

Dated

2008

- (1) INVESTEECO Limited
- (2) [MANAGERS]
- (3) [NON MANAGER SHAREHOLDERS]
- (4) [INVESTORS]

Shareholders' agreement relating to [INVESTEECO] Limited

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DRAFT

BETWEEN

- (1) [INVESTTECO] Limited, a company incorporated in England and Wales (registered number [NUMBER]) whose registered office is at [ADDRESS] (the "**Company**");
- (2) The persons whose names and addresses are set out in **Part A** of **Schedule 1** (the "**Managers**");
- (3) The persons whose names and addressees are set out in **Part B** of **Schedule 1** (the "**Existing Shareholders**"); and

The persons whose names and addresses are set out in **Schedule 2** (the "**Investors**").

BACKGROUND

This Agreement contains the terms upon which the Investors are willing to invest in the Company.

OPERATIVE CLAUSES

1. **INTERPRETATION**

In this Agreement

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

"Articles" the articles of association of the Company in the agreed form to be adopted pursuant to the Resolutions as amended from time to time and any reference in this Agreement to any Article will be to that article of the Articles

"Board" the board of directors of the Company from time to time

"Business" [] being the business of the Company executed in accordance with the Business Plan

"Business Day" any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business

"Business Plan"	the business plan [and profit and cash flow projections] of the Group in the agreed form, to include the annual operating budget approved in writing by the Investors pursuant to and as more fully described in paragraph 2 of Part 1 of Schedule 7
"CA 1985"	the Companies Act 1985 (as amended)
"CA 2006"	the Companies Act 2006 (as amended)
"Companies Acts"	CA 1985 and CA 2006
"Company's Covenants"	the covenants referred to in clause 9.4 and set out in Schedule 7
"Completion"	completion of the matters set out in clause 3.1
"Completion Date"	the date of this Agreement
"Conditions"	the conditions precedent to Completion referred to in clause 2.1 and set out in Schedule 4
"connected person"	the meaning given to that expression in section 993 of the Income Taxes Act 2007 and "connected with" will be construed accordingly
"Deed of Adherence"	a deed in substantially the form set out in Schedule 9 entered into pursuant to the provisions of clause 12.3
"Director"	a director of the Company for the time being
"Disclosed"	fairly disclosed by the Disclosure Letter in a manner and with sufficient detail to enable the Investors to make an informed and accurate assessment of the matter concerned and of its implications
"Disclosure Letter"	the letter in the agreed form (with its annexures) from the Managers to the Investors relating to the Warranties
"Encumbrance"	any mortgage, charge, pledge, lien,

assignment, option, restriction, claim, right of pre-emption, right of first refusal, third party right or interest, other encumbrance or security interest of any kind, or other preferential arrangement having similar effect

"FSMA" the Financial Services and Markets Act 2000 as the same may be amended from time to time

"Group" the Company and its subsidiary undertakings from time to time and **"member of the Group"** and **"Group Company"** is to be construed accordingly

"Investor Consent" the consent in writing of [the Investor Majority] [the Lead Investor/ the Investor Director] in accordance with the terms of **clause 14**

"Investor Director" a director of the Company appointed pursuant to **clause 8** or his or her alternate

"Investor Majority" Investors holding more than [75] % of the Ordinary Shares for the time being (whether through nominees or otherwise)

"Investors' Solicitors" [ADDRESS]

"Investors" the Investors specified in **Schedule 2** and any additional or replacement Investor who is named as an investor in a Deed of Adherence

"IP Assignment" the agreement in the agreed form between (1) the Company and (2) [NAME(S) OF MANAGERS] to assign [DESCRIPTION OF IP RIGHTS] used by the Business to the Company

"ITEPA" the Income Tax (Earnings and Pensions) Act 2003

"Joint Election" the joint election under section 431(1) of ITEPA between an employee and the Company in a form acceptable to H.M. Revenue & Customs

"Lead Investor" [NAME] of [ADDRESS] or such other person as

an Investor Majority may from time to time appoint in its place by notice in writing to each of the Investors and the Company

"Listing"

the admission by the Financial Services Authority in its capacity as the UK Listing Authority of any part of the share capital of the Company to the Official List of London Stock Exchange plc or the admission by London Stock Exchange plc of any part of the share capital of the Company to trading on AIM or the admission by any recognised investment exchange of any part of the share capital of the Company, and, in each case, such admission becoming effective

"Managers' Covenants"

means the covenants referred to in **clause 9.3** and set out in **Schedule 8**

"Managers' Declarations"

the declarations made by the Managers in the agreed form

"Member"

any person from time to time registered by the Company as the holder of any Share

"Ordinary Shares"

the ordinary shares of £[NOMINAL AMOUNT] each in the share capital of the Company from time to time in issue

"Press Release"

the press release in the agreed form

"recognised investment exchange"

the meaning given to the expression in section 285(1) FSMA

"Resolutions"

the resolutions of the Company to be passed prior to Completion in the agreed form

"Sale"

the meaning given to that expression in the Articles

"Service Agreements"

the service agreements in the agreed form to be entered into at Completion between the Company and each of the Managers

"Shares"

shares in the capital of the Company from time to time

"Subscription"	the subscription by each of the Investors in cash for Ordinary Shares in the Company in accordance with clause 3.1.2
"Warranties"	the warranties and representations contained in clause 4 and Schedule 5
"Warrantors"	the Managers and the Company

- 1.2 words and expressions defined in the Articles have the same meaning in this Agreement (unless expressly defined in this Agreement);
- 1.3 words and expressions used or defined in the Companies Acts will have the same meaning in this Agreement unless expressly defined in this Agreement or the Articles;
- 1.4 references to any statute or statutory provision include, unless inconsistent with the context, a reference to that statute or statutory provision as modified, re-enacted or consolidated and in force from time to time, whether before or after the date of this Agreement and any subordinate legislation made pursuant to it whether before or after the date of this Agreement provided that, as between the parties, no such modification, re-enactment or consolidation after the date of this Agreement will apply to the extent it creates or extends the liability of any of the parties to this Agreement;
- 1.5 references to a person includes references to that person's legal personal representatives and permitted assigns and reference to parties will be construed accordingly;
- 1.6 the headings are for convenience only and will not affect the interpretation of the Agreement;
- 1.7 references to persons will include any individual, firm, body corporate, unincorporated association or partnership;
- 1.8 references to the plural will include the singular and vice versa;
- 1.9 references to a document being **"in the agreed form"** is a reference to a document approved and for the purposes of identification signed by each party or by a person acting on their behalf;
- 1.10 reference to a **"subsidiary"** or **"holding company"** will have the meaning defined by the CA 1985 and reference to a "subsidiary undertaking" will have the meaning defined by the CA 2006;
- 1.11 any phrase introduced by the term "include", "including", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of

the words preceding that term;

- 1.12 the schedules form part of the operative provisions of this Agreement and references to a clause or schedule, unless the context otherwise requires, is a reference to a clause of or Schedule to this Agreement;
- 1.13 all covenants, warranties and other obligations given or entered into by more than one person are given or entered into, as the case may be, jointly and severally except as otherwise provided by this Agreement.

2. **CONDITIONS**

- 2.1 Completion is subject to and conditional upon the matters set out in **Schedule 4** (The Conditions) having been fulfilled to the satisfaction of or waived in writing by the Lead Investor.
- 2.2 The Managers will procure (so far as they are able by using their powers as officers and shareholders of the Company) that the Conditions will be satisfied, in each case, on or before the Completion Date.

3. **COMPLETION**

- 3.1 Completion will take place at the offices of the Investors' Solicitors on the Completion Date when the following will take place:
 - 3.1.1 the Managers shall produce to the Lead Investor such evidence as the Lead Investor may reasonably require to demonstrate that each of the Conditions has been fully satisfied;
 - 3.1.2 each of the Investors will subscribe in cash for the number of Ordinary Shares set opposite their names in **Schedule 2** at a subscription price of £[NUMBER] for each share; and
 - 3.1.3 the Company will allot and issue to the Investors the Ordinary Shares subscribed by them in accordance with **clauses 3.1.2** and **3.1.3** and will enter the names of the Investors in the registers of members of the Company as the registered holders of such shares and will issue and deliver to the Investors share certificates duly executed by the Company.
- 3.2 The proceeds of the subscriptions by Investors pursuant to **clause 3.1** will be used for the purpose paying the costs and expenses in connection with this Agreement and, in respect of the balance, for providing general working capital for the Group or otherwise as set out in the Business Plan.
- 3.3 Immediately following Completion the Company and the Managers will procure the appointment of [NAME] as the Investor Director.

- 3.4 The Investors consent to their names being entered in the register of members and agree that they (or, in the case of the Investors, their respective nominees) will take their Shares with the benefit of the rights and subject to the restrictions set out in the Company's memorandum of association and the Articles.
- 3.5 The parties consent to the issue of the Shares subscribed pursuant to this Agreement and waive or agree to procure the waiver of any rights or restrictions which may exist in the Articles or otherwise which might prevent any such issue.
- 3.6 This Agreement may not be rescinded after Completion.

4. **WARRANTIES**

- 4.1 In consideration of the Investors agreeing to enter into this Agreement the Managers and the Company warrant to the Investors that each of the statements set out in **Schedule 5** is true and accurate in all respects;
- 4.2 In the case of a claim in respect of any breach of the Warranties against any or all of the Managers no counterclaim or right of contribution or indemnity will lie by any of them against the Company or any other Manager. For the avoidance of doubt, the Civil Liability (Contribution) Act 1978 will not apply to this Agreement.
- 4.3 Where any Warranty or statement in the Disclosure Letter is expressly qualified by the knowledge or awareness or belief of any Manager it will be deemed to include an additional statement that it has been made after due and careful enquiry.
- 4.4 The Managers and the Company acknowledge that they have given the Warranties with the intention of inducing the Investors to enter into this Agreement and that the Investors have relied on the Warranties in entering into this Agreement.
- 4.5 Subject to **clause 4.8**, the maximum liability of each Manager individually in respect of all or any claims pursuant to the Warranties will not exceed the sum shown opposite his name in column (3) of **Schedule 1** plus any costs and expenses of recovery against him.¹
- 4.6 Subject to **clause 4.8**, the Managers will not be liable in respect of any claim for breach of any of the Warranties unless the aggregate amount of all such claims made exceeds £[AMOUNT] in which event the Managers will be liable for the whole of such aggregate amount and not merely for the excess.
- 4.7 Subject to **clause 4.8**, no Manager nor the Company will be liable in respect of a

¹ The cap on the liability of each Manager is a matter for negotiation, although is typically agreed by reference to the value of the Subscription being provided by the Investors, or by reference to a multiple of the relevant Manager's gross salary (e.g. 1 or 2 years' salary).

claim for breach of a Warranty unless he has been given written notice of the claim ("**Notice of Claim**") on or before [DATE²] (the "**Expiry Date**") and unless legal proceedings have been issued and served in respect of such claim within [12 months] of the Expiry Date save where the liability in question is a contingent liability or (as the case may be) incapable of being quantified in which case such [12 month] limit for the issue and service of proceedings shall have no application until such liability shall become an actual and/or quantifiable liability. Without prejudice to the liability of the Managers or the Company for a breach of Warranty, each Notice of Claim shall contain reasonable details of the subject matter of the claim so far as such information is then available.

- 4.8 In the case of fraud or deliberate or reckless non-disclosure by any Manager giving rise to a claim pursuant to the Warranties the liability of that Manager in respect of such claim will not be limited by **clauses 4.5 to 4.7** (inclusive).
- 4.9 The maximum liability of the Company in respect of all or any claims pursuant to the Warranties will not exceed the value of the Subscription.
- 4.10 Each of the Managers agrees with the Investors and the Company to waive any and all claims which they or any of them might otherwise have against the Group (including in each case their respective employees and directors) in respect of any misrepresentations or inaccuracy or omission from any information supplied or given to him for the purposes of this Agreement or the Disclosure Letter.
- 4.11 Each Warranty is to be construed separately and independently and (except where this Agreement provides otherwise) is not limited by any other provision of this Agreement or any other Warranty.

5. **FEES**

- 5.1 At Completion the Company will reimburse the Investors from the gross sum invested all the professional fees and out-of-pocket expenses of the Investors in connection with this Agreement and the agreed form documents up to the agreed maximum of [£], in each case, with any applicable value added tax;
- 5.2 The Company shall also bear its own professional fees, such fees not to exceed £[] plus VAT (if applicable).
- 5.3 The Company will pay [quarterly] in arrears against invoice on the [31 March, 30 June, 30 September and 31 December] in each year a [monitoring fee/fee in respect of the services of the Investor Director] from time to time at the rate of £ [AMOUNT] (plus value added tax where applicable) per annum (together with

² The Expiry Date is again usually a matter for negotiation, although is typically agreed at a date 6 months after the end of the Company's current or next accounting period to enable any issues to be identified through the audit process.

any expenses reasonably incurred on the business of the Group by the Investor Director, such fees not to exceed £500 per annum without the consent of the Board). The first instalment of such fee will be paid on the first of such dates falling after Completion in respect of the period from the Completion Date to such date and will be reduced in proportion.

6. PROVISION OF INFORMATION

6.1 The Company agrees with the Investors that it will maintain effective and appropriate control systems in relation to the financial, accounting and record keeping functions of the Group and will generally keep the Investors informed of the progress of each Group Company's business and affairs and in particular will:

6.1.1 procure that the Investors and their advisers are given such information and such access to the officers, employees and premises of the Group as they may request; and

6.1.2 direct the Company's auditors to provide to the Investors such information as the Investors may request.

6.2 Without prejudice to the generality of **clause 6.1**, the Company agrees with the Investors that it will prepare and send to the [Lead Investor (who may distribute such information to the other Investors / those Investors who request it) (all in such form and detail as is specified by the Lead Investor or as is approved by the Lead Investor) the information referred to in **Schedule 7**.

7. DISCLOSURE OF INFORMATION

7.1 Notwithstanding any other provision of this Agreement, the Investors will be entitled at all times:

7.1.1 to consult freely about the Group and its affairs with, and to disclose Confidential Information to the Group's auditors, legal advisers and other professional advisers, lenders and proposed lenders and with any other Investor or to any person to whom it is required to pass such information by law or regulation; and

7.1.2 for the purposes of facilitating a Sale or Listing, to disclose any Confidential Information to any proposed purchaser, underwriter, sponsor or broker subject to the Investors using reasonable endeavours to procure that any such recipient is made aware that it is Confidential Information and agrees to treat it accordingly,

and the Company and the Managers agree with the Investors for themselves and as trustees for the persons to whom Confidential Information may be disclosed under this **clause 7.1** to waive any claim for breach of confidence in respect of

any disclosure of Confidential Information made by an Investor in compliance with this **clause 7.1**.

- 7.2 The obligations on the Investors under **clause 7.1** above will not apply if and to the extent that the Investor Director and/or any of the Investors are expressly obliged by law or other regulatory or governmental requirement to disclose or divulge any such information, or if the information concerned has come into the public domain otherwise than as a result of a default under **clause 7.1** above.

8. **INVESTOR DIRECTOR**

- 8.1 The Investor Majority will be entitled at any time to appoint and remove any person as a director of the Company (and in its absolute discretion as a director of any other members of the Group and/or as a member of each and any committee of the Board or the board of any other member of the Group) who shall be designated as the Investor Director for the purposes of this Agreement. The initial appointment shall be made pursuant to **clause 3.3**. Subsequent appointments and removals shall be made by notice in writing to the Company.

- 8.2 For the avoidance of doubt, the right to appoint the Investor Director under this Agreement is not an additional right to that conferred by the Articles.

- 8.3 Any Investor Director (or their alternate directors) shall be entitled to disclose to any Investor, member of the Investor Group, Investor Associate (and in each case with or to any of their professional advisers) such information concerning the Group as they may think fit.

9. **OBSERVANCE**

- 9.1 Each of the obligations, undertakings and rights pursuant to this Agreement (including the Warranties) will continue in full force and effect notwithstanding Completion.

- 9.2 Each of the Managers undertakes to each of the Investors that:

9.2.1 he will use the powers vested in him from time to time as director, officer, employee and shareholder to procure that the Company observes and performs its obligations under the Articles and this Agreement; and

9.2.2 he will observe and perform his obligations under this Agreement, his Service Agreement and the Articles.

- 9.3 Each Manager severally covenants with each of the Investors in the terms of the Managers' Covenants, as set out in **Schedule 8** and acknowledges that damages would not be an adequate remedy for breach of such covenants and that

Investors shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of such covenants.

9.4 The Company covenants with the Investors in the terms of the Company's Covenants, as set out in Part 1 of **Schedule 7**.

9.5 The Company covenants with each of the Investors to procure (as far as it is lawfully able) that each Group Company will comply with the Company's Covenants as if each Group Company were a party to this Agreement and has covenanted with each of the Investors in the terms of the Company's Covenants. The Managers severally covenant with each of the Investors to exercise all rights and powers that he may have (whether as a shareholder, director or otherwise) so as to procure (as far as he is lawfully able) that each Group Company will comply with the Company's Covenants as if each Group Company were a party to this Agreement.

10. **MATTERS REQUIRING CONSENT**

10.1 Each of the Managers shall exercise all voting rights and powers of control available to him in relation to the Company to procure that the Company shall not without prior Investor Consent effect or propose any of the matters referred to in **Schedule 6** (Consent Matters).

10.2 The Company agrees that, save with prior Investor Consent, it shall not effect or propose (and will procure that each Group Company will not effect or propose) any of the matters referred to in **Schedule 6** (Consent Matters).

10.3 Notwithstanding any other provision contained in this Agreement the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of the Company, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

11. **SALE OR LISTING**

11.1 The Managers and the Company acknowledge that the Investors are investing in the Company with a view to a Sale or Listing being effected prior to the [fifth] anniversary of Completion and the Managers and the Company undertake to use their reasonable endeavours to obtain a Sale or Listing before that date.

11.2 The Managers hereby undertake to use all reasonable efforts to assist the Investors in obtaining a Sale or Listing and to prepare the Group for such a Sale or Listing within the timescale set out above including, without limitation, making and attending presentations to potential investors in or purchasers of the Group (as the case may be), and cooperating with any corporate finance advisers and/or nominated advisers which may be appointed to act for the Company in

connection with a Sale or Listing.

12. **ASSIGNMENT AND NEW SHAREHOLDERS**

12.1 Subject to **clause 12.2**, no party will assign or in any other way dispose of any of its rights or obligations under this Agreement.

12.2 If any Shares held by the Investors are at any time transferred in accordance with the Articles the benefit of this Agreement will be assignable in whole or in part to the transferee of such Shares and references to the parties will be construed accordingly.

12.3 Except with the prior written consent of the Investors, no Shares will be allotted or transferred to any person who is not already a party to this Agreement (a "**New Party**") unless at the time of or prior to such allotment or transfer he (and, if he is a nominee of another person, that other person) enters into a Deed of Adherence.

12.4 Each of the Managers undertakes to the Investors and the Company that he will not, without a prior Investor Consent, dispose of any interest in or otherwise create any Encumbrance over any Shares registered in his name (or held by or on behalf of his family trusts or relations) other than transfers required pursuant to or permitted by the Articles.

12.5 No Shares shall be allotted or transferred to a person who is an employee and/or director of a member of the Group (excluding the Investor Director) or to a person whom it is proposed should become one unless such person and the Company enter into a Joint Election in relation to such shares.

13. **[REMUNERATION COMMITTEES**

There will be a committee of the Board called the remuneration and appointment committee which will comprise the Investor Director and the [chief executive officer/managing director] of the Group ("**Remuneration Committee**"). The [chief executive officer/managing director] of the Group (as applicable) will not be entitled to sit on the Remuneration Committee in matters concerning his own remuneration. The Remuneration Committee will make determinations on all matters concerning the emoluments of the Managers and the appointment and the emoluments of any other senior managers/directors of any Group Company including, without limitation, salary reviews, the setting of bonus levels and performance targets and the grant of employee share options and will be empowered, on behalf of the Company, to amend any of the terms of the service contracts of any of the Managers from time to time. The Remuneration Committee will act by majority, such majority to include the Investor Director. The Remuneration Committee will meet not less than once a year (or such

greater frequency as the Remuneration Committee may decide) from the date of this Agreement.]

14. **INVESTORS' CONSENTS**

- 14.1 Where this Agreement requires Investor Consent, such consent shall be deemed given on behalf of all the Investors if obtained in writing from the [Lead Investor][Investor Director][Investor Majority][, or given orally by the Investor Director in a quorate meeting of the Board (and such consent is recorded in the minutes of such meeting)]. Investor Consent may be given subject to such terms and conditions as the [Lead Investor][Investor Director][Investor Majority] may impose and any breach of such terms and conditions by any person subject thereto will be deemed to be a breach of the terms of this Agreement. Any application for Investor Consent may be made to the [Lead Investor][Investor Director][Lead Investor where consent is to be given by the Investor Majority] who may consult with the other Investors and will advise the Company of the decision of the Investors and if Investor Consent has accordingly been provided. Any written consent or approval given by the [Lead Investor][Investor Director][Investor Majority] to the Company will be legally binding on all the Investors.
- 14.2 If the same proposed transaction or matter requires Investor Consent under more than one provision of this Agreement and/or the Articles a single consent from [the Lead Investor/the Investor Director/ the Investor Majority] to that proposed transaction or matter shall be deemed to cover all required consents from [the Lead Investor Investor/the Investor Director/ the Investor Majority].
- 14.3 The consent or direction of an Investor Director may only be validly given (whether under this Agreement, the Articles or otherwise) if the Investor Director:
- 14.3.1 gives his consent or direction in writing to the Board; or
 - 14.3.2 (in the case of a consent, as opposed to a direction, required from an Investor Director) signs a written resolution of the Board or signs the minutes of the Board meeting approving the relevant transaction or matter.
- 14.4 The Company shall supply to the Lead Investor on behalf of the Investors and to the Investor Director all information and documents necessary to allow proper consideration to be given over a reasonable period to any proposed transaction or matter upon which Investor Consent or direction of the Lead Investor, the Investor Director or, as the case may be, the Investor Majority is sought.
- 14.5 The Investors will not enforce their rights under this Agreement or make any claim under the Warranties save with the written agreement of an Investor

Majority.

14.6 Where this Agreement provides that any transaction or matter is required to be done at the discretion of the Investors (or any of them) then the Investors will be entitled to exercise such discretion in an absolute and unfettered manner (subject as herein expressly stated).

14.7 The Lead Investor will not have any duties, obligations, liabilities or responsibilities to the other Investors beyond those expressly stated in this Agreement or in any other agreement reached between the Lead Investor and the other Investors.

15. **TERMINATION**

15.1 When a Manager ceases to be an employee of the Company or of any member of the Group and no longer holds any shares in the capital of the Company, the Manager shall cease to be party to this Agreement except that **clause 4** (warranties), **clause 9.3** and **Schedule 8** (Manager's Covenants) shall continue to bind him and his accrued rights and obligations shall not be affected provided that, where appropriate, such party will first have complied with its obligations under **clause 12** (assignment) and the transferee of such shares will have entered into a Deed of Adherence.

15.2 On a Sale or Listing, the provisions of this Agreement shall cease to have effect except that the parties' accrued rights and obligations shall not be affected.

15.3 When an Investor (or its nominee) ceases to hold any shares in the capital of the Company, that Investor shall cease to be a party except that its respective accrued rights and obligations shall not be affected.

16. **ANNOUNCEMENTS**

16.1 No announcement, circular, advertisement or other publicity (referred collectively in this clause as an "**announcement**") in connection with this Agreement, their subject matter or any ancillary matter will be made or issued without [Investor Consent] (save as required by law or by any regulatory authority).

16.2 The terms of any such announcement which is required by law or any regulatory authority will be the subject of prior consultation with the Lead Investor.

16.3 Nothing in this clause will prevent any party making an announcement which contains only information which was contained in an announcement previously made in compliance with this clause or in published accounts of any member of the Group.

17. **NOTICES**

17.1 Any notice, demand or other communication in connection with this Agreement will be in writing and may be delivered by hand, pre-paid first class post (or airmail if overseas) or facsimile (but not by e-mail), to the recipient's address as set out at **clause 17.3** marked for the attention of the recipient (or such other address or facsimile number or person which the recipient has notified in writing to the sender in accordance with this **clause 17**, to be received by the sender not less than seven Business Days before the notice is despatched).

17.2 The notice, demand or communication will be deemed to have been duly served:

17.2.1 if delivered by hand, at the time of delivery;

17.2.2 if delivered by first class post, two Business Days after being posted or, in the case of airmail, six Business Days after being posted;

17.2.3 if delivered by facsimile, when confirmation on completion of its transmission has been recorded by the sender's fax machine;

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day [(such times being local to the time at the address of the recipient)].

17.3 The addresses referred to in **clause 17.1** are:

Each of the Managers

To: [NAME]

Address: [ADDRESS]

Fax: [Number]

To: [NAME]

Address: [ADDRESS]

Fax: [Number]

Each of the Non-Manager Shareholders

To: [NAME]

Address: [ADDRESS]

[For the attention of: [NAME]]

Fax: [Number]

To: [NAME]

Address: [ADDRESS]

[For the attention of: [NAME]]

Fax: [Number]

Each of the Investors

To: [NAME]

Address: [ADDRESS]

[For the attention of: [NAME]]

Fax: [Number]

To: [NAME]

Address: [ADDRESS]

[For the attention of: [NAME]]

Fax: [Number]

17.4 [The Investors confirm that notices or other communications to be served upon them will be sent to them at the registered office of the Lead Investor, marked for the attention of [NAME].]

17.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

18. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed will be an original but together will constitute one and the same agreement.

19. **NO PARTNERSHIP**

Nothing contained in this Agreement will be deemed to constitute a partnership between the parties or any of them.

20. **CONFLICT WITH ARTICLES**

In the event of any conflict or inconsistency between the provisions of this Agreement and the Articles, the parties will co-operate to ensure that the provisions of this Agreement will prevail and will procure the passing of such resolutions as will be necessary to amend the Articles to eliminate such conflict or inconsistency.

21. **ENTIRE AGREEMENT**

21.1 This Agreement, and the documents referred to in it, constitutes the entire agreement between the parties and supersedes and replaces any previous agreement, understanding, representation, warranty or arrangements of any nature whatsoever between the parties relating to the subject matter of this Agreement.

21.2 Each Investor acknowledges and confirms that he has not relied on any representation by any other Investor in deciding whether to proceed with the Subscription or the execution of this Agreement (and the documents referred to herein).

22. **WAIVER AND VARIATION**

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

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

22.3 No breach of any provision of this Agreement will be waived or discharged except with the express written consent of the parties.

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

22.5 No variation to this Agreement shall be effective unless made in writing and signed by all parties to this Agreement, provided that if notice of the proposed variation has been served upon all parties in accordance with the provisions of **clause 17**, if the variation does not become effective within 14 days from service of such notice (for the reason that insufficient number of parties are unavailable to sign and have not provided any written notice of their objection to the proposed variation to the Company, the variation shall become effective

when made in writing by such number of parties to this Agreement as represent the holders of [90%] of the entire issued share capital of the Company.

23. **THIRD PARTY RIGHTS**

In accordance with the Contracts (Rights of Third Parties) Act 1999, each Group Company has the right to enforce the provisions of this Agreement and the employees and directors of each Group Company have the right to enforce **clause 4.10** only of this Agreement. Except as stated in this **clause 23** the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

24. **GOVERNING LAW**

The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement will be governed by the law of England and Wales. The Courts of England and Wales will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement. The parties irrevocably agree to submit to that jurisdiction.

IN WITNESS whereof the parties or their duly authorised representatives have executed and delivered this Agreement as a Deed on the date first stated above.

SCHEDULE 1

The Managers and the Non-Manager Shareholders

(A) The Managers

(1) <u>Name and Address</u>	(2) <u>Existing Shareholding</u>	(3) <u>Maximum Warranty Liability (£)</u>
Total		

(B) The Non-Manager Shareholders

(1) <u>Name and Address</u>	(2) <u>Existing Shareholding</u>
Total	

SCHEDULE 2

The Investors

(1) <u>Name and Address</u>	(2) <u>No. of</u> <u>Ordinary Shares at</u> <u>£[AMOUNT] per share</u>	(3) <u>Total Price (£)</u>
Total		

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SCHEDULE 3

Part 1 - Particulars of the Company (immediately before Completion)

Name : [NAME] Limited
Registered Office :
Directors :
[Secretary] :
Registered Number :
Date of Incorporation :
Authorised Share Capital :
Issued Share Capital :
Accounting Reference Date :

Part 2 - Particulars of the Company (immediately after Completion)

Name : [NAME] Limited
Registered Office :
Directors :
[Secretary] :
Registered Number :
Date of Incorporation :
Authorised Share Capital :
Issued Share Capital :
Accounting Reference Date :

Part 3 - Post Completion Shareholdings

Member	Ordinary Shares	Percentage of equity share capital held (%)
Shares reserved for share option scheme		
Total		

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SCHEDULE 4

The Conditions

1. The passing of the Resolutions.
2. The Company having adopted the Articles.
3. The entry into of the Service Agreements between the Company and each of the Managers.
4. "Keyman" life assurance on the lives of the following and in the individual amounts of:

£[AMOUNT] [NAME]

£[AMOUNT] [NAME]

£[AMOUNT] [NAME]

for the benefit of the Company being in place and on risk from, and including, the date of this Agreement on terms approved by the Lead Investor.
5. Receipt by the Lead Investor of evidence satisfactory to it that the Company has obtained [in respect of itself and each member of the Group] directors' and officers' insurance in such a form and on such terms as are satisfactory to the Lead Investor.
6. Satisfactory completion of due diligence on behalf of the Investors, to include financial, legal and commercial due diligence [and the finalisation of the Company's management/audited accounts for the period []].
7. Receipt by the Lead Investor of evidence satisfactory that the Business and all assets required for the Business including, without limitation, all intellectual property rights used in the Business are wholly owned by or validly licensed to the Company.
8. Receipt by the Lead Investor or evidence satisfactory to it that provisional clearance for the trade of the Business has been granted for the purpose of Enterprise Investment Scheme relief, and such relief being available in respect of the subscription for shares made by the Investors hereunder.
9. [The entry into of the IP Assignment between [NAME(S) OF MANAGERS] and the Company.]
10. [Adoption of the Enterprise Management Initiative share option scheme by the Company on terms satisfactory to the Lead Investor.]

SCHEDULE 5

Warranties

1. The information set out at **Schedule 3** is true and accurate in all respects.
2. There are no outstanding share options or similar rights or agreements to issue any other shares save as Disclosed in the Disclosure Letter, and there are no other share reward schemes in existence other than as Disclosed in the Disclosure Letter.
3. The executive directors and senior management of the Company are listed in the Disclosure Letter, and a template of their contracts of employment and the individual remuneration details have been Disclosed to the Investors. Other than exemptions specifically envisaged by their contracts of employment each of the above works full time for and devotes the entirety of his/her working time to the business of the Company and neither he nor any connected person has any other interest of whatsoever nature in any other company, business, partnership, firm or trade.
4. Details of any pension schemes, life insurance, private medical insurance, permanent health insurance, company cars, bonus arrangements and any other additional items of remuneration have been Disclosed to the Investors.
5. Save as Disclosed the Company does not have any subsidiaries.
6. The Company has not disposed of any of its assets or intellectual property, and has not divulged at any time to any person any of the Company's confidential information, intellectual property or trade secrets.
7. **IP Warranties**

All patents, patent applications, trade marks, trade mark applications, copyrights, trade names, industrial designs and processes and all other intellectual or industrial property rights and all know-how used by the Company:

 - 7.1 are vested in the Company as sole legal and beneficial owner or validly licensed in from a third party pursuant to an arms-length arrangement;
 - 7.2 are free from any assignment, mortgage, charge, licence out agreement, royalty agreement or any other disposition, restriction, dealing, encumbrance or arrangement of any description nor is the Company obliged to create or grant any of the foregoing;
 - 7.3 have not, so far as the Warrantors are aware, been infringed by any person, firm or company, and the Company has taken all steps necessary or desirable for the

fullest protection of all such intellectual property including without limitation applying for and maintaining in force all possible patents, trade mark registrations and registered designs in all relevant countries;

- 7.4 do not infringe or breach any patents, trade marks, copyrights, industrial designs, registered designs, know how, trade secret or other intellectual or industrial property rights whether registered or not, or licence owned by or granted by any third party, or any of its current or former employees, consultants, contractors or officers;
- 7.5 are, as far as the Warrantors are aware, sufficient to enable the Company to fulfil the Business Plan in all material respects;
- 7.6 are, where it is intellectual property that is registered or subject to an application for registration Disclosed in the Disclosure Letter.
8. There are no mortgages, charges or liens over any of the Company's assets.
9. There is no litigation or dispute either current, pending, lapsed or threatened between the Company and any third party.
10. The Company and its directors are not in breach of any relevant legislation, and have not been convicted of any criminal offence involving dishonesty.
11. The [audited] [abbreviated] accounts of the Company to [] disclosed to the Investors give a true and fair view of the assets and liabilities and profits and losses of the Company as at their respective dates, and the management accounts of the Company to [] disclosed to the Investors are not materially misleading in any respect.
12. All statements of fact contained in the Business Plan and the replies to enquiries provided to the Investors' Solicitors by the Company's solicitors on [] ("**Replies to Enquiries**") were true and accurate in all material respects at the date when such documents were issued and the Warrantors are not aware of any matter or circumstance which would render them untrue or inaccurate at the date of this Agreement. They do not omit to state any fact which would make any statement contained in them misleading.
13. The projections and forecasts contained in the Business Plan have been properly compiled, are based on fair and reasonable assumptions, have been carefully considered by the Warrantors and are believed by them to be reasonable and accurate.
14. The statements of intention, expectation and opinions contained in the Business Plan are honestly made and held by the Warrantors, are based upon fair assumptions and are believed by them to be reasonable.

15. The Warrantors are not aware of any fact which would prevent the Company from implementing the Business Plan.
16. The Company has not given any mortgage, charge (fixed or floating), pledge, lien, security, interest or other third party right (including rights of pre-emption) over any of its share capital (whether issued or unissued) and no dividends or other rights or benefits have been declared, made or paid or agreed to be declared, made or paid thereon.
17. The issued share capital of the Company is fully paid.
18. The Company has no borrowings or indebtedness other than monies owed by the Company to third parties in respect of trading activities in the ordinary and usual course of its business.
19. The Company has not given any guarantee, indemnity, warranty or bond or incurred any other similar obligation or created any security outside the normal course of business for or in respect of liabilities, actual or contingent, of any other person.
20. Since []:
 - 20.1 there has been no material adverse change in the financial or trading position of the Company;
 - 20.2 the Company has not entered into any transaction or assumed or incurred any liabilities (including contingent liabilities) or made any payment not provided for in the accounts to [] other than Disclosed or otherwise in the ordinary course of carrying on its business;
 - 20.3 the Company has conducted its business in a normal and proper manner;
 - 20.4 the Company has not entered into any unusual contract or unusual commitment;
 - 20.5 the Company has paid its creditors according to their respective terms of business;
 - 20.6 no event has occurred which would entitle any third party (with or without the giving of notice) to call for the repayment of indebtedness of the Company prior to its normal maturity date; and
 - 20.7 no event has occurred to the Company which gives rise to a liability for tax on deemed (as opposed to actual) income, profits or gains or which results in the Company becoming liable to pay or bear a liability for tax directly or primarily chargeable against or attributable to another person.
21. All agreements to which the Company is a party:

- 21.1 have been complied with fully by the Company and, so far as the Warrantors are aware, by each other party to those agreements; and
- 21.2 are valid and constitute binding and enforceable obligations of the parties to those agreements.
22. No notice of any intention to terminate, repudiate or disclaim, and no notice of any default in respect of, any agreement to which the Company is a party has been given by the Company or received.
23. There are no grounds for the rescission, avoidance or reputation by a third party or, so far as the Warrantors are aware, by the Company of any agreement to which the Company is a party and there are no circumstances which might give rise to a default by the Company or, so far as the Warrantors are aware, by any third party in respect of such agreement.
24. No agreement to which the Company is a party will be affected by the subscription for shares by the Investors.
25. All returns, computations and payments which should be, or should have been, made by the Company for any taxation purpose have been made within the requisite periods and are in all material respects up-to-date, correct and on a proper basis and none of them is, or, so far as the Warrantors are aware, is likely to be, the subject of any dispute with HM Revenue and Customs or other taxation authorities.
26. The Company has duly deducted and accounted for all amounts which it has been obliged to deduct in respect of taxation and, in particular, has all material respects properly operated the PAYE system, by deducting tax, as required by law, from all payments made, or treated as made, to its employees or former employees, and accounting to HM Revenue and Customs for all tax so deducted and for all tax chargeable on benefits provided for its employees or former employees.
27. The Company is not, and will not become, liable to pay, or make reimbursement to indemnity in respect of, any taxation (or amounts corresponding thereto) in consequence of the failure by any other person to discharge that taxation within any specified period or otherwise, where such taxation related to a profit, income or gain, transaction, event, omission or circumstance arising, occurring or deemed to arise or occur (whether wholly or partly) on or prior to the date of this Agreement.
28. There are no loans made by the Company to any of its directors or shareholders and/or any person connected with any of them and no debts or liabilities owing by the Company to any of its directors or shareholders and/or any person connected with any of them and there are no existing agreements or

arrangements to which the Company is a party and to which any of its directors or shareholders and/or any person connected with any of them is a party.

29. The Company:
 - 29.1 is not insolvent as defined by section 123 Insolvency Act 1986;
 - 29.2 has not entered into any scheme of arrangement or voluntary or other arrangement with any of its creditors;
 - 29.3 is not the subject of any order or resolution for its winding up; and
 - 29.4 is not the subject of any outstanding petition for its winding up or of any petition applying for an administration order to be made in respect of it nor has it had a receiver appointed over all or any part of its undertaking or assets nor has an administrator been appointed in respect of it nor had any analogous thing done in any other jurisdiction.
30. The Company and each Manager has taken all necessary action and has all necessary power and authority to enter into and perform this Agreement and all documents referred to in it to which it, or he, is a party, each of which constitutes a binding and enforceable obligation on it, or him, in accordance with its terms.
31. Entry into this Agreement and all documents referred to in it to which the Company or an Executive is a party does not and will not conflict with or constitute a default under any agreement or arrangement to which the Company or any Manager is a party.

SCHEDULE 6

Consent Matters

1. References in **paragraph 2** below to the “**Company**” will include each Group Company from time to time and reference to amounts will be deemed to be the aggregate for all Group Companies.
2. The matters requiring Investor Consent are as follows:
 - 2.1 any variation in the authorised or issued share capital of the Company or the creation or the granting of any options or other rights to subscribe for, or convert into, shares of the Company or the variation of the rights attaching to such shares other than the grant of options over and the issue of shares pursuant thereto of [] ordinary shares pursuant to an employee share scheme;
 - 2.2 the reduction of the Company's share capital, share premium account, capital redemption reserve or any other reserve or of any uncalled liability in respect of partly paid shares or the purchase by the Company of any of its own shares;
 - 2.3 the amendment of any provision of the memorandum of association or the articles of association of the Company;
 - 2.4 the capitalisation of any undistributed profits (whether or not the same are available for distribution and including profits standing to the credit of the reserve) or any sums standing to the credit of the share premium account or capital redemption reserve fund of the Company;
 - 2.5 the taking of any steps to wind up the company or any other Group Company;
 - 2.6 a Sale or a Listing;
 - 2.7 any disposal of the whole or substantially the whole of the business of the Company or any of the shares in any Group Company;
 - 2.8 the declaration, making or payment of any dividend or other distribution to the holders of the Shares other than as expressly permitted under the Articles;
 - 2.9 any change in the accounting reference date of the Company;
 - 2.10 the incurring by the Company of any borrowing or other indebtedness in the nature of borrowings;
 - 2.11 the lending of money (except to employees of the Company in amounts not

- exceeding £[1,000] per employee (up to a maximum aggregate of £[20,000] for all employees), or to a wholly-owned subsidiary for use in the normal course of trading);
- 2.12 the adoption, in relation to each financial period, of the Budget and any material revision to the Budget;
 - 2.13 any change in the Company's accounting policies or principles or the basis of their application, save for any changes required from time to time to comply with changes in the law or with Statements of Standard Accounting Practice or Financial Reporting Standards;
 - 2.14 the appointment or removal of the auditors to the Company (other than reappointment of an existing auditor);
 - 2.15 the adoption or variation, once agreed, of any business plan;
 - 2.16 the incurring of any capital expenditure commitments above [£5,000] which are not provided for in the Budget in respect of that financial period;
 - 2.17 the acquisition or formation of any subsidiary undertaking or the acquisition of shares or other securities in any body corporate;
 - 2.18 the acquisition of the whole or any part of any business or undertaking;
 - 2.19 the establishment by the Company, or material variation to the terms of, any pension or life insurance scheme;
 - 2.20 the establishment by the Company, or variation to the terms of any share option, shadow share option, profit sharing, bonus or incentive scheme;
 - 2.21 the giving of notice of any resolution to wind-up the Company, or the filing of any petition for the appointment of an administrator or liquidator, or the making of an invitation to any person to appoint a receiver or an administrative receiver;
 - 2.22 the creation, extension or variation of any mortgage, charge or security interest over any asset of the Company (otherwise than in accordance with the Facility Documents) or any lien arising by operation of law;
 - 2.23 the making of any material change in the nature of the business of the Company (including cessation, except where legally obliged to do so, or on the advice of a licensed insolvency practitioner) or commence any type of new business except as provided for in or contemplated by the Business Plan or the Budget.
 - 2.24 the carrying on, expansion or development of any of the businesses from time to time carried on by the Company otherwise than through a Group Company.

- 2.25 the undertaking or entering into of any transaction of any nature whatsoever other than on arm's length and upon normal commercial terms.
- 2.26 the commencement or settlement of any litigation or arbitration by the Company other than debt collection by the Company in the ordinary course of trading;
- 2.27 the entering into by the Company of any partnership or joint venture; and
- 2.28 entering into any agreement or arrangement with respect to any of the Company's trade marks, patents or other intellectual property other than in the ordinary course of trading.

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SCHEDULE 7

Company's Covenants

Part 1 - Provision of Information

1. The Company will prepare and send to the Lead Investor:
 - 1.1 within [20] Business Days of the end of each [month / quarter], [monthly / quarterly] management accounts for the Group in a format approved by the Lead Investor and which include:
 - 1.1.1 a consolidated profit and loss account for the Group for that [month / quarter] and the financial period to date;
 - 1.1.2 a consolidated balance sheet for the Group for that [month / quarter];
 - 1.2 [audited] [abbreviated] statutory accounts for each member of the Group within [six] months (or such longer period as the Lead Investor may agree) of the end of the financial period to which they relate;
 - 1.3 promptly upon their receipt, copies of any management letters and any similar correspondence to any member of the Group from its auditors;
 - 1.4 information regarding any offer or approach (formal or informal) which might lead to any sale or disposal of any Shares or of any part of the business or assets of the Group (otherwise than in the ordinary and normal course of trading), forthwith upon the Company or any member of the Board becoming aware of it;
 - 1.5 forthwith upon the Company or any member of the Board becoming aware of them, written details of any circumstances which will or might reasonably be expected to:
 - 1.5.1 cause any actual or prospective material adverse change in the financial position, prospects or business of any Group Company; or
 - 1.5.2 materially adversely affect the Company's ability to perform its obligations under this Agreement or any Group Company's ability to perform its obligations under any material contract to which it is a party;
 - 1.6 notice of any fact, matter or circumstance which constitutes a breach of (or which has been alleged to, or would with the lapse of time, constitute a breach of):

- 1.6.1 the obligations of the Company or a Manager under this Agreement (including the Warranties);
- 1.6.2 the Articles;
- 1.6.3 a Service Agreement;

as soon as reasonably practicable (and in any event within two Business Days) following a Manager or the Company becoming aware of the event;

- 1.7 promptly upon a request being made, such other information relating to the activities and affairs of the Group as [any Investor or] the Lead Investor may from time to time reasonably require.
- 2. At least 28 days before the commencement of a financial period the Company will prepare and deliver to the [Lead Investor / Investor Director] for approval in writing a budget (that is, the Business Plan) for the Group for that financial period approved by the finance director of the Company. The Business Plan will include:
 - 2.1 a month by month projected profit and loss account, cash flow statement and balance sheet in respect of the Group and each trading member of the Group; and
 - 2.2 a capital expenditure budget.

Part 2 - Conduct of the Group

The Company will:

- 1. **Notice of Board Meetings and Minutes** - send to the Investor Director or, if none is appointed, to the Lead Investor:
 - 1.1 reasonable advance notice of each meeting of the Board or committee of the Board or of any meeting of the directors of any member of the Group of which the Investor Director is a director (such notice to be not less than twenty-one days' prior notice unless otherwise agreed by the Investor Director) and not less than seven days prior to the proposed meeting an agenda of the business to be transacted at such meeting (together with all board papers circulated in advance of the meeting); and
 - 1.2 as soon as practicable after each meeting of the Board or of a committee of the Board a copy of the draft minutes thereof;
- 2. **Frequency of Board Meetings** - procure that at least [ten] board meetings of the Company will be held each year at the Company's head office (or such other venue as may be approved by the Investor Director);

3. **Insurance** - insure with a reputable insurance office and keep so insured at all times the Group against appropriate risks to the extent and in accordance with good commercial practice (such insurance to include cover against any liability by the Directors or their respective alternates in the lawful performance of their respective duties) and procure that the insurances maintained by the Group are reviewed by the Company's insurance brokers at least once in each calendar year and that all reasonable recommendations made by such insurance brokers in relation to such insurances are complied with;
4. **Management of Business** - procure that the business of the Group will be properly managed and will use all reasonable endeavours to comply with all applicable laws and the Group will maintain all licences, consents and authorities whatsoever which are required or necessary to carry on the business of the Group from time to time;
5. **Business Plan** – use reasonable endeavours to carry into effect the Business Plan as from time to time amended with Investor Consent;
6. **Consent Matters** - procure that none of the matters set out in **Schedule 6** occurs without prior Investor Consent;
7. **Keyman Insurance** – maintain “key man” life and permanent incapacity assurance policy or policies with a life assurance office of repute approved by way of Investor Consent as set out in **paragraph 14**, each such policy to remain in force for so long as the insured remains a full time employee of the Group.
8. **Audit / Accounts** - procure that the Board:
 - 8.1.1 reviews the financial statements of the Company and consolidated financial statements of the Group before publication and, as necessary, take advice to be assured that the principles and policies adopted comply with statutory requirements and with the best practices in accounting standards;
 - 8.1.2 consults with the external auditors (and, if any, internal auditors) regarding the extent of their work and review with them all major points arising from the auditors' management letters and the response thereto; and
 - 8.1.3 seeks to satisfy itself that the internal control and compliance environment within the Group is adequate and effective.
9. **Matters for Board Decision** - [specify items which, for the avoidance of doubt, the Investors and the Managers agree should be dealt with at meetings of the Board].

SCHEDULE 8

Managers' Covenants

1. NON-COMPETE

1.1 As further consideration for the Investors agreeing to subscribe for Ordinary Shares on the terms of this Agreement each of the Managers covenants with the Investors and, as a separate undertaking, to the Company (for itself and as trustee for each member of the Group) that such Manager will not, without the prior written consent of the [Lead Investor/Investor Director], whether directly or indirectly and whether alone or in conjunction with, or on behalf of, any other person and whether as principal, shareholder, director, employee, agent, consultant, partner or otherwise:

1.1.1 during the period of his employment by any Group Company fail to devote his full time and attention to the business of the Group or be concerned or interested in any business (other than the business of the Group) whether or not in competition with any business carried on by the Group;

1.1.2 during the Restricted Period canvass, solicit or approach, or cause to be canvassed, solicited or approached, for orders any person who at any time during the Relevant Period is or was negotiating with any Group Company for the supply by any Group Company of Relevant Goods or Services or is or was a client or customer of any Group Company [and in each case with whom the Manager was, during the Relevant Period, directly concerned or connected or of whom, during the Relevant Period, the Manager had personal knowledge, where the orders relate to Relevant Goods or Services];

1.1.3 during the Restricted Period, deal or contract with any person who at any time during the Relevant Period is or was negotiating with any Group Company for the supply by any Group Company of Relevant Goods or Services or is or was a client or customer of any Group Company [and in each case with whom the Manager was, during the Relevant Period, directly concerned or connected or of whom, during the Relevant Period, the Manager had personal knowledge where in each case the dealing or contracting relates to Relevant Goods or Services];

1.1.4 during the Restricted Period, interfere, or seek to interfere, with the continuance of supplies to any Group Company from any supplier who has been supplying goods and/or services to any Group Company at any time during the Relevant Period if such interference causes or

would cause that supplier to cease supplying, or materially reduce its supply of, those goods and/or services to any Group Company;

- 1.1.5 during the Restricted Period, solicit or entice, or endeavour to solicit or entice, away from any Group Company or employ any person employed in a managerial, supervisory, technical or sales capacity by, or who is or was a consultant to, any Group Company at the Relevant Date or at any time during the period of [three months] immediately preceding the Relevant Date;
- 1.1.6 within the Restricted Territory during the Restricted Period be engaged, concerned or interested in any business which supplies Relevant Goods or Services;
- 1.1.7 at any time after Completion (except in the proper performance of his duties as a director and/or employee of any Group Company) use in connection with any business which is competitive with the business of any Group Company any name (in whatever form) which includes the name of any Group Company or any trading style or get up which is confusingly similar to that used by any Group Company as at the Relevant Date; or
- 1.1.8 make use of, take away, conceal, destroy, disclose or cause unauthorised disclosure to any person of any Confidential Information.

1.2 In this **Schedule 8**:

- 1.2.1 **"Confidential Information"** means any trade secret, know-how, ideas, business methods, finances, prices, business plans, marketing plans, development plans, manpower plans, sales targets, sales statistics, customer lists, customer relationships, computer systems or computer software or other confidential information concerning the businesses, finances, dealings, transactions or affairs of the Group or any of its customers or clients entrusted to him or arising or coming to his knowledge during the course of his employment with the Group.
- 1.2.2 **"Relevant Date"** the date of termination of the relevant Manager's employment [or contract for services] with the Group; and
- 1.2.3 **"Relevant Goods or Services"** means goods or services which are of the same kind as or are of a materially similar kind to or competitive with those supplied by any Group Company within the Relevant Period [and with which supply the Manager was, during the Relevant Period concerned or connected or of which, during the Relevant Period, he had personal knowledge];

- 1.2.4 **“Relevant Period”** means the period of [12] months immediately before the Relevant Date;
- 1.2.5 **“Restricted Period”** means the period of [12] months immediately following the Relevant Date;
- 1.2.6 **“Restricted Territory”** means [SPECIFY];
- 1.3 The restriction in **paragraph 1.1.8** will not apply to Confidential Information to the extent that:
- 1.3.1 it is in the public domain on the Completion Date or subsequently comes into the public domain other than pursuant to a breach of **paragraph 1.1.8**; or
- 1.3.2 a Manager is required by law or by the rules of any regulatory authority, to which he or the Company is subject, to disclose the same.
- 1.4 Nothing contained in this **Schedule 8** will prevent any Manager from holding for investment purposes only not more than three per cent of any class of securities which are listed or dealt in on a recognised investment exchange.
- 1.5 Each of the Managers agrees that (after taking legal advice) he considers that the undertakings contained in this **Schedule 8** are reasonable and are entered into for the purpose of and go no further than are legitimately necessary for protecting the goodwill of the business of the Group.
- 1.6 Each of the undertakings contained in this **Schedule 8** will be, and is, a separate undertaking by each of the Managers and will be enforceable by the Company (for itself and as trustee for each Group Company) and the Investors separately and independently of each other and if one or more of the undertakings contained in this **Schedule 8** is held to be against the public interest or unlawful or in any way an unreasonable restraint of trade the remaining undertakings will continue to bind the Managers.
- 1.7 If any undertaking contained in this **Schedule 8** would be void as drawn but would be valid if the period of application were reduced or if some part of the undertaking were deleted, the undertaking in question will apply with such modifications as may be necessary to make it valid and effective.

SCHEDULE 9

Deed of Adherence

This Agreement is made on

2008

BETWEEN

- (1) [NEWCO] Limited, a company incorporated in England and Wales (registered number [NUMBER] whose registered office is at [ADDRESS] ("the Company");
- (2) The persons whose names and addresses are set out in Part A of the Schedule to this Agreement ("the Managers");
- (3) The persons whose names and addresses are set out in Part B of the Schedule to this Agreement ("the Investors");
- (4) The persons whose names and addresses are set out in Part C of the Schedule to this Agreement ("the Non-Manager or Investor Shareholders"); and
- (5) [NAME OF NEW SHAREHOLDER] whose registered office is at [ADDRESS] ("the New Shareholder").

OR

[NAME OF NEW SHAREHOLDER] of [ADDRESS] ("the New Shareholder").]

BACKGROUND

- (A) This Agreement is supplemental to a shareholders' agreement dated [DATE] and entered into by [DETAILS] ("the Shareholders' Agreement").
- (B) The New Shareholder wishes to [subscribe for] [acquire] Ordinary Shares the capital of the Company.

OPERATIVE PROVISIONS

1. The definitions contained in the Shareholders' Agreement will have the same meanings in this Agreement save where the context otherwise requires.
2. The New Shareholder confirms (subject to paragraph 3 below) that [it] has been given and read a copy of the Shareholders' Agreement and covenants with each person named in the Schedule to this Agreement to perform and be bound by all the terms of the Shareholders' Agreement and named in the Shareholders' Agreement as if the New Shareholder was a party to the Shareholders' Agreement as [an Investor] [a Manager] to the intent that it shall be bound by and entitled to the benefit of the provisions of the Shareholders' Agreement as if it was a party to the Shareholders' Agreement and named in the Shareholders'

Agreement as [an Investor] [a Manager].

3. A New Shareholder who is entering into this Agreement as a Manager will have no liability or obligations in respect of the Warranties.
4. The Managers and the Company agree and confirm to each New Shareholder who is entering into this Agreement as an Investor that the benefit of the Warranties shall extend to such New Shareholder as if they had originally been given to such New Shareholder by the Managers pursuant to the Shareholders' Agreement.
5. This Agreement may be executed in any number of counterparts, each of which when executed will be an original but together will constitute one and the same agreement.
6. This Agreement will be governed by and construed in accordance with the laws of England and Wales.

IN WITNESS whereof the parties or their duly authorised representatives have executed and delivered this Agreement as a Deed on the date first stated above.

SCHEDULE

Part A - The Managers

PART B - The Investors

PART C - The Non-Manager or Investor Shareholders

[INSERT APPROPRIATE EXECUTION CLAUSES]

EXECUTED as a **DEED**)
by **[INVESTTECO]** LIMITED acting by)
[NAME] and **[NAME]**)

[Director]

[Director/Secretary]

OR

EXECUTED as a **DEED**)
by **[INVESTTECO]** LIMITED acting by)
[NAME])

Director

in the presence of:

Witness signature:

Witness name:

SIGNED AS A DEED by **[MANAGER]**)
in the presence of:)

Witness signature:

Witness name:

Witness address:

**[INSERT RELEVANT EXECUTION
CLAUSES FOR THE NON-MANAGER
SHAREHOLDERS AND THE INVESTORS]**