

## Example Loan Note Instrument

### **DISCLAIMER:**

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### **EXPLANATORY NOTES:**

*This is an example of a loan note instrument issued by a company as a “social impact bond” i.e. where the issuer of the loan note is accredited as a “social impact contractor” pursuant to section 257JD of the Income Tax Act 2007 (“ITA”).*

*The company is a private company limited by shares. The company also raised debt funding from another lender who was not eligible to claim SISR. The company is not controlled by any one single shareholder.*

*This version of the note (subject only to removal of commercially sensitive information) was submitted to HMRC as part of an application for advance assurance that the loan note holders would be eligible to claim Social Investment Tax Relief (“SISR”). HMRC issued that assurance.*

*Where a clause is included in this document specifically to meet the requirements of the SISR legislation in Part 5B of ITA, we have added a short footnote explaining that.*

Dated [] 201[]

**LOAN NOTE INSTRUMENT**

relating to

**constituting**

**up to £[] []% fixed rate unsecured loan notes, due 201[]**

between

**[] Limited**

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THIS DEED is dated [] 201[]

## Parties

[] **LIMITED** incorporated and registered in England and Wales with company number [] whose registered office is at [] (**Company**).

## Recitals

The Company has, by resolution of its board of directors passed on [] 201[], resolved to create up to a maximum nominal amount of £[] []% fixed rate unsecured loan notes, due 201[], to be constituted in the manner set out below.

## Agreed terms

### 1. Definitions and interpretation

1.1 The definitions and rules of interpretation in this clause apply in this instrument.

**Associate:** business partners, spouses, civil partners, parents and grandparents, children and grandchildren, or the trustees of any settlement where the Noteholder is a settlor or beneficiary.

**Board of Directors:** the board of directors of the Company from time to time.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Conditions:** the conditions set out in Schedule 2 as from time to time amended and **Condition** shall be construed accordingly.

**Connected:** a company is connected with another company if (i) the same person has control of both companies, (ii) a person (“A”) has control of one company and persons connected with “A” have control of the other company, (iii) either “A” has control of one company and “A” together with persons connected with “A” have control of the other company or a group of two or more persons has control of both companies and the groups consist of the same persons (or connected persons).

**Contract for Services:** an agreement named as such and entered between (1) the Company and (2) one of the Partners and dated on or about the date of this instrument.

**Control:** a person controls a company if he or she possesses or is entitled to acquire: (i) the greater part of the voting power in the company; (ii) the greater part of the share capital or of the issued share capital of the company; (iii) such part of the issued share capital as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he, she or any other person has as a loan creditor) entitle him or her to receive the greater part of the amount so distributed, or (iv) such rights as would, in the event

of a winding up or in any other circumstances entitle him or her to receive the greater part of the assets which would then be available for distribution among participators.

**De Minimis State Aid:** the de minimis state aid which fulfils the conditions set out in Commission Regulation (EU) No. 1407/2013 as amended from time to time or in an EU instrument from time to time replacing the whole or any part of that Regulation.

**Directors:** the board of directors of the Company for the time being.

**Eligible Compliance Period:** the period from the Issuance Date to the date falling 2 years after the end of the tax year in which the Issuance Date occurred.

**Event of Default:** the event specified in clause 14.10.

**Financial Year:** the annual accounting period of the Company ending on [] in each year.

**Full Time Equivalent Employees:** calculated by the number of full-time employees of the Company and adding, for such employee of the Company who is not a full-time employee, such fraction as is just and reasonable.

**Grant:** the grant agreement made on or about the date of this agreement between (1) [] and (2) the Company.

**Gross Assets:** the forms of property that appear on the Company's balance sheet.

**Group:** the Company and any subsidiary or holding company from time to time of the Company, and any subsidiary from time to time of the Company's holding company (and the expression **member of the Group** shall be construed accordingly).

**Issuance Date:** has the meaning given to it in Clause 5.1.

**Mobilisation Plan:** the plan prepared with the Partners in respect of implementation of the Social Impact Project.

**Noteholder:** each person for the time being entered in the Register as a holder of any Notes.

**Notes:** of an aggregate value not exceeding £[] []% fixed rate unsecured loan notes, due 201[] constituted by this instrument or, as the case may be, the amount of such loan notes for the time being issued and outstanding.

**Partners:**

(i) [], a company limited by guarantee, incorporated in England and Wales with registered number [] and registered with the Charity Commission with registration number []; and

(ii) [], a company limited by guarantee, incorporated in England and Wales with registered number [] and registered with the Charity Commission with registration number [].

**Qualifying Subsidiary:** where the subsidiary is a 51% subsidiary of the parent and no person other than the parent or another of its subsidiaries has control of the subsidiary and no arrangements are in place which would result in either of these conditions to cease to be complied with.

**Quarter Date:** 31 March, 30 June, 30 September and 31 December.

**Register:** the register of Noteholders kept and maintained by the Company in accordance with clause 9.

**Release Conditions Precedent:** evidence that the Company has been accredited by a Minister of the Crown as a “social impact contactor” as defined in section 257JD of the Income Tax Act 2007.

**Release Date:** the date that the Noteholders have received a condition precedent satisfaction letter signed by the Company stating that the documents and evidence listed in Schedule 2 (*Conditions Precedent*) and the Release Conditions Precedent is in form and substance satisfactory to them.

**Repayment Date:** [] 201[].

**Senior Discharge Date:** the first date on which the liabilities owed by the Company to the Senior Lenders under the Senior Loan Agreement have been fully and finally discharged to the satisfaction of the Senior Lenders.

**Senior Lender:** [], a company registered in England and Wales (registered number []) whose registered office is at [].

**Senior Loan Agreement:** the senior loan agreement made between the Company as borrower and the Senior Lender as lender dated [] 201[].

**SITR:** social investment tax relief which provides each Noteholder with income tax relief at 30% of the respective amounts subscribed in the Notes, subject to a maximum annual investment limit of £1,000,000 (as further defined in Schedule 11 of Part 5B of the Income Tax Act 2007).

**SITR Compliance Certificate:** a certificate issued by the Company to the Noteholders, immediately following authorisation by HMRC and/or a certificate issued by HMRC directly to the Noteholders once HMRC have approved the SITR Compliance Statement;

**SITR Compliance Statement:** a statement completed by the SITR Compliance Representative to be sent to HMRC in respect of SITR.

**SITR Accreditation Condition:** has the meaning given to it in Clause 12.1.

**SITR Conditions:** has the meaning given to it in Clause 12.2.

**SITR Compliance Representative:** the secretary or any director of the Company or any person authorised by them to negotiate with HMRC on their behalf.

**SITR Eligible Period:** the period commencing on the Issuance Date and ending on (and including) the third anniversary of the Issuance Date.

**Social Impact Project:** the three year and three month project to []

**Social Impact Summary:** a summary prepared by the Company and approved by the Board of Directors, in a form it deems suitable, covering salient aspect of the social performance of the Social Impact Project. This will include the outcomes achieved, and hence the social impact delivered, since the project's commencement.

**Special Resolution:** a resolution passed at a meeting of the Noteholders duly convened and held in accordance with the provisions of this instrument and carried unanimously by the persons voting at such meeting on a show of hands or, if a poll is demanded, unanimously by the votes given on such poll.

**51% subsidiary:** a subsidiary in which 51% of its shares are held by a holding company.

Any reference in this instrument to:

- 1.1.1 the **assets** of any person shall be construed as a reference to all or any part of its business, undertaking, property, assets, revenues (including any right to receive revenues) and uncalled capital;
- 1.1.2 an **encumbrance** shall be construed as a reference to a mortgage, charge, assignment, pledge, lien (save as arising in the ordinary course of business), hypothecation, right of set-off (save as arising under the general law for the protection of certain classes of creditors) or trust arrangement for the purpose of and having a similar effect to the granting of security, or other security interest of any kind;
- 1.1.3 **indebtedness** shall be construed as a reference to any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent;
- 1.1.4 this **instrument** or to any other instrument, agreement or document shall, unless the context otherwise requires, be construed as reference to this instrument or such other instrument, agreement or document as the same may from time to time be amended, varied, supplemented or novated, in each case, in accordance with its terms;
- 1.1.5 a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month save that, where any such period would otherwise end on a day that is not a Business Day, it shall end on the next Business Day, unless that day falls in the calendar month succeeding that in which it would otherwise have ended, in which case it shall end on the preceding

Business Day provided that, if a period starts on the last Business Day in a calendar month or if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last Business Day in that later month;

- 1.1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
  - 1.1.7 **repayment** includes redemption and vice versa and the words **repay, redeem, repayable, redeemed** and **repaid** shall be construed accordingly;
  - 1.1.8 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of: (i) another person (or its nominee), by way of security or in connection with the taking of security; or (ii) its nominee;
  - 1.1.9 **tax** shall be construed so as to include any present and future tax, levy, impost, deduction, withholding, duty or other charge of a similar nature (including, without limitation, any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);
  - 1.1.10 the **winding-up, dissolution** or **administration** of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or of any jurisdiction in which such person carries on business; and
  - 1.1.11 **£** denotes the lawful currency of the United Kingdom.
- 1.2 References to any statute or statutory provision:
- 1.2.1 shall be construed as a reference to it as amended, extended or re-enacted from time to time.
  - 1.2.2 shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.3 In construing this instrument general words introduced by the word **other** shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words followed by the word **including** shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.
- 1.4 All the provisions of this instrument are severable and distinct from one another and the illegality, invalidity or unenforceability of any provision of this instrument under the law of any jurisdiction shall not affect its validity or enforceability under



the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

- 1.5 References to the **Notes** include references to all and/or any of the Notes.
- 1.6 Clause, Schedule and paragraph headings shall not affect the interpretation of this instrument.
- 1.7 References to clauses and Schedules are to the clauses of and Schedules to this instrument and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.8 The Schedules (including, for avoidance of doubt, the Conditions) form part of this instrument and shall have effect as if set out in full in the body of this instrument. Any reference to this instrument includes the Schedules.

## **2. Amount of Notes**

The principal amount of the Notes is limited to £[].

## **3. Description of Notes**

The Notes shall be known as []% fixed rate unsecured loan notes, due 201[] and shall be issued in integral multiples of £1 by the Company.

## **4. Status of Notes**

The Notes when issued shall rank (i) *pari passu* equally and rateably without discrimination or preference among themselves; (ii) subordinated to all other debts of the Company and (iii) on a winding up, equally with shares in the Company; and (iv) as an unsecured obligation of the Company.

## **5. Issuance of Notes**

- 5.1 Upon the occurrence of the Release Date, the relevant Noteholder will transfer the subscription amount into the account specified by the Company in one issuance (the “**Issuance Date**”).
- 5.2 The amount of the proposed investment by any individual Noteholder must be a minimum of £[].
- 5.3 The Company shall apply all amounts borrowed by it under the Notes towards carrying out the social impact contract concerned to which the Grant relates, no later than 24 months beginning with the Issuance Date by:
  - 5.3.1 meeting all costs incurred in delivering the Social Impact Project;
  - 5.3.2 any charges properly payable pursuant to a Contract for Services;
  - 5.3.3 all legal, accounting and other professional fees and costs incurred by the Company in connection with the Social Impact Project;

- 5.3.4 premia payable in respect of insurances required for delivery of the Social Impact Project;
- 5.3.5 any value added or similar tax in respect of any of the above; and
- 5.3.6 any other costs and expenses agreed by the Noteholders and the Company.

## **6. Repayment of Notes**

- 6.1 When the Notes become payable in accordance with the provisions of this instrument, the Company shall pay to the Noteholders the full principal amount of the Notes to be repaid together with any accrued and unpaid interest on such Notes (less any tax which the Company is required by law to deduct or withhold from such payment) up to and including the date of payment.
- 6.2 All payments under this instrument, whether of principal, interest or otherwise, shall be made by the Company to the Noteholders entitled to such payments as provided in paragraph 4 of Schedule 4.
- 6.3 Where any payment to a Noteholder, whether of principal, interest or otherwise, is due in accordance with the terms of this instrument on a day that is not a Business Day, payment shall take place on the next succeeding Business Day. If that next succeeding Business Day is in the month following the month in which payment would otherwise be made, payment shall take place on the immediately preceding Business Day.
- 6.4 Subject to Clause 6.5, the Company is not permitted to make any repayments or prepayments of principal on the Notes prior to the Repayment Date.
- 6.5 In the event that:
  - 6.5.1 HMRC withdraws all or some of SITR as a result of the Company failing to comply with the SITR Conditions; or
  - 6.5.2 any of the Noteholders request early repayment of the relevant Notes, notwithstanding the fact that such early repayment will result in the loss of SITR,

the Company and the relevant Noteholder may agree (but are not obliged to) early repayment or prepayment of the full principal amount of the relevant Notes prior to the Repayment Date.

## **7. Interest on Notes**

Interest shall accrue and be paid on the principal amount of the Notes which are outstanding at the rate and in the manner set out in the Conditions.

## **8. Certificates**

- 8.1 Each certificate for Notes shall:

- 8.1.1 bear a denoting number;
  - 8.1.2 be issued to a Noteholder as a deed, substantially in the form set out in Schedule 1; and
  - 8.1.3 have the Conditions endorsed on it.
- 8.2 Each Noteholder shall be entitled to receive without charge one certificate for the Notes registered in his name.
- 8.3 The Company shall not be bound to register more than four persons as the joint holders of any Notes and, in the case of Notes held jointly by several persons, the Company shall not be bound to issue more than one certificate. Delivery of a certificate to the person who is first named in the Register as Noteholder shall be sufficient delivery to all joint holders of the Notes in respect of which such certificate has been delivered.

## **9. Register**

- 9.1 The Company shall, at all times, keep a Register at its registered office (or at such other place as the Company may from time to time have appointed for the purpose and have notified to the Noteholders).
- 9.2 The Register shall contain the following details:
- 9.2.1 the names and addresses of the Noteholders for the time being;
  - 9.2.2 the principal amount of the Notes held by each Noteholder;
  - 9.2.3 the date at which the name of each Noteholder is entered in respect of the Notes registered in his name; and
  - 9.2.4 the date of issue of each Note.
- 9.3 Any change of name or address by any Noteholder that is notified to the Company at its registered office address above shall be entered in the Register.
- 9.4 Any Noteholder may at all reasonable times during office hours and on reasonable notice inspect, and take copies of, the Register.

## **10. Representation**

- 10.1 The Company makes the representations and warranties set out in this Clause 10 to the Noteholders.
- 10.1.1 The Company has received confirmation from the Cabinet Office that accreditation as a social impact contractor as defined in section 257JD of the Income Tax Act 2007 should be forthcoming based on the documents provided.

- 10.1.2 The available tax relief on this instrument, together with any other De Minimis State Aid received in the three year period prior to the Issuance Date does not exceed EUR 200,000.
- 10.1.3 The factual statements made in the Advance Assurance Letter are true and accurate.
- 10.1.4 The Company has fewer than 500 Full Time Equivalent Employees.
- 10.1.5 The Company has not more than £15,000,000 in Gross Assets immediately before the Issuance Date.
- 10.1.6 The Company has not more than £16,000,000 in Gross Assets immediately after the Issuance Date.
- 10.1.7 The Company is not a quoted company and there are no arrangements in existence for the Company to become a quoted company.
- 10.2 The representations made in Clause 10.1 shall be made on the date of this instrument and shall be deemed to be repeated on the each Issuance Date.

## **11. Information Covenants**

- 11.1 The Company shall deliver to the Noteholders within nine months of the end of each Financial Year annual audited accounts including a notes section, together with a Social Impact Summary.
- 11.2 The Company shall notify the Noteholders of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

## **12. Covenants**

- The undertakings in this Clause 12 remain in force from the date of this instrument for so long as any amount is outstanding under the Notes.
- 12.1 The Company covenants that with effect from the Issuance Date until the third anniversary of the Issuance Date, the Company is an accredited social impact contactor as defined in section 257JD of the Income Tax Act 2007 (the “**SITR Accreditation Condition**”).
- 12.2 The Company will comply with the following conditions (the “**SITR Conditions**”) for the duration of the SITR Eligible Period:
- 12.2.1 The Company shall not amend this instrument in a manner which results in it ceasing to be a “qualifying debt investment” for the purposes of section 257L of the Finance Act 2014;
- 12.2.2 This instrument and the Notes are at all times unsecured;

- 12.2.3 The Company and any 90% social subsidiary of the Company (as such term is defined in section 257MV of the Income Tax Act 2007) is not and will not be a member of a partnership;
- 12.2.4 The Company is not in Control of any company which is not a Qualifying Subsidiary of the Company;
- 12.2.5 There are no arrangements in place for the Company to Control any company which is not a Qualifying Subsidiary of the Company;
- 12.2.6 The Company is not and will not be a 51% subsidiary of a company or be otherwise under the Control of a company and a person Connected with the Company;
- 12.2.7 There are no arrangements in place for the Company to be a 51% subsidiary of a company or be otherwise under the Control of a company and a person Connected with the Company.
- 12.3 The Company will submit to HMRC a duly completed Sitr Compliance Statement and respond promptly to any queries from HMRC with regard to that Sitr Compliance Statements.
- 12.4 The Company will complete and send to each Noteholder the applicable Sitr Compliance Certificates within fourteen days of receipt of an authorisation to do so from HMRC.
- 12.5 The Company will not issue a Sitr Compliance Certificate until it has received authorisation to do so from HMRC.
- 12.6 The Company will advise HMRC if the Company ceases to comply with any of the Sitr Conditions or the Sitr Accreditation Condition within 60 days of the date of such non-compliance.

### **13. Conditions Subsequent**

- 13.1 Within the Eligible Compliance Period, the Company shall provide the Noteholders with a letter confirming that the following deliverables have been satisfied, in compliance with the relevant requirements of the Income Tax Act 2007;
- 13.1.1 a copy of the Sitr Compliance Statement duly completed by the Sitr Compliance Representative has been submitted to HMRC;
- 13.1.2 a copy of the Sitr Compliance Certificate, which HMRC have authorised the Company to issue to each of the Noteholders;
- 13.1.3 a copy of the Sitr Compliance Certificate issued by HMRC; and
- 13.1.4 evidence that the money raised under the Notes have been used by the Company no later than the end of 24 months commencing with the

Issuance Date, wholly for the carrying out of the social impact contract to which the Grant relates.

#### **14. Default**

The following is an Events of Default:

**Winding-up:** Save for any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement, a receiver, custodian, interim receiver, or similar officer is appointed in respect of the Company or over a substantial part of the Company's assets or any third party takes steps to appoint such an officer in respect of the Company.

#### **15. Acceleration**

15.1 If, prior to the occurrence of the Senior Discharge Date and for any reason, an Event of Default has occurred, the Noteholders may, subject to the receipt of prior written consent from the Senior Lenders, by Special Resolution or by written notice to the Company from Noteholders holding more than 50% in nominal value of the Notes then issued and outstanding, at any time while such Event of Default remains unremedied and has not been waived by a Special Resolution, direct that the principal amount of all Notes, all unpaid accrued interest and any other sum then payable on such Notes shall become due and payable immediately. If the Noteholders give such a direction under this clause, then the principal amount of all Notes, all unpaid accrued interest and any other sum then payable on such Notes (in each case less any applicable taxes) shall be immediately due and payable by the Company and the Company shall immediately pay or repay such amounts to the Noteholders.

15.2 If, after the occurrence of the Senior Discharge Date and for any reason, any Event of Default has occurred, the Noteholders may by Special Resolution or by written notice to the Company from Noteholders holding more than 50% in nominal value of the Notes then issued and outstanding, at any time while such Event of Default remains unremedied and has not been waived by a Special Resolution, direct that the principal amount of all Notes, all unpaid accrued interest and any other sum then payable on such Notes shall become due and payable immediately. If the Noteholders give such a direction under this clause, then the principal amount of all Notes, all unpaid accrued interest and any other sum then payable on such Notes (in each case less any applicable taxes) shall be immediately due and payable by the Company and the Company shall immediately pay or repay such amounts to the Noteholders.

#### **16. No set-off**

Payments of principal and interest under this instrument shall be paid by the Company to the Noteholders, without any deduction or withholding (whether in respect of any set-off, counterclaim or otherwise whatsoever) unless the deduction or withholding is required by law.

## **17. Meetings of Noteholders**

The provisions for meetings of the Noteholders set out in Schedule 5 shall be deemed to be incorporated in this instrument and shall be binding on the Company and the Noteholders and on all persons claiming through or under them respectively.

## **18. Enforcement**

18.1 From and after the date of this instrument and so long as any amount is payable by the Company in respect of the Notes, the Company undertakes that it shall duly perform and observe the obligations on its part contained in this instrument.

18.2 The Notes shall be held subject to and with the benefit of the provisions of this instrument, the Conditions and the schedules (all of which shall be deemed to be incorporated in this instrument). All such provisions shall be binding on the Company and the Noteholders and all persons claiming through or under them respectively, and shall enure for the benefit of all Noteholders.

18.3 Except as expressly provided in clause 18.4, a person who is not a party to this instrument shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this instrument.

18.4 This instrument and the Notes are enforceable under the Contracts (Rights of Third Parties) Act 1999 by each Noteholder and by the Senior Lender.

## **19. Modification**

The provisions of this instrument and the Conditions and the rights of the Noteholders may from time to time be modified, abrogated or compromised in any respect (including in any manner set out in paragraph 16.1 of Schedule 5) with the sanction of a Special Resolution and with the consent of the Company.

## **20. Governing law and jurisdiction**

20.1 This instrument and the Notes and any dispute or claim arising out of or in connection with any of them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.

20.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this instrument or any Note or their subject matter or formation (including non-contractual disputes or claims).

This instrument has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Schedule 1 Form of Note**

**Certificate No. [NUMBER]**

**Date of Issue [DATE]**

**Amount £[AMOUNT]**

**[ ] LIMITED**

**£[ ] [%] FIXED RATE**

**UNSECURED LOAN NOTES 201[ ]**

Created and issued pursuant to a resolution of the board of directors of the Company passed on [DATE].

**THIS IS TO CERTIFY THAT** [NAME OF NOTEHOLDER] is the registered holder of £[AMOUNT] of the £[ ] [%] fixed rate unsecured loan notes 201[ ] constituted by an instrument entered into by the Company on [DATE] (**Instrument**). Such Notes are issued with the benefit of and subject to the provisions contained in the Instrument and the Conditions endorsed hereon.

1. The Notes are repayable in accordance with Condition 1.
2. Any change of address of the Noteholder(s) must be notified in writing signed by the Noteholder(s) to the Company at its registered office from time to time.
3. Words and expressions defined in the Instrument shall bear the same meaning in this Certificate and in the Conditions endorsed hereon.
4. The Notes and any dispute or claim arising out of or in connection with any of them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
5. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Notes or their subject matter or formation (including non-contractual disputes or claims).
6. This Certificate has been executed as a deed and is delivered and takes effect on its date of issue stated at the beginning of it.

Executed as a deed by [NAME OF COMPANY] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director OR its secretary]

.....

[SIGNATURE OF FIRST DIRECTOR]

Director

.....

[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]

[Director or Secretary]

OR

Executed as a deed by [NAME OF COMPANY] acting by [NAME OF DIRECTOR] a director, in the presence of:

.....



[SIGNATURE OF DIRECTOR]

Director

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Dated: [YEAR]

SAMPLE

## Schedule 2 Conditions Precedent

1. This instrument executed by the Company.
2. True and complete copies (which have been certified as true, complete and up to date by a director of the Company) of:
  - i. the resolutions of the board of directors of the Company approving the terms of this instrument and the Notes and authorising a specified person or persons to execute this instrument and the Notes; and
  - ii. the memorandum and articles of the Company.
3. A certificate of a director of the Company certifying that the Notes will not cause any borrowing or security or similar limit binding on it to be exceeded.

### Other

4. Evidence that the Partners have subscribed for shares in the Company in an aggregate amount of £[] ;
5. A copy of the duly executed Senior Loan Agreement and evidence that £[] has been drawn down by the Company thereunder;
6. A copy of the projected balance sheet of the Company for the immediately following Financial Year evidencing that it has less than £15,000,000 Gross Assets and that after the Issuance Date, it will not have more than £16,000,000 of Gross Assets; and
7. A copy of the duly executed agreement with the [] to which the Grant relates.

## **Schedule 3    The Conditions**

### **1.    Repayment**

On the Repayment Date, the Company shall redeem the principal amount of Notes issued on the date of this instrument. Any redemption of the Notes under this Condition 1 shall be made pro rata to the holdings of all Noteholders, together with accrued and unpaid interest (less any tax required by law to be deducted or withheld from such payment) accrued on the relevant Notes up to (and including) the date of such repayment by the Company.

### **2.    Cancellation**

All Notes repaid, or purchased by the Company shall be cancelled and the Company shall not reissue the same.

### **3.    Payment of interest**

3.1 Interest on the principal amount of the Notes outstanding from time to time shall accrue at the rate of []% per annum.

3.2 The Company shall pay accrued interest in cash, in arrears within 5 Business Days of each Quarter Date to the persons who were registered as Noteholders at the close of business on each Quarter.

3.3 Interest shall be calculated on the basis of the actual number of days elapsed in the relevant period and a 365 day year.

3.4 If the Company fails to pay any amount of interest or principal on any Note when such amount is due, interest at the rate applicable under these Conditions plus 1% per annum shall accrue on the unpaid amount from the due date until the date of payment.

3.5 Interest on any Notes repaid by the Company in accordance with these Conditions shall cease to accrue as from the date of such repayment.

### **4.    Dealings**

The Notes shall not be capable of being dealt in or on any stock exchange in the United Kingdom or elsewhere and no application has been or shall be made to any stock exchange for permission to deal in or for an official or other quotation for the Notes.

### **5.    Notices**

Any Noteholder described in the Register as being at an address outside the United Kingdom but who shall from time to time give to the Company an address within the United Kingdom at which any notice may be served upon him shall be entitled to have notice served on him at such address. Save as otherwise provided in this Condition 6, no Noteholder other than a Noteholder described in the Register as

being at an address within the United Kingdom shall be entitled to receive any notice.

SAMPLE

## **Schedule 4 Provisions as to registration and other matters**

### **1. Recognition of Noteholder as absolute owner**

The Company shall recognise as absolute owner the registered holder of any Notes. The Company shall not (except as ordered by a court of competent jurisdiction) be bound to take notice or see to the execution of any trust (whether express, implied or constructive) to which any Notes may be subject. The receipt of the registered holder for the time being of any Notes or, in the case of joint registered holders, the receipt of any of them, for the principal payable in respect of such Notes and for the interest from time to time accruing due in respect of such Notes or for any other moneys payable in respect of such Notes shall be a good discharge to the Company notwithstanding any notice it may have (whether express or otherwise) of the right, title, interest or claim of any other person to or in such Notes, interest or moneys. The Company shall not be bound to enter any notice of any express, implied or constructive trust on the Register in respect of any Notes.

### **2. Recognition of personal representatives**

The executors or administrators of a deceased Noteholder (not being one of several joint registered holders) and in the case of the death of one or more of several joint registered holders the survivor or survivors of such joint registered holders, shall be the only person(s) recognised by the Company as having any title to such Notes.

### **3. Transmission of Notes**

Any person who becomes entitled to any of the Notes as a result of the death or bankruptcy of any Noteholder, or of any other event giving rise to the transmission of such Notes by operation of law may, upon producing such evidence that he sustains the character in respect of which he proposes to act under this Condition or of his title as the Directors shall think sufficient, be registered himself as the holder of such Notes. The Company may retain any payments paid upon any such Notes which any person under this provision is entitled to, until such person is registered as the holder of such Notes.

### **4. Payment of interest and principal**

#### **4.1 The payments of principal, interest or other sums payable in respect of the Notes may be paid by:**

- (a) electronic transfer in immediately available cleared funds on the due date for payment, to the account specified for the purpose by the Noteholder or joint Noteholders in writing to the Company; or
- (b) in the absence of such notification, by cheque, warrant or bankers' draft made payable to and sent to the registered address of the Noteholder or in the case of joint registered holders, made payable to the order of and sent to

the registered address of that one of the joint registered holders who is first named on the Register or made payable to such person and sent to such address as the registered holder or all the joint registered holders may in writing direct.

4.2 Every such cheque, warrant or bankers' draft shall be sent on the due date for payment and may be sent through the post at the risk of the registered Noteholder or joint registered holders. Payment of the cheque, warrant or bankers' draft shall be a good discharge to the Company.

4.3 All payments of principal, interest or other moneys to be made by the Company shall be made after any deductions or withholdings for or on account of any present or future taxes required to be deducted or withheld from such payments.

5. **Receipt of joint holders**

If several persons are entered in the Register as joint registered holders of any Notes then without prejudice to the provisions of paragraph 4 the receipt of any one of such persons for any interest or principal or other moneys payable in respect of such Notes shall be as effective a discharge to the Company as if the person signing such receipt were the sole registered holder of such Notes.

6. **Replacement of certificates**

If the Certificate for any Notes is lost, defaced or destroyed it may be renewed on such terms (if any) as to evidence and indemnity as the Directors may require. In the case of defacement the defaced Certificate shall be surrendered before the new Certificate is issued.

7. **Notice of Noteholders**

Any notice or other document (including Certificates for Notes) may be given or sent to any Noteholder by sending the same by post in a prepaid, first-class letter addressed to such Noteholder at his registered address in the United Kingdom or (if he has no registered address within the United Kingdom) to the address (if any) within the United Kingdom supplied by him to the Company for the giving of notice to him. In the case of joint registered holders of any Notes a notice given to the Noteholder whose name stands first in the Register in respect of such Notes shall be sufficient notice to all joint holders. Notice may be given to the persons entitled to any Notes as a result of the death or bankruptcy of any Noteholder by sending the same by post in a prepaid, first-class envelope addressed to them by name or by the title of the representative or trustees of such Noteholder at the address (if any) in the United Kingdom supplied for the purpose by such persons or (until such address is supplied) by giving notice in the manner in which it would have been given if the death or bankruptcy had not occurred.

8. **Notice to the company**

Any notice or other document (including Certificates for Notes) may be given or sent to the Company by sending the same by post in a prepaid, first-class letter addressed to the Company at its registered office for the time being.

9. **Service of notices**

Any notice, communication or document sent by post shall be deemed to have been delivered or received on the second Business Day following the day on which it was posted. In proving such delivery or receipt it shall be sufficient to prove that the relevant notice, communication or document was properly addressed, stamped and posted (by airmail, if to another country) in the United Kingdom.

SAMPLE

## **Schedule 5 Provisions for meetings of Noteholders**

### **1. Calling of meetings**

The Company may (i) upon the occurrence of an Event of Default and (ii) on the request in writing signed by any registered holder of the Notes for the time being outstanding, convene a meeting of the Noteholders to be held at such place as the Company shall determine.

### **2. Notice of meetings**

At least 14 clear days' notice specifying the place, day and hour of the meeting shall be given to the Noteholders of any meeting of Noteholders in the manner provided in Schedule 4. Any such notice shall specify the general nature of the business to be transacted at the meeting thereby convened but, except in the case of a resolution to be proposed as a Special Resolution, it shall not be necessary to specify the terms of any resolutions to be proposed. The omission to give notice to any Noteholder shall invalidate any resolution passed at any such meeting.

### **3. Chairman of meetings**

A person nominated by the Company shall be entitled to take the chair at any such meeting and if no such nomination is made, or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for holding the meeting, the Noteholders present shall choose one of their number to be Chairman. The Directors and the Secretary and legal advisers of the Company and any other person authorised in that behalf by the Directors may attend at any such meeting.

### **4. Quorum at meetings**

At any such meeting convened for any purpose, other than the passing of a Special Resolution, a person or persons holding or representing by proxy one-tenth in nominal value of the Notes for the time being outstanding shall form a quorum for the transaction of business. At any meeting convened for the purpose of passing a Special Resolution persons (at least two in number) holding or representing by proxy a clear majority in nominal value of the Notes for the time being outstanding shall form a quorum. No business (other than the choosing of a Chairman) shall be transacted at any meeting unless the requisite quorum is present at the commencement of the meeting.

### **5. Absence of quorum**

If within 30 minutes from the time appointed for any meeting of the Noteholders a quorum is not present the meeting shall, if convened upon the requisition of the Noteholders, be dissolved. In any other case it shall stand adjourned to such day and time (being not less than 14 days and not more than 42 days thereafter) and to such place as may be appointed by the Chairman and at such adjourned meeting



two Noteholders present in person or by proxy and entitled to vote, whatever the principal amount of the Notes held by them, shall form a quorum.

6. **Adjournment of meetings**

The Chairman may with the consent of (and shall if directed by) any such meeting adjourn the same from time to time and from place to place. No business shall be transacted at any adjourned meeting other than business that might lawfully have been transacted at the meeting from which the adjournment took place.

7. **Notice of adjourned meetings**

Notice of any adjourned meeting at which a Special Resolution is to be submitted shall be given in the manner provided for in this instrument. Such notice shall state that two Noteholders present in person or by proxy and entitled to vote at the adjourned meeting whatever the principal amount of the Notes held by them shall form a quorum.

8. **Resolution on show of hands**

Every question submitted to a meeting of Noteholders shall be decided in the first instance by a show of hands. In case of an equality of votes the Chairman shall have a casting vote.

9. **Demand for poll**

At any meeting of Noteholders, unless (before or on the declaration of the result of the show of hands) a poll is demanded by the Chairman or by one or more Noteholders present in person or by proxy, a declaration by the Chairman that a resolution has been carried or carried by a particular majority or lost or not carried by any particular majority shall be conclusive evidence of the fact.

10. **Manner of taking poll**

If at any such meeting a poll is so demanded it shall be taken in such manner as the Chairman may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.

11. **Time for taking poll**

Any poll demanded at any such meeting shall be taken at the meeting without adjournment. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

12. **Persons entitled to vote**

The registered holders of any of the Notes or, in the case of joint holders, any one of them shall be entitled to vote in respect thereof either in person or by proxy and in the latter case as if such joint holder were solely entitled to such Notes. If more

than one of such joint holders be present at any meeting either personally or by proxy the vote of the senior who tenders a vote (seniority being determined by the order in which the joint holders are named in the Register) shall be accepted to the exclusion of the votes of the other joint holders.

13. **Instrument appointing proxy**

Every instrument appointing a proxy shall be in writing, signed by the appointor or his attorney or, in the case of a corporation, under its common seal, or signed by its attorney or a duly authorised officer and shall be in such form as the Directors may approve. Such instrument of proxy shall, unless the contrary is stated thereon, be valid both for an adjournment of the meeting and for the meeting to which it relates and need not be witnessed. A person appointed to act as a proxy need not be a Noteholder.

14. **Deposit of instrument appointing proxy**

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified or office copy of such power or authority shall be deposited with the Company at the address where the Register is maintained for the time being (as referred to in clause 9.1 of this instrument) or at such other place as may be specified in the notice convening the meeting before the time appointed for holding the meeting or adjourned meeting or the taking of a poll at which the person named in such instrument proposes to vote and in default the instrument of proxy shall not be treated as valid. A vote given in accordance with the terms of an instrument appointing a proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the instrument of proxy or of the authority under which the instrument of proxy is given in respect of which it is given unless previous intimation in writing of such death, insanity, revocation shall have been received by the Company at the address where the Register is maintained for the time being (as referred to in clause 9.1 of this instrument). No instrument appointing a proxy shall be valid after the expiration of 12 months from the date named in it as the date of its execution.

15. **Votes**

On a show of hands every Noteholder who (being an individual) is present in person or by proxy or (being a corporation) is present by a representative (not being himself a Noteholder) or by proxy shall have one vote (provided that a proxy appointed by more than one member should only have one vote or, where the proxy has been instructed by one or more of those members to vote for the resolution and by one or more other of those members to vote against it, such proxy shall have one vote for and one vote against the resolution). On a poll every Noteholder shall have one vote for every £1 in nominal amount of the Notes of which he is the holder. A Noteholder (or a proxy or representative of a Noteholder) entitled to more than one vote on a poll need not use all his votes or cast all the votes he uses in the same way.

16. **Power of meetings of Noteholders**

- 16.1 In addition to any other powers it may have, a meeting of the Noteholders may, by Special Resolution:
- (a) sanction any compromise or arrangement proposed to be made between the Company and the Noteholders;
  - (b) sanction any abrogation, modification or compromise or any arrangement in respect of the rights of the Noteholders against the Company or its property whether such rights shall arise under this instrument or otherwise;
  - (c) sanction any scheme for the reconstruction of the Company or for the amalgamation of the Company with any other company;
  - (d) sanction any scheme or proposal for the sale or exchange of the Notes for, or the conversion of the Notes into, cash or shares, stock, debentures, debenture stock or other obligations or securities of the Company or any other company formed or to be formed;
  - (e) assent to any modification or abrogation of the provisions contained in this instrument that shall be proposed by the Company and authorise the Company to execute an instrument supplemental to this instrument embodying any such modification or abrogation; and
  - (f) give any authority or sanction which under the provisions of this instrument is required to be given by Special Resolution.
- 16.2 No resolution that would increase any obligation of the Company under this instrument or postpone the due date for payment of any principal or interest in respect of any Note without the consent of the Company shall be effective.

**17. Special Resolution binding on all Noteholders**

A Special Resolution, passed at a meeting of Noteholders duly convened and held in accordance with the provisions of this schedule, shall be binding on all the Noteholders whether or not present at such meeting and each of the Noteholders shall be bound to give effect to such Special Resolution accordingly. The passing of any such resolution shall be conclusive evidence that the circumstances justify the passing of such Special Resolution.

**18. Resolutions in writing**

A resolution in writing signed by all the holders of the Notes for the time being outstanding who are for the time being entitled to receive notice of meetings in accordance with the provisions contained in this instrument shall for all purposes be as valid and effectual as a Special Resolution. Such resolution in writing may be contained in one document or in several documents in like form each signed by one or more of the Noteholders.

**19. Minutes of meetings**

Minutes of all resolutions and proceedings at every such meeting of the Noteholders shall be made and duly entered in books to be from time to time provided for that purpose by the Company. Any minutes which purport to be signed by the Chairman of the meeting at which such resolutions were passed or proceedings held or by the Chairman of the next succeeding meeting of the Noteholders shall be conclusive evidence of the matters contained in such minutes. Unless the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly convened and held and all resolutions passed at such meetings to have been duly passed.

SAMPLE

Executed as a deed by [] LIMITED  
acting by [], a director and [], a  
director

.....

Director

.....

Director

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