

IMPORTANT

This document is for lawyers who are familiar with transactions of this type with the Pension Protection Fund (the "PPF"). It is a not comprehensive guide to the legal and practical issues that may arise on a deal-specific basis.

EXPLANATORY NOTES

1 Master version

This is the master version of the PPF Precedent Shareholders' Agreement. It documents the terms upon which the PPF may be prepared to take an equity stake as part of a package of measures in a restructuring.

It should be used in conjunction with the PPF Precedent Articles of Association.

This PPF Precedent Shareholders' Agreement precedent includes provisions relating to Loan Notes. If applicable, this precedent should be read in conjunction with the PPF precedent Loan Note Instrument, the Pension Scheme Debenture and Loan Note Transfer Instrument.

This precedent may or not be applicable to your deal and this precedent should be tailored accordingly.

2 Possible amendments

This precedent provides for various scenarios where the PPF may be taking an equity stake in a UK company. The amendments set out below are not exhaustive. Further amendments may be advisable on a deal-specific basis.

2.1 Parties

Corporate Trustee

- (a) Where one of the Pension Scheme Trustees is a Corporate Trustee:

Parties paragraph (2) Use paragraph 2 subsection 2 (N.B. choose country of incorporation).

- (b) Where there is a sole Corporate Trustee:

In addition *delete* "(acting jointly in their capacity as trustees)" from Clauses 3.5, 5.2 and 9.

3 Loan Notes

- (a) Where Loan Notes are proposed:

The PPF has a precedent Loan Note Instrument and Loan Note Transfer Instrument for use in transactions of this type. In these circumstances the shareholders' agreement should include:

Contents	Include "Loan Notes" in Schedule 2 heading.
Recital E	Include this paragraph.
Definitions	Include "Loan Notes", "Loan Note Holder", "Loan Note Instrument" and "Loan Note Transfer Instrument" specifying the relevant details and <i>delete</i> the accompanying notes. Include "Loan Note Instruments" and "Loan Note Transfer Instruments" in the definition of "Transaction Documents".
Clause 3.2.2	Include paragraphs (a) to (d), specifying the relevant details (as appropriate).
Clause 3.2.3(b)	Include this paragraph in full.
Clause 3.3	Include "and Loan Notes" in the first sentence.
Clause 3.5	Include both references to "or Loan Notes".
Clause 6.1	Include the last sentence in full.
Clause 8	Include "or under any other Transaction Document" in the last sentence.
Schedule 2	Include "Loan Notes" in the heading and include details in Part B.

(b) Where Loan Notes are not proposed:

Delete all provisions referred to paragraph 4 above.

4 Execution by the PPF

Please note the PPF is a statutory corporation rather than a Companies Act 2006 company. The PPF executes deeds by affixing its seal in the presence of one authorised signatory.

Shareholders' agreement by way of deed

Dated [•]

Between

- (1) **The Board of the Pension Protection Fund**, a statutory corporation established by the Pension Act 2004 of Renaissance, 12 Dingwall Road, Croydon Surrey CR0 2NA (the "**PPF**");
- (2) [Name of Trustee] of [Insert address of Trustee] and [Name of Trustee] of [Insert address of Trustee]

[AND/OR where there is a Corporate Trustee

[Corporate Trustee], a company registered in England and Wales [**OR** Scotland] under number ** whose registered office is at **, in its capacity solely as the trustee of the Pension Scheme]

(the "**Pension Scheme Trustees**" which phrase shall, where the context so requires, include all their legal successors and assigns).

- (3) **Those persons (other than the Pension Scheme Trustees) whose names and addresses are set out in Schedule 2** (together, other than the Pension Scheme Trustees, "**the Principal Shareholders**"); and
- (4) [******] **Limited**, a company registered in [England and Wales] [**OR** Scotland] under number ** whose registered office is at **] (the "**Company**")

Recitals

A The Company is a private company limited by shares incorporated in [England and Wales] [**OR** Scotland] further details of which are set out in Schedule 1.

B [**Where the Company is an existing company:**

On the date of this Agreement the Company will adopt the Articles and carry on the Business pursuant to the terms of the Transaction Documents.]

[**OR Where the Company is a new company acquiring an existing business:**

On the date of this Agreement the Company intends to enter into a [business purchase] agreement for the purchase of [*describe business of the existing company*] from [*Existing company*] to carry on the Business as a going concern.

[**OR Where the Company is a holding company incorporated to acquire an existing company:**

On the date of this Agreement the Company intends to enter into a share purchase agreement for the purchase of the entire issued share capital of [*Existing company*] from [*the Seller(s)*].]

- C The Pension Scheme Trustees [(acting jointly in their capacity as trustees)] are to acquire ** A Ordinary Shares on the terms of this Agreement
- D [The Pension Scheme Trustees [(acting jointly in their capacity as trustees)] are also to acquire the Loan Notes on the terms set out in the Loan Note Instrument.]
- E The PPF (acting pursuant to section [111 – **for use before the commencement of the assessment period**] [OR 137 – **for use after the commencement of the assessment period**] of the Pensions Act) and the Shareholders are entering into this Agreement with the Company in order to record the basis of their relationship with the Company and to establish the manner in which the business and affairs of the Company will be conducted following Closing.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement and in the Recitals and Schedules hereto the following definitions shall apply.

"2006 Act" means the Companies Act 2006 including any statutory modification or any re-enactment thereof for the time being in force.

"A Ordinary Share" means an A non-voting ordinary share of [£1] in the capital of the Company for the time being.

"Adequate Procedures" means adequate procedures as referred to in section 7(2) of the Bribery Act and any guidance issued by the Secretary of State under section 9 of the Bribery Act;

"Assessment Period" means an assessment period for the purposes of section 132 of the Pensions Act.

"Associated Person" means in relation to a company, a person (including, but not limited to, an employee, agent or subsidiary) who performs services for or on that company's behalf;

"Articles" means the articles of association of the Company in the agreed form or as they may subsequently be altered from time to time.

"Associate" means any person, firm or company which is a connected person (as defined in section 839 of the Taxes Act) of any of the Principal Shareholders (or in the context of Clause 4.1(s) of any of the directors or managers), or which is an associated company as defined in section 416 of the Taxes Act of the Principal Shareholders.

"Assumptions" has the meaning given in Clause 1.3 (PPF) and **"Assumption"** means any one of them.

"Board" means the board of directors of the Company or a duly appointed committee thereof.

"**Bribery Act**" means the Bribery Act 2010.

"**Business**" means [*specify the business of the Company*] [**OR Where the Company is a holding company incorporated to acquire an existing company**: the business of acting as a holding company of [*Existing company*] [*describe Existing company business*]

"**Business Day**" means any day (other than a Saturday, Sunday or public holiday) on which banks generally are open for normal business in London.

"**Business Plan**" means any business plan of the Company from time to time.

"**Closing**" means completion of the matters specified in Clause 3.2.

"**Deed of Adherence**" means a deed of adherence in substantially the form set out in Schedule 3.

"**Directors**" means the directors for the time being of the Company.

"**Encumbrance**" means any mortgage, charge, pledge, option, attachment, restriction, assignment, security interest, title retention, preferential right, equity or trust arrangement, lien (other than a lien arising by operation of law), right of set-off, hypothecation, encumbrance or any security interest whatsoever howsoever created or arising, including any analogous security interest under local law.

"**Group**" means the Company together with its holding company or companies and any subsidiary or subsidiary undertaking of the Company or any such holding company, from time to time, and "**Group Company**" shall be construed accordingly.

"**IFRS**" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

["**Loan Notes**" means the loan notes constituted by the Loan Note Instruments and "**Loan Note**" means any one of them. (***N.B. Delete if not used***)]

["**Loan Note Holder**" means a registered owner of Loan Notes. (***N.B. Delete if not used***)]

["**Loan Note Instruments**" means the instruments in the agreed form to be executed by the Company on Closing constituting [*Insert details of Loan Notes*] and "**Loan Note Instrument**" means any one of them (***N.B. Delete if not used and remove from definition of Transaction Documents and delete Recital E***)]

["**Loan Note Transfer Instruments**"] means the transfer instruments in the agreed form to be executed by [*Insert name of Loan Note subscriber*] on Closing and "**Loan Note Transfer Instrument**" means any one of them (***N.B. Delete if not used and remove from definition of Transaction Documents***)]

"**Ordinary Share**" means an ordinary share of [£1] in the capital of the Company for the time being.

"**Pensions Act**" means the Pensions Act 2004 and its underlying regulations (as amended).

"Pension Scheme" means [*Name of Pension Scheme*] established by a deed dated [*insert date*] between [*insert parties*] [(as amended)], which is administered by the Pension Scheme Trustees.

"Pension Scheme Debenture" means the guarantee and debenture to be executed by the [Obligors] (as defined in the Loan Note Instruments) on or about the date hereof in favour of the Pension Scheme Trustees to secure, inter alia, all liabilities of the Company under the Loan Note Instruments. **(N.B. Delete if not used and remove from definition of Transaction Documents)**

"Pensions Regulator" means the UK Pensions Regulator, a body corporate established pursuant to the Part I of the Pensions Act.

"PPF Creditor Rights" means the rights and powers in relation to the debts owed to the Pension Scheme Trustees which pass to the PPF by virtue of section 137 and/or section 161 of the Pensions Act.

"Qualifying Insolvency" means a qualifying insolvency event for the purposes of section 127 of the Pensions Act. **"Prescribed Price"** means, in relation to a voluntary Transfer of Shares in respect of which a Transfer Notice shall have been served pursuant to Clause 6.4, the price per Share offered by the Proposed Transferee (as defined in Clause 6.4.1(a)).]

"Shareholders" means the Pension Scheme Trustees, the Principal Shareholders and their respective permitted transferees pursuant to the Articles and Clause 6 and **"Shareholder"** means any one of them.

"Shares" means the Ordinary Shares and the A Ordinary Shares.

"subsidiary" and **"holding company"** have the respective meanings attributed to them by section 1159 of the 2006 Act.

"subsidiary undertaking" has the meaning attributed to it in sections 1161 and 1162 of the 2006 Act.

"Taxes Act" means the Income and Corporation Taxes Act 1988.

"TCGA" means the Taxation of Chargeable Gains Act 1992.

"Transaction Documents" means this Agreement, the Articles and any Deed of Adherence which has been executed pursuant to this Agreement, [the Loan Note Instruments,] [the Pension Scheme Debenture,] [the Loan Note Transfer Instruments,] each as it may subsequently be amended or altered from time to time and **"Transaction Document"** means any one of them.

"Transfer" means any sale, assignment, pledge, transfer, grant of lease or other disposition of any legal, equitable or other interest or the creation of an Encumbrance, whether by operation of law or otherwise.

1.2 Interpretation

In this Agreement unless otherwise specified:

- (a) headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (b) references to this Agreement are references to this Agreement as varied, novated or supplemented from time to time;
- (c) references to statutes shall include any statute modifying, re-enacting, extending or made pursuant to the same or which is modified re-enacted or extended by the same or pursuant to which the same is made;
- (d) a document is in the **agreed form** if it is in the form of a draft agreed between and initialled by or on behalf of the Shareholders and the PPF on or before the date hereof;
- (e) references to Clauses, paragraphs and Schedules are references to those contained in this Agreement;
- (f) the Schedules are an integral part of this Agreement and references to this Agreement include references to such Schedules;
- (g) **in writing** includes any communication made by letter but does not include, other than for the purposes of Clause 4.1, e-mail or other forms of electronic communication; and
- (h) the *ejusdem generis* rule does not apply to the interpretation of this Agreement. The words "**include**", "**including**" and "**in particular**" indicate examples only. They do not limit the general nature of any preceding words. A phrase starting with the words "**or other**" or "**otherwise**" is not limited by any preceding words where a wider interpretation is possible.

1.3 PPF

- 1.3.1 The PPF is entering into this Deed pursuant to section [111]¹ [137]² of the Pensions Act (and all other powers empowering it) and on the following assumptions (the "**Assumptions**") which the other Parties acknowledge:
- (a) the Pensions Regulator has given its clearance for the proposed restructuring of the Company [and the Group Companies];³
 - (b) the Pension Scheme is an Eligible Scheme; and
 - (c) [on or before [DATE],]⁴ a Qualifying Insolvency will occur in relation to every Employer in relation to the Pension Scheme triggering an Assessment Period and the PPF Creditor Rights in relation to the whole of the Pension Scheme.
- 1.3.2 The PPF enters into this Deed, and the other Parties acknowledge that the PPF enters into this Deed, on the basis that:

¹ For use before the commencement of the Assessment Period under s132 Pensions Act 2004.

² For use after the commencement of the assessment period.

³ Delete if not other group companies. Check this accurately reflects all of the parties who should be seeking clearance.

⁴ It may be necessary to impose a deadline in some cases.

- (a) it does so without having made any enquiries in relation to the Assumptions, and without passing any opinion on or acknowledging whether or not the Assumptions (or any of them) are true or correct;
- (b) nothing in this Deed, any other Transaction Document, or otherwise shall be construed so as to create any obligation on the PPF to confirm that an Assessment Period has commenced or to assume responsibility for the Pension Scheme or any part of it.

1.3.3 The Parties (other than the PPF) agree that, if an Assessment Period commences in relation to the Pension Scheme (or any part of it), then unless and until:

- (a) the Board ceases to be involved with the Pension Scheme pursuant to section 149 of the Pensions Act; or
- (b) subsection 154(1) of the Pensions Act applies to the Pension Scheme,

the PPF may exercise any of the rights or powers of the Pension Scheme Trustees under this deed, any other Transaction Document, or otherwise.

2 Purpose of the Company

2.1 Primary object

The primary object of the Company shall be to carry on the Business. The Business shall be conducted in accordance with the Business Plan and in the best interests of the Company, with a view to promoting the success of the Company for the benefit of the Shareholders as a whole, and on sound commercial profit-making principles so as to generate the maximum achievable maintainable profits.

2.2 Business housekeeping

The Company shall, and the Principal Shareholders shall procure that the Company shall:

- (a) carry on and conduct its business on a commercial basis in a proper lawful and efficient manner for its own benefit;
- (b) transact all business on arm's length terms;
- (c) ensure that all its business other than routine business is undertaken or supervised by the Directors;
- (d) obtain and maintain:
 - (i) insurance cover in respect of all property and assets of the Company which are of an insurable nature so that they are fully insured for their full replacement value against all risks and on all such bases as are necessary or prudent or usual for companies carrying on business which is similar to the Business; and

- (ii) all other insurance for the carrying on of its business which is necessary or prudent or usual for companies carrying on business similar to the Business including product liability, professional indemnity and business interruption cover, such insurance being for the full replacement value of the Company's assets; and
- (e) obtain and maintain all necessary licences and approvals required in order to carry on the Business.

2.3 Group Companies

The Company and the Principal Shareholders shall procure that each Group Company (other than the Company) shall comply with the provisions of Clause 2.2 as if references in that Clause to the Company were references to the relevant Group Company.

3 Closing arrangements

3.1 Time and place of Closing

Closing shall take place on [the date of this Agreement] at the offices of [*insert details*] or at such other time and place as the parties shall agree in writing.

3.2 Matters to be dealt with at Closing

At Closing the parties shall take such steps as are reasonably required [in order to give effect to the structure set out in Schedule 2] [**OR** to reorganise the share capital of the Company in order to give effect to the structure set out in Schedule 2] and, in particular:

3.2.1 Share subscription

- (a) The Principal Shareholders shall cause to be passed at a duly convened Shareholders' meeting and/or Board meeting of the Company any resolutions necessary to give effect to [the arrangements in Schedule 2] [**OR** that share capital reorganisation]; and
- (b) Each Shareholder shall acquire, by subscription and/or transfer, such number and class of Shares so that it holds the number and class of Shares set opposite its name in Schedule 2 by the following subscriptions and/or transfers:

(Describe subscriptions / transfers) (It should be considered how the nominal value of any shares for which the PPF subscribes will be paid up, note clause 3.5).

3.2.2 [Loan Notes

- (a) The Company shall execute the Loan Note Instrument [and the Pension Scheme Debenture] and shall issue and allot such number of Loan Notes so that the Pension Scheme Trustees hold Loan Notes to the value set opposite their name in Schedule 2.

- (b) *[Insert name of Loan Note subscriber]* shall subscribe for the Loan Notes and deliver a written confirmation to the Company [of its agreement to apply and treat as discharged £** of the balance of the total receivable owed by Company to *[Insert name of Loan Note subscriber]* pursuant to *[describe debt]*];
- (c) Immediately following issue and allotment of the Loan Notes, *[Insert name of Loan Note subscriber]* shall execute the Loan Note Transfer Instrument(s) and transfer the Loan Notes to the [Pension Scheme Trustees] [(acting jointly in their capacity as trustees)]; and
- (d) [The Pension Scheme Trustees] shall acquire, by subscription and/or transfer, such number of Loan Notes so that it holds Loan Notes to the value set opposite its name in Schedule 2.]

3.2.3 Board approval

At a meeting of the Board, the Directors shall:

- (a) approve the [issue, allotment and transfer] (as relevant) of the Shares to be acquired pursuant to Clause 3.2.1 and shall enter the name of the relevant Shareholder in the register of members of the Company as the registered holders of such Shares, and shall issue and deliver to the relevant Shareholder the requisite share certificates duly executed by the Company; [;and]
- (b) [approve the [issue and allotment and transfer (as relevant) of the Loan Note(s) to be acquired pursuant to Clause 3.2.2, approve execution of the Loan Note Instrument [and the Pension Scheme Debenture], enter the name of the relevant Loan Note Holder(s) in a register of the Company of such holders as the registered holder(s) of such Loan Note(s), and shall issue and deliver to the relevant Loan Note Holder(s) the requisite Loan Note certificates duly executed by the Company.]

3.2.4 Adoption of the Articles

At a duly convened general meeting of the Company, [the Principal Shareholders shall procure that the Company] adopts the Articles with effect from Closing.

3.3 Free from Encumbrances

The Shares [and Loan Notes] allotted, issued or transferred under Clause 3.2 shall be so allotted, issued or transferred free (as applicable) from all Encumbrances and fully paid.

3.4 Waiver

Each of the parties hereby irrevocably waives all rights of pre-emption in respect of the allotment of, subscription for or transfer of any Shares under Clause 3.2 whether conferred upon them under the Articles or otherwise.

3.5 Gift

It is understood by the parties that the Pension Scheme Trustees will not be obliged to pay any moneys in order to acquire any Shares, [or Loan Notes,] whether by subscription, transfer or otherwise, and that any Shares [or Loan Notes,] shall be gifted to them [(acting jointly in their capacity as trustees)].

3.6 Representations, warranties and undertakings

Each Principal Shareholder and the Company represents, warrants and undertakes to the Pension Scheme Trustees and the PPF that:

- (a) any information supplied to the Pension Scheme Trustees or the PPF (or their respective advisers) prior to Closing in relation to [the Company] [and its Group Companies] [**OR Existing company**] [and its Group Companies] or the Business is true, accurate and complete in all material respects;
- (b) no material information regarding [the Company] [and its Group Companies] [**OR Existing company**] [and its Group Companies] or the Business has been withheld from the Pension Scheme Trustees or the PPF;
- (c) Schedule 4 sets out true, accurate and complete details of the salaries and benefits (including any bonus or similar arrangements) payable by any Group Company to each of the Company's shareholders, directors, [employees] or any of their Associates, and such salaries and benefits (save as disclosed in writing to the PPF prior to the date of this Agreement) have not changed since [*insert date 6 months prior to first approach to PPF*];
- (d) the Shares set out in Schedule 2 will together comprise, as at Closing, the entire issued share capital of the Company; and
- (e) [the only indebtedness due from any Group Company or that any Group Company has agreed to incur is []];
- (f) any information supplied to the Pensions Regulator in connection with the issue of any clearance statement by the Pensions Regulator under the Pensions Act is true, accurate and complete in all respects and any application for such a clearance statement does not omit any relevant information;
- (g) it will not, and will procure that each Group Company will not, engage in any activity, practice or conduct which would constitute a breach of any applicable law or convention relating to the prevention of bribery and corruption including, but not limited to:
 - (i) the Bribery Act 2010;
 - (ii) the United States Foreign Corrupt Practices Act of 1977 (as amended);
 - (iii) the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December

17, 1997, which entered into force on February 15, 1999, and the Convention's Commentaries; and

- (h) it has and will maintain in place, and will procure that each Group Company has and will maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under the Bribery Act (as each such term is defined in the Bribery Act).

4 Shareholder protections

4.1 Shareholder approval

The Company agrees, so far as it lawfully may, and each of the Principal Shareholders shall severally procure, to the extent that it is able as a Shareholder, that the Company shall not without the prior written consent of the holder(s) of a majority of the A Ordinary Shares⁵ then in issue (such consent not to be unreasonably withheld or delayed):

- (a) pass any resolution or present any petition for the Company's winding up or liquidation or take any steps with a view to the Company entering into a company voluntary arrangement or administration or pass a resolution inviting a secured creditor to appoint an administrative receiver or receiver; unless in each case an authorised insolvency practitioner shall have advised the directors of the Company that the Company is legally obliged to take such action by reason of having become insolvent;
- (b) issue or allot any share or other capital or reduce, convert, sub-divide, cancel, reorganise, or alter any rights attaching to, any shares;
- (c) grant any share option or right to subscribe, acquire or convert into shares or implement or vary any incentive, bonus or commission arrangement;
- (d) implement any share buy-back or other return of capital, other than in respect of any share buy-back or return of capital which is designed to return cash to Shareholders on a proportionate basis relative to the number of Shares held by such Shareholders in the Company at such time;
- (e) register any transfer or allotment of shares except in accordance with this Agreement and the Articles;
- (f) form any subsidiary, acquire or dispose of any material interest in any business or company, participate in any partnership, joint venture or profit/revenue sharing arrangement or enter into any scheme of arrangement or merger;
- (g) re-register the Company as a public or an unlimited company;
- (h) alter the Company's memorandum of association (if any) or Articles;
- (i) cease, or make any material change in the nature or geographical location of the Business;

⁵ This assumes the PPF holds all of the A Ordinary Shares

- (j) sell, transfer, lease, license or dispose by the Company (otherwise than in the ordinary course of trading) of (i) all or a substantial part of its business, undertaking or assets; or (ii) the whole or a substantial part of its real property assets whether by a single transaction or series of transactions, related or not (including whether by licence or option); or (iii) any asset other than on an arm's length basis; or (iv) any asset to an Associate other than in the ordinary course of trading and for market value;
- (k) [permit any material change in the Company's borrowings] [incur [(other than in the ordinary course of trading)] any borrowings in excess of **] or create any Encumbrance upon or in respect of the whole or any material part of the Business or any of the Company's material assets;
- (l) dispose of or out-license any intellectual property rights;
- (m) enter into any transaction or arrangement outside the ordinary course of trading of the Company with any Associate, manager, director or any shareholder of the Company or any person who is connected to any of its Associate, managers, shareholders or directors whether or not any person shall be party to such transaction or arrangement;
- (n) enter into any material or long-term agreement (including any mortgage or charge) which is unusual, onerous, not on an arm's length basis or otherwise outside the normal course of trading of the Company;
- (o) make any loan or provide any surety or security arrangement in respect of any loan or third party obligation whatsoever, other than in the ordinary course of trading;
- (p) make any payment otherwise than on an arm's length basis;
- (q) make any claim for or surrendering of losses for taxation purposes;
- (r) amend, vary or waive any provisions of or entry into, material breach of, failure to enforce or terminate (or give notice to terminate) any employment arrangements of any person where such person is, or is to be, director or a manager (including any service agreements) where such aforementioned action would have a material effect on the rights of the Pension Scheme Trustees or the PPF (as the case may be) pursuant to this Agreement or otherwise;
- (s) increase the pay or emoluments (including pension contributions, bonuses and the money value of non-cash benefits) of any shareholder of the Company, director or manager/or any of their Associates by a total sum representing more than the rate of increase in the all items Retail Price Index; or
- (t) establish or terminate any profit sharing, bonus or incentive scheme for any Shareholder, director or manager of the Company or any of their Associates or any variation of the terms of such a scheme.

For the purposes of this Clause 4.1 only, written consent shall include an e-mail sent from an authorised representative of the Pension Scheme Trustees or the PPF (as the case may be) to an authorised representative or director of the Company.

4.2 Group Companies

The provisions of Clause 4.1 shall apply equally and *mutatis mutandis*, to any Group Company (other than the Company) as if references in Clause 4.1 to the Company were references to the relevant Group Company.

Invoicing

- 4.3** The Company shall pay the PPF and the PPF may invoice the Company at its prevailing hourly rates for any time it spends in connection with the consideration, giving or refusing of any consent pursuant to clause 4.1. The Company shall reimburse the PPF for all reasonable legal and other advisor costs of the PPF in connection with such consents, within [10] Business Days of the delivery of an invoice from the PPF.

5 Information

5.1 Books and records

The Company shall:

- (a) at all times keep true, accurate and up-to-date books and records of all the affairs of the Company; and
- (b) at all times make available to the Shareholders and the PPF and their duly authorised representatives full and complete access (including copying facilities) to the books, records, accounts, documents and premises of the Company free of charge.

5.2 Supply of information

Without prejudice to Clause 5.1, the Company shall (and the Principal Shareholders shall procure that the Company shall), at its own cost prepare and send to the Pension Scheme Trustees and the PPF:

- (a) as soon as the same become available and in any event within two weeks from the end of each calendar month (or such other times as the Pension Scheme Trustees or the PPF may require), unaudited management accounts of the Company for that month rolling cash flow forecasts for a period of 12 months from the end of each month and details of its capital expenditure at such date in a form reasonably acceptable to the Pension Scheme Trustees;
- (b) as soon as the same become available and in any event within three months from the end of each of its financial years (or such other times as the Pension Scheme Trustees or the PPF may require) audited accounts of the Company (to be prepared, save as required by law in accordance with generally accepted accounting principles in the United Kingdom, including IFRS (if applicable), and certified by the auditors of the Company);

- (c) as soon as the same become available and in any event not later than one month before the start of each financial year of the Company (or such other times as the Pension Scheme Trustees or the PPF may require) a draft annual budget and business plan for the Company in respect of such financial year; and
- (d) all other information relating to the Company as the Pension Scheme Trustees or the PPF (as the case may be) may reasonably require (including any forecasts, budgets, business plans, board papers and minutes and any supporting documentation), and including in relation to material developments regarding the Company's financial and business affairs and significant events (including any litigation, arbitration or mediation) the outcome of which will or is likely to affect the Company, and such information shall be supplied within 5 days of it being requested.

5.3 Potential Approach

If the Company or a Principal Shareholder becomes aware of any approach by a potential purchaser to acquire any equity in the Company or the entire or a significant part of the business of the Company, it shall notify the Pension Scheme Trustees (with a copy of the PPF) as soon as reasonably practicable, and promptly copy to the Pension Scheme Trustees (and the PPF) any relevant correspondence with that potential purchaser.

5.4 Representative at Board Meetings

The Pension Scheme Trustees and the PPF may each from time to time appoint a representative [(the first such representative(s) being []][and])] who may attend all Board meetings and any meetings of any other board of directors of any other Group Company or any committees thereof (such representative(s) having the right to speak at but not vote at such meetings). The representative(s) shall be entitled to receive (at the same time as the directors) all notices, minutes and other papers circulated to the directors.

6 Transfer of Shares

6.1 Restrictions on Transfer

Save for a Transfer pursuant to and in accordance with the provisions of Clause[s] 6.3 [or 6.4] and/or pursuant to article 49 (Tag-along rights) or article 50 (Drag-along rights) of the Articles, the Company and each Shareholder agrees and undertakes that no Transfer of any Shares may be made without the prior written consent of the other Shareholders.

6.2 Deed of Adherence

6.2.1 If any Shareholder (the "**transferor**") proposes to Transfer any Shares to any person (the "**transferee**") who is not already a party to this Agreement then it shall be a condition precedent to such Transfer and the registration thereof that the parties to this Agreement and the transferee shall execute a Deed of Adherence, save that no such Deed of Adherence is required where the Pension Scheme Trustees Transfer any Shares to the PPF where the PPF

has assumed responsibility for the Pension Scheme pursuant to section 161 of the Pensions Act.

- 6.2.2 If the conditions and requirements to a Transfer set out in this Clause 6 have been satisfied, the parties (other than the transferor if transferring its entire shareholding) shall execute a Deed of Adherence.

6.3 Permitted transfers

A holder of A Ordinary Shares may freely Transfer its A Ordinary Shares, [Loan Notes] (in each case in whole or in part) including for the avoidance of doubt to:

- (a) the PPF where the PPF has assumed responsibility for the Pension Scheme pursuant to section 161 of the Pensions Act; or
- (b) any new trustee of the Pension Scheme (in its capacity as trustee),

and in each case the provisions of Clause 6.4 shall not apply to such Transfer.

6.4 Pre-emption

- 6.4.1 Any holder of Ordinary Shares who wishes to sell its Ordinary Shares (a "**Vendor**") shall give notice in writing to the Company and the other Shareholders of such wish (a "**Transfer Notice**") identifying:

- (a) the persons, to whom it proposes to sell its Ordinary Shares if they are not purchased by the other Shareholders pursuant to the provisions of this Clause 6 (the "**Proposed Transferee**");
- (b) the name of the Proposed Transferee's ultimate parent company and controlling shareholders, if any; and
- (c) the Prescribed Price and other terms of the proposed sale.

- 6.4.2 The Transfer Notice shall not be effective if it does not contain the information set out in clause 6.4.1. The Transfer Notice shall constitute the Company as the Vendor's agent for the sale of all, but not some only, of the Ordinary Shares held by the Vendor (the "**Sale Shares**") to the other Shareholders at the Prescribed Price. The Transfer Notice shall be accompanied by the Vendor's share certificates (or an appropriate indemnity) and (save as hereinafter provided) may not be withdrawn.

- 6.4.3 Within 5 Business Days of receipt of the Transfer Notice by the Company, the Company shall give notice in writing to the other Shareholders specifying the number of Sale Shares and the Prescribed Price therefor and offering the Sale Shares for sale to the other Shareholders at the Prescribed Price. Such notice shall be accompanied by a copy of the Transfer Notice and shall require each other Shareholder to state in writing within 10 days of the date of the notice:

- (a) that it is willing to purchase a stated number of the Sale Shares at the Prescribed Price; or

- (b) that it consents to the sale of all of the Sale Shares within 10 days thereof to the Proposed Transferee at the Prescribed Price.

In the event that no notice is received within the said period of 10 days or notice(s) have been given pursuant to Clause 6.4.3(a) but not collectively in respect of all the Sale Shares then all such other Shareholders shall be deemed to have served a notice pursuant to Clause 6.4.3(b) at the end of such 10 day period.

- 6.4.4 In the event that a notice is, or notices are, served pursuant to Clause 6.4.3(a) in respect of all of the Sale Shares the Company shall, by notice, allocate the Sale Shares to or amongst the other Shareholders in accordance with their willingness as stated in the notices given pursuant to that clause and (if more than one and in the event of competition) pro rata to the number of Shares for the time being held by them (but so that no such other Shareholder shall be obliged to purchase more than the Sale Shares so notified by it). Such Shareholders as aforesaid shall within 5 days thereafter complete the purchase from the Vendor of the Sale Shares so allocated to them at the Prescribed Price. The Vendor shall be bound to transfer the Sale Shares comprised in the notice to the other Shareholders at the Prescribed Price, and if it defaults in so doing the Company may receive the purchase money and the Directors (excluding any Director nominated by a defaulting Shareholder) may authorise some person to execute a transfer of the Sale Shares in accordance with the aforesaid allocation in favour of the other Shareholders as aforesaid (the "**Shareholder Purchasers**") and the Company shall hold the purchase money in trust for the Vendor. The receipt by the Company of the purchase money shall be a good discharge to the Shareholder Purchasers and after their name has been entered in the Company's register of members in exercise of the aforesaid power, the validity of the proceedings shall not be questioned by any person. If such purchase is not completed (for any reason other than the Vendor's default) within such period of 5 days, then the certificates and duly completed transfer in respect of the Sale Shares shall be returned to the Vendor and the provisions of Clause 6.4.5 shall apply *mutatis mutandis*.
- 6.4.5 In the event that a notice is given or deemed to be given by the other Shareholders pursuant to Clause 6.4.3(b), the Vendor shall be at liberty to sell all of the Sale Shares at any time within 3 days after the date of such notice (or, if no actual notice is given pursuant to Clause 6.4.3, the expiry of the period of 5 days provided for under Clause 6.4.3) to the Proposed Transferee at the Prescribed Price and otherwise upon no more favourable terms than those offered to the other Shareholders and as stated in the Transfer Notice
- 6.4.6 All Ordinary Shares transferred pursuant to this Clause 6.4 shall be transferred legally and beneficially and free from all Encumbrances together with all rights, benefits and advantages attached thereto as at the date of the Transfer Notice except the right to any dividend declared but not paid prior to the date of the relevant Transfer Notice.

6.4.7 Immediately upon completion of the Transfer of any Ordinary Shares by any Shareholder pursuant to the provisions of this Clause 6.4 the Vendor shall procure the resignation of any Director appointed to the Board by the Vendor without any claim for damages or compensation for loss of office of any kind whatsoever.

6.4.8 The Principal Shareholders shall together procure that at all times during the continuation of this Agreement the Board acts in accordance with the provisions of this Clause 6.

6.5 Share Certificates

Each share certificate in respect of Ordinary Shares held by any Principal Shareholder shall have typed on the face thereof the following legend:

"Transfer is subject to restriction as appears on the back".

and on the back the following legend:

*"The Ordinary Shares represented by this certificate are held by the registered owner subject to the terms of a Shareholders' Agreement dated ** which prevents the registered owner from (inter alia) selling, transferring, assigning, mortgaging, charging, pledging or otherwise disposing in any way whatsoever of the said Ordinary Shares otherwise than in accordance with that agreement, a copy of which has been filed at, and can be inspected by shareholders or a bona fide potential shareholder at, the Company's registered office."*

6.6 Obligations of the Company

The Principal Shareholders shall procure that the Company maintains an executed copy of this Agreement on file at its registered office and that the Company shall not transfer on its books any Ordinary Shares or issue any certificates in respect thereof unless all the conditions as set out in this Agreement and the Articles in respect of such transfer have been complied with and a purported transfer not in accordance with the terms hereof shall be null and void.

7 Competition

7.1 Definitions

In this Clause, the following definitions shall apply:

"Key Employees" means [*Specify*];

"Products" means [*Insert details of actual products involved*] and all other products (including without limitation intangible products) of the nature or type [*designed,*][*produced,*] manufactured, distributed or sold (or in the process of being [*designed,*][*produced,*] manufactured, distributed or sold) by [*the Company*][*any Group Company*] during the Relevant Period and in the six months prior to the Relevant Period;

"Services" means [*Insert details of actual services involved*] and all other services of the nature or type supplied by [*the Company*][*any Group Company*] during the Relevant Period and in the six months prior to the Relevant Period;

the "**Prohibited Area**" means [*Specify*];

the "**Relevant Period**" means the period from the date hereof to [the date falling ** [months] after the date when the Principal Shareholder in question, and its Associates, cease to own any interest in any Shares].

7.2 Restrictions

7.2.1 Each of the Principal Shareholders covenants with the others, the Pension Scheme Trustees, the PPF and the Company that it shall not and shall procure that none of its Associates shall either on its own account or jointly with, on behalf of or for any person, whether as principal, agent, partner, shareholder, director, consultant, employee or otherwise and whether directly or indirectly:

- (a) at any time during the Relevant Period (other than through its interest in the Company) carry on or be engaged, concerned or interested in any business all or a material part of which is or is to be the [design,][production,] manufacture, distribution or sale of any Products or the supply of any Services within the Prohibited Area;
- (b) at any time during the Relevant Period (other than through its interest in the Company) in any way assist any person engaged or to be engaged in the manufacture [design,][production,] distribution or sale of any Products or the supply of any Services within the Prohibited Area;
- (c) at any time during the Relevant Period solicit in relation to any Products or Services the custom within the Prohibited Area of any person who (at any time during the period from the date hereof to [the date when the Shareholder in question, and its Associates, cease to own any interest in any Shares]) was a customer or client of the Company, or any other Group Company (or who at any time during such period was in the course of negotiating therewith) in relation to any Products or Services;
- (d) at any time during the Relevant Period solicit or entice away or endeavour to solicit or entice away, employ or engage any [Key Employee], whether or not such person would commit any breach of contract by reason of leaving the service thereof [unless such person had ceased to be employed or engaged by any such person more than [six] months previously];
- (e) cause or seek to cause to be terminated or adversely affected or otherwise interfere with any agreement or arrangement of any kind to which any Group Company is party; or
- (f) use any trading name, mark or style which may suggest a connection with the Group or which is similar to any trading name, mark or style now or at any time [in the Relevant Period] used by

the Group or permit the Company or any other Group Company's name to be used in such a manner.

7.2.2 Nothing in Clause 7.2.1 shall preclude:

- (a) a Shareholder or its Associates from holding or acquiring directly or indirectly not more than 5% in aggregate in nominal value of the issued shares or other securities of any class of any company which is listed or dealt in on any recognised investment exchange (as that term is used in section 285 of the Financial Services and Markets Act 2000); or
- (b) the PPF from holding or acquiring directly or indirectly any shares or any other securities of any class of any company which are so held or acquired by the PPF pursuant to the fulfilment of its statutory function or otherwise.

7.3 Effect of partial invalidity

If any one or more of the provisions contained in this Clause 7 shall be invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions of this Clause shall not in any way be affected or impaired thereby.

8 Further Assurance

Each of the Principal Shareholders severally covenants with the Pension Scheme Trustees and the PPF that insofar as (i) it may lawfully do so and (ii) it is within its power to do so, it will take and do all necessary steps and actions and otherwise act and omit to act (including without limitation by the exercise of all powers and voting rights held by it as a Shareholder in the Company) to ensure that the provisions of this Agreement are given and remain in full force and effect and in particular so as to procure that the Company properly and duly performs its obligations under this Agreement or under the Articles [or under any other Transaction Document].

9 No assignment

Save as provided in Clause 6, no party may assign, transfer, charge or otherwise dispose of or subcontract any of its rights or obligations hereunder without the prior written consent of the Pension Scheme Trustees [(acting jointly in their capacity as trustees)].

10 Confidentiality

10.1 Obligations

Each of the parties shall at all times keep confidential and shall not use or disclose to any third party (and shall procure that its Associates, officers and employees and agents shall keep confidential and shall not use or disclose to any third party) any confidential information which it may have or acquire in relation to the customers, business, finances, assets or affairs of the Company, the PPF or the other Shareholders and their Associates or which, in consequence of the negotiation or operation of, or the exercise of rights under, any Transaction Document it may have

or acquire in relation to the customers, business or affairs of the other parties or their Associates, save for any information:

- (a) which is publicly available or becomes publicly available through no act of that Shareholder or the PPF;
- (b) which is disclosed to that Shareholder or the PPF by a third party which did not acquire the information under an obligation of confidentiality;
- (c) which is disclosed to the disclosing party's professional advisers on a need-to-know basis;
- (d) which is independently acquired by that Shareholder or the PPF as the result of work carried out by an employee to whom no disclosure of such information had been made; or
- (e) which is required to be disclosed by any law (including without limitation any order of a court of competent jurisdiction and the Freedom of Information Act 2000) or the rules of any stock exchange or governmental, revenue or other regulatory authority, whether or not having the force of law.

10.2 Duration

The provisions of this Clause 10 shall survive any termination of this Agreement.

11 Announcements

No announcement or circular in connection with the subject matter of this Agreement shall be made or issued by or on behalf of any of the parties hereto without the prior written approval of the others, such approval not to be unreasonably withheld or delayed.

12 Waivers, remedies cumulative, amendments, etc.

12.1 No waiver

No failure or delay by any of the parties hereto in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by any of the parties hereto of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

12.2 Rights and remedies

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

12.3 No variation

No provision of this Agreement may be amended, modified, waived, discharged or terminated, otherwise than by the express written agreement of the parties hereto nor may any breach of any provision of this Agreement be waived or discharged except with the express written consent of the parties not in breach.

12.4 Third party rights

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

13 No partnership or agency

Nothing in this Agreement shall be deemed to constitute a partnership between the parties hereto nor, save as expressly set out herein, constitute any party the agent of another party for any purpose. In addition, unless otherwise agreed in writing between the Shareholders, none of them shall enter into contracts with third parties as agent for any member of the Group or for the other Shareholders nor shall any Shareholder describe itself as agent as aforesaid or in any way hold itself out as being an agent as aforesaid.

14 Entire Agreement

14.1 Definition

For the purposes of Clause 14.2 "**Pre-Contractual Representation**" means any arrangement, agreement, assurance, draft document, promise, undertaking, representation or warranty of any nature whether or not in writing made or given by any person prior to the execution of this Agreement.

14.2 Entire Agreement

This Agreement and the documents referred to in it (together the **Contract Documents**) constitute the entire agreement between the parties relating to their subject matter. Each party to this Agreement acknowledges and agrees that in entering into the Contract Documents it is not relying upon and shall have no right of action against any other party to this Agreement in respect of any Pre-Contractual Representation which is not expressly set out in any of the Contract Documents.

15 Conflict with Articles etc.

In the event of any conflict between the provisions of this Agreement and the Articles, the provisions of this Agreement shall prevail and the parties shall exercise all voting and other rights and powers available to them so as to give effect to the provisions of this Agreement and shall further if necessary procure any required amendment to the Articles as may be necessary.

16 Notices

16.1 Manner of service

16.1.1 Any notice or other communication given or made under this Agreement (including without limitation a request for consent pursuant to Clause 4.1) shall be in writing and may be delivered to the relevant party or sent by first class prepaid letter to the address of that party specified in this Agreement (and in addition, in the case of the Pension Scheme Trustees, with a copy sent to the PPF) or such other address in England as may be notified

hereunder by that party from time to time for this purpose and shall be effectual notwithstanding any change of address not so notified.

16.1.2 For the purposes of Clause 16.1.1, as at the date of this Agreement, the current addresses are as follows:

- (a) Pension Scheme Trustees
 - (i) Address: **
 - (ii) Attention: **
- (b) PPF
 - (i) Address: Renaissance, 12 Dingwall Road, Croydon Surrey CR0 2NA.
 - (i) Attention: [The Chief Executive.]
- (c) The Company
 - (i) Address: **
 - (ii) Attention: **
- (d) [Y]
 - (i) Address: **
 - (ii) Attention: **
- (e) [Z]
 - (i) Address: **
 - (ii) Attention: **

16.2 Validity of service

Unless the contrary shall be proved, each such notice or communication shall be deemed to have been given or made and delivered, if by delivery, when left at the relevant address and, if by letter, 48 hours after posting.

17 Counterparts

17.1 This Deed may be executed in any number of counterparts. Any party may enter into this Deed by executing any counterpart but this Deed shall not be effective until each party has executed at least one counterpart.

17.2 Each counterpart shall constitute an original of this Deed but all the counterparts together constitute the same instrument.

18 Governing law and jurisdiction

18.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by, and construed in all respects in accordance with, English law.

18.2 The parties irrevocably agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising out of or in connection with this Agreement or its subject matter or formation (including any non-contractual disputes or claims).

Executed as a deed and delivered on the date appearing at the beginning of this Agreement.

Schedule 1 – Particulars of the Company

Name of Company:

Date of incorporation:

Place of registration:

Company registration number:

Authorised share capital (if any)

Issued share capital:

Particulars of any issued share capital not fully paid up:

Accounting reference date:

Names and addresses of Directors:

Name and address of secretary (if any):

Name and address of auditors:

Names of subsidiaries (if any):

Schedule 2 – Details of Shareholdings[, Loan Notes]

[Part A – Shareholdings (such [Ordinary Shares and A Ordinary Shares] representing the entire issued share capital of the Company upon Closing)]

Shareholders' names and addresses	Number of existing Ordinary Shares	Number of Ordinary Shares on Closing	Number of A Ordinary Shares on Closing
--	---	---	---

[Y]

[Address]

[Z]

[Address]

Pension Scheme Trustees

[Address]

[Part B - Loan Notes]

Loan Note Holders' names and Details of Loan Notes addresses

Pension Scheme Trustees

**

[Address]

Schedule 3 – Form of Deed of Adherence

Deed of Adherence

Dated 2015

Between

- (1) [Name of transferee] (the "**New Shareholder**") registered in ** under number ** whose registered office is at ** ;
- (2) The Board of the Pension Protection Fund;
- (3) The Pension Scheme Trustees;
- (4) [Insert details of shareholder [Y]];
- (5) [Insert details of shareholder [Z]]; and
- (6) ** (the "**Company**") registered in [England and Wales] [**OR** Scotland] under number ** and having its registered office at ** .

Recitals

By virtue of the Transfer referred to in the Schedule to this Deed the New Shareholder became entitled subject, *inter alia*, to the execution of this Deed, to the Shares (the **New Shareholder's Shares**) in the capital of the Company set out in the Schedule hereto.

This deed witnesses

- 1 In this Deed and the Recitals hereto:
 - (a) the "**Shareholders' Agreement**" means the agreement dated ** and made between [Insert names of original parties to the agreement]; and
 - (b) terms and expressions defined in the Shareholders' Agreement shall have the same meaning when used herein or in the Recital hereto, unless the context requires or admits otherwise.
- 2 The New Shareholder hereby covenants with and undertakes to each other party to this Deed and to the Company as trustee for all other parties who hereafter become bound by the Shareholders' Agreement pursuant to a deed in a similar form to this Deed to adhere to and be bound by the provisions of the Shareholders' Agreement as if the New Shareholder had been an original party to the Shareholders' Agreement.
- 3 [Where the transfer is only of part of the Transferor's shareholding:

For the avoidance of doubt, the Transferor is not released from its obligations under the Shareholders' Agreement save in respect of the New Shareholder's Shares.]

[Where the transfer is of the Transferor's entire shareholding:

Subject to the provisions of Clause 2 of this Deed, the Company, the Shareholders and the PPF hereby release the transferor from its obligations under the

Shareholders' Agreement (other than in respect of clause 10 (*Confidentiality*)), clause 11 (Announcements), clause 12 (Waivers, remedies cumulative, amendments etc), clause 14 (Entire agreement), clause 16 (Notices) and clause 18 (Governing law and Jurisdiction) and hereby acknowledge that the Transferor shall no longer be a Shareholder for the purposes of the definition of that term in the Shareholders' Agreement.]

- 4 The provisions of this Deed (other than those contained in this Clause) shall not have any effect until this Deed has been dated.

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

[* *Delete as appropriate*]

Schedule [to Deed of Adherence]

Transferor	Transferee	Shares	Price
**	**	**	**

[Insert appropriate signature blocks for Deed of Adherence]

Schedule 4 Employee etc. details

Name of shareholder, director, employee or Associate	Salary	Benefits (including bonus entitlements)
**	**	**

PPF

Executed as a deed and delivered when dated, by affixing the common seal of

THE BOARD OF THE PENSION PROTECTION FUND

in the presence of:

[Common seal]

Authorised Signatory

signature

print name

[add execution block for trustees as appropriate]

Executed as a deed by [company name] acting by a director in the presence of:

signature

Director

signature of witness

print name

name
print name of witness

address

Executed as a **deed** by [**company name**] acting by a director in the presence of:

signature Director

signature
of witness

print name

name

print name of witness

address

Executed as a **deed** by [**X Limited**] acting by a director in the presence of:

.....
signature Director

signature
of witness

.....
print name

name

print name of witness

address

occupation

Executed as a **deed** by [**Y Limited**] acting by a director in the presence of:

signature Director

signature
of witness

print name

name

print name of witness

address

[ALTERNATIVE EXECUTION BLOCK WHERE X OR Y IS NOT A UK COMPANY:]

Signed as a **deed** by **[insert full name of company]** acting by [

] signatory(ies) being [a] person[s] who in accordance with the law of [territory or incorporation] are acting under the authority of the company:

[]
