**"Conversion Price"** has the meaning ascribed to it in the Conditions;

**"Conversion Right"** has the meaning ascribed to it in the Conditions;

**"CREST"** means the relevant system (as defined in the CREST Regulations) in respect of which Euroclear UK & Ireland Limited is the Operator (as defined in the CREST Regulations);

**"CREST Regulations"** means the Uncertificated Securities Regulations 2001 (S.I. 2001 No. 3755);

**"CULS"** means the Initial CULS and any Additional CULS;

**"CULS Holders"** means the several persons for the time being entered in the CULS Register as the holders of the CULS;

**"CULS Register"** means the register in respect of the CULS referred to in Clause 23 (*CULS Register*);

**"Current Market Price"** has the meaning ascribed to it in the Conditions;

**"Directors"** or **"Board"** means the directors of the Company or, where the context permits, the board of directors of the Company (or any duly authorised committee of such board);

**"equity share capital"** means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

**"Event of Default"** means any of the conditions, events or acts provided in Clause 8 (*Events of Default*) to be events upon the happening of which the CULS would, subject only to notice and (if applicable) certification by the Trustee as therein provided having been given, become immediately due and repayable;

**"Extraordinary Resolution"** has the meaning set out in paragraph 21 of Schedule 4 (*Provisions for meetings of CULS Holders*);

**"Further CULS"** has the meaning ascribed to it in the Conditions;

**"Independent Financial Adviser"** has the meaning ascribed to it in the Conditions;

**"Liability"** means any loss, damage, cost, charge, claim, demand, fee, expense, judgment, action, proceeding or other liability whatsoever (including, without limitation, in respect of taxes, duties, levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof and legal fees and expenses on a full indemnity basis;

**"Maturity Date"** has the meaning ascribed to it in the Conditions;

**"Net Asset Value of the Company"** has the meaning ascribed to it in the Conditions;

**"Newco Scheme"** has the meaning ascribed to it in the Conditions;

**"Ordinary Shares"** has the meaning ascribed to it in the Conditions;

**"outstanding"** means, in relation to the CULS, all the CULS issued and in respect of which there is for the time being an entry in the CULS Register other than CULS which have been:

- (a) redeemed and cancelled pursuant to these presents;
- (b) purchased and cancelled pursuant to these presents; and
- (c) converted pursuant to these presents (unless there is a failure to deliver the Ordinary Shares in connection therewith, in which case, notwithstanding such conversion, the relevant CULS shall be deemed to remain outstanding),

provided that for each of the following purposes, namely:

- (i) the right to attend and vote at any meeting of the CULS Holders or any of them;
- (ii) the determination of how much and which CULS is for the time being outstanding for the purposes of Clauses 8 (*Events of Default*) and 11.1 (*Proceedings, Action and Indemnification*) and paragraphs 1, 3, 4 and 7 of Schedule 4 (*Provisions for meetings of holders*);
- (iii) any discretion, power or authority (whether contained in these presents or vested by operation of law) which the Trustee is required, expressly or impliedly, to exercise in or by reference to the interests of the CULS Holders or any of them; and
- (iv) the determination by the Trustee whether any event, circumstance, matter or thing is, in its opinion, materially prejudicial to the interests of the CULS Holders or any of them,

the CULS (if any) which are for the time being held by, for the benefit of, or on behalf of, the Company or any Subsidiary shall (unless and until ceasing to be so held) be deemed not to remain outstanding and accordingly the holders of such CULS shall be deemed not to be CULS Holders;

**"Participating CULS"** means CULS which are for the time being participating securities pursuant to the CREST Regulations;

**"Potential Event of Default"** means any condition, event or act which, with the lapse of time and/or the issue, making or giving of any notice, certification, declaration, demand, determination or request and/or the taking of any similar action and/or the fulfilment of any similar condition, would constitute an Event of Default;

**"relevant date"** has the meaning ascribed to it in Clause 17(f);

**"Relevant Electronic System"** has the meaning ascribed to it in the Conditions;

**"repay", "redeem" and "pay"** shall each include both the others and cognate expressions shall be construed accordingly;

**"Shareholder Approval"** means the passing of an ordinary resolution to authorise the Directors in accordance with Article 4(8) of the Articles to allot equity securities of the Company, as if Article 4(8) of the Articles does not apply to any such allotment, provided that the power is limited to the allotment of equity securities up to an aggregate amount of 10 per cent. of the issued Ordinary Shares, so as to act as the pre-emption right disapplication authority to allow the issue of Additional CULS;

**"Shareholders"** has the meaning ascribed to it in the Conditions;

**"Securities"** has the meaning ascribed to it in the Conditions;

**"Specialist Fund Market"** means the Specialist Fund Market of the London Stock Exchange plc;

**"Subordination Agreement"** means the subordination agreement dated on or about the date hereof entered into between, *inter alios*, the Company and the Trustee, the form of which, as at the date hereof, is set out in (*Form of Subordination Agreement*) (as may be supplemented, amended or varied from time to time);

**"Subsidiary"** has the meaning ascribed to it in the Conditions;

**"these presents"** means this Trust Deed and the Schedules and any trust deed supplemental hereto and the Schedules (if any) thereto and the Conditions, all as from time to time modified in accordance with the provisions herein or therein contained;

**"Trustee Acts"** means the Trustee Act 1925 and the Trustee Act 2000 of England and Wales;

**"UK Transfer and Paying Agent"** means Equiniti Limited as transfer and paying agent of the Company (including any successor transfer and paying agent);

**"uncertificated" or "in uncertificated form"** means securities recorded in the register of member or CULS Holders (as appropriate) as being held in uncertificated form in CREST and title to which, by virtue of the CREST Regulations, may be transferred by means of CREST;

**"Uncertificated CULS"** has the meaning ascribed to it in the Conditions; and

**"Uncertificated Conversion Notice"** has the meaning ascribed to it in the Conditions.

## 1.2 Construction

- (a) All references in these presents to any statute or any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such modification or re-enactment.
- (b) All references in these presents to guarantees or to an obligation being guaranteed shall be deemed to include respectively references to indemnities or to an indemnity being given in respect thereof.
- (c) All references in these presents to any action, remedy or method of proceeding for the enforcement of the rights of creditors shall be deemed to include, in respect of

any jurisdiction other than England, references to such action, remedy or method of proceeding for the enforcement of the rights of creditors available or appropriate in such jurisdiction as shall most nearly approximate to such action, remedy or method of proceeding described or referred to in these presents.

- (d) All references in these presents to taking proceedings against the Company shall be deemed to include references to proving in the winding up of the Company.
- (e) All references in these presents to any CULS being in uncertificated form or in certificated form are references, respectively, to such CULS being an uncertificated unit of a security or a certificated unit of a security.
- (f) If at any time any provision of these presents is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of, such provision under the law of any other jurisdiction, or other provisions in these presents, shall in any way be affected or impaired thereby.
- (g) In this Trust Deed, references to Schedules, Clauses, sub-clauses, paragraphs and sub-paragraphs shall be construed as references to the Schedules to this Trust Deed and to the Clauses, sub-clauses, paragraphs and sub-paragraphs of this Trust Deed respectively.
- (h) In these presents, the tables of contents and Clause headings are included for ease of reference only and shall not affect the construction of these presents.
- (i) An Event of Default or a Potential Event of Default is "continuing" if it has not been remedied or waived.
- (j) All references to "**sterling**", "**Pounds Sterling**", "**GBP**" or "**£**" are to the lawful currency for the time being of the United Kingdom.
- (k) Words denoting the singular shall include the plural and *vice versa*.
- (l) Words denoting one gender only shall include the other gender.
- (m) Words denoting persons only shall include firms and corporations and *vice versa*.
- (n) As used in these presents, in relation to any CULS or Ordinary Share (as the case may be) which has a listing or is listed on the Specialist Fund Market, "**listing**" and "**listed**" shall be construed to mean that such CULS or, as the case may be, Ordinary Share has been admitted to trading on the Specialist Fund Market (or if at that time not so listed or dealt in, the principal stock exchange or securities market on which the CULS or Ordinary Shares (as the case may be) are then listed or dealt in). All references in these presents to listing and listed shall include references to quotation and quoted respectively.

### 1.3 **Conflict between these presents, the Conditions, the CULS and the Subordination Agreement**

- (a) The rights and obligations of the parties hereto are subject to the terms and provisions of the Subordination Agreement and, in the case of conflict between the terms of these presents, the Conditions, the CULS and the Subordination Agreement, the Subordination Agreement shall prevail.
- (b) CULS Holders agree to, are bound by and are deemed to have notice of, the provisions contained in the Trust Deed, the Conditions and the Subordination Agreement.

## 2. COVENANT TO REPAY AND TO PAY INTEREST ON THE CULS

- 2.1 The aggregate nominal amount of the CULS is limited to £38,861,140.00 and the CULS shall be known as 6.00 per cent. convertible unsecured subordinated loan stock due 2021. The whole of the CULS shall rank *pari passu* equally and rateably without discrimination or preference amongst themselves and as an unsecured subordinated obligation of the Company and subject to the terms of the Subordination Agreement.
- 2.2 The Company covenants with the Trustee that it will, in accordance with these presents and subject to the Subordination Agreement, on the Maturity Date provided for in the Conditions, or on such earlier date as the same or any part thereof is due to be repaid or shall become immediately due and repayable under these presents, pay or procure to be paid unconditionally to or to the order of the Trustee in Pounds Sterling in London for immediate value the nominal amount of the CULS repayable on that date and shall, in the meantime and until the whole of the CULS shall have been repaid, purchased or converted and, in each case (to the extent applicable), cancelled pursuant to these presents (both before and after any judgment or other order of a court of competent jurisdiction), pay or procure to be paid unconditionally to or to the order of the Trustee as aforesaid interest (which shall accrue from day to day) on the nominal amount of the CULS at the rate of 6.00 per cent. per annum such interest to be payable semi-annually in arrear on 31 March and 30 September in each year in respect of the half years ending on those dates respectively, provided that:
- (a) every payment to the CULS Holders in respect of principal or interest in respect of the CULS held by them respectively shall be in satisfaction *pro tanto* of the covenant by the Company in this Clause contained;
  - (b) in any case where payment of principal is not duly made on or before the due date, interest shall continue to accrue on the nominal amount of the CULS (both before and after any judgment or other order of a court of competent jurisdiction) at the rate aforesaid (or, if higher, the rate of interest on judgment debts for the time being provided by English law) up to and including the day on which transfer in respect of the whole of such principal, together with an amount equal to the interest which has accrued and is to accrue pursuant to this proviso up to and including that day, to a Pounds Sterling account (or other account to which Pounds Sterling may be credited) maintained by a CULS Holder with a bank in the City of London as previously notified to the UK Transfer and Paying Agent has been made or by cheques in respect of the whole of such principal, together with an amount equal to the interest which has accrued and is to accrue pursuant to this proviso up to and including that day, have been duly despatched to the persons entitled thereto; and
  - (c) the amount of interest payable in respect of any period which is either shorter or longer than a Regular Period (as defined below) shall be calculated at the rate of 6.00 per cent. per annum on the basis of the number of days in the relevant period from (and including) the first day of such period to (but excluding) the last day of such period divided by the product of (i) two and (ii) the number of days in the Regular Period in which the relevant period falls. "**Regular Period**" means each period from (and including) any Interest Payment Date to (but excluding) the next Interest Payment Date save that, for the purposes of this definition only, the first Interest Payment Date shall be deemed to be 30 September 2014 and the last Interest Payment Date shall be deemed to be 31 March 2021.
- 2.3 All payments in respect of the CULS by or on behalf of the Company shall be made without withholding or deduction for, or on account of, any and all present or future taxes, duties, assessments or governmental charges of whatever nature, unless the withholding or deduction of the taxes is required by law. In that event, the relevant payments will be



made subject to such withholding or deduction. The Company will not be required to pay additional or further amounts in respect of such withholding or deduction.

## 2.4 Further Issues

- (a) The Company shall be at liberty from time to time (but subject always to the provisions of these presents) without the consent of the CULS Holders to create and issue further convertible unsecured subordinated loan stock either (i) ranking *pari passu* in all respects (or in all respects save for the first payment of interest thereon), and so that the same shall be consolidated and form a single series, with the CULS or (ii) upon such terms as to ranking, subordination, interest, conversion, redemption and otherwise as the Company may, at the time of issue thereof, determine, provided that whenever it is proposed to create and issue any Additional CULS pursuant to sub-paragraph (i) of this Clause, the Company shall give to the Trustee not less than fourteen days' notice in writing of its intention so to do stating the nominal amount of Additional CULS proposed to be created and issued.
- (b) Any Additional CULS which are to be created and issued pursuant to the provisions of sub-paragraph (i) of Clause 2.4(a) so as to be consolidated and form a single series with the CULS shall be constituted by a trust deed supplemental to this Trust Deed and any other Additional CULS which are to be created and issued pursuant to the provisions of sub-paragraph (ii) of Clause 2.4(a) may (subject to the consent of the Trustee) be constituted by a trust deed supplemental to this Trust Deed. In any such case, the Company shall, prior to the issue of any Additional CULS to be so constituted, execute and deliver to the Trustee a trust deed supplemental to this Trust Deed (in relation to which all applicable stamp duties or other documentation fees, duties or taxes have been paid and, if applicable, duly stamped or denoted accordingly) and containing a covenant by the Company in the form *mutatis mutandis* of Clause 2.2 in relation to the principal and interest in respect of such Additional CULS and such other provisions (whether or not corresponding to any of the provisions contained in this Trust Deed) as the Trustee shall require.
- (c) A memorandum of every such supplemental trust deed shall be endorsed by the Trustee on this Trust Deed and by the Company on its duplicate of this Trust Deed.
- (d) Subject to the provisions of Clause 6 (*Further Restrictions on the Company*), any Additional CULS created and issued pursuant to the provisions of this Clause 2.4 may be issued to such persons at such times and on such terms and either at par or at a discount as the Company may think fit and the proceeds of the issue thereof shall be receivable by the Company and shall be applied as the Company in its absolute discretion shall determine.
- (e) Any Additional CULS not forming a single series with the CULS shall form a separate series and accordingly, unless for any purpose the Trustee in its absolute discretion shall otherwise determine, the provisions of Clauses 4 (*Fees, Duties and Taxes*) to 23 (*CULS Register*) (both inclusive) and 24.2 and Schedule 3 (*Provisions relating to registration and transfer*), Schedule 4 (*Provisions for meetings of Holders*) and Schedule 5 (*Provisions relating to CULS in uncertificated form*) shall apply *mutatis mutandis* separately and independently to the CULS of each series and, in such Clauses and Schedules, the expressions "CULS" and "CULS Holders" shall be construed accordingly.

- 2.5 (a) In the event of the winding up of the Company, all amounts in respect of the CULS paid to the Trustee by the liquidator of the Company in the winding up of the Company shall, subject to the provisions of the Subordination Agreement, be held by the Trustee upon trust:

- (i) *firstly*, for payment or satisfaction of all amounts then due and unpaid under Clauses 18 (*Remuneration and Indemnification of the Trustee*) and/or 19.10 to the Trustee and/or any Appointee; and
  - (ii) *secondly*, as to the balance (if any) in or towards payment *pari passu* and rateably of the amounts owing on or in respect of the CULS.
- (b) The trust mentioned in sub-paragraph (ii) of Clause 2.5(a) may be performed by the Trustee paying over to the liquidator for the time being in the winding-up of the Company the amounts received by the Trustee as aforesaid (less any amounts thereof applied in the implementation of the trust mentioned in sub-paragraph (i) of Clause 2.5(a)) on terms that such liquidator shall distribute the same accordingly and the receipt of such liquidator for the same shall be a good discharge to the Trustee for the performance by it of the trust mentioned in sub-paragraph (ii) of Clause 2.5(a).
- (c) The Trustee shall be entitled and it is hereby authorised to call for and to accept as conclusive evidence thereof a certificate from the liquidator for the time being of the Company as to the persons entitled thereto and their respective entitlements.

### 3. **CERTIFICATES**

- 3.1 The Certificates shall be issued in accordance with the provisions of the Articles for the time being of the Company relating to the issue of Certificates for securities of the Company. The Certificates shall be in the form or substantially in the form set out in Schedule 1 (*Form of Certificate for the CULS*) or in such other form as the Trustee may approve and shall have endorsed thereon the Conditions. The Company shall comply with the terms and provisions of the Certificates and the Conditions and shall give effect to the Conversion Rights set out therein if exercised and the CULS shall be held subject to and with the benefit of such Conversion Rights and the Conditions, all of which shall be deemed to be incorporated in this Trust Deed and shall be binding on the Company and the CULS Holders and all persons claiming through or under them respectively. The Certificates for any Additional CULS shall be as nearly as may be in like form and shall have endorsed thereon the terms and conditions of such Additional CULS. Every CULS Holder shall be entitled to receive one Certificate for the CULS of each series held by him but so that joint CULS Holders shall be entitled to one Certificate only in respect of the CULS of each series held jointly by them which Certificate shall be delivered to that one of the joint CULS Holders whose name stands first in the CULS Register in respect of the joint holding. Where a CULS Holder has transferred or converted or had redeemed a part only of his holding of CULS of any series, he/she shall be entitled to a Certificate for the balance of such holding without charge.
- 3.2 Pursuant to the CREST Regulations, the Company may make arrangements for the holding of title to units of CULS in uncertificated form and the transfer of title thereto otherwise than by a written instrument, as provided for in the provisions contained in Schedule 5 (*Provisions relating to CULS in uncertificated form*) (all of which provisions shall be deemed to be, and shall have effect as though, incorporated in this Trust Deed). Where any provisions of these presents (including, but not limited to, this Clause 3 (*Certificates*), Clauses 13 (*Notice of Payments by Trustee*) and 15 (*Endorsement of Certificates*) and Schedule 3 (*Provisions relating to registration and transfer*)) are, insofar as they relate to CULS in uncertificated form, inconsistent with the provisions of Schedule 5 (*Provisions relating to CULS in uncertificated form*), Schedule 5 (*Provisions relating to CULS in uncertificated form*) shall prevail.

### 4. **FEES, DUTIES AND TAXES**

The Company will pay any stamp, issue, registration, documentary and other fees, duties and taxes, including interest and penalties, payable on or in connection with (a) the

execution and delivery of these presents, (b) the constitution and original issue of the CULS and (c) any action taken by or on behalf of the Trustee to enforce these presents.

**5. COVENANT OF COMPLIANCE**

The Company covenants with the Trustee that it will comply with and perform and observe all the provisions of these presents which are expressed to be binding on it.

**6. FURTHER RESTRICTIONS ON THE COMPANY**

The Company covenants with the Trustee that, so long as any of the CULS remains outstanding, no additional loan capital of the Company or any Subsidiary shall be paid up in whole or in part by way of capitalisation of profits or reserves (including share premium account, capital redemption reserve and profit and loss account) or be issued by way of collateral security.

**7. COVENANTS RELATING TO CONVERSION RIGHTS**

7.1 While any Conversion Rights remain capable of exercise by any CULS Holder, save with the previous sanction of an Extraordinary Resolution or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall use its reasonable endeavours:

- (a) to procure that (i) the CULS and (ii) the Ordinary Shares which are fully paid at all times remain admitted to trading on the Specialist Fund Market; and
- (b) to ensure that during such time as the Ordinary Shares are admitted to trading on the Specialist Fund Market and/or listed or quoted on any other stock exchange, all the Ordinary Shares allotted on exercise of Conversion Rights will, on allotment, be admitted to the Official List of the Financial Conduct Authority and to trading on the Specialist Fund Market and/or be listed or quoted on such other stock exchange.

7.2 While any Conversion Rights remain capable of exercise by any CULS Holder, save with the previous sanction of an Extraordinary Resolution or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall:

- (a) subject only to their being admitted to trading on the Specialist Fund Market and/or any other stock exchange or securities market on which the Ordinary Shares may then be listed or quoted or dealt in, issue, allot and deliver Ordinary Shares on exercise of Conversion Rights in accordance with the Conditions and, at all times, keep available for issue free from pre-emptive or other similar rights such number of Ordinary Shares as would enable it to issue in full such number of Ordinary Shares as are required to be issued by it upon exercise of Conversion Rights and all other rights of subscription and exchange for and conversion into Ordinary Shares;
- (b) not issue or pay up any Securities, in either case by way of capitalisation of profits or reserves unless, in any such case, the same gives rise (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price other than:
  - (i) by the issue of fully paid Ordinary Shares or other Securities to the Shareholders and other holders of ordinary shares in the capital of the Company which by their terms entitle the holders thereof to receive Ordinary Shares or other Securities on a capitalisation of profits or reserves;

- (ii) by the issue of Ordinary Shares paid up in full out of profits or reserves (in accordance with applicable law) and issued wholly, ignoring fractional entitlements, in lieu of the whole or part of a cash dividend; or
  - (iii) by the issue of fully paid equity share capital (other than Ordinary Shares) to the holders of equity share capital of the same class and other holders of ordinary shares in the capital of the Company which by their terms entitle the holders thereof to receive equity ordinary share capital (other than Ordinary Shares) on a capitalisation of profits or reserves;
- (c) not in any way modify the rights attaching to the Ordinary Shares with respect to voting, dividends or liquidation nor issue any other class of equity ordinary share capital carrying any rights which are more favourable than such rights but so that nothing in this Clause shall prevent:
  - (i) any consolidation or subdivision of the Ordinary Shares;
  - (ii) any modification of such rights which is not, in the opinion of the Independent Financial Adviser, materially prejudicial to the interests of the CULS Holders;
  - (iii) any alteration to the Articles made in connection with the matters described in this Clause or which is supplemental or incidental to any of the foregoing (including any amendment made to enable or facilitate procedures relating to such matters and any amendment dealing with the rights and obligations of holders of Securities, including Ordinary Shares, dealt with under such procedures);
  - (iv) any issue of equity ordinary share capital where the issue of such equity share capital results or would, but for the provisions of these Conditions, otherwise result in an adjustment of the Conversion Price; or
  - (v) any issue of equity ordinary share capital or modification of rights attaching to the Ordinary Shares where prior thereto the Company shall have instructed the Independent Financial Adviser to determine what (if any) adjustments should be made to the Conversion Price as being fair and reasonable to take account thereof and the Independent Financial Adviser shall have determined either that no adjustment is required or that an adjustment to the Conversion Price is required and, if so, the new Conversion Price as a result thereof and the basis upon which such adjustment is to be made and, in any such case, the date on which the adjustment shall take effect (and so that the adjustment shall be made and shall take effect accordingly);
- (d) procure that no Securities (whether issued by the Company or any Subsidiary or procured by the Company or any Subsidiary to be issued or issued by any other person pursuant to any arrangement with the Company or any Subsidiary) issued without rights to convert into, or exchange or subscribe for, Ordinary Shares shall subsequently be granted such rights exercisable at a consideration per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share at the close of business on the last dealing day preceding the date of the announcement of the proposed inclusion of such rights unless the same gives rise (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price and that at no time shall there be in issue Ordinary Shares of differing nominal values, save where such Ordinary Shares have the same economic rights;

- (e) not make any issue, grant or distribution or take any other action if the effect thereof would be that, on the conversion of the CULS, Ordinary Shares would (but for the provisions of Condition 4.15) have to be issued at a discount or otherwise could not, under any applicable law then in effect, be legally issued as fully paid;
- (f) not reduce its issued share capital, share premium account or capital redemption reserve or any uncalled liability in respect thereof or any non-distributable reserves, except (i) pursuant to the terms of issue of the relevant share capital, (ii) by means of a purchase or redemption of share capital of the Company to the extent permitted by the Articles and/or applicable law, (iii) where the reduction does not involve any distribution of assets, (iv) where the reduction results in (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, result in) an adjustment to the Conversion Price or is otherwise taken into account for the purposes of determining whether such an adjustment should be made, (v) solely in relation to a change in the currency in which the nominal value of the Ordinary Shares is expressed, (vi) pursuant to a Newco Scheme or (vii) by way of, or involving, a transfer to reserves under applicable law;
- (g) if any offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) such Shareholders other than the offeror and/or any associated companies (as defined in section 529(1) of the Companies (Guernsey) Law 2008 (as amended) of the offeror) to acquire all or a majority of the issued ordinary share capital of the Company, or if a scheme is proposed with regard to such acquisition, give notice of such offer or scheme to the Trustee and the CULS Holders at the same time as any notice thereof is sent to the Shareholders (or as soon as practicable thereafter) that details concerning such offer or scheme may be obtained from the office of the Company and, where such an offer or scheme has been recommended by the Board or where such an offer has become or been declared unconditional in all respects, use its reasonable endeavours to procure that a like offer or scheme is extended to the holders of any Ordinary Shares issued during the period of the offer or scheme arising out of the exercise of the Conversion Rights and/or to the CULS Holders; and
- (h) send to all CULS Holders a copy of every document sent by the Company to Shareholders at the time the same is sent to Shareholders.

7.3 For the purposes of this Clause only, (a) references to the **"issue"** of Ordinary Shares shall include the transfer and/or delivery of Ordinary Shares by the Company or any Subsidiary, whether newly issued and allotted or previously existing or held by or on behalf of the Company or any Subsidiary, and (b) Ordinary Shares held by or on behalf of the Company or any Subsidiary, shall not be considered as or treated as **"in issue"**.

## 8. **EVENTS OF DEFAULT**

Upon the occurrence of any of the following events, the Trustee may at its discretion and, if requested in writing by CULS Holders holding at least one-quarter in nominal amount of the CULS then outstanding or directed by an Extraordinary Resolution, shall (subject in each case to being indemnified and/or secured and/or pre-funded by CULS Holders to its satisfaction), give notice to the Company that the CULS are (and the CULS shall thereupon become) immediately due and payable at their nominal amount together with accrued interest as provided in the Trust Deed:

- 8.1 if the Company makes default, except as provided by the Subordination Agreement, for a period of 14 days or more in the payment on the due date of any principal or interest in respect of the CULS;
- 8.2 if an order is made or an effective resolution passed for the winding up or dissolution of the Company (except for the purpose of a reconstruction or amalgamation the terms of

which have previously been approved in writing by the Trustee or by an Extraordinary Resolution);

8.3 if:

- (a) the Company is unable or admits inability to pay its debts as they fall due;
- (b) the value of the assets of the Company is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness of the Company; or
- (d) the Company ceases or threatens to cease to carry on all or substantially all of its business, which shall not include (A) a change in investment policy, objective, performance benchmark or manager, or (B) a reconstruction or amalgamation the terms of which have previously been approved in writing by the Trustee or by an Extraordinary Resolution;

8.4 if an encumbrancer takes possession or a receiver or administrator or administrative receiver or other similar official is appointed of the Company or of the whole or a substantial part of the assets or undertaking of the Company or a distress or execution is levied or enforced upon or sued out against the whole or a substantial part of the assets or property of the Company and is not discharged within 30 days of being levied, enforced or sued out;

8.5 if default is made by the Company in the performance or observance of any covenant or provision binding on it under or pursuant to these presents (other than (a) any covenant for the payment of principal or interest in respect of the CULS or (b) any breach referred to in Clause 8.6) or if any event occurs or any action is taken or fails to be taken which is (or but for the provisions of any applicable law would be) a breach of any of the covenants contained in these presents and (except where, in the opinion of the Trustee, the same is not capable of remedy when no such continuation or notice as is herein provided will be required) the same continues for more than 30 days after written notice requiring the same to be remedied shall have been given to the Company by the Trustee; or

8.6 if the Company, without the prior written consent of the Trustee or by an Extraordinary Resolution or as otherwise permitted by the Conditions, alters the rights attached to all or any of its Ordinary Shares in issue from time to time or attaches any special rights, privileges or restrictions thereto, or creates or issues any new class of equity share capital other than the Ordinary Shares ranking *pari passu* in all respects (or in all respects except as regards any restriction on their rights to receive dividends or other distributions or on their rights on a return of capital or on their rights to participate in any issue by way of capitalisation of profits or reserves or on their voting rights, which, in all such cases, make such rights materially less favourable than those attached to the Ordinary Shares) with the Ordinary Shares and, in each case (except where, in the opinion of the Trustee, such alteration, attachment, creation or issue is not capable of cancellation when no such continuation or notice as is herein provided shall be required), such alteration, attachment, creation or issue shall continue for more than 30 days after written notice requiring such alteration, attachment, creation or issue to be cancelled shall have been given to the Company by the Trustee, provided that nothing in this Clause shall restrict the right of the Company to consolidate or subdivide Ordinary Shares or convert Ordinary Shares into stock or *vice versa* and no such consolidation, subdivision or conversion shall give rise to any rights under this Clause.

Provided that no such event set out in Clause 8.3 to 8.6 shall constitute an event of default on the occurrence of which the CULS may become immediately due and payable unless the Trustee shall have certified in writing that, in its opinion (having taken such

advice as it may require), such event is materially prejudicial to the interests of the CULS Holders.

9. **ENFORCEMENT**

9.1 Subject to the Subordination Agreement, the Trustee may at any time, at its discretion and without notice, take such proceedings and/or other action as it may think fit against or in relation to the Company to enforce its obligations under these presents.

9.2 Proof that as regards any specified CULS Holder the Company has made default in paying any amount due in respect of his/her CULS shall (unless the contrary be proved) be sufficient evidence that the same default has been made as regards all other CULS Holders in respect of which the relevant amount is due and payable.

10. **EFFECT OF RESTRICTED PERSONS ON THE CULS REGISTER AND THE TRANSFER AND TRANSMISSION OF CULS**

10.1 For the purposes of this Clause:

**"Eligible Transferee"** means a person to whom a Required Disposal is permitted to be made;

**"Required Disposal"** means a transfer or other disposal or disposals of all Restricted CULS which transfer or other disposal is made to another person who, in the sole and conclusive determination of the Directors, is not a Restricted Person and which would not cause any other person to become a Restricted Person;

**"Required Redemption"** means a redemption of all Restricted CULS in accordance with this Clause;

**"Restricted CULS"** means any CULS in which a Restricted Person has a legal or beneficial interest;

**"Restricted Person"** means any person who is, or who is deemed to be, or who appears to the Directors to be (a) a U.S. Person or (b) holding CULS for the account or benefit of a U.S. Person; and

**"U.S. Person"** has the meaning given to it in Regulation S under the U.S. Securities Act of 1933, as amended.

10.2 Without prejudice to the provisions of Clause 10.11, the Directors may, in their sole discretion and without assigning any reason therefor, instruct the UK Transfer and Paying Agent to decline to register any person as a holder of CULS unless there has been furnished to them a declaration (in such form as the Directors may from time to time prescribe), together with such evidence as the Directors may require of the authority under which any such declaration may have been signed, stating whether or not such person is a Restricted Person and whether or not, upon registration of such CULS in the relevant name or names, any Restricted Person has or will have a legal or beneficial interest in such CULS. The Directors shall, in any case, where it may consider appropriate require such person to provide such evidence or give such information as to the matters referred to in the declaration as it thinks fit, and shall decline to register any person as a CULS Holder if such further evidence or information is not provided or given.

10.3 The Directors may, at any time, give notice in writing to a CULS Holder (or to any or each one of joint holders) requiring him, within such reasonable period as may be specified in the notice, to show to their satisfaction whether or not such CULS Holder is a Restricted Person. If, within 14 days after the giving of such notice (or such longer period as the Directors may consider reasonable or shorter period as may be required to comply with

law or avoid a pecuniary or tax disadvantage to the Company), they are not so satisfied, the Directors may declare that such CULS Holder is a Restricted Person.

- 10.4 If it shall come to the notice of the Directors that any CULS are held directly or beneficially by any Restricted Person or the Directors have declared that a Restricted Person is legally or beneficially interested in any CULS, then the Directors may serve written notice (a "**Transfer Notice**" in the case of paragraph (a) below or a "**Redemption Notice**" in the case of paragraph (b) below) on the registered holder of any Restricted CULS and on any other person who appears to them to be a Restricted Person (or any one of such persons where CULS are registered in joint names) in relation to those CULS setting out the restrictions contained in Clause 10.6 and either:
- (a) calling for a Required Disposal to be made within 14 days of the service of the Transfer Notice on the registered CULS Holder (or such longer period as the Directors consider reasonable or shorter period as may be required to comply with law or avoid a pecuniary or tax disadvantage to the Company); or
  - (b) notifying the registered CULS Holder that the Company shall redeem the CULS on a Business Day in London and Guernsey falling not earlier than 30 days following the date of the Redemption Notice at their nominal amount, together with accrued but unpaid interest to such date.

The Directors may extend the period in which a Transfer Notice is required to be complied with and may withdraw any Transfer Notice or Redemption Notice (whether before or after the expiration of the period referred to) if it appears to them that there is no Restricted Person in relation to the CULS concerned. The registered holder of the Restricted CULS and any other person on whom a Transfer Notice or Redemption Notice is served may make representations to the Directors in such manner and detail as the Directors shall deem appropriate to the effect that no Restricted Person has a legal or beneficial interest in such CULS. Upon the giving of a Transfer Notice or a Redemption Notice and save for the purpose of a Required Disposal under this Clause or the following Clause 10.5, no transfer of any Restricted CULS (or any interest therein) may be made until either the Transfer Notice or Redemption Notice (as the case may be) has been withdrawn or a Required Disposal or Required Redemption has been made to the satisfaction of the Directors and (if applicable) registered.

- 10.5 If a notice served under paragraph (a) of Clause 10.4 has not been complied with in all respects to the satisfaction of the Directors and has not been withdrawn, the Directors may, in their sole discretion, so far as they are able, arrange for a Required Disposal to be made at the best price reasonably obtainable at the relevant time and shall give written notice within such reasonable time as the Directors shall determine of such disposal to the former registered holder. The manner, timing and terms under which any such Required Disposal is made or sought to be made by the Directors (including but not limited to the price or prices at which the same is made and the extent to which assurance is obtained that no transferee is or would become a Restricted Person) shall be such as the Directors determine, based upon advice from bankers, brokers or other appropriate persons consulted by them for the purpose, to be reasonably practicable having regard to all the circumstances (including but not limited to the number of CULS to be disposed of and the requirement for the disposal be made without delay); and the Directors shall not be liable for any of the consequences of reliance on such advice.
- 10.6 On and after the date of a Transfer Notice or Redemption Notice, and until registration of the Required Disposal or the Required Redemption has taken place or withdrawal of the relevant notice, any rights and privileges attaching to the Restricted CULS will be suspended and not capable of exercise other than as specifically set forth in this Clause. A registered holder of a Restricted CULS on whom a Transfer Notice or Redemption Notice has been served under Clause 10.4 shall not in respect of that CULS be entitled, until such



time as the Transfer Notice either has been complied with to the satisfaction of the Directors or the Required Redemption has taken effect or the relevant notice withdrawn, to attend or vote in person or, except as follows, by proxy, at any meeting of that series of CULS and any such registered holder shall be deemed to have appointed the Chairman of any such meeting as his proxy in respect of the rights to attend and to demand and vote on a poll attached to the Restricted CULS. The manner in which the Chairman exercises or refrains from exercising any such right shall be entirely at his discretion. The Chairman of any such meeting as aforesaid shall be informed by the Directors of any CULS becoming or being deemed to be a Restricted CULS.

- 10.7 For the purpose of a Required Disposal under Clause 10.5, the Directors may appoint any person to execute as transferor an instrument of transfer in favour of the transferee and may enter the name of the transferee in respect of the transferred CULS in the CULS Register, notwithstanding the absence of any CULS Certificate, and such instrument of transfer shall be as effective as if it had been executed by the registered holder and the title of the transferee shall not be affected by any irregularity or invalidity in the proceedings relating thereto. The Company may instruct a member of the Relevant Electronic System to sell the CULS at the best price reasonably obtainable at the time of sale to any one or more Eligible Transferees. To give effect to a sale, the Directors may authorise in writing the registrar or other agent to transfer the relevant CULS on behalf of the holder thereof (or any person who is automatically entitled to the CULS by transmission or by law) or to cause the transfer of the relevant CULS to the Eligible Transferee and, in relation to Uncertificated CULS, may require the Relevant Electronic System to convert any Uncertificated CULS into Certificated CULS and an instrument of transfer executed by that person will be as effective as if it had been executed by the holder of, or the person entitled by transmission to, the relevant CULS. An Eligible Transferee is not bound to see the application of the purchase money and the title of the Eligible Transferee is not affected by any irregularity in or invalidity of the proceedings connected to the sale. The net proceeds of a Required Disposal shall be received by the Company (whose receipt shall be a good discharge for the purchase money) and shall be converted into Pounds Sterling (if necessary) and shall be held on trust for and paid (together with interest at such rate as the Directors deem appropriate) to the former registered holder (or, in the case of joint holders, the first named joint holder thereof in the CULS Register) upon surrender by him or on his behalf of any Certificate in respect of the CULS sold and formerly held by him. When a Required Disposal is made as aforesaid, the Directors shall notify the former registered holder of the CULS disposed of and inform him that such net proceeds of the Required Disposal will be paid to him upon surrender by him or on his behalf of any certificate in respect of the CULS concerned. Pending payment of such net proceeds to such former registered holder, those net proceeds may be employed in the business of the Company or otherwise as the Directors think fit. The Company may register or cause the registration of the Eligible Transferee as holder of the relevant CULS and thereupon the Eligible Transferee shall become absolutely entitled thereto.
- 10.8 A person who becomes aware that his holding, directly or beneficially, of CULS will or is likely to be a holding of Restricted CULS, shall forthwith, unless he has already received a Transfer Notice or Redemption Notice pursuant to the provisions referred to in Clause 10.4 above, either transfer the relevant CULS to one or more Eligible Transferees or give a request in writing to the Directors for the issue of a Transfer Notice or Redemption Notice (at the Company's sole election) in accordance with the provisions referred to in Clause 10.4 above. Every such request shall, in the case of Certificated CULS, be accompanied by the Certificate(s) for the CULS to which it relates.
- 10.9 Subject to the provisions of this Clause 10 and to the delivery of all required certifications, the Directors shall, unless any Director has any reason to believe otherwise, be entitled to assume without enquiry that no CULS are Restricted CULS and that no person is a Restricted Person.

- 10.10 The Directors shall not be obliged to serve any notice required under this Clause 10 upon any person if they know neither his identity nor his address. The absence of service in such circumstances as aforesaid and any accidental error in or failure to give any notice to any person upon whom notice is required to be served under this Clause 10 shall not prevent the implementation of or invalidate any procedure under this Clause 10. Subject as aforesaid, the provisions of these presents dealing with the service of notices shall apply, *mutatis mutandis*, to this Clause 10. Notwithstanding any other provision of these presents, any notice required by this Clause 10 shall be deemed validly served if it is sent through the post pre-paid addressed to that person at the address (or if more than one at one of the addresses (if any)) at which the Directors believe him to be resident or carrying on business. Service shall in such a case be deemed to be effected at the expiration of 24 hours (or, where second class mail is employed, 72 hours) after the time when the cover containing the same is posted and in proving such service it shall be sufficient to prove that such cover was properly addressed, stamped and posted.
- 10.11 The Directors shall, so long as they act reasonably and in good faith, be under no liability to the Company or to any other person for failing to treat any CULS as a Restricted CULS or any person as a Restricted Person in accordance with the provisions of this Clause 10 and neither shall the Directors be liable to the Company or any other person if, having acted reasonably and in good faith, they determine erroneously that any CULS is a Restricted CULS, or any person is a Restricted Person, or on the basis of such determination or any other determination or resolution of the Directors, they perform or exercise (or purport to perform or exercise) their duties, powers, rights or discretions under this Clause 10 in relation to such CULS.
- 10.12 In exercising their powers under this Clause 10 in respect of Restricted CULS, the Directors shall, so far as practicable, have regard to the order of the date (insofar as the Directors are able to determine) in which such CULS became Restricted CULS and/or the relative number of Restricted CULS held or beneficially owned by each Restricted Person save:
- (a) in circumstances where such would in the opinion of the Directors be inequitable; or
  - (b) in the case of Restricted CULS which became Restricted CULS at or around the same time;
- when the Directors shall be entitled to apply such other criterion or criteria as they consider appropriate.
- 10.13 The Directors will not be required to give any reasons for any decision, determination or declaration taken or made in accordance with this Clause 10. The exercise of the powers conferred by this Clause 10 may not be questioned or invalidated in any case on the ground that there was insufficient evidence of direct or beneficial ownership or holding of CULS by any person or that the true direct or beneficial owner or holder of any CULS was otherwise than as appeared to the Directors at the relevant date provided that the said powers have been exercised in good faith.

## **11. PROCEEDINGS, ACTION AND INDEMNIFICATION**

- 11.1 The Trustee shall not be bound to take any proceedings mentioned in Clause 9 (*Enforcement*) or any other action in relation to these presents unless respectively directed or requested to do so (a) by an Extraordinary Resolution or (b) in writing by the CULS Holders of at least one-quarter in nominal amount of the CULS then outstanding and, in either case, then only if it shall be indemnified and/or secured and/or pre-funded to its satisfaction against all Liabilities to which it may thereby render itself liable or which it may incur by so doing.

- 11.2 Only the Trustee may enforce the provisions of these presents. No CULS Holder shall be entitled to proceed directly against the Company to enforce the performance of any of the provisions of these presents, unless the Trustee having become bound as aforesaid to take proceedings fails to do so within a reasonable period and such failure is continuing.

## 12. **APPLICATION OF MONEYS**

Subject to the Subordination Agreement, all moneys received by the Trustee under these presents shall, unless and to the extent attributable in the opinion of the Trustee to a particular series of the CULS of which it is the trustee, be apportioned *pari passu* and rateably between each series of the CULS of which it is the trustee, and all moneys received by the Trustee under these presents, to the extent attributable in the opinion of the Trustee to a particular series of the CULS of which it is the trustee or which are apportioned to such series as aforesaid, shall (notwithstanding any appropriation by the Company) be held by the Trustee upon trust to apply them (subject to Clause 14 (*Investment by the Trustee*)):

- (a) *firstly*, in payment or satisfaction of all amounts then due and unpaid under Clauses 18 (*Remuneration and Indemnification of the Trustee*) and/or 19.10 to the Trustee and/or any Appointee;
- (b) *secondly*, in or towards payment *pari passu* and rateably of all interest then due and unpaid in respect of the CULS of that series;
- (c) *thirdly*, in or towards payment *pari passu* and rateably of all principal then due and unpaid in respect of the CULS of that series;
- (d) *fourthly*, in or towards payment *pari passu* and rateably of all interest then due and unpaid in respect of the CULS of each other series of which it is the trustee;
- (e) *fifthly*, in or towards payment *pari passu* and rateably of all principal then due and unpaid in respect of the CULS of each other series of which it is the trustee; and
- (f) *sixthly*, in payment of the balance (if any) to the Company (without prejudice to, or liability in respect of, any question as to how such payment to the Company shall be dealt with as between the Company and any other person),

provided that, if the Trustee so determines payments may be made on account of principal in respect of the CULS of a particular series before the interest or the whole of the interest on the CULS of that series has been paid but such alteration in order of payment shall not prejudice the rights of the relevant CULS Holders to receive the full amount to which they would have been entitled if the ordinary order of payment had been observed or any less amount which the sum ultimately available may be sufficient to pay.

## 13. **NOTICE OF PAYMENTS BY TRUSTEE**

The Trustee shall give not less than 14 days' notice to the relevant CULS Holders of the day fixed for any payment to them under Clause 12 (*Application of Moneys*). Payment of the principal or interest in respect of the CULS by the Trustee under the provisions of Clause 12 (*Application of Moneys*) in respect of the CULS may be made to CULS Holders in the manner provided by Schedule 3 (*Provisions relating to registration and transfer*) for payment of principal and interest in respect of the CULS or, if applicable, paragraph 3(i) of Schedule 5 (*Provisions relating to CULS in uncertificated form*) and any payment so made shall be a good discharge to the Trustee. After receipt of moneys by the Trustee as set out in Clause 12 (*Application of Moneys*), the relevant CULS Holders shall (subject to the proviso to Clause 12 (*Application of Moneys*)) be entitled to interest on the balance only (if any) of the principal owing in respect of the CULS held by them after deducting the

amount payable in respect thereof on the day so fixed by the Trustee pursuant to this Clause.

**14. INVESTMENT AND ACCUMULATION BY THE TRUSTEE**

- 14.1 If, at any time, the amount of money available for payment in respect of the CULS under Clause 12 (*Application of moneys*) is less than 10 per cent. of the principal amount outstanding of the CULS, the Trustee may, at its discretion, invest such moneys and retain such investments and accumulate the resulting income until the investments and accumulation, together with any other funds under its control and available for such payment, amount to at least 10 per cent. of the principal amount outstanding of the CULS and the foregoing shall be applied in accordance with Clause 12 (*Application of moneys*).
- 14.2 The Trustee may, at its discretion and pending payment, invest moneys at any time available for the payment of principal and interest on the CULS in some or one of the investments hereinafter authorised for such periods as it may consider expedient with power from time to time at the like discretion to vary such investments. All interest and other income deriving from such investment shall be applied first in payment or satisfaction of all amounts then due and unpaid under Clauses 18 (*Remuneration and Indemnification of the Trustee*) and/or 19.10 to the Trustee and/or any Appointee and otherwise held for the benefit of and paid to the CULS Holders in accordance with Clause 12 (*Application of moneys*).
- 14.3 Any moneys which under the trusts of these presents ought to or may be invested by the Trustee may be invested in the name or under the control of the Trustee in any investments or other assets in any part of the world whether or not they produce income or by placing the same on deposit in the name or under the control of the Trustee at such bank or other financial institution and in such currency as the Trustee may think fit. The Trustee may, at any time, vary any such investments for or into other investments or convert any moneys so deposited into any other currency and shall not be responsible for any loss resulting from any such investments or deposits, whether due to depreciation in value, fluctuations in exchange rates or otherwise.

**15. ENDORSEMENT OF CERTIFICATES**

Upon any payment under Clause 12 (*Application of Moneys*), the Certificate in respect of which such payment is made shall be produced by the relevant CULS Holder to the Trustee and, upon presentation to the Trustee, the Trustee shall endorse thereon or shall cause to be endorsed thereon a memorandum of the amount and the date of payment but the Trustee may in any particular case or generally dispense with such production and endorsement upon such indemnity being given as it shall think sufficient.

**16. PAYMENT OF OF THE CULS**

In the event of a CULS Holder which the Company is ready to repay or satisfy failing to claim the amount due to him within thirty days after the due date for repayment of such CULS, the Company shall be at liberty to, or if so requested by the Trustee shall, deposit with a bank in the name of the Trustee an amount equal to the amount due to such CULS Holder and upon such deposit being made the CULS which the Company is ready to repay or satisfy shall be deemed to have been repaid or satisfied in accordance with the provisions hereof. After provision for repayment or satisfaction of the CULS is made by such deposit of the funds required for the purpose, neither the Company nor the Trustee shall be responsible for the safe custody of such moneys or for interest thereon except such interest (if any) as the said moneys may earn whilst on deposit less any expenses incurred, and charges made, by the Trustee or the relevant account bank in connection therewith. The Trustee shall not have any duty to consider varying the manner in which such money is held.

## 17. COVENANTS BY THE COMPANY

The Company covenants with the Trustee that so long as any of the CULS remains outstanding, save with the previous sanction of an Extraordinary Resolution or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall:

- (a) give or procure to be given to the Trustee such opinions, certificates, reports, information and evidence as it shall require and in such form as it shall require (including without limitation the procurement by the Company of all such certificates called for by the Trustee pursuant to Clause 19.3) for the purpose of the discharge or exercise of the duties, trusts, powers, authorities and discretions vested in it under these presents or by operation of law;
- (b) cause to be prepared and certified by the Auditors in respect of each financial accounting period accounts in such form as will comply with all relevant legal and accounting requirements and all requirements for the time being of the Specialist Fund Market;
- (c) at all times, keep and procure the Subsidiaries to keep proper books of account and, at any time after an Event of Default or Potential Event of Default has occurred and is continuing, allow and procure the Subsidiaries to allow the Trustee and any person appointed by the Trustee to whom the Company or the relevant Subsidiary (as the case may be) shall have no reasonable objection free access to such books of account at all reasonable times during normal business hours;
- (d) send to the Trustee (in addition to any copies to which it may be entitled as a holder of any securities of the Company) (i) two copies in English of every unaudited balance sheet, unaudited profit and loss account, report, circular and notice of general meeting and every other document issued or sent to the Shareholders together with any of the foregoing, and every document issued or sent to holders of securities other than the Shareholders (including the CULS Holders), as soon as practicable and in any event within 7 days after the issue or publication thereof and (ii) two copies in English of the audited accounts of the Company in respect of each financial year commencing with the financial year ending 28 February 2015, as soon as reasonably practicable and in any event not later than 180 days after the end of the relevant financial year;
- (e) forthwith upon becoming aware thereof, give notice in writing to the Trustee of the occurrence of any Event of Default or any Potential Event of Default;
- (f) give to the Trustee (i) within ten days after a demand by the Trustee therefor and (ii) (without the necessity for any such demand) promptly after the publication of its audited accounts in respect of each financial year commencing with the financial year ending 28 February 2015 and, in any event, not later than 180 days after the end of each such financial year, a certificate in or substantially in the form set out in Schedule 6 (*Form of Director's Certificate*) signed by two directors of the Company to the effect that, as at a date not more than seven days before delivering such certificate (the "**relevant date**"), there did not exist and had not existed since the relevant date of the previous certificate (or in the case of the first such certificate the date hereof) any Event of Default or any Potential Event of Default (or if such exists or existed specifying the same) and that, during the period from and including the relevant date of the last such certificate (or in the case of the first such certificate the date hereof) to and including the relevant date of such certificate, the Company has complied with all its obligations contained in these presents or (if such is not the case) specifying the respects in which it has not complied;

- (g) at all times, execute and do all such further documents, acts and things as may be necessary at any time or times in the opinion of the Trustee to give effect to these presents;
- (h) obtain the prior written approval of the Trustee to, and promptly give to the Trustee two copies of, the form of every notice given to the CULS Holders (such approval, unless so expressed, not to constitute approval for the purposes of Section 21 of the Financial Services and Markets Act 2000 of the United Kingdom of a communication within the meaning of such Section);
- (i) in order to enable the Trustee to ascertain the nominal amount of CULS of each series for the time being outstanding, deliver to the Trustee forthwith, upon being so requested in writing by the Trustee, a certificate in writing signed by two Directors of the Company setting out the aggregate nominal amount of CULS of each series which:
  - (i) up to and including the date of such certificate has been redeemed, purchased or converted and cancelled; and
  - (ii) is at the date of such certificate held by, for the benefit of, or on behalf of, the Company or any Subsidiary;
- (j) so far as permitted by applicable law, do such further things as may be necessary in the reasonable opinion of the Trustee to give effect to these presents;
- (k) forthwith upon request by the Trustee give notice to CULS Holders of any unconditional payment made to the Trustee of any sums due in respect of the CULS made after the due date for payment.

## **18. REMUNERATION AND INDEMNIFICATION OF TRUSTEE**

- 18.1 The Company shall pay to the Trustee remuneration for its services as trustee of these presents such sums on such dates in each case as they may from time to time agree. Such remuneration shall accrue from day to day and be payable (in priority to payments to the CULS Holders) up to and including the date on which the trusts of these presents shall be finally wound up.
- 18.2 In the event of the occurrence of an Event of Default or a Potential Event of Default, the Company shall pay to the Trustee additional remuneration, which shall be calculated by reference to its hourly rates in force from time to time. In the event of the Trustee considering it expedient or necessary or being requested by the Company to undertake duties which the Trustee and the Company agree to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee under these presents, the Company shall pay to the Trustee such additional remuneration, which may be calculated by reference to its hourly rates in force from time to time, as shall be agreed between them.
- 18.3 The Company shall in addition pay to the Trustee an amount equal to the amount of any value added tax or similar tax chargeable in respect of its remuneration under these presents.
- 18.4 In the event of the Trustee and the Company failing to agree:
  - (a) (in a case to which Clause 18.1 applies) upon the amount of the remuneration; or
  - (b) (in a case to which Clause 18.2 applies) upon whether such duties shall be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee under these presents, or upon such additional remuneration,

such matters shall be determined by a person (acting as an expert and not as an arbitrator) selected by the Trustee and approved by the Company or, failing such approval, nominated (on the application of the Trustee) by the President for the time being of The Law Society of England and Wales (the expenses involved in such nomination and the fees of such person being payable by the Company) and the determination of any such person shall be final and binding upon the Trustee and the Company.

- 18.5 The Company shall also pay or discharge all properly incurred Liabilities incurred by the Trustee in relation to the preparation and execution of, the exercise of its powers and the performance of its duties under, and in any other manner in relation to, these presents, including (but not limited to) travelling expenses and any stamp, issue, registration, documentary and other taxes or duties paid or payable by the Trustee in connection with any action taken or contemplated by or on behalf of the Trustee for enforcing these presents, except for those Liabilities which result from the fraud, negligence or wilful default of the Trustee.
- 18.6 All amounts payable pursuant to Clause 18.5 and/or Clause 19.10 shall be payable by the Company on the date specified in a demand by the Trustee and, in the case of payments actually made by the Trustee prior to such demand, shall (if not paid within five Business Days after such demand and the Trustee so requires) carry interest at the rate equal to the Trustee's cost of funds from the date specified in such demand and, in all other cases, shall (if not paid on the date specified in such demand or, if later, within five Business Days after such demand and, in either case, the Trustee so requires) carry interest at such rate from the date specified in such demand (or, if later, within five Business Days after such demand). All remuneration payable to the Trustee shall carry interest at such rate from the due date therefor.
- 18.7 Unless otherwise specifically stated in any discharge of these presents, the provisions of this Clause and Clause 19.10 shall continue in full force and effect notwithstanding such discharge.
- 18.8 The Trustee shall be entitled, in its absolute discretion, to determine in respect of which series of the CULS any Liabilities incurred under these presents have been incurred or to allocate any such Liabilities between the CULS of any one or more series.

**19. SUPPLEMENT TO TRUSTEE ACTS**

The Trustee shall have all the powers conferred upon trustees by the Trustee Acts and, by way of supplement thereto, it is expressly declared as follows:

- 19.1 The Trustee may in relation to these presents act and rely without enquiry on certificates, reports, advice, opinions, confirmations and information provided by the Auditors, the Independent Financial Adviser or any lawyer, valuer, accountant, surveyor, banker, broker, auctioneer or other expert, whether obtained by the Company, the Trustee or otherwise, whether or not addressed to it and whether liability in relation thereto is limited (by its terms or by any engagement letter or other document relating thereto entered into by the Trustee or any other person or in any other manner) by reference to a monetary cap, methodology or otherwise, shall not be responsible for any Liability occasioned by its so acting, and is entitled to treat the same as conclusive and binding on the Company, the Trustee and the CULS Holders.
- 19.2 Any such advice, opinion or information may be sent or obtained by letter or facsimile transmission and the Trustee shall not be liable for acting on any advice, opinion or information purporting to be conveyed by any such letter or facsimile transmission although the same shall contain some error or shall not be authentic.
- 19.3 The Trustee may call for and shall be at liberty to accept as sufficient evidence of any fact or matter or the expediency of any transaction or thing a certificate signed by two

directors of the Company and the Trustee shall not be bound in any such case to call for further evidence or be responsible for any Liability that may be occasioned by it or any other person acting on such certificate.

- 19.4 The Trustee shall be at liberty to hold or to place these presents and any other documents relating thereto in any part of the world with any banker or banking company or company whose business includes undertaking the safe custody of documents or lawyer or firm of lawyers considered by the Trustee to be of good repute and the Trustee shall not be responsible for or required to insure against any Liability incurred in connection with any such deposit and may pay all sums required to be paid on account of or in respect of any such deposit.
- 19.5 The Trustee shall not be responsible for the receipt or application of the proceeds of the issue of any of the CULS by the Company.
- 19.6 The Trustee shall not be bound to give notice to any person of the execution of any documents comprised or referred to in these presents or to take any steps to ascertain whether any Event of Default or any Potential Event of Default has occurred and, until it shall have actual knowledge or express notice to the contrary, the Trustee shall be entitled to assume that no Event of Default or Potential Event of Default has occurred and that the Company is observing and performing all its obligations under these presents.
- 19.7 Save as expressly otherwise provided in these presents, the Trustee shall have absolute and uncontrolled discretion as to the exercise of its trusts, powers, authorities and discretions under these presents (the exercise of which as between the Trustee and the CULS Holders shall be conclusive and binding on the CULS Holders) and shall not be responsible for any Liability which may result from their exercise or non-exercise, except for those Liabilities which result from the fraud, negligence or wilful default of the Trustee.
- 19.8 The Trustee shall not be liable to any person by reason of having acted upon any resolution purporting to have been passed at any meeting of the CULS Holders of all or any series in respect whereof minutes have been made and signed or any direction or request of the CULS Holders even though subsequent to its acting it may be found that there was some defect in the constitution of the meeting or the passing of the resolution or (in the case of a resolution in writing) that not all CULS Holders had signed the resolution or (in the case of a direction or request) that it was not signed by the requisite number of CULS Holders or that for any reason the resolution was not valid or binding upon such CULS Holders.
- 19.9 The Trustee shall not be liable to any person by reason of having accepted as valid or not having rejected any Certificate purporting to be such and subsequently found to be forged or not authentic.
- 19.10 Without prejudice to the right of indemnity by law given to trustees, the Company shall indemnify the Trustee and every Appointee and keep it or him indemnified against all Liabilities to which it or he may be or become subject or which may be incurred by it or him in the execution or purported execution of any of its trusts, powers, authorities and discretions under these presents or its or his functions under any such appointment or in respect of any other matter or thing done or omitted in any way relating to these presents or any such appointment, except for those Liabilities which result from the fraud, negligence or wilful default of the Trustee.
- 19.11 Any consent or approval given by the Trustee for the purposes of these presents may be given on such terms and subject to such conditions (if any) as the Trustee thinks fit and, notwithstanding anything to the contrary in these presents, may be given retrospectively.
- 19.12 The Trustee shall not (unless and to the extent ordered so to do by a court of competent jurisdiction) be required to disclose to any CULS Holder any information (including,



without limitation, information of a confidential, financial or price sensitive nature) made available to the Trustee by the Company or any other person in connection with these presents and no CULS Holder shall be entitled to take any action to obtain from the Trustee any such information.

- 19.13 Where it is necessary or desirable for any purpose in connection with these presents to convert any sum from one currency to another it shall (unless otherwise provided by these presents or required by law) be converted at such rate or rates, in accordance with such method and as at such date for the determination of such rate of exchange, as may be determined by the Trustee and any rate, method and date so agreed shall be binding on the Company and the CULS Holders.
- 19.14 The Trustee may certify whether or not any of the conditions, events and acts set out in Clauses 8.3 to 8.6 (inclusive) (each of which conditions, events and acts shall, unless in any case the Trustee in its absolute discretion shall otherwise determine, for all the purposes of these presents be deemed to include the circumstances resulting therein and the consequences resulting therefrom) is or is not in its opinion materially prejudicial to the interests of the CULS Holders and any such certificate shall be conclusive and binding upon the Company and the CULS Holders.
- 19.15 The Trustee as between itself and the CULS Holders may determine all questions and doubts arising in relation to any of the provisions of these presents. Every such determination, whether or not relating in whole or in part to the acts or proceedings of the Trustee, shall be conclusive and shall bind the Trustee and the CULS Holders.
- 19.16 In connection with the exercise by it of any of its trusts, powers, authorities and discretions under these presents (including, without limitation, any modification, waiver, authorisation or determination), the Trustee shall have regard to the general interests of the CULS Holders as a class but shall not have regard to any interests arising from circumstances particular to individual CULS Holders (whatever their number) and, in particular but without limitation, shall not have regard to the consequences of such exercise for individual CULS Holders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political sub-division thereof and the Trustee shall not be entitled to require, nor shall any CULS Holder be entitled to claim, from the Company, the Trustee or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual CULS Holders.
- 19.17 Any trustee of these presents being a lawyer, accountant, broker or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional and other charges for business transacted and acts done by him or his firm in connection with these presents and also his reasonable charges in addition to disbursements for all other work and business done and all time spent by him or his firm in connection with matters arising in connection with these presents.
- 19.18 The Trustee may whenever it thinks fit delegate by power of attorney or otherwise to any person or persons or fluctuating body of persons (whether being a joint trustee of these presents or not) all or any of its trusts, powers, authorities and discretions under these presents. Such delegation may be made upon such terms (including power to sub-delegate) and subject to such conditions and regulations as the Trustee may in the interests of the CULS Holders think fit. The Trustee shall not be under any obligation to supervise the proceedings or acts of any such delegate or sub-delegate or be in any way responsible for any Liability incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate, except where the same results from the fraud, negligence or wilful default of the Trustee in the selection of such delegate. The Trustee shall within a reasonable time after any such delegation or any renewal, extension or termination thereof give notice thereof to the Company.

- 19.19 The Trustee may in the conduct of the trusts of these presents instead of acting personally employ and pay an agent or a nominee (whether being a lawyer or other professional person) to transact or conduct, or concur in transacting or conducting, any business and to do, or concur in doing, all acts required to be done in connection with these presents (including the receipt and payment of money). The Trustee shall not be in any way responsible for any Liability incurred by reason of any misconduct or default on the part of any such agent or nominee or be bound to supervise the proceedings or acts of any such agent or nominee, except where the same results from the fraud, negligence or wilful default of the Trustee in the selection of such agent or nominee.
- 19.20 The Trustee shall not be responsible for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of these presents or any other document relating thereto and shall not be liable for any failure to obtain any licence, consent or other authority for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, performance, enforceability or admissibility in evidence of these presents or any other document relating thereto.
- 19.21 The Trustee shall have no duty or responsibility to determine whether facts exist which may require an adjustment of the Conversion Price or to determine the nature or extent of any such adjustment when made or the method used or to be used in making it and shall incur no liability for any failure to do so.
- 19.22 The Trustee shall have no duty or responsibility at any time in respect of the validity or value (or kind or amount) of the Ordinary Shares or any other property which may at any time be issued or delivered on the conversion of any CULS or the sale or other disposal of any Ordinary Shares. The Trustee shall not be responsible to anyone for any failure of the Company to make available or deliver any Ordinary Shares, share certificates or any other securities or property or make any payment on the exercise of any Conversion Right.
- 19.23 Nothing in this Trust Deed shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of any rights, powers, authorities or discretions hereunder if it determines in its sole discretion that repayment of such funds or adequate indemnity against, or security for, such risk or liability is not assured to it.
- 19.24 The Trustee may refrain from doing anything in any jurisdiction if doing the relevant thing in that jurisdiction would, in its opinion (which may be based upon legal advice), be contrary to any law or regulation of that jurisdiction or would otherwise render it liable to any person in that jurisdiction or if, in its opinion, it would not have power to do the relevant thing in that jurisdiction by virtue of any applicable law or regulation in that jurisdiction or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power.
- 19.25 The Trustee shall have no responsibility to any person in the event that it fails to request, require or receive any legal opinion in relation to the CULS.
- 19.26 Notwithstanding anything contained in these presents, if the Trustee is or will be required to make any deduction or withholding from any distribution or payment made by it hereunder or if the Trustee is or will be otherwise charged to, or is or may become liable to, tax as a consequence of performing its duties hereunder whether by reason of any assessment, prospective assessment or other imposition of liability to taxation of whatsoever nature and whensoever made upon the Trustee, and whether in connection with or arising from any sums received or distributed by it or to which it may be entitled under these presents (other than in connection with its remuneration as provided for herein) or any investments or deposits from time to time representing the same, including any income or gains arising therefrom or any action of the Trustee in connection with the trusts of these presents (other than the remuneration herein specified) or otherwise, then the Trustee shall be entitled to make such deduction or withholding or, as the case may

be, to retain out of sums received by it an amount sufficient to discharge any liability to tax which relates to sums so received or distributed or to discharge any such other liability of the Trustee to tax from the funds held by the Trustee upon the trusts of these presents.

- 19.27 Other than requesting a certificate pursuant to Clause 17(i), the Trustee may assume, without enquiry, that no Certificates are for the time being held by or for the benefit or on behalf of the Company or any Subsidiary.

**20. TRUSTEE'S LIABILITY**

- 20.1 The duty of care contained in Section 1 of the Trustee Act 2000 shall not apply to these presents. However, nothing in these presents shall in any case in which the Trustee has failed to show the degree of care and diligence required of it as trustee having regard to the provisions of these presents conferring on it any trusts, powers, authorities or discretions exempt the Trustee from or indemnify it against any liability which would otherwise attach to it in respect of any fraud, negligence or wilful default of which it may be guilty.

- 20.2 Where there are any inconsistencies between the Trustee Act 1925, the Trustee Act 2000 and these presents, these presents shall, to the extent permitted by law, prevail, and, in the case of any inconsistency with the Trustee Act 2000, shall constitute a restriction or exclusion for the purposes of that Act.

**21. TRUSTEE CONTRACTING WITH THE COMPANY**

Neither the Trustee nor any director or officer of a corporation acting as a trustee under these presents shall by reason of its or his fiduciary position be in any way precluded from:

- 21.1 entering into or being interested in any contract or financial or other transaction or arrangement with the Company or any person or body corporate associated with the Company (including, without limitation, any contract, transaction or arrangement of a banking or insurance nature or any contract, transaction or arrangement in relation to the making of loans or the provision of financial facilities to, or the purchase, placing or underwriting of or the subscribing or procuring subscriptions for or otherwise acquiring, holding or dealing with the CULS or any other loan stock, notes, shares, debenture stock, debentures, bonds or other securities of, the Company or any person or body corporate associated as aforesaid); or
- 21.2 accepting or holding the trusteeship of any other trust deed constituting or securing any other securities issued by or relating to the Company or any such person or body corporate so associated or any other office of profit under the Company or any such person or body corporate so associated,

and, in each case, shall be entitled to retain and shall not be in any way liable to account for any profit made or share of brokerage or commission or remuneration or other benefit received thereby or in connection therewith.

**22. WAIVER, AUTHORISATION AND DETERMINATION**

- 22.1 The Trustee may, without prejudice to its rights in respect of any subsequent breach, Event of Default or Potential Event of Default, from time to time and at any time, but only if and in so far as, in its opinion, the interests of the CULS Holders shall not be materially prejudiced thereby, waive or authorise any breach or proposed breach by the Company of any of the covenants or provisions contained in these presents or determine that any Event of Default or Potential Event of Default shall not be treated as such for the purposes of these presents provided that the Trustee shall not exercise any powers conferred on it by this Clause in contravention of any express direction given by Extraordinary Resolution

or by a request under Clause 8 (*Events of Default*) but so that no such direction or request shall affect any waiver, authorisation or determination previously given or made. Any such waiver, authorisation or determination may be given or made on such terms and subject to such conditions (if any) as the Trustee may determine, shall be binding on the CULS Holders and, if, but only if, the Trustee, shall so require, shall be notified by the Company to the CULS Holders as soon as practicable thereafter.

- 22.2 The Trustee may, without the consent of the CULS Holders, at any time and from time to time concur with the Company in making any modification to these presents (a) which in the opinion of the Trustee it may be proper to make, provided that the Trustee is of the opinion that (i) such modification will not be materially prejudicial to the interests of the CULS Holders or (ii) such modification is of a formal, minor or technical nature or to correct a manifest error, or (b) in order to reflect changes in the CREST Regulations or in applicable law and practice relating to the holding or transfer of the CULS in uncertificated form and the issue of Ordinary Shares in uncertificated form on conversion of the CULS. Any such modification may be made on such terms and subject to such conditions (if any) as the Trustee may determine, shall be binding upon the CULS Holders and, unless the Trustee agrees otherwise, shall be notified by the Company to the CULS Holders as soon as practicable thereafter.

### 23. **CULS REGISTER**

- 23.1 The Company shall, at all times, keep at its registered office (or at such other place as the Trustee may agree) the CULS Register showing the number of CULS in issue, the date of issue and all subsequent transfers and changes of ownership thereof and the names and addresses of the CULS Holders and the persons deriving title under them. The Trustee and the CULS Holders or any of them and any person authorised by any such person shall be at liberty at all reasonable times during office hours to inspect the CULS Register and to take (free of charge) copies of or extracts from the same or any part thereof. In the event of the Trustee requiring to convene a meeting of or to give any notice to the CULS Holders, the Company shall furnish the Trustee (free of charge) with such copies of or extracts from the CULS Register as it shall require. The Trustee shall be entitled to rely absolutely on such CULS Register. The CULS Register may be closed by the Company for such periods and at such times (not exceeding in the whole 30 days in any one year) as it may think fit.
- 23.2 The Company shall procure that the UK Paying and Transfer Agent shall, upon a request in writing by the Trustee, confirm the number of CULS in issue, the aggregate principal amount outstanding of the CULS and the address and payment details of the CULS Holders from time to time and on which such confirmation the Trustee shall be entitled to rely absolutely.

### 24. **NEW TRUSTEE**

- 24.1 The power to appoint a new trustee of these presents shall be vested in the Company but no person shall be appointed who shall not previously have been approved by an Extraordinary Resolution. One or more persons may hold office as trustee or trustees of these presents. Whenever there shall be more than two trustees of these presents the majority of such trustees shall be competent to execute and exercise all the duties, powers, trusts, authorities and discretions vested in the Trustee by these presents. Any appointment of a new trustee of these presents shall be notified by the Company to the CULS Holders as soon as practicable thereafter.
- 24.2 Notwithstanding the provisions of Clause 24.1, the Trustee may, upon giving prior notice to the Company (but without the consent of the Company or the CULS Holders), appoint any person established or resident in any jurisdiction to act either as a separate trustee or as a co-trustee jointly with the Trustee:

- (a) if the Trustee considers such appointment to be in the interests of the CULS Holders;
- (b) for the purposes of conforming to any legal requirements, restrictions or conditions in any jurisdiction in which any particular act or acts is or are to be performed; or
- (c) for the purposes of obtaining a judgment in any jurisdiction or the enforcement in any jurisdiction of either a judgment already obtained or any of the provisions of these presents against the Company.

24.3 The Company irrevocably appoints the Trustee to be its attorney in its name and on its behalf to execute any such instrument of appointment. Such a person shall (subject always to the provisions of these presents) have such trusts, powers, authorities and discretions (not exceeding those conferred on the Trustee by these presents) and such duties and obligations as shall be conferred or imposed by the instrument of appointment. The Trustee shall have power in like manner to remove any such person. Such reasonable remuneration as the Trustee may pay to any such person, together with any attributable Liabilities incurred by it in performing its function as such separate trustee or co-trustee, shall for the purposes of these presents be treated as Liabilities incurred by the Trustee.

## 25. **TRUSTEE'S RETIREMENT AND REMOVAL**

A Trustee of these presents may retire at any time on giving not less than three months' prior written notice to the Company without giving any reason and without being responsible for any Liabilities incurred by reason of such retirement. The CULS Holders may by Extraordinary Resolution remove any Trustee or Trustees for the time being of these presents. The Company undertakes that in the event of the only Trustee of these presents giving notice under this Clause or being removed by Extraordinary Resolution, it will use its best endeavours to procure that a new Trustee of these presents is appointed as soon as reasonably practicable thereafter and in any event within 90 days thereafter failing which the Trustee that is retiring or being removed may appoint a new Trustee of these presents. The retirement or removal of any such Trustee shall not become effective until a successor Trustee is appointed.

## 26. **TRUSTEE'S POWERS TO BE ADDITIONAL**

The powers conferred upon the Trustee by these presents shall be in addition to any powers which may from time to time be vested in the Trustee by the general law or as a CULS Holder.

## 27. **NOTICES**

27.1 Any notice or demand to the Company or the Trustee to be given, made or served for any purposes under these presents shall be given, made or served by sending the same by pre-paid post (first class if inland, first class airmail if overseas) or facsimile transmission or by delivering it by hand as follows:

to the Company: PO Box 255  
Trafalgar Court  
Les Banques  
St Peter Port  
Guernsey GY1 3QL

Attention: Company Secretary, JZ Capital Partners Limited  
Facsimile No.: +44 (0)1481 745368

to the Trustee: Fifth Floor  
100 Wood Street  
London EC2V 7EX

Attention: Manager, Commercial Trusts (reference:  
200935)

Facsimile No.: +44 (0)20 7606 0643

or to such other address or facsimile number as shall have been notified (in accordance with this Clause) to the other party hereto and any notice or demand sent by post as aforesaid shall be deemed to have been given, made or served three days in the case of inland post or seven days in the case of overseas post after despatch and any notice or demand sent by facsimile transmission as aforesaid shall be deemed to have been given, made or served 24 hours after the time of despatch provided that in the case of a notice or demand given by facsimile transmission such notice or demand shall forthwith be confirmed by post. The failure of the addressee to receive such confirmation shall not invalidate the relevant notice or demand given by facsimile transmission.

- 27.2 All notices regarding the CULS will be deemed to be validly given (a) if sent by first class mail or (if posted to an address overseas) by airmail to the CULS Holders (or the first named of joint holders) at their respective addresses recorded in the CULS Register (or, in the case of Participating CULS, recorded in the electronic register of CULS Holders maintained in accordance with the CREST Regulations), (b) if published through the electronic communications system of Bloomberg or (c) for so long as the CULS are admitted to trading on the Specialist Fund Market, if published through the regulatory news service of the London Stock Exchange plc. Any such notice will be deemed to have been given on the fourth day after mailing or on the date of publication (as the case may be). In addition, for so long as any CULS are listed by or on a competent authority or stock exchange and the rules of that competent authority or stock exchange so require, such notice will be published in a daily newspaper of general circulation in the places or places required by that competent authority or stock exchange. If the giving of notice as provided above is not practicable, notice will be given in such other manner and shall be deemed to have been given on such date as the Trustee may approve.

28. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Trust Deed or any trust deed supplemental hereto has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Trust Deed or any trust deed supplemental hereto, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

29. **ENTIRE AGREEMENT**

The entire agreement between the Company and the Trustee with respect to the subject matter herein is contained in this Trust Deed and the Subordination Agreement, which supersedes all previous agreements, undertakings, representations, warranties and arrangements, oral or written, or other arrangements shall cease to be of any further force (save in respect of accrued rights and obligation).

30. **GOVERNING LAW AND JURISDICTION**

- 30.1 This Trust Deed, the CULS and any non-contractual obligations arising out of or in connection with them, are governed by, and construed in accordance with, English law.

- 30.2 The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the CULS or the Trust Deed and, accordingly, any legal action or proceedings arising out of or in connection with the CULS or the Trust Deed ("**Proceedings**") may be brought in such courts. The Company irrevocably submits to

the jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of each of the CULS Holders and the Trustee and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

- 30.3 The Company has appointed Law Debenture Corporate Services Limited at its office for the time being, currently at Fifth Floor, 100 Wood Street, London EC2V 7EX, as its agent in England to receive service of process of any Proceedings in England. If, for any reason, the Company does not have such an agent in England, it will promptly appoint a substitute process agent and notify the CULS Holders of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.

31. **COUNTERPARTS**

This Trust Deed and any trust deed supplemental hereto may be executed and delivered in counterparts, both of which, taken together, shall constitute one and the same deed and either party to this Trust Deed or any trust deed supplemental hereto may enter into the same by executing and delivering a counterpart.

**IN WITNESS** whereof this Trust Deed has been executed as a deed by the Company and the Trustee and delivered on the day and year first above written.

## SCHEDULE 1

### Form of Certificate for the CULS

#### JZ CAPITAL PARTNERS LIMITED

*(a non-cellular company limited by shares and incorporated in Guernsey under the Companies (Guernsey) Law 2008 (as amended) with registered number 48761)*

Certificate No.	CULS Holder Reference	Transfer No.	Date	No. of CULS
[●]	[●]	[●]	[●]	[●]

### ISSUE OF 6.00 PER CENT. CONVERTIBLE UNSECURED SUBORDINATED LOAN STOCK DUE 2021

Issued pursuant to the Memorandum and Articles of Incorporation of JZ Capital Partners Limited (the "**Company**") and created by resolutions of the Board of Directors of the Company passed on 10 July 2014 and 16 July 2014 and of a duly authorised committee of the Board of Directors of the Company passed on 18 July, 20 July and 25 July 2014.

THIS IS TO CERTIFY that the undermentioned is/are the registered holder(s) of the above-mentioned number of the 6.00 per cent. convertible unsecured subordinated convertible loan stock due 2021 (the "**CULS**") which are constituted by a Trust Deed dated 30 July 2014 (the "**Trust Deed**") and made between the Company and The Law Debenture Trust Corporation p.l.c. (the "**Trustee**") as trustee for the holders of such CULS and such CULS are issued with the benefit of and subject to, and holders of CULS agree to, are bound by and are deemed to have notice of, the provisions contained in the Trust Deed and the conditions of the CULS (the "**Conditions**") attached hereto and a subordination agreement dated 30 July 2014 and made between, *inter alios*, the Company and the Trustee.

Interest on the CULS represented by this Certificate is payable semi-annually in arrear at the rate of 6.00 per cent. per annum on 31 March and 30 September of each year in accordance with the Conditions attached hereto.

GIVEN under the common seal of the Company this [●].

#### Name(s) of CULS Holders:

1) .....	2) .....
3) .....	4) .....

#### Number of CULS:

[●]

#### NOTES:

- (i) *The CULS are denominated, registered and transferable in integral multiples of £10 in nominal amount.*
- (ii) *No transfer of any part of the CULS represented by this Certificate will be registered unless it is accompanied by this Certificate.*
- (iii) *The CULS are convertible into Ordinary Shares of the Company in accordance with the Conditions attached hereto.*



[On the reverse of the Certificate]

## CONVERSION NOTICE

To: JZ CAPITAL PARTNERS LIMITED (the "**Company**")

I/We, being the registered holder(s) of the CULS represented by this Certificate hereby give notice of my/our election to exercise my/our Conversion Rights in respect of all/ of the CULS represented by this Certificate<sup>1</sup> in accordance with the Conditions.

### PART A<sup>2</sup>

I/We elect all/ <sup>3</sup> the Ordinary Shares to be allotted on exercise of my/our Conversion Rights to be allotted to me/us and registered in my/our name(s) and hereby authorise the entry of my/our name(s) in the register of Shareholders in respect thereof and the despatch of a certificate in respect of such Ordinary Shares by ordinary post at my/our risk to at <sup>4</sup>.

I/We agree to accept all the fully paid Ordinary Shares to be allotted to me/us pursuant hereto subject to the Articles. I/We represent and warrant that (i) I am/we are not [a] U.S. Person[s] (as defined in Regulation S under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**")); (ii) I am/we are not acquiring Ordinary Shares for the account or benefit of a U.S. Person; and (iii) I am/we are acquiring Ordinary Shares in an offshore transaction (as defined in Regulation S under the U.S. Securities Act).<sup>5</sup>

### PART B<sup>6</sup>

I/We hereby authorise and direct the Company to allot all/ <sup>7</sup> of the fully paid Ordinary Shares to be allotted on exercise of my/our Conversion Rights to be allotted pursuant hereto to the person(s) who is/are named in and who has/have signed the acceptance(s) in the form(s) of nomination<sup>8</sup> attached hereto.

### PART C<sup>9</sup>

I/We hereby authorise the despatch of a Certificate for the balance (if any) of the CULS represented by this Certificate in respect of which the Conversion Rights have not been exercised by ordinary post at my/our risk to at <sup>10</sup>.

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<sup>1</sup> Delete or complete, as appropriate. If this space is left blank, the Conversion Notice will be deemed to relate to all of the CULS represented by this Certificate.

<sup>2</sup> Delete or complete, as appropriate.

<sup>3</sup> Delete or complete, as appropriate.

<sup>4</sup> If these spaces are left blank, the certificate in respect of such Ordinary Shares will be sent to the registered address of the (first-named) CULS Holder.

<sup>5</sup> Delete or complete, as appropriate.

<sup>6</sup> Delete or complete, as appropriate. If it is desired to nominate some other person(s) as the allottee(s) of all or any of the Ordinary Shares, application should be made to the Company's UK Paying and Transfer Agent for the appropriate form(s) of nomination, which must be completed and delivered with this Certificate.

<sup>7</sup> Delete or complete, as appropriate.

<sup>8</sup> Form(s) of nomination are available on request from the UK Transfer and Paying Agent. Any person(s) named in the form(s) of nomination will be required in such form(s) of nomination to give the representations set out in Part A of this Conversion Notice to the Company.

<sup>9</sup> Delete or complete, as appropriate.

<sup>10</sup> If these spaces are left blank, the certificate in respect of such Ordinary Shares will be sent to the registered address of the (first-named) CULS Holder.

**Signature(s) of CULS Holders:<sup>11</sup>**

1) .....

2) .....

3) .....

4) .....

Dated this            day of

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<sup>11</sup>        *In the case of joint holders, all CULS Holders must sign. In the case of a corporation, this Conversion Notice must be either given under its common seal or signed on its behalf by an attorney or duly authorised official of the corporation.*

## CONDITIONS

### 1. DEFINITIONS

- 1.1 In these Conditions unless there is anything in the subject or context inconsistent therewith, the following expressions shall have the following meanings:

**"Business Day"** means, in relation to any place, a day (other than a Saturday, Sunday or public holiday) on which commercial banks and foreign exchange markets are open for business in that place;

any references to the **"CULS"** shall, unless otherwise specified, be to the Initial CULS and any Additional CULS (as defined in Condition 11) (including the Further CULS);

**"Further CULS"** means the further issue of up to £38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of the Company due 2021, to be consolidated with and form a single series with the Initial CULS;

**"Initial CULS"** means the £38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of the Company due 2021 constituted by the Trust Deed (as defined in the certificate attached hereto);

**"Initial Issue Date"** means the Issue Date (as defined in Condition 2.1);

**"Net Asset Value of the Company"** means the net asset value of the Company calculated by the Company in accordance with its normal accounting policies and stated in the latest monthly management accounts;

any references to the **"nominal amount"** of any CULS shall be to the face value of that CULS;

**"Relevant Electronic System"** means any computer-based system enabling title to units of CULS to be evidenced and transferred without a written instrument, including CREST;

**"Subsidiary"** means a subsidiary of the Company and shall have the meaning given to such term in section 531 of the Companies (Guernsey) Law 2008 (as amended), excluding the provision of section 531(6) so that overseas companies shall be included and excluding any body corporate (in this definition, an "entity") whose accounts are not included in the then latest published audited consolidated accounts of the Company or, in the case of an entity which has first become a subsidiary of the Company since the date as at which any such audited accounts were prepared, would not have been so included or consolidated if it had become so on or before that date; and

**"Trustee"** means The Law Debenture Trust Corporation p.l.c., a company incorporated under the laws of England and Wales with registered number 1675231, whose registered office is at Fifth Floor, 100 Wood Street, London EC2V 7EX, United Kingdom (which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the trustee or trustees of the Trust Deed) as trustee for the CULS Holders (as defined below).

- 1.2 For the purposes of Conditions 4.1 to 4.9, 4.13 and 4.17 only, (a) references to the **"issue"** of Ordinary Shares shall include the transfer and/or delivery of Ordinary Shares by the Company or any Subsidiary, whether newly issued and allotted or previously existing or held by or on behalf of the Company or any Subsidiary, and (b) Ordinary Shares held by or on behalf of the Company or any Subsidiary, shall not be considered as or treated as **"in issue"**.

- 1.3 All references to "**sterling**", "**Pounds Sterling**", "**GBP**" or "**£**" are to the lawful currency for the time being of the United Kingdom.

## 2. **INTEREST**

### 2.1 *Interest Rate*

The CULS will bear interest on its nominal amount for the time being outstanding from (and including) 30 July 2014 (the "**Issue Date**") at the rate of 6.00 per cent. per annum. Interest will, subject to Condition 17, be payable on the CULS semi-annually in equal instalments in arrear on 31 March and 30 September in each year (each an "**Interest Payment Date**") to (but excluding) the Maturity Date (as defined below), save that the first payment of interest on the CULS will be made on 30 September 2014 in respect of the period from and including the Issue Date to (but excluding) 30 September 2014 and the final payment of interest on the CULS will be in respect of the period from (and including) 31 March 2021 to (but excluding) the Maturity Date.

The amount of interest payable in respect of any period which is either shorter or longer than a Regular Period (as defined below) shall be calculated at the rate of 6.00 per cent. per annum on the basis of the number of days in the relevant period from (and including) the first day of such period to (but excluding) the last day of such period divided by the product of (i) two and (ii) the number of days in the Regular Period in which the relevant period falls. "**Regular Period**" means each period from (and including) any Interest Payment Date to (but excluding) the next Interest Payment Date save that, for the purposes of this definition only, the first Interest Payment Date shall be deemed to be 30 September 2014 and the last Interest Payment Date shall be deemed to be 31 March 2021.

### 2.2 *Accrual of Interest*

The CULS will cease to bear interest (i) where the Conversion Right (as defined below) shall have been exercised, from the Interest Payment Date immediately preceding the relevant Conversion Date or, if none, the Issue Date, (ii) from the due date for redemption thereof, unless payment of principal in respect of the CULS is improperly withheld or refused in which event interest will continue to accrue at the rate specified in Condition 2.1 (both before and after judgment) until whichever is the earlier of (A) the day on which all sums due in respect of such CULS up to that day are received by or on behalf of the relevant CULS Holder (as defined below), and (B) the day seven days after the Trustee has notified CULS Holders of receipt of all sums due in respect of all the CULS up to that seventh day (except to the extent that there is failure in the subsequent payment to the relevant CULS Holders under the Conditions).

## 3. **CONVERSION RIGHTS**

### 3.1 *Conversion Rights*

Subject to and as provided in these Conditions, each holder of a CULS (a "**CULS Holder**") shall have the right (a "**Conversion Right**" and together, the "**Conversion Rights**") to convert the whole or such part (being an integral multiple of £10 in nominal amount) of their CULS as they may specify into fully paid ordinary shares of the Company ("**Ordinary Shares**").

Conversion Rights may not be exercised (i) following the giving of notice by the Trustee pursuant to Condition 8, (ii) following the giving of notice by the Issuer pursuant to Condition 7.2 or (iii) in respect of CULS for which the relevant CULS Holder has exercised its right to require the Company to redeem their CULS pursuant to Condition 7.4.

The number of Ordinary Shares to be issued on exercise of the Conversion Right shall be determined by dividing the nominal amount of CULS so specified in the Conversion Notice by the conversion price (the "Conversion Price") per Ordinary Share in effect on the relevant Conversion Date (as defined below). The initial Conversion Price is £6.0373 per Ordinary Share (which shall be subject to adjustment in circumstances described in Condition 4).

### 3.2 *Procedure for Conversion*

The Conversion Rights shall be exercisable (in the manner described in this Condition 3.2) at any time during the period from (and including) the forty-first Business Day in London and Guernsey after the Issue Date to (and including) the tenth Business Day in London and Guernsey prior to the Maturity Date (the "**Conversion Period**").

In order to exercise, in whole or in part, the Conversion Rights which are conferred by any CULS that are, on the relevant Conversion Date, held in certificated form ("**Certificated CULS**"), a CULS Holder must lodge the relevant CULS certificate (a "**CULS Certificate**") (or such other document(s) as the Company may, in its absolute discretion, accept) at the office of the UK Transfer and Paying Agent specified in the CULS Certificate (or such other place as the Company may from time to time notify to the CULS Holders) during the Conversion Period, having completed and signed the notice (the "**Conversion Notice**") of exercise of Conversion Rights thereon (or by giving such other notice of exercise as the Company may, in its absolute discretion, accept). A Conversion Notice, once given, shall be irrevocable save with the consent in writing of the Company. CULS Holders must also comply with any statutory and regulatory requirements for the time being applicable.

The Conversion Rights which are conferred by any CULS that are, on the relevant Conversion Date, held in uncertificated form ("**Uncertificated CULS**") shall be exercisable, in whole or in part, (and treated by the Company as exercised) if an Uncertificated Conversion Notice is received during the Conversion Period (but not later than the latest time for input of instruction permitted by the Relevant Electronic System) by the Company (or by such person as it may require for these purposes) in such form and subject to such terms and conditions as may from time to time be prescribed by the Company (subject always to the CREST Regulations and the facilities, rules and requirements of the Relevant Electronic System concerned). For these purposes, an "**Uncertificated Conversion Notice**" shall mean a properly authenticated dematerialised instruction and/or other instruction or notification received by the Company (or by such person as it may require for these purposes) in such form and subject to such terms and conditions as may from time to time be prescribed by the Company (subject always to the CREST Regulations and the facilities, rules and requirements of the Relevant Electronic System) and that specifies (in accordance with the form prescribed by the Company as aforesaid) the nominal amount of the CULS in respect of which Conversion Rights are being exercised. The Company may, in addition but subject to the CREST Regulations and the facilities and requirements of the Relevant Electronic System, determine when any such properly authenticated dematerialised instruction and/or other instruction or notification and any such remittance is to be treated as received by the Company or by such person as it may require for these purposes. Without prejudice to the generality of the foregoing, the effect of the Uncertificated Conversion Notice may be such as to divest the holder of the CULS concerned of the power to transfer such CULS to another person. Once lodged, an Uncertificated Conversion Notice shall be irrevocable save with the consent of the Company. To be effective, compliance must also be made with any statutory and regulatory requirements for the time being applicable.

The conversion date in respect of the CULS (the "**Conversion Date**") shall be the Business Day in London and Guernsey immediately following the date of lodging of such CULS Certificate or such Uncertificated Conversion Notice, as provided in this Condition

3.2, and compliance with any statutory or regulatory requirements applicable at such time.

In order for CULS Holders to convert their CULS into Ordinary Shares, they will have to certify that: (i) they are not in the United States; (ii) they are not US Persons; and (iii) they are not exercising their conversion rights for the account or benefit of US Persons.

Fractions of Ordinary Shares will not be issued on conversion and no cash payment or adjustment will be made *in lieu* thereof.

The date upon which the Company allots Ordinary Shares pursuant to the exercise of Conversion Rights shall be the "**Share Record Date**". On and following the Share Record Date, the relevant CULS Holder will, subject to the following sentence, become entitled to the economic rights of a holder of Ordinary Shares for the purposes of distribution entitlement and otherwise. However, the relevant CULS Holder shall not be entitled to transfer Ordinary Shares until they have been registered in the Company's Register of member or CREST, as provided below.

The Company shall procure that the Share Record Date occurs on the first day of each calendar month (or, if such day is not a Business Day in London and Guernsey, the following Business Day in London and Guernsey) in relation to Conversion Notices in respect of which the Conversion Date occurred at least seven Business Days in London and Guernsey prior to such day. Where the Conversion Date falls after the seventh Business Day in London and Guernsey prior to the first day of a calendar month (or, if such day is not a Business Day in London and Guernsey, the following Business Day in London and Guernsey), the Company will procure that the Share Record Date occurs on the first day of the immediately following calendar month or, if such day is not a Business Day in London and Guernsey, the following Business Day in London and Guernsey.

Notwithstanding the preceding paragraph, in the case of Conversion Notices delivered in respect of which the Conversion Date falls after seventh Business Day in London and Guernsey prior to the month in which the Maturity Date falls or the Optional Redemption Date falls or the last day of the Change of Control Period falls (as the case may be), the Company shall procure that the Share Record Date occurs on the Business Day in London and Guernsey prior to the Maturity Date, the Optional Redemption Date or the last day of the Change of Control Period (as the case may be).

Certificates in respect of Ordinary Shares allotted pursuant to the exercise of Conversion Rights which are conferred by any Certificated CULS will be despatched free of charge (at the risk of the person(s) entitled thereto) not later than 21 days after, and will be deemed (subject as aforesaid) to have been issued with effect from, the relevant Share Record Date to the person(s) in whose name(s) the CULS is/are registered at the Conversion Date (and, if more than one, to the first-named, which shall be sufficient despatch for all) or (subject as provided by law and to the payment of stamp duty reserve tax or any other tax that may be applicable) to such other person(s) (not being more than four in number) as may be named in the form of nomination available for the purpose from the UK Transfer and Paying Agent (and, if more than one, to the first-named, which shall be sufficient despatch for all). In the event of partial exercise of the Conversion Rights evidenced by a CULS Certificate, the Company shall, at the same time, issue a new CULS Certificate in the name of the CULS Holder for any balance of that CULS Holder's CULS not converted.

Ordinary Shares in respect of Ordinary Shares allotted pursuant to exercise of Conversion Rights which are conferred by any Uncertificated CULS will be allotted not later than 14 days after, and will be deemed (subject as aforesaid) to have been issued with effect from, the relevant Share Record Date. The Company shall procure that the appropriate instructions are given to enable such Ordinary Shares to be evidenced by means of the Relevant Electronic System as a holding of the person(s) in whose name(s) the CULS in

respect of which Conversion Rights have been exercised were registered at the Conversion Date or (subject as provided by law, to the payment of stamp duty reserve tax or any other tax that may be applicable, to such terms and conditions as the Company may from time to time prescribe for this purpose and to the CREST Regulations and the facilities, rules and requirements of the Relevant Electronic System) to such other person(s) (not being more than four in number) as may be named in the properly authenticated dematerialised instruction and/or other instruction or notification in such form.

For the avoidance of doubt, unless the Company otherwise determines or unless the CREST Regulations or the facilities, rules or requirements of the Relevant Electronic System otherwise require, the Ordinary Shares issued on the exercise of any Conversion Rights shall be issued in registered certificated form where such Conversion Rights were conferred by Certificated CULS and in uncertificated form where such Conversion Rights were conferred by Uncertificated CULS.

Any additional Ordinary Shares to be issued pursuant to Condition 4.13 will be deemed to be issued as of the date the relevant Retroactive Adjustment takes effect or as of the date of issue of Ordinary Shares if the adjustment results from the issue of Ordinary Shares.

Ordinary Shares allotted on conversion shall be credited as fully paid and shall carry the right to receive all dividends and (unless adjustments shall have been made in respect thereof pursuant to Condition 4.1 to 4.9) all other distributions (including, but not limited to, any Ordinary Shares issued referred to in Condition 4.2) declared, paid or made on the Ordinary Shares in or in respect of the financial year of the Company in which the relevant Conversion Date falls, other than dividends and other distributions declared, paid or made on the Ordinary Shares by reference to a record date falling prior to the relevant Conversion Date and shall rank *pari passu* in all other respects and form one class with the Ordinary Shares in issue on the relevant Conversion Date.

#### 4. **ADJUSTMENTS OF THE CONVERSION PRICE**

Upon the happening of any of the events described below, the Conversion Price shall be adjusted as follows:

##### 4.1 *Consolidation or Sub-division of Ordinary Shares*

If and whenever there shall be an alteration to the nominal value of the Ordinary Shares as a result of consolidation or subdivision, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such alteration by the following fraction:

$$\frac{A}{B}$$

where:

A is the nominal amount of one Ordinary Share immediately after such alteration;  
and

B is the nominal amount of one Ordinary Share immediately before such alteration.

Such adjustment shall become effective on the date the alteration takes effect.

##### 4.2 *Bonus Issue*

If and whenever the Company shall issue any Ordinary Shares credited as fully paid to the Shareholders by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve) other than (1) where any such Ordinary Shares are issued instead of the whole or part of a cash Dividend (as defined below) which the

Shareholders would or could otherwise have received or (2) where the Shareholders may elect to receive a cash Dividend in lieu of such Ordinary Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue by the following fraction:

$$\frac{A}{B}$$

where:

- A is the aggregate nominal amount of the issued Ordinary Shares immediately before such issue; and
- B is the aggregate nominal amount of the issued Ordinary Shares immediately after such issue.

Such adjustment shall become effective on the date of issue of such Ordinary Shares.

#### 4.3 *Dividends*

If and whenever the Company shall, in any Financial Year, pay or make any Dividend (as defined below) to the Shareholders which, either alone or in the aggregate, is more than 5 per cent. of the applicable the Net Asset Value of the Company at the time of paying or making such Dividend, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such Dividend being paid by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price (as defined below) of one Ordinary Share on the dealing day (as defined below) immediately preceding the date of the first public announcement of the relevant Dividend or, in the case of a purchase of Ordinary Shares or any receipts or certificates representing Ordinary Shares by or on behalf of the Company or any Subsidiary, on which such Ordinary Shares are purchased or, in the case of a Spin-Off (as defined below), is the mean of the Volume Weighted Average Prices (as defined below) of an Ordinary Share for the five consecutive dealing days ending on the dealing day immediately preceding the first date on which the Ordinary Shares are traded ex- the relevant Spin-Off; and
- B is the portion of the Fair Market Value (as defined below) of the amount by which such Dividend or Dividends in that Financial Year exceeds 5 per cent. of the Net Asset Value of the Company which is attributable to one Ordinary Share, with such portion being determined by dividing the Fair Market Value of such excess by the number of Ordinary Shares entitled to receive the relevant Dividend (or, in the case of a purchase of Ordinary Shares or any receipts or certificates representing Ordinary Shares by or on behalf of the Company or any Subsidiary, by the number of Ordinary Shares in issue immediately prior to such purchase).

Such adjustment shall become effective on the date on which such Dividend is made or, in the case of a purchase of Ordinary Shares or any receipts or certificates representing Ordinary Shares, on the date such purchase is made or, in any such case if later, the first date upon which the Fair Market Value of such excess is capable of being determined as provided herein.



As used in this Condition 4:

**"Dividend"** means any dividend or distribution (including a Spin-Off) whether of cash, assets or other property, and whenever paid or made and however described (and for these purposes a distribution of assets includes without limitation an issue of Ordinary Shares or other Securities credited as fully or partly paid up by way of capitalisation of profits or reserves) provided that:

- (a) where a cash Dividend is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the issue or delivery of Ordinary Shares or other property or assets, or where a capitalisation of profits or reserves is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the payment of a cash Dividend, then for the purposes of this definition the Dividend in question shall be treated as a Dividend of the greater of (i) such cash Dividend and (ii) the Fair Market Value (on the date of the first public announcement of such Dividend or capitalisation (as the case may be) or if later, the date on which the number of Ordinary Shares (or amount of property or assets, as the case may be) which may be issued or delivered is determined), of such Ordinary Shares or other property or assets;
- (b) any issue of Ordinary Shares falling within Condition 4.2 shall be disregarded;
- (c) a purchase or redemption of share capital of the Company by the Company or any Subsidiary shall not constitute a Dividend unless, in the case of purchases of Ordinary Shares by or on behalf of the Company or any Subsidiary, the weighted average price per Ordinary Share (before expenses) on any one day in respect of such purchases exceeds by more than 5 per cent. the average of the closing prices of the Ordinary Shares on the Relevant Stock Exchange on the five immediately preceding dealing days as derived from the Relevant Stock Exchange either (1) on that day, or (2) where an announcement (excluding for the avoidance of doubt for these purposes, any general authority for such purchases or redemptions approved by a general meeting of Shareholders of the Company or any notice convening such a meeting of Shareholders) has been made of the intention to purchase Ordinary Shares at some future date at a specified price, on the dealing day immediately preceding the date of such announcement and, if in the case of either (1) or (2), the relevant day is not a dealing day, the immediately preceding dealing day, in which case such purchase shall be deemed to constitute a Dividend to the extent that the aggregate price paid (before expenses) in respect of such Ordinary Shares purchased by the Company or, as the case may be, any of its Subsidiaries exceeds the product of (i) 105 per cent. of the average closing price of the Ordinary Shares determined as aforesaid and (ii) the number of Ordinary Shares so purchased; and
- (d) if the Company or any Subsidiary shall purchase any receipts or certificates representing Ordinary Shares, the provisions of paragraph (c) shall be applied in respect thereof in such manner and with such modifications (if any) as shall be determined in good faith by an Independent Financial Adviser.

**"Fair Market Value"** means, with respect to any property on any date, the fair market value of that property as determined in good faith by the Independent Financial Adviser provided that: (a) the Fair Market Value of a cash Dividend paid or to be paid shall be the amount of such cash Dividend; (b) the Fair Market Value of any other cash amount shall be the amount of such cash; (c) where Spin-Off Securities, options, warrants or other rights are publicly traded in a market of adequate liquidity (as determined by the Independent Financial Adviser), the fair market value (i) of such Spin-Off Securities shall equal the arithmetic mean of the daily Volume Weighted Average Prices of such Spin-Off Securities and (ii) of such options, warrants or other rights shall equal the arithmetic mean

of the daily closing prices of such options, warrants or other rights, in the case of both (i) and (ii) during the period of five dealing days on the relevant market commencing on such date (or, if later, the first such dealing day such Spin-Off Securities options, warrants or other rights are publicly traded); and (d) in the case of (a), converted into Pounds Sterling (if declared or paid in a currency other than Pounds Sterling) at the rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid or are entitled to be paid the cash Dividend in Pounds Sterling and, in any other case, converted into Pounds Sterling (if expressed in a currency other than Pounds Sterling) at such rate of exchange as may be determined in good faith by the Independent Financial Adviser to be the spot rate prevailing at the close of business on that date (or if no such rate is available on that date the equivalent rate on the immediately preceding date on which such a rate is available);

**"Financial Year"** means the annual accounting period of the Company ending on or about 28 February in each year;

**"Independent Financial Adviser"** means an investment bank of international repute appointed by the Company and approved in writing by the Trustee (such approval not to be unreasonably withheld or delayed) or, if the Company fails to make such appointment and such failure continues for a reasonable period (as determined by the Trustee in its absolute discretion) and the Trustee is indemnified and/or secured and/or pre-funded to its satisfaction against the costs, fees and expenses of such adviser, appointed by the Trustee following notification to the Company;

**"Newco Scheme"** means a scheme of arrangement which effects the interposition of a limited liability company ("**Newco**") between the Shareholders immediately prior to the scheme of arrangement ("**Existing Shareholders**") and the Company, provided that immediately after completion of the scheme of arrangement the only shareholders of Newco are the Existing Shareholders and that all Subsidiaries immediately prior to the scheme of arrangement (other than Newco, if Newco is then a Subsidiary) are subsidiaries (as such term is defined in section 531 of the Companies (Guernsey) Law 2008 (as amended) ) of the Company (or of Newco) immediately after the scheme of arrangement;

**"Securities"** means any securities including, without limitation, Ordinary Shares or options, warrants or other rights to subscribe for or purchase or acquire Ordinary Shares;

**"Spin-Off"** means:

- (a) a distribution of Spin-Off Securities by the Company to Shareholders as a class; or
- (b) any transfer of any property or assets (including cash or shares or securities of or in or issued or allotted by any entity) by any entity (other than the Company) to Shareholders as a class or, in the case of or in connection with a Newco Scheme, Existing Shareholders, as a class (but excluding the issue and allotment of shares by Newco to Existing Shareholders), pursuant in each case to any arrangements with the Company or any of its Subsidiaries; and

**"Spin-Off Securities"** means equity share capital of an entity other than the Company.

#### 4.4 *Shares, Rights and Share-Related Securities Issued to Shareholders*

If and whenever the Company shall issue Ordinary Shares to Shareholders as a class by way of rights, or issue or grant to Shareholders as a class by way of rights, options, warrants or other rights to subscribe for or purchase any Ordinary Shares, in each case, at a price per Ordinary Share which is less than 95 per cent. of the Current Market Price (as defined below) per Ordinary Share on the dealing day immediately preceding the date of the first public announcement of the terms of the issue or grant of such Ordinary

Shares, options, warrants or other rights, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Ordinary Shares in issue immediately before such announcement;
- B is the number of Ordinary Shares which the aggregate amount (if any) payable for the Ordinary Shares issued by way of rights, or for the options or warrants or other rights issued by way of rights and for the total number of Ordinary Shares deliverable on the exercise thereof, would purchase at such Current Market Price per Ordinary Share; and
- C is the number of Ordinary Shares issued or, as the case may be, the maximum number of Ordinary Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the first date on which the Ordinary Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange.

#### 4.5 *Issue of Other Securities to Shareholders*

If and whenever the Company shall issue any Securities (other than Ordinary Shares or options, warrants or other rights to subscribe for or purchase any Ordinary Shares) to Shareholders as a class by way of rights or grant to Shareholders as a class by way of rights any options, warrants or other rights to subscribe for or purchase any Securities (other than Ordinary Shares or options, warrants or other rights to subscribe for or purchase Ordinary Shares), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the dealing day immediately preceding the first date on which the terms of such issue or grant are publicly announced; and
- B is the Fair Market Value on the date of such announcement of the portion of the rights attributable to one Ordinary Share.

Such adjustment shall become effective on the first date on which the Ordinary Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange.

#### 4.6 *Issue of Shares at Below Current Market Price*

If and whenever the Company shall issue (otherwise than as mentioned in Condition 4.4 above) wholly for cash or for no consideration any Ordinary Shares (other than Ordinary Shares issued on the exercise of Conversion Rights or on the exercise of any rights of conversion into, or exchange or subscription for or purchase of, Ordinary Shares) or issue or grant (otherwise than as mentioned in Condition 4.4) wholly for cash or for no consideration any options, warrants or other rights to subscribe for or purchase any

Ordinary Shares (other than the CULS, which term shall include any Additional CULS issued and consolidated and forming a single series with the CULS), in each case at a price per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share on the dealing day immediately preceding the date of the first public announcement of the terms of such issue or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Ordinary Shares in issue immediately before the issue of such Ordinary Shares or the grant of such options, warrants or rights;
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the issue of such additional Ordinary Shares or, as the case may be, for the Ordinary Shares to be issued or otherwise made available upon the exercise of any such options, warrants or rights, would purchase at such Current Market Price per Ordinary Share; and
- C is the number of Ordinary Shares to be issued pursuant to such issue of such additional Ordinary Shares or, as the case may be, the maximum number of Ordinary Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the date of issue of such additional Ordinary Shares or, as the case may be, the grant of such options, warrants or rights.

#### 4.7 *Share-Related Securities Issued Other than to Shareholders*

If and whenever the Company or any Subsidiary or (at the direction or request of or pursuant to any arrangements with the Company or any Subsidiary) any other company, person or entity (otherwise than as mentioned in Conditions 4.4, 4.5 or 4.6 above) shall issue wholly for cash or for no consideration any Securities (other than the CULS, which term shall for this purpose exclude any Additional CULS issued and consolidated and forming a single series with the CULS) which by their terms of issue carry (directly or indirectly) rights of conversion into, or exchange or subscription for, Ordinary Shares (or shall grant any such rights in respect of existing Securities so issued) or Securities which, by their terms, might be re-designated as Ordinary Shares, and the consideration per Ordinary Share receivable upon conversion, exchange, subscription or re-designation is less than 95 per cent. of the Current Market Price per Ordinary Share on the dealing day immediately preceding the date of the first public announcement of the terms of issue of such Securities (or the terms of such grant), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue (or grant) by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Ordinary Shares in issue immediately before such issue or grant (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for Ordinary Shares which have been issued by the Company for the purposes of or in connection with such issue, less the number of such Ordinary Shares so issued);

- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to such Securities or, as the case may be, for the Ordinary Shares to be issued or to arise from any such re-designation would purchase at such Current Market Price per Ordinary Share; and
- C is the maximum number of Ordinary Shares to be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such right of subscription attached thereto at the initial conversion, exchange or subscription price or rate or, as the case may be, the maximum number of Ordinary Shares which may be issued or arise from any such re-designation,

provided that if, at the time of issue of the relevant Securities or date of grant of such rights (as used in this Condition 4.7, the "**Specified Date**"), such number of Ordinary Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Securities are converted or exchanged or rights of subscription are exercised or, as the case may be, such Securities are re-designated or at such other time as may be provided), then for the purposes of this Condition 4.7, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange, subscription, purchase or acquisition or, as the case may be, re-designation had taken place on the Specified Date.

Such adjustment shall become effective on the date of issue of such Securities or, as the case may be, the grant of such rights.

#### 4.8 *Amendment of Terms of Rights or Share-Related Securities*

If and whenever there shall be any modification of the rights of conversion, exchange or subscription attaching to any such Securities (other than the CULS and any Additional CULS issued and consolidated and forming a single series with the CULS) as are mentioned in Condition 4.7 above (other than in accordance with the terms (including terms as to adjustment) applicable to such Securities upon issue) so that following such modification the consideration per Ordinary Share receivable has been reduced and is less than 95 per cent. of the Current Market Price per Ordinary Share on the dealing day immediately preceding the date of the first public announcement of the proposals for such modification, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such modification by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the number of Ordinary Shares in issue immediately before such modification (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for Ordinary Shares which have been issued, purchased or acquired by the Company or any Subsidiary (or at the direction or request or pursuant to any arrangements with the Company or any Subsidiary) for the purposes of or in connection with such issue, less the number of such Ordinary Shares so issued, purchased or acquired);
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to the Securities so modified would purchase at such Current Market Price per

Ordinary Share or, if lower, the existing conversion, exchange or subscription price of such Securities; and

- C is the maximum number of Ordinary Shares which may be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such rights of subscription attached thereto at the modified conversion, exchange or subscription price or rate but giving credit in such manner as the Independent Financial Adviser shall consider appropriate for any previous adjustment under this Condition 4.8 or Condition 4.7,

provided that if at the time of such modification (as used in this Condition 4.8, the "Specified Date") such number of Ordinary Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Securities are converted or exchanged or rights of subscription are exercised or at such other time as may be provided) then, for the purposes of this Condition 4.8, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange or subscription had taken place on the Specified Date.

Such adjustment shall become effective on the date of modification of the rights of conversion, exchange or subscription attaching to such Securities.

#### 4.9 *Demerger*

If and whenever the Company or any Subsidiary or (at the direction or request of or pursuant to any arrangements with the Company or any Subsidiary) any other company, person or entity shall offer any Securities in connection with which offer Shareholders as a class are entitled to participate in arrangements whereby such Securities may be acquired by them (except where the Conversion Price falls to be adjusted under Conditions 4.2, 4.3, 4.4, 4.6, 4.7 or 4.8 (or would fall to be so adjusted if the relevant issue or grant was at less than 95 per cent. of the Current Market Price per Ordinary Share on the relevant dealing day) or under Condition 4.5) the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the making of such offer by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the dealing day immediately preceding the date on which the terms of such offer are first publicly announced; and
- B is the Fair Market Value on the date of such announcement of the portion of the relevant offer attributable to one Ordinary Share.

Such adjustment shall become effective on the first date on which the Ordinary Shares are traded ex-rights on the Relevant Stock Exchange.

#### 4.10 *Change of Control*

If an offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) such Shareholders other than the offeror and/or any associated company (as defined in Section 529(1) of the Companies (Guernsey) Law 2008, as amended) of the offeror), to acquire all or a majority of the issued ordinary share capital of the Company or if any person proposes a scheme of arrangement

(pursuant to Part VIII of the Companies (Guernsey) Law, 2008 (as amended)) or analogous proceeding with regard to such acquisition (other than a Newco Scheme) and (such offer or scheme having become or been declared unconditional in all respects or effective) the right to cast more than 50 per cent. of the votes which may ordinarily be cast on a poll at a general meeting of the Company has or will become unconditionally vested in such offeror, such person, and/or any associate of such offeror or person as aforesaid (a "**Relevant Event**"), the Conversion Price shall in each such case be adjusted as set out below (but, in each case, adjusted, if appropriate, proportionately on each adjustment to the Conversion Price under the foregoing provisions of this Condition 4 and Condition 4.11 (such adjusted Conversion Price, the "**Change of Control Conversion Price**"), provided that the Change of Control Conversion Price shall only apply to CULS in respect of which Conversion Rights are duly exercised and the Conversion Date falls within the period (the "**Relevant Event Period**") commencing on the date the Relevant Event occurs and ending on the date falling 60 London and Guernsey Business Days following the occurrence of the Relevant Event or, if later, the date falling 60 London and Guernsey Business Days following the date on which notice of such Relevant Event is given to CULS Holders by or on behalf of the Company pursuant to Condition 4.15:

$$\text{COCCP} = \text{CP} / (1 + (P \times c/t))$$

where:

- COCCP is the Change of Control Conversion Price;
- CP is the Conversion Price in effect on the relevant Conversion Date;
- P is 36.90 per cent. (expressed as a fraction);
- c is the number of days from and including the date the Relevant Event occurs to but excluding the Maturity Date; and
- t is the number of days from (and including) the Issue Date to (but excluding) the Maturity Date.

#### 4.11 *Other Events; Contemporaneous Events*

If the Company determines that an adjustment should be made to the Conversion Price as a result of one or more circumstances not referred to above in this Conditions 4.1 to 4.9 (even if the relevant circumstance is specifically excluded from the operation of Conditions 4.1 to 4.9 above), the Company shall, at its own expense and acting reasonably, request the Independent Financial Adviser to determine as soon as practicable what adjustment (if any) to the Conversion Price is fair and reasonable to take account thereof and the date on which such adjustment should take effect and upon such determination such adjustment (if any) shall be made and shall take effect in accordance with such determination, provided that an adjustment shall only be made pursuant to this Condition 4.11 if the Independent Financial Adviser is so requested to make such a determination not more than 21 days after the date on which the relevant circumstance arises.

Notwithstanding the foregoing provisions, where the events or circumstances giving rise to any adjustment pursuant to this Condition 4 have already resulted or will result in an adjustment to the Conversion Price or where the events or circumstances giving rise to any adjustment arise by virtue of any other events or circumstances which have already given or will give rise to an adjustment to the Conversion Price or where more than one event which gives rise to an adjustment to the Conversion Price occurs within such a short period of time that, in the opinion of the Company, a modification to the operation of the adjustment provisions is required to give the intended result, such modification shall be made to the operation of the adjustment provisions as may be advised by the Independent Financial Adviser to be in its opinion appropriate to give the intended result

and provided further that, for the avoidance of doubt, the issue of Ordinary Shares pursuant to the exercise of Conversion Rights shall not result in an adjustment to the Conversion Price.

#### 4.12 *Aggregate Consideration and Consideration per Ordinary Share*

For the purpose of any calculation of the consideration receivable or price pursuant to Conditions 4.4, 4.6, 4.7 or 4.8, the following provisions shall apply:

- (a) the aggregate consideration receivable or price for Ordinary Shares issued for cash shall be the amount of such cash;
- (b) (x) the aggregate consideration receivable or price for Ordinary Shares to be issued or otherwise made available upon the conversion or exchange of any Securities shall be deemed to be the consideration or price received or receivable for any such Securities, and (y) the aggregate consideration receivable or price for Ordinary Shares to be issued or otherwise made available upon the exercise of rights of subscription attached to any Securities or upon the exercise of any options, warrants or rights shall be deemed to be that part (which may be the whole) of the consideration or price received or receivable for such Securities or, as the case may be, for such options, warrants or rights which are attributed by the Company to such rights of subscription or, as the case may be, such options, warrants or rights or, if no part of such consideration or price is so attributed or the Company so determines, the Fair Market Value of such rights of subscription or, as the case may be, such options, warrants or rights as at the date of the first public announcement of the terms of issue of such Securities or, as the case may be, such options, warrants or rights, plus in the case of each of (x) and (y) above, the additional minimum consideration receivable or price (if any) upon the conversion or exchange of such Securities, or upon the exercise of such rights or subscription attached thereto or, as the case may be, upon exercise of such options, warrants or rights and (z) the consideration receivable or price per Ordinary Share upon the conversion or exchange of, or upon the exercise of such rights of subscription attached to, such Securities or, as the case may be, upon the exercise of such options, warrants or rights shall be the aggregate consideration or price referred to in (x) or (y) above (as the case may be) divided by the number of Ordinary Shares to be issued upon such conversion or exchange or exercise at the initial conversion, exchange or subscription price or rate;
- (c) if the consideration or price determined pursuant to paragraph (a) or (b) above (or any component thereof) shall be expressed in a currency other than Pounds Sterling, it shall be converted into Pounds Sterling at such rate of exchange as may be determined in good faith by the Independent Financial Adviser to be the spot rate ruling at the close of business on the date of the first public announcement of the terms of issue of such Securities (or if no such rate is available on that date, the equivalent rate on the immediately preceding date on which such rate is available);
- (d) in determining consideration or price pursuant to the above, no deduction shall be made for any commissions or fees (howsoever described) or any expenses paid or incurred for any underwriting, placing or management of the issue of the relevant Ordinary Shares or Securities or otherwise in connection therewith; and
- (e) an adjustment shall not be made pursuant to Conditions 4.7 or 4.9 in respect of an issue or offer by or on behalf of an entity which is a Subsidiary unless (1) the same is also made at the direction or request of or pursuant to any arrangements with the Company or any Subsidiary and (2) (in the case of Condition 4.7) the relevant Ordinary Shares have been issued or are issued or are to be issued by the Company in connection with or in contemplation of the relevant issue or offer.



And in this Condition 4:

**"Current Market Price"** means, in respect of an Ordinary Share at a particular date, the average of the Volume Weighted Average Price of an Ordinary Share for the five consecutive dealing days ending on such date if it is a dealing day; provided that if at any time during the said five-dealing-day period the Volume Weighted Average Price shall have been based on a price ex-Dividend (or ex- any other entitlement) and during some other part of that period the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum- any other entitlement), then:

- (a) if the Ordinary Shares to be issued do not rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Ordinary Shares shall have been based on a price cum-Dividend (or cum-any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Ordinary Share as at the date of first public announcement of such Dividend (or entitlement) (excluding, in any case, any associated tax credit and less the tax (if any) falling to be deducted on payment thereof to a resident of the United Kingdom); or
- (b) if the Ordinary Shares to be issued do rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Ordinary Shares shall have been based on a price ex-Dividend (or ex- any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount,

and provided further that, if on each of the said five dealing days the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum- any other entitlement) in respect of a Dividend (or other entitlement) which has been declared or announced but the Ordinary Shares to be issued do not rank for that Dividend (or other entitlement), the Volume Weighted Average Price on each of such dates shall for the purposes of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Ordinary Share as at the date of the first public announcement of such Dividend or entitlement (excluding, in any case, any associated tax credit and less the tax (if any) falling to be deducted on payment thereof to a resident of the United Kingdom), and provided further that, if the Volume Weighted Average Price of an Ordinary Share is available on one or more of the said five dealing days, then the average of such Volume Weighted Average Prices which are available in that five dealing day period shall be used (subject to a minimum of two such prices) and if only one, or no, such Volume Weighted Average Price is available in the relevant period the Current Market Price shall be determined in good faith by the Independent Financial Adviser;

**"dealing day"** means a day on which the Relevant Stock Exchange is open for business, other than a day on which the Relevant Stock Exchange is scheduled to, or does, close prior to its regular weekday closing time;

**"Relevant Stock Exchange"** means the Specialist Fund Market of the London Stock Exchange plc or, if at the relevant time, the Ordinary Shares are not at that time admitted to trading on the Specialist Fund Market, the principal stock exchange or securities market on which the Ordinary Shares are then listed, admitted to trading or quoted or dealt in; and

**"Volume Weighted Average Price"** means, in respect of an Ordinary Share or, as the case may be, a Spin-Off Security on any dealing day, the order book volume-weighted average price of an Ordinary Share or, as the case may be, a Spin-Off Security appearing on or derived from Bloomberg page VAP (in the case of an Ordinary Share) or such other source as shall be determined to be appropriate by the Independent Financial Adviser on

such dealing day, provided that on any such dealing day where such price is not available or cannot otherwise be determined as provided above, the Volume Weighted Average Price of an Ordinary Share or a Spin-Off Security, as the case may be, in respect of such dealing day shall be the Volume Weighted Average Price, determined as provided above, on the immediately preceding dealing day on which the same can be so determined.

#### 4.13 *Retroactive Adjustments*

If the Conversion Date shall be after the record date for any such issue, distribution, grant or offer (as the case may be) as is mentioned in Conditions 4.2, 4.3, 4.4, 4.5 or 4.9, or any such issue as is mentioned in Condition 4.6 and 4.7 which is made to the Shareholders or any of them, but before the relevant adjustment becomes effective under Condition 4 (such adjustment, a "**Retroactive Adjustment**"), the Company shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued to the converting CULS Holder, in accordance with the instructions contained in the Conversion Notice or in the Uncertificated Conversion Notice (as may be applicable), such additional number of Ordinary Shares (if any) as, together with the Ordinary Shares issued or to be issued on conversion of the relevant CULS (together with any fraction of an Ordinary Share not so issued), is equal to the number of Ordinary Shares which would have been required to be issued on conversion of such CULS if the relevant adjustment (more particularly referred to in the said provisions of Condition 4) to the Conversion Price had in fact been made and become effective immediately after the relevant record date.

#### 4.14 *Decision of an Independent Financial Adviser*

If any doubt shall arise as to the appropriate adjustment to the Conversion Price, and following consultation between the Company and the Independent Financial Adviser, a written opinion of the Independent Financial Adviser in respect of such adjustment to the Conversion Price shall be conclusive and binding on all concerned, save in the case of manifest error.

#### 4.15 *Relevant Event*

Within 14 calendar days following the occurrence of a Relevant Event, the Company shall give notice in writing thereof to the Trustee and to the CULS Holders in accordance with the Trust Deed (a "**Relevant Event Notice**"). Such notice shall contain a statement informing CULS Holders of their entitlement to exercise their Conversion Rights as provided in these Conditions and their entitlement to exercise their rights to require redemption of their CULS pursuant to Condition 7.4.

The Relevant Event Notice shall also specify:

- (a) all information material to CULS Holders concerning the Relevant Event;
- (b) the Conversion Price immediately prior to the occurrence of the Relevant Event and the Conversion Price which is applicable pursuant to Condition 4.10 during the Relevant Event Period on the basis of the Conversion Price in effect immediately prior to the occurrence of the Relevant Event;
- (c) the closing price of the Ordinary Shares as derived from the Relevant Stock Exchange as at the latest practicable date prior to the publication of the Relevant Event Notice;
- (d) the last day of the Relevant Event Period; and
- (e) the Relevant Event Put Date (as defined below).

The Trustee shall not be required to monitor, determine, form an opinion or take any steps to ascertain whether a Relevant Event or any event which could lead to a Relevant Event has occurred or may occur and will not be responsible or liable to CULS Holders or any other person for any loss arising from any failure by it to do so.

4.16 *Discount to par*

The Conversion Price may not be reduced so that, on conversion of the CULS, Ordinary Shares would fall to be issued at a discount to their nominal or par value.

4.17 *Employees' Share Schemes*

No adjustment will be made to the Conversion Price where Ordinary Shares or other Securities (including rights, warrants and options) are issued, offered, exercised, allotted, appropriated, modified or granted to, or for the benefit of, employees or former employees (including directors holding or formerly holding executive office or the personal service company of any such person) or their spouses or relatives, in each case, of the Company or any Subsidiary or any associated company or to trustees to be held for the benefit of any such person, in any such case, pursuant to any dividend reinvestment plan or similar plan or scheme.

4.18 *Rounding Down and Adjustments*

On any adjustment, the resultant Conversion Price, if not an integral multiple of £0.0001, shall be rounded down to the nearest whole multiple of £0.0001. No adjustment shall be made to the Conversion Price where such adjustment (rounded down if applicable) would be less than one per cent. of the Conversion Price then in effect. Any adjustment not required to be made, and/or any amount by which the Conversion Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment, and such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time.

4.19 *Notice of adjustment of Conversion Price*

Notice of any adjustments to the Conversion Price shall be given to CULS Holders in accordance with the Trust Deed promptly after the determination thereof.

4.20 *Trustee not liable*

The Trustee shall not be required to take any steps to ascertain whether a Relevant Event or any event which could lead to a Relevant Event or any event described in Conditions 4.1 to 4.9 has occurred or may occur.

5. **RESTRICTION ON FINANCIAL INDEBTEDNESS**

5.1 For as long as the CULS are outstanding, without the sanction of an Extraordinary Resolution:

- (a) the Company shall not incur or have outstanding (and the Company shall procure that no Subsidiary incurs or has outstanding) any Financial Indebtedness if, at the time of such incurrence, the aggregate amount of Financial Indebtedness of the Company and its Subsidiaries then outstanding (and taking into account the Financial Indebtedness to be incurred as if it had been incurred) exceeds 50 per cent. of the Net Asset Value of the Company; or
- (b) the aggregate amount of Financial Indebtedness of the Company and its Subsidiaries (excluding indebtedness with an original maturity of less than 270-days for the purpose of meeting investment commitments pending the realisation

of the Company's assets) shall not, at any time, exceed 75 per cent. of the Net Asset Value of the Company.

For the purpose of this Condition:

**"Financial Indebtedness"** shall mean any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculation the value of any derivative transaction, only the marked to market value shall be taken into account);
- (f) any amount raised by the issue of shares which are redeemable (other than at the option of the Company) before the Maturity Date or are otherwise classified as borrowings under International Financial Reporting Standards as adopted by the European Union in accordance with IAS Regulation 1606/2002 (as amended); or
- (g) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (f) above.

For the purposes of this Condition, any Financial Indebtedness denominated in a currency other than the currency in which the Net Asset Value of the Company is reported shall be converted into the currency in which the Net Asset Value of the Company is reported.

5.2 Condition 5.1(a) shall not prohibit the incurrence of any of the following items of Financial Indebtedness:

- (a) the incurrence by the Company or any Subsidiary of any Financial Indebtedness in existence on the Initial Issue Date;
- (b) the incurrence by the Company of Financial Indebtedness represented by the Initial CULS to be issued on the Initial Issue Date; or
- (c) the incurrence by the Company or any Subsidiary of indebtedness with an original maturity of less than 270-days for the purpose of meeting investment commitments pending the realisation of the Company's assets.

## 6. COVENANTS RELATING TO CONVERSION RIGHTS

6.1 While any Conversion Rights remain capable of exercise by any CULS Holder, save with the previous sanction of an extraordinary resolution of the CULS Holders within the meaning of the Trust Deed (an **"Extraordinary Resolution"**) or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall use its reasonable endeavours:

- (a) to procure that (i) the CULS and (ii) the Ordinary Shares which are fully paid at all times remain admitted to trading on the Specialist Fund Market; and
- (b) to ensure that during such time as the Ordinary Shares are admitted to trading on the Specialist Fund Market and/or listed or quoted on any other stock exchange, all the Ordinary Shares allotted on exercise of Conversion Rights will, on allotment, be admitted to trading on the Specialist Fund Market and/or be listed or quoted on such other stock exchange.

6.2 While any Conversion Rights remain capable of exercise by any CULS Holder, save with the previous sanction of an Extraordinary Resolution or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall:

- (a) subject only to their being admitted to trading on the Specialist Fund Market and/or any other stock exchange or securities market on which the Ordinary Shares may then be listed or quoted or dealt in, issue, allot and deliver Ordinary Shares on exercise of Conversion Rights in accordance with the Conditions and, at all times, keep available for issue free from pre-emptive or other similar rights such number of Ordinary Shares as would enable it to issue in full such number of Ordinary Shares as are required to be issued by it upon exercise of Conversion Rights and all other rights of subscription and exchange for and conversion into Ordinary Shares;
- (b) not issue or pay up any Securities, in either case by way of capitalisation of profits or reserves unless, in any such case, the same gives rise (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price other than:
  - (i) by the issue of fully paid Ordinary Shares or other Securities to the Shareholders and other holders of ordinary shares in the capital of the Company which by their terms entitle the holders thereof to receive Ordinary Shares or other Securities on a capitalisation of profits or reserves;
  - (ii) by the issue of Ordinary Shares paid up in full out of profits or reserves (in accordance with applicable law) and issued wholly, ignoring fractional entitlements, in lieu of the whole or part of a cash dividend; or
  - (iii) by the issue of fully paid equity share capital (other than Ordinary Shares) to the holders of equity share capital of the same class and other holders of ordinary shares in the capital of the Company which by their terms entitle the holders thereof to receive equity ordinary share capital (other than Ordinary Shares) on a capitalisation of profits or reserves;
- (c) not in any way modify the rights attaching to the Ordinary Shares with respect to voting, dividends or liquidation nor issue any other class of equity ordinary share capital carrying any rights which are more favourable than such rights but so that nothing in this Condition 6.2 shall prevent:
  - (i) any consolidation or subdivision of the Ordinary Shares;
  - (ii) any modification of such rights which is not, in the opinion of the Independent Financial Adviser, materially prejudicial to the interests of the CULS Holders;
  - (iii) any alteration to the Articles made in connection with the matters described in this Condition 5 or which is supplemental or incidental to any of the foregoing (including any amendment made to enable or facilitate procedures relating to such matters and any amendment dealing with the rights and

obligations of holders of Securities, including Ordinary Shares, dealt with under such procedures);

- (iv) any issue of equity ordinary share capital where the issue of such equity share capital results or would, but for the provisions of these Conditions, otherwise result in an adjustment of the Conversion Price; or
- (v) any issue of equity ordinary share capital or modification of rights attaching to the Ordinary Shares where prior thereto the Company shall have instructed the Independent Financial Adviser to determine what (if any) adjustments should be made to the Conversion Price as being fair and reasonable to take account thereof and the Independent Financial Adviser shall have determined either that no adjustment is required or that an adjustment to the Conversion Price is required and, if so, the new Conversion Price as a result thereof and the basis upon which such adjustment is to be made and, in any such case, the date on which the adjustment shall take effect (and so that the adjustment shall be made and shall take effect accordingly);
- (d) procure that no Securities (whether issued by the Company or any Subsidiary or procured by the Company or any Subsidiary to be issued or issued by any other person pursuant to any arrangement with the Company or any Subsidiary) issued without rights to convert into, or exchange or subscribe for, Ordinary Shares shall subsequently be granted such rights exercisable at a consideration per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share at the close of business on the last dealing day preceding the date of the announcement of the proposed inclusion of such rights unless the same gives rise (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price and that at no time shall there be in issue Ordinary Shares of differing nominal values, save where such Ordinary Shares have the same economic rights;
- (e) not make any issue, grant or distribution or take any other action if the effect thereof would be that, on the conversion of the CULS, Ordinary Shares would (but for the provisions of Condition 4.15) have to be issued at a discount or otherwise could not, under any applicable law then in effect, be legally issued as fully paid;
- (f) not reduce its issued share capital, share premium account or capital redemption reserve or any uncalled liability in respect thereof or any non-distributable reserves, except (i) pursuant to the terms of issue of the relevant share capital, (ii) by means of a purchase or redemption of share capital of the Company to the extent permitted by the Articles and/or applicable law, (iii) where the reduction does not involve any distribution of assets, (iv) where the reduction results in (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, result in) an adjustment to the Conversion Price or is otherwise taken into account for the purposes of determining whether such an adjustment should be made, (v) solely in relation to a change in the currency in which the nominal value of the Ordinary Shares is expressed, (vi) pursuant to a Newco Scheme or (vii) by way of, or involving, a transfer to reserves under applicable law;
- (g) if any offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) such Shareholders other than the offeror and/or any associated companies (as defined in section 529(1) of the Companies (Guernsey) Law 2008 (as amended)) of the offeror) to acquire all or a majority of the issued ordinary share capital of the Company, or if a scheme is proposed with regard to such acquisition, give notice of such offer or scheme to the Trustee and the Holders at the same time as any notice thereof is sent to the Shareholders (or

as soon as practicable thereafter) that details concerning such offer or scheme may be obtained from the office of the Company and, where such an offer or scheme has been recommended by the Board or where such an offer has become or been declared unconditional in all respects, use its reasonable endeavours to procure that a like offer or scheme is extended to the holders of any Ordinary Shares issued during the period of the offer or scheme arising out of the exercise of the Conversion Rights and/or to the Holders; and

- (h) send to all CULS Holders a copy of every document sent by the Company to Shareholders at the time the same is sent to Shareholders.

## 7. **PURCHASE AND REDEMPTION**

### 7.1 *Final Redemption*

All CULS not previously redeemed, purchased or converted and, in each case, cancelled in accordance with the provisions of the Trust Deed or these Conditions will be redeemed by the Company on 30 July 2021 (the "**Maturity Date**") at their nominal amount, together with accrued interest up to (but excluding) the date of final redemption of the Maturity Date.

### 7.2 *Redemption at the Option of the Company*

On giving not less than 30 nor more than 60 days' notice (an "**Optional Redemption Notice**") to the Trustee and to CULS Holders in accordance with the Trust Deed, the Company may redeem all (but not some only) of the CULS on the date (the "**Optional Redemption Date**") specified in the Optional Redemption Notice at their nominal amount, together with accrued but unpaid interest to such date:

- (a) at any time on or after 30 July 2017, if on each of not less than 20 dealing days during any period of 30 consecutive dealing days ending not earlier than the fifth dealing day prior to the giving of the relevant Optional Redemption Notice, the Volume Weighted Average Price of an Ordinary Share exceeds 130 per cent. of the Conversion Price in effect (or deemed to be in effect) on each dealing day; or
- (b) at any time, if prior to the date the relevant Optional Redemption Notice is given, Conversion Rights shall have been exercised and/or purchases (and corresponding cancellations) and/or redemptions effected in respect of 85 per cent. or more in nominal amount of the CULS originally issued (which shall, for this purpose, include any Additional CULS).

For the purposes of paragraph (a) of this Condition 7.2, if on any dealing day in such 30 dealing day period, the Volume Weighted Average Price of an Ordinary Share on such dealing day shall have been quoted cum-Dividend (or cum-any other entitlement), the Volume Weighted Average Price of an Ordinary Share on such dealing day shall be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Ordinary Share as at the date (or, if that is not a dealing day, the immediately preceding dealing day) of first public announcement of such Dividend (or entitlement).

### 7.3 *Optional Redemption Notices*

Any Optional Redemption Notice shall be irrevocable. Any such notice shall specify (a) the Optional Redemption Date, which shall be a Business Day in London and Guernsey, (b) the Conversion Price, the aggregate nominal amount of the CULS outstanding and the closing price of the Ordinary Shares as derived from the Relevant Stock Exchange, in each case, as at the latest practicable date prior to the publication of the Optional Redemption Notice, (c) the last day on which Conversion Rights may be exercised by CULS Holders

and (d) the amount of accrued interest payable in respect of the CULS on the Optional Redemption Date.

#### 7.4 *Redemption at the Option of the CULS Holder following a Relevant Event*

Following the occurrence of a Relevant Event, each CULS Holder will have the right to require the Company to redeem that CULS on the Relevant Event Put Date at its nominal amount, together with accrued and unpaid interest to such date. To exercise such right, the holder of the relevant CULS must deliver a duly completed and signed notice of exercise in the form for the time being current obtainable from the specified office of the UK Transfer and Paying Agent (a "**Relevant Event Put Exercise Notice**"), together with (in the case of Certificated CULS only) the relevant CULS Certificate to the specified office of the UK Transfer and Paying Agent, at any time during the Relevant Event Period. The "**Relevant Event Put Date**" shall be the tenth calendar day after the expiry of the Relevant Event Period. Payment in respect of any such CULS shall be made in accordance with Condition 15. A Relevant Event Put Exercise Notice, once delivered, shall be irrevocable and the Company shall redeem all CULS the subject of Relevant Event Put Exercise Notices delivered as aforesaid on the Relevant Event Put Date.

#### 7.5 *Purchase*

Subject to the requirements (if any) of any stock exchange on which the CULS may be admitted to listing and trading at the relevant time and subject to compliance with applicable laws and regulations, the Company or any Subsidiary may, at any time, purchase any CULS in the open market or otherwise at any price. Such CULS may be held, reissued, resold or, at the option of the Company or relevant Subsidiary, cancelled.

#### 7.6 *Cancellation*

All CULS which are redeemed or in respect of which Conversion Rights are exercised will be cancelled and may not be reissued or resold. CULS purchased by the Company or any of its Subsidiaries may be cancelled and, if so surrendered, shall be cancelled forthwith and may not be reissued or re-sold.

### 8. **EVENTS OF DEFAULT**

Upon the occurrence of any of the following events, the Trustee may at its discretion and, if requested in writing by CULS Holders holding at least one-quarter in nominal amount of the CULS then outstanding or directed by an Extraordinary Resolution, shall (subject, in each case, to being indemnified and/or secured and/or pre-funded by CULS Holders to its satisfaction), give notice to the Company that the CULS are (and the CULS shall thereupon become) immediately due and payable at their nominal amount together with accrued interest as provided in the Trust Deed:

8.1 if the Company makes default (except as provided by the Subordination Agreement) for a period of 14 days or more in the payment on the due date of any principal or interest in respect of the CULS;

8.2 if an order is made or an effective resolution passed for the winding up or dissolution of the Company (except for the purpose of a reconstruction or amalgamation the terms of which have previously been approved in writing by the Trustee or by an Extraordinary Resolution);

if:

(a) the Company is unable or admits inability to pay its debts as they fall due;



- (b) the value of the assets of the Company is less than its liabilities (taking into account contingent and prospective liabilities);
  - (c) a moratorium is declared in respect of any indebtedness of the Company; or
  - (d) the Company ceases or threatens to cease to carry on all or substantially all of its business, which shall not include (A) a change in investment policy, objective, performance benchmark or manager, or (B) a reconstruction or amalgamation the terms of which have previously been approved in writing by the Trustee or by an Extraordinary Resolution;
- 8.3 if an encumbrancer takes possession or a receiver or administrator or administrative receiver or other similar official is appointed of the Company or of the whole or a substantial part of the assets or undertaking of the Company or a distress or execution is levied or enforced upon or sued out against the whole or a substantial part of the assets or property of the Company and is not discharged within 30 days of being levied, enforced or sued out;
- 8.4 if default is made by the Company in the performance or observance of any covenant or provision binding on it under or pursuant to the Trust Deed (other than (a) any covenant for the payment of principal or interest in respect of the CULS; or (b) any breach referred to in Condition 8.6) or if any event occurs or any action is taken or fails to be taken which is (or but for the provisions of any applicable law would be) a breach of any of the covenants contained in the Trust Deed and (except where, in the opinion of the Trustee, the same is not capable of remedy when no such continuation or notice as is herein provided will be required) the same continues for more than 30 days after written notice requiring the same to be remedied shall have been given to the Company by the Trustee; or
- 8.5 if the Company, without the prior written consent of the Trustee or by an Extraordinary Resolution or as otherwise permitted by these Conditions, alters the rights attached to all or any of its Ordinary Shares in issue from time to time or attaches any special rights, privileges or restrictions thereto, or creates or issues any new class of equity share capital other than the Ordinary Shares ranking *pari passu* in all respects (or in all respects except as regards any restriction on their rights to receive dividends or other distributions or on their rights on a return of capital or on their rights to participate in any issue by way of capitalisation of profits or reserves or on their voting rights, which, in all such cases, make such rights materially less favourable than those attached to the Ordinary Shares) with the Ordinary Shares and, in each case (except where, in the opinion of the Trustee, such alteration, attachment, creation or issue is not capable of cancellation when no such continuation or notice as is herein provided shall be required), such alteration, attachment, creation or issue shall continue for more than 30 days after written notice requiring such alteration, attachment, creation or issue to be cancelled shall have been given to the Company by the Trustee, provided that nothing in this Condition 8.6 shall restrict the right of the Company to consolidate or subdivide Ordinary Shares or convert Ordinary Shares into stock or vice versa and no such consolidation, subdivision or conversion shall give rise to any rights under this Condition 8.6.

Provided that no such event set out in Conditions 8.3 to 8.6 shall constitute an event of default on the occurrence of which the CULS may become immediately due and payable unless the Trustee shall have certified in writing that, in its opinion (having taken such advice as it may require), such event is materially prejudicial to the interests of the CULS Holders.

## 9. **STATUS AND SUBORDINATION**

### 9.1 *Status*

The CULS constitute direct, unsecured, subordinated, and unconditional obligations of the Company which will, at all times, rank *pari passu* among themselves.

### 9.2 *Subordination*

The terms of the CULS are subject in their entirety to the terms of the Subordination Agreement. In the event of inconsistency between the terms of the CULS and the provisions of the Subordination Agreement, the provisions of the Subordination Agreement will prevail. The CULS Holders agree to and are bound by, and are deemed to have notice of, all the provisions of the Subordination Agreement.

Any failure to pay any amount under or in respect of the CULS to the Trustee (other than any Trustee Fees and Expenses (as defined in the Subordination Agreement)) or any CULS Holder as a result of the provisions of the Subordination Agreement shall not give rise to an event of default under Condition 8 or a breach of any other Condition. Notwithstanding the above, any amount which is not so paid due to the provisions of the Subordination Agreement shall remain a debt owing to the Trustee or the relevant CULS Holder, as the case may be, by the Company until it is paid and shall be payable, in the case of principal, on the third Business Day in London and Guernsey following the day on which the relevant provisions of the Subordination Agreement no longer apply (whether or not such a date is otherwise a payment date pursuant to the Conditions) and, in the case of interest, on such Business Day or on the next Interest Payment Date (at the Company's election). No interest shall accrue on any amount under or in respect of the CULS which is not paid solely as a result of the relevant provisions of the Subordination Agreement.

## 10. **DENOMINATION AND TRANSFER**

The CULS will be denominated in integral multiples of £10 in nominal amount and will be in registered form and transferable without payment of any fee (excepting all transfer taxes). The Trust Deed will contain provisions enabling the CULS to be held and transferred in uncertificated form. The Trustee may, without any sanction of CULS Holders, concur with the Company in making modifications to the provisions of the Trust Deed in order to reflect changes in the CREST Regulations or in the applicable law and practice relating to the holding or transfer of CULS in uncertificated form and the issue of Ordinary Shares in uncertificated form on conversion of CULS.

The CULS may not be legally or beneficially owned by any US Person at any time nor offered, sold, delivered, pledged, assigned or otherwise transferred or exercised or redeemed at any time within the United States or to, or for the account or benefit of, any US Person. If the Company determines at any time that any CULS is legally or beneficially owned by any US Person, the Company may direct the CULS Holder to sell or transfer such CULS to a person who is not a US Person within 14 days following receipt of notice of the direction. If the CULS Holder fails to sell or transfer such CULS within such period, the Company may at its discretion (i) cause such CULS to be sold to an acquirer selected by the Company that certifies to the Company that such acquirer is not a US Person, on terms as the Company may choose, subject to the purchaser representations and requirements and transfer restrictions set out herein, and, pending such transfer, no further payments will be made in respect of such CULS or (ii) give notice to the CULS Holder that such CULS will be redeemed by the Company at their nominal amount, together with any accrued but unpaid interest on the date specified in such notice.

In the event of a sale in accordance with the previous paragraph, the Company may select an acquirer by any means determined by it in its sole discretion. The proceeds of the sale, net of any commissions, expenses and taxes due in connection with the sale

shall be remitted to the selling CULS Holder. The terms and conditions of any sale hereunder (including the sale price) shall be determined in the sole discretion of the Company, subject to the purchaser representations and requirements and transfer restrictions set out herein (and in the Placing Agreement), and the Company shall not be liable to any person having an interest in the CULS sold as a result of any sale or the exercise of such discretion.

**11. ISSUES OF ADDITIONAL UNSECURED LOAN STOCK**

Provision will be made in the Trust Deed to enable further unsecured loan stock of the Company to be issued either so as to be identical in all respects with and to form a single series with the CULS (including the Further CULS) or on such terms, including rights as to interest, ranking (but not ranking ahead of the CULS), conversion, premium, redemption and otherwise as the Company may, in its absolute discretion (but subject to Shareholder Approval), determine. Such further unsecured loan stock shall, if identical and forming a single series with the CULS, and may, in any other case with the consent of the Trustee, be constituted by a trust deed supplemental to the Trust Deed and shall accordingly, if so constituted, be "**Additional CULS**". However, no additional loan capital of the Company or any Subsidiary shall be paid up in whole or in part by way of capitalisation of profits or reserves or be issued by way of collateral security.

**12. MODIFICATION OF RIGHTS, ETC.**

- 12.1 CULS Holders will have power by Extraordinary Resolution, inter alia, to sanction any modification, abrogation or compromise of or arrangement in respect of their rights against the Company and to assent to any modification of the provisions of the Trust Deed. In addition, the Trustee may from time to time without the consent or sanction of the CULS Holders (but only if and insofar as in the opinion of the Trustee the interests of the CULS Holders will not be materially prejudiced thereby), on such terms and subject to such conditions as it shall deem expedient, waive or authorise any breach or proposed breach by the Company of any of the covenants or provisions of the Trust Deed, determine that any act or omission which would or could constitute an event of default under the Trust Deed shall not do so, or agree to any modification of the provisions of the Trust Deed. The Trustee may also agree, without such consent or sanction, to any modification of the Trust Deed which is, in the opinion of the Trustee, of a formal, technical or minor nature or to correct a manifest error or an error which is in the opinion of the Trustee proven. Provision will be made for convening separate meetings of the holders of the CULS and each series of any Additional CULS when the Trustee considers this appropriate.
- 12.2 An Extraordinary Resolution passed at a meeting of the CULS Holders duly convened and held shall be binding upon all the CULS Holders, whether present or not present at the meeting, and the Company, each of the CULS Holders and (subject to the provisions for its indemnity and/or security and/or pre-funding contained in the Trust Deed) the Trustee shall be bound to give effect thereto accordingly.
- 12.3 In connection with the exercise by it of any of its trusts, powers, authorities and discretions under the Trust Deed (including, without limitation, any modification, waiver, authorisation or determination referred to in Condition 12.1), the Trustee shall have regard to the general interests of the CULS Holders as a class but shall not have regard to any interests arising from circumstances particular to individual CULS Holders (whatever their number) and, in particular but without limitation, shall not have regard to the consequences of such exercise for individual CULS Holders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political subdivision thereof and the Trustee shall not be entitled to require, nor shall any CULS Holder be entitled to claim, from the Company, the Trustee or any other person, any indemnification

or payment in respect of any tax consequences of any such exercise on individual CULS Holders.

### 13. **TRUSTEE'S INDEMNIFICATION AND CONSENTS**

13.1 The Trust Deed will contain provisions for the indemnification and/or pre-funding of and/or provision of security to the Trustee and for its relief from responsibility in certain events. The Trust Deed will provide that when determining whether an indemnity or any security or prefunding is satisfactory to it, the Trustee shall be entitled:

- (a) to evaluate its risk in any given circumstance by considering the worst-case scenario; and
- (b) to require that any indemnity or security given to it by the CULS Holders or any of them be given on a joint and several basis and be supported by evidence satisfactory to it as to the financial standing and creditworthiness of each counterparty and/or as to the value of the security and an opinion as to the capacity, power and authority of each counterparty and/or the validity and effectiveness of the security.

13.2 Any consent given by the Trustee may be given on such terms and subject to such conditions (if any) as the Trustee may in its absolute discretion think fit and, notwithstanding anything to the contrary in the Conditions or the Trust Deed, may be given retrospectively.

### 14. **REMOVAL, RETIREMENT AND REPLACEMENT OF TRUSTEE**

The Trust Deed will contain provisions for the removal of the Trustee by an Extraordinary Resolution and will permit the Trustee to retire at any time without assigning any reason. The Company will have the power to appoint a new Trustee but such new Trustee shall be subject to the approval of an Extraordinary Resolution.

### 15. **PAYMENTS**

#### 15.1 *Method of Payment*

- (a) Certificated CULS

Payment of the nominal amount of CULS on redemption and/or interest will be made by transfer to a Pounds Sterling account (or other account to which Pounds Sterling may be credited) maintained by the CULS Holder with a bank in the City of London as previously notified to the UK Transfer and Paying Agent, or in the absence of a bank account by cheque posted to the registered address of the first-named holder on the CULS Register, and (in the case of redemption and/or interest payable on redemption) will be made against surrender of the relevant CULS Certificate at the specified office of the UK Transfer and Paying Agent.

- (b) Uncertificated CULS

The Company shall pay or cause to be paid payments of nominal amount in respect of Uncertificated CULS by way of a CREST assured payment in accordance with the CREST Regulations.

Payments of interest in respect of Uncertificated CULS will be made by transfer to a Pounds Sterling account (or other account to which Pounds Sterling may be credited) maintained by the CULS Holder with a bank in the City of London where previously notified to the UK Transfer and Paying Agent, or by cheque posted to the address of the first-named holder on the CULS Register relating to Uncertificated CULS.

#### 15.2 *Payments subject to fiscal laws*

All payments in respect of the CULS are subject, in all cases, to any fiscal or other laws and regulations applicable thereto in the place of payment. No commissions or expenses shall be charged to CULS Holders in respect of such payments.

#### 15.3 *Non-Business Days*

Every cheque sent through the post shall be sent by first class post on or before the Business Day in London and Guernsey next preceding the due date of the relevant nominal and or interest payment unless such due date is not a Business Day in London and Guernsey, in which event it shall be sent on or before the second Business Day in London and Guernsey next preceding the due date of the relevant payment. Where payment is to be made by transfer to a Pounds Sterling bank account, payment instructions (for value the due date or, if the due date is not a Business Day in London and Guernsey, for value the next succeeding Business Day in London and Guernsey) will be initiated (a) in the case of payments of nominal amount and interest payable on redemption, on the later of the due date for payment and (in the case of Certificated CULS only) the day on which the relevant CULS Certificate is surrendered at the specified office of the UK Transfer and Paying Agent and (b) in the case of payments of interest payable other than on redemption, on the due date for payment. CULS Holders shall not be entitled to any interest or other payment in respect of any delay in payment resulting from the due date for payment not being a Business Day in London and Guernsey.

#### 15.4 *Rounding*

When making payments of nominal amount and/or interest to CULS Holders, the relevant payment will be rounded down to the nearest whole pence.

### 16. **NOTICES**

All notices regarding the CULS will be deemed to be validly given (i) if sent by first class mail or (if posted to an address overseas) by airmail to the CULS Holders (or the first named of joint holders) at their respective addresses recorded in the CULS Register (or, in the case of Uncertificated CULS, recorded in the electronic register of CULS Holders maintained in accordance with the CREST Regulations), (ii) if published through the electronic communications system of Bloomberg or (iii) for so long as the CULS are admitted to trading on the Specialist Fund Market, if published through the regulatory news service of the London Stock Exchange. Any such notice will be deemed to have been given on the fourth day after mailing or on the date of publication (as the case may be). In addition, for so long as any CULS are listed by or on a competent authority or stock exchange and the rules of that competent authority or stock exchange so require, such notice will be published in a daily newspaper of general circulation in the places or places required by that competent authority or stock exchange. If the giving of notice as provided above is not practicable, notice will be given in such other manner and shall be deemed to have been given on such date as the Trustee may approve.

### 17. **TAXATION**

All payments of principal and interest by or on behalf of the Company in respect of the CULS shall be made free and clear of, and without withholding or deduction for or on account of any taxation, unless such withholding or deduction is required by law. In that event, the relevant payment will be made subject to such withholding or deduction. The Company will not be required to pay any additional or further amounts in respect of such withholding or deduction.

18. **AUDITORS**

The Trust Deed will provide that the Trustee may rely on certificates or reports provided by the Auditors or other experts in accordance with the provisions of the Trust Deed whether or not any such certificate or report shall be addressed to the Trustee and whether or not any such certificate or report or any engagement letter or other document entered into by the Trustee and/or the Auditors or such other experts in connection therewith contains any limit (whether monetary or otherwise) on the liability of the Auditors or such other expert.

19. **MISCELLANEOUS**

A person whose address on the CULS Register is not within the United Kingdom shall not be entitled to receive notice of any meeting unless such person shall have given to the Company an address within the United Kingdom to which such notice shall be sent. Unless otherwise determined by the Company, each CULS Holder electing to convert their CULS must represent and warrant that, in the Conversion Notice (or otherwise as agreed by the Company), that he/she is not a US Person (as defined in the Securities Act), that he/she is not acquiring Ordinary Shares for the account of a US Person and that he/she is acquiring Ordinary Shares in an offshore transaction (as defined in Regulation S under the U.S. Securities Act of 1933, as amended).

20. **GOVERNING LAW AND JURISDICTION**

20.1 *Governing Law*

The Trust Deed, and any non-contractual obligations arising out of or in connection with it, will be governed by, and construed in accordance with, English law.

20.2 *Jurisdiction*

The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the CULS or the Trust Deed and, accordingly, any legal action or proceedings arising out of or in connection with the CULS or the Trust Deed ("**Proceedings**") may be brought in such courts. The Company irrevocably submits to the jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of each of the CULS Holders and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

20.3 *Agent for Service of Process*

The Company has appointed Law Debenture Corporate Services Limited at its office for the time being, currently at Fifth Floor, 100 Wood Street, London EC2V 7EX, as its agent in England to receive service of process of any Proceedings in England. If, for any reason, the Company does not have such an agent in England, it will promptly appoint a substitute process agent and notify the CULS Holders of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.

## SCHEDULE 2

### Form of Subordination Agreement

**THIS AGREEMENT** is made on 30 July 2014

#### **BETWEEN:**

- (3) **JZ CAPITAL PARTNERS LIMITED**, a non-cellular company limited by shares and incorporated in Guernsey under the Companies (Guernsey) Law 2008 (as amended) with registered number 48761 (the "**Company**");
- (4) **JEFFERIES FINANCE LLC** as administrative agent and collateral agent for and on behalf of the Initial Senior Lenders (as defined below) (the "**Initial Senior Representative**"); and
- (5) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.**, a company incorporated under the laws of England and Wales with registered number 1675231 (the "**Trustee**", which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the trustee or trustees of these presents) as trustee for the CULS Holders (as defined below).

#### **RECITALS:**

- (C) The Company proposes to issue the Initial CULS and may, at its absolute discretion but subject to obtaining the prior approval of the shareholders of the Company, elect to issue Further CULS.
- (D) The terms of the Term Loan Credit Agreement requires that any securities issued by the Company which are convertible into its ordinary shares must be subordinated on terms reasonably satisfactory to Required Lenders (as defined therein).
- (E) As a condition to the issue of the CULS, the Company requires the Trustee, on behalf of the CULS Holders, to enter into this Agreement to subordinate certain payments under the CULS and the Trust Deed in right of payment to the Senior Debt.

#### **THE PARTIES AGREE AS FOLLOWS:**

##### **1. INTERPRETATION**

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**"Accession Agreement"** means an accession agreement substantially in the form set out in Schedule 1 (*Form of Accession Agreement*) under which an Additional Senior Representative or a New Trustee may become a party to this Agreement, with such amendments as the Company and the Appointed Senior Representative may reasonably approve or reasonably require;

**"Additional Senior Creditor"** means:

- (a) each Additional Senior Lender; and
- (b) each Additional Senior Representative;

**"Additional Senior Document"** means any document designated by the Company as an "Additional Senior Document" in accordance with Clause 15 (*Changes to Senior Debt*);

**"Additional Senior Lender"** means each person party to an Additional Senior Document in its capacity as lender to, or creditor in respect of Financial Indebtedness (including any hedge counterparty) of, the Company;

**"Additional Senior Representative"** means each entity that accedes to this Agreement as a "Additional Senior Representative" in accordance with Clause 15 (*Changes to Senior Debt*);

**"Appointed Senior Representative"** means the Senior Representative which has agreed (with the consent in writing of the other Senior Representatives) to act as Appointed Senior Representative for the purposes of this Agreement which, as at the date of this Agreement, shall be the Initial Senior Representative. Each other Senior Representative shall confirm in writing to the Company and the Trustee its acceptance of any appointment of an Appointed Senior Representative after the date of this Agreement and, if acceptance of any such appointment is not received by the Company and the Trustee from all other Senior Representatives, "Appointed Senior Representative" shall mean all Senior Representatives (acting unanimously);

**"Conditions"** means the conditions of the CULS (as in effect on the date of this Agreement);

**"CULS"** means the Initial CULS and further unsecured subordinated loan stock of the Company issued after the date of this Agreement pursuant to clause 2.4 of the Trust Deed (including the Further CULS) or, where the context so requires, any of them;

**"CULS Default"** means

- (a) a default by the Company, subject to any originally applicable grace period, in the payment on the due date of any principal or interest in respect of the CULS which, but for this Agreement, would be an Event of Default under clause 8 (*Events of Default*) or the Trust Deed; or
- (b) any other "Event of Default" under clause 8 (*Events of Default*) of the Trust Deed (as in effect on the date of this Agreement);

**"CULS Enforcement Notice"** has the meaning given to it in Clause 7.2 (*Permitted Enforcement by Subordinated Creditors*);

**"CULS Holder"** means any holder of CULS from time to time;

**"CULS Standstill Period"** has the meaning given to it in Clause 7.3 (*CULS Standstill Period*);

**"CULS Standstill Period Start Date"** has the meaning given to it in Clause 7.3 (*CULS Standstill Period*);

**"Enforcement Action"** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or any other declaration that any Liabilities are due and payable prior to their originally scheduled maturity or date due for payment;
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of any demand against the Company in relation to any Liabilities; or



- (iv) the enforcement of any Liabilities by execution or otherwise;
- (b) the initiation or support of or taking any steps with a view to:
  - (i) any insolvency, liquidation, reorganisation, administration or dissolution proceedings;
  - (ii) any voluntary arrangement or assignment for the benefit of creditors; or
  - (iii) any similar proceedings,
 whether by petition, convening a meeting, voting for a resolution or otherwise;
- (a) bringing, supporting or joining any legal or arbitration proceedings in relation to any Liabilities; or
- (b) the entering into of any composition, compromise, assignment or arrangement for reasons of actual or anticipated financial difficulty of the Company or any other member of the Group;
- (c) the bringing of any other step or otherwise exercising any remedy for the recovery of any Liabilities,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action specified in paragraph (c) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) the Trustee bringing legal proceedings against any person solely for the purposes of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales or Guernsey) to restrain any actual or putative breach of this Agreement or any Subordinated Document;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a Payment) with no claim for damages in relation to this Agreement or any Subordinated Document; or
  - (C) requesting judicial interpretation of any provision of this Agreement or any Subordinated Document with no claim for damages;

**"Financial Indebtedness"** means any indebtedness for or in respect of:

- (a) monies borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;

- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculation the value of any derivative transaction, only the marked to market value shall be taken into account); and
- (f) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (e) above;

**"Further CULS"** means the further issue of up to £38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of the Company due 2021, to be consolidated with and form a single series with the Initial CULS;

**"Further Issue Date"** means the issue date of the Further CULS;

**"Group"** means the Company and the Subsidiaries from time to time;

**"Initial CULS"** means the £38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of the Company due 2021;

**"Initial Issue Date"** means 30 July 2014;

**"Initial Senior Creditor"** means:

- (a) each Initial Senior Lender; and
- (b) the Initial Senior Representative;

**"Initial Senior Debt"** means any Senior Debt outstanding at the Initial Issue Date;

**"Initial Senior Documents"** means the "Loan Documents" as defined in the Term Loan Credit Agreement;

**"Initial Senior Lender"** means each "Lender" as defined in the Term Loan Credit Agreement;

**"Insolvency Event"** means any corporate action, legal proceedings, resolution, order, filing or other procedure or step taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, arrestment, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company;
- (b) a composition, compromise, assignment, assignation or arrangement with any creditor of the Company;
- (c) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Company or any of its assets;
- (d) any event in any country or territory in which the Company is incorporated or carries on business or to the jurisdiction of whose courts it is subject, which corresponds in that country or territory with or is analogous to any of the events mentioned in paragraphs (a) to (c) (inclusive) above;

**"Liability"** means any present and future liability or obligation now or in the future due, owing or incurred in any currency, whether actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, including:

- (a) any permitted novation, deferral or extension of that liability or obligation;

- (b) any further advance which may be made under any agreement expressed to be supplemental to any document in respect of that liability or obligation, together with all related interest, fees and costs;
- (c) any claim for damages or restitution in the event of rescission of that liability or obligation or otherwise;
- (d) any claim flowing from any recovery by a payment or discharge in respect of that liability or obligation on grounds of preference or otherwise; and
- (e) any amount (such as post-insolvency interest) which would be included in any of the above but for its discharge, non-provability, unenforceability or non-allowability in any insolvency or other proceedings;

**"Maturity Date"** has the meaning given to it in the Conditions;

**"New Trustee"** has the meaning given to it in Clause 14.3 (*The Trustee*).

**"Original Trust Deed"** means the trust deed dated on or about the Initial Issue Date between the Company and the Trustee constituting the Initial CULS;

**"Party"** means a party to this Agreement;

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations), whether in respect of principal, interest or any other amount;

**"Permitted Conversion"** means a conversion of the CULS into ordinary shares of the Company in accordance with the Conditions and the Trust Deed;

**"Permitted Subordinated Payment"** has the meaning given to such term in Clause 3.1(b) (*Undertakings of the Company to the Senior Creditors*);

**"Relevant CULS Default"** has the meaning given to it in Clause 7.2 (*Permitted Enforcement by Subordinated Creditors*);

**"Security Interest"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**"Senior Creditor"** means:

- (a) each Initial Senior Creditor; and
- (b) each Additional Senior Creditor;

**"Senior Debt"** means all Liabilities payable or owing by the Company to a Senior Creditor under or in connection with the Senior Documents;

**"Senior Default"** means the occurrence of an event of default (however described), other than a Senior Payment Default, which entitles any creditor of the Company to declare any Senior Debt of the Company due and payable prior to its specified maturity;

**"Senior Discharge Date"** means the date on which all Senior Debt has been fully and irrevocably discharged to the satisfaction of the Senior Representative and all commitments of the Senior Creditors to the Company have been terminated or cancelled in accordance with the Senior Documents;

**"Senior Documents"** means:

- (a) the Initial Senior Documents; and
- (b) any Additional Senior Documents;

**"Senior Payment Default"** means the occurrence of any of the following:

- (a) any Senior Debt is not paid when due nor within any originally applicable grace period;
- (b) any Senior Debt is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default or mandatory prepayment or repayment obligation (in each case, however described); or
- (c) any commitment for Senior Debt is cancelled or suspended by a creditor of the Company in accordance with the terms of the relevant Senior Debt Documents as a result of an event of default or mandatory prepayment or repayment obligation (in each case, however described);

**"Senior Representative"** means:

- (a) each Initial Senior Representative; and
- (b) each Additional Senior Representative;

**"Subordinated Creditor"** means:

- (a) each CULS Holder; and
- (b) the Trustee;

**"Subordinated Debt"** means all Liabilities payable or owing by the Company to a Subordinated Creditor under or in connection with any Subordinated Document, but excluding any Trustee Fees and Expenses;

**"Subordinated Documents"** means:

- (a) each CULS in certificated form; and
- (b) the Trust Deed;

**"Subordination Period"** means the period beginning on the date of this Agreement and ending on the Senior Discharge Date;

**"Subsidiary"** means a subsidiary of the Company and shall have the meaning given to such term by section 531 of the Companies (Guernsey) Law 2008 (as amended) excluding the provision of section 531(6) so that overseas companies shall be included and excluding any body corporate (in this definition, an **"entity"**) whose accounts are not included in the then latest published audited consolidated accounts of the Company or, in the case of an entity which has first become a subsidiary of the Company since the date as at which any such audited accounts were prepared, would not have been so included or consolidated if it had become so on or before that date;

**"Supplemental Trust Deed"** means the supplemental trust deed to the Trust Deed to be entered into by the Company and the Trustee on or about the Further Issue Date constituting the Further CULS;

**"Term Loan Credit Agreement"** means the credit agreement dated 16 June 2014 between, among others, the Company (as borrower) and the Initial Senior Representative (as administrative and collateral agent);

**"Trust Deed"** means the Original Trust Deed as may be supplemented, amended or varied from time to time (including, without limitation, by the Supplemental Trust Deed);

**"Trustee Fees and Expenses"** means:

- (a) the normal remuneration of the Trustee accrued under clause 18.1 of the Trust Deed (as in effect on the date of this Agreement);
- (b) any extra remuneration and all costs, charges, liabilities and expenses incurred by the Trustee pursuant to clauses 18.2, 18.3 or 18.5 of the Trust Deed (as in effect on the date of this Agreement); and
- (c) any stamp duties, registration taxes, capital duties and other similar duties or taxes (if any) payable pursuant to clause 4 of the Trust Deed (as in effect on the date of this Agreement),

if and to the extent (in relation to paragraphs (b) and (c) above) that such payment is made to the Trustee for its own account only (and not for the account of the CULS Holders).

## 1.2 **Construction**

- (a) In this Agreement, unless the context otherwise requires:
  - (i) a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's respective successors and permitted assignees or permitted transferees;
  - (ii) references to Clauses, paragraphs, sub-paragraphs and Schedules are references to, respectively, clauses, paragraphs, sub-paragraphs of and schedules to this Agreement and references to this Agreement include its schedules;
  - (iii) a reference to (or to any specified provision of) any agreement or document (including a Senior Document) is to be construed as a reference to that agreement or document (or that provision) as it may have been or hereafter be, from time to time, amended, varied, extended, supplemented, restated or novated;
  - (iv) a reference to a statute or statutory instrument or any provision thereof is to be construed as a reference to that statute or statutory instrument or such provision thereof as it may be amended or re-enacted from time to time;
  - (v) a time of day is a reference to London time;
  - (vi) the index to and the headings in this Agreement are inserted for convenience only and are to be ignored in construing this Agreement;
  - (vii) if there is any inconsistency between the terms of this Agreement and the terms on which the Subordinated Debt was incurred by a Subordinated Creditor, the terms of this Agreement shall prevail until (and including) the Senior Discharge Date; and
  - (viii) words importing the plural shall include the singular and *vice versa*.

- (b) A CULS Default is "**continuing**" if it has not been remedied or waived. A Senior Default or Senior Payment Default shall cease to be "**continuing**" only in accordance with Clause 3.5(b).
- (b) In determining whether any Liabilities have been fully and finally discharged, the relevant Senior Representative will disregard contingent liabilities (such as the risk of claw back from a preference claim), except to the extent it reasonably believes there is a reasonable likelihood that those contingent liabilities will become actual liabilities.
- (c) References to a Senior Representative acting on behalf of Senior Lenders means such Senior Representative acting on behalf of the Senior Lenders which it represents or, if applicable, with the consent of the requisite number of Senior Lenders required under and in accordance with the applicable Senior Documents for which it is a Senior Representative. A Senior Representative will be entitled to seek instructions from the Senior Lenders which it represents to the extent required by the applicable Senior Documents for which it is a Senior Representative as to any action to be taken by it under this Agreement.
- (d) References to the Trustee acting on behalf of CULS Holders means the Trustee acting on behalf of the CULS Holders it represents or, if applicable, with the consent of the requisite number of CULS Holders required under and in accordance with the Trust Deed. The Trustee shall be entitled to seek instructions from the CULS Holders which it represents to the extent required by the Trust Deed as to any action to be taken by it under this Agreement.

### 1.3 **Third Party Rights**

- (a) A person who is not Party has no right to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject (in the case of the Trustee) to the terms of the Trust Deed and notwithstanding any term of any Senior Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

### 1.4 **Loan Document**

This Agreement is designated a Loan Document for the purposes of the Term Loan Credit Agreement.

## 2. **RANKING OF SENIOR DEBT AND SUBORDINATED DEBT**

- 2.1 The Senior Debt and the Subordinated Debt will rank for all purposes and at all times in the following order:
  - (a) first, the Senior Debt and the Trustee Fees and Expenses *pari passu* as between themselves; and
  - (b) second, the Subordinated Debt.
- 2.2 This Agreement does not purport to rank any of the Senior Debt as between themselves or any of the Subordinated Debt as between themselves.

## 3. **UNDERTAKINGS OF THE COMPANY**

### 3.1 **Undertakings of the Company to the Senior Creditors**

- (a) During the Subordination Period and except as provided below, the Company undertakes to the Senior Creditors that it shall not:

- (i) make any Payment in respect of any Subordinated Debt, whether in cash or kind from any source;
  - (ii) allow any Subsidiary to acquire any of the Subordinated Debt (including, without limitation, by way of sub-participation or any other agreement or arrangement having an economic effect substantially similar to a sub-participation) or knowingly acquire a beneficial interest in all or any part of the share capital of a company to whom any Subordinated Debt is owed;
  - (iii) exercise any set-off or exercise any similar actions in relation to any Subordinated Debt;
  - (iv) allow to exist or receive the benefit of any Security Interest, guarantee, indemnity or other assurance against loss in respect of any Subordinated Debt;
  - (v) convert any Subordinated Debt into shares of the Company or any other member of the Group;
  - (vi) allow any Subordinated Debt to be subordinated to any person other than in accordance with this Agreement; or
  - (vii) take or omit to take any action which could reasonably be expected to impair the priority or subordination achieved or intended to be achieved by this Agreement.
- (b) Notwithstanding paragraph (a) above, the Company may:
- (i) do anything prohibited by paragraph (a) above with the prior written consent of the Senior Representative(s);
  - (ii) make any repayment in respect of the principal amount of the CULS on the Maturity Date provided that:
    - (A) no Senior Default has occurred and is continuing; or
    - (B) no Senior Payment Default has occurred and is continuing,
 and no Senior Default or Senior Payment Default would occur or arise as a result of such repayment;
  - (iii) make an optional payment or prepayment of the CULS pursuant to Condition 7.2 provided that:
    - (A) no Senior Default has occurred and is continuing; or
    - (B) no Senior Payment Default has occurred and is continuing; or
    - (C) no Insolvency Event has occurred which has not been discharged;
  - (iv) redeem the CULS on the occurrence of a Relevant Event (as that term is defined in the Conditions) pursuant to Condition 7.4 provided that:
    - (A) no amendment is made to Condition 7.4 or to the definition of Relevant Event or to any related provision after the date of this Agreement without the prior written consent of the Senior Representative(s); and

- (B) before that redemption, all outstanding amounts of the Senior Debt will have been repaid in full,

and provided further that:

- (C) no Senior Default has occurred and is continuing; or
  - (D) no Senior Payment Default has occurred and is continuing; or
  - (E) no Insolvency Event has occurred which has not been discharged;
- (v) effect a Permitted Conversion; and
- (vi) make any payment of interest in respect of the CULS in accordance with the Conditions or payment of any other amount to the Trustee (solely in its capacity as trustee) in respect of the Subordinated Debt if, in each case, such payment is payable under the Trust Deed (as in effect on the date of this Agreement) or the Conditions (as in effect on the date of this Agreement) on the due date therefor provided that:
- (A) no Senior Default has occurred and is continuing; or
  - (B) no Senior Payment Default has occurred and is continuing; or
  - (C) no Insolvency Event has occurred which has not been discharged; and
- (vii) make any payment of any amount due and payable under the Conditions or the Trust Deed (as in effect on the date of this Agreement) in respect of the Subordinated Debt following the taking of any Enforcement Action permitted to be taken in accordance with this Agreement by the Subordinated Creditors provided that the proceeds thereof are promptly applied by, or turned over by, the recipient of such sum in accordance with the terms of this Agreement (including, without limitation, Clause 2 (*Ranking of Senior Debt and Subordination Debt*) and Clause 6 (*Turnover of Receipts*),

(any payment permitted by sub-paragraphs (i), (ii), (iii), (iv), (vi) or (vii) above, a **"Permitted Subordinated Payment"**).

### 3.2 Undertakings of Subordinated Creditors to Senior Creditors

- (a) During the Subordination Period and except as provided below, the Trustee undertakes to the Senior Creditors that it shall not on behalf of any CULS Holder (and no CULS Holder shall be permitted to exercise any right under the Trust Deed):
- (i) to demand or receive Payment of, or any distribution in respect or on account of, any Subordinated Debt, whether in cash or in kind or allow any Subordinated Debt owed to it to be discharged;
  - (ii) to exercise any set-off or other similar rights in relation to any Subordinated Debt;
  - (iii) to receive the benefit of any Security Interest, guarantee, indemnity or other assurance against loss in respect of any Subordinated Debt;
  - (iv) to convert any Subordinated Debt into shares of the Company or any other member of the Group;



- (v) to take any step that results in any Subordinated Debt to be subordinated to any other person otherwise than in accordance with this Agreement; or
  - (vi) to take or omit to take any action which could reasonably be expected to impair the priority or subordination achieved or intended to be achieved by this Agreement.
- (b) Notwithstanding paragraph (a) above, any Subordinated Creditor may:
- (i) do anything prohibited by paragraph (a) above with the prior written consent of the Senior Representative(s);
  - (ii) receive any Permitted Subordinated Payment; and
  - (iii) participate in a Permitted Conversion.

### 3.3 **Effect of a Senior Default or Senior Payment Default**

- (a) Any failure by the Company to make a Payment to a Subordinated Creditor due under the Subordinated Documents as a result of the occurrence of a Senior Default or Senior Payment Default shall not constitute a CULS Default of any kind under the Conditions.
- (b) Notwithstanding paragraph (a) of this Clause:
- (i) nothing in this Clause shall prevent the service of a CULS Enforcement Notice by the Trustee on behalf of the Subordinated Creditors;
  - (ii) the Company shall not be released from the obligation to make Payment to Subordinated Creditors under the Subordinated Documents by the operation of Clause 3 (*Undertakings of the Company*), even if its obligation to make such Payment is restricted at any time by the terms of thereof; and
  - (iii) the accrual and/or capitalisation of interest (if any) in accordance with the Subordinated Documents shall continue notwithstanding the occurrence of a Senior Default or Senior Payment Default.

### 3.4 **Cure of a CULS Enforcement Notice**

If:

- (a) at any time following the occurrence of a Senior Default or Senior Payment Default, such Senior Default or Senior Payment Default ceases to be continuing; and
- (b) the Company promptly pays to the Subordinated Creditors an amount equal to any Payments to such Subordinated Creditors which have accrued under the Subordinated Documents and which would have been Permitted Payments but for such Senior Default or Senior Payment Default,

then, any CULS Enforcement Notice which may have been issued as a result thereof shall be automatically waived immediately without any further action being required on the part of the Trustee.

### 3.5 **Notice and cure of a Senior Default and/or Senior Payment Default**

- (a) Following the occurrence of a Senior Default or Senior Payment Default, the Company shall promptly (and any Senior Representative may at any time) notify the Trustee in writing of the occurrence thereof but any failure by the Company (or

omission by the Senior Representatives) to deliver any such notice shall not affect whether or not a Senior Default or Senior Payment Default has occurred.

- (b) A Senior Default or Senior Payment Default (as the case may be) shall cease to be continuing upon the earliest to occur of:
  - (i) the date on which the relevant Senior Representative(s) delivers a notice in writing to the Company and the Trustee (such notice not to be unreasonably withheld or delayed) confirming that, for the purposes of this Agreement, such Senior Default or Senior Payment Default (as the case may be) is waived, remedied or cured in accordance with the relevant Senior Documents or otherwise ceases to exist; and
  - (ii) the full and final discharge to the satisfaction of the relevant Senior Representative(s), whether or not as a result of enforcement, of the Senior Liabilities.
- (c) The Company shall, promptly upon a Senior Default or Senior Payment Default ceasing to be continuing, notify the Trustee in writing of the same.

#### **4. AMENDMENTS TO THE SUBORDINATED DOCUMENTS**

During the Subordination Period, neither the Company nor any Subordinated Creditor may amend, waive or release any term of any Subordinated Document without the prior written consent of the Senior Representative(s) (such consent not to be unreasonably withheld or delayed), except for an amendment, waiver or release:

- (a) which in the opinion of Trustee (acting in accordance with the Trust Deed), is proper to make and is of a formal, minor or technical nature, or to correct a manifest error; or
- (b) if the Company has delivered a certificate signed by two directors to the Trustee and each Senior Representative no later than 15 days before such amendment, waiver or release it to take effect certifying that such amendment, waiver or release would not prejudice any Senior Debt, any Senior Creditor or impair the subordination achieved or intended to be achieved by this Agreement.

#### **5. SUBORDINATION ON INSOLVENCY**

##### **5.1 Subordination**

Prior to the Senior Discharge Date, upon the occurrence of an Insolvency Event, the claims against the Company in respect of Subordinated Debt will be postponed and subordinated in right of payment to the claims against the Company in respect of the Senior Debt and the Trustee's Fees and Expenses.

##### **5.2 Exercise of Rights**

Prior to the Senior Discharge Date, upon the occurrence of an Insolvency Event:

- (a) the Appointed Senior Representative may:
  - (i) determine whether the Subordinated Creditors may claim, enforce and prove for any Subordinated Debt;
  - (ii) file claims and proofs, give receipts and take any proceedings as it considers reasonably necessary to recover that Subordinated Debt;

- (iii) do anything which it sees fit to recover that Subordinated Debt (but may not waive or (unless such discharge arises as a result of other steps taken under this Clause) discharge the Subordinated Debt without the consent of the Trustee); and
  - (iv) receive all distributions on that Subordinated Debt (up to a maximum of an amount equal any shortfall with respect to the Senior Debt) for application against the Senior Debt and any amount in excess thereof shall be paid to the Trustee or, if the Trustee so directs, to the liquidator for application in accordance with the Trust Deed;
- (b) if and to the extent that the Appointed Senior Representative is not entitled to do anything mentioned in paragraph (a) above or does not wish to do so, the Trustee must, on behalf of each CULS Holder, so far as is permitted by law (at the expense of the Senior Creditors *pro rata* and *pari passu*), do so in good time and as requested by the Appointed Senior Representative, subject, in the case of the Trustee, to it being indemnified and/or secured and/or prefunded to its satisfaction by the Company or the CULS Holders, and each CULS Holder shall be deemed to have agreed to the taking of such action;
- (c) the Trustee irrevocably authorises the Appointed Senior Representative to take any action referred to in paragraph (a) above and each CULS Holder shall be deemed to have agreed to such authorisation; and
- (d) the Trustee shall, upon receiving notice in writing from any Senior Representative of the occurrence of any Insolvency Event and at the Company's expense:
  - (i) hold all payments and distributions in cash or in kind received or receivable by it in respect of any Subordinated Debt from the Company or from any other source (up to a maximum of an amount equal to the Senior Debt as notified to it in writing by the Appointed Senior Representative) on trust for the Appointed Senior Representative (on behalf of the Senior Creditors);
  - (ii) promptly pay and transfer any such payment or distribution it actually receives under paragraph (i) above in its capacity as trustee to the Appointed Senior Representative (or as it may direct) for application first against the Senior Debt; and
  - (iii) direct the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of the Company or their proceeds to pay all payments and distributions on the Subordinated Debt (up to a maximum of an amount equal to the Senior Debt as notified to it in writing by the Appointed Senior Representative) directly to the Appointed Senior Representative (or as it may direct).

### 5.3 Further assurance

- (a) Subject to paragraph (b) below, the Trustee shall, at the Company's expense, take whatever action the Appointed Senior Representative may require to give effect to this Clause and each CULS Holder shall be deemed to have consented to the taking of any such action.
- (b) The Parties acknowledge and agree that no provision of this Agreement shall require the Trustee to do anything which could be expected (i) to be illegal or contrary to applicable law or regulation; or (ii) to cause it to expend or risk its own funds or (but without prejudice to its obligation to comply with the express provisions of this Agreement, so long as it may do so without expending or risking

its own funds) otherwise incur any liability in the performance of any of its duties or in the exercise of any of its rights, powers or discretions hereunder.

## 6. **TURNOVER OF RECEIPTS**

### 6.1 **Non-permitted receipts**

If:

- (a) any Subordinated Creditor receives or recovers a Payment or other distribution (including by way of set-off) in respect of any of the Subordinated Debt from the Company other than as allowed under this Agreement; or
- (b) any Subordinated Creditor receives the proceeds of any enforcement of any Security Interest or any guarantee or other assurance against financial loss for any Subordinated Debt,

that Subordinated Creditor shall hold the amount received or recovered by it (including by way of set-off) (up to a maximum of an amount equal to the Senior Debt as notified to it in writing by the Appointed Senior Representative) on trust for the Appointed Senior Representative (on behalf of the Senior Creditors) and:

- (i) immediately pay that amount, less any properly incurred and documented third party costs and expenses (if any) incurred by it in recovering that amount, to the Appointed Senior Representative (or as it may direct) for application against the Senior Debt in accordance with this Agreement; and
- (ii) if the amount received by the Appointed Senior Representative is more than the Senior Debt, the Appointed Senior Representative must promptly pay (or procure payment of) the excess amount to the Trustee for application against the Subordinated Debt,

provided that the Trustee shall only be obliged under this Clause to pay to the Appointed Senior Representative amounts actually received or recovered by it (including by way of set-off) in its capacity as Trustee and held on trust in such capacity and nothing shall oblige it to pay any amount equivalent to that distributed in accordance with the terms of the Trust Deed where the Trustee (having made reasonable enquiries in respect thereof, including as to its obligations under this Agreement) is unaware of any matter or thing that would have prevented it from making such distribution.

### 6.2 **Non-permitted discharge**

If, for any reason, any of the Subordinated Debt is discharged by a Subordinated Creditor in any manner other than as allowed under this Agreement, that Subordinated Creditor must immediately pay an amount (in the case of the Trustee, up to the amount then held on trust by it in its capacity as Trustee), equal to the amount discharged, less any properly incurred and documented third party costs and expenses (if any) incurred by it in recovering that amount, to the Appointed Senior Representative (or as it may direct) for application against the Senior Debt *pari passu* in the manner set out in sub-paragraphs (i) and (ii) of Clause 6.1 (*Non-permitted receipts*) above, as if such amount had been received in the circumstances set out in paragraphs (a) or (b) of that Clause. Notwithstanding the foregoing of this Clause 6.2, nothing shall oblige the Trustee to pay any amount equivalent to that distributed in accordance with the terms of the Trust Deed where the Trustee (having made reasonable enquiries in respect thereof, including as to its obligations under this Agreement) is unaware of any matter or thing that would have prevented it from making such distribution.

## 7. ENFORCEMENT BY SUBORDINATED CREDITORS

### 7.1 Restriction on Enforcement by Subordinated Creditors

During the Subordination Period, no Subordinated Creditor may take any Enforcement Action against the Company in respect of any of the Subordinated Debt.

### 7.2 Permitted Enforcement by Subordinated Creditors

(a) The restriction in Clause 7.1 (*Restriction on Enforcement by Subordinated Creditors*) shall not apply in respect of the Subordinated Debt:

(i) if:

- (A) a CULS Default (other than as described or referred to in subparagraphs (ii) or (iii) below) (the **"Relevant CULS Default"**) has occurred and is continuing;
- (B) the Senior Representative(s) has or have received from the Trustee written notice of the Relevant CULS Default specifying the event or circumstance giving rise thereto;
- (C) a CULS Standstill Period with respect to the Relevant CULS Default has elapsed or otherwise terminated, even if, at the end of the CULS Standstill Period or, at any later time, a further CULS Standstill Period has begun as a result of any other CULS Default; and
- (D) the Relevant CULS Default is continuing at the end of the relevant CULS Standstill Period;

(ii) in circumstances where the Senior Creditors take any Enforcement Action against the Company, provided that the Trustee (on behalf of the CULS Holders) may only take the same (and no other) Enforcement Action against the Company as that taken by the Senior Creditors and not against any other member of the Group; or

(iii) unless otherwise directed by the Appointed Senior Representative or the Appointed Senior Representative has taken, or has given notice that it intends to take, action on behalf of the Subordinated Creditors in accordance with Clause 5.2 (*Exercise of Rights*) in respect of any Enforcement Action in the insolvency of the Company for any Subordinated Debt if a failure to make such claim would result in no subsequent claim being permitted by law in respect of that Subordinated Debt and that Subordinated Creditor (A) takes no other action and (B) applies any proceeds arising from such claim in accordance with Clause 6.1 (*Non-permitted receipts*).

(b) Promptly upon the occurrence of a CULS Default, the Trustee shall, by notice (a **"CULS Enforcement Notice"**) in writing, notify the Senior Representatives of the occurrence of such CULS Default.

### 7.3 CULS Standstill Period

In relation to a Relevant CULS Default, a **"CULS Standstill Period"** shall mean the period beginning on the date (the **"CULS Standstill Period Start Date"**) the Senior Representative(s) receive(s) a CULS Enforcement Notice in respect of such Relevant CULS Default and ending on the earliest to occur of:

(a) the date falling 179 days after the CULS Standstill Period Start Date;

- (b) the date of an Insolvency Event (other than where the Insolvency Event occurs as a result solely of action taken by the Trustee in relation to any Subordinated Creditors);
- (c) the expiry of any CULS Standstill Period outstanding at the date of such first mentioned CULS Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy); and
- (d) the date on which the Senior Representatives consent to the taking of Enforcement Action in respect of that Relevant CULS Default by the Subordinated Creditors.

## 8. **CONSENTS**

- 8.1 No Subordinated Creditor will have any remedy against any Senior Creditor by reason of any transaction entered into between a Senior Creditor and the Company (including any Senior Document) which may conflict with or constitute a default under any Subordinated Document.
- 8.2 Provided always that the Trustee is notified in writing, any waiver or consent granted by or on behalf of any Senior Creditor in respect of any Senior Document will also be deemed to have been given by each Subordinated Creditor, if any transaction or circumstance would, in the absence of that waiver or consent by that Subordinated Creditor, conflict with a term of or constitute a default under any Subordinated Document. Notwithstanding the foregoing of this Clause, no such waiver or consent shall relate to any of the protections afforded to the Trustee under the Trust Deed or any provision or matter affecting the Trustee in a personal capacity.

## 9. **PROTECTION OF SUBORDINATION OF SUBORDINATED DEBT TO SENIOR DEBT**

### 9.1 **Continuing subordination**

The subordination provisions in this Agreement in respect of Subordinated Debt constitute a continuing subordination and will benefit the ultimate balance of all of the Senior Debt, regardless of any intermediate payment or discharge in whole or in part.

### 9.2 **Waiver of defences**

The subordination of Subordinated Debt in this Agreement and the obligations of the Subordinated Creditors under this Agreement will not be affected by any act, omission, matter or thing (whether or not known to the Subordinated Creditors or any Senior Creditor) which, but for this provision, would reduce, release or prejudice the subordination or any of those obligations, including:

- (a) any time or waiver granted to, or composition with, any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment of a Senior Document or any other document or security;

(g) any unenforceability, illegality or invalidity of any obligation of any person under any Senior Document or any other document or security; or

(h) any insolvency or similar proceedings.

### 9.3 **Immediate recourse**

Each Subordinated Creditor waives any right it may have of first requiring any Senior Creditor (or any trustee or other agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming the benefit of this Agreement.

### 9.4 **Appropriations**

Prior to the Senior Debt Discharge Date, the Senior Creditors may, subject to the provisions of this Agreement:

(a) apply any moneys received under this Agreement to any item of account or liability in respect of the Senior Debt in such order or in such manner as they may determine in accordance with the Senior Documents; and

(b) hold any moneys or distributions received under this Agreement in a suspense account (bearing interest at a market rate usual for accounts of that type) unless and until such moneys are sufficient in aggregate in order to bring about the Senior Discharge Date.

### 9.5 **Non-competition**

Until the Senior Debt Discharge Date, no Subordinated Creditor, unless otherwise directed by the Appointed Senior Representative or as permitted by this Agreement, will under any circumstance in respect of the Subordinated Debt:

(a) be subrogated to any rights, security or moneys held, received or receivable by any Senior Creditor (or any trustee or other agent on its behalf) or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Subordinated Creditor's liability under this Agreement;

(b) claim, rank, prove or vote as a creditor of any person or estate in competition with any Senior Creditor (or any trustee or other agent on its behalf); or

(c) receive, claim or have the benefit of any payment, distribution or security from or on account of any person,

in each case, other than as permitted by this Agreement.

### 9.6 **Subrogation by the Subordinated Creditors**

If any Senior Debt is paid out of any proceeds received in respect of or on account of the Subordinated Debt in accordance with this Agreement, the Subordinated Creditors will, to that extent, be subrogated to the Senior Debt so paid (and all securities and guarantees for that Senior Debt) but not before the Senior Debt Discharge Date.

## 10. **INFORMATION BY SUBORDINATED CREDITORS**

The Trustee shall, on request by any Senior Representative, notify all Senior Representatives of details of the principal outstanding amount of the Subordinated Debt and shall exercise its rights under the Trust Deed to ascertain the same from the agent appointed from time to time as the Company's transfer and/or paying agent under the CULS.

## **11. PRESERVATION OF SUBORDINATED DEBT**

Notwithstanding any term of this Agreement postponing, subordinating or preventing the payment of any of the Subordinated Debt:

- (a) that Subordinated Debt will, solely as between the Company and each Subordinated Creditor, remain owing or due and payable in accordance with the terms of the relevant Subordinated Documents; and
- (b) interest and default interest will accrue on payments due but unpaid accordingly.

## **12. RESPONSIBILITY OF THE APPOINTED SENIOR REPRESENTATIVE**

### **12.1 Rights and responsibility of the Appointed Senior Representative**

The Appointed Senior Representative will not be liable to any Subordinated Creditor for the manner of exercise of or for any non-exercise of its powers under this Agreement or failure to collect or preserve any Subordinated Debt.

### **12.2 Indemnity**

The Company hereby indemnifies the Appointed Senior Representative (and every attorney appointed by it) in respect of any loss or liability incurred by it in connection with the exercise or purported exercise by it of any of its rights, powers and discretions under this Agreement, unless that liability or loss arises as a result of the Appointed Senior Representative's negligence or wilful misconduct or breach of any provision of this Agreement.

### **12.3 Non-derogation**

Nothing contained in this Agreement in any manner affects the rights or remedies of any Senior Creditor under any Senior Document.

## **13. TREATMENT OF DISTRIBUTION IN RESPECT OF THE SUBORDINATED DEBT**

### **13.1 Non-cash distributions**

If any Senior Creditor receives any distribution otherwise than in cash in respect of the Subordinated Debt from the Company or from any other source, the Senior Debt will not be deemed reduced by the distribution until and except to the extent that the realisation proceeds are applied in cash towards the Senior Debt in accordance with this Agreement.

### **13.2 Transfer of distributions**

Until the Senior Debt Discharge Date, the Trustee (at the Company's expense) and the Company shall, subject to Clause 5.2 (*Exercise of rights*), do anything which any Senior Representative may reasonably require as being necessary or desirable to transfer to the Appointed Senior Representative Agent all payments and distributions which must be made to or held on trust for the Senior Creditors pursuant to this Agreement, including endorsements and execution of formal transfers.

### **13.3 Currencies**

- (a) All moneys received or held by a Senior Creditor under this Agreement at any time on or after the enforcement of this Agreement in a currency other than a currency in which the Senior Debt is denominated may be sold for any one or more of the currencies in which the Senior Debt is denominated and which the relevant Senior Representative considers necessary or desirable.



- (b) The Company hereby indemnifies the Senior Creditors against any loss or liability incurred in relation to any sale, unless that loss or liability arises as a result of such Senior Creditor's negligence, wilful misconduct or breach of any provision of this Agreement. The Senior Creditors will have no liability to any Party in respect of any loss resulting from any fluctuation in exchange rates after any such sale.

#### 14. **CHANGES TO THE PARTIES**

##### 14.1 **The Company**

During the Subordination Period, the Company shall not assign or transfer any of its rights or obligations under this Agreement without the prior consent of the Senior Representatives.

##### 14.2 **The Senior Representatives**

The Company shall procure that no person shall become an agent, trustee, security agent, security trustee or similar representation in respect of any Senior Debt unless, at the same time, it accedes to this Agreement as an Additional Senior Representative in accordance with Clause 15 (*Changes to Senior Debt*).

##### 14.3 **The Trustee**

- (a) The existing Trustee shall not resign, nor shall the Company replace or substitute the existing Trustee, unless, at the same time, the replacement or substitute trustee (the "**New Trustee**") to be appointed for and on behalf of the CULS Holders accedes to this Agreement as a New Trustee in accordance with this Clause.
- (b) A New Trustee shall accede to this Agreement by delivering to the Appointed Senior Representative an Accession Agreement, duly executed by the New Trustee and the Company, together with a copy of any supplemental trust deed or amendment to the Trust Deed to be executed by the New Trustee to effect its appointment.
- (c) No consent is required from any Senior Representative in order for a New Trustee to accede to this Agreement. Upon receipt of a duly executed Accession Agreement from the New Trustee, the Appointed Senior Representative shall counter-sign it on behalf of the other Senior Representatives (and each other Senior Representative hereby authorises the Appointed Senior Representative to execute such Accession Agreement on its behalf), whereupon the New Trustee shall accede to this Agreement and shall have all the rights, benefits and obligations of the Trustee as if it were the existing Trustee.

#### 15. **CHANGES TO SENIOR DEBT**

##### 15.1 If:

- (a) the Company refinances, replaces, renews or increases any Senior Debt;
- (b) borrows or incurs any Liabilities which are to constitute Senior Debt under this Agreement; or
- (c) any existing Senior Representative is to be replaced,

the Company shall:

- (i) give not less than 10 Business Days' notice to the existing Senior Representatives and the Trustee of (A) such refinancing, replacement or renewal of Senior Debt, borrowing or incurrence of further Liabilities or

replacement of existing Senior Representative and (B) the details of the person to accede to this Agreement as an Additional Senior Representative and (if applicable) the Additional Senior Creditors which it is to represent under this Agreement; and

- (ii) deliver to the Appointed Senior Representative (with a copy to the Trustee) a Accession Agreement, duly executed by the Additional Senior Representative and the Company, together with a copy of the document to be designated as an Additional Senior Document.

15.2 No consent is required from any Subordinated Creditor in order for (a) a document to be designated as an Additional Senior Document in accordance with this Clause; (b) an Additional Senior Representative to become a party to this Agreement; or (c) a person or persons to be designated as Additional Senior Creditors in accordance with this Clause.

15.3 Without prejudice to the Subordinated Documents, no consent is required from any Subordinated Creditor under this Agreement in order for the Company to increase the amount of any Senior Debt or the aggregate amount of all Senior Debt.

15.4 On the date of counter-signature by the Appointed Senior Representative of an Accession Agreement duly executed by the Additional Senior Representative and the Company:

- (a) such Additional Senior Representative will become Party to this Agreement;
- (b) (if applicable) the lenders or creditors which such Additional Senior Representative represents will be designated Additional Senior Lenders; and
- (c) (if applicable) the relevant document will be designated as an Additional Senior Document,

and, by the execution of the Accession Agreement by the Additional Senior Representative and the Company and the counter-signature by the Appointed Senior Representative, any Additional Senior Debt shall have all the rights, benefits and obligations enjoyed by the Senior Debt under this Agreement.

15.5 Each Senior Representative authorises the Appointed Senior Representative to execute any Accession Agreement on its behalf.

15.6 On the unconditional and irrevocable repayment in full of all any Senior Debt, the relevant Senior Representative will, as soon as reasonably practicable following a written request by the Company, confirm the same in writing to the other Senior Representatives, the Trustee and the Company.

## 16. **NOTICES**

### 16.1 **Mode of Service**

- (a) Except as specifically provided otherwise in this Agreement, any notice, demand, consent, agreement or other communication (a "**Notice**") to be served under or in connection with this Agreement will be in writing, in English and will be made by letter or by facsimile transmission to the party to be served.
- (b) The address and facsimile number of each Party for the purposes of this Clause are:
  - (i) in the case of the Company:

Address: PO Box 255  
Trafalgar Court

Les Banques  
St Peter Port  
Guernsey GY1 3QL

Facsimile: +44 (0)1481 745368

Attention: Company Secretary, JZ Capital Partners Limited

(ii) in the case of the Initial Senior Representative:

Address: 520 Madison Avenue  
New York, NY 10022  
United States of America

Facsimile: +1 212 284 3444

Attention: JZ Capital Account Manager

(iii) in the case of the Trustee:

Address: Fifth Floor  
100 Wood Street  
London EC2V 7EX

Facsimile: +44 (0)20 7606 0643

Attention: Manager, Commercial Trusts (reference: 200935)

(iv) and, in the case of any Party which accedes to this Agreement, the address and facsimile number which are stated in the relevant Accession Agreement.

(c) Any Notice to be served by any Party will be effective only if it is expressly marked for the attention of the department or officer (if any) specified in conjunction with the relevant address and facsimile number referred to in this Clause.

## 16.2 **Deemed Service**

(a) Subject to Clause 16.2(b), a Notice will be deemed to be given as follows:

- (i) if by letter, when delivered by hand or by courier; and
- (ii) if by facsimile, when delivered.

(b) A Notice given under Clause 16.2(a) but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

## 17. **MISCELLANEOUS**

### 17.1 **Power of attorney for the obligations of the Subordinated Creditors**

The Trustee (on behalf of each CULS Holder), by way of security for the obligations of that Subordinated Creditor under this Agreement, irrevocably and severally appoints (and each CULS Holder shall be deemed to have appointed) the Appointed Senior Representative and any of its delegates or sub-delegates to be its attorney to take any action, in such manner as the attorney sees fit, which any Subordinated Creditor is obliged to take under this Agreement but has failed to take within five Business Days of a written notice from any Senior Representative (unless an Event of Default is outstanding, in which case no such notice shall be required), provided that such attorney shall not be entitled to take

any action that imposes new or additional obligations on, releases the rights or protections of, or alters the rights, obligations or protections of, the Trustee. The Trustee (on behalf of each CULS Holder) ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause.

**17.2 Certificates and determinations**

Any certification or determination by a Senior Creditor of a rate or amount under this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**17.3 Amendments**

No amendment of this Agreement shall be binding on any Party unless evidenced in a written document executed by such Party.

**17.4 Termination**

Unless otherwise agreed in writing by the Parties, this Agreement shall remain valid and in force until the Maturity Date.

**18. SEVERABILITY**

If a term of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
- (b) the legality, validity or enforceability in any other jurisdiction of that or any other term of this Agreement.

**19. WAIVERS AND REMEDIES CUMULATIVE**

**19.1 The rights of each Senior Creditor under this Agreement:**

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

**19.2 Delay in exercise or non-exercise of any right is not a waiver of that right.**

**20. CONFLICT WITH AND OVERRIDE OF THE CONDITIONS AND TRUST DEED**

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Trust Deed or the Conditions to the contrary and, in the event of conflict between any provision of the Trust Deed or the Conditions and this Agreement, this Agreement shall prevail.

**21. COUNTERPARTS**

This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

22. **GOVERNING LAW**

This Agreement, and any non-contractual obligations arising out of or in connection with it, are governed by Guernsey law.

23. **ENFORCEMENT**

23.1 The courts of Guernsey have exclusive jurisdiction to settle any dispute including a dispute relating to non-contractual obligations arising out of or in connection with this Agreement.

23.2 The Guernsey courts are the most appropriate and convenient courts to settle any such dispute and the Trustee and the Company waive objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

23.3 This Clause is for the benefit of the Senior Creditors only. To the extent allowed by law, a Senior Creditor may take:

- (a) proceedings in any other court; and
- (b) concurrent proceedings in any number of jurisdictions.

**THIS AGREEMENT** has been duly executed on the day and year first before written.

## Schedule 1

### Form of Accession Agreement

**THIS AGREEMENT** is made on [●]

#### **BETWEEN:**

- (1) **JZ CAPITAL PARTNERS LIMITED**, a non-cellular company limited by shares and incorporated in Guernsey under the Companies (Guernsey) Law 2008 (as amended) with registered number 48761 (the "**Company**");
- (2) [[●] (the "**New Trustee**")][●] (the "**Additional Senior Representative**")]; and
- (3) [●] in its capacity as Appointed Senior Representative under the Subordination Agreement (as defined below).

#### **RECITALS:**

- (A) This agreement is supplemental to a subordination agreement dated 30 July 2014 (the "**Subordination Agreement**").
- (A) This Agreement has been entered into to record the accession of the [New Trustee][the Additional Senior Representative as a Senior Representative] to the Subordination Agreement.

**THE PARTIES AGREE** as follows:

#### 1. **DEFINITIONS**

Words and expressions defined in the Subordination Agreement have the same meanings when used in this Accession Agreement.

#### 2. **ACCESSION OF ADDITIONAL SUBORDINATED CREDITOR**

- 2.1 The [New Trustee][Additional Senior Representative] agrees to become, with immediate effect, a party to, and agrees to be bound by the terms of, the Subordination Agreement as if it had originally been party to the Subordination Agreement as [the Trustee][an Initial Senior Representative].
- 2.2 The [New Trustee][Additional Senior Representative] confirms that its address details for notices in relation to Clause [16] (*Notices*) of the Subordination Agreement are as follows:

Address: [●]  
Facsimile: [●]  
Attention: [●]

- 2.3 The Appointed Senior Representative confirms for itself and the other Senior Representative the acceptance of the [New Trustee][Additional Senior Representative] as [the Trustee][a Senior Representative] for the purposes of the Subordination Agreement.

#### 3. **COUNTERPARTS**

This Accession Agreement may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

4. **LAW**

This Accession Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Accession Agreement) shall be governed by and construed in accordance with Guernsey law.

**THIS ACCESSION AGREEMENT** has been duly executed on the date first above written.

**Signatories to the Accession Agreement**

**The Company**

For and on behalf of )  
**JZ CAPITAL PARTNERS LIMITED** )  
 )  
 )

**[The New Trustee**

For and on behalf of )  
**[●]** )  
 )  
 )

**[The Additional Senior Representative**

For and on behalf of )  
**[●]** )  
 )  
 )

**The Appointed Senior Representative**

For and on behalf of )  
**[●]** )  
 )  
 )

## **Signatories to the Subordination Agreement**

### **The Company**

For and on behalf of )  
**JZ CAPITAL PARTNERS LIMITED** )  
 )  
 )

### **The Initial Senior Representative**

For and on behalf of )  
**JEFFERIES FINANCE LLC** )  
 )  
 )

### **The Trustee**

For and on behalf of )  
**THE LAW DEBENTURE TRUST** )  
**CORPORATION P.L.C.** )  
 )



### **SCHEDULE 3**

#### **Provisions relating to registration and transfer**

1. The Company will recognise the Holder as the absolute owner thereof and shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any CULS may be subject and the receipt of the CULS Holder for the time being of any CULS or, in the case of joint CULS Holders, the receipt of any of them for the interest from time to time accruing due in respect thereof or for any other moneys payable in respect thereof shall be a good discharge to the Company, notwithstanding any notice it may have whether express, constructive or otherwise of the right, title, interest or claim of any other person to or in such CULS, interest or moneys. No notice of any trust express, implied or constructive shall be entered on the CULS Register in respect of any CULS.
2. Every CULS Holder will be recognised by the Company as entitled to his CULS free from any equity, set-off or cross-claim on the part of the Company against the original or any intermediate CULS Holder.
3. The CULS are transferable in integral multiples of £10 in nominal amount by instrument in writing in the usual common form or such other form as the Trustee may approve. Only CULS of one series may be transferred by a single instrument of transfer.
4. Every instrument of transfer must be signed by the transferor or, where the transferor is a corporation, given under its common seal and the transferor shall be deemed to remain the owner of the CULS to be transferred until the name of the transferee is entered in the CULS Register in respect thereof provided that in the case of partly paid CULS, the instrument of transfer must also be signed by or on behalf of the transferee.
5. Every instrument of transfer must be left for registration at the place where the CULS Register shall for the time being be kept accompanied by the Certificate for the CULS to be transferred and such other evidence as the directors or other officers of the Company authorised to deal with transfers may reasonably require to prove the title of the transferor or his right to transfer the CULS and if the instrument is executed by some other person on his behalf the authority of that person to do so.
6. All instruments of transfer shall be registered without payment of any fee and will be retained by the Company.
7. The executors or administrators of a deceased CULS Holder (not being one of several joint CULS Holders) and, in the case of the death of one or more of several joint CULS Holders, the survivor or survivors of such joint CULS Holders shall be the only person or persons recognised by the Company as having any title to such CULS.
8. Any person becoming entitled to CULS in consequence of the death or bankruptcy of the CULS Holder may upon producing such evidence that he holds the position in respect of which he proposes to act under this paragraph or of his title as the Company shall reasonably think sufficient be registered himself as the CULS Holder or, subject to the preceding paragraphs as to transfer, may transfer such CULS. The Company shall be at liberty to retain the principal and interest in respect of any CULS to which any person has become entitled under this paragraph until such person shall be registered as aforesaid or shall duly transfer such CULS.
9. (a) Payment of the nominal and/or interest in respect of any CULS may be made by transfer to a Pounds Sterling account (or other account to which Pounds Sterling may be credited) maintained by a CULS Holder with a bank in the City of London as previously notified to the UK Transfer and Paying Agent or, in the absence of a bank account, by cheque posted to the registered address of the first-named

holder on the CULS Register and (in the case of redemption and/or interest payable on redemption) payment will be made against surrender of the relevant CULS Certificate at the specified office of the UK Transfer and Paying Agent. Every such cheque or warrant may be sent through the post at the risk of the relevant CULS Holder or relevant joint CULS Holders and due payment of the cheque or warrant shall be a satisfaction of the interest represented thereby.

- (b) Every cheque sent through the post pursuant to paragraph (a) above shall be sent by first class post on or before the Business Day in London next preceding the due date of the relevant nominal and or interest payment unless such due date is not a Business Day in London, in which event it shall be sent on or before the second Business Day in London next preceding the due date of the relevant payment. Where payment is to be made by transfer to a Pounds Sterling bank account, payment instructions (for value the due date or, if the due date is not a Business Day in London, for value the next succeeding Business Day in London) will be initiated (a) in the case of payments of nominal amount and interest payable on redemption, on the later of the due date for payment and (in the case of Certificated CULS only) the day on which the relevant CULS Certificate is surrendered at the specified office of the UK Transfer and Paying Agent and (b) in the case of payments of interest payable other than on redemption, on the due date for payment. CULS Holders shall not be entitled to any interest or other payment in respect of any delay in payment resulting from the due date for payment not being a Business Day in London.

## **SCHEDULE 4**

### **Provisions for meetings of CULS Holders**

1. The Company and the Trustee may respectively and the Trustee shall, at the request in writing of CULS Holders of not less than one-tenth in nominal amount of CULS for the time being outstanding and upon receiving such indemnity and/or security and/or pre-funding as the Trustee may require against the cost of convening and holding the meeting, convene a meeting of the CULS Holders. Any such meeting shall be held at such place in England and at such time as the Trustee shall determine or approve.
2. At least fourteen days' notice or, when the meeting is being convened for the purpose of passing an Extraordinary Resolution, at least twenty-one days' notice (exclusive in each case of the day on which the notice is served or deemed to be served and of the day for which the notice is given) of every meeting shall be given to the CULS Holders in the manner provided in Condition 16. Such notice shall specify the place, day and hour of the meeting and the general nature of the business to be transacted at the meeting but it shall not be necessary, except in the case of an Extraordinary Resolution, to specify in such notice the terms of any resolution to be proposed. A copy of such notice shall be sent by post to the Trustee (unless the meeting shall be convened by the Trustee) and to the Company (unless the meeting shall be convened by the Company). The accidental omission to give notice to, or the non-receipt of notice by, any (but not all) of the CULS Holders shall not invalidate the proceedings at any meeting.
3. At any meeting one or more persons being CULS Holders present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative and holding or representing in the aggregate one-twentieth in nominal amount of the CULS for the time being outstanding shall form a quorum for the transaction of business, except for the purpose of passing an Extraordinary Resolution. The quorum for passing an Extraordinary Resolution shall be one or more persons being CULS Holders present in person or by proxy or (in the case a CULS Holder which is a corporation) by its duly authorised representative and holding or representing in the aggregate a clear majority in nominal amount of the CULS for the time being outstanding. No business (other than the choosing of a chairman) shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
4. If within 15 minutes (or such longer period not exceeding 30 minutes as the chairman may decide) from the time appointed for holding the meeting a quorum is not present the meeting, if convened upon the requisition of CULS Holders, shall be dissolved. In any other case, it shall stand adjourned to such day and time being not less than fourteen days nor more than forty-two days thereafter and to such place as may be appointed by the chairman and at such adjourned meeting one or more persons being CULS Holders present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative whatever the nominal amount of the CULS for the time being outstanding held or represented by them shall form a quorum for the transaction of business including the passing of Extraordinary Resolutions. At least seven days' notice (exclusive as aforesaid) of any adjourned meeting of CULS Holders at which an Extraordinary Resolution is to be proposed shall be given in the same manner as for an original meeting and such notice shall state that one or more persons being CULS Holders present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative at the adjourned meeting whatever the nominal amount of the CULS for the time being outstanding held or represented by them will form a quorum.
5. A person nominated in writing by the Trustee shall preside as chairman at every meeting and if no such person is nominated or if at any meeting no person nominated shall be present within five minutes after the time appointed for holding the meeting the CULS Holders present shall choose one of their number to be chairman. The chairman of an

adjourned meeting need not be the same person as was the chairman of the meeting from which the adjournment took place. The Trustee and the Trustee's legal and financial advisers and any director, officer or employee of a corporation being a trustee of these presents and any director and the secretary and the legal and financial advisers of the Company and any other person authorised in that behalf by the Trustee may attend and be heard at any meeting.

6. The chairman may with the consent of any meeting at which a quorum is present and shall if so directed by the meeting adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.
7. At any meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless (before or on the declaration of the result of the show of hands) a poll is demanded by the chairman or by the Trustee or by one or more CULS Holders present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative and holding or representing not less than one-twentieth in nominal amount of the CULS for the time being outstanding. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or not carried by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
8. If a poll is duly demanded, it shall be taken in such manner as the chairman may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
9. In the case of an equality of votes (whether on a show of hands or on a poll), the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the vote or votes (if any) to which he may be entitled as a CULS Holder.
10. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the chairman directs.
11. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded. The demand for a poll may be withdrawn.
12. On a show of hands, every CULS Holder who is present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative shall have one vote. On a poll, every CULS Holder who is so present shall have one vote in respect of each £10 in nominal amount of CULS of which he is the CULS Holder or in respect of which he is the proxy or duly authorised representative.
13. In the case of joint CULS Holders, the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint CULS Holders and, for this purpose, seniority shall be determined by the order in which the names stand in the CULS Register in respect of the joint holding.
14. On a poll, votes may be given either personally or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative and a CULS Holder entitled to more than one vote need not (if he votes) use all his votes or cast all the votes he uses in the same way.

15. The instrument appointing a proxy shall be in such form as the Trustee may approve and shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under its common seal or under the hand of an officer or attorney duly authorised and such instrument shall be deemed to confer authority to demand or join in demanding a poll.
16. A person appointed to act as a proxy need not be a CULS Holder.
17. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority shall be deposited at the registered office of the Company or such other place as the Trustee shall approve not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of the poll at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiry of 12 months from the date named in it as the date of its execution.
18. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death, insanity or revocation shall have been received by the Company before the commencement of the meeting or adjourned meeting or the taking of the poll at which the proxy is to be used.
19. A meeting of the CULS Holders shall, in addition to all other powers, have the following powers exercisable by Extraordinary Resolution only, that is to say:
  - (a) Power to sanction any scheme for the reconstruction of the Company or for the amalgamation of the Company with any other company.
  - (b) Power to sanction any scheme or proposal for the sale or exchange of the CULS for, or the conversion of the CULS into, shares, stock, debentures, debenture stock or other obligations or securities of the Company or any other company formed or to be formed or cash or partly for, or into, such shares, stock, debentures, debenture stock or other obligations or securities as aforesaid and partly for, or into, cash and for the appointment of some person with power on behalf of the CULS Holders to execute an instrument of transfer of the CULS held by them in favour of the person to, or with whom, the CULS are to be sold or exchanged, respectively.
  - (c) Power to sanction the release of the Company from the payment of all or any part of the principal and interest in respect of the CULS and all other moneys payable pursuant to these presents.
  - (d) Power to sanction any modification, abrogation or compromise of, or arrangement in respect of, the rights of the CULS Holders against the Company whether such rights shall arise under these presents, the Certificates or otherwise.
  - (e) Power to assent to any modification or abrogation of the covenants or provisions contained in these presents proposed or agreed to by the Company and to authorise the Trustee to concur in and execute any supplemental trust deed embodying any such modification.
  - (f) Power to agree to discharge or exonerate any trustee of these presents from any liability in respect of any act or omission for which it is or may be liable there presents.
  - (g) Power to give any authority, direction or sanction which is required by the CULS or the Trust Deed to be given by Extraordinary Resolution.

- (h) Power to authorise anyone to concur in and do anything necessary to give effect to an Extraordinary Resolution.
  - (i) Power to approve or appoint a new trustee or to remove a Trustee.
  - (j) Power to appoint any persons (whether CULS Holders or not) as a committee or committees to represent CULS Holders' interests and to confer any right or discretion on them which CULS Holders otherwise would exercise by Extraordinary Resolution.
20. An Extraordinary Resolution passed at a meeting of the CULS Holders duly convened and held in accordance with the provisions of these presents shall be binding upon all the CULS Holders whether present or not present at the meeting and the Company, each of the CULS Holders and (subject to the provisions for its indemnity and/or security and/or pre-funding contained in the Trust Deed) the Trustee shall be bound to give effect thereto accordingly.
21. The expression "**Extraordinary Resolution**" means a resolution passed at a meeting of the CULS Holders duly convened and held in accordance with the provisions herein contained and carried by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three-fourths of the votes given on such poll.
22. Minutes of all resolutions and proceedings at every meeting shall be made and duly entered in books to be from time to time provided for that purpose by the Company and any such minutes as aforesaid if purporting to be signed by the chairman of the meeting shall be conclusive evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made and signed shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed. Notice of the result of the voting on any resolution duly considered by the CULS Holders shall be given by the Company by way of announcement not more than 14 days after such result is known provided that the non-receipt of such notice by any CULS Holder shall not invalidate such result.
23. If and whenever the Company shall have issued and have outstanding CULS of more than one series, the foregoing provisions of this Schedule shall have effect subject to the following modifications:
- (a) A resolution which in the opinion of the Trustee affects one series only of the CULS shall be deemed to have been duly passed if passed at a separate meeting of the CULS Holders of that series.
  - (b) A resolution which in the opinion of the Trustee affects more than one series of the CULS but does not give rise to a conflict of interests between the CULS Holders of any of the series so affected shall be deemed to have been duly passed if passed at a single meeting of the CULS Holders of the series so affected.
  - (c) A resolution which in the opinion of the Trustee affects more than one series of the CULS and gives or may give rise to a conflict of interests between the CULS Holders of one series or group of series so affected and the CULS Holders of another series or group of series so affected shall be deemed to have been duly passed only if *in lieu* of being passed at a single meeting of the CULS Holders it shall be duly passed at separate meetings of the CULS Holders of each series or group of series so affected.
  - (d) To all such meetings as aforesaid all the preceding provisions of this Schedule shall *mutatis mutandis* apply as though references therein to CULS and CULS Holders

were references to the CULS of the series or group of series in question and to the CULS Holders respectively.

24. A resolution in writing signed by or on behalf of all the CULS Holders or by or on behalf of all the CULS Holders of any series shall for all purposes of these presents be as valid and effectual as and be deemed to be an Extraordinary Resolution passed at a meeting of the CULS Holders or of the CULS Holders of the relevant series (as the case may be) duly convened and held in accordance with the provisions herein contained. Such resolution in writing may be contained in one document or in several documents in or substantially in like form each signed by or on behalf of one or more of the relevant CULS Holders.
25. Subject to all other provisions of these presents, the Trustee may, without the consent of the Company or the CULS Holders, prescribe such further regulations regarding the requisitioning and/or the holding of meetings of CULS Holders and attendance and voting thereat as the Trustee may in its sole discretion think fit.

## **SCHEDULE 5**

### **Provisions relating to CULS in uncertificated form**

1. The following provisions of this Schedule shall have effect in relation to CULS which are Participating CULS.
2. So long as the CULS are Participating CULS, no provision of these presents shall (notwithstanding anything contained in these presents) apply or have effect to the extent that it is in any respect inconsistent with:
  - (a) the holding of title to Participating CULS in uncertificated form;
  - (b) the transfer of title to Participating CULS by means of a relevant system;
  - (c) the exercise of Conversion Rights in relation to Participating CULS held in uncertificated form; or
  - (d) the CREST Regulations.
3. Without prejudice to the generality of paragraph 2 of this Schedule and, notwithstanding anything contained in these presents, where the CULS are, for the time being, Participating CULS:
  - (a) units of the Participating CULS may be issued in uncertificated form in accordance with and subject as provided in the CREST Regulations;
  - (b) units of the Participating CULS may be changed from uncertificated to certificated form, and from certificated to uncertificated form, in each case in accordance with and subject as provided in the CREST Regulations;
  - (c) where title to a unit of the Participating CULS is evidenced otherwise than by a certificate by virtue of the CREST Regulations, the transfer of title to such a unit shall be effected by means of a relevant system in the manner provided for, and subject as provided, in the CREST Regulations and, accordingly (and in particular) paragraphs 3, 4, 5 and 6 of Schedule 3 (*Provisions relating to registration and transfer*) shall not apply in respect of such a unit to the extent that those paragraphs require or contemplate the effecting of a transfer by an instrument in writing and the production of a Certificate for the unit to be transferred;
  - (d) the Company shall comply with the provisions of CREST Regulations 21 and 22 in relation to the Participating CULS ;
  - (e) the provisions of Schedule 4 (*Provisions for meetings of CULS Holders*) with respect to meetings of CULS Holders of the Participating CULS shall have effect subject to the provisions of CREST Regulation 34;
  - (f) Clause 4 (*Fees, Duties and Taxes*) of this Trust Deed shall not apply so as to require the Company to issue a Certificate for the Participating CULS to any person holding units of such CULS in uncertificated form;
  - (g) notwithstanding sub-paragraph (f) above, and for the avoidance of doubt, the Conditions shall remain applicable to the Participating CULS (and accordingly the Company shall continue to comply with the terms and conditions of the same in accordance with Clause 3 (*Certificates*) of this Trust Deed) notwithstanding that they are not endorsed on any Certificate for any unit of Participating CULS which are in uncertificated form;



- (h) the Company shall provide on request to any CULS Holder of Participating CULS in uncertificated form within seven days of it first becoming such a holder a copy of the Conditions and any other document containing equivalent information to that normally endorsed on the Certificates (but so that joint CULS Holders of Participating CULS shall be entitled to receive one copy only of the Conditions or such other document in respect of the Participating CULS held jointly by them, which copy shall be delivered to that one of the joint CULS Holders whose name stands first in the electronic register of CULS Holders maintained in accordance with the CREST Regulations in respect of that holding);
- (i) notwithstanding paragraph 9 of Schedule 3 (*Provisions relating to registration and transfer*) hereto or any other provision of these presents relating to payment in respect of the CULS, in respect of any unit of Participating CULS in uncertificated form, where an authority in that behalf shall have been received by the Company from the CULS Holder of such unit in such form as the Company shall from time to time consider sufficient, the Company may pay or procure the payment of the principal for the time being owing on, the interest payable in respect of, and/or any other moneys payable by the Company to such CULS Holder pursuant to these presents in respect of such Participating CULS to any bank or other agent of such CULS Holder and payment in accordance with such authority shall constitute a good discharge therefor;
- (j) notwithstanding any provision of these presents requiring the CULS Holder of any Participating CULS to exercise Conversion Rights by delivering a written notice in the prescribed form, Conversion Rights may be exercised in respect of Participating CULS in uncertificated form by means of a properly authenticated dematerialised instruction and/or other instruction or notification received by the Company or such person as it may require in such form and subject to such conditions as may from time to time be prescribed by the Company (subject always to the facilities and requirements of the relevant system and to the prior approval of the form of such notice by the Trustee);
- (k) notwithstanding any provision of these presents requiring the issue of Ordinary Shares in certificated form upon the exercise of Conversion Rights in respect of Participating CULS, the Ordinary Shares arising upon conversion of any Participating CULS shall (unless the Company shall otherwise determine with the approval of the Trustee or unless the CREST Regulations and/or the rules of the relevant system otherwise require) be issued in uncertificated form (where the Participating CULS converted were in uncertificated form on the relevant Conversion Date) or in certificated form (where the Participating CULS converted were in certificated form on the relevant Conversion Date); and
- (l) for the avoidance of doubt, any unit of the Participating CULS may be held in uncertificated form by not more than four joint CULS Holders,

and the Company hereby covenants with the Trustee that it will comply with and observe and be bound by all the foregoing provisions accordingly.

4. The Trustee may, without the consent of the CULS Holders, concur with the Company in making modifications to the provisions of these presents in order to reflect changes in the CREST Regulations or in the applicable law and/or practice relating to the holding or transfer of CULS in uncertificated form and the issue of Ordinary Shares in uncertificated form on conversion of CULS.
5. For the avoidance of doubt, terms defined in the CREST Regulations have the same meanings in this Schedule.

## SCHEDULE 6

### Form of Directors' Certificate

*[On the headed paper of the Company]*

To:           [●]  
               [●]

Attention:   [●]

[DATE]

Dear Sirs

**£38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of JZ Capital Partners Limited due 2021**

This certificate is delivered to you in accordance with Clause 17(f) of the Trust Deed dated 30 July 2014 (the "**Trust Deed**") and made between JZ Capital Partners Limited (the "**Company**") and The Law Debenture Trust Corporation p.l.c. (the "**Trustee**"). All words and expressions defined in the Trust Deed shall (save as otherwise provided herein or unless the context otherwise requires) have the same meanings herein.

We hereby certify that, to the best of our knowledge, information and belief (having made all reasonable enquiries):

- (a) as at [●]<sup>1</sup>, no Event of Default or Potential Event of Default existed [other than [●]]<sup>2</sup> and no Event of Default or Potential Event of Default had existed at any time since [[●]<sup>3</sup>]/[the relevant date (as defined in the Trust Deed) of the last certificate delivered under Clause 17(f)]<sup>4</sup>] [other than [●]]<sup>5</sup>; and
- (b) from and including [[●]<sup>3</sup>]/[the relevant date of the last certificate delivered under Clause 17(f)]<sup>4</sup>] to and including [●]<sup>1</sup>, the Issuer has complied in all respects with its obligations under these presents (as defined in the Trust Deed) [other than [●]]<sup>6</sup>.

Yours faithfully

.....

Director

.....

Director

---

<sup>1</sup> Specify a date not more than 7 days before the date of delivery of the certificate

<sup>2</sup> If any Event of Default or Potential Event of Default did exist, give details: otherwise delete

<sup>3</sup> Insert date of Trust Deed in respect of the first certificate delivered under Clause 17.6, otherwise delete

<sup>4</sup> Include unless the certificate is the first certificate delivered under Clause 17.6, in which case delete

<sup>5</sup> If any Event of Default or Potential Event of Default did exist, give details; otherwise delete

<sup>6</sup> If the Issuer has failed to comply with any obligation(s), give details: otherwise delete

**SIGNATURES**

**EXECUTED** as a deed by  
**JZ CAPITAL PARTNERS LIMITED**  
acting by

)  
)  
)  
)

Director

)  
)  
)  
)

Director/Secretary

**EXECUTED** as a deed by  
**THE LAW DEBENTURE TRUST**  
**CORPORATION P.L.C.**  
acting by

)  
)  
)  
)

Director

)  
)  
)  
)

Director/Secretary

**SIGNATURES**

**EXECUTED** as a deed by  
**JZ CAPITAL PARTNERS LIMITED**  
acting by

)  
)  
)  
)

Director

)  
)  
)  
)

Director/Secretary

**EXECUTED** as a deed by  
**THE LAW DEBENTURE TRUST**  
**CORPORATION P.L.C.**  
acting by

)  
)  
)  
)



Director

)  
)  
)  
)



Director/~~Secretary~~



## Trust Deed

JZ Capital Partners Limited

as Company

and

The Law Debenture Trust Corporation p.l.c.

as Trustee

£38,861,140 6.00 per cent.  
convertible unsecured subordinated loan stock  
due 2021

30 July 2014

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**THIS TRUST DEED** is made on 30 July 2014

**BETWEEN:**

- (1) **JZ CAPITAL PARTNERS LIMITED**, a non-cellular company limited by shares under the laws of Guernsey under the Companies (Guernsey) Law 2008 (as amended) with registered number 48761, whose registered office is at PO Box 255, Trafalgar Court, Les Banques, St. Peter Port, Guernsey GY1 3QL, Channel Islands (the "**Company**"); and
- (2) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.**, a company incorporated under the laws of England and Wales with registered number 1675231, whose registered office is at Fifth Floor, 100 Wood Street, London EC2V 7EX, United Kingdom (the "**Trustee**", which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the trustee or trustees of these presents) as trustee for the CULS Holders (as defined below).

**WHEREAS:**

- (A) By resolutions of the Board of Directors of the Company passed on 10 July and 16 July 2014 and of a duly authorised committee of the Board of Directors of the Company passed on 18 July, 20 July and 25 July 2014, the Company has created and resolved to issue up to £38,861,140 in aggregate nominal amount of 6.00 per cent. convertible unsecured subordinated loan stock due 2021 (the "**Initial CULS**") to be constituted by this Trust Deed.
- (B) The Trustee has agreed to act as trustee of these presents for the benefit of the CULS Holders upon and subject to the terms and conditions of these presents.

**NOW THIS TRUST DEED WITNESSES AND IT IS AGREED AND DECLARED** as follows:

**1. DEFINITIONS AND CONSTRUCTION**

**1.1 Definitions**

In these presents unless there is anything in the subject or context inconsistent therewith, the following expressions shall have the following meanings:

**"Additional CULS"** means all further convertible unsecured subordinated loan stock of the Company issued pursuant to the provisions of Clause 2.4, or the nominal amount thereof for the time being outstanding or as the context may require a specific portion thereof;

**"Appointee"** means any attorney, manager, agent, delegate or other person appointed by the Trustee under these presents;

**"Articles"** means the articles of incorporation of the Company (as amended from time to time);

**"Auditors"** means the auditors for the time being of the Company or, in the event of their being unable or unwilling promptly to carry out any action requested of them pursuant to the provisions of these presents, such other firm of accountants as may be nominated or approved by the Trustee, provided that the Trustee shall have no obligation to appoint an Auditor unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction;

**"Business Day"** has the meaning ascribed to it in the Conditions;

**"Certificate"** means the certificate for CULS, in the form or substantially in the form set out in Schedule 1 (*Form of Certificate for the CULS*);

**"certificated"** or **"in certificated form"** means an Ordinary Share or unit of CULS (as appropriate), which is not in uncertificated form;

**"Certificated CULS"** has the meaning ascribed to it in the Conditions;

**"Conditions"** means the Conditions to be endorsed on the Certificates for the CULS in the form or substantially in the form set out in Schedule 1 (*Form of Certificate for the CULS*) as the same may from time to time be modified in accordance with these presents and any reference in these presents to a particular specified Condition or paragraph or sub-paragraph of such a Condition shall in relation to the CULS be construed accordingly;

**"Conversion Date"** has the meaning ascribed to it in the Conditions;

**"Conversion Period"** has the meaning ascribed to it in the Conditions;

**"Conversion Price"** has the meaning ascribed to it in the Conditions;

**"Conversion Right"** has the meaning ascribed to it in the Conditions;

**"CREST"** means the relevant system (as defined in the CREST Regulations) in respect of which Euroclear UK & Ireland Limited is the Operator (as defined in the CREST Regulations);

**"CREST Regulations"** means the Uncertificated Securities Regulations 2001 (S.I. 2001 No. 3755);

**"CULS"** means the Initial CULS and any Additional CULS;

**"CULS Holders"** means the several persons for the time being entered in the CULS Register as the holders of the CULS;

**"CULS Register"** means the register in respect of the CULS referred to in Clause 23 (*CULS Register*);

**"Current Market Price"** has the meaning ascribed to it in the Conditions;

**"Directors"** or **"Board"** means the directors of the Company or, where the context permits, the board of directors of the Company (or any duly authorised committee of such board);

**"equity share capital"** means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

**"Event of Default"** means any of the conditions, events or acts provided in Clause 8 (*Events of Default*) to be events upon the happening of which the CULS would, subject only to notice and (if applicable) certification by the Trustee as therein provided having been given, become immediately due and repayable;

**"Extraordinary Resolution"** has the meaning set out in paragraph 21 of Schedule 4 (*Provisions for meetings of CULS Holders*);

**"Further CULS"** has the meaning ascribed to it in the Conditions;

**"Independent Financial Adviser"** has the meaning ascribed to it in the Conditions;



**"Liability"** means any loss, damage, cost, charge, claim, demand, fee, expense, judgment, action, proceeding or other liability whatsoever (including, without limitation, in respect of taxes, duties, levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof and legal fees and expenses on a full indemnity basis;

**"Maturity Date"** has the meaning ascribed to it in the Conditions;

**"Net Asset Value of the Company"** has the meaning ascribed to it in the Conditions;

**"Newco Scheme"** has the meaning ascribed to it in the Conditions;

**"Ordinary Shares"** has the meaning ascribed to it in the Conditions;

**"outstanding"** means, in relation to the CULS, all the CULS issued and in respect of which there is for the time being an entry in the CULS Register other than CULS which have been:

- (a) redeemed and cancelled pursuant to these presents;
- (b) purchased and cancelled pursuant to these presents; and
- (c) converted pursuant to these presents (unless there is a failure to deliver the Ordinary Shares in connection therewith, in which case, notwithstanding such conversion, the relevant CULS shall be deemed to remain outstanding),

provided that for each of the following purposes, namely:

- (i) the right to attend and vote at any meeting of the CULS Holders or any of them;
- (ii) the determination of how much and which CULS is for the time being outstanding for the purposes of Clauses 8 (*Events of Default*) and 11.1 (*Proceedings, Action and Indemnification*) and paragraphs 1, 3, 4 and 7 of Schedule 4 (*Provisions for meetings of holders*);
- (iii) any discretion, power or authority (whether contained in these presents or vested by operation of law) which the Trustee is required, expressly or impliedly, to exercise in or by reference to the interests of the CULS Holders or any of them; and
- (iv) the determination by the Trustee whether any event, circumstance, matter or thing is, in its opinion, materially prejudicial to the interests of the CULS Holders or any of them,

the CULS (if any) which are for the time being held by, for the benefit of, or on behalf of, the Company or any Subsidiary shall (unless and until ceasing to be so held) be deemed not to remain outstanding and accordingly the holders of such CULS shall be deemed not to be CULS Holders;

**"Participating CULS"** means CULS which are for the time being participating securities pursuant to the CREST Regulations;

**"Potential Event of Default"** means any condition, event or act which, with the lapse of time and/or the issue, making or giving of any notice, certification, declaration, demand, determination or request and/or the taking of any similar action and/or the fulfilment of any similar condition, would constitute an Event of Default;

**"relevant date"** has the meaning ascribed to it in Clause 17(f);

**"Relevant Electronic System"** has the meaning ascribed to it in the Conditions;

**"repay", "redeem" and "pay"** shall each include both the others and cognate expressions shall be construed accordingly;

**"Shareholder Approval"** means the passing of an ordinary resolution to authorise the Directors in accordance with Article 4(8) of the Articles to allot equity securities of the Company, as if Article 4(8) of the Articles does not apply to any such allotment, provided that the power is limited to the allotment of equity securities up to an aggregate amount of 10 per cent. of the issued Ordinary Shares, so as to act as the pre-emption right disapplication authority to allow the issue of Additional CULS;

**"Shareholders"** has the meaning ascribed to it in the Conditions;

**"Securities"** has the meaning ascribed to it in the Conditions;

**"Specialist Fund Market"** means the Specialist Fund Market of the London Stock Exchange plc;

**"Subordination Agreement"** means the subordination agreement dated on or about the date hereof entered into between, *inter alios*, the Company and the Trustee, the form of which, as at the date hereof, is set out in (*Form of Subordination Agreement*) (as may be supplemented, amended or varied from time to time);

**"Subsidiary"** has the meaning ascribed to it in the Conditions;

**"these presents"** means this Trust Deed and the Schedules and any trust deed supplemental hereto and the Schedules (if any) thereto and the Conditions, all as from time to time modified in accordance with the provisions herein or therein contained;

**"Trustee Acts"** means the Trustee Act 1925 and the Trustee Act 2000 of England and Wales;

**"UK Transfer and Paying Agent"** means Equiniti Limited as transfer and paying agent of the Company (including any successor transfer and paying agent);

**"uncertificated" or "in uncertificated form"** means securities recorded in the register of member or CULS Holders (as appropriate) as being held in uncertificated form in CREST and title to which, by virtue of the CREST Regulations, may be transferred by means of CREST;

**"Uncertificated CULS"** has the meaning ascribed to it in the Conditions; and

**"Uncertificated Conversion Notice"** has the meaning ascribed to it in the Conditions.

## 1.2 Construction

- (a) All references in these presents to any statute or any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such modification or re-enactment.
- (b) All references in these presents to guarantees or to an obligation being guaranteed shall be deemed to include respectively references to indemnities or to an indemnity being given in respect thereof.
- (c) All references in these presents to any action, remedy or method of proceeding for the enforcement of the rights of creditors shall be deemed to include, in respect of

any jurisdiction other than England, references to such action, remedy or method of proceeding for the enforcement of the rights of creditors available or appropriate in such jurisdiction as shall most nearly approximate to such action, remedy or method of proceeding described or referred to in these presents.

- (d) All references in these presents to taking proceedings against the Company shall be deemed to include references to proving in the winding up of the Company.
- (e) All references in these presents to any CULS being in uncertificated form or in certificated form are references, respectively, to such CULS being an uncertificated unit of a security or a certificated unit of a security.
- (f) If at any time any provision of these presents is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of, such provision under the law of any other jurisdiction, or other provisions in these presents, shall in any way be affected or impaired thereby.
- (g) In this Trust Deed, references to Schedules, Clauses, sub-clauses, paragraphs and sub-paragraphs shall be construed as references to the Schedules to this Trust Deed and to the Clauses, sub-clauses, paragraphs and sub-paragraphs of this Trust Deed respectively.
- (h) In these presents, the tables of contents and Clause headings are included for ease of reference only and shall not affect the construction of these presents.
- (i) An Event of Default or a Potential Event of Default is "continuing" if it has not been remedied or waived.
- (j) All references to "**sterling**", "**Pounds Sterling**", "**GBP**" or "**£**" are to the lawful currency for the time being of the United Kingdom.
- (k) Words denoting the singular shall include the plural and *vice versa*.
- (l) Words denoting one gender only shall include the other gender.
- (m) Words denoting persons only shall include firms and corporations and *vice versa*.
- (n) As used in these presents, in relation to any CULS or Ordinary Share (as the case may be) which has a listing or is listed on the Specialist Fund Market, "**listing**" and "**listed**" shall be construed to mean that such CULS or, as the case may be, Ordinary Share has been admitted to trading on the Specialist Fund Market (or if at that time not so listed or dealt in, the principal stock exchange or securities market on which the CULS or Ordinary Shares (as the case may be) are then listed or dealt in). All references in these presents to listing and listed shall include references to quotation and quoted respectively.

### 1.3 **Conflict between these presents, the Conditions, the CULS and the Subordination Agreement**

- (a) The rights and obligations of the parties hereto are subject to the terms and provisions of the Subordination Agreement and, in the case of conflict between the terms of these presents, the Conditions, the CULS and the Subordination Agreement, the Subordination Agreement shall prevail.
- (b) CULS Holders agree to, are bound by and are deemed to have notice of, the provisions contained in the Trust Deed, the Conditions and the Subordination Agreement.

## 2. COVENANT TO REPAY AND TO PAY INTEREST ON THE CULS

- 2.1 The aggregate nominal amount of the CULS is limited to £38,861,140.00 and the CULS shall be known as 6.00 per cent. convertible unsecured subordinated loan stock due 2021. The whole of the CULS shall rank *pari passu* equally and rateably without discrimination or preference amongst themselves and as an unsecured subordinated obligation of the Company and subject to the terms of the Subordination Agreement.
- 2.2 The Company covenants with the Trustee that it will, in accordance with these presents and subject to the Subordination Agreement, on the Maturity Date provided for in the Conditions, or on such earlier date as the same or any part thereof is due to be repaid or shall become immediately due and repayable under these presents, pay or procure to be paid unconditionally to or to the order of the Trustee in Pounds Sterling in London for immediate value the nominal amount of the CULS repayable on that date and shall, in the meantime and until the whole of the CULS shall have been repaid, purchased or converted and, in each case (to the extent applicable), cancelled pursuant to these presents (both before and after any judgment or other order of a court of competent jurisdiction), pay or procure to be paid unconditionally to or to the order of the Trustee as aforesaid interest (which shall accrue from day to day) on the nominal amount of the CULS at the rate of 6.00 per cent. per annum such interest to be payable semi-annually in arrear on 31 March and 30 September in each year in respect of the half years ending on those dates respectively, provided that:
- (a) every payment to the CULS Holders in respect of principal or interest in respect of the CULS held by them respectively shall be in satisfaction *pro tanto* of the covenant by the Company in this Clause contained;
  - (b) in any case where payment of principal is not duly made on or before the due date, interest shall continue to accrue on the nominal amount of the CULS (both before and after any judgment or other order of a court of competent jurisdiction) at the rate aforesaid (or, if higher, the rate of interest on judgment debts for the time being provided by English law) up to and including the day on which transfer in respect of the whole of such principal, together with an amount equal to the interest which has accrued and is to accrue pursuant to this proviso up to and including that day, to a Pounds Sterling account (or other account to which Pounds Sterling may be credited) maintained by a CULS Holder with a bank in the City of London as previously notified to the UK Transfer and Paying Agent has been made or by cheques in respect of the whole of such principal, together with an amount equal to the interest which has accrued and is to accrue pursuant to this proviso up to and including that day, have been duly despatched to the persons entitled thereto; and
  - (c) the amount of interest payable in respect of any period which is either shorter or longer than a Regular Period (as defined below) shall be calculated at the rate of 6.00 per cent. per annum on the basis of the number of days in the relevant period from (and including) the first day of such period to (but excluding) the last day of such period divided by the product of (i) two and (ii) the number of days in the Regular Period in which the relevant period falls. "**Regular Period**" means each period from (and including) any Interest Payment Date to (but excluding) the next Interest Payment Date save that, for the purposes of this definition only, the first Interest Payment Date shall be deemed to be 30 September 2014 and the last Interest Payment Date shall be deemed to be 31 March 2021.
- 2.3 All payments in respect of the CULS by or on behalf of the Company shall be made without withholding or deduction for, or on account of, any and all present or future taxes, duties, assessments or governmental charges of whatever nature, unless the withholding or deduction of the taxes is required by law. In that event, the relevant payments will be

made subject to such withholding or deduction. The Company will not be required to pay additional or further amounts in respect of such withholding or deduction.

#### 2.4 Further Issues

- (a) The Company shall be at liberty from time to time (but subject always to the provisions of these presents) without the consent of the CULS Holders to create and issue further convertible unsecured subordinated loan stock either (i) ranking *pari passu* in all respects (or in all respects save for the first payment of interest thereon), and so that the same shall be consolidated and form a single series, with the CULS or (ii) upon such terms as to ranking, subordination, interest, conversion, redemption and otherwise as the Company may, at the time of issue thereof, determine, provided that whenever it is proposed to create and issue any Additional CULS pursuant to sub-paragraph (i) of this Clause, the Company shall give to the Trustee not less than fourteen days' notice in writing of its intention so to do stating the nominal amount of Additional CULS proposed to be created and issued.
  - (b) Any Additional CULS which are to be created and issued pursuant to the provisions of sub-paragraph (i) of Clause 2.4(a) so as to be consolidated and form a single series with the CULS shall be constituted by a trust deed supplemental to this Trust Deed and any other Additional CULS which are to be created and issued pursuant to the provisions of sub-paragraph (ii) of Clause 2.4(a) may (subject to the consent of the Trustee) be constituted by a trust deed supplemental to this Trust Deed. In any such case, the Company shall, prior to the issue of any Additional CULS to be so constituted, execute and deliver to the Trustee a trust deed supplemental to this Trust Deed (in relation to which all applicable stamp duties or other documentation fees, duties or taxes have been paid and, if applicable, duly stamped or denoted accordingly) and containing a covenant by the Company in the form *mutatis mutandis* of Clause 2.2 in relation to the principal and interest in respect of such Additional CULS and such other provisions (whether or not corresponding to any of the provisions contained in this Trust Deed) as the Trustee shall require.
  - (c) A memorandum of every such supplemental trust deed shall be endorsed by the Trustee on this Trust Deed and by the Company on its duplicate of this Trust Deed.
  - (d) Subject to the provisions of Clause 6 (*Further Restrictions on the Company*), any Additional CULS created and issued pursuant to the provisions of this Clause 2.4 may be issued to such persons at such times and on such terms and either at par or at a discount as the Company may think fit and the proceeds of the issue thereof shall be receivable by the Company and shall be applied as the Company in its absolute discretion shall determine.
  - (e) Any Additional CULS not forming a single series with the CULS shall form a separate series and accordingly, unless for any purpose the Trustee in its absolute discretion shall otherwise determine, the provisions of Clauses 4 (*Fees, Duties and Taxes*) to 23 (*CULS Register*) (both inclusive) and 24.2 and Schedule 3 (*Provisions relating to registration and transfer*), Schedule 4 (*Provisions for meetings of Holders*) and Schedule 5 (*Provisions relating to CULS in uncertificated form*) shall apply *mutatis mutandis* separately and independently to the CULS of each series and, in such Clauses and Schedules, the expressions "CULS" and "CULS Holders" shall be construed accordingly.
- 2.5 (a) In the event of the winding up of the Company, all amounts in respect of the CULS paid to the Trustee by the liquidator of the Company in the winding up of the Company shall, subject to the provisions of the Subordination Agreement, be held by the Trustee upon trust:

- (i) *firstly*, for payment or satisfaction of all amounts then due and unpaid under Clauses 18 (*Remuneration and Indemnification of the Trustee*) and/or 19.10 to the Trustee and/or any Appointee; and
  - (ii) *secondly*, as to the balance (if any) in or towards payment *pari passu* and rateably of the amounts owing on or in respect of the CULS.
- (b) The trust mentioned in sub-paragraph (ii) of Clause 2.5(a) may be performed by the Trustee paying over to the liquidator for the time being in the winding-up of the Company the amounts received by the Trustee as aforesaid (less any amounts thereof applied in the implementation of the trust mentioned in sub-paragraph (i) of Clause 2.5(a)) on terms that such liquidator shall distribute the same accordingly and the receipt of such liquidator for the same shall be a good discharge to the Trustee for the performance by it of the trust mentioned in sub-paragraph (ii) of Clause 2.5(a).
- (c) The Trustee shall be entitled and it is hereby authorised to call for and to accept as conclusive evidence thereof a certificate from the liquidator for the time being of the Company as to the persons entitled thereto and their respective entitlements.

### 3. **CERTIFICATES**

- 3.1 The Certificates shall be issued in accordance with the provisions of the Articles for the time being of the Company relating to the issue of Certificates for securities of the Company. The Certificates shall be in the form or substantially in the form set out in Schedule 1 (*Form of Certificate for the CULS*) or in such other form as the Trustee may approve and shall have endorsed thereon the Conditions. The Company shall comply with the terms and provisions of the Certificates and the Conditions and shall give effect to the Conversion Rights set out therein if exercised and the CULS shall be held subject to and with the benefit of such Conversion Rights and the Conditions, all of which shall be deemed to be incorporated in this Trust Deed and shall be binding on the Company and the CULS Holders and all persons claiming through or under them respectively. The Certificates for any Additional CULS shall be as nearly as may be in like form and shall have endorsed thereon the terms and conditions of such Additional CULS. Every CULS Holder shall be entitled to receive one Certificate for the CULS of each series held by him but so that joint CULS Holders shall be entitled to one Certificate only in respect of the CULS of each series held jointly by them which Certificate shall be delivered to that one of the joint CULS Holders whose name stands first in the CULS Register in respect of the joint holding. Where a CULS Holder has transferred or converted or had redeemed a part only of his holding of CULS of any series, he/she shall be entitled to a Certificate for the balance of such holding without charge.
- 3.2 Pursuant to the CREST Regulations, the Company may make arrangements for the holding of title to units of CULS in uncertificated form and the transfer of title thereto otherwise than by a written instrument, as provided for in the provisions contained in Schedule 5 (*Provisions relating to CULS in uncertificated form*) (all of which provisions shall be deemed to be, and shall have effect as though, incorporated in this Trust Deed). Where any provisions of these presents (including, but not limited to, this Clause 3 (*Certificates*), Clauses 13 (*Notice of Payments by Trustee*) and 15 (*Endorsement of Certificates*) and Schedule 3 (*Provisions relating to registration and transfer*)) are, insofar as they relate to CULS in uncertificated form, inconsistent with the provisions of Schedule 5 (*Provisions relating to CULS in uncertificated form*), Schedule 5 (*Provisions relating to CULS in uncertificated form*) shall prevail.

### 4. **FEES, DUTIES AND TAXES**

The Company will pay any stamp, issue, registration, documentary and other fees, duties and taxes, including interest and penalties, payable on or in connection with (a) the

execution and delivery of these presents, (b) the constitution and original issue of the CULS and (c) any action taken by or on behalf of the Trustee to enforce these presents.

**5. COVENANT OF COMPLIANCE**

The Company covenants with the Trustee that it will comply with and perform and observe all the provisions of these presents which are expressed to be binding on it.

**6. FURTHER RESTRICTIONS ON THE COMPANY**

The Company covenants with the Trustee that, so long as any of the CULS remains outstanding, no additional loan capital of the Company or any Subsidiary shall be paid up in whole or in part by way of capitalisation of profits or reserves (including share premium account, capital redemption reserve and profit and loss account) or be issued by way of collateral security.

**7. COVENANTS RELATING TO CONVERSION RIGHTS**

7.1 While any Conversion Rights remain capable of exercise by any CULS Holder, save with the previous sanction of an Extraordinary Resolution or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall use its reasonable endeavours:

- (a) to procure that (i) the CULS and (ii) the Ordinary Shares which are fully paid at all times remain admitted to trading on the Specialist Fund Market; and
- (b) to ensure that during such time as the Ordinary Shares are admitted to trading on the Specialist Fund Market and/or listed or quoted on any other stock exchange, all the Ordinary Shares allotted on exercise of Conversion Rights will, on allotment, be admitted to the Official List of the Financial Conduct Authority and to trading on the Specialist Fund Market and/or be listed or quoted on such other stock exchange.

7.2 While any Conversion Rights remain capable of exercise by any CULS Holder, save with the previous sanction of an Extraordinary Resolution or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall:

- (a) subject only to their being admitted to trading on the Specialist Fund Market and/or any other stock exchange or securities market on which the Ordinary Shares may then be listed or quoted or dealt in, issue, allot and deliver Ordinary Shares on exercise of Conversion Rights in accordance with the Conditions and, at all times, keep available for issue free from pre-emptive or other similar rights such number of Ordinary Shares as would enable it to issue in full such number of Ordinary Shares as are required to be issued by it upon exercise of Conversion Rights and all other rights of subscription and exchange for and conversion into Ordinary Shares;
- (b) not issue or pay up any Securities, in either case by way of capitalisation of profits or reserves unless, in any such case, the same gives rise (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price other than:
  - (i) by the issue of fully paid Ordinary Shares or other Securities to the Shareholders and other holders of ordinary shares in the capital of the Company which by their terms entitle the holders thereof to receive Ordinary Shares or other Securities on a capitalisation of profits or reserves;

- (ii) by the issue of Ordinary Shares paid up in full out of profits or reserves (in accordance with applicable law) and issued wholly, ignoring fractional entitlements, in lieu of the whole or part of a cash dividend; or
  - (iii) by the issue of fully paid equity share capital (other than Ordinary Shares) to the holders of equity share capital of the same class and other holders of ordinary shares in the capital of the Company which by their terms entitle the holders thereof to receive equity ordinary share capital (other than Ordinary Shares) on a capitalisation of profits or reserves;
- (c) not in any way modify the rights attaching to the Ordinary Shares with respect to voting, dividends or liquidation nor issue any other class of equity ordinary share capital carrying any rights which are more favourable than such rights but so that nothing in this Clause shall prevent:
  - (i) any consolidation or subdivision of the Ordinary Shares;
  - (ii) any modification of such rights which is not, in the opinion of the Independent Financial Adviser, materially prejudicial to the interests of the CULS Holders;
  - (iii) any alteration to the Articles made in connection with the matters described in this Clause or which is supplemental or incidental to any of the foregoing (including any amendment made to enable or facilitate procedures relating to such matters and any amendment dealing with the rights and obligations of holders of Securities, including Ordinary Shares, dealt with under such procedures);
  - (iv) any issue of equity ordinary share capital where the issue of such equity share capital results or would, but for the provisions of these Conditions, otherwise result in an adjustment of the Conversion Price; or
  - (v) any issue of equity ordinary share capital or modification of rights attaching to the Ordinary Shares where prior thereto the Company shall have instructed the Independent Financial Adviser to determine what (if any) adjustments should be made to the Conversion Price as being fair and reasonable to take account thereof and the Independent Financial Adviser shall have determined either that no adjustment is required or that an adjustment to the Conversion Price is required and, if so, the new Conversion Price as a result thereof and the basis upon which such adjustment is to be made and, in any such case, the date on which the adjustment shall take effect (and so that the adjustment shall be made and shall take effect accordingly);
- (d) procure that no Securities (whether issued by the Company or any Subsidiary or procured by the Company or any Subsidiary to be issued or issued by any other person pursuant to any arrangement with the Company or any Subsidiary) issued without rights to convert into, or exchange or subscribe for, Ordinary Shares shall subsequently be granted such rights exercisable at a consideration per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share at the close of business on the last dealing day preceding the date of the announcement of the proposed inclusion of such rights unless the same gives rise (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price and that at no time shall there be in issue Ordinary Shares of differing nominal values, save where such Ordinary Shares have the same economic rights;



- (e) not make any issue, grant or distribution or take any other action if the effect thereof would be that, on the conversion of the CULS, Ordinary Shares would (but for the provisions of Condition 4.15) have to be issued at a discount or otherwise could not, under any applicable law then in effect, be legally issued as fully paid;
- (f) not reduce its issued share capital, share premium account or capital redemption reserve or any uncalled liability in respect thereof or any non-distributable reserves, except (i) pursuant to the terms of issue of the relevant share capital, (ii) by means of a purchase or redemption of share capital of the Company to the extent permitted by the Articles and/or applicable law, (iii) where the reduction does not involve any distribution of assets, (iv) where the reduction results in (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, result in) an adjustment to the Conversion Price or is otherwise taken into account for the purposes of determining whether such an adjustment should be made, (v) solely in relation to a change in the currency in which the nominal value of the Ordinary Shares is expressed, (vi) pursuant to a Newco Scheme or (vii) by way of, or involving, a transfer to reserves under applicable law;
- (g) if any offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) such Shareholders other than the offeror and/or any associated companies (as defined in section 529(1) of the Companies (Guernsey) Law 2008 (as amended) of the offeror) to acquire all or a majority of the issued ordinary share capital of the Company, or if a scheme is proposed with regard to such acquisition, give notice of such offer or scheme to the Trustee and the CULS Holders at the same time as any notice thereof is sent to the Shareholders (or as soon as practicable thereafter) that details concerning such offer or scheme may be obtained from the office of the Company and, where such an offer or scheme has been recommended by the Board or where such an offer has become or been declared unconditional in all respects, use its reasonable endeavours to procure that a like offer or scheme is extended to the holders of any Ordinary Shares issued during the period of the offer or scheme arising out of the exercise of the Conversion Rights and/or to the CULS Holders; and
- (h) send to all CULS Holders a copy of every document sent by the Company to Shareholders at the time the same is sent to Shareholders.

7.3 For the purposes of this Clause only, (a) references to the **"issue"** of Ordinary Shares shall include the transfer and/or delivery of Ordinary Shares by the Company or any Subsidiary, whether newly issued and allotted or previously existing or held by or on behalf of the Company or any Subsidiary, and (b) Ordinary Shares held by or on behalf of the Company or any Subsidiary, shall not be considered as or treated as **"in issue"**.

## 8. EVENTS OF DEFAULT

Upon the occurrence of any of the following events, the Trustee may at its discretion and, if requested in writing by CULS Holders holding at least one-quarter in nominal amount of the CULS then outstanding or directed by an Extraordinary Resolution, shall (subject in each case to being indemnified and/or secured and/or pre-funded by CULS Holders to its satisfaction), give notice to the Company that the CULS are (and the CULS shall thereupon become) immediately due and payable at their nominal amount together with accrued interest as provided in the Trust Deed:

- 8.1 if the Company makes default, except as provided by the Subordination Agreement, for a period of 14 days or more in the payment on the due date of any principal or interest in respect of the CULS;
- 8.2 if an order is made or an effective resolution passed for the winding up or dissolution of the Company (except for the purpose of a reconstruction or amalgamation the terms of

which have previously been approved in writing by the Trustee or by an Extraordinary Resolution);

8.3 if:

- (a) the Company is unable or admits inability to pay its debts as they fall due;
- (b) the value of the assets of the Company is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness of the Company; or
- (d) the Company ceases or threatens to cease to carry on all or substantially all of its business, which shall not include (A) a change in investment policy, objective, performance benchmark or manager, or (B) a reconstruction or amalgamation the terms of which have previously been approved in writing by the Trustee or by an Extraordinary Resolution;

8.4 if an encumbrancer takes possession or a receiver or administrator or administrative receiver or other similar official is appointed of the Company or of the whole or a substantial part of the assets or undertaking of the Company or a distress or execution is levied or enforced upon or sued out against the whole or a substantial part of the assets or property of the Company and is not discharged within 30 days of being levied, enforced or sued out;

8.5 if default is made by the Company in the performance or observance of any covenant or provision binding on it under or pursuant to these presents (other than (a) any covenant for the payment of principal or interest in respect of the CULS or (b) any breach referred to in Clause 8.6) or if any event occurs or any action is taken or fails to be taken which is (or but for the provisions of any applicable law would be) a breach of any of the covenants contained in these presents and (except where, in the opinion of the Trustee, the same is not capable of remedy when no such continuation or notice as is herein provided will be required) the same continues for more than 30 days after written notice requiring the same to be remedied shall have been given to the Company by the Trustee; or

8.6 if the Company, without the prior written consent of the Trustee or by an Extraordinary Resolution or as otherwise permitted by the Conditions, alters the rights attached to all or any of its Ordinary Shares in issue from time to time or attaches any special rights, privileges or restrictions thereto, or creates or issues any new class of equity share capital other than the Ordinary Shares ranking *pari passu* in all respects (or in all respects except as regards any restriction on their rights to receive dividends or other distributions or on their rights on a return of capital or on their rights to participate in any issue by way of capitalisation of profits or reserves or on their voting rights, which, in all such cases, make such rights materially less favourable than those attached to the Ordinary Shares) with the Ordinary Shares and, in each case (except where, in the opinion of the Trustee, such alteration, attachment, creation or issue is not capable of cancellation when no such continuation or notice as is herein provided shall be required), such alteration, attachment, creation or issue shall continue for more than 30 days after written notice requiring such alteration, attachment, creation or issue to be cancelled shall have been given to the Company by the Trustee, provided that nothing in this Clause shall restrict the right of the Company to consolidate or subdivide Ordinary Shares or convert Ordinary Shares into stock or *vice versa* and no such consolidation, subdivision or conversion shall give rise to any rights under this Clause.

Provided that no such event set out in Clause 8.3 to 8.6 shall constitute an event of default on the occurrence of which the CULS may become immediately due and payable unless the Trustee shall have certified in writing that, in its opinion (having taken such

advice as it may require), such event is materially prejudicial to the interests of the CULS Holders.

9. **ENFORCEMENT**

9.1 Subject to the Subordination Agreement, the Trustee may at any time, at its discretion and without notice, take such proceedings and/or other action as it may think fit against or in relation to the Company to enforce its obligations under these presents.

9.2 Proof that as regards any specified CULS Holder the Company has made default in paying any amount due in respect of his/her CULS shall (unless the contrary be proved) be sufficient evidence that the same default has been made as regards all other CULS Holders in respect of which the relevant amount is due and payable.

10. **EFFECT OF RESTRICTED PERSONS ON THE CULS REGISTER AND THE TRANSFER AND TRANSMISSION OF CULS**

10.1 For the purposes of this Clause:

**"Eligible Transferee"** means a person to whom a Required Disposal is permitted to be made;

**"Required Disposal"** means a transfer or other disposal or disposals of all Restricted CULS which transfer or other disposal is made to another person who, in the sole and conclusive determination of the Directors, is not a Restricted Person and which would not cause any other person to become a Restricted Person;

**"Required Redemption"** means a redemption of all Restricted CULS in accordance with this Clause;

**"Restricted CULS"** means any CULS in which a Restricted Person has a legal or beneficial interest;

**"Restricted Person"** means any person who is, or who is deemed to be, or who appears to the Directors to be (a) a U.S. Person or (b) holding CULS for the account or benefit of a U.S. Person; and

**"U.S. Person"** has the meaning given to it in Regulation S under the U.S. Securities Act of 1933, as amended.

10.2 Without prejudice to the provisions of Clause 10.11, the Directors may, in their sole discretion and without assigning any reason therefor, instruct the UK Transfer and Paying Agent to decline to register any person as a holder of CULS unless there has been furnished to them a declaration (in such form as the Directors may from time to time prescribe), together with such evidence as the Directors may require of the authority under which any such declaration may have been signed, stating whether or not such person is a Restricted Person and whether or not, upon registration of such CULS in the relevant name or names, any Restricted Person has or will have a legal or beneficial interest in such CULS. The Directors shall, in any case, where it may consider appropriate require such person to provide such evidence or give such information as to the matters referred to in the declaration as it thinks fit, and shall decline to register any person as a CULS Holder if such further evidence or information is not provided or given.

10.3 The Directors may, at any time, give notice in writing to a CULS Holder (or to any or each one of joint holders) requiring him, within such reasonable period as may be specified in the notice, to show to their satisfaction whether or not such CULS Holder is a Restricted Person. If, within 14 days after the giving of such notice (or such longer period as the Directors may consider reasonable or shorter period as may be required to comply with

law or avoid a pecuniary or tax disadvantage to the Company), they are not so satisfied, the Directors may declare that such CULS Holder is a Restricted Person.

- 10.4 If it shall come to the notice of the Directors that any CULS are held directly or beneficially by any Restricted Person or the Directors have declared that a Restricted Person is legally or beneficially interested in any CULS, then the Directors may serve written notice (a **"Transfer Notice"** in the case of paragraph (a) below or a **"Redemption Notice"** in the case of paragraph (b) below) on the registered holder of any Restricted CULS and on any other person who appears to them to be a Restricted Person (or any one of such persons where CULS are registered in joint names) in relation to those CULS setting out the restrictions contained in Clause 10.6 and either:
- (a) calling for a Required Disposal to be made within 14 days of the service of the Transfer Notice on the registered CULS Holder (or such longer period as the Directors consider reasonable or shorter period as may be required to comply with law or avoid a pecuniary or tax disadvantage to the Company); or
  - (b) notifying the registered CULS Holder that the Company shall redeem the CULS on a Business Day in London and Guernsey falling not earlier than 30 days following the date of the Redemption Notice at their nominal amount, together with accrued but unpaid interest to such date.

The Directors may extend the period in which a Transfer Notice is required to be complied with and may withdraw any Transfer Notice or Redemption Notice (whether before or after the expiration of the period referred to) if it appears to them that there is no Restricted Person in relation to the CULS concerned. The registered holder of the Restricted CULS and any other person on whom a Transfer Notice or Redemption Notice is served may make representations to the Directors in such manner and detail as the Directors shall deem appropriate to the effect that no Restricted Person has a legal or beneficial interest in such CULS. Upon the giving of a Transfer Notice or a Redemption Notice and save for the purpose of a Required Disposal under this Clause or the following Clause 10.5, no transfer of any Restricted CULS (or any interest therein) may be made until either the Transfer Notice or Redemption Notice (as the case may be) has been withdrawn or a Required Disposal or Required Redemption has been made to the satisfaction of the Directors and (if applicable) registered.

- 10.5 If a notice served under paragraph (a) of Clause 10.4 has not been complied with in all respects to the satisfaction of the Directors and has not been withdrawn, the Directors may, in their sole discretion, so far as they are able, arrange for a Required Disposal to be made at the best price reasonably obtainable at the relevant time and shall give written notice within such reasonable time as the Directors shall determine of such disposal to the former registered holder. The manner, timing and terms under which any such Required Disposal is made or sought to be made by the Directors (including but not limited to the price or prices at which the same is made and the extent to which assurance is obtained that no transferee is or would become a Restricted Person) shall be such as the Directors determine, based upon advice from bankers, brokers or other appropriate persons consulted by them for the purpose, to be reasonably practicable having regard to all the circumstances (including but not limited to the number of CULS to be disposed of and the requirement for the disposal be made without delay); and the Directors shall not be liable for any of the consequences of reliance on such advice.
- 10.6 On and after the date of a Transfer Notice or Redemption Notice, and until registration of the Required Disposal or the Required Redemption has taken place or withdrawal of the relevant notice, any rights and privileges attaching to the Restricted CULS will be suspended and not capable of exercise other than as specifically set forth in this Clause. A registered holder of a Restricted CULS on whom a Transfer Notice or Redemption Notice has been served under Clause 10.4 shall not in respect of that CULS be entitled, until such

time as the Transfer Notice either has been complied with to the satisfaction of the Directors or the Required Redemption has taken effect or the relevant notice withdrawn, to attend or vote in person or, except as follows, by proxy, at any meeting of that series of CULS and any such registered holder shall be deemed to have appointed the Chairman of any such meeting as his proxy in respect of the rights to attend and to demand and vote on a poll attached to the Restricted CULS. The manner in which the Chairman exercises or refrains from exercising any such right shall be entirely at his discretion. The Chairman of any such meeting as aforesaid shall be informed by the Directors of any CULS becoming or being deemed to be a Restricted CULS.

- 10.7 For the purpose of a Required Disposal under Clause 10.5, the Directors may appoint any person to execute as transferor an instrument of transfer in favour of the transferee and may enter the name of the transferee in respect of the transferred CULS in the CULS Register, notwithstanding the absence of any CULS Certificate, and such instrument of transfer shall be as effective as if it had been executed by the registered holder and the title of the transferee shall not be affected by any irregularity or invalidity in the proceedings relating thereto. The Company may instruct a member of the Relevant Electronic System to sell the CULS at the best price reasonably obtainable at the time of sale to any one or more Eligible Transferees. To give effect to a sale, the Directors may authorise in writing the registrar or other agent to transfer the relevant CULS on behalf of the holder thereof (or any person who is automatically entitled to the CULS by transmission or by law) or to cause the transfer of the relevant CULS to the Eligible Transferee and, in relation to Uncertificated CULS, may require the Relevant Electronic System to convert any Uncertificated CULS into Certificated CULS and an instrument of transfer executed by that person will be as effective as if it had been executed by the holder of, or the person entitled by transmission to, the relevant CULS. An Eligible Transferee is not bound to see the application of the purchase money and the title of the Eligible Transferee is not affected by any irregularity in or invalidity of the proceedings connected to the sale. The net proceeds of a Required Disposal shall be received by the Company (whose receipt shall be a good discharge for the purchase money) and shall be converted into Pounds Sterling (if necessary) and shall be held on trust for and paid (together with interest at such rate as the Directors deem appropriate) to the former registered holder (or, in the case of joint holders, the first named joint holder thereof in the CULS Register) upon surrender by him or on his behalf of any Certificate in respect of the CULS sold and formerly held by him. When a Required Disposal is made as aforesaid, the Directors shall notify the former registered holder of the CULS disposed of and inform him that such net proceeds of the Required Disposal will be paid to him upon surrender by him or on his behalf of any certificate in respect of the CULS concerned. Pending payment of such net proceeds to such former registered holder, those net proceeds may be employed in the business of the Company or otherwise as the Directors think fit. The Company may register or cause the registration of the Eligible Transferee as holder of the relevant CULS and thereupon the Eligible Transferee shall become absolutely entitled thereto.
- 10.8 A person who becomes aware that his holding, directly or beneficially, of CULS will or is likely to be a holding of Restricted CULS, shall forthwith, unless he has already received a Transfer Notice or Redemption Notice pursuant to the provisions referred to in Clause 10.4 above, either transfer the relevant CULS to one or more Eligible Transferees or give a request in writing to the Directors for the issue of a Transfer Notice or Redemption Notice (at the Company's sole election) in accordance with the provisions referred to in Clause 10.4 above. Every such request shall, in the case of Certificated CULS, be accompanied by the Certificate(s) for the CULS to which it relates.
- 10.9 Subject to the provisions of this Clause 10 and to the delivery of all required certifications, the Directors shall, unless any Director has any reason to believe otherwise, be entitled to assume without enquiry that no CULS are Restricted CULS and that no person is a Restricted Person.

- 10.10 The Directors shall not be obliged to serve any notice required under this Clause 10 upon any person if they know neither his identity nor his address. The absence of service in such circumstances as aforesaid and any accidental error in or failure to give any notice to any person upon whom notice is required to be served under this Clause 10 shall not prevent the implementation of or invalidate any procedure under this Clause 10. Subject as aforesaid, the provisions of these presents dealing with the service of notices shall apply, *mutatis mutandis*, to this Clause 10. Notwithstanding any other provision of these presents, any notice required by this Clause 10 shall be deemed validly served if it is sent through the post pre-paid addressed to that person at the address (or if more than one at one of the addresses (if any)) at which the Directors believe him to be resident or carrying on business. Service shall in such a case be deemed to be effected at the expiration of 24 hours (or, where second class mail is employed, 72 hours) after the time when the cover containing the same is posted and in proving such service it shall be sufficient to prove that such cover was properly addressed, stamped and posted.
- 10.11 The Directors shall, so long as they act reasonably and in good faith, be under no liability to the Company or to any other person for failing to treat any CULS as a Restricted CULS or any person as a Restricted Person in accordance with the provisions of this Clause 10 and neither shall the Directors be liable to the Company or any other person if, having acted reasonably and in good faith, they determine erroneously that any CULS is a Restricted CULS, or any person is a Restricted Person, or on the basis of such determination or any other determination or resolution of the Directors, they perform or exercise (or purport to perform or exercise) their duties, powers, rights or discretions under this Clause 10 in relation to such CULS.
- 10.12 In exercising their powers under this Clause 10 in respect of Restricted CULS, the Directors shall, so far as practicable, have regard to the order of the date (insofar as the Directors are able to determine) in which such CULS became Restricted CULS and/or the relative number of Restricted CULS held or beneficially owned by each Restricted Person save:
- (a) in circumstances where such would in the opinion of the Directors be inequitable; or
  - (b) in the case of Restricted CULS which became Restricted CULS at or around the same time;
- when the Directors shall be entitled to apply such other criterion or criteria as they consider appropriate.
- 10.13 The Directors will not be required to give any reasons for any decision, determination or declaration taken or made in accordance with this Clause 10. The exercise of the powers conferred by this Clause 10 may not be questioned or invalidated in any case on the ground that there was insufficient evidence of direct or beneficial ownership or holding of CULS by any person or that the true direct or beneficial owner or holder of any CULS was otherwise than as appeared to the Directors at the relevant date provided that the said powers have been exercised in good faith.

## 11. **PROCEEDINGS, ACTION AND INDEMNIFICATION**

- 11.1 The Trustee shall not be bound to take any proceedings mentioned in Clause 9 (*Enforcement*) or any other action in relation to these presents unless respectively directed or requested to do so (a) by an Extraordinary Resolution or (b) in writing by the CULS Holders of at least one-quarter in nominal amount of the CULS then outstanding and, in either case, then only if it shall be indemnified and/or secured and/or pre-funded to its satisfaction against all Liabilities to which it may thereby render itself liable or which it may incur by so doing.

- 11.2 Only the Trustee may enforce the provisions of these presents. No CULS Holder shall be entitled to proceed directly against the Company to enforce the performance of any of the provisions of these presents, unless the Trustee having become bound as aforesaid to take proceedings fails to do so within a reasonable period and such failure is continuing.

12. **APPLICATION OF MONEYS**

Subject to the Subordination Agreement, all moneys received by the Trustee under these presents shall, unless and to the extent attributable in the opinion of the Trustee to a particular series of the CULS of which it is the trustee, be apportioned *pari passu* and rateably between each series of the CULS of which it is the trustee, and all moneys received by the Trustee under these presents, to the extent attributable in the opinion of the Trustee to a particular series of the CULS of which it is the trustee or which are apportioned to such series as aforesaid, shall (notwithstanding any appropriation by the Company) be held by the Trustee upon trust to apply them (subject to Clause 14 (*Investment by the Trustee*)):

- (a) *firstly*, in payment or satisfaction of all amounts then due and unpaid under Clauses 18 (*Remuneration and Indemnification of the Trustee*) and/or 19.10 to the Trustee and/or any Appointee;
- (b) *secondly*, in or towards payment *pari passu* and rateably of all interest then due and unpaid in respect of the CULS of that series;
- (c) *thirdly*, in or towards payment *pari passu* and rateably of all principal then due and unpaid in respect of the CULS of that series;
- (d) *fourthly*, in or towards payment *pari passu* and rateably of all interest then due and unpaid in respect of the CULS of each other series of which it is the trustee;
- (e) *fifthly*, in or towards payment *pari passu* and rateably of all principal then due and unpaid in respect of the CULS of each other series of which it is the trustee; and
- (f) *sixthly*, in payment of the balance (if any) to the Company (without prejudice to, or liability in respect of, any question as to how such payment to the Company shall be dealt with as between the Company and any other person),

provided that, if the Trustee so determines payments may be made on account of principal in respect of the CULS of a particular series before the interest or the whole of the interest on the CULS of that series has been paid but such alteration in order of payment shall not prejudice the rights of the relevant CULS Holders to receive the full amount to which they would have been entitled if the ordinary order of payment had been observed or any less amount which the sum ultimately available may be sufficient to pay.

13. **NOTICE OF PAYMENTS BY TRUSTEE**

The Trustee shall give not less than 14 days' notice to the relevant CULS Holders of the day fixed for any payment to them under Clause 12 (*Application of Moneys*). Payment of the principal or interest in respect of the CULS by the Trustee under the provisions of Clause 12 (*Application of Moneys*) in respect of the CULS may be made to CULS Holders in the manner provided by Schedule 3 (*Provisions relating to registration and transfer*) for payment of principal and interest in respect of the CULS or, if applicable, paragraph 3(i) of Schedule 5 (*Provisions relating to CULS in uncertificated form*) and any payment so made shall be a good discharge to the Trustee. After receipt of moneys by the Trustee as set out in Clause 12 (*Application of Moneys*), the relevant CULS Holders shall (subject to the proviso to Clause 12 (*Application of Moneys*)) be entitled to interest on the balance only (if any) of the principal owing in respect of the CULS held by them after deducting the

amount payable in respect thereof on the day so fixed by the Trustee pursuant to this Clause.

**14. INVESTMENT AND ACCUMULATION BY THE TRUSTEE**

14.1 If, at any time, the amount of money available for payment in respect of the CULS under Clause 12 (*Application of moneys*) is less than 10 per cent. of the principal amount outstanding of the CULS, the Trustee may, at its discretion, invest such moneys and retain such investments and accumulate the resulting income until the investments and accumulation, together with any other funds under its control and available for such payment, amount to at least 10 per cent. of the principal amount outstanding of the CULS and the foregoing shall be applied in accordance with Clause 12 (*Application of moneys*).

14.2 The Trustee may, at its discretion and pending payment, invest moneys at any time available for the payment of principal and interest on the CULS in some or one of the investments hereinafter authorised for such periods as it may consider expedient with power from time to time at the like discretion to vary such investments. All interest and other income deriving from such investment shall be applied first in payment or satisfaction of all amounts then due and unpaid under Clauses 18 (*Remuneration and Indemnification of the Trustee*) and/or 19.10 to the Trustee and/or any Appointee and otherwise held for the benefit of and paid to the CULS Holders in accordance with Clause 12 (*Application of moneys*).

14.3 Any moneys which under the trusts of these presents ought to or may be invested by the Trustee may be invested in the name or under the control of the Trustee in any investments or other assets in any part of the world whether or not they produce income or by placing the same on deposit in the name or under the control of the Trustee at such bank or other financial institution and in such currency as the Trustee may think fit. The Trustee may, at any time, vary any such investments for or into other investments or convert any moneys so deposited into any other currency and shall not be responsible for any loss resulting from any such investments or deposits, whether due to depreciation in value, fluctuations in exchange rates or otherwise.

**15. ENDORSEMENT OF CERTIFICATES**

Upon any payment under Clause 12 (*Application of Moneys*), the Certificate in respect of which such payment is made shall be produced by the relevant CULS Holder to the Trustee and, upon presentation to the Trustee, the Trustee shall endorse thereon or shall cause to be endorsed thereon a memorandum of the amount and the date of payment but the Trustee may in any particular case or generally dispense with such production and endorsement upon such indemnity being given as it shall think sufficient.

**16. PAYMENT OF OF THE CULS**

In the event of a CULS Holder which the Company is ready to repay or satisfy failing to claim the amount due to him within thirty days after the due date for repayment of such CULS, the Company shall be at liberty to, or if so requested by the Trustee shall, deposit with a bank in the name of the Trustee an amount equal to the amount due to such CULS Holder and upon such deposit being made the CULS which the Company is ready to repay or satisfy shall be deemed to have been repaid or satisfied in accordance with the provisions hereof. After provision for repayment or satisfaction of the CULS is made by such deposit of the funds required for the purpose, neither the Company nor the Trustee shall be responsible for the safe custody of such moneys or for interest thereon except such interest (if any) as the said moneys may earn whilst on deposit less any expenses incurred, and charges made, by the Trustee or the relevant account bank in connection therewith. The Trustee shall not have any duty to consider varying the manner in which such money is held.



17. **COVENANTS BY THE COMPANY**

The Company covenants with the Trustee that so long as any of the CULS remains outstanding, save with the previous sanction of an Extraordinary Resolution or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall:

- (a) give or procure to be given to the Trustee such opinions, certificates, reports, information and evidence as it shall require and in such form as it shall require (including without limitation the procurement by the Company of all such certificates called for by the Trustee pursuant to Clause 19.3) for the purpose of the discharge or exercise of the duties, trusts, powers, authorities and discretions vested in it under these presents or by operation of law;
- (b) cause to be prepared and certified by the Auditors in respect of each financial accounting period accounts in such form as will comply with all relevant legal and accounting requirements and all requirements for the time being of the Specialist Fund Market;
- (c) at all times, keep and procure the Subsidiaries to keep proper books of account and, at any time after an Event of Default or Potential Event of Default has occurred and is continuing, allow and procure the Subsidiaries to allow the Trustee and any person appointed by the Trustee to whom the Company or the relevant Subsidiary (as the case may be) shall have no reasonable objection free access to such books of account at all reasonable times during normal business hours;
- (d) send to the Trustee (in addition to any copies to which it may be entitled as a holder of any securities of the Company) (i) two copies in English of every unaudited balance sheet, unaudited profit and loss account, report, circular and notice of general meeting and every other document issued or sent to the Shareholders together with any of the foregoing, and every document issued or sent to holders of securities other than the Shareholders (including the CULS Holders), as soon as practicable and in any event within 7 days after the issue or publication thereof and (ii) two copies in English of the audited accounts of the Company in respect of each financial year commencing with the financial year ending 28 February 2015, as soon as reasonably practicable and in any event not later than 180 days after the end of the relevant financial year;
- (e) forthwith upon becoming aware thereof, give notice in writing to the Trustee of the occurrence of any Event of Default or any Potential Event of Default;
- (f) give to the Trustee (i) within ten days after a demand by the Trustee therefor and (ii) (without the necessity for any such demand) promptly after the publication of its audited accounts in respect of each financial year commencing with the financial year ending 28 February 2015 and, in any event, not later than 180 days after the end of each such financial year, a certificate in or substantially in the form set out in Schedule 6 (*Form of Director's Certificate*) signed by two directors of the Company to the effect that, as at a date not more than seven days before delivering such certificate (the "**relevant date**"), there did not exist and had not existed since the relevant date of the previous certificate (or in the case of the first such certificate the date hereof) any Event of Default or any Potential Event of Default (or if such exists or existed specifying the same) and that, during the period from and including the relevant date of the last such certificate (or in the case of the first such certificate the date hereof) to and including the relevant date of such certificate, the Company has complied with all its obligations contained in these presents or (if such is not the case) specifying the respects in which it has not complied;

- (g) at all times, execute and do all such further documents, acts and things as may be necessary at any time or times in the opinion of the Trustee to give effect to these presents;
- (h) obtain the prior written approval of the Trustee to, and promptly give to the Trustee two copies of, the form of every notice given to the CULS Holders (such approval, unless so expressed, not to constitute approval for the purposes of Section 21 of the Financial Services and Markets Act 2000 of the United Kingdom of a communication within the meaning of such Section);
- (i) in order to enable the Trustee to ascertain the nominal amount of CULS of each series for the time being outstanding, deliver to the Trustee forthwith, upon being so requested in writing by the Trustee, a certificate in writing signed by two Directors of the Company setting out the aggregate nominal amount of CULS of each series which:
  - (i) up to and including the date of such certificate has been redeemed, purchased or converted and cancelled; and
  - (ii) is at the date of such certificate held by, for the benefit of, or on behalf of, the Company or any Subsidiary;
- (j) so far as permitted by applicable law, do such further things as may be necessary in the reasonable opinion of the Trustee to give effect to these presents;
- (k) forthwith upon request by the Trustee give notice to CULS Holders of any unconditional payment made to the Trustee of any sums due in respect of the CULS made after the due date for payment.

## **18. REMUNERATION AND INDEMNIFICATION OF TRUSTEE**

- 18.1 The Company shall pay to the Trustee remuneration for its services as trustee of these presents such sums on such dates in each case as they may from time to time agree. Such remuneration shall accrue from day to day and be payable (in priority to payments to the CULS Holders) up to and including the date on which the trusts of these presents shall be finally wound up.
- 18.2 In the event of the occurrence of an Event of Default or a Potential Event of Default, the Company shall pay to the Trustee additional remuneration, which shall be calculated by reference to its hourly rates in force from time to time. In the event of the Trustee considering it expedient or necessary or being requested by the Company to undertake duties which the Trustee and the Company agree to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee under these presents, the Company shall pay to the Trustee such additional remuneration, which may be calculated by reference to its hourly rates in force from time to time, as shall be agreed between them.
- 18.3 The Company shall in addition pay to the Trustee an amount equal to the amount of any value added tax or similar tax chargeable in respect of its remuneration under these presents.
- 18.4 In the event of the Trustee and the Company failing to agree:
  - (a) (in a case to which Clause 18.1 applies) upon the amount of the remuneration; or
  - (b) (in a case to which Clause 18.2 applies) upon whether such duties shall be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee under these presents, or upon such additional remuneration,

such matters shall be determined by a person (acting as an expert and not as an arbitrator) selected by the Trustee and approved by the Company or, failing such approval, nominated (on the application of the Trustee) by the President for the time being of The Law Society of England and Wales (the expenses involved in such nomination and the fees of such person being payable by the Company) and the determination of any such person shall be final and binding upon the Trustee and the Company.

- 18.5 The Company shall also pay or discharge all properly incurred Liabilities incurred by the Trustee in relation to the preparation and execution of, the exercise of its powers and the performance of its duties under, and in any other manner in relation to, these presents, including (but not limited to) travelling expenses and any stamp, issue, registration, documentary and other taxes or duties paid or payable by the Trustee in connection with any action taken or contemplated by or on behalf of the Trustee for enforcing these presents, except for those Liabilities which result from the fraud, negligence or wilful default of the Trustee.
- 18.6 All amounts payable pursuant to Clause 18.5 and/or Clause 19.10 shall be payable by the Company on the date specified in a demand by the Trustee and, in the case of payments actually made by the Trustee prior to such demand, shall (if not paid within five Business Days after such demand and the Trustee so requires) carry interest at the rate equal to the Trustee's cost of funds from the date specified in such demand and, in all other cases, shall (if not paid on the date specified in such demand or, if later, within five Business Days after such demand and, in either case, the Trustee so requires) carry interest at such rate from the date specified in such demand (or, if later, within five Business Days after such demand). All remuneration payable to the Trustee shall carry interest at such rate from the due date therefor.
- 18.7 Unless otherwise specifically stated in any discharge of these presents, the provisions of this Clause and Clause 19.10 shall continue in full force and effect notwithstanding such discharge.
- 18.8 The Trustee shall be entitled, in its absolute discretion, to determine in respect of which series of the CULS any Liabilities incurred under these presents have been incurred or to allocate any such Liabilities between the CULS of any one or more series.

19. **SUPPLEMENT TO TRUSTEE ACTS**

The Trustee shall have all the powers conferred upon trustees by the Trustee Acts and, by way of supplement thereto, it is expressly declared as follows:

- 19.1 The Trustee may in relation to these presents act and rely without enquiry on certificates, reports, advice, opinions, confirmations and information provided by the Auditors, the Independent Financial Adviser or any lawyer, valuer, accountant, surveyor, banker, broker, auctioneer or other expert, whether obtained by the Company, the Trustee or otherwise, whether or not addressed to it and whether liability in relation thereto is limited (by its terms or by any engagement letter or other document relating thereto entered into by the Trustee or any other person or in any other manner) by reference to a monetary cap, methodology or otherwise, shall not be responsible for any Liability occasioned by its so acting, and is entitled to treat the same as conclusive and binding on the Company, the Trustee and the CULS Holders.
- 19.2 Any such advice, opinion or information may be sent or obtained by letter or facsimile transmission and the Trustee shall not be liable for acting on any advice, opinion or information purporting to be conveyed by any such letter or facsimile transmission although the same shall contain some error or shall not be authentic.
- 19.3 The Trustee may call for and shall be at liberty to accept as sufficient evidence of any fact or matter or the expediency of any transaction or thing a certificate signed by two

directors of the Company and the Trustee shall not be bound in any such case to call for further evidence or be responsible for any Liability that may be occasioned by it or any other person acting on such certificate.

- 19.4 The Trustee shall be at liberty to hold or to place these presents and any other documents relating thereto in any part of the world with any banker or banking company or company whose business includes undertaking the safe custody of documents or lawyer or firm of lawyers considered by the Trustee to be of good repute and the Trustee shall not be responsible for or required to insure against any Liability incurred in connection with any such deposit and may pay all sums required to be paid on account of or in respect of any such deposit.
- 19.5 The Trustee shall not be responsible for the receipt or application of the proceeds of the issue of any of the CULS by the Company.
- 19.6 The Trustee shall not be bound to give notice to any person of the execution of any documents comprised or referred to in these presents or to take any steps to ascertain whether any Event of Default or any Potential Event of Default has occurred and, until it shall have actual knowledge or express notice to the contrary, the Trustee shall be entitled to assume that no Event of Default or Potential Event of Default has occurred and that the Company is observing and performing all its obligations under these presents.
- 19.7 Save as expressly otherwise provided in these presents, the Trustee shall have absolute and uncontrolled discretion as to the exercise of its trusts, powers, authorities and discretions under these presents (the exercise of which as between the Trustee and the CULS Holders shall be conclusive and binding on the CULS Holders) and shall not be responsible for any Liability which may result from their exercise or non-exercise, except for those Liabilities which result from the fraud, negligence or wilful default of the Trustee.
- 19.8 The Trustee shall not be liable to any person by reason of having acted upon any resolution purporting to have been passed at any meeting of the CULS Holders of all or any series in respect whereof minutes have been made and signed or any direction or request of the CULS Holders even though subsequent to its acting it may be found that there was some defect in the constitution of the meeting or the passing of the resolution or (in the case of a resolution in writing) that not all CULS Holders had signed the resolution or (in the case of a direction or request) that it was not signed by the requisite number of CULS Holders or that for any reason the resolution was not valid or binding upon such CULS Holders.
- 19.9 The Trustee shall not be liable to any person by reason of having accepted as valid or not having rejected any Certificate purporting to be such and subsequently found to be forged or not authentic.
- 19.10 Without prejudice to the right of indemnity by law given to trustees, the Company shall indemnify the Trustee and every Appointee and keep it or him indemnified against all Liabilities to which it or he may be or become subject or which may be incurred by it or him in the execution or purported execution of any of its trusts, powers, authorities and discretions under these presents or its or his functions under any such appointment or in respect of any other matter or thing done or omitted in any way relating to these presents or any such appointment, except for those Liabilities which result from the fraud, negligence or wilful default of the Trustee.
- 19.11 Any consent or approval given by the Trustee for the purposes of these presents may be given on such terms and subject to such conditions (if any) as the Trustee thinks fit and, notwithstanding anything to the contrary in these presents, may be given retrospectively.
- 19.12 The Trustee shall not (unless and to the extent ordered so to do by a court of competent jurisdiction) be required to disclose to any CULS Holder any information (including,

without limitation, information of a confidential, financial or price sensitive nature) made available to the Trustee by the Company or any other person in connection with these presents and no CULS Holder shall be entitled to take any action to obtain from the Trustee any such information.

- 19.13 Where it is necessary or desirable for any purpose in connection with these presents to convert any sum from one currency to another it shall (unless otherwise provided by these presents or required by law) be converted at such rate or rates, in accordance with such method and as at such date for the determination of such rate of exchange, as may be determined by the Trustee and any rate, method and date so agreed shall be binding on the Company and the CULS Holders.
- 19.14 The Trustee may certify whether or not any of the conditions, events and acts set out in Clauses 8.3 to 8.6 (inclusive) (each of which conditions, events and acts shall, unless in any case the Trustee in its absolute discretion shall otherwise determine, for all the purposes of these presents be deemed to include the circumstances resulting therein and the consequences resulting therefrom) is or is not in its opinion materially prejudicial to the interests of the CULS Holders and any such certificate shall be conclusive and binding upon the Company and the CULS Holders.
- 19.15 The Trustee as between itself and the CULS Holders may determine all questions and doubts arising in relation to any of the provisions of these presents. Every such determination, whether or not relating in whole or in part to the acts or proceedings of the Trustee, shall be conclusive and shall bind the Trustee and the CULS Holders.
- 19.16 In connection with the exercise by it of any of its trusts, powers, authorities and discretions under these presents (including, without limitation, any modification, waiver, authorisation or determination), the Trustee shall have regard to the general interests of the CULS Holders as a class but shall not have regard to any interests arising from circumstances particular to individual CULS Holders (whatever their number) and, in particular but without limitation, shall not have regard to the consequences of such exercise for individual CULS Holders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political sub-division thereof and the Trustee shall not be entitled to require, nor shall any CULS Holder be entitled to claim, from the Company, the Trustee or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual CULS Holders.
- 19.17 Any trustee of these presents being a lawyer, accountant, broker or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional and other charges for business transacted and acts done by him or his firm in connection with these presents and also his reasonable charges in addition to disbursements for all other work and business done and all time spent by him or his firm in connection with matters arising in connection with these presents.
- 19.18 The Trustee may whenever it thinks fit delegate by power of attorney or otherwise to any person or persons or fluctuating body of persons (whether being a joint trustee of these presents or not) all or any of its trusts, powers, authorities and discretions under these presents. Such delegation may be made upon such terms (including power to sub-delegate) and subject to such conditions and regulations as the Trustee may in the interests of the CULS Holders think fit. The Trustee shall not be under any obligation to supervise the proceedings or acts of any such delegate or sub-delegate or be in any way responsible for any Liability incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate, except where the same results from the fraud, negligence or wilful default of the Trustee in the selection of such delegate. The Trustee shall within a reasonable time after any such delegation or any renewal, extension or termination thereof give notice thereof to the Company.

- 19.19 The Trustee may in the conduct of the trusts of these presents instead of acting personally employ and pay an agent or a nominee (whether being a lawyer or other professional person) to transact or conduct, or concur in transacting or conducting, any business and to do, or concur in doing, all acts required to be done in connection with these presents (including the receipt and payment of money). The Trustee shall not be in any way responsible for any Liability incurred by reason of any misconduct or default on the part of any such agent or nominee or be bound to supervise the proceedings or acts of any such agent or nominee, except where the same results from the fraud, negligence or wilful default of the Trustee in the selection of such agent or nominee.
- 19.20 The Trustee shall not be responsible for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of these presents or any other document relating thereto and shall not be liable for any failure to obtain any licence, consent or other authority for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, performance, enforceability or admissibility in evidence of these presents or any other document relating thereto.
- 19.21 The Trustee shall have no duty or responsibility to determine whether facts exist which may require an adjustment of the Conversion Price or to determine the nature or extent of any such adjustment when made or the method used or to be used in making it and shall incur no liability for any failure to do so.
- 19.22 The Trustee shall have no duty or responsibility at any time in respect of the validity or value (or kind or amount) of the Ordinary Shares or any other property which may at any time be issued or delivered on the conversion of any CULS or the sale or other disposal of any Ordinary Shares. The Trustee shall not be responsible to anyone for any failure of the Company to make available or deliver any Ordinary Shares, share certificates or any other securities or property or make any payment on the exercise of any Conversion Right.
- 19.23 Nothing in this Trust Deed shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of any rights, powers, authorities or discretions hereunder if it determines in its sole discretion that repayment of such funds or adequate indemnity against, or security for, such risk or liability is not assured to it.
- 19.24 The Trustee may refrain from doing anything in any jurisdiction if doing the relevant thing in that jurisdiction would, in its opinion (which may be based upon legal advice), be contrary to any law or regulation of that jurisdiction or would otherwise render it liable to any person in that jurisdiction or if, in its opinion, it would not have power to do the relevant thing in that jurisdiction by virtue of any applicable law or regulation in that jurisdiction or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power.
- 19.25 The Trustee shall have no responsibility to any person in the event that it fails to request, require or receive any legal opinion in relation to the CULS.
- 19.26 Notwithstanding anything contained in these presents, if the Trustee is or will be required to make any deduction or withholding from any distribution or payment made by it hereunder or if the Trustee is or will be otherwise charged to, or is or may become liable to, tax as a consequence of performing its duties hereunder whether by reason of any assessment, prospective assessment or other imposition of liability to taxation of whatsoever nature and whensoever made upon the Trustee, and whether in connection with or arising from any sums received or distributed by it or to which it may be entitled under these presents (other than in connection with its remuneration as provided for herein) or any investments or deposits from time to time representing the same, including any income or gains arising therefrom or any action of the Trustee in connection with the trusts of these presents (other than the remuneration herein specified) or otherwise, then the Trustee shall be entitled to make such deduction or withholding or, as the case may

be, to retain out of sums received by it an amount sufficient to discharge any liability to tax which relates to sums so received or distributed or to discharge any such other liability of the Trustee to tax from the funds held by the Trustee upon the trusts of these presents.

- 19.27 Other than requesting a certificate pursuant to Clause 17(i), the Trustee may assume, without enquiry, that no Certificates are for the time being held by or for the benefit or on behalf of the Company or any Subsidiary.

**20. TRUSTEE'S LIABILITY**

- 20.1 The duty of care contained in Section 1 of the Trustee Act 2000 shall not apply to these presents. However, nothing in these presents shall in any case in which the Trustee has failed to show the degree of care and diligence required of it as trustee having regard to the provisions of these presents conferring on it any trusts, powers, authorities or discretions exempt the Trustee from or indemnify it against any liability which would otherwise attach to it in respect of any fraud, negligence or wilful default of which it may be guilty.

- 20.2 Where there are any inconsistencies between the Trustee Act 1925, the Trustee Act 2000 and these presents, these presents shall, to the extent permitted by law, prevail, and, in the case of any inconsistency with the Trustee Act 2000, shall constitute a restriction or exclusion for the purposes of that Act.

**21. TRUSTEE CONTRACTING WITH THE COMPANY**

Neither the Trustee nor any director or officer of a corporation acting as a trustee under these presents shall by reason of its or his fiduciary position be in any way precluded from:

- 21.1 entering into or being interested in any contract or financial or other transaction or arrangement with the Company or any person or body corporate associated with the Company (including, without limitation, any contract, transaction or arrangement of a banking or insurance nature or any contract, transaction or arrangement in relation to the making of loans or the provision of financial facilities to, or the purchase, placing or underwriting of or the subscribing or procuring subscriptions for or otherwise acquiring, holding or dealing with the CULS or any other loan stock, notes, shares, debenture stock, debentures, bonds or other securities of, the Company or any person or body corporate associated as aforesaid); or
- 21.2 accepting or holding the trusteeship of any other trust deed constituting or securing any other securities issued by or relating to the Company or any such person or body corporate so associated or any other office of profit under the Company or any such person or body corporate so associated,

and, in each case, shall be entitled to retain and shall not be in any way liable to account for any profit made or share of brokerage or commission or remuneration or other benefit received thereby or in connection therewith.

**22. WAIVER, AUTHORISATION AND DETERMINATION**

- 22.1 The Trustee may, without prejudice to its rights in respect of any subsequent breach, Event of Default or Potential Event of Default, from time to time and at any time, but only if and in so far as, in its opinion, the interests of the CULS Holders shall not be materially prejudiced thereby, waive or authorise any breach or proposed breach by the Company of any of the covenants or provisions contained in these presents or determine that any Event of Default or Potential Event of Default shall not be treated as such for the purposes of these presents provided that the Trustee shall not exercise any powers conferred on it by this Clause in contravention of any express direction given by Extraordinary Resolution

or by a request under Clause 8 (*Events of Default*) but so that no such direction or request shall affect any waiver, authorisation or determination previously given or made. Any such waiver, authorisation or determination may be given or made on such terms and subject to such conditions (if any) as the Trustee may determine, shall be binding on the CULS Holders and, if, but only if, the Trustee, shall so require, shall be notified by the Company to the CULS Holders as soon as practicable thereafter.

- 22.2 The Trustee may, without the consent of the CULS Holders, at any time and from time to time concur with the Company in making any modification to these presents (a) which in the opinion of the Trustee it may be proper to make, provided that the Trustee is of the opinion that (i) such modification will not be materially prejudicial to the interests of the CULS Holders or (ii) such modification is of a formal, minor or technical nature or to correct a manifest error, or (b) in order to reflect changes in the CREST Regulations or in applicable law and practice relating to the holding or transfer of the CULS in uncertificated form and the issue of Ordinary Shares in uncertificated form on conversion of the CULS. Any such modification may be made on such terms and subject to such conditions (if any) as the Trustee may determine, shall be binding upon the CULS Holders and, unless the Trustee agrees otherwise, shall be notified by the Company to the CULS Holders as soon as practicable thereafter.

23. **CULS REGISTER**

- 23.1 The Company shall, at all times, keep at its registered office (or at such other place as the Trustee may agree) the CULS Register showing the number of CULS in issue, the date of issue and all subsequent transfers and changes of ownership thereof and the names and addresses of the CULS Holders and the persons deriving title under them. The Trustee and the CULS Holders or any of them and any person authorised by any such person shall be at liberty at all reasonable times during office hours to inspect the CULS Register and to take (free of charge) copies of or extracts from the same or any part thereof. In the event of the Trustee requiring to convene a meeting of or to give any notice to the CULS Holders, the Company shall furnish the Trustee (free of charge) with such copies of or extracts from the CULS Register as it shall require. The Trustee shall be entitled to rely absolutely on such CULS Register. The CULS Register may be closed by the Company for such periods and at such times (not exceeding in the whole 30 days in any one year) as it may think fit.
- 23.2 The Company shall procure that the UK Paying and Transfer Agent shall, upon a request in writing by the Trustee, confirm the number of CULS in issue, the aggregate principal amount outstanding of the CULS and the address and payment details of the CULS Holders from time to time and on which such confirmation the Trustee shall be entitled to rely absolutely.

24. **NEW TRUSTEE**

- 24.1 The power to appoint a new trustee of these presents shall be vested in the Company but no person shall be appointed who shall not previously have been approved by an Extraordinary Resolution. One or more persons may hold office as trustee or trustees of these presents. Whenever there shall be more than two trustees of these presents the majority of such trustees shall be competent to execute and exercise all the duties, powers, trusts, authorities and discretions vested in the Trustee by these presents. Any appointment of a new trustee of these presents shall be notified by the Company to the CULS Holders as soon as practicable thereafter.
- 24.2 Notwithstanding the provisions of Clause 24.1, the Trustee may, upon giving prior notice to the Company (but without the consent of the Company or the CULS Holders), appoint any person established or resident in any jurisdiction to act either as a separate trustee or as a co-trustee jointly with the Trustee;



- (a) if the Trustee considers such appointment to be in the interests of the CULS Holders;
- (b) for the purposes of conforming to any legal requirements, restrictions or conditions in any jurisdiction in which any particular act or acts is or are to be performed; or
- (c) for the purposes of obtaining a judgment in any jurisdiction or the enforcement in any jurisdiction of either a judgment already obtained or any of the provisions of these presents against the Company.

24.3 The Company irrevocably appoints the Trustee to be its attorney in its name and on its behalf to execute any such instrument of appointment. Such a person shall (subject always to the provisions of these presents) have such trusts, powers, authorities and discretions (not exceeding those conferred on the Trustee by these presents) and such duties and obligations as shall be conferred or imposed by the instrument of appointment. The Trustee shall have power in like manner to remove any such person. Such reasonable remuneration as the Trustee may pay to any such person, together with any attributable Liabilities incurred by it in performing its function as such separate trustee or co-trustee, shall for the purposes of these presents be treated as Liabilities incurred by the Trustee.

## 25. **TRUSTEE'S RETIREMENT AND REMOVAL**

A Trustee of these presents may retire at any time on giving not less than three months' prior written notice to the Company without giving any reason and without being responsible for any Liabilities incurred by reason of such retirement. The CULS Holders may by Extraordinary Resolution remove any Trustee or Trustees for the time being of these presents. The Company undertakes that in the event of the only Trustee of these presents giving notice under this Clause or being removed by Extraordinary Resolution, it will use its best endeavours to procure that a new Trustee of these presents is appointed as soon as reasonably practicable thereafter and in any event within 90 days thereafter failing which the Trustee that is retiring or being removed may appoint a new Trustee of these presents. The retirement or removal of any such Trustee shall not become effective until a successor Trustee is appointed.

## 26. **TRUSTEE'S POWERS TO BE ADDITIONAL**

The powers conferred upon the Trustee by these presents shall be in addition to any powers which may from time to time be vested in the Trustee by the general law or as a CULS Holder.

## 27. **NOTICES**

27.1 Any notice or demand to the Company or the Trustee to be given, made or served for any purposes under these presents shall be given, made or served by sending the same by pre-paid post (first class if inland, first class airmail if overseas) or facsimile transmission or by delivering it by hand as follows:

to the Company: PO Box 255  
Trafalgar Court  
Les Banques  
St Peter Port  
Guernsey GY1 3QL

Attention: Company Secretary, JZ Capital Partners Limited  
Facsimile No.: +44 (0)1481 745368

to the Trustee: Fifth Floor  
100 Wood Street  
London EC2V 7EX

Attention: Manager, Commercial Trusts (reference:  
200935)

Facsimile No.: +44 (0)20 7606 0643

or to such other address or facsimile number as shall have been notified (in accordance with this Clause) to the other party hereto and any notice or demand sent by post as aforesaid shall be deemed to have been given, made or served three days in the case of inland post or seven days in the case of overseas post after despatch and any notice or demand sent by facsimile transmission as aforesaid shall be deemed to have been given, made or served 24 hours after the time of despatch provided that in the case of a notice or demand given by facsimile transmission such notice or demand shall forthwith be confirmed by post. The failure of the addressee to receive such confirmation shall not invalidate the relevant notice or demand given by facsimile transmission.

- 27.2 All notices regarding the CULS will be deemed to be validly given (a) if sent by first class mail or (if posted to an address overseas) by airmail to the CULS Holders (or the first named of joint holders) at their respective addresses recorded in the CULS Register (or, in the case of Participating CULS, recorded in the electronic register of CULS Holders maintained in accordance with the CREST Regulations), (b) if published through the electronic communications system of Bloomberg or (c) for so long as the CULS are admitted to trading on the Specialist Fund Market, if published through the regulatory news service of the London Stock Exchange plc. Any such notice will be deemed to have been given on the fourth day after mailing or on the date of publication (as the case may be). In addition, for so long as any CULS are listed by or on a competent authority or stock exchange and the rules of that competent authority or stock exchange so require, such notice will be published in a daily newspaper of general circulation in the places or places required by that competent authority or stock exchange. If the giving of notice as provided above is not practicable, notice will be given in such other manner and shall be deemed to have been given on such date as the Trustee may approve.

28. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Trust Deed or any trust deed supplemental hereto has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Trust Deed or any trust deed supplemental hereto, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

29. **ENTIRE AGREEMENT**

The entire agreement between the Company and the Trustee with respect to the subject matter herein is contained in this Trust Deed and the Subordination Agreement, which supersedes all previous agreements, undertakings, representations, warranties and arrangements, oral or written, or other arrangements shall cease to be of any further force (save in respect of accrued rights and obligation).

30. **GOVERNING LAW AND JURISDICTION**

- 30.1 This Trust Deed, the CULS and any non-contractual obligations arising out of or in connection with them, are governed by, and construed in accordance with, English law.
- 30.2 The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the CULS or the Trust Deed and, accordingly, any legal action or proceedings arising out of or in connection with the CULS or the Trust Deed ("**Proceedings**") may be brought in such courts. The Company irrevocably submits to

the jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of each of the CULS Holders and the Trustee and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

- 30.3 The Company has appointed Law Debenture Corporate Services Limited at its office for the time being, currently at Fifth Floor, 100 Wood Street, London EC2V 7EX, as its agent in England to receive service of process of any Proceedings in England. If, for any reason, the Company does not have such an agent in England, it will promptly appoint a substitute process agent and notify the CULS Holders of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.

31. **COUNTERPARTS**

This Trust Deed and any trust deed supplemental hereto may be executed and delivered in counterparts, both of which, taken together, shall constitute one and the same deed and either party to this Trust Deed or any trust deed supplemental hereto may enter into the same by executing and delivering a counterpart.

**IN WITNESS** whereof this Trust Deed has been executed as a deed by the Company and the Trustee and delivered on the day and year first above written.

## SCHEDULE 1

### Form of Certificate for the CULS

#### JZ CAPITAL PARTNERS LIMITED

*(a non-cellular company limited by shares and incorporated in Guernsey under the Companies (Guernsey) Law 2008 (as amended) with registered number 48761)*

Certificate No.	CULS Holder Reference	Transfer No.	Date	No. of CULS
[●]	[●]	[●]	[●]	[●]

#### ISSUE OF 6.00 PER CENT. CONVERTIBLE UNSECURED SUBORDINATED LOAN STOCK DUE 2021

Issued pursuant to the Memorandum and Articles of Incorporation of JZ Capital Partners Limited (the "**Company**") and created by resolutions of the Board of Directors of the Company passed on 10 July 2014 and 16 July 2014 and of a duly authorised committee of the Board of Directors of the Company passed on 18 July, 20 July and 25 July 2014.

THIS IS TO CERTIFY that the undermentioned is/are the registered holder(s) of the above-mentioned number of the 6.00 per cent. convertible unsecured subordinated convertible loan stock due 2021 (the "**CULS**") which are constituted by a Trust Deed dated 30 July 2014 (the "**Trust Deed**") and made between the Company and The Law Debenture Trust Corporation p.l.c. (the "**Trustee**") as trustee for the holders of such CULS and such CULS are issued with the benefit of and subject to, and holders of CULS agree to, are bound by and are deemed to have notice of, the provisions contained in the Trust Deed and the conditions of the CULS (the "**Conditions**") attached hereto and a subordination agreement dated 30 July 2014 and made between, *inter alios*, the Company and the Trustee.

Interest on the CULS represented by this Certificate is payable semi-annually in arrear at the rate of 6.00 per cent. per annum on 31 March and 30 September of each year in accordance with the Conditions attached hereto.

GIVEN under the common seal of the Company this [●].

#### Name(s) of CULS Holders:

1) .....	2) .....
3) .....	4) .....

#### Number of CULS:

[●]

#### NOTES:

- (i) *The CULS are denominated, registered and transferable in integral multiples of £10 in nominal amount.*
- (ii) *No transfer of any part of the CULS represented by this Certificate will be registered unless it is accompanied by this Certificate.*
- (iii) *The CULS are convertible into Ordinary Shares of the Company in accordance with the Conditions attached hereto.*

[On the reverse of the Certificate]

## CONVERSION NOTICE

To: JZ CAPITAL PARTNERS LIMITED (the "**Company**")

I/We, being the registered holder(s) of the CULS represented by this Certificate hereby give notice of my/our election to exercise my/our Conversion Rights in respect of all/ of the CULS represented by this Certificate<sup>1</sup> in accordance with the Conditions.

### PART A<sup>2</sup>

I/We elect all/ <sup>3</sup> the Ordinary Shares to be allotted on exercise of my/our Conversion Rights to be allotted to me/us and registered in my/our name(s) and hereby authorise the entry of my/our name(s) in the register of Shareholders in respect thereof and the despatch of a certificate in respect of such Ordinary Shares by ordinary post at my/our risk to at <sup>4</sup>

I/We agree to accept all the fully paid Ordinary Shares to be allotted to me/us pursuant hereto subject to the Articles. I/We represent and warrant that (i) I am/we are not [a] U.S. Person[s] (as defined in Regulation S under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**")); (ii) I am/we are not acquiring Ordinary Shares for the account or benefit of a U.S. Person; and (iii) I am/we are acquiring Ordinary Shares in an offshore transaction (as defined in Regulation S under the U.S. Securities Act).<sup>5</sup>

### PART B<sup>6</sup>

I/We hereby authorise and direct the Company to allot all/ <sup>7</sup> of the fully paid Ordinary Shares to be allotted on exercise of my/our Conversion Rights to be allotted pursuant hereto to the person(s) who is/are named in and who has/have signed the acceptance(s) in the form(s) of nomination<sup>8</sup> attached hereto.

### PART C<sup>9</sup>

I/We hereby authorise the despatch of a Certificate for the balance (if any) of the CULS represented by this Certificate in respect of which the Conversion Rights have not been exercised by ordinary post at my/our risk to at <sup>10</sup>

<sup>1</sup> Delete or complete, as appropriate. If this space is left blank, the Conversion Notice will be deemed to relate to all of the CULS represented by this Certificate.

<sup>2</sup> Delete or complete, as appropriate.

<sup>3</sup> Delete or complete, as appropriate.

<sup>4</sup> If these spaces are left blank, the certificate in respect of such Ordinary Shares will be sent to the registered address of the (first-named) CULS Holder.

<sup>5</sup> Delete or complete, as appropriate.

<sup>6</sup> Delete or complete, as appropriate. If it is desired to nominate some other person(s) as the allottee(s) of all or any of the Ordinary Shares, application should be made to the Company's UK Paying and Transfer Agent for the appropriate form(s) of nomination, which must be completed and delivered with this Certificate.

<sup>7</sup> Delete or complete, as appropriate.

<sup>8</sup> Form(s) of nomination are available on request from the UK Transfer and Paying Agent. Any person(s) named in the form(s) of nomination will be required in such form(s) of nomination to give the representations set out in Part A of this Conversion Notice to the Company.

<sup>9</sup> Delete or complete, as appropriate.

<sup>10</sup> If these spaces are left blank, the certificate in respect of such Ordinary Shares will be sent to the registered address of the (first-named) CULS Holder.

**Signature(s) of CULS Holders:<sup>11</sup>**

1) ..... 2) .....

3) ..... 4) .....

Dated this            day of            .

---

<sup>11</sup> *In the case of joint holders, all CULS Holders must sign. In the case of a corporation, this Conversion Notice must be either given under its common seal or signed on its behalf by an attorney or duly authorised official of the corporation.*

*[Attached to the Certificate]*

## **CONDITIONS**

### **1. DEFINITIONS**

- 1.1 In these Conditions unless there is anything in the subject or context inconsistent therewith, the following expressions shall have the following meanings:

**"Business Day"** means, in relation to any place, a day (other than a Saturday, Sunday or public holiday) on which commercial banks and foreign exchange markets are open for business in that place;

any references to the **"CULS"** shall, unless otherwise specified, be to the Initial CULS and any Additional CULS (as defined in Condition 11) (including the Further CULS);

**"Further CULS"** means the further issue of up to £38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of the Company due 2021, to be consolidated with and form a single series with the Initial CULS;

**"Initial CULS"** means the £38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of the Company due 2021 constituted by the Trust Deed (as defined in the certificate attached hereto);

**"Initial Issue Date"** means the Issue Date (as defined in Condition 2.1);

**"Net Asset Value of the Company"** means the net asset value of the Company calculated by the Company in accordance with its normal accounting policies and stated in the latest monthly management accounts;

any references to the **"nominal amount"** of any CULS shall be to the face value of that CULS;

**"Relevant Electronic System"** means any computer-based system enabling title to units of CULS to be evidenced and transferred without a written instrument, including CREST;

**"Subsidiary"** means a subsidiary of the Company and shall have the meaning given to such term in section 531 of the Companies (Guernsey) Law 2008 (as amended), excluding the provision of section 531(6) so that overseas companies shall be included and excluding any body corporate (in this definition, an "entity") whose accounts are not included in the then latest published audited consolidated accounts of the Company or, in the case of an entity which has first become a subsidiary of the Company since the date as at which any such audited accounts were prepared, would not have been so included or consolidated if it had become so on or before that date; and

**"Trustee"** means The Law Debenture Trust Corporation p.l.c., a company incorporated under the laws of England and Wales with registered number 1675231, whose registered office is at Fifth Floor, 100 Wood Street, London EC2V 7EX, United Kingdom (which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the trustee or trustees of the Trust Deed) as trustee for the CULS Holders (as defined below).

- 1.2 For the purposes of Conditions 4.1 to 4.9, 4.13 and 4.17 only, (a) references to the **"issue"** of Ordinary Shares shall include the transfer and/or delivery of Ordinary Shares by the Company or any Subsidiary, whether newly issued and allotted or previously existing or held by or on behalf of the Company or any Subsidiary, and (b) Ordinary Shares held by or on behalf of the Company or any Subsidiary, shall not be considered as or treated as **"in issue"**.

- 1.3 All references to "**sterling**", "**Pounds Sterling**", "**GBP**" or "**£**" are to the lawful currency for the time being of the United Kingdom.

## 2. **INTEREST**

### 2.1 *Interest Rate*

The CULS will bear interest on its nominal amount for the time being outstanding from (and including) 30 July 2014 (the "**Issue Date**") at the rate of 6.00 per cent. per annum. Interest will, subject to Condition 17, be payable on the CULS semi-annually in equal instalments in arrear on 31 March and 30 September in each year (each an "**Interest Payment Date**") to (but excluding) the Maturity Date (as defined below), save that the first payment of interest on the CULS will be made on 30 September 2014 in respect of the period from and including the Issue Date to (but excluding) 30 September 2014 and the final payment of interest on the CULS will be in respect of the period from (and including) 31 March 2021 to (but excluding) the Maturity Date.

The amount of interest payable in respect of any period which is either shorter or longer than a Regular Period (as defined below) shall be calculated at the rate of 6.00 per cent. per annum on the basis of the number of days in the relevant period from (and including) the first day of such period to (but excluding) the last day of such period divided by the product of (i) two and (ii) the number of days in the Regular Period in which the relevant period falls. "**Regular Period**" means each period from (and including) any Interest Payment Date to (but excluding) the next Interest Payment Date save that, for the purposes of this definition only, the first Interest Payment Date shall be deemed to be 30 September 2014 and the last Interest Payment Date shall be deemed to be 31 March 2021.

### 2.2 *Accrual of Interest*

The CULS will cease to bear interest (i) where the Conversion Right (as defined below) shall have been exercised, from the Interest Payment Date immediately preceding the relevant Conversion Date or, if none, the Issue Date, (ii) from the due date for redemption thereof, unless payment of principal in respect of the CULS is improperly withheld or refused in which event interest will continue to accrue at the rate specified in Condition 2.1 (both before and after judgment) until whichever is the earlier of (A) the day on which all sums due in respect of such CULS up to that day are received by or on behalf of the relevant CULS Holder (as defined below), and (B) the day seven days after the Trustee has notified CULS Holders of receipt of all sums due in respect of all the CULS up to that seventh day (except to the extent that there is failure in the subsequent payment to the relevant CULS Holders under the Conditions).

## 3. **CONVERSION RIGHTS**

### 3.1 *Conversion Rights*

Subject to and as provided in these Conditions, each holder of a CULS (a "**CULS Holder**") shall have the right (a "**Conversion Right**" and together, the "**Conversion Rights**") to convert the whole or such part (being an integral multiple of £10 in nominal amount) of their CULS as they may specify into fully paid ordinary shares of the Company ("**Ordinary Shares**").

Conversion Rights may not be exercised (i) following the giving of notice by the Trustee pursuant to Condition 8, (ii) following the giving of notice by the Issuer pursuant to Condition 7.2 or (iii) in respect of CULS for which the relevant CULS Holder has exercised its right to require the Company to redeem their CULS pursuant to Condition 7.4.



The number of Ordinary Shares to be issued on exercise of the Conversion Right shall be determined by dividing the nominal amount of CULS so specified in the Conversion Notice by the conversion price (the "Conversion Price") per Ordinary Share in effect on the relevant Conversion Date (as defined below). The initial Conversion Price is £6.0373 per Ordinary Share (which shall be subject to adjustment in circumstances described in Condition 4).

### 3.2 *Procedure for Conversion*

The Conversion Rights shall be exercisable (in the manner described in this Condition 3.2) at any time during the period from (and including) the forty-first Business Day in London and Guernsey after the Issue Date to (and including) the tenth Business Day in London and Guernsey prior to the Maturity Date (the "**Conversion Period**").

In order to exercise, in whole or in part, the Conversion Rights which are conferred by any CULS that are, on the relevant Conversion Date, held in certificated form ("**Certified CULS**"), a CULS Holder must lodge the relevant CULS certificate (a "**CULS Certificate**") (or such other document(s) as the Company may, in its absolute discretion, accept) at the office of the UK Transfer and Paying Agent specified in the CULS Certificate (or such other place as the Company may from time to time notify to the CULS Holders) during the Conversion Period, having completed and signed the notice (the "**Conversion Notice**") of exercise of Conversion Rights thereon (or by giving such other notice of exercise as the Company may, in its absolute discretion, accept). A Conversion Notice, once given, shall be irrevocable save with the consent in writing of the Company. CULS Holders must also comply with any statutory and regulatory requirements for the time being applicable.

The Conversion Rights which are conferred by any CULS that are, on the relevant Conversion Date, held in uncertificated form ("**Uncertificated CULS**") shall be exercisable, in whole or in part, (and treated by the Company as exercised) if an Uncertificated Conversion Notice is received during the Conversion Period (but not later than the latest time for input of instruction permitted by the Relevant Electronic System) by the Company (or by such person as it may require for these purposes) in such form and subject to such terms and conditions as may from time to time be prescribed by the Company (subject always to the CREST Regulations and the facilities, rules and requirements of the Relevant Electronic System concerned). For these purposes, an "**Uncertificated Conversion Notice**" shall mean a properly authenticated dematerialised instruction and/or other instruction or notification received by the Company (or by such person as it may require for these purposes) in such form and subject to such terms and conditions as may from time to time be prescribed by the Company (subject always to the CREST Regulations and the facilities, rules and requirements of the Relevant Electronic System) and that specifies (in accordance with the form prescribed by the Company as aforesaid) the nominal amount of the CULS in respect of which Conversion Rights are being exercised. The Company may, in addition but subject to the CREST Regulations and the facilities and requirements of the Relevant Electronic System, determine when any such properly authenticated dematerialised instruction and/or other instruction or notification and any such remittance is to be treated as received by the Company or by such person as it may require for these purposes. Without prejudice to the generality of the foregoing, the effect of the Uncertificated Conversion Notice may be such as to divest the holder of the CULS concerned of the power to transfer such CULS to another person. Once lodged, an Uncertificated Conversion Notice shall be irrevocable save with the consent of the Company. To be effective, compliance must also be made with any statutory and regulatory requirements for the time being applicable.

The conversion date in respect of the CULS (the "**Conversion Date**") shall be the Business Day in London and Guernsey immediately following the date of lodging of such CULS Certificate or such Uncertificated Conversion Notice, as provided in this Condition

3.2, and compliance with any statutory or regulatory requirements applicable at such time.

In order for CULS Holders to convert their CULS into Ordinary Shares, they will have to certify that: (i) they are not in the United States; (ii) they are not US Persons; and (iii) they are not exercising their conversion rights for the account or benefit of US Persons.

Fractions of Ordinary Shares will not be issued on conversion and no cash payment or adjustment will be made *in lieu* thereof.

The date upon which the Company allots Ordinary Shares pursuant to the exercise of Conversion Rights shall be the "**Share Record Date**". On and following the Share Record Date, the relevant CULS Holder will, subject to the following sentence, become entitled to the economic rights of a holder of Ordinary Shares for the purposes of distribution entitlement and otherwise. However, the relevant CULS Holder shall not be entitled to transfer Ordinary Shares until they have been registered in the Company's Register of member or CREST, as provided below.

The Company shall procure that the Share Record Date occurs on the first day of each calendar month (or, if such day is not a Business Day in London and Guernsey, the following Business Day in London and Guernsey) in relation to Conversion Notices in respect of which the Conversion Date occurred at least seven Business Days in London and Guernsey prior to such day. Where the Conversion Date falls after the seventh Business Day in London and Guernsey prior to the first day of a calendar month (or, if such day is not a Business Day in London and Guernsey, the following Business Day in London and Guernsey), the Company will procure that the Share Record Date occurs on the first day of the immediately following calendar month or, if such day is not a Business Day in London and Guernsey, the following Business Day in London and Guernsey.

Notwithstanding the preceding paragraph, in the case of Conversion Notices delivered in respect of which the Conversion Date falls after seventh Business Day in London and Guernsey prior to the month in which the Maturity Date falls or the Optional Redemption Date falls or the last day of the Change of Control Period falls (as the case may be), the Company shall procure that the Share Record Date occurs on the Business Day in London and Guernsey prior to the Maturity Date, the Optional Redemption Date or the last day of the Change of Control Period (as the case may be).

Certificates in respect of Ordinary Shares allotted pursuant to the exercise of Conversion Rights which are conferred by any Certificated CULS will be despatched free of charge (at the risk of the person(s) entitled thereto) not later than 21 days after, and will be deemed (subject as aforesaid) to have been issued with effect from, the relevant Share Record Date to the person(s) in whose name(s) the CULS is/are registered at the Conversion Date (and, if more than one, to the first-named, which shall be sufficient despatch for all) or (subject as provided by law and to the payment of stamp duty reserve tax or any other tax that may be applicable) to such other person(s) (not being more than four in number) as may be named in the form of nomination available for the purpose from the UK Transfer and Paying Agent (and, if more than one, to the first-named, which shall be sufficient despatch for all). In the event of partial exercise of the Conversion Rights evidenced by a CULS Certificate, the Company shall, at the same time, issue a new CULS Certificate in the name of the CULS Holder for any balance of that CULS Holder's CULS not converted.

Ordinary Shares in respect of Ordinary Shares allotted pursuant to exercise of Conversion Rights which are conferred by any Uncertificated CULS will be allotted not later than 14 days after, and will be deemed (subject as aforesaid) to have been issued with effect from, the relevant Share Record Date. The Company shall procure that the appropriate instructions are given to enable such Ordinary Shares to be evidenced by means of the Relevant Electronic System as a holding of the person(s) in whose name(s) the CULS in

respect of which Conversion Rights have been exercised were registered at the Conversion Date or (subject as provided by law, to the payment of stamp duty reserve tax or any other tax that may be applicable, to such terms and conditions as the Company may from time to time prescribe for this purpose and to the CREST Regulations and the facilities, rules and requirements of the Relevant Electronic System) to such other person(s) (not being more than four in number) as may be named in the properly authenticated dematerialised instruction and/or other instruction or notification in such form.

For the avoidance of doubt, unless the Company otherwise determines or unless the CREST Regulations or the facilities, rules or requirements of the Relevant Electronic System otherwise require, the Ordinary Shares issued on the exercise of any Conversion Rights shall be issued in registered certificated form where such Conversion Rights were conferred by Certificated CULS and in uncertificated form where such Conversion Rights were conferred by Uncertificated CULS.

Any additional Ordinary Shares to be issued pursuant to Condition 4.13 will be deemed to be issued as of the date the relevant Retroactive Adjustment takes effect or as of the date of issue of Ordinary Shares if the adjustment results from the issue of Ordinary Shares.

Ordinary Shares allotted on conversion shall be credited as fully paid and shall carry the right to receive all dividends and (unless adjustments shall have been made in respect thereof pursuant to Condition 4.1 to 4.9) all other distributions (including, but not limited to, any Ordinary Shares issued referred to in Condition 4.2) declared, paid or made on the Ordinary Shares in or in respect of the financial year of the Company in which the relevant Conversion Date falls, other than dividends and other distributions declared, paid or made on the Ordinary Shares by reference to a record date falling prior to the relevant Conversion Date and shall rank *pari passu* in all other respects and form one class with the Ordinary Shares in issue on the relevant Conversion Date.

#### 4. **ADJUSTMENTS OF THE CONVERSION PRICE**

Upon the happening of any of the events described below, the Conversion Price shall be adjusted as follows:

##### 4.1 *Consolidation or Sub-division of Ordinary Shares*

If and whenever there shall be an alteration to the nominal value of the Ordinary Shares as a result of consolidation or subdivision, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such alteration by the following fraction:

$$\frac{A}{B}$$

where:

A is the nominal amount of one Ordinary Share immediately after such alteration;  
and

B is the nominal amount of one Ordinary Share immediately before such alteration.

Such adjustment shall become effective on the date the alteration takes effect.

##### 4.2 *Bonus Issue*

If and whenever the Company shall issue any Ordinary Shares credited as fully paid to the Shareholders by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve) other than (1) where any such Ordinary Shares are issued instead of the whole or part of a cash Dividend (as defined below) which the

Shareholders would or could otherwise have received or (2) where the Shareholders may elect to receive a cash Dividend in lieu of such Ordinary Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue by the following fraction:

$$\frac{A}{B}$$

where:

- A is the aggregate nominal amount of the issued Ordinary Shares immediately before such issue; and
- B is the aggregate nominal amount of the issued Ordinary Shares immediately after such issue.

Such adjustment shall become effective on the date of issue of such Ordinary Shares.

#### 4.3 *Dividends*

If and whenever the Company shall, in any Financial Year, pay or make any Dividend (as defined below) to the Shareholders which, either alone or in the aggregate, is more than 5 per cent. of the applicable the Net Asset Value of the Company at the time of paying or making such Dividend, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such Dividend being paid by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price (as defined below) of one Ordinary Share on the dealing day (as defined below) immediately preceding the date of the first public announcement of the relevant Dividend or, in the case of a purchase of Ordinary Shares or any receipts or certificates representing Ordinary Shares by or on behalf of the Company or any Subsidiary, on which such Ordinary Shares are purchased or, in the case of a Spin-Off (as defined below), is the mean of the Volume Weighted Average Prices (as defined below) of an Ordinary Share for the five consecutive dealing days ending on the dealing day immediately preceding the first date on which the Ordinary Shares are traded ex- the relevant Spin-Off; and
- B is the portion of the Fair Market Value (as defined below) of the amount by which such Dividend or Dividends in that Financial Year exceeds 5 per cent. of the Net Asset Value of the Company which is attributable to one Ordinary Share, with such portion being determined by dividing the Fair Market Value of such excess by the number of Ordinary Shares entitled to receive the relevant Dividend (or, in the case of a purchase of Ordinary Shares or any receipts or certificates representing Ordinary Shares by or on behalf of the Company or any Subsidiary, by the number of Ordinary Shares in issue immediately prior to such purchase).

Such adjustment shall become effective on the date on which such Dividend is made or, in the case of a purchase of Ordinary Shares or any receipts or certificates representing Ordinary Shares, on the date such purchase is made or, in any such case if later, the first date upon which the Fair Market Value of such excess is capable of being determined as provided herein.

As used in this Condition 4:

**"Dividend"** means any dividend or distribution (including a Spin-Off) whether of cash, assets or other property, and whenever paid or made and however described (and for these purposes a distribution of assets includes without limitation an issue of Ordinary Shares or other Securities credited as fully or partly paid up by way of capitalisation of profits or reserves) provided that:

- (a) where a cash Dividend is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the issue or delivery of Ordinary Shares or other property or assets, or where a capitalisation of profits or reserves is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the payment of a cash Dividend, then for the purposes of this definition the Dividend in question shall be treated as a Dividend of the greater of (i) such cash Dividend and (ii) the Fair Market Value (on the date of the first public announcement of such Dividend or capitalisation (as the case may be) or if later, the date on which the number of Ordinary Shares (or amount of property or assets, as the case may be) which may be issued or delivered is determined), of such Ordinary Shares or other property or assets;
- (b) any issue of Ordinary Shares falling within Condition 4.2 shall be disregarded;
- (c) a purchase or redemption of share capital of the Company by the Company or any Subsidiary shall not constitute a Dividend unless, in the case of purchases of Ordinary Shares by or on behalf of the Company or any Subsidiary, the weighted average price per Ordinary Share (before expenses) on any one day in respect of such purchases exceeds by more than 5 per cent. the average of the closing prices of the Ordinary Shares on the Relevant Stock Exchange on the five immediately preceding dealing days as derived from the Relevant Stock Exchange either (1) on that day, or (2) where an announcement (excluding for the avoidance of doubt for these purposes, any general authority for such purchases or redemptions approved by a general meeting of Shareholders of the Company or any notice convening such a meeting of Shareholders) has been made of the intention to purchase Ordinary Shares at some future date at a specified price, on the dealing day immediately preceding the date of such announcement and, if in the case of either (1) or (2), the relevant day is not a dealing day, the immediately preceding dealing day, in which case such purchase shall be deemed to constitute a Dividend to the extent that the aggregate price paid (before expenses) in respect of such Ordinary Shares purchased by the Company or, as the case may be, any of its Subsidiaries exceeds the product of (i) 105 per cent. of the average closing price of the Ordinary Shares determined as aforesaid and (ii) the number of Ordinary Shares so purchased; and
- (d) if the Company or any Subsidiary shall purchase any receipts or certificates representing Ordinary Shares, the provisions of paragraph (c) shall be applied in respect thereof in such manner and with such modifications (if any) as shall be determined in good faith by an Independent Financial Adviser.

**"Fair Market Value"** means, with respect to any property on any date, the fair market value of that property as determined in good faith by the Independent Financial Adviser provided that: (a) the Fair Market Value of a cash Dividend paid or to be paid shall be the amount of such cash Dividend; (b) the Fair Market Value of any other cash amount shall be the amount of such cash; (c) where Spin-Off Securities, options, warrants or other rights are publicly traded in a market of adequate liquidity (as determined by the Independent Financial Adviser), the fair market value (i) of such Spin-Off Securities shall equal the arithmetic mean of the daily Volume Weighted Average Prices of such Spin-Off Securities and (ii) of such options, warrants or other rights shall equal the arithmetic mean

of the daily closing prices of such options, warrants or other rights, in the case of both (i) and (ii) during the period of five dealing days on the relevant market commencing on such date (or, if later, the first such dealing day such Spin-Off Securities options, warrants or other rights are publicly traded); and (d) in the case of (a), converted into Pounds Sterling (if declared or paid in a currency other than Pounds Sterling) at the rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid or are entitled to be paid the cash Dividend in Pounds Sterling and, in any other case, converted into Pounds Sterling (if expressed in a currency other than Pounds Sterling) at such rate of exchange as may be determined in good faith by the Independent Financial Adviser to be the spot rate prevailing at the close of business on that date (or if no such rate is available on that date the equivalent rate on the immediately preceding date on which such a rate is available);

**"Financial Year"** means the annual accounting period of the Company ending on or about 28 February in each year;

**"Independent Financial Adviser"** means an investment bank of international repute appointed by the Company and approved in writing by the Trustee (such approval not to be unreasonably withheld or delayed) or, if the Company fails to make such appointment and such failure continues for a reasonable period (as determined by the Trustee in its absolute discretion) and the Trustee is indemnified and/or secured and/or pre-funded to its satisfaction against the costs, fees and expenses of such adviser, appointed by the Trustee following notification to the Company;

**"Newco Scheme"** means a scheme of arrangement which effects the interposition of a limited liability company ("**Newco**") between the Shareholders immediately prior to the scheme of arrangement ("**Existing Shareholders**") and the Company, provided that immediately after completion of the scheme of arrangement the only shareholders of Newco are the Existing Shareholders and that all Subsidiaries immediately prior to the scheme of arrangement (other than Newco, if Newco is then a Subsidiary) are subsidiaries (as such term is defined in section 531 of the Companies (Guernsey) Law 2008 (as amended) ) of the Company (or of Newco) immediately after the scheme of arrangement;

**"Securities"** means any securities including, without limitation, Ordinary Shares or options, warrants or other rights to subscribe for or purchase or acquire Ordinary Shares;

**"Spin-Off"** means:

- (a) a distribution of Spin-Off Securities by the Company to Shareholders as a class; or
- (b) any transfer of any property or assets (including cash or shares or securities of or in or issued or allotted by any entity) by any entity (other than the Company) to Shareholders as a class or, in the case of or in connection with a Newco Scheme, Existing Shareholders, as a class (but excluding the issue and allotment of shares by Newco to Existing Shareholders), pursuant in each case to any arrangements with the Company or any of its Subsidiaries; and

**"Spin-Off Securities"** means equity share capital of an entity other than the Company.

#### 4.4 *Shares, Rights and Share-Related Securities Issued to Shareholders*

If and whenever the Company shall issue Ordinary Shares to Shareholders as a class by way of rights, or issue or grant to Shareholders as a class by way of rights, options, warrants or other rights to subscribe for or purchase any Ordinary Shares, in each case, at a price per Ordinary Share which is less than 95 per cent. of the Current Market Price (as defined below) per Ordinary Share on the dealing day immediately preceding the date of the first public announcement of the terms of the issue or grant of such Ordinary

Shares, options, warrants or other rights, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Ordinary Shares in issue immediately before such announcement;
- B is the number of Ordinary Shares which the aggregate amount (if any) payable for the Ordinary Shares issued by way of rights, or for the options or warrants or other rights issued by way of rights and for the total number of Ordinary Shares deliverable on the exercise thereof, would purchase at such Current Market Price per Ordinary Share; and
- C is the number of Ordinary Shares issued or, as the case may be, the maximum number of Ordinary Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the first date on which the Ordinary Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange.

#### 4.5 *Issue of Other Securities to Shareholders*

If and whenever the Company shall issue any Securities (other than Ordinary Shares or options, warrants or other rights to subscribe for or purchase any Ordinary Shares) to Shareholders as a class by way of rights or grant to Shareholders as a class by way of rights any options, warrants or other rights to subscribe for or purchase any Securities (other than Ordinary Shares or options, warrants or other rights to subscribe for or purchase Ordinary Shares), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the dealing day immediately preceding the first date on which the terms of such issue or grant are publicly announced; and
- B is the Fair Market Value on the date of such announcement of the portion of the rights attributable to one Ordinary Share.

Such adjustment shall become effective on the first date on which the Ordinary Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange.

#### 4.6 *Issue of Shares at Below Current Market Price*

If and whenever the Company shall issue (otherwise than as mentioned in Condition 4.4 above) wholly for cash or for no consideration any Ordinary Shares (other than Ordinary Shares issued on the exercise of Conversion Rights or on the exercise of any rights of conversion into, or exchange or subscription for or purchase of, Ordinary Shares) or issue or grant (otherwise than as mentioned in Condition 4.4) wholly for cash or for no consideration any options, warrants or other rights to subscribe for or purchase any

Ordinary Shares (other than the CULS, which term shall include any Additional CULS issued and consolidated and forming a single series with the CULS), in each case at a price per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share on the dealing day immediately preceding the date of the first public announcement of the terms of such issue or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Ordinary Shares in issue immediately before the issue of such Ordinary Shares or the grant of such options, warrants or rights;
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the issue of such additional Ordinary Shares or, as the case may be, for the Ordinary Shares to be issued or otherwise made available upon the exercise of any such options, warrants or rights, would purchase at such Current Market Price per Ordinary Share; and
- C is the number of Ordinary Shares to be issued pursuant to such issue of such additional Ordinary Shares or, as the case may be, the maximum number of Ordinary Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the date of issue of such additional Ordinary Shares or, as the case may be, the grant of such options, warrants or rights.

#### 4.7 *Share-Related Securities Issued Other than to Shareholders*

If and whenever the Company or any Subsidiary or (at the direction or request of or pursuant to any arrangements with the Company or any Subsidiary) any other company, person or entity (otherwise than as mentioned in Conditions 4.4, 4.5 or 4.6 above) shall issue wholly for cash or for no consideration any Securities (other than the CULS, which term shall for this purpose exclude any Additional CULS issued and consolidated and forming a single series with the CULS) which by their terms of issue carry (directly or indirectly) rights of conversion into, or exchange or subscription for, Ordinary Shares (or shall grant any such rights in respect of existing Securities so issued) or Securities which, by their terms, might be re-designated as Ordinary Shares, and the consideration per Ordinary Share receivable upon conversion, exchange, subscription or re-designation is less than 95 per cent. of the Current Market Price per Ordinary Share on the dealing day immediately preceding the date of the first public announcement of the terms of issue of such Securities (or the terms of such grant), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue (or grant) by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Ordinary Shares in issue immediately before such issue or grant (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for Ordinary Shares which have been issued by the Company for the purposes of or in connection with such issue, less the number of such Ordinary Shares so issued);



- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to such Securities or, as the case may be, for the Ordinary Shares to be issued or to arise from any such re-designation would purchase at such Current Market Price per Ordinary Share; and
- C is the maximum number of Ordinary Shares to be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such right of subscription attached thereto at the initial conversion, exchange or subscription price or rate or, as the case may be, the maximum number of Ordinary Shares which may be issued or arise from any such re-designation,

provided that if, at the time of issue of the relevant Securities or date of grant of such rights (as used in this Condition 4.7, the "**Specified Date**"), such number of Ordinary Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Securities are converted or exchanged or rights of subscription are exercised or, as the case may be, such Securities are re-designated or at such other time as may be provided), then for the purposes of this Condition 4.7, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange, subscription, purchase or acquisition or, as the case may be, re-designation had taken place on the Specified Date.

Such adjustment shall become effective on the date of issue of such Securities or, as the case may be, the grant of such rights.

#### 4.8 *Amendment of Terms of Rights or Share-Related Securities*

If and whenever there shall be any modification of the rights of conversion, exchange or subscription attaching to any such Securities (other than the CULS and any Additional CULS issued and consolidated and forming a single series with the CULS) as are mentioned in Condition 4.7 above (other than in accordance with the terms (including terms as to adjustment) applicable to such Securities upon issue) so that following such modification the consideration per Ordinary Share receivable has been reduced and is less than 95 per cent. of the Current Market Price per Ordinary Share on the dealing day immediately preceding the date of the first public announcement of the proposals for such modification, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such modification by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the number of Ordinary Shares in issue immediately before such modification (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for Ordinary Shares which have been issued, purchased or acquired by the Company or any Subsidiary (or at the direction or request or pursuant to any arrangements with the Company or any Subsidiary) for the purposes of or in connection with such issue, less the number of such Ordinary Shares so issued, purchased or acquired);
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to the Securities so modified would purchase at such Current Market Price per

Ordinary Share or, if lower, the existing conversion, exchange or subscription price of such Securities; and

- C is the maximum number of Ordinary Shares which may be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such rights of subscription attached thereto at the modified conversion, exchange or subscription price or rate but giving credit in such manner as the Independent Financial Adviser shall consider appropriate for any previous adjustment under this Condition 4.8 or Condition 4.7,

provided that if at the time of such modification (as used in this Condition 4.8, the "Specified Date") such number of Ordinary Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Securities are converted or exchanged or rights of subscription are exercised or at such other time as may be provided) then, for the purposes of this Condition 4.8, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange or subscription had taken place on the Specified Date.

Such adjustment shall become effective on the date of modification of the rights of conversion, exchange or subscription attaching to such Securities.

#### 4.9 *Demerger*

If and whenever the Company or any Subsidiary or (at the direction or request of or pursuant to any arrangements with the Company or any Subsidiary) any other company, person or entity shall offer any Securities in connection with which offer Shareholders as a class are entitled to participate in arrangements whereby such Securities may be acquired by them (except where the Conversion Price falls to be adjusted under Conditions 4.2, 4.3, 4.4, 4.6, 4.7 or 4.8 (or would fall to be so adjusted if the relevant issue or grant was at less than 95 per cent. of the Current Market Price per Ordinary Share on the relevant dealing day) or under Condition 4.5) the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the making of such offer by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the dealing day immediately preceding the date on which the terms of such offer are first publicly announced; and
- B is the Fair Market Value on the date of such announcement of the portion of the relevant offer attributable to one Ordinary Share.

Such adjustment shall become effective on the first date on which the Ordinary Shares are traded ex-rights on the Relevant Stock Exchange.

#### 4.10 *Change of Control*

If an offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) such Shareholders other than the offeror and/or any associated company (as defined in Section 529(1) of the Companies (Guernsey) Law 2008, as amended) of the offeror), to acquire all or a majority of the issued ordinary share capital of the Company or if any person proposes a scheme of arrangement

(pursuant to Part VIII of the Companies (Guernsey) Law, 2008 (as amended)) or analogous proceeding with regard to such acquisition (other than a Newco Scheme) and (such offer or scheme having become or been declared unconditional in all respects or effective) the right to cast more than 50 per cent. of the votes which may ordinarily be cast on a poll at a general meeting of the Company has or will become unconditionally vested in such offeror, such person, and/or any associate of such offeror or person as aforesaid (a "**Relevant Event**"), the Conversion Price shall in each such case be adjusted as set out below (but, in each case, adjusted, if appropriate, proportionately on each adjustment to the Conversion Price under the foregoing provisions of this Condition 4 and Condition 4.11 (such adjusted Conversion Price, the "**Change of Control Conversion Price**"), provided that the Change of Control Conversion Price shall only apply to CULS in respect of which Conversion Rights are duly exercised and the Conversion Date falls within the period (the "**Relevant Event Period**") commencing on the date the Relevant Event occurs and ending on the date falling 60 London and Guernsey Business Days following the occurrence of the Relevant Event or, if later, the date falling 60 London and Guernsey Business Days following the date on which notice of such Relevant Event is given to CULS Holders by or on behalf of the Company pursuant to Condition 4.15:

$$\text{COCCP} = \text{CP} / (1 + (P \times c/t))$$

where:

- COCCP is the Change of Control Conversion Price;
- CP is the Conversion Price in effect on the relevant Conversion Date;
- P is 36.90 per cent. (expressed as a fraction);
- c is the number of days from and including the date the Relevant Event occurs to but excluding the Maturity Date; and
- t is the number of days from (and including) the Issue Date to (but excluding) the Maturity Date.

#### 4.11 *Other Events; Contemporaneous Events*

If the Company determines that an adjustment should be made to the Conversion Price as a result of one or more circumstances not referred to above in this Conditions 4.1 to 4.9 (even if the relevant circumstance is specifically excluded from the operation of Conditions 4.1 to 4.9 above), the Company shall, at its own expense and acting reasonably, request the Independent Financial Adviser to determine as soon as practicable what adjustment (if any) to the Conversion Price is fair and reasonable to take account thereof and the date on which such adjustment should take effect and upon such determination such adjustment (if any) shall be made and shall take effect in accordance with such determination, provided that an adjustment shall only be made pursuant to this Condition 4.11 if the Independent Financial Adviser is so requested to make such a determination not more than 21 days after the date on which the relevant circumstance arises.

Notwithstanding the foregoing provisions, where the events or circumstances giving rise to any adjustment pursuant to this Condition 4 have already resulted or will result in an adjustment to the Conversion Price or where the events or circumstances giving rise to any adjustment arise by virtue of any other events or circumstances which have already given or will give rise to an adjustment to the Conversion Price or where more than one event which gives rise to an adjustment to the Conversion Price occurs within such a short period of time that, in the opinion of the Company, a modification to the operation of the adjustment provisions is required to give the intended result, such modification shall be made to the operation of the adjustment provisions as may be advised by the Independent Financial Adviser to be in its opinion appropriate to give the intended result

and provided further that, for the avoidance of doubt, the issue of Ordinary Shares pursuant to the exercise of Conversion Rights shall not result in an adjustment to the Conversion Price.

#### 4.12 *Aggregate Consideration and Consideration per Ordinary Share*

For the purpose of any calculation of the consideration receivable or price pursuant to Conditions 4.4, 4.6, 4.7 or 4.8, the following provisions shall apply:

- (a) the aggregate consideration receivable or price for Ordinary Shares issued for cash shall be the amount of such cash;
- (b) (x) the aggregate consideration receivable or price for Ordinary Shares to be issued or otherwise made available upon the conversion or exchange of any Securities shall be deemed to be the consideration or price received or receivable for any such Securities, and (y) the aggregate consideration receivable or price for Ordinary Shares to be issued or otherwise made available upon the exercise of rights of subscription attached to any Securities or upon the exercise of any options, warrants or rights shall be deemed to be that part (which may be the whole) of the consideration or price received or receivable for such Securities or, as the case may be, for such options, warrants or rights which are attributed by the Company to such rights of subscription or, as the case may be, such options, warrants or rights or, if no part of such consideration or price is so attributed or the Company so determines, the Fair Market Value of such rights of subscription or, as the case may be, such options, warrants or rights as at the date of the first public announcement of the terms of issue of such Securities or, as the case may be, such options, warrants or rights, plus in the case of each of (x) and (y) above, the additional minimum consideration receivable or price (if any) upon the conversion or exchange of such Securities, or upon the exercise of such rights or subscription attached thereto or, as the case may be, upon exercise of such options, warrants or rights and (z) the consideration receivable or price per Ordinary Share upon the conversion or exchange of, or upon the exercise of such rights of subscription attached to, such Securities or, as the case may be, upon the exercise of such options, warrants or rights shall be the aggregate consideration or price referred to in (x) or (y) above (as the case may be) divided by the number of Ordinary Shares to be issued upon such conversion or exchange or exercise at the initial conversion, exchange or subscription price or rate;
- (c) if the consideration or price determined pursuant to paragraph (a) or (b) above (or any component thereof) shall be expressed in a currency other than Pounds Sterling, it shall be converted into Pounds Sterling at such rate of exchange as may be determined in good faith by the Independent Financial Adviser to be the spot rate ruling at the close of business on the date of the first public announcement of the terms of issue of such Securities (or if no such rate is available on that date, the equivalent rate on the immediately preceding date on which such rate is available);
- (d) in determining consideration or price pursuant to the above, no deduction shall be made for any commissions or fees (howsoever described) or any expenses paid or incurred for any underwriting, placing or management of the issue of the relevant Ordinary Shares or Securities or otherwise in connection therewith; and
- (e) an adjustment shall not be made pursuant to Conditions 4.7 or 4.9 in respect of an issue or offer by or on behalf of an entity which is a Subsidiary unless (1) the same is also made at the direction or request of or pursuant to any arrangements with the Company or any Subsidiary and (2) (in the case of Condition 4.7) the relevant Ordinary Shares have been issued or are issued or are to be issued by the Company in connection with or in contemplation of the relevant issue or offer.

And in this Condition 4:

**"Current Market Price"** means, in respect of an Ordinary Share at a particular date, the average of the Volume Weighted Average Price of an Ordinary Share for the five consecutive dealing days ending on such date if it is a dealing day; provided that if at any time during the said five-dealing-day period the Volume Weighted Average Price shall have been based on a price ex-Dividend (or ex- any other entitlement) and during some other part of that period the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum- any other entitlement), then:

- (a) if the Ordinary Shares to be issued do not rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Ordinary Shares shall have been based on a price cum-Dividend (or cum-any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Ordinary Share as at the date of first public announcement of such Dividend (or entitlement) (excluding, in any case, any associated tax credit and less the tax (if any) falling to be deducted on payment thereof to a resident of the United Kingdom); or
- (b) if the Ordinary Shares to be issued do rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Ordinary Shares shall have been based on a price ex-Dividend (or ex- any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount,

and provided further that, if on each of the said five dealing days the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum- any other entitlement) in respect of a Dividend (or other entitlement) which has been declared or announced but the Ordinary Shares to be issued do not rank for that Dividend (or other entitlement), the Volume Weighted Average Price on each of such dates shall for the purposes of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Ordinary Share as at the date of the first public announcement of such Dividend or entitlement (excluding, in any case, any associated tax credit and less the tax (if any) falling to be deducted on payment thereof to a resident of the United Kingdom), and provided further that, if the Volume Weighted Average Price of an Ordinary Share is available on one or more of the said five dealing days, then the average of such Volume Weighted Average Prices which are available in that five dealing day period shall be used (subject to a minimum of two such prices) and if only one, or no, such Volume Weighted Average Price is available in the relevant period the Current Market Price shall be determined in good faith by the Independent Financial Adviser;

**"dealing day"** means a day on which the Relevant Stock Exchange is open for business, other than a day on which the Relevant Stock Exchange is scheduled to, or does, close prior to its regular weekday closing time;

**"Relevant Stock Exchange"** means the Specialist Fund Market of the London Stock Exchange plc or, if at the relevant time, the Ordinary Shares are not at that time admitted to trading on the Specialist Fund Market, the principal stock exchange or securities market on which the Ordinary Shares are then listed, admitted to trading or quoted or dealt in; and

**"Volume Weighted Average Price"** means, in respect of an Ordinary Share or, as the case may be, a Spin-Off Security on any dealing day, the order book volume-weighted average price of an Ordinary Share or, as the case may be, a Spin-Off Security appearing on or derived from Bloomberg page VAP (in the case of an Ordinary Share) or such other source as shall be determined to be appropriate by the Independent Financial Adviser on

such dealing day, provided that on any such dealing day where such price is not available or cannot otherwise be determined as provided above, the Volume Weighted Average Price of an Ordinary Share or a Spin-Off Security, as the case may be, in respect of such dealing day shall be the Volume Weighted Average Price, determined as provided above, on the immediately preceding dealing day on which the same can be so determined.

#### 4.13 *Retroactive Adjustments*

If the Conversion Date shall be after the record date for any such issue, distribution, grant or offer (as the case may be) as is mentioned in Conditions 4.2, 4.3, 4.4, 4.5 or 4.9, or any such issue as is mentioned in Condition 4.6 and 4.7 which is made to the Shareholders or any of them, but before the relevant adjustment becomes effective under Condition 4 (such adjustment, a "**Retroactive Adjustment**"), the Company shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued to the converting CULS Holder, in accordance with the instructions contained in the Conversion Notice or in the Uncertificated Conversion Notice (as may be applicable), such additional number of Ordinary Shares (if any) as, together with the Ordinary Shares issued or to be issued on conversion of the relevant CULS (together with any fraction of an Ordinary Share not so issued), is equal to the number of Ordinary Shares which would have been required to be issued on conversion of such CULS if the relevant adjustment (more particularly referred to in the said provisions of Condition 4) to the Conversion Price had in fact been made and become effective immediately after the relevant record date.

#### 4.14 *Decision of an Independent Financial Adviser*

If any doubt shall arise as to the appropriate adjustment to the Conversion Price, and following consultation between the Company and the Independent Financial Adviser, a written opinion of the Independent Financial Adviser in respect of such adjustment to the Conversion Price shall be conclusive and binding on all concerned, save in the case of manifest error.

#### 4.15 *Relevant Event*

Within 14 calendar days following the occurrence of a Relevant Event, the Company shall give notice in writing thereof to the Trustee and to the CULS Holders in accordance with the Trust Deed (a "**Relevant Event Notice**"). Such notice shall contain a statement informing CULS Holders of their entitlement to exercise their Conversion Rights as provided in these Conditions and their entitlement to exercise their rights to require redemption of their CULS pursuant to Condition 7.4.

The Relevant Event Notice shall also specify:

- (a) all information material to CULS Holders concerning the Relevant Event;
- (b) the Conversion Price immediately prior to the occurrence of the Relevant Event and the Conversion Price which is applicable pursuant to Condition 4.10 during the Relevant Event Period on the basis of the Conversion Price in effect immediately prior to the occurrence of the Relevant Event;
- (c) the closing price of the Ordinary Shares as derived from the Relevant Stock Exchange as at the latest practicable date prior to the publication of the Relevant Event Notice;
- (d) the last day of the Relevant Event Period; and
- (e) the Relevant Event Put Date (as defined below).

The Trustee shall not be required to monitor, determine, form an opinion or take any steps to ascertain whether a Relevant Event or any event which could lead to a Relevant Event has occurred or may occur and will not be responsible or liable to CULS Holders or any other person for any loss arising from any failure by it to do so.

4.16 *Discount to par*

The Conversion Price may not be reduced so that, on conversion of the CULS, Ordinary Shares would fall to be issued at a discount to their nominal or par value.

4.17 *Employees' Share Schemes*

No adjustment will be made to the Conversion Price where Ordinary Shares or other Securities (including rights, warrants and options) are issued, offered, exercised, allotted, appropriated, modified or granted to, or for the benefit of, employees or former employees (including directors holding or formerly holding executive office or the personal service company of any such person) or their spouses or relatives, in each case, of the Company or any Subsidiary or any associated company or to trustees to be held for the benefit of any such person, in any such case, pursuant to any dividend reinvestment plan or similar plan or scheme.

4.18 *Rounding Down and Adjustments*

On any adjustment, the resultant Conversion Price, if not an integral multiple of £0.0001, shall be rounded down to the nearest whole multiple of £0.0001. No adjustment shall be made to the Conversion Price where such adjustment (rounded down if applicable) would be less than one per cent. of the Conversion Price then in effect. Any adjustment not required to be made, and/or any amount by which the Conversion Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment, and such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time.

4.19 *Notice of adjustment of Conversion Price*

Notice of any adjustments to the Conversion Price shall be given to CULS Holders in accordance with the Trust Deed promptly after the determination thereof.

4.20 *Trustee not liable*

The Trustee shall not be required to take any steps to ascertain whether a Relevant Event or any event which could lead to a Relevant Event or any event described in Conditions 4.1 to 4.9 has occurred or may occur.

5. **RESTRICTION ON FINANCIAL INDEBTEDNESS**

5.1 For as long as the CULS are outstanding, without the sanction of an Extraordinary Resolution:

- (a) the Company shall not incur or have outstanding (and the Company shall procure that no Subsidiary incurs or has outstanding) any Financial Indebtedness if, at the time of such incurrence, the aggregate amount of Financial Indebtedness of the Company and its Subsidiaries then outstanding (and taking into account the Financial Indebtedness to be incurred as if it had been incurred) exceeds 50 per cent. of the Net Asset Value of the Company; or
- (b) the aggregate amount of Financial Indebtedness of the Company and its Subsidiaries (excluding indebtedness with an original maturity of less than 270-days for the purpose of meeting investment commitments pending the realisation

of the Company's assets) shall not, at any time, exceed 75 per cent. of the Net Asset Value of the Company.

For the purpose of this Condition:

**"Financial Indebtedness"** shall mean any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (f) any amount raised by the issue of shares which are redeemable (other than at the option of the Company) before the Maturity Date or are otherwise classified as borrowings under International Financial Reporting Standards as adopted by the European Union in accordance with IAS Regulation 1606/2002 (as amended); or
- (g) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (f) above.

For the purposes of this Condition, any Financial Indebtedness denominated in a currency other than the currency in which the Net Asset Value of the Company is reported shall be converted into the currency in which the Net Asset Value of the Company is reported.

5.2 Condition 5.1(a) shall not prohibit the incurrence of any of the following items of Financial Indebtedness:

- (a) the incurrence by the Company or any Subsidiary of any Financial Indebtedness in existence on the Initial Issue Date;
- (b) the incurrence by the Company of Financial Indebtedness represented by the Initial CULS to be issued on the Initial Issue Date; or
- (c) the incurrence by the Company or any Subsidiary of indebtedness with an original maturity of less than 270-days for the purpose of meeting investment commitments pending the realisation of the Company's assets.

## 6. COVENANTS RELATING TO CONVERSION RIGHTS

6.1 While any Conversion Rights remain capable of exercise by any CULS Holder, save with the previous sanction of an extraordinary resolution of the CULS Holders within the meaning of the Trust Deed (an **"Extraordinary Resolution"**) or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall use its reasonable endeavours:



- (a) to procure that (i) the CULS and (ii) the Ordinary Shares which are fully paid at all times remain admitted to trading on the Specialist Fund Market; and
- (b) to ensure that during such time as the Ordinary Shares are admitted to trading on the Specialist Fund Market and/or listed or quoted on any other stock exchange, all the Ordinary Shares allotted on exercise of Conversion Rights will, on allotment, be admitted to trading on the Specialist Fund Market and/or be listed or quoted on such other stock exchange.

6.2 While any Conversion Rights remain capable of exercise by any CULS Holder, save with the previous sanction of an Extraordinary Resolution or with the prior approval of the Trustee where, in the Trustee's opinion, it is not materially prejudicial to the interests of the CULS Holders to give such approval, the Company shall:

- (a) subject only to their being admitted to trading on the Specialist Fund Market and/or any other stock exchange or securities market on which the Ordinary Shares may then be listed or quoted or dealt in, issue, allot and deliver Ordinary Shares on exercise of Conversion Rights in accordance with the Conditions and, at all times, keep available for issue free from pre-emptive or other similar rights such number of Ordinary Shares as would enable it to issue in full such number of Ordinary Shares as are required to be issued by it upon exercise of Conversion Rights and all other rights of subscription and exchange for and conversion into Ordinary Shares;
- (b) not issue or pay up any Securities, in either case by way of capitalisation of profits or reserves unless, in any such case, the same gives rise (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price other than:
  - (i) by the issue of fully paid Ordinary Shares or other Securities to the Shareholders and other holders of ordinary shares in the capital of the Company which by their terms entitle the holders thereof to receive Ordinary Shares or other Securities on a capitalisation of profits or reserves;
  - (ii) by the issue of Ordinary Shares paid up in full out of profits or reserves (in accordance with applicable law) and issued wholly, ignoring fractional entitlements, in lieu of the whole or part of a cash dividend; or
  - (iii) by the issue of fully paid equity share capital (other than Ordinary Shares) to the holders of equity share capital of the same class and other holders of ordinary shares in the capital of the Company which by their terms entitle the holders thereof to receive equity ordinary share capital (other than Ordinary Shares) on a capitalisation of profits or reserves;
- (c) not in any way modify the rights attaching to the Ordinary Shares with respect to voting, dividends or liquidation nor issue any other class of equity ordinary share capital carrying any rights which are more favourable than such rights but so that nothing in this Condition 6.2 shall prevent:
  - (i) any consolidation or subdivision of the Ordinary Shares;
  - (ii) any modification of such rights which is not, in the opinion of the Independent Financial Adviser, materially prejudicial to the interests of the CULS Holders;
  - (iii) any alteration to the Articles made in connection with the matters described in this Condition 5 or which is supplemental or incidental to any of the foregoing (including any amendment made to enable or facilitate procedures relating to such matters and any amendment dealing with the rights and

obligations of holders of Securities, including Ordinary Shares, dealt with under such procedures);

- (iv) any issue of equity ordinary share capital where the issue of such equity share capital results or would, but for the provisions of these Conditions, otherwise result in an adjustment of the Conversion Price; or
- (v) any issue of equity ordinary share capital or modification of rights attaching to the Ordinary Shares where prior thereto the Company shall have instructed the Independent Financial Adviser to determine what (if any) adjustments should be made to the Conversion Price as being fair and reasonable to take account thereof and the Independent Financial Adviser shall have determined either that no adjustment is required or that an adjustment to the Conversion Price is required and, if so, the new Conversion Price as a result thereof and the basis upon which such adjustment is to be made and, in any such case, the date on which the adjustment shall take effect (and so that the adjustment shall be made and shall take effect accordingly);
- (d) procure that no Securities (whether issued by the Company or any Subsidiary or procured by the Company or any Subsidiary to be issued or issued by any other person pursuant to any arrangement with the Company or any Subsidiary) issued without rights to convert into, or exchange or subscribe for, Ordinary Shares shall subsequently be granted such rights exercisable at a consideration per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share at the close of business on the last dealing day preceding the date of the announcement of the proposed inclusion of such rights unless the same gives rise (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price and that at no time shall there be in issue Ordinary Shares of differing nominal values, save where such Ordinary Shares have the same economic rights;
- (e) not make any issue, grant or distribution or take any other action if the effect thereof would be that, on the conversion of the CULS, Ordinary Shares would (but for the provisions of Condition 4.15) have to be issued at a discount or otherwise could not, under any applicable law then in effect, be legally issued as fully paid;
- (f) not reduce its issued share capital, share premium account or capital redemption reserve or any uncalled liability in respect thereof or any non-distributable reserves, except (i) pursuant to the terms of issue of the relevant share capital, (ii) by means of a purchase or redemption of share capital of the Company to the extent permitted by the Articles and/or applicable law, (iii) where the reduction does not involve any distribution of assets, (iv) where the reduction results in (or would, but for the provisions of Condition 4.18 relating to the carry forward of adjustments, result in) an adjustment to the Conversion Price or is otherwise taken into account for the purposes of determining whether such an adjustment should be made, (v) solely in relation to a change in the currency in which the nominal value of the Ordinary Shares is expressed, (vi) pursuant to a Newco Scheme or (vii) by way of, or involving, a transfer to reserves under applicable law;
- (g) if any offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) such Shareholders other than the offeror and/or any associated companies (as defined in section 529(1) of the Companies (Guernsey) Law 2008 (as amended)) of the offeror) to acquire all or a majority of the issued ordinary share capital of the Company, or if a scheme is proposed with regard to such acquisition, give notice of such offer or scheme to the Trustee and the Holders at the same time as any notice thereof is sent to the Shareholders (or

as soon as practicable thereafter) that details concerning such offer or scheme may be obtained from the office of the Company and, where such an offer or scheme has been recommended by the Board or where such an offer has become or been declared unconditional in all respects, use its reasonable endeavours to procure that a like offer or scheme is extended to the holders of any Ordinary Shares issued during the period of the offer or scheme arising out of the exercise of the Conversion Rights and/or to the Holders; and

- (h) send to all CULS Holders a copy of every document sent by the Company to Shareholders at the time the same is sent to Shareholders.

## 7. PURCHASE AND REDEMPTION

### 7.1 *Final Redemption*

All CULS not previously redeemed, purchased or converted and, in each case, cancelled in accordance with the provisions of the Trust Deed or these Conditions will be redeemed by the Company on 30 July 2021 (the "**Maturity Date**") at their nominal amount, together accrued interest up to (but excluding) the date of final redemption of the Maturity Date.

### 7.2 *Redemption at the Option of the Company*

On giving not less than 30 nor more than 60 days' notice (an "**Optional Redemption Notice**") to the Trustee and to CULS Holders in accordance with the Trust Deed, the Company may redeem all (but not some only) of the CULS on the date (the "**Optional Redemption Date**") specified in the Optional Redemption Notice at their nominal amount, together with accrued but unpaid interest to such date:

- (a) at any time on or after 30 July 2017, if on each of not less than 20 dealing days during any period of 30 consecutive dealing days ending not earlier than the fifth dealing day prior to the giving of the relevant Optional Redemption Notice, the Volume Weighted Average Price of an Ordinary Share exceeds 130 per cent. of the Conversion Price in effect (or deemed to be in effect) on each dealing day; or
- (b) at any time, if prior to the date the relevant Optional Redemption Notice is given, Conversion Rights shall have been exercised and/or purchases (and corresponding cancellations) and/or redemptions effected in respect of 85 per cent. or more in nominal amount of the CULS originally issued (which shall, for this purpose, include any Additional CULS).

For the purposes of paragraph (a) of this Condition 7.2, if on any dealing day in such 30 dealing day period, the Volume Weighted Average Price of an Ordinary Share on such dealing day shall have been quoted cum-Dividend (or cum-any other entitlement), the Volume Weighted Average Price of an Ordinary Share on such dealing day shall be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Ordinary Share as at the date (or, if that is not a dealing day, the immediately preceding dealing day) of first public announcement of such Dividend (or entitlement).

### 7.3 *Optional Redemption Notices*

Any Optional Redemption Notice shall be irrevocable. Any such notice shall specify (a) the Optional Redemption Date, which shall be a Business Day in London and Guernsey, (b) the Conversion Price, the aggregate nominal amount of the CULS outstanding and the closing price of the Ordinary Shares as derived from the Relevant Stock Exchange, in each case, as at the latest practicable date prior to the publication of the Optional Redemption Notice, (c) the last day on which Conversion Rights may be exercised by CULS Holders

and (d) the amount of accrued interest payable in respect of the CULS on the Optional Redemption Date.

7.4 *Redemption at the Option of the CULS Holder following a Relevant Event*

Following the occurrence of a Relevant Event, each CULS Holder will have the right to require the Company to redeem that CULS on the Relevant Event Put Date at its nominal amount, together with accrued and unpaid interest to such date. To exercise such right, the holder of the relevant CULS must deliver a duly completed and signed notice of exercise in the form for the time being current obtainable from the specified office of the UK Transfer and Paying Agent (a "**Relevant Event Put Exercise Notice**"), together with (in the case of Certificated CULS only) the relevant CULS Certificate to the specified office of the UK Transfer and Paying Agent, at any time during the Relevant Event Period. The "**Relevant Event Put Date**" shall be the tenth calendar day after the expiry of the Relevant Event Period. Payment in respect of any such CULS shall be made in accordance with Condition 15. A Relevant Event Put Exercise Notice, once delivered, shall be irrevocable and the Company shall redeem all CULS the subject of Relevant Event Put Exercise Notices delivered as aforesaid on the Relevant Event Put Date.

7.5 *Purchase*

Subject to the requirements (if any) of any stock exchange on which the CULS may be admitted to listing and trading at the relevant time and subject to compliance with applicable laws and regulations, the Company or any Subsidiary may, at any time, purchase any CULS in the open market or otherwise at any price. Such CULS may be held, reissued, resold or, at the option of the Company or relevant Subsidiary, cancelled.

7.6 *Cancellation*

All CULS which are redeemed or in respect of which Conversion Rights are exercised will be cancelled and may not be reissued or resold. CULS purchased by the Company or any of its Subsidiaries may be cancelled and, if so surrendered, shall be cancelled forthwith and may not be reissued or re-sold.

8. **EVENTS OF DEFAULT**

Upon the occurrence of any of the following events, the Trustee may at its discretion and, if requested in writing by CULS Holders holding at least one-quarter in nominal amount of the CULS then outstanding or directed by an Extraordinary Resolution, shall (subject, in each case, to being indemnified and/or secured and/or pre-funded by CULS Holders to its satisfaction), give notice to the Company that the CULS are (and the CULS shall thereupon become) immediately due and payable at their nominal amount together with accrued interest as provided in the Trust Deed:

8.1 if the Company makes default (except as provided by the Subordination Agreement) for a period of 14 days or more in the payment on the due date of any principal or interest in respect of the CULS;

8.2 if an order is made or an effective resolution passed for the winding up or dissolution of the Company (except for the purpose of a reconstruction or amalgamation the terms of which have previously been approved in writing by the Trustee or by an Extraordinary Resolution);

if:

(a) the Company is unable or admits inability to pay its debts as they fall due;

- (b) the value of the assets of the Company is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness of the Company; or
- (d) the Company ceases or threatens to cease to carry on all or substantially all of its business, which shall not include (A) a change in investment policy, objective, performance benchmark or manager, or (B) a reconstruction or amalgamation the terms of which have previously been approved in writing by the Trustee or by an Extraordinary Resolution;

8.3 if an encumbrancer takes possession or a receiver or administrator or administrative receiver or other similar official is appointed of the Company or of the whole or a substantial part of the assets or undertaking of the Company or a distress or execution is levied or enforced upon or sued out against the whole or a substantial part of the assets or property of the Company and is not discharged within 30 days of being levied, enforced or sued out;

8.4 if default is made by the Company in the performance or observance of any covenant or provision binding on it under or pursuant to the Trust Deed (other than (a) any covenant for the payment of principal or interest in respect of the CULS; or (b) any breach referred to in Condition 8.6) or if any event occurs or any action is taken or fails to be taken which is (or but for the provisions of any applicable law would be) a breach of any of the covenants contained in the Trust Deed and (except where, in the opinion of the Trustee, the same is not capable of remedy when no such continuation or notice as is herein provided will be required) the same continues for more than 30 days after written notice requiring the same to be remedied shall have been given to the Company by the Trustee; or

8.5 if the Company, without the prior written consent of the Trustee or by an Extraordinary Resolution or as otherwise permitted by these Conditions, alters the rights attached to all or any of its Ordinary Shares in issue from time to time or attaches any special rights, privileges or restrictions thereto, or creates or issues any new class of equity share capital other than the Ordinary Shares ranking *pari passu* in all respects (or in all respects except as regards any restriction on their rights to receive dividends or other distributions or on their rights on a return of capital or on their voting rights, which, in all such cases, make such rights materially less favourable than those attached to the Ordinary Shares) with the Ordinary Shares and, in each case (except where, in the opinion of the Trustee, such alteration, attachment, creation or issue is not capable of cancellation when no such continuation or notice as is herein provided shall be required), such alteration, attachment, creation or issue shall continue for more than 30 days after written notice requiring such alteration, attachment, creation or issue to be cancelled shall have been given to the Company by the Trustee, provided that nothing in this Condition 8.6 shall restrict the right of the Company to consolidate or subdivide Ordinary Shares or convert Ordinary Shares into stock or vice versa and no such consolidation, subdivision or conversion shall give rise to any rights under this Condition 8.6.

Provided that no such event set out in Conditions 8.3 to 8.6 shall constitute an event of default on the occurrence of which the CULS may become immediately due and payable unless the Trustee shall have certified in writing that, in its opinion (having taken such advice as it may require), such event is materially prejudicial to the interests of the CULS Holders.

9. **STATUS AND SUBORDINATION**

9.1 *Status*

The CULS constitute direct, unsecured, subordinated, and unconditional obligations of the Company which will, at all times, rank *pari passu* among themselves.

9.2 *Subordination*

The terms of the CULS are subject in their entirety to the terms of the Subordination Agreement. In the event of inconsistency between the terms of the CULS and the provisions of the Subordination Agreement, the provisions of the Subordination Agreement will prevail. The CULS Holders agree to and are bound by, and are deemed to have notice of, all the provisions of the Subordination Agreement.

Any failure to pay any amount under or in respect of the CULS to the Trustee (other than any Trustee Fees and Expenses (as defined in the Subordination Agreement)) or any CULS Holder as a result of the provisions of the Subordination Agreement shall not give rise to an event of default under Condition 8 or a breach of any other Condition. Notwithstanding the above, any amount which is not so paid due to the provisions of the Subordination Agreement shall remain a debt owing to the Trustee or the relevant CULS Holder, as the case may be, by the Company until it is paid and shall be payable, in the case of principal, on the third Business Day in London and Guernsey following the day on which the relevant provisions of the Subordination Agreement no longer apply (whether or not such a date is otherwise a payment date pursuant to the Conditions) and, in the case of interest, on such Business Day or on the next Interest Payment Date (at the Company's election). No interest shall accrue on any amount under or in respect of the CULS which is not paid solely as a result of the relevant provisions of the Subordination Agreement.

10. **DENOMINATION AND TRANSFER**

The CULS will be denominated in integral multiples of £10 in nominal amount and will be in registered form and transferable without payment of any fee (excepting all transfer taxes). The Trust Deed will contain provisions enabling the CULS to be held and transferred in uncertificated form. The Trustee may, without any sanction of CULS Holders, concur with the Company in making modifications to the provisions of the Trust Deed in order to reflect changes in the CREST Regulations or in the applicable law and practice relating to the holding or transfer of CULS in uncertificated form and the issue of Ordinary Shares in uncertificated form on conversion of CULS.

The CULS may not be legally or beneficially owned by any US Person at any time nor offered, sold, delivered, pledged, assigned or otherwise transferred or exercised or redeemed at any time within the United States or to, or for the account or benefit of, any US Person. If the Company determines at any time that any CULS is legally or beneficially owned by any US Person, the Company may direct the CULS Holder to sell or transfer such CULS to a person who is not a US Person within 14 days following receipt of notice of the direction. If the CULS Holder fails to sell or transfer such CULS within such period, the Company may at its discretion (i) cause such CULS to be sold to an acquirer selected by the Company that certifies to the Company that such acquirer is not a US Person, on terms as the Company may choose, subject to the purchaser representations and requirements and transfer restrictions set out herein, and, pending such transfer, no further payments will be made in respect of such CULS or (ii) give notice to the CULS Holder that such CULS will be redeemed by the Company at their nominal amount, together with any accrued but unpaid interest on the date specified in such notice.

In the event of a sale in accordance with the previous paragraph, the Company may select an acquirer by any means determined by it in its sole discretion. The proceeds of the sale, net of any commissions, expenses and taxes due in connection with the sale

shall be remitted to the selling CULS Holder. The terms and conditions of any sale hereunder (including the sale price) shall be determined in the sole discretion of the Company, subject to the purchaser representations and requirements and transfer restrictions set out herein (and in the Placing Agreement), and the Company shall not be liable to any person having an interest in the CULS sold as a result of any sale or the exercise of such discretion.

**11. ISSUES OF ADDITIONAL UNSECURED LOAN STOCK**

Provision will be made in the Trust Deed to enable further unsecured loan stock of the Company to be issued either so as to be identical in all respects with and to form a single series with the CULS (including the Further CULS) or on such terms, including rights as to interest, ranking (but not ranking ahead of the CULS), conversion, premium, redemption and otherwise as the Company may, in its absolute discretion (but subject to Shareholder Approval), determine. Such further unsecured loan stock shall, if identical and forming a single series with the CULS, and may, in any other case with the consent of the Trustee, be constituted by a trust deed supplemental to the Trust Deed and shall accordingly, if so constituted, be "**Additional CULS**". However, no additional loan capital of the Company or any Subsidiary shall be paid up in whole or in part by way of capitalisation of profits or reserves or be issued by way of collateral security.

**12. MODIFICATION OF RIGHTS, ETC.**

- 12.1 CULS Holders will have power by Extraordinary Resolution, inter alia, to sanction any modification, abrogation or compromise of or arrangement in respect of their rights against the Company and to assent to any modification of the provisions of the Trust Deed. In addition, the Trustee may from time to time without the consent or sanction of the CULS Holders (but only if and insofar as in the opinion of the Trustee the interests of the CULS Holders will not be materially prejudiced thereby), on such terms and subject to such conditions as it shall deem expedient, waive or authorise any breach or proposed breach by the Company of any of the covenants or provisions of the Trust Deed, determine that any act or omission which would or could constitute an event of default under the Trust Deed shall not do so, or agree to any modification of the provisions of the Trust Deed. The Trustee may also agree, without such consent or sanction, to any modification of the Trust Deed which is, in the opinion of the Trustee, of a formal, technical or minor nature or to correct a manifest error or an error which is in the opinion of the Trustee proven. Provision will be made for convening separate meetings of the holders of the CULS and each series of any Additional CULS when the Trustee considers this appropriate.
- 12.2 An Extraordinary Resolution passed at a meeting of the CULS Holders duly convened and held shall be binding upon all the CULS Holders, whether present or not present at the meeting, and the Company, each of the CULS Holders and (subject to the provisions for its indemnity and/or security and/or pre-funding contained in the Trust Deed) the Trustee shall be bound to give effect thereto accordingly.
- 12.3 In connection with the exercise by it of any of its trusts, powers, authorities and discretions under the Trust Deed (including, without limitation, any modification, waiver, authorisation or determination referred to in Condition 12.1), the Trustee shall have regard to the general interests of the CULS Holders as a class but shall not have regard to any interests arising from circumstances particular to individual CULS Holders (whatever their number) and, in particular but without limitation, shall not have regard to the consequences of such exercise for individual CULS Holders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political subdivision thereof and the Trustee shall not be entitled to require, nor shall any CULS Holder be entitled to claim, from the Company, the Trustee or any other person, any indemnification

or payment in respect of any tax consequences of any such exercise on individual CULS Holders.

**13. TRUSTEE'S INDEMNIFICATION AND CONSENTS**

13.1 The Trust Deed will contain provisions for the indemnification and/or pre-funding of and/or provision of security to the Trustee and for its relief from responsibility in certain events. The Trust Deed will provide that when determining whether an indemnity or any security or prefunding is satisfactory to it, the Trustee shall be entitled:

- (a) to evaluate its risk in any given circumstance by considering the worst-case scenario; and
- (b) to require that any indemnity or security given to it by the CULS Holders or any of them be given on a joint and several basis and be supported by evidence satisfactory to it as to the financial standing and creditworthiness of each counterparty and/or as to the value of the security and an opinion as to the capacity, power and authority of each counterparty and/or the validity and effectiveness of the security.

13.2 Any consent given by the Trustee may be given on such terms and subject to such conditions (if any) as the Trustee may in its absolute discretion think fit and, notwithstanding anything to the contrary in the Conditions or the Trust Deed, may be given retrospectively.

**14. REMOVAL, RETIREMENT AND REPLACEMENT OF TRUSTEE**

The Trust Deed will contain provisions for the removal of the Trustee by an Extraordinary Resolution and will permit the Trustee to retire at any time without assigning any reason. The Company will have the power to appoint a new Trustee but such new Trustee shall be subject to the approval of an Extraordinary Resolution.

**15. PAYMENTS**

**15.1 *Method of Payment***

**(a) Certificated CULS**

Payment of the nominal amount of CULS on redemption and/or interest will be made by transfer to a Pounds Sterling account (or other account to which Pounds Sterling may be credited) maintained by the CULS Holder with a bank in the City of London as previously notified to the UK Transfer and Paying Agent, or in the absence of a bank account by cheque posted to the registered address of the first-named holder on the CULS Register, and (in the case of redemption and/or interest payable on redemption) will be made against surrender of the relevant CULS Certificate at the specified office of the UK Transfer and Paying Agent.

**(b) Uncertificated CULS**

The Company shall pay or cause to be paid payments of nominal amount in respect of Uncertificated CULS by way of a CREST assured payment in accordance with the CREST Regulations.

Payments of interest in respect of Uncertificated CULS will be made by transfer to a Pounds Sterling account (or other account to which Pounds Sterling may be credited) maintained by the CULS Holder with a bank in the City of London where previously notified to the UK Transfer and Paying Agent, or by cheque posted to the address of the first-named holder on the CULS Register relating to Uncertificated CULS.



15.2 *Payments subject to fiscal laws*

All payments in respect of the CULS are subject, in all cases, to any fiscal or other laws and regulations applicable thereto in the place of payment. No commissions or expenses shall be charged to CULS Holders in respect of such payments.

15.3 *Non-Business Days*

Every cheque sent through the post shall be sent by first class post on or before the Business Day in London and Guernsey next preceding the due date of the relevant nominal and or interest payment unless such due date is not a Business Day in London and Guernsey, in which event it shall be sent on or before the second Business Day in London and Guernsey next preceding the due date of the relevant payment. Where payment is to be made by transfer to a Pounds Sterling bank account, payment instructions (for value the due date or, if the due date is not a Business Day in London and Guernsey, for value the next succeeding Business Day in London and Guernsey) will be initiated (a) in the case of payments of nominal amount and interest payable on redemption, on the later of the due date for payment and (in the case of Certificated CULS only) the day on which the relevant CULS Certificate is surrendered at the specified office of the UK Transfer and Paying Agent and (b) in the case of payments of interest payable other than on redemption, on the due date for payment. CULS Holders shall not be entitled to any interest or other payment in respect of any delay in payment resulting from the due date for payment not being a Business Day in London and Guernsey.

15.4 *Rounding*

When making payments of nominal amount and/or interest to CULS Holders, the relevant payment will be rounded down to the nearest whole pence.

16. **NOTICES**

All notices regarding the CULS will be deemed to be validly given (i) if sent by first class mail or (if posted to an address overseas) by airmail to the CULS Holders (or the first named of joint holders) at their respective addresses recorded in the CULS Register (or, in the case of Uncertificated CULS, recorded in the electronic register of CULS Holders maintained in accordance with the CREST Regulations), (ii) if published through the electronic communications system of Bloomberg or (iii) for so long as the CULS are admitted to trading on the Specialist Fund Market, if published through the regulatory news service of the London Stock Exchange. Any such notice will be deemed to have been given on the fourth day after mailing or on the date of publication (as the case may be). In addition, for so long as any CULS are listed by or on a competent authority or stock exchange and the rules of that competent authority or stock exchange so require, such notice will be published in a daily newspaper of general circulation in the places or places required by that competent authority or stock exchange. If the giving of notice as provided above is not practicable, notice will be given in such other manner and shall be deemed to have been given on such date as the Trustee may approve.

17. **TAXATION**

All payments of principal and interest by or on behalf of the Company in respect of the CULS shall be made free and clear of, and without withholding or deduction for or on account of any taxation, unless such withholding or deduction is required by law. In that event, the relevant payment will be made subject to such withholding or deduction. The Company will not be required to pay any additional or further amounts in respect of such withholding or deduction.

18. **AUDITORS**

The Trust Deed will provide that the Trustee may rely on certificates or reports provided by the Auditors or other experts in accordance with the provisions of the Trust Deed whether or not any such certificate or report shall be addressed to the Trustee and whether or not any such certificate or report or any engagement letter or other document entered into by the Trustee and/or the Auditors or such other experts in connection therewith contains any limit (whether monetary or otherwise) on the liability of the Auditors or such other expert.

19. **MISCELLANEOUS**

A person whose address on the CULS Register is not within the United Kingdom shall not be entitled to receive notice of any meeting unless such person shall have given to the Company an address within the United Kingdom to which such notice shall be sent. Unless otherwise determined by the Company, each CULS Holder electing to convert their CULS must represent and warrant that, in the Conversion Notice (or otherwise as agreed by the Company), that he/she is not a US Person (as defined in the Securities Act), that he/she is not acquiring Ordinary Shares for the account of a US Person and that he/she is acquiring Ordinary Shares in an offshore transaction (as defined in Regulation S under the U.S. Securities Act of 1933, as amended).

20. **GOVERNING LAW AND JURISDICTION**

20.1 *Governing Law*

The Trust Deed, and any non-contractual obligations arising out of or in connection with it, will be governed by, and construed in accordance with, English law.

20.2 *Jurisdiction*

The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the CULS or the Trust Deed and, accordingly, any legal action or proceedings arising out of or in connection with the CULS or the Trust Deed ("**Proceedings**") may be brought in such courts. The Company irrevocably submits to the jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of each of the CULS Holders and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

20.3 *Agent for Service of Process*

The Company has appointed Law Debenture Corporate Services Limited at its office for the time being, currently at Fifth Floor, 100 Wood Street, London EC2V 7EX, as its agent in England to receive service of process of any Proceedings in England. If, for any reason, the Company does not have such an agent in England, it will promptly appoint a substitute process agent and notify the CULS Holders of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.

## SCHEDULE 2

### Form of Subordination Agreement

**THIS AGREEMENT** is made on 30 July 2014

#### **BETWEEN:**

- (3) **JZ CAPITAL PARTNERS LIMITED**, a non-cellular company limited by shares and incorporated in Guernsey under the Companies (Guernsey) Law 2008 (as amended) with registered number 48761 (the "**Company**");
- (4) **JEFFERIES FINANCE LLC** as administrative agent and collateral agent for and on behalf of the Initial Senior Lenders (as defined below) (the "**Initial Senior Representative**"); and
- (5) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.**, a company incorporated under the laws of England and Wales with registered number 1675231 (the "**Trustee**", which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the trustee or trustees of these presents) as trustee for the CULS Holders (as defined below).

#### **RECITALS:**

- (C) The Company proposes to issue the Initial CULS and may, at its absolute discretion but subject to obtaining the prior approval of the shareholders of the Company, elect to issue Further CULS.
- (D) The terms of the Term Loan Credit Agreement requires that any securities issued by the Company which are convertible into its ordinary shares must be subordinated on terms reasonably satisfactory to Required Lenders (as defined therein).
- (E) As a condition to the issue of the CULS, the Company requires the Trustee, on behalf of the CULS Holders, to enter into this Agreement to subordinate certain payments under the CULS and the Trust Deed in right of payment to the Senior Debt.

#### **THE PARTIES AGREE AS FOLLOWS:**

##### **1. INTERPRETATION**

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**"Accession Agreement"** means an accession agreement substantially in the form set out in Schedule 1 (*Form of Accession Agreement*) under which an Additional Senior Representative or a New Trustee may become a party to this Agreement, with such amendments as the Company and the Appointed Senior Representative may reasonably approve or reasonably require;

**"Additional Senior Creditor"** means:

- (a) each Additional Senior Lender; and
- (b) each Additional Senior Representative;

**"Additional Senior Document"** means any document designated by the Company as an "Additional Senior Document" in accordance with Clause 15 (*Changes to Senior Debt*);

**"Additional Senior Lender"** means each person party to an Additional Senior Document in its capacity as lender to, or creditor in respect of Financial Indebtedness (including any hedge counterparty) of, the Company;

**"Additional Senior Representative"** means each entity that accedes to this Agreement as a "Additional Senior Representative" in accordance with Clause 15 (*Changes to Senior Debt*);

**"Appointed Senior Representative"** means the Senior Representative which has agreed (with the consent in writing of the other Senior Representatives) to act as Appointed Senior Representative for the purposes of this Agreement which, as at the date of this Agreement, shall be the Initial Senior Representative. Each other Senior Representative shall confirm in writing to the Company and the Trustee its acceptance of any appointment of an Appointed Senior Representative after the date of this Agreement and, if acceptance of any such appointment is not received by the Company and the Trustee from all other Senior Representatives, "Appointed Senior Representative" shall mean all Senior Representatives (acting unanimously);

**"Conditions"** means the conditions of the CULS (as in effect on the date of this Agreement);

**"CULS"** means the Initial CULS and further unsecured subordinated loan stock of the Company issued after the date of this Agreement pursuant to clause 2.4 of the Trust Deed (including the Further CULS) or, where the context so requires, any of them;

**"CULS Default"** means

- (a) a default by the Company, subject to any originally applicable grace period, in the payment on the due date of any principal or interest in respect of the CULS which, but for this Agreement, would be an Event of Default under clause 8 (*Events of Default*) or the Trust Deed; or
- (b) any other "Event of Default" under clause 8 (*Events of Default*) of the Trust Deed (as in effect on the date of this Agreement);

**"CULS Enforcement Notice"** has the meaning given to it in Clause 7.2 (*Permitted Enforcement by Subordinated Creditors*);

**"CULS Holder"** means any holder of CULS from time to time;

**"CULS Standstill Period"** has the meaning given to it in Clause 7.3 (*CULS Standstill Period*);

**"CULS Standstill Period Start Date"** has the meaning given to it in Clause 7.3 (*CULS Standstill Period*);

**"Enforcement Action"** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or any other declaration that any Liabilities are due and payable prior to their originally scheduled maturity or date due for payment;
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of any demand against the Company in relation to any Liabilities; or

- (iv) the enforcement of any Liabilities by execution or otherwise;
- (b) the initiation or support of or taking any steps with a view to:
  - (i) any insolvency, liquidation, reorganisation, administration or dissolution proceedings;
  - (ii) any voluntary arrangement or assignment for the benefit of creditors; or
  - (iii) any similar proceedings,
 whether by petition, convening a meeting, voting for a resolution or otherwise;
- (a) bringing, supporting or joining any legal or arbitration proceedings in relation to any Liabilities; or
- (b) the entering into of any composition, compromise, assignment or arrangement for reasons of actual or anticipated financial difficulty of the Company or any other member of the Group;
- (c) the bringing of any other step or otherwise exercising any remedy for the recovery of any Liabilities,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action specified in paragraph (c) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) the Trustee bringing legal proceedings against any person solely for the purposes of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales or Guernsey) to restrain any actual or putative breach of this Agreement or any Subordinated Document;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a Payment) with no claim for damages in relation to this Agreement or any Subordinated Document; or
  - (C) requesting judicial interpretation of any provision of this Agreement or any Subordinated Document with no claim for damages;

**"Financial Indebtedness"** means any indebtedness for or in respect of:

- (a) monies borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;

- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculation the value of any derivative transaction, only the marked to market value shall be taken into account); and
- (f) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (e) above;

**"Further CULS"** means the further issue of up to £38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of the Company due 2021, to be consolidated with and form a single series with the Initial CULS;

**"Further Issue Date"** means the issue date of the Further CULS;

**"Group"** means the Company and the Subsidiaries from time to time;

**"Initial CULS"** means the £38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of the Company due 2021;

**"Initial Issue Date"** means 30 July 2014;

**"Initial Senior Creditor"** means:

- (a) each Initial Senior Lender; and
- (b) the Initial Senior Representative;

**"Initial Senior Debt"** means any Senior Debt outstanding at the Initial Issue Date;

**"Initial Senior Documents"** means the "Loan Documents" as defined in the Term Loan Credit Agreement;

**"Initial Senior Lender"** means each "Lender" as defined in the Term Loan Credit Agreement;

**"Insolvency Event"** means any corporate action, legal proceedings, resolution, order, filing or other procedure or step taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, arrestment, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company;
- (b) a composition, compromise, assignment, assignation or arrangement with any creditor of the Company;
- (c) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Company or any of its assets;
- (d) any event in any country or territory in which the Company is incorporated or carries on business or to the jurisdiction of whose courts it is subject, which corresponds in that country or territory with or is analogous to any of the events mentioned in paragraphs (a) to (c) (inclusive) above;

**"Liability"** means any present and future liability or obligation now or in the future due, owing or incurred in any currency, whether actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, including:

- (a) any permitted novation, deferral or extension of that liability or obligation;

- (b) any further advance which may be made under any agreement expressed to be supplemental to any document in respect of that liability or obligation, together with all related interest, fees and costs;
- (c) any claim for damages or restitution in the event of rescission of that liability or obligation or otherwise;
- (d) any claim flowing from any recovery by a payment or discharge in respect of that liability or obligation on grounds of preference or otherwise; and
- (e) any amount (such as post-insolvency interest) which would be included in any of the above but for its discharge, non-provability, unenforceability or non-allowability in any insolvency or other proceedings;

**"Maturity Date"** has the meaning given to it in the Conditions;

**"New Trustee"** has the meaning given to it in Clause 14.3 (*The Trustee*).

**"Original Trust Deed"** means the trust deed dated on or about the Initial Issue Date between the Company and the Trustee constituting the Initial CULS;

**"Party"** means a party to this Agreement;

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations), whether in respect of principal, interest or any other amount;

**"Permitted Conversion"** means a conversion of the CULS into ordinary shares of the Company in accordance with the Conditions and the Trust Deed;

**"Permitted Subordinated Payment"** has the meaning given to such term in Clause 3.1(b) (*Undertakings of the Company to the Senior Creditors*);

**"Relevant CULS Default"** has the meaning given to it in Clause 7.2 (*Permitted Enforcement by Subordinated Creditors*);

**"Security Interest"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**"Senior Creditor"** means:

- (a) each Initial Senior Creditor; and
- (b) each Additional Senior Creditor;

**"Senior Debt"** means all Liabilities payable or owing by the Company to a Senior Creditor under or in connection with the Senior Documents;

**"Senior Default"** means the occurrence of an event of default (however described), other than a Senior Payment Default, which entitles any creditor of the Company to declare any Senior Debt of the Company due and payable prior to its specified maturity;

**"Senior Discharge Date"** means the date on which all Senior Debt has been fully and irrevocably discharged to the satisfaction of the Senior Representative and all commitments of the Senior Creditors to the Company have been terminated or cancelled in accordance with the Senior Documents;

**"Senior Documents"** means:

- (a) the Initial Senior Documents; and
- (b) any Additional Senior Documents;

**"Senior Payment Default"** means the occurrence of any of the following:

- (a) any Senior Debt is not paid when due nor within any originally applicable grace period;
- (b) any Senior Debt is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default or mandatory prepayment or repayment obligation (in each case, however described); or
- (c) any commitment for Senior Debt is cancelled or suspended by a creditor of the Company in accordance with the terms of the relevant Senior Debt Documents as a result of an event of default or mandatory prepayment or repayment obligation (in each case, however described);

**"Senior Representative"** means:

- (a) each Initial Senior Representative; and
- (b) each Additional Senior Representative;

**"Subordinated Creditor"** means:

- (a) each CULS Holder; and
- (b) the Trustee;

**"Subordinated Debt"** means all Liabilities payable or owing by the Company to a Subordinated Creditor under or in connection with any Subordinated Document, but excluding any Trustee Fees and Expenses;

**"Subordinated Documents"** means:

- (a) each CULS in certificated form; and
- (b) the Trust Deed;

**"Subordination Period"** means the period beginning on the date of this Agreement and ending on the Senior Discharge Date;

**"Subsidiary"** means a subsidiary of the Company and shall have the meaning given to such term by section 531 of the Companies (Guernsey) Law 2008 (as amended) excluding the provision of section 531(6) so that overseas companies shall be included and excluding any body corporate (in this definition, an **"entity"**) whose accounts are not included in the then latest published audited consolidated accounts of the Company or, in the case of an entity which has first become a subsidiary of the Company since the date as at which any such audited accounts were prepared, would not have been so included or consolidated if it had become so on or before that date;

**"Supplemental Trust Deed"** means the supplemental trust deed to the Trust Deed to be entered into by the Company and the Trustee on or about the Further Issue Date constituting the Further CULS;



**"Term Loan Credit Agreement"** means the credit agreement dated 16 June 2014 between, among others, the Company (as borrower) and the Initial Senior Representative (as administrative and collateral agent);

**"Trust Deed"** means the Original Trust Deed as may be supplemented, amended or varied from time to time (including, without limitation, by the Supplemental Trust Deed);

**"Trustee Fees and Expenses"** means:

- (a) the normal remuneration of the Trustee accrued under clause 18.1 of the Trust Deed (as in effect on the date of this Agreement);
- (b) any extra remuneration and all costs, charges, liabilities and expenses incurred by the Trustee pursuant to clauses 18.2, 18.3 or 18.5 of the Trust Deed (as in effect on the date of this Agreement); and
- (c) any stamp duties, registration taxes, capital duties and other similar duties or taxes (if any) payable pursuant to clause 4 of the Trust Deed (as in effect on the date of this Agreement),

if and to the extent (in relation to paragraphs (b) and (c) above) that such payment is made to the Trustee for its own account only (and not for the account of the CULS Holders).

## 1.2 Construction

- (a) In this Agreement, unless the context otherwise requires:
  - (i) a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's respective successors and permitted assignees or permitted transferees;
  - (ii) references to Clauses, paragraphs, sub-paragraphs and Schedules are references to, respectively, clauses, paragraphs, sub-paragraphs of and schedules to this Agreement and references to this Agreement include its schedules;
  - (iii) a reference to (or to any specified provision of) any agreement or document (including a Senior Document) is to be construed as a reference to that agreement or document (or that provision) as it may have been or hereafter be, from time to time, amended, varied, extended, supplemented, restated or novated;
  - (iv) a reference to a statute or statutory instrument or any provision thereof is to be construed as a reference to that statute or statutory instrument or such provision thereof as it may be amended or re-enacted from time to time;
  - (v) a time of day is a reference to London time;
  - (vi) the index to and the headings in this Agreement are inserted for convenience only and are to be ignored in construing this Agreement;
  - (vii) if there is any inconsistency between the terms of this Agreement and the terms on which the Subordinated Debt was incurred by a Subordinated Creditor, the terms of this Agreement shall prevail until (and including) the Senior Discharge Date; and
  - (viii) words importing the plural shall include the singular and *vice versa*.

- (b) A CULS Default is "**continuing**" if it has not been remedied or waived. A Senior Default or Senior Payment Default shall cease to be "**continuing**" only in accordance with Clause 3.5(b).
- (b) In determining whether any Liabilities have been fully and finally discharged, the relevant Senior Representative will disregard contingent liabilities (such as the risk of claw back from a preference claim), except to the extent it reasonably believes there is a reasonable likelihood that those contingent liabilities will become actual liabilities.
- (c) References to a Senior Representative acting on behalf of Senior Lenders means such Senior Representative acting on behalf of the Senior Lenders which it represents or, if applicable, with the consent of the requisite number of Senior Lenders required under and in accordance with the applicable Senior Documents for which it is a Senior Representative. A Senior Representative will be entitled to seek instructions from the Senior Lenders which it represents to the extent required by the applicable Senior Documents for which it is a Senior Representative as to any action to be taken by it under this Agreement.
- (d) References to the Trustee acting on behalf of CULS Holders means the Trustee acting on behalf of the CULS Holders it represents or, if applicable, with the consent of the requisite number of CULS Holders required under and in accordance with the Trust Deed. The Trustee shall be entitled to seek instructions from the CULS Holders which it represents to the extent required by the Trust Deed as to any action to be taken by it under this Agreement.

### 1.3 **Third Party Rights**

- (a) A person who is not Party has no right to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject (in the case of the Trustee) to the terms of the Trust Deed and notwithstanding any term of any Senior Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

### 1.4 **Loan Document**

This Agreement is designated a Loan Document for the purposes of the Term Loan Credit Agreement.

## 2. **RANKING OF SENIOR DEBT AND SUBORDINATED DEBT**

- 2.1 The Senior Debt and the Subordinated Debt will rank for all purposes and at all times in the following order:
  - (a) first, the Senior Debt and the Trustee Fees and Expenses *pari passu* as between themselves; and
  - (b) second, the Subordinated Debt.
- 2.2 This Agreement does not purport to rank any of the Senior Debt as between themselves or any of the Subordinated Debt as between themselves.

## 3. **UNDERTAKINGS OF THE COMPANY**

### 3.1 **Undertakings of the Company to the Senior Creditors**

- (a) During the Subordination Period and except as provided below, the Company undertakes to the Senior Creditors that it shall not:

- (i) make any Payment in respect of any Subordinated Debt, whether in cash or kind from any source;
  - (ii) allow any Subsidiary to acquire any of the Subordinated Debt (including, without limitation, by way of sub-participation or any other agreement or arrangement having an economic effect substantially similar to a sub-participation) or knowingly acquire a beneficial interest in all or any part of the share capital of a company to whom any Subordinated Debt is owed;
  - (iii) exercise any set-off or exercise any similar actions in relation to any Subordinated Debt;
  - (iv) allow to exist or receive the benefit of any Security Interest, guarantee, indemnity or other assurance against loss in respect of any Subordinated Debt;
  - (v) convert any Subordinated Debt into shares of the Company or any other member of the Group;
  - (vi) allow any Subordinated Debt to be subordinated to any person other than in accordance with this Agreement; or
  - (vii) take or omit to take any action which could reasonably be expected to impair the priority or subordination achieved or intended to be achieved by this Agreement.
- (b) Notwithstanding paragraph (a) above, the Company may:
- (i) do anything prohibited by paragraph (a) above with the prior written consent of the Senior Representative(s);
  - (ii) make any repayment in respect of the principal amount of the CULS on the Maturity Date provided that:
    - (A) no Senior Default has occurred and is continuing; or
    - (B) no Senior Payment Default has occurred and is continuing,
 and no Senior Default or Senior Payment Default would occur or arise as a result of such repayment;
  - (iii) make an optional payment or prepayment of the CULS pursuant to Condition 7.2 provided that:
    - (A) no Senior Default has occurred and is continuing; or
    - (B) no Senior Payment Default has occurred and is continuing; or
    - (C) no Insolvency Event has occurred which has not been discharged;
  - (iv) redeem the CULS on the occurrence of a Relevant Event (as that term is defined in the Conditions) pursuant to Condition 7.4 provided that:
    - (A) no amendment is made to Condition 7.4 or to the definition of Relevant Event or to any related provision after the date of this Agreement without the prior written consent of the Senior Representative(s); and

- (B) before that redemption, all outstanding amounts of the Senior Debt will have been repaid in full,

and provided further that:

- (C) no Senior Default has occurred and is continuing; or
  - (D) no Senior Payment Default has occurred and is continuing; or
  - (E) no Insolvency Event has occurred which has not been discharged;
- (v) effect a Permitted Conversion; and
- (vi) make any payment of interest in respect of the CULS in accordance with the Conditions or payment of any other amount to the Trustee (solely in its capacity as trustee) in respect of the Subordinated Debt if, in each case, such payment is payable under the Trust Deed (as in effect on the date of this Agreement) or the Conditions (as in effect on the date of this Agreement) on the due date therefor provided that:
- (A) no Senior Default has occurred and is continuing; or
  - (B) no Senior Payment Default has occurred and is continuing; or
  - (C) no Insolvency Event has occurred which has not been discharged; and
- (vii) make any payment of any amount due and payable under the Conditions or the Trust Deed (as in effect on the date of this Agreement) in respect of the Subordinated Debt following the taking of any Enforcement Action permitted to be taken in accordance with this Agreement by the Subordinated Creditors provided that the proceeds thereof are promptly applied by, or turned over by, the recipient of such sum in accordance with the terms of this Agreement (including, without limitation, Clause 2 (*Ranking of Senior Debt and Subordination Debt*) and Clause 6 (*Turnover of Receipts*),

(any payment permitted by sub-paragraphs (i), (ii), (iii), (iv), (vi) or (vii) above, a **"Permitted Subordinated Payment"**).

### 3.2 Undertakings of Subordinated Creditors to Senior Creditors

- (a) During the Subordination Period and except as provided below, the Trustee undertakes to the Senior Creditors that it shall not on behalf of any CULS Holder (and no CULS Holder shall be permitted to exercise any right under the Trust Deed):
  - (i) to demand or receive Payment of, or any distribution in respect or on account of, any Subordinated Debt, whether in cash or in kind or allow any Subordinated Debt owed to it to be discharged;
  - (ii) to exercise any set-off or other similar rights in relation to any Subordinated Debt;
  - (iii) to receive the benefit of any Security Interest, guarantee, indemnity or other assurance against loss in respect of any Subordinated Debt;
  - (iv) to convert any Subordinated Debt into shares of the Company or any other member of the Group;

- (v) to take any step that results in any Subordinated Debt to be subordinated to any other person otherwise than in accordance with this Agreement; or
  - (vi) to take or omit to take any action which could reasonably be expected to impair the priority or subordination achieved or intended to be achieved by this Agreement.
- (b) Notwithstanding paragraph (a) above, any Subordinated Creditor may:
- (i) do anything prohibited by paragraph (a) above with the prior written consent of the Senior Representative(s);
  - (ii) receive any Permitted Subordinated Payment; and
  - (iii) participate in a Permitted Conversion.

### 3.3 **Effect of a Senior Default or Senior Payment Default**

- (a) Any failure by the Company to make a Payment to a Subordinated Creditor due under the Subordinated Documents as a result of the occurrence of a Senior Default or Senior Payment Default shall not constitute a CULS Default of any kind under the Conditions.
- (b) Notwithstanding paragraph (a) of this Clause:
- (i) nothing in this Clause shall prevent the service of a CULS Enforcement Notice by the Trustee on behalf of the Subordinated Creditors;
  - (ii) the Company shall not be released from the obligation to make Payment to Subordinated Creditors under the Subordinated Documents by the operation of Clause 3 (*Undertakings of the Company*), even if its obligation to make such Payment is restricted at any time by the terms of thereof; and
  - (iii) the accrual and/or capitalisation of interest (if any) in accordance with the Subordinated Documents shall continue notwithstanding the occurrence of a Senior Default or Senior Payment Default.

### 3.4 **Cure of a CULS Enforcement Notice**

If:

- (a) at any time following the occurrence of a Senior Default or Senior Payment Default, such Senior Default or Senior Payment Default ceases to be continuing; and
- (b) the Company promptly pays to the Subordinated Creditors an amount equal to any Payments to such Subordinated Creditors which have accrued under the Subordinated Documents and which would have been Permitted Payments but for such Senior Default or Senior Payment Default,

then, any CULS Enforcement Notice which may have been issued as a result thereof shall be automatically waived immediately without any further action being required on the part of the Trustee.

### 3.5 **Notice and cure of a Senior Default and/or Senior Payment Default**

- (a) Following the occurrence of a Senior Default or Senior Payment Default, the Company shall promptly (and any Senior Representative may at any time) notify the Trustee in writing of the occurrence thereof but any failure by the Company (or

omission by the Senior Representatives) to deliver any such notice shall not affect whether or not a Senior Default or Senior Payment Default has occurred.

- (b) A Senior Default or Senior Payment Default (as the case may be) shall cease to be continuing upon the earliest to occur of:
  - (i) the date on which the relevant Senior Representative(s) delivers a notice in writing to the Company and the Trustee (such notice not to be unreasonably withheld or delayed) confirming that, for the purposes of this Agreement, such Senior Default or Senior Payment Default (as the case may be) is waived, remedied or cured in accordance with the relevant Senior Documents or otherwise ceases to exist; and
  - (ii) the full and final discharge to the satisfaction of the relevant Senior Representative(s), whether or not as a result of enforcement, of the Senior Liabilities.
- (c) The Company shall, promptly upon a Senior Default or Senior Payment Default ceasing to be continuing, notify the Trustee in writing of the same.

#### **4. AMENDMENTS TO THE SUBORDINATED DOCUMENTS**

During the Subordination Period, neither the Company nor any Subordinated Creditor may amend, waive or release any term of any Subordinated Document without the prior written consent of the Senior Representative(s) (such consent not to be unreasonably withheld or delayed), except for an amendment, waiver or release:

- (a) which in the opinion of Trustee (acting in accordance with the Trust Deed), is proper to make and is of a formal, minor or technical nature, or to correct a manifest error; or
- (b) if the Company has delivered a certificate signed by two directors to the Trustee and each Senior Representative no later than 15 days before such amendment, waiver or release it to take effect certifying that such amendment, waiver or release would not prejudice any Senior Debt, any Senior Creditor or impair the subordination achieved or intended to be achieved by this Agreement.

#### **5. SUBORDINATION ON INSOLVENCY**

##### **5.1 Subordination**

Prior to the Senior Discharge Date, upon the occurrence of an Insolvency Event, the claims against the Company in respect of Subordinated Debt will be postponed and subordinated in right of payment to the claims against the Company in respect of the Senior Debt and the Trustee's Fees and Expenses.

##### **5.2 Exercise of Rights**

Prior to the Senior Discharge Date, upon the occurrence of an Insolvency Event:

- (a) the Appointed Senior Representative may:
  - (i) determine whether the Subordinated Creditors may claim, enforce and prove for any Subordinated Debt;
  - (ii) file claims and proofs, give receipts and take any proceedings as it considers reasonably necessary to recover that Subordinated Debt;

- (iii) do anything which it sees fit to recover that Subordinated Debt (but may not waive or (unless such discharge arises as a result of other steps taken under this Clause) discharge the Subordinated Debt without the consent of the Trustee); and
  - (iv) receive all distributions on that Subordinated Debt (up to a maximum of an amount equal any shortfall with respect to the Senior Debt) for application against the Senior Debt and any amount in excess thereof shall be paid to the Trustee or, if the Trustee so directs, to the liquidator for application in accordance with the Trust Deed;
- (b) if and to the extent that the Appointed Senior Representative is not entitled to do anything mentioned in paragraph (a) above or does not wish to do so, the Trustee must, on behalf of each CULS Holder, so far as is permitted by law (at the expense of the Senior Creditors *pro rata* and *pari passu*), do so in good time and as requested by the Appointed Senior Representative, subject, in the case of the Trustee, to it being indemnified and/or secured and/or prefunded to its satisfaction by the Company or the CULS Holders, and each CULS Holder shall be deemed to have agreed to the taking of such action;
- (c) the Trustee irrevocably authorises the Appointed Senior Representative to take any action referred to in paragraph (a) above and each CULS Holder shall be deemed to have agreed to such authorisation; and
- (d) the Trustee shall, upon receiving notice in writing from any Senior Representative of the occurrence of any Insolvency Event and at the Company's expense:
  - (i) hold all payments and distributions in cash or in kind received or receivable by it in respect of any Subordinated Debt from the Company or from any other source (up to a maximum of an amount equal to the Senior Debt as notified to it in writing by the Appointed Senior Representative) on trust for the Appointed Senior Representative (on behalf of the Senior Creditors);
  - (ii) promptly pay and transfer any such payment or distribution it actually receives under paragraph (i) above in its capacity as trustee to the Appointed Senior Representative (or as it may direct) for application first against the Senior Debt; and
  - (iii) direct the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of the Company or their proceeds to pay all payments and distributions on the Subordinated Debt (up to a maximum of an amount equal to the Senior Debt as notified to it in writing by the Appointed Senior Representative) directly to the Appointed Senior Representative (or as it may direct).

### 5.3 Further assurance

- (a) Subject to paragraph (b) below, the Trustee shall, at the Company's expense, take whatever action the Appointed Senior Representative may require to give effect to this Clause and each CULS Holder shall be deemed to have consented to the taking of any such action.
- (b) The Parties acknowledge and agree that no provision of this Agreement shall require the Trustee to do anything which could be expected (i) to be illegal or contrary to applicable law or regulation; or (ii) to cause it to expend or risk its own funds or (but without prejudice to its obligation to comply with the express provisions of this Agreement, so long as it may do so without expending or risking

its own funds) otherwise incur any liability in the performance of any of its duties or in the exercise of any of its rights, powers or discretions hereunder.

## **6. TURNOVER OF RECEIPTS**

### **6.1 Non-permitted receipts**

If:

- (a) any Subordinated Creditor receives or recovers a Payment or other distribution (including by way of set-off) in respect of any of the Subordinated Debt from the Company other than as allowed under this Agreement; or
- (b) any Subordinated Creditor receives the proceeds of any enforcement of any Security Interest or any guarantee or other assurance against financial loss for any Subordinated Debt,

that Subordinated Creditor shall hold the amount received or recovered by it (including by way of set-off) (up to a maximum of an amount equal to the Senior Debt as notified to it in writing by the Appointed Senior Representative) on trust for the Appointed Senior Representative (on behalf of the Senior Creditors) and:

- (i) immediately pay that amount, less any properly incurred and documented third party costs and expenses (if any) incurred by it in recovering that amount, to the Appointed Senior Representative (or as it may direct) for application against the Senior Debt in accordance with this Agreement; and
- (ii) if the amount received by the Appointed Senior Representative is more than the Senior Debt, the Appointed Senior Representative must promptly pay (or procure payment of) the excess amount to the Trustee for application against the Subordinated Debt,

provided that the Trustee shall only be obliged under this Clause to pay to the Appointed Senior Representative amounts actually received or recovered by it (including by way of set-off) in its capacity as Trustee and held on trust in such capacity and nothing shall oblige it to pay any amount equivalent to that distributed in accordance with the terms of the Trust Deed where the Trustee (having made reasonable enquiries in respect thereof, including as to its obligations under this Agreement) is unaware of any matter or thing that would have prevented it from making such distribution.

### **6.2 Non-permitted discharge**

If, for any reason, any of the Subordinated Debt is discharged by a Subordinated Creditor in any manner other than as allowed under this Agreement, that Subordinated Creditor must immediately pay an amount (in the case of the Trustee, up to the amount then held on trust by it in its capacity as Trustee), equal to the amount discharged, less any properly incurred and documented third party costs and expenses (if any) incurred by it in recovering that amount, to the Appointed Senior Representative (or as it may direct) for application against the Senior Debt *pari passu* in the manner set out in sub-paragraphs (i) and (ii) of Clause 6.1 (*Non-permitted receipts*) above, as if such amount had been received in the circumstances set out in paragraphs (a) or (b) of that Clause. Notwithstanding the foregoing of this Clause 6.2, nothing shall oblige the Trustee to pay any amount equivalent to that distributed in accordance with the terms of the Trust Deed where the Trustee (having made reasonable enquiries in respect thereof, including as to its obligations under this Agreement) is unaware of any matter or thing that would have prevented it from making such distribution.



## 7. ENFORCEMENT BY SUBORDINATED CREDITORS

### 7.1 Restriction on Enforcement by Subordinated Creditors

During the Subordination Period, no Subordinated Creditor may take any Enforcement Action against the Company in respect of any of the Subordinated Debt.

### 7.2 Permitted Enforcement by Subordinated Creditors

(a) The restriction in Clause 7.1 (*Restriction on Enforcement by Subordinated Creditors*) shall not apply in respect of the Subordinated Debt:

(i) if:

(A) a CULS Default (other than as described or referred to in subparagraphs (ii) or (iii) below) (the "**Relevant CULS Default**") has occurred and is continuing;

(B) the Senior Representative(s) has or have received from the Trustee written notice of the Relevant CULS Default specifying the event or circumstance giving rise thereto;

(C) a CULS Standstill Period with respect to the Relevant CULS Default has elapsed or otherwise terminated, even if, at the end of the CULS Standstill Period or, at any later time, a further CULS Standstill Period has begun as a result of any other CULS Default; and

(D) the Relevant CULS Default is continuing at the end of the relevant CULS Standstill Period;

(ii) in circumstances where the Senior Creditors take any Enforcement Action against the Company, provided that the Trustee (on behalf of the CULS Holders) may only take the same (and no other) Enforcement Action against the Company as that taken by the Senior Creditors and not against any other member of the Group; or

(iii) unless otherwise directed by the Appointed Senior Representative or the Appointed Senior Representative has taken, or has given notice that it intends to take, action on behalf of the Subordinated Creditors in accordance with Clause 5.2 (*Exercise of Rights*) in respect of any Enforcement Action in the insolvency of the Company for any Subordinated Debt if a failure to make such claim would result in no subsequent claim being permitted by law in respect of that Subordinated Debt and that Subordinated Creditor (A) takes no other action and (B) applies any proceeds arising from such claim in accordance with Clause 6.1 (*Non-permitted receipts*).

(b) Promptly upon the occurrence of a CULS Default, the Trustee shall, by notice (a "**CULS Enforcement Notice**") in writing, notify the Senior Representatives of the occurrence of such CULS Default.

### 7.3 CULS Standstill Period

In relation to a Relevant CULS Default, a "**CULS Standstill Period**" shall mean the period beginning on the date (the "**CULS Standstill Period Start Date**") the Senior Representative(s) receive(s) a CULS Enforcement Notice in respect of such Relevant CULS Default and ending on the earliest to occur of:

(a) the date falling 179 days after the CULS Standstill Period Start Date;

- (b) the date of an Insolvency Event (other than where the Insolvency Event occurs as a result solely of action taken by the Trustee in relation to any Subordinated Creditors);
- (c) the expiry of any CULS Standstill Period outstanding at the date of such first mentioned CULS Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy); and
- (d) the date on which the Senior Representatives consent to the taking of Enforcement Action in respect of that Relevant CULS Default by the Subordinated Creditors.

## 8. **CONSENTS**

- 8.1 No Subordinated Creditor will have any remedy against any Senior Creditor by reason of any transaction entered into between a Senior Creditor and the Company (including any Senior Document) which may conflict with or constitute a default under any Subordinated Document.
- 8.2 Provided always that the Trustee is notified in writing, any waiver or consent granted by or on behalf of any Senior Creditor in respect of any Senior Document will also be deemed to have been given by each Subordinated Creditor, if any transaction or circumstance would, in the absence of that waiver or consent by that Subordinated Creditor, conflict with a term of or constitute a default under any Subordinated Document. Notwithstanding the foregoing of this Clause, no such waiver or consent shall relate to any of the protections afforded to the Trustee under the Trust Deed or any provision or matter affecting the Trustee in a personal capacity.

## 9. **PROTECTION OF SUBORDINATION OF SUBORDINATED DEBT TO SENIOR DEBT**

### 9.1 **Continuing subordination**

The subordination provisions in this Agreement in respect of Subordinated Debt constitute a continuing subordination and will benefit the ultimate balance of all of the Senior Debt, regardless of any intermediate payment or discharge in whole or in part.

### 9.2 **Waiver of defences**

The subordination of Subordinated Debt in this Agreement and the obligations of the Subordinated Creditors under this Agreement will not be affected by any act, omission, matter or thing (whether or not known to the Subordinated Creditors or any Senior Creditor) which, but for this provision, would reduce, release or prejudice the subordination or any of those obligations, including:

- (a) any time or waiver granted to, or composition with, any person;
- (b) any release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment of a Senior Document or any other document or security;

- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Senior Document or any other document or security; or
- (h) any insolvency or similar proceedings.

### 9.3 **Immediate recourse**

Each Subordinated Creditor waives any right it may have of first requiring any Senior Creditor (or any trustee or other agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming the benefit of this Agreement.

### 9.4 **Appropriations**

Prior to the Senior Debt Discharge Date, the Senior Creditors may, subject to the provisions of this Agreement:

- (a) apply any moneys received under this Agreement to any item of account or liability in respect of the Senior Debt in such order or in such manner as they may determine in accordance with the Senior Documents; and
- (b) hold any moneys or distributions received under this Agreement in a suspense account (bearing interest at a market rate usual for accounts of that type) unless and until such moneys are sufficient in aggregate in order to bring about the Senior Discharge Date.

### 9.5 **Non-competition**

Until the Senior Debt Discharge Date, no Subordinated Creditor, unless otherwise directed by the Appointed Senior Representative or as permitted by this Agreement, will under any circumstance in respect of the Subordinated Debt:

- (a) be subrogated to any rights, security or moneys held, received or receivable by any Senior Creditor (or any trustee or other agent on its behalf) or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Subordinated Creditor's liability under this Agreement;
- (b) claim, rank, prove or vote as a creditor of any person or estate in competition with any Senior Creditor (or any trustee or other agent on its behalf); or
- (c) receive, claim or have the benefit of any payment, distribution or security from or on account of any person,

in each case, other than as permitted by this Agreement.

### 9.6 **Subrogation by the Subordinated Creditors**

If any Senior Debt is paid out of any proceeds received in respect of or on account of the Subordinated Debt in accordance with this Agreement, the Subordinated Creditors will, to that extent, be subrogated to the Senior Debt so paid (and all securities and guarantees for that Senior Debt) but not before the Senior Debt Discharge Date.

## 10. **INFORMATION BY SUBORDINATED CREDITORS**

The Trustee shall, on request by any Senior Representative, notify all Senior Representatives of details of the principal outstanding amount of the Subordinated Debt and shall exercise its rights under the Trust Deed to ascertain the same from the agent appointed from time to time as the Company's transfer and/or paying agent under the CULS.

## **11. PRESERVATION OF SUBORDINATED DEBT**

Notwithstanding any term of this Agreement postponing, subordinating or preventing the payment of any of the Subordinated Debt:

- (a) that Subordinated Debt will, solely as between the Company and each Subordinated Creditor, remain owing or due and payable in accordance with the terms of the relevant Subordinated Documents; and
- (b) interest and default interest will accrue on payments due but unpaid accordingly.

## **12. RESPONSIBILITY OF THE APPOINTED SENIOR REPRESENTATIVE**

### **12.1 Rights and responsibility of the Appointed Senior Representative**

The Appointed Senior Representative will not be liable to any Subordinated Creditor for the manner of exercise of or for any non-exercise of its powers under this Agreement or failure to collect or preserve any Subordinated Debt.

### **12.2 Indemnity**

The Company hereby indemnifies the Appointed Senior Representative (and every attorney appointed by it) in respect of any loss or liability incurred by it in connection with the exercise or purported exercise by it of any of its rights, powers and discretions under this Agreement, unless that liability or loss arises as a result of the Appointed Senior Representative's negligence or wilful misconduct or breach of any provision of this Agreement.

### **12.3 Non-derogation**

Nothing contained in this Agreement in any manner affects the rights or remedies of any Senior Creditor under any Senior Document.

## **13. TREATMENT OF DISTRIBUTION IN RESPECT OF THE SUBORDINATED DEBT**

### **13.1 Non-cash distributions**

If any Senior Creditor receives any distribution otherwise than in cash in respect of the Subordinated Debt from the Company or from any other source, the Senior Debt will not be deemed reduced by the distribution until and except to the extent that the realisation proceeds are applied in cash towards the Senior Debt in accordance with this Agreement.

### **13.2 Transfer of distributions**

Until the Senior Debt Discharge Date, the Trustee (at the Company's expense) and the Company shall, subject to Clause 5.2 (*Exercise of rights*), do anything which any Senior Representative may reasonably require as being necessary or desirable to transfer to the Appointed Senior Representative Agent all payments and distributions which must be made to or held on trust for the Senior Creditors pursuant to this Agreement, including endorsements and execution of formal transfers.

### **13.3 Currencies**

- (a) All moneys received or held by a Senior Creditor under this Agreement at any time on or after the enforcement of this Agreement in a currency other than a currency in which the Senior Debt is denominated may be sold for any one or more of the currencies in which the Senior Debt is denominated and which the relevant Senior Representative considers necessary or desirable.

- (b) The Company hereby indemnifies the Senior Creditors against any loss or liability incurred in relation to any sale, unless that loss or liability arises as a result of such Senior Creditor's negligence, wilful misconduct or breach of any provision of this Agreement. The Senior Creditors will have no liability to any Party in respect of any loss resulting from any fluctuation in exchange rates after any such sale.

#### 14. **CHANGES TO THE PARTIES**

##### 14.1 **The Company**

During the Subordination Period, the Company shall not assign or transfer any of its rights or obligations under this Agreement without the prior consent of the Senior Representatives.

##### 14.2 **The Senior Representatives**

The Company shall procure that no person shall become an agent, trustee, security agent, security trustee or similar representation in respect of any Senior Debt unless, at the same time, it accedes to this Agreement as an Additional Senior Representative in accordance with Clause 15 (*Changes to Senior Debt*).

##### 14.3 **The Trustee**

- (a) The existing Trustee shall not resign, nor shall the Company replace or substitute the existing Trustee, unless, at the same time, the replacement or substitute trustee (the "**New Trustee**") to be appointed for and on behalf of the CULS Holders accedes to this Agreement as a New Trustee in accordance with this Clause.
- (b) A New Trustee shall accede to this Agreement by delivering to the Appointed Senior Representative an Accession Agreement, duly executed by the New Trustee and the Company, together with a copy of any supplemental trust deed or amendment to the Trust Deed to be executed by the New Trustee to effect its appointment.
- (c) No consent is required from any Senior Representative in order for a New Trustee to accede to this Agreement. Upon receipt of a duly executed Accession Agreement from the New Trustee, the Appointed Senior Representative shall counter-sign it on behalf of the other Senior Representatives (and each other Senior Representative hereby authorises the Appointed Senior Representative to execute such Accession Agreement on its behalf), whereupon the New Trustee shall accede to this Agreement and shall have all the rights, benefits and obligations of the Trustee as if it were the existing Trustee.

#### 15. **CHANGES TO SENIOR DEBT**

##### 15.1 If:

- (a) the Company refinances, replaces, renews or increases any Senior Debt;
- (b) borrows or incurs any Liabilities which are to constitute Senior Debt under this Agreement; or
- (c) any existing Senior Representative is to be replaced,

the Company shall:

- (i) give not less than 10 Business Days' notice to the existing Senior Representatives and the Trustee of (A) such refinancing, replacement or renewal of Senior Debt, borrowing or incurrence of further Liabilities or

replacement of existing Senior Representative and (B) the details of the person to accede to this Agreement as an Additional Senior Representative and (if applicable) the Additional Senior Creditors which it is to represent under this Agreement; and

- (ii) deliver to the Appointed Senior Representative (with a copy to the Trustee) a Accession Agreement, duly executed by the Additional Senior Representative and the Company, together with a copy of the document to be designated as an Additional Senior Document.

15.2 No consent is required from any Subordinated Creditor in order for (a) a document to be designated as an Additional Senior Document in accordance with this Clause; (b) an Additional Senior Representative to become a party to this Agreement; or (c) a person or persons to be designated as Additional Senior Creditors in accordance with this Clause.

15.3 Without prejudice to the Subordinated Documents, no consent is required from any Subordinated Creditor under this Agreement in order for the Company to increase the amount of any Senior Debt or the aggregate amount of all Senior Debt.

15.4 On the date of counter-signature by the Appointed Senior Representative of an Accession Agreement duly executed by the Additional Senior Representative and the Company:

- (a) such Additional Senior Representative will become Party to this Agreement;
- (b) (if applicable) the lenders or creditors which such Additional Senior Representative represents will be designated Additional Senior Lenders; and
- (c) (if applicable) the relevant document will be designated as an Additional Senior Document,

and, by the execution of the Accession Agreement by the Additional Senior Representative and the Company and the counter-signature by the Appointed Senior Representative, any Additional Senior Debt shall have all the rights, benefits and obligations enjoyed by the Senior Debt under this Agreement.

15.5 Each Senior Representative authorises the Appointed Senior Representative to execute any Accession Agreement on its behalf.

15.6 On the unconditional and irrevocable repayment in full of all any Senior Debt, the relevant Senior Representative will, as soon as reasonably practicable following a written request by the Company, confirm the same in writing to the other Senior Representatives, the Trustee and the Company.

## 16. **NOTICES**

### 16.1 **Mode of Service**

- (a) Except as specifically provided otherwise in this Agreement, any notice, demand, consent, agreement or other communication (a "**Notice**") to be served under or in connection with this Agreement will be in writing, in English and will be made by letter or by facsimile transmission to the party to be served.
- (b) The address and facsimile number of each Party for the purposes of this Clause are:
  - (i) in the case of the Company:

Address: PO Box 255  
Trafalgar Court

Les Banques  
St Peter Port  
Guernsey GY1 3QL

Facsimile: +44 (0)1481 745368

Attention: Company Secretary, JZ Capital Partners Limited

(ii) in the case of the Initial Senior Representative:

Address: 520 Madison Avenue  
New York, NY 10022  
United States of America

Facsimile: +1 212 284 3444

Attention: JZ Capital Account Manager

(iii) in the case of the Trustee:

Address: Fifth Floor  
100 Wood Street  
London EC2V 7EX

Facsimile: +44 (0)20 7606 0643

Attention: Manager, Commercial Trusts (reference: 200935)

(iv) and, in the case of any Party which accedes to this Agreement, the address and facsimile number which are stated in the relevant Accession Agreement.

(c) Any Notice to be served by any Party will be effective only if it is expressly marked for the attention of the department or officer (if any) specified in conjunction with the relevant address and facsimile number referred to in this Clause.

## 16.2 Deemed Service

(a) Subject to Clause 16.2(b), a Notice will be deemed to be given as follows:

- (i) if by letter, when delivered by hand or by courier; and
- (ii) if by facsimile, when delivered.

(b) A Notice given under Clause 16.2(a) but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

## 17. MISCELLANEOUS

### 17.1 Power of attorney for the obligations of the Subordinated Creditors

The Trustee (on behalf of each CULS Holder), by way of security for the obligations of that Subordinated Creditor under this Agreement, irrevocably and severally appoints (and each CULS Holder shall be deemed to have appointed) the Appointed Senior Representative and any of its delegates or sub-delegates to be its attorney to take any action, in such manner as the attorney sees fit, which any Subordinated Creditor is obliged to take under this Agreement but has failed to take within five Business Days of a written notice from any Senior Representative (unless an Event of Default is outstanding, in which case no such notice shall be required), provided that such attorney shall not be entitled to take

any action that imposes new or additional obligations on, releases the rights or protections of, or alters the rights, obligations or protections of, the Trustee. The Trustee (on behalf of each CULS Holder) ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause.

**17.2 Certificates and determinations**

Any certification or determination by a Senior Creditor of a rate or amount under this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**17.3 Amendments**

No amendment of this Agreement shall be binding on any Party unless evidenced in a written document executed by such Party.

**17.4 Termination**

Unless otherwise agreed in writing by the Parties, this Agreement shall remain valid and in force until the Maturity Date.

**18. SEVERABILITY**

If a term of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
- (b) the legality, validity or enforceability in any other jurisdiction of that or any other term of this Agreement.

**19. WAIVERS AND REMEDIES CUMULATIVE**

**19.1 The rights of each Senior Creditor under this Agreement:**

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

**19.2 Delay in exercise or non-exercise of any right is not a waiver of that right.**

**20. CONFLICT WITH AND OVERRIDE OF THE CONDITIONS AND TRUST DEED**

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Trust Deed or the Conditions to the contrary and, in the event of conflict between any provision of the Trust Deed or the Conditions and this Agreement, this Agreement shall prevail.

**21. COUNTERPARTS**

This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.



22. **GOVERNING LAW**

This Agreement, and any non-contractual obligations arising out of or in connection with it, are governed by Guernsey law.

23. **ENFORCEMENT**

23.1 The courts of Guernsey have exclusive jurisdiction to settle any dispute including a dispute relating to non-contractual obligations arising out of or in connection with this Agreement.

23.2 The Guernsey courts are the most appropriate and convenient courts to settle any such dispute and the Trustee and the Company waive objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

23.3 This Clause is for the benefit of the Senior Creditors only. To the extent allowed by law, a Senior Creditor may take:

- (a) proceedings in any other court; and
- (b) concurrent proceedings in any number of jurisdictions.

**THIS AGREEMENT** has been duly executed on the day and year first before written.

## Schedule 1

### Form of Accession Agreement

**THIS AGREEMENT** is made on [●]

#### **BETWEEN:**

- (1) **JZ CAPITAL PARTNERS LIMITED**, a non-cellular company limited by shares and incorporated in Guernsey under the Companies (Guernsey) Law 2008 (as amended) with registered number 48761 (the "**Company**");
- (2) [[●] (the "**New Trustee**")][[●] (the "**Additional Senior Representative**")]; and
- (3) [●] in its capacity as Appointed Senior Representative under the Subordination Agreement (as defined below).

#### **RECITALS:**

- (A) This agreement is supplemental to a subordination agreement dated 30 July 2014 (the "**Subordination Agreement**").
- (A) This Agreement has been entered into to record the accession of the [New Trustee][the Additional Senior Representative as a Senior Representative] to the Subordination Agreement.

**THE PARTIES AGREE** as follows:

#### **1. DEFINITIONS**

Words and expressions defined in the Subordination Agreement have the same meanings when used in this Accession Agreement.

#### **2. ACCESSION OF ADDITIONAL SUBORDINATED CREDITOR**

- 2.1 The [New Trustee][Additional Senior Representative] agrees to become, with immediate effect, a party to, and agrees to be bound by the terms of, the Subordination Agreement as if it had originally been party to the Subordination Agreement as [the Trustee][an Initial Senior Representative].
- 2.2 The [New Trustee][Additional Senior Representative] confirms that its address details for notices in relation to Clause [16] (*Notices*) of the Subordination Agreement are as follows:

Address: [●]  
Facsimile: [●]  
Attention: [●]

- 2.3 The Appointed Senior Representative confirms for itself and the other Senior Representative the acceptance of the [New Trustee][Additional Senior Representative] as [the Trustee][a Senior Representative] for the purposes of the Subordination Agreement.

#### **3. COUNTERPARTS**

This Accession Agreement may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

4. **LAW**

This Accession Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Accession Agreement) shall be governed by and construed in accordance with Guernsey law.

**THIS ACCESSION AGREEMENT** has been duly executed on the date first above written.

**Signatories to the Accession Agreement**

**The Company**

For and on behalf of )  
**JZ CAPITAL PARTNERS LIMITED** )  
 )  
 )

**[The New Trustee**

For and on behalf of )  
**[●]** )  
 )  
 )

**[The Additional Senior Representative**

For and on behalf of )  
**[●]** )  
 )  
 )

**The Appointed Senior Representative**

For and on behalf of )  
**[●]** )  
 )  
 )

**Signatories to the Subordination Agreement**

**The Company**

For and on behalf of )  
**JZ CAPITAL PARTNERS LIMITED** )  
 )  
 )

**The Initial Senior Representative**

For and on behalf of )  
**JEFFERIES FINANCE LLC** )  
 )  
 )

**The Trustee**

For and on behalf of )  
**THE LAW DEBENTURE TRUST** )  
**CORPORATION P.L.C.** )  
 )

### **SCHEDULE 3**

#### **Provisions relating to registration and transfer**

1. The Company will recognise the Holder as the absolute owner thereof and shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any CULS may be subject and the receipt of the CULS Holder for the time being of any CULS or, in the case of joint CULS Holders, the receipt of any of them for the interest from time to time accruing due in respect thereof or for any other moneys payable in respect thereof shall be a good discharge to the Company, notwithstanding any notice it may have whether express, constructive or otherwise of the right, title, interest or claim of any other person to or in such CULS, interest or moneys. No notice of any trust express, implied or constructive shall be entered on the CULS Register in respect of any CULS.
2. Every CULS Holder will be recognised by the Company as entitled to his CULS free from any equity, set-off or cross-claim on the part of the Company against the original or any intermediate CULS Holder.
3. The CULS are transferable in integral multiples of £10 in nominal amount by instrument in writing in the usual common form or such other form as the Trustee may approve. Only CULS of one series may be transferred by a single instrument of transfer.
4. Every instrument of transfer must be signed by the transferor or, where the transferor is a corporation, given under its common seal and the transferor shall be deemed to remain the owner of the CULS to be transferred until the name of the transferee is entered in the CULS Register in respect thereof provided that in the case of partly paid CULS, the instrument of transfer must also be signed by or on behalf of the transferee.
5. Every instrument of transfer must be left for registration at the place where the CULS Register shall for the time being be kept accompanied by the Certificate for the CULS to be transferred and such other evidence as the directors or other officers of the Company authorised to deal with transfers may reasonably require to prove the title of the transferor or his right to transfer the CULS and if the instrument is executed by some other person on his behalf the authority of that person to do so.
6. All instruments of transfer shall be registered without payment of any fee and will be retained by the Company.
7. The executors or administrators of a deceased CULS Holder (not being one of several joint CULS Holders) and, in the case of the death of one or more of several joint CULS Holders, the survivor or survivors of such joint CULS Holders shall be the only person or persons recognised by the Company as having any title to such CULS.
8. Any person becoming entitled to CULS in consequence of the death or bankruptcy of the CULS Holder may upon producing such evidence that he holds the position in respect of which he proposes to act under this paragraph or of his title as the Company shall reasonably think sufficient be registered himself as the CULS Holder or, subject to the preceding paragraphs as to transfer, may transfer such CULS. The Company shall be at liberty to retain the principal and interest in respect of any CULS to which any person has become entitled under this paragraph until such person shall be registered as aforesaid or shall duly transfer such CULS.
9. (a) Payment of the nominal and/or interest in respect of any CULS may be made by transfer to a Pounds Sterling account (or other account to which Pounds Sterling may be credited) maintained by a CULS Holder with a bank in the City of London as previously notified to the UK Transfer and Paying Agent or, in the absence of a bank account, by cheque posted to the registered address of the first-named

holder on the CULS Register and (in the case of redemption and/or interest payable on redemption) payment will be made against surrender of the relevant CULS Certificate at the specified office of the UK Transfer and Paying Agent. Every such cheque or warrant may be sent through the post at the risk of the relevant CULS Holder or relevant joint CULS Holders and due payment of the cheque or warrant shall be a satisfaction of the interest represented thereby.

- (b) Every cheque sent through the post pursuant to paragraph (a) above shall be sent by first class post on or before the Business Day in London next preceding the due date of the relevant nominal and or interest payment unless such due date is not a Business Day in London, in which event it shall be sent on or before the second Business Day in London next preceding the due date of the relevant payment. Where payment is to be made by transfer to a Pounds Sterling bank account, payment instructions (for value the due date or, if the due date is not a Business Day in London, for value the next succeeding Business Day in London) will be initiated (a) in the case of payments of nominal amount and interest payable on redemption, on the later of the due date for payment and (in the case of Certificated CULS only) the day on which the relevant CULS Certificate is surrendered at the specified office of the UK Transfer and Paying Agent and (b) in the case of payments of interest payable other than on redemption, on the due date for payment. CULS Holders shall not be entitled to any interest or other payment in respect of any delay in payment resulting from the due date for payment not being a Business Day in London.

## **SCHEDULE 4**

### **Provisions for meetings of CULS Holders**

1. The Company and the Trustee may respectively and the Trustee shall, at the request in writing of CULS Holders of not less than one-tenth in nominal amount of CULS for the time being outstanding and upon receiving such indemnity and/or security and/or pre-funding as the Trustee may require against the cost of convening and holding the meeting, convene a meeting of the CULS Holders. Any such meeting shall be held at such place in England and at such time as the Trustee shall determine or approve.
2. At least fourteen days' notice or, when the meeting is being convened for the purpose of passing an Extraordinary Resolution, at least twenty-one days' notice (exclusive in each case of the day on which the notice is served or deemed to be served and of the day for which the notice is given) of every meeting shall be given to the CULS Holders in the manner provided in Condition 16. Such notice shall specify the place, day and hour of the meeting and the general nature of the business to be transacted at the meeting but it shall not be necessary, except in the case of an Extraordinary Resolution, to specify in such notice the terms of any resolution to be proposed. A copy of such notice shall be sent by post to the Trustee (unless the meeting shall be convened by the Trustee) and to the Company (unless the meeting shall be convened by the Company). The accidental omission to give notice to, or the non-receipt of notice by, any (but not all) of the CULS Holders shall not invalidate the proceedings at any meeting.
3. At any meeting one or more persons being CULS Holders present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative and holding or representing in the aggregate one-twentieth in nominal amount of the CULS for the time being outstanding shall form a quorum for the transaction of business, except for the purpose of passing an Extraordinary Resolution. The quorum for passing an Extraordinary Resolution shall be one or more persons being CULS Holders present in person or by proxy or (in the case a CULS Holder which is a corporation) by its duly authorised representative and holding or representing in the aggregate a clear majority in nominal amount of the CULS for the time being outstanding. No business (other than the choosing of a chairman) shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
4. If within 15 minutes (or such longer period not exceeding 30 minutes as the chairman may decide) from the time appointed for holding the meeting a quorum is not present the meeting, if convened upon the requisition of CULS Holders, shall be dissolved. In any other case, it shall stand adjourned to such day and time being not less than fourteen days nor more than forty-two days thereafter and to such place as may be appointed by the chairman and at such adjourned meeting one or more persons being CULS Holders present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative whatever the nominal amount of the CULS for the time being outstanding held or represented by them shall form a quorum for the transaction of business including the passing of Extraordinary Resolutions. At least seven days' notice (exclusive as aforesaid) of any adjourned meeting of CULS Holders at which an Extraordinary Resolution is to be proposed shall be given in the same manner as for an original meeting and such notice shall state that one or more persons being CULS Holders present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative at the adjourned meeting whatever the nominal amount of the CULS for the time being outstanding held or represented by them will form a quorum.
5. A person nominated in writing by the Trustee shall preside as chairman at every meeting and if no such person is nominated or if at any meeting no person nominated shall be present within five minutes after the time appointed for holding the meeting the CULS Holders present shall choose one of their number to be chairman. The chairman of an

adjourned meeting need not be the same person as was the chairman of the meeting from which the adjournment took place. The Trustee and the Trustee's legal and financial advisers and any director, officer or employee of a corporation being a trustee of these presents and any director and the secretary and the legal and financial advisers of the Company and any other person authorised in that behalf by the Trustee may attend and be heard at any meeting.

6. The chairman may with the consent of any meeting at which a quorum is present and shall if so directed by the meeting adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.
7. At any meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless (before or on the declaration of the result of the show of hands) a poll is demanded by the chairman or by the Trustee or by one or more CULS Holders present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative and holding or representing not less than one-twentieth in nominal amount of the CULS for the time being outstanding. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or not carried by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
8. If a poll is duly demanded, it shall be taken in such manner as the chairman may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
9. In the case of an equality of votes (whether on a show of hands or on a poll), the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the vote or votes (if any) to which he may be entitled as a CULS Holder.
10. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the chairman directs.
11. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded. The demand for a poll may be withdrawn.
12. On a show of hands, every CULS Holder who is present in person or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative shall have one vote. On a poll, every CULS Holder who is so present shall have one vote in respect of each £10 in nominal amount of CULS of which he is the CULS Holder or in respect of which he is the proxy or duly authorised representative.
13. In the case of joint CULS Holders, the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint CULS Holders and, for this purpose, seniority shall be determined by the order in which the names stand in the CULS Register in respect of the joint holding.
14. On a poll, votes may be given either personally or by proxy or (in the case of a CULS Holder which is a corporation) by its duly authorised representative and a CULS Holder entitled to more than one vote need not (if he votes) use all his votes or cast all the votes he uses in the same way.



15. The instrument appointing a proxy shall be in such form as the Trustee may approve and shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under its common seal or under the hand of an officer or attorney duly authorised and such instrument shall be deemed to confer authority to demand or join in demanding a poll.
16. A person appointed to act as a proxy need not be a CULS Holder.
17. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority shall be deposited at the registered office of the Company or such other place as the Trustee shall approve not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of the poll at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiry of 12 months from the date named in it as the date of its execution.
18. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death, insanity or revocation shall have been received by the Company before the commencement of the meeting or adjourned meeting or the taking of the poll at which the proxy is to be used.
19. A meeting of the CULS Holders shall, in addition to all other powers, have the following powers exercisable by Extraordinary Resolution only, that is to say:
  - (a) Power to sanction any scheme for the reconstruction of the Company or for the amalgamation of the Company with any other company.
  - (b) Power to sanction any scheme or proposal for the sale or exchange of the CULS for, or the conversion of the CULS into, shares, stock, debentures, debenture stock or other obligations or securities of the Company or any other company formed or to be formed or cash or partly for, or into, such shares, stock, debentures, debenture stock or other obligations or securities as aforesaid and partly for, or into, cash and for the appointment of some person with power on behalf of the CULS Holders to execute an instrument of transfer of the CULS held by them in favour of the person to, or with whom, the CULS are to be sold or exchanged, respectively.
  - (c) Power to sanction the release of the Company from the payment of all or any part of the principal and interest in respect of the CULS and all other moneys payable pursuant to these presents.
  - (d) Power to sanction any modification, abrogation or compromise of, or arrangement in respect of, the rights of the CULS Holders against the Company whether such rights shall arise under these presents, the Certificates or otherwise.
  - (e) Power to assent to any modification or abrogation of the covenants or provisions contained in these presents proposed or agreed to by the Company and to authorise the Trustee to concur in and execute any supplemental trust deed embodying any such modification.
  - (f) Power to agree to discharge or exonerate any trustee of these presents from any liability in respect of any act or omission for which it is or may be liable there presents.
  - (g) Power to give any authority, direction or sanction which is required by the CULS or the Trust Deed to be given by Extraordinary Resolution.

- (h) Power to authorise anyone to concur in and do anything necessary to give effect to an Extraordinary Resolution.
  - (i) Power to approve or appoint a new trustee or to remove a Trustee.
  - (j) Power to appoint any persons (whether CULS Holders or not) as a committee or committees to represent CULS Holders' interests and to confer any right or discretion on them which CULS Holders otherwise would exercise by Extraordinary Resolution.
20. An Extraordinary Resolution passed at a meeting of the CULS Holders duly convened and held in accordance with the provisions of these presents shall be binding upon all the CULS Holders whether present or not present at the meeting and the Company, each of the CULS Holders and (subject to the provisions for its indemnity and/or security and/or pre-funding contained in the Trust Deed) the Trustee shall be bound to give effect thereto accordingly.
21. The expression "**Extraordinary Resolution**" means a resolution passed at a meeting of the CULS Holders duly convened and held in accordance with the provisions herein contained and carried by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three-fourths of the votes given on such poll.
22. Minutes of all resolutions and proceedings at every meeting shall be made and duly entered in books to be from time to time provided for that purpose by the Company and any such minutes as aforesaid if purporting to be signed by the chairman of the meeting shall be conclusive evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made and signed shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed. Notice of the result of the voting on any resolution duly considered by the CULS Holders shall be given by the Company by way of announcement not more than 14 days after such result is known provided that the non-receipt of such notice by any CULS Holder shall not invalidate such result.
23. If and whenever the Company shall have issued and have outstanding CULS of more than one series, the foregoing provisions of this Schedule shall have effect subject to the following modifications:
- (a) A resolution which in the opinion of the Trustee affects one series only of the CULS shall be deemed to have been duly passed if passed at a separate meeting of the CULS Holders of that series.
  - (b) A resolution which in the opinion of the Trustee affects more than one series of the CULS but does not give rise to a conflict of interests between the CULS Holders of any of the series so affected shall be deemed to have been duly passed if passed at a single meeting of the CULS Holders of the series so affected.
  - (c) A resolution which in the opinion of the Trustee affects more than one series of the CULS and gives or may give rise to a conflict of interests between the CULS Holders of one series or group of series so affected and the CULS Holders of another series or group of series so affected shall be deemed to have been duly passed only if *in lieu* of being passed at a single meeting of the CULS Holders it shall be duly passed at separate meetings of the CULS Holders of each series or group of series so affected.
  - (d) To all such meetings as aforesaid all the preceding provisions of this Schedule shall *mutatis mutandis* apply as though references therein to CULS and CULS Holders

were references to the CULS of the series or group of series in question and to the CULS Holders respectively.

24. A resolution in writing signed by or on behalf of all the CULS Holders or by or on behalf of all the CULS Holders of any series shall for all purposes of these presents be as valid and effectual as and be deemed to be an Extraordinary Resolution passed at a meeting of the CULS Holders or of the CULS Holders of the relevant series (as the case may be) duly convened and held in accordance with the provisions herein contained. Such resolution in writing may be contained in one document or in several documents in or substantially in like form each signed by or on behalf of one or more of the relevant CULS Holders.
25. Subject to all other provisions of these presents, the Trustee may, without the consent of the Company or the CULS Holders, prescribe such further regulations regarding the requisitioning and/or the holding of meetings of CULS Holders and attendance and voting thereat as the Trustee may in its sole discretion think fit.

## **SCHEDULE 5**

### **Provisions relating to CULS in uncertificated form**

1. The following provisions of this Schedule shall have effect in relation to CULS which are Participating CULS.
2. So long as the CULS are Participating CULS, no provision of these presents shall (notwithstanding anything contained in these presents) apply or have effect to the extent that it is in any respect inconsistent with:
  - (a) the holding of title to Participating CULS in uncertificated form;
  - (b) the transfer of title to Participating CULS by means of a relevant system;
  - (c) the exercise of Conversion Rights in relation to Participating CULS held in uncertificated form; or
  - (d) the CREST Regulations.
3. Without prejudice to the generality of paragraph 2 of this Schedule and, notwithstanding anything contained in these presents, where the CULS are, for the time being, Participating CULS:
  - (a) units of the Participating CULS may be issued in uncertificated form in accordance with and subject as provided in the CREST Regulations;
  - (b) units of the Participating CULS may be changed from uncertificated to certificated form, and from certificated to uncertificated form, in each case in accordance with and subject as provided in the CREST Regulations;
  - (c) where title to a unit of the Participating CULS is evidenced otherwise than by a certificate by virtue of the CREST Regulations, the transfer of title to such a unit shall be effected by means of a relevant system in the manner provided for, and subject as provided, in the CREST Regulations and, accordingly (and in particular) paragraphs 3, 4, 5 and 6 of Schedule 3 (*Provisions relating to registration and transfer*) shall not apply in respect of such a unit to the extent that those paragraphs require or contemplate the effecting of a transfer by an instrument in writing and the production of a Certificate for the unit to be transferred;
  - (d) the Company shall comply with the provisions of CREST Regulations 21 and 22 in relation to the Participating CULS ;
  - (e) the provisions of Schedule 4 (*Provisions for meetings of CULS Holders*) with respect to meetings of CULS Holders of the Participating CULS shall have effect subject to the provisions of CREST Regulation 34;
  - (f) Clause 4 (*Fees, Duties and Taxes*) of this Trust Deed shall not apply so as to require the Company to issue a Certificate for the Participating CULS to any person holding units of such CULS in uncertificated form;
  - (g) notwithstanding sub-paragraph (f) above, and for the avoidance of doubt, the Conditions shall remain applicable to the Participating CULS (and accordingly the Company shall continue to comply with the terms and conditions of the same in accordance with Clause 3 (*Certificates*) of this Trust Deed) notwithstanding that they are not endorsed on any Certificate for any unit of Participating CULS which are in uncertificated form;

- (h) the Company shall provide on request to any CULS Holder of Participating CULS in uncertificated form within seven days of it first becoming such a holder a copy of the Conditions and any other document containing equivalent information to that normally endorsed on the Certificates (but so that joint CULS Holders of Participating CULS shall be entitled to receive one copy only of the Conditions or such other document in respect of the Participating CULS held jointly by them, which copy shall be delivered to that one of the joint CULS Holders whose name stands first in the electronic register of CULS Holders maintained in accordance with the CREST Regulations in respect of that holding);
- (i) notwithstanding paragraph 9 of Schedule 3 (*Provisions relating to registration and transfer*) hereto or any other provision of these presents relating to payment in respect of the CULS, in respect of any unit of Participating CULS in uncertificated form, where an authority in that behalf shall have been received by the Company from the CULS Holder of such unit in such form as the Company shall from time to time consider sufficient, the Company may pay or procure the payment of the principal for the time being owing on, the interest payable in respect of, and/or any other moneys payable by the Company to such CULS Holder pursuant to these presents in respect of such Participating CULS to any bank or other agent of such CULS Holder and payment in accordance with such authority shall constitute a good discharge therefor;
- (j) notwithstanding any provision of these presents requiring the CULS Holder of any Participating CULS to exercise Conversion Rights by delivering a written notice in the prescribed form, Conversion Rights may be exercised in respect of Participating CULS in uncertificated form by means of a properly authenticated dematerialised instruction and/or other instruction or notification received by the Company or such person as it may require in such form and subject to such conditions as may from time to time be prescribed by the Company (subject always to the facilities and requirements of the relevant system and to the prior approval of the form of such notice by the Trustee);
- (k) notwithstanding any provision of these presents requiring the issue of Ordinary Shares in certificated form upon the exercise of Conversion Rights in respect of Participating CULS, the Ordinary Shares arising upon conversion of any Participating CULS shall (unless the Company shall otherwise determine with the approval of the Trustee or unless the CREST Regulations and/or the rules of the relevant system otherwise require) be issued in uncertificated form (where the Participating CULS converted were in uncertificated form on the relevant Conversion Date) or in certificated form (where the Participating CULS converted were in certificated form on the relevant Conversion Date); and
- (l) for the avoidance of doubt, any unit of the Participating CULS may be held in uncertificated form by not more than four joint CULS Holders,

and the Company hereby covenants with the Trustee that it will comply with and observe and be bound by all the foregoing provisions accordingly.

4. The Trustee may, without the consent of the CULS Holders, concur with the Company in making modifications to the provisions of these presents in order to reflect changes in the CREST Regulations or in the applicable law and/or practice relating to the holding or transfer of CULS in uncertificated form and the issue of Ordinary Shares in uncertificated form on conversion of CULS.
5. For the avoidance of doubt, terms defined in the CREST Regulations have the same meanings in this Schedule.

## SCHEDULE 6

### Form of Directors' Certificate

[On the headed paper of the Company]

To: [●]  
[●]

Attention: [●]

[DATE]

Dear Sirs

**£38,861,140 6.00 per cent. convertible unsecured subordinated loan stock of JZ Capital Partners Limited due 2021**

This certificate is delivered to you in accordance with Clause 17(f) of the Trust Deed dated 30 July 2014 (the "**Trust Deed**") and made between JZ Capital Partners Limited (the "**Company**") and The Law Debenture Trust Corporation p.l.c. (the "**Trustee**"). All words and expressions defined in the Trust Deed shall (save as otherwise provided herein or unless the context otherwise requires) have the same meanings herein.

We hereby certify that, to the best of our knowledge, information and belief (having made all reasonable enquiries):

- (a) as at [●]<sup>1</sup>, no Event of Default or Potential Event of Default existed [other than [●]]<sup>2</sup> and no Event of Default or Potential Event of Default had existed at any time since [[●]<sup>3</sup>]/[the relevant date (as defined in the Trust Deed) of the last certificate delivered under Clause 17(f)]<sup>4</sup>] [other than [●]]<sup>5</sup>; and
- (b) from and including [[●]<sup>3</sup>]/[the relevant date of the last certificate delivered under Clause 17(f)]<sup>4</sup>] to and including [●]<sup>1</sup>, the Issuer has complied in all respects with its obligations under these presents (as defined in the Trust Deed) [other than [●]]<sup>6</sup>.

Yours faithfully

.....  
Director

.....  
Director

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<sup>1</sup> Specify a date not more than 7 days before the date of delivery of the certificate

<sup>2</sup> If any Event of Default or Potential Event of Default did exist, give details; otherwise delete

<sup>3</sup> Insert date of Trust Deed in respect of the first certificate delivered under Clause 17.6, otherwise delete

<sup>4</sup> Include unless the certificate is the first certificate delivered under Clause 17.6, in which case delete

<sup>5</sup> If any Event of Default or Potential Event of Default did exist, give details; otherwise delete

<sup>6</sup> If the Issuer has failed to comply with any obligation(s), give details; otherwise delete

**SIGNATURES**

**EXECUTED** as a deed by  
**JZ CAPITAL PARTNERS LIMITED**  
acting by

)  
)  
)  
)

Director



)  
)  
)  
)

Director/Secretary



**EXECUTED** as a deed by  
**THE LAW DEBENTURE TRUST**  
**CORPORATION P.L.C.**  
acting by

)  
)  
)  
)

**For Northern Trust International**  
**Fund Administration Services**  
**(Guernsey) Limited As Secretary**

Director

)  
)  
)  
)

Director/Secretary

