

# **Legal Consultancy to Develop Standardized Documents, Guidelines and Templates for the Jamaica Venture Capital and Private Equity Industry**

***Report***

***Standardized Documents for JVCP Tool Kit***

**Revised September 10, 2014**

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*Report 1*

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*Legal Consultancy to Develop Standardized Documents, Guidelines and Templates for the Jamaica  
Venture Capital and Private Equity Industry*

Presented by

**LEYSMITH ATTORNEYS AT LAW**

*This project is executed by the Development Bank of Jamaica Limited*

## **TABLE OF CONTENTS**

<b>Executive Summary .....</b>	<b>6 -7</b>
<b>Background .....</b>	<b>8 -10</b>
<b>Objectives of the Consultancy .....</b>	<b>11</b>
<b><u>Methodology</u></b>	
A. Team Work .....	12
B. Prioritisation .....	12
<b>Key Observations and Implications .....</b>	<b>15 -18</b>
<b>Abbreviations .....</b>	<b>19</b>
<b><u>Annexures</u></b>	
<b>Appendix I</b>	
Letter of Intent/Term Sheet for equity based financing .....	21- 30
<b>Appendix II</b>	
Due Diligence Request Form .....	31- 32
<b>Appendix III</b>	
Certificate of Incorporation of a VC .....	33
<b>Appendix IV</b>	
Purchase Agreement .....	34- 68
<b>Appendix V</b>	
Form of Shareholders Agreement [ Investor Rights Agreement].....	69-86
<b>Appendix VI</b>	
Right of First Refusal and Co-Sale Agreement .....	.87 -99
<b>Appendix VII</b>	
Form of Warranties .....	100

<b>Appendix VIII</b>	
<b>Form of Promissory Note .....</b>	<b>101-116</b>
 <b>Appendix IX</b>	
<b>Founders' Agreement .....</b>	<b>117</b>
 <b>Appendix X</b>	
<b>Form of Confidential Information and Proprietary Rights Agreement .....</b>	<b>118-124</b>
 <b>Appendix XI</b>	
<b>Form of Legal Opinion .....</b>	<b>125-130</b>
 <b>Appendix XII</b>	
<b>Form of Non Disclosure Agreement and Confidentiality Agreement .....</b>	<b>131</b>
 <b>Appendix XIII</b>	
<b>TBC - Form of Observer Agreements .....</b>	<b>132</b>
 <b>Appendix XIV</b>	
<b>TBC - Investor Guidelines &amp; Restrictions/ Financing Plans .....</b>	<b>133</b>
 <b>Appendix XV</b>	
<b>TBC-Form of Fund Management Agreement .....</b>	<b>134</b>
 <b>Appendix XVI</b>	
<b>Convertible Debenture .....</b>	<b>135-152</b>

## **Executive Summary**

This assignment commenced with a kickoff meeting on April 9<sup>th</sup> 2014, between the Project Manager for the Jamaica Venture Capital Programme, the IDB MIF Senior Specialist, Executive Assistant and the Consultants, Douglas Leys QC and Kayanne E. Anderson at the offices of the Development Bank of Jamaica Limited. The Inception Report was submitted and approved in July 2014. Contained herein are the deliverables attached to the Second Report in the Terms of Reference.

The assignment brief is for development of standardized documents, guidelines and templates for the Jamaica Venture Capital and Private Equity Industry with a view to compiling a tool kit for stakeholders in the Programme.

To date the Consultants have collected all relevant background documentation, and conducted an initial desk review of data, and work already completed during the earlier stages of the Programme – which documents are referred later in this Report. Having reviewed these documents and conducted further research and interviews with some key stakeholders, the Consultants have advanced on the assessment of the Jamaica Venture Capital and Private Equity industry. The best practice guidelines and principles which are applicable to the Jamaican context will be provided in the Consultant's forthcoming Report.

It has already been concluded in our Inception report there are significant gaps in the VC infrastructure in Jamaica. And we reiterate here that, to the extent that these gaps impact on business relationships and investor confidence/willingness to venture, the guidelines, documents and templates provided in this Project will not be an adequate measure of the success/prospects for success of the Jamaica VC Programme. For success these gaps must be addressed as a matter of priority within the Programme's phases.

The setting up of a Help/Service Portal may be helpful as a way to help small businesses or those new to the VC Programme to navigate the templates, standardized documents and guidelines provided under this assignment. In our following report, we will provide clear simple instructions on the use of the documents drafted so as to bolster the relevance and utility of the VC Tool Kit.

Upon approval of our Inception Report, the Consultants proceeded to complete the following main tasks:

- Complete comprehensive List of international organization data;
- Complete stakeholder matrix and outline of Stakeholder needs;
- Construct comparative profile of international best practice guidelines and governing principles;
- Collate inventory/List of required (applicable) documents and outline of the relevance and uses of each – based on those developed by international organizations and adopted by private equity and venture capital stakeholders in established VC and PE environments;
- Outline assessment of the local VC infrastructure as baseline for preparation of guidelines, tweaking of international best practice guidelines to be applicable and appropriate to the local context – that is to say, the Jamaican best practice framework;
- Draft and prepare required documents, standardized to the local environment, templates and precedents for use by stakeholders, with outline of the particular stakeholders who would utilize such templates, how and when (Instructions for Use);

Due to the delays occasioned during review of the Inception Report, the completion of this project was kindly extended by the Bank to October 31<sup>st</sup>, 2014. Given the time and volume of work required to complete and review the legal documentation (in the form of standardized documents and templates), it was decided to complete the first draft of the said legal documents and submit ahead of the deliverables expected in the First Report, that is to say, Best Practice Guidelines for the Private Equity and venture capital industry in Jamaica.

You will find appended to this Report, first drafts of the documents, including agreements, forms of documents and provisions/principles to govern the relationships between the various parties, and which would form a part of the JVCP Tool Kit for PE & VC stakeholders. Stakeholders, for the purposes of this assignment will include, fund manager, entrepreneur, investor - Limited Partners and General Partners.

## Background

This Report (primarily comprising the documents in Appendices I – XII) is in response to Terms of Reference for services of a Legal Consultant to **Develop Standardized Documents, Guidelines and Templates for the Jamaica Venture Capital and Private Equity Industry under the facility of the Caribbean Growth Forum of the Compete Caribbean**, the latter which is a Caribbean private sector development programme jointly funded by the Canadian International Development Agency (CIDA), the United Kingdom Department of International Development (DFID) and the Inter-American Development Bank (IDB). The ultimate goal of this Program is to contribute to the increase in the standard of living and quality of life, and the enhancement of the competitiveness of the 15 independent CARIFORUM countries.

The consultancy is funded under RG-CC2066, a project that was designed by Compete Caribbean to support the initial implementation of set of agreed reforms from the action plans that emanated from the Caribbean Growth Forum National chapters. The government of Jamaica has requested support under this project to provide guidance as part of its focus on improving access to finance for many high-potential SMEs, the Government of Jamaica (GOJ) sees the development of the private equity (PE) and venture capital (VC) industry in Jamaica as a viable and desirable financing option, to provide ‘patient’ long-term equity capital.

However, in order to achieve sustainable development of a local venture capital industry, the environment has to be conducive to long-term capital formation, with knowledgeable investors, trained fund managers, entrepreneurs who understand the benefits of having a partner in their ventures, and investment-ready firms operating within a transparent legal, regulatory, and tax environment. An assessment of the Jamaican environment has identified clear gaps in the required ecosystem (summarized in the section below) and it will be necessary to fill these “gaps” in order to facilitate the development of the industry.

With a clear understanding of the local VC environment and after having had the opportunity to review the available work completed in the Programme to date and comparing to other international profiles, the Consultants will now embark on the assignment as outlined herein. The preceding work we assume would have provided a map of stakeholders, as well as confirmed the components of the Jamaica VC market, organizational assessments and stakeholder perspectives on the mandate of the Jamaica VC Programme.



We also assume that work has already been concluded to review the broader legal, taxation and regulatory environment, as well as to identify the legislative and regulatory changes which will be necessary in the short, medium and long term, including the adaptation of existing legislation and regulation to the market needs. The templates and guidelines developed under this assignment would therefore properly be situated in the context of the work already completed in the earlier phases of the Jamaica VC Programme.

According to the Terms of Reference, the ecosystem for VC investing in Jamaica is characterized by an environment which based on demand side and supply-side factors is an underdeveloped long term risk capital market. The factors which are gaps in the ecosystem include a macro-economic environment which, for many years, was not conducive to long term capital formation, and a significant lack of knowledge of the industry by market participants, including investors, entrepreneurs, business advisors, and other professionals such as attorneys and accountants.

The Terms of Reference also posit accurately that an underdeveloped legal and regulatory venture-capital framework has resulted in limited rules and regulations governing the actions of market participants. There is also an absence of transparent or easily replicated mechanisms through which to mobilize investor funds – particularly institutional funds.

Additionally, the Terms of Reference recognize that the level of readiness of many entrepreneurs to receive investment is currently low for several reasons; including to wit:

significant levels of business informality and information asymmetry – the latter which causes financial and other business information to not be readily verifiable.

Many SMEs have weak or non-existent governance structures, limited management capability, limited financial capacity because of highly leveraged capital structures and a lack of adequate collateral to meet required credit standards.

So it is established that these firms do need capacity building in order to attract investment capital and to create a sustainable “deal flow” of opportunities for venture capital investors.

As a result of the impediments on both demand and supply side, there has been no incentive for VC stakeholders to become involved in the market, besides a few discrete transactions. It is the view of the

VC stakeholders that significant resources would be required on their part to undertake a multi-faceted programme in order to bridge the developmental gaps.

The Terms of Reference indicate that the Government of Jamaica is committed to the development of a venture capital and private equity market and has through the Development Bank of Jamaica (DBJ) undertaken a number of initiatives to ensure broad-based and sustainable development of the venture capital industry. Under the Programme these initiatives include:

a market review of the VC ecosystem, which formed the basis for the development of a Strategic and Implementation Plan for the creation of a conducive ecosystem within the medium term;

A review of the Legal, Taxation and Regulatory environment, identification of legislative and regulatory changes which will be necessary in the short, medium and long term, adaptation of existing legislation and regulations to facilitate transactions in the short term and drafting/enactment of new legislation over the medium to long term.

Development and implementation of a framework for the establishment of private equity and venture funds.

Awareness building and knowledge development through conferences, seminars and workshops to improve stakeholder knowledge of the VC/PE asset class.

As regards the barriers to entry for stakeholders in a relatively new industry is the administrative burden which initial entrants will have to undertake in order to develop the necessary documentation, in keeping with best practices internationally.

Given that various international organization have developed standardized guidelines, templates, rules and legal agreements to be adopted by practitioners within the industry, with the aim of establishing best practices to ensure:

1. alignment of interests
2. governance
3. transparency

The Consultants agree with the position iterated in the Terms of Reference that these guidelines may not be prescriptive as each agreement/transaction may have variations depending on the actual negotiated terms. However, the establishment of best practices and standardized documentation within a particular jurisdiction is expected to create more effective private equity partnerships and build confidence among stakeholders.

## **OBJECTIVES OF THE CONSULTANCY**

The objectives of the consultancy have been outlined in the Terms of Reference as being to identify and develop the relevant documentation and guidelines necessary to support the venture capital and private equity industry in Jamaica under the Jamaica VC Programme.

### **The Main Activities for this assignment include:**

1. To identify and review the best practices guidelines, templates and documentation developed by the international organizations and to advise how these may be adopted within the Jamaican jurisdiction.
2. To develop and/or modify existing documentation from those sources, in order to establish a compilation of standard documentation and precedents, modified where necessary to the Jamaican jurisdiction and available for use by local and international fund managers and investors (<sup>1</sup>GPs, LPs), investee companies and service providers.

On completion of the consultancy, it is anticipated that stakeholders in the Jamaican VC and PE industry will have access to all the necessary documentation and guidelines in order to enter into agreements and undertake VC or PE transactions, with only minimal additional costs for customizing to the needs of the stakeholder(s).

The materials generated from the engagement will be the property of the Inter-American Development Bank and may not be disseminated or used otherwise except with the sole permission of the Bank.

## METHODOLOGY

During the work period the Consultants were focused on Legal Drafting and Preparation of Documentation ; Primary Research and assessment of international best practice and VC Framework in established VC and PE environments/jurisdictions; limited Stakeholder interviews/consultation; Templates and Guidelines and Undertook further secondary research and analysis.

as outlined in our Inception report, the Consultants work jointly as a team, splitting research, drafting and reporting responsibilities to deliver according to the Schedule agreed with the Project Manager and the Bank. Douglas A. Leys Q.C. as Lead Consultant is responsible primarily for document development as well as the technical oversight and Kayanne Anderson, Senior Legal Expert assists him substantially by conducting the legal research (primary and secondary), drafting, analysis and benchmarking as well as reporting and administrative matters related to the assignment.

### Prioritisation:

During the foregoing period, the Team's completed the following tasks:

Drafting and Preparation of Templates, legal documents and guidelines appropriate to Jamaica.

Commenced preparation of Best Practice Guidelines – collation of materials from international organizations and analysis for applicability to the Jamaica VC framework

Completed assessment of the Jamaica VC environment and framework

Initiated preparation of Stakeholder Matrix and Needs Outline

Commenced Comparative Analysis of international best practice and standardized documents etc. utilized in established VC environments and Jamaica.

**Primary Research** . We embarked upon legal research in reviewing international best practice in the VC and PE markets, review of the Jamaica VC framework, and identified gaps which might impact on the utility of the documents to be developed in this assignment as well as preparation of lists of international organization data.

**Secondary Research** included research from secondary sources, review of the work already completed under the Jamaica VC Programme and analysis of international best practice organization data and documentation as well as comparisons between established VC environments.

### **Drafting & Document Preparation**

The first draft of documents utilised in the VC process has been included in the Annex to this Report. Further drafting of templates, agreements, standard form letters and other documents will be developed in varied detail to provide options for stakeholders to tweak according to specific needs.

The Following is the List of documents which have been prepared for the review and approval by the Bank and Project Manager:

Letter of Intent for equity-based financing (Also Term Sheet)

Due Diligence Request List (Checklist provided)

Certificate of Incorporation of a VC<sup>2</sup>

The Purchase Agreement (or Subscription Agreement)

Investor Rights Agreement or Shareholder's Agreement (or when applicable in Jamaica – Limited Partnership Agreement)

Right of First Refusal and Co-Sale Agreement<sup>3</sup>

Warrants (if applicable and Form of warrants)<sup>4</sup>

Promissory Notes<sup>5</sup>; Quasi-Equity or Convertible Notes/Form of Debt Agreement

Founders' Agreement

Form of Confidential Information and Invention Assignment Agreement

Legal Opinion

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<sup>2</sup> To be included in Second report

<sup>3</sup> Note that the Right of First Refusal (and where applicable Right of First Offer) provisions are often included as terms and conditions/forming part of a Limited Partnership Agreement.

<sup>4</sup> Supra.

<sup>5</sup> This has been included in the Tool Kit in contemplation of scenarios where target is near insolvent and VC wishes to obtain downside protection or target is already backed by other equity investors and the issuance of other senior equity securities would require the consent of existing investors and result in anti-dilution adjustments or alternatively where the target is in need of quick cash to cover an unanticipated shortfall and there is insufficient time to prepare a valuation. Provision will be made for the conversion of the above debt instruments into equity.

## Non Disclosure agreement and Confidentiality Agreement<sup>6</sup>

The following documents will be submitted ahead of the Second Report.

1. Board Observer Agreements<sup>7</sup>
2. Investor Guidelines & Restrictions/Financing Plans<sup>8</sup>
3. Fund Management Agreement<sup>9</sup>
4. Internal governance guidelines – Financing Plans/Guidelines

## Main Activities in the Forthcoming Period

Given the substantial legal drafting work already completed in this Report, the main future activities to be undertaken by the Consultants are :

### Complete Stakeholder Matrix & Needs Outline

Complete Analysis of data collected, including Interviews with Regional and Local Funds to ascertain lessons learned, as well as International organization data

Complete Drafting of Investor/Financing Guidelines for Internal governance:

Complete revision of draft Documents, Templates (precedents) based on JVCP/IDB review

Revision in consultation with the Bank and Project Execution Unit of the JVCP

### Reporting

Training/meetings with Stakeholders (if/when considered necessary)

Once completed and delivered, it is our view that consultations will be necessary to properly implement the materials provided under this assignment and can be completed in the context of the Programme's training schedule on the VC tool kit.

The Second Report will be submitted containing the results of all the foregoing activities on the 30<sup>th</sup> September 2014.

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<sup>6</sup> Although usually forming part of the Limited Partnership Agreement, these are in the local scenario often proposed as stand-alone agreements.

<sup>7</sup> To be provided in Second Report

<sup>8</sup> *supra*, 7

<sup>9</sup> *supra*, 8

## KEY OBSERVATIONS AND IMPLICATIONS

The expectation from the preparation of the materials under this assignment is that together with the VC Programme measures to establish an ideal venture capital programme, the addressing of significant gaps in the VC ecosystem will make the documents themselves more useful and in need of tweaking/revision in light of the gaps being closed, once the recommendations of the ***Report on Legislative and Regulatory Reform of the Venture Capital Regime in Jamaica*** are adopted and implemented.

According to the Second Legal Report on the Legislative and Regulatory reform of the VC Regime in Jamaica (August 2013), low levels of VC activity in Jamaica evidence the inadequacy of the legal/regulatory framework...gaps identified include:

- lack of true limited liability partnership structure in Jamaica, which is the preferred vehicle for establishment of a VC Fund;
- limitation of the Approved Venture Capital Company (VC Entity) designation in the Income Tax Act to companies only;
- discretionary nature of the Approved VC Entity designation which currently exists under the Income Tax Act;
- Restricted nature of current tax benefits as they apply to income tax only;
- Anticipated IMF-led changes to tax incentives, etc.
- Issues regarding the ownership of copyright, for e.g. for works commissioned by an employer; and
- Low levels of awareness of the tax benefits that currently exist.

The Report on Legislative and Regulatory Reform of the Venture Capital Regime in Jamaica, already completed under the Jamaica VC Programme, proposes the establishment in Jamaica of a new Venture Capital Act which is patterned largely on the Trinidad & Tobago legislation which, inter alia, established a programme to provide training to key stakeholders, promote the concept of venture capital financing, to register VC entities, register QICs and issue tax credit certificates.

The Report<sup>10</sup> proposes an Act structured to cover the following areas:

1. Preliminary
2. Registration of Venture Capital Companies

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<sup>10</sup> Myers, Fletcher & Gordon Second Legal Report on Legislative and Regulatory Reform of the Venture Capital Regime in Jamaica revised January 2014.

3. Business & Investments
4. Prohibitions
5. Investment Protection Account and Eligible Investments
6. Reporting, Examination and Payments to Minister
7. Taxation Incentives
8. Offences
9. Miscellaneous

Whatever decision is taken by the GOJ for enactment of legislation to consolidate the regulation of VC and PE industry as well as to incentivize venture capital in Jamaica, the documents and templates developed in this report will need to be consistent with the legislative and regulatory framework. To that extent, it should be appreciated that the documents submitted in this assignment will need to be reviewed for compliance once legislative changes are enacted by the Parliament.

As stated in our Inception report, we share the view of the authors of the Report that any legislation governing VC and aimed at incentivizing VC will have to be supported by such factors as –

- a facilitative regulatory body
- mentoring and training programme for SMEs *and other stakeholders*
- developing a culture of entrepreneurship and fostering innovation
- leveraging the local scientific and research base
- increasing awareness of venture capitalism and the JVCP
- developing local capital markets

### **Jamaica's Venture Capital and Private Equity Industry – Relevant Legislation**

The legislation governing or relevant to the regulation of Jamaica's venture capital and private equity industry include:

- The Income Tax Relief (Large Scale Projects and Pioneer Industries) Bill (2013)
- The Companies Act, Jamaica
- The Copyright Act and suite of Intellectual Property Legislation including
- The Designs Act
- The Jamaica Intellectual Property Act
- The Patent Act (amendments)
- Protection of Geographical Indications Act
- The Trade Marks Act
- The Layout Designs and Topographies Act



- The Income Tax Act, Jamaica
- The Employees Share Ownership Plan Act, 1995
- Securities (Mutual Fund) Act and Regulations
- Securities (Amendment) Act, 2013
- Securities (Collective Investment Scheme) Regulations 2013
- Secured Interests of Personal Property Act, 2013
- The Pensions (Superannuation Funds and Retirement Schemes) Act, 2004
- The Investment Regulations under The Securities (Amendment) Act 2013
- The Insurance Act
- The Financial Services Commission Act, 2001 & Regulations
- The Money Lending Act
- The Unit Trusts Act
- The Mutual Funds Act
- The Financial Institutions Act
- The Proceeds of Crime Act
- The Anti-Money Laundering Act
- The Arbitration Act
- The Insolvency Act
- The Omnibus Tax Incentives Legislation
- The Jamaica Stock Exchange Act
- The Bank of Jamaica Act
- The Banking Act
- The Jamaica Deposit Insurance Act

Below we outline some local considerations which will have implications on the adoption in Jamaica's of international benchmarks, guidelines and best practice from international organizations, whether from developed private equity markets, or emerging markets such as China, India, Chile and Brazil.

- The need to incentivize venture capital in Jamaica
- How do we balance regulation and the need to incentivize Venture capital
- How to ensure facilitative regulation of the capital/financial market affecting private equity and venture capital operation) as opposed to restrictive regulation of financial activity
- Development of a culture of enterprise and innovation
- Development of the scientific inquiry base
- Increase the awareness of venture capital and private equity
- Need to develop the local capital market
- How has the global financial crisis of the 2000s and the resultant market turmoil internationally impacted the local capital market

- How has the experience of the local financial crises – including FINSAC financial meltdown of the late 1990s, affected the local capital market and thus the likely attitude to venture capital funds and private equity generally
- To what extent does the current regulation of the local financial sector close out innovation, startup, business facilitation and investment climate
- Need to ensure that guidelines cover scenarios ranging from seed funding to development funding and growth funding
- To what extent does the local experience of under investment in new products and processes create an incentive or opportunity for private equity/venture capital in Jamaica.

### **Snapshot of Lessons Learned by VC efforts in the Caribbean**

The following are some issues we have ascertained from initial stakeholder consultations<sup>11</sup> as to why VC Funds have not yet been successful in the Caribbean from the experience of fund managers:

1. The lack of an organized and efficient capital market in the Caribbean is a hindrance as there is no structure where investors can enter and exit as they please. Some experienced players cite that this is a hindrance to the smooth flow of capital into and out of the Caribbean which would facilitate easy access to these funds; restrictions in the Companies Act of Jamaica on the ability of debenture holders to exit a company which is not yet liquidated, also present a disincentive to a venture capitalist to smoothly enter and exit a company.
2. SME's in the Caribbean view VC Funds with suspicion and because of this there is a lack of buy-in. It is felt that a contributing factor is that many of the companies in the Caribbean are family owned and do not have a culture of dependence on equity for funding. They prefer and are more comfortable with the debt market.
3. The VC market is one where you have lots of losers and very few winners. And investors – particularly local investors must be prepared to ride the waves of boom and bust.

We will bear these and other considerations in mind in proposing relevant best practice for the Jamaican VC industry under this assignment.

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<sup>11</sup> Interview conducted with Mr. Peter Blackman, Actg Director, Private Sector Development Unit, Caribbean Development Bank

Interview conducted with Douglas Hewson of AIC Caribbean Fund, Portland Caribbean Fund II – Managing Partner, Portland Private Equity Ltd.

## Abbreviations

DBJ	Development Bank of Jamaica
GOJ	Government of Jamaica
GOTT	Government of Trinidad & Tobago
JVCP	Jamaica Venture Capital Programme
MOF	Ministry of Finance
PE	Private Equity
QIC	Qualified Investee Company
VC	Venture Capital
VC Entity	Venture Capital Company

## **ANNEXURES**

- Appendix I - Letter of Intent for equity based financing
- Appendix II - Due Diligence Request List (Checklist only)
- Appendix III- Certificate of Incorporation of a VC\*
- Appendix IV- The Purchase Agreement
- Appendix V- Investor Rights Agreement/Shareholder's Agreement
- Appendix VI - Right of First Refusal & Co-Sale Agreement
- Appendix VII- Form of Warrants
- Appendix VIII- Form of Promissory Note (with convertible feature)
- Appendix IX- Form of Founders Agreement
- Appendix X- Form of Confidentiality & Invention Assignment Agreement
- Appendix XI- Form of Legal Opinion/Opinion Letters
- Appendix XII- Form of Debenture
- Non Disclosure Agreement (provisions are included in LPA)

ii. List of Documents so far reviewed by the Consultants include:

Market Report – The Venture Capital Industry in Jamaica – Practical Assessment (Patricia Freitas) May 2013

Market Report – Creating a Venture Capital Ecosystem in Jamaica – Strategic & Implementation Plan (Patricia Freitas) September 2013

Venture Capital: Driving Development in Latin America (Farfan, Garcia-Robles, Granda and Landsberger - Multilateral Investment Fund) IADB 2012;

Latin American – Law & Business Report Volume 19, No# 6 June 2011 Published by WorldTrade Executive, a part of Thomson Reuters;

First Legal Report on: Legislative And Regulatory Reform of the Venture Capital Regime in Jamaica, Myers Fletcher & Gordon, Attorneys-at-law – version July 2013

Second Legal Report on: Legislative And Regulatory Reform of the Venture Capital Regime in Jamaica, Myers Fletcher & Gordon, Attorneys-at-law – version updated January 2014

Private Equity Principles – Version 2.0, January 2011. Institutional Limited Partners Association (ILPA)

**Appendix I**  
**Letter of Intent/Term Sheet for equity based financing**

**TERM SHEET FOR PROPOSED INVESTMENT IN [YYYYY COMPANY LTD]**

**[DATE]**

This document shall serve to confirm the agreement between one or more venture capital funds affiliated with XXXXXXX Company Limited (collectively, the “Fund”) and YYYYYY Company Limited, a corporation (the “Company”) with respect to a proposed investment in the Company (the “Transaction”) by the Fund and certain other investors (collectively, the “Investors”). This document (the “Term Sheet”) does not address all issues and matters that may arise in the course of preparing a definitive purchase agreement (the “Purchase Agreement”), but rather is intended as an outline of the material terms of our understanding with regard to the proposed investment. Set forth below is a summary of the material terms of our understanding.

<b>Brief Summary of Transaction:</b>	<p>The Investors will invest \$[DOLLARS] as equity (the “Investment”) based upon a pre-money valuation of \$[PREMONEY] on a fully diluted basis, including a [PERCENT] [% unallocated share option pool], as further discussed below. The Investment will be allocated as follows:</p> <p>The Fund - \${OUR INVESTMENT};</p> <p>Other investors - \${OTHER INVESTORS, IF ANY}.</p> <p>The Investors will be issued, in the aggregate, [# SHARES] shares of Series [SERIES LETTER] Preferred Shares of the Company (the “Preferred Shares”) representing [PERCENT] of the share capital of the Company on a fully diluted basis [(including the additional share option pool reserve) following the closing of the Investment.]</p>
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	The price per Preferred Share will be \$[ <b>PER SHARE</b> ] per share (the “Purchase Price”).
<b>Outstanding Capitalization:</b>	See attached capitalization table, Appendix A.
<b>Tentative Closing:</b>	On or before [ <b>CLOSING DATE</b> ] (the “Closing”)
<b>Use of Proceeds:</b>	The investment will be used to [fund product development, begin the Company’s marketing efforts, fund working capital, and recruit a management team.]
<b>[Option Plan:</b>	[ # <b>SHARES</b> ] shares of the Company’s Share Capital shall be allocated to the Company’s share option plan (the “Option Plan”) which shall represent [ <b>PERCENT</b> ]% of the share capital of the Company on a fully diluted basis after the Closing.]
<b>Representations and Warranties:</b>	Standard representations and warranties given by the Company and the Investors in connection with the sale of a significant block of share capital.
<b>Dividend Policy:</b>	<p>Holders of the Preferred Shares shall be entitled to receive [cumulative] dividends in preference to any dividend on the Ordinary Shares at the rate of ____% of their original price per share, per annum, whenever funds are legally available, [when, if, and as declared by the Board of Directors]. The Preferred Shares will also participate pro rata in any dividend paid on the Ordinary Shares on an as-if-converted basis. [Dividends, at the sole option of the Investor, may be payable in Ordinary Shares, valued at the fair market price (calculated based on the closing price the previous five</p>

	trading days, if publicly traded, or, if not publicly traded, calculated in good faith, by the Board of Directors using the best information then available).]
<b>Liquidation Preference:</b>	In the event of any liquidation, [sale, merger] [public offering] consolidation or winding up of the Company, the holders of the Preferred Shares shall be entitled to receive, in preference to the holders of all other issued capital stock, an amount equal to the original purchase price of each Preferred Share, [plus accrued but unpaid dividends](the “Liquidation Preference”). After the payment of the Liquidation Preference, the holders of the Ordinary Shares shall be entitled to receive any remaining assets of the Company.
<b>Conversion Ratio; Anti-Dilution:</b>	Holders of Preferred Shares shall have the right at any time after the date of issuance to convert their shares into Ordinary Shares of the Company at an initial conversion rate of one-to-one, subject to[ <del>broad-based</del> ]{narrow-based} weighted average] [full ratchet] anti-dilution and other customary adjustments.
<b>Automatic Conversion:</b>	Each of the Preferred Shares shall be automatically converted into Ordinary Shares of the Company at the then applicable conversion rate in the event of an underwritten public offering on a firm commitment basis netting the Company [\$ ] based on a pre-money valuation of not less than [\$ ](a “Qualified IPO”).
<b>Voting Rights:</b>	The holders of Preferred Shares shall vote together with the holders of Ordinary Shares on an as-if-converted basis.
<b>Registration Rights:</b>	Upon the vote of a [majority] of the Ordinary Shares issuable upon conversion of the Preferred Shares, the holders of such

	<p>shares shall be entitled to: (i)[two] demand registrations at any time commencing [180] days after an initial public offering of share capital of the Company (an “IPO”); (ii) unlimited “piggyback” registration rights, and (iii) [two] demand registrations. The Company shall pay all registration costs and fees, including the reasonable fees and expenses of one counsel for the selling shareholders, other than underwriters discount and selling commissions incurred in connection with demand and company registrations.</p> <p><b>[{FOUNDERS}]</b> shall also have “piggyback” registration rights subject to the amount of shares that they are registering and are limited to the amount of shares the Investors are registering. In the event of an underwriter cutback all shares held by a founder being registered shall be cut back prior to any shares held by the Investors being registered.]</p>
<b>Lock Up:</b>	Holders of the Preferred Shares and holders of all other issued share capital will agree to lock-ups of up to [180] days following the IPO.
<b>Information and Reporting:</b>	Prior to a Qualified IPO, the Company shall provide to the Investors: (i) audited financial statements within 90 days after the end of each fiscal year; (ii) unaudited financial statements within 45 days after the end of each fiscal quarter; (iii) a profit and loss statement and balance sheet on a monthly basis; and (iv) such other critical metrics as reasonably requested by the Investors. The Investors will have the right to inspect the books and records of the Company during reasonable business hours upon reasonable prior notice to the Company.
<b>Participation in Future</b>	The Investors shall have the preemptive right to participate in any future sales of



<b>Offerings:</b>	securities by the Company (other than (i) shares or options issued pursuant to the Option Plan and (ii) shares issued as consideration for an acquisition or merger approved by the Board of Directors), on a pro rata basis based on each Investor's ownership percentage prior to such offering.
<b>Transfer to Affiliates and/or Partners:</b>	An Investor may, at his option, transfer any or all of its investment to its affiliates.
<b>Board of Directors:</b>	The Company shall have a Board of Directors with five seats. [Two board members shall be appointed by the Investors, and two board members shall be appointed by the current shareholders. The fifth seat shall be a director mutually agreed upon by the Company and the Investors.]
<b>Consents:</b>	For so long as <b>[PERCENTAGE]</b> % of Preferred Shares remain outstanding, the Company will not take any of the following actions without the approval of the holders representing a majority ownership percentage of the Preferred Shares then outstanding: (i) any action which results in any merger, corporate reorganization, sale of control, or any transaction in which all or substantially all of the assets of the company are sold; (ii) a material and adverse modification of rights, preferences or privileges of the Preferred Shares; (iii) an increase in the number of authorized Preferred Shares (iv) the creation of any class of shares senior to or on parity with the Preferred Shares or the issuance of any securities which are issued, or convert into Ordinary Shares , at a price per share less than the Purchase Price; (v) the reclassification of outstanding capital shares of the Company; (vi) the modification of the Company's Certificate of Incorporation or Bylaws, if such action would materially and adversely alter the rights of the Preferred Shares, whether by merger or otherwise, (vii) the incurring of any debt outside the

	ordinary course of business; (viii) a material change in the Company's business plan; and (ix) making of any assignment for the benefit of creditors or the commencement of any insolvency, dissolution, termination of corporate existence, or any other similar action.
<b>Directors and Officers Insurance; Expenses:</b>	Immediately upon Closing, the Company will undertake to obtain Directors and Officers insurance in a standard amount. The Company shall also reimburse the reasonable out-of-pocket expenses of Directors and Observers incurred in connection with attendance at board meetings and other undertakings on behalf of the Company.
<b>Employment Agreement; Key Man Insurance:</b>	At or prior to Closing, the Company will enter into three-year employment agreements with the CEO and other senior management, determined at the discretion of the Investors, in which they agree to devote full time to the affairs of the Company. Such employment agreements shall include confidentiality and non-solicitation provisions and a covenant not to compete. Additionally, prior to the Closing, the Company will obtain key man insurance in the amount of \$[ ] with respect to [ ].
<b>Stockholders Agreement:</b>	As a condition to the Closing, each of the current controlling shareholders of the Company and the Investors shall enter into a mutually agreeable shareholders agreement, granting the Investors customary rights of first refusal and co-sale rights with respect to any sale of equity securities.
<b>[Warrants]:</b>	[The Investors will be issued warrants (the "Warrants") to purchase and aggregate of \$[ ] of [Ordinary Shares ] [Preferred Shares], with an exercise price of \$[ ] per share, for a purchase price of \$[.001] per





<b>Standstill:</b>	<p>The Company agrees that prior to <b>[CLOSING DATE]</b>, it shall not permit any of its shareholders, officers, directors, employees, agents, or representatives (including, without limitation, its attorneys and accountants) to directly or indirectly initiate, solicit, or encourage discussions, inquiries, or proposals, or to participate in any negotiation or discussion for the purpose or with the intention of leading to any proposal concerning the sale of the assets or any of the capital stock of the Company. The parties agree to use their best efforts to move towards a prompt Closing.</p>
<b>Confidentiality:</b>	<p>Each party shall insure that all confidential information which such party or any of its respective officers, directors, employees, attorneys, agents, investment bankers or accountants may now possess or may hereafter create or obtain relating to the financial condition, results of operations, businesses, properties, assets, liabilities or future prospects of the other party, any affiliate of the other party, or any customer or supplier of such other party or any such affiliate shall not be published, disclosed or made accessible by any of them to any other person or entity at any time or used by any of them, in each case without the prior written consent of the other party; provided, however, that the restrictions of this sentence shall not apply (i) as may otherwise be required by law, (ii) as may be necessary or appropriate in connection with the enforcement of this Agreement or (iii) to the extent such information was in the public domain when received or thereafter enters the public domain other than because of disclosure by the other party. Each party shall cause all of such other persons and entities that received confidential data from time to time to deliver to the other party all tangible evidence of such confidential information to which the restrictions of the foregoing sentence apply at such time as</p>

	negotiations with respect to the Transaction are terminated.
<b>Public      Non-Disclosure:</b>	Neither the terms of this Term Sheet nor any other document required to be executed in order to consummate the Transaction, nor any termination of negotiations relating to the Transaction, shall be publicly disseminated by either party, either by oral or by written disclosure, without the prior written approval of the other party, which approval shall not be unreasonably withheld.
<b>Expenses:</b>	The Company shall pay from the proceeds of the Investment the expenses (including reasonable legal fees and due diligence expenses) incurred by the Fund in connection with this transaction up to a maximum of [\$ XXXXX]. In the event this transaction does not close (other than a breach of the “standstill” provisions above), each party shall be responsible for its own legal costs. If the Company breaches such “standstill” provisions, it shall be responsible for all reasonable legal fees and due diligence expenses of the Investors, plus liquidated damages of \$[_____] payable to the Investors.
<b>Contingencies:</b>	This offer shall remain open until [TIME, DATE] and is contingent upon the completion by the Investors of due diligence, final approval by the Fund’s Investment Committee and completion of satisfactory legal agreements incorporating the terms hereof.

**Appendix II-**  
**Due Diligence Request List**

This List/Form is general and must be tailored to your particular transaction. The Due Diligence investigation must be designed to accomplish the identified objectives bearing in mind the features of the Proposed Transaction and the circumstances in which the due diligence investigation is being performed.

STRICTLY CONFIDENTIAL

NAME:

TITLE:

COMPANY:

COMPANY ADDRESS:

RE: REVIEW OF DOCUMENTS AND INFORMATION IN CONNECTION WITH POSSIBLE TRANSACTION

DEAR [ ]:

In connection with our representation of [ ] in connection with a possible transaction between [ ] (the Operating Company) and its parent [ ] (the Company), we would appreciate information requested hereinbelow for our review. Please disregard any items included on the list which do not exist due to the nature of the Company and the Operating Company. Our request for information relating to the Company should also be applied to the Operating Company.

We would appreciate it if you would kindly arrange to have the information sent to our offices, and where not convenient, we are prepared to review the remaining information at the Company's offices.

- i. Corporate Records & Organization
- ii. Financing
- iii. Assets
- iv. Other Material Agreements:
  - Intangibles
  - Confidentiality & Non Disclosure Agreements
  - Description of any interference. Infringement, or unfair competition matters, current or potential

- v. Financial Data
- vi. Environmental & related matters
- vii. Personnel
- viii. Tax Matters
- ix. Litigation, Government and Regulatory Issues
- x. Auditors
- xi. Regulations & Filings
- xii. Miscellaneous

Additionally, we anticipate that during the course of our due diligence review, we may need to review other materials not described herein.

If you have any questions or comments with regards to requests set forth above, please call the undersigned at ( phone number).

Thank you for your assistance in this matter and we look forward to working with you.

Sincerely,

[Attorney]

cc: Client



**Appendix III**  
**Certificate of Incorporation of a VC**

**Appendix IV**  
**PURCHASE AGREEMENT**

This Purchase Agreement (this “Agreement”) is made as of [ ], 20[ ], by and among [***Name of Issuer***], a [***Type of incorporation***] (the “Company”), and the purchasers of the Company’s Shares set forth on Exhibit E hereto (each, a “Purchaser,” and together, the “Purchasers”).

Preliminary Statement

WHEREAS, the Company desires to issue and sell to the Purchasers, and the Purchasers desire to purchase from the Company, [***number of shares being purchased***] authorized but unissued shares of the Company’s shares (the “Shares”), and/or an additional number of Preference Shares (as defined below) [***number of shares of Preferred Shares***] of Preferred Shares, all upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, simultaneously with entering into this Agreement, the Company, the Purchasers and the Founders (as defined herein) are entering into that certain [Transaction Document], in the form attached hereto as Exhibit C, and that certain [Transaction Document] in the form attached hereto as Exhibit D, each dated as of the date hereof.

NOW THEREFORE, in consideration of the mutual agreements, representations, warranties and covenants herein contained, the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1.01. Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

“Affiliate” of any Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person, as the term “Affiliated” is used and construed in the Companies Act 2004.

“Agreement” has the meaning set forth in the Preamble.

“Articles” means the Amended and Restated Articles of Incorporation of the Company, in the form attached hereto as Exhibit A.

“Board” means the Board of Directors of the Company.

“Business Day” means any day except Saturday, Sunday and any day which is a National legal holiday or a day on which banking institutions in the Jamaica are authorized or required by law or other governmental action to close.

“Closing” has the meaning set forth in Section 2.03.

“Closing Date” has the meaning set forth in Section 2.03.

“Company” has the meaning set forth in the Preamble.

“Company Plans” has the meaning set forth in Section 3.18(a).

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued under any such Law (hereafter “Claims”), including (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, fines or penalties pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

“Environmental Law” means any Act of Parliament rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials including, but not limited to any of the following:

The Clean Air Act 1964; the Forest Act 1996 & Regulations of 2001; The National Resources Conservation Authority Act 1991 & Regulations; The Mining Act; The Preserved Areas Act, The National Environment and Planning Agency Act; The Beach Control Act 1956; The Beach Control (Hotel, Commercial and Public Recreational Beaches) Regulations 1978; The Beach Control (Licencing) Regulations 1956; The Beach Control (Safety Measures) Regulations 1957; The Country Fires Act 1942; The Endangered Species (Protection, Conversations and Regulation of Trade) Act 2000; The Exclusive Economic Zone Act 1993; The Fishing Industry Act 1976 and Regulations; The Fishing Industry (Conversation of Conch) (Genus Strombus) Regulations 2000; The Flood Water Control Act 1958; The Land Development & Utilization Act 1966; The Maritime Areas Act 1996; The National Solid Waste

Management Act 2001; The Pesticides Act 1987; The Public Health Act 1985 & Regulations; The Quarries Control Act 1984; The Town and Country Planning Act 1958 & Regulations; The Water Resources Act 1995; The Watersheds Protection Act 1963; and the Wildlife Protection Act 1945 and Regulations.

“Financial Services Commission Act” means the Financial Services Commission Act of 2001 as amended from time to time and all of the rules and regulations promulgated thereunder.

“Financial Statements” has the meaning set forth in Section 3.06.

“Founders” means [insert *names of founders*].

“GAP” means generally accepted accounting principles of the Institute of Chartered Accountants of Jamaica and as applied in Jamaica from time to time.

“Hazardous Materials” means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants” or “pollutants,” or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance exposure to which is prohibited, limited or regulated by any governmental authority.

“Income Tax Act” means the Income Tax Act of Jamaica 1955 as amended from time to time and all of the rules and regulations promulgated thereunder

“Intellectual Property” has the meaning set forth in Section 3.15(a).

“Losses” has the meaning set forth in Section 6.01.

“Material Adverse Effect” means a material adverse effect on (a) the assets, liabilities (contingent or otherwise), business, affairs, operations, prospects or condition (financial or otherwise) of the Company, (b) the ability of the Company to timely perform its obligations under this Agreement, the other Transaction Documents and the Articles, (c) the legality, validity, binding effect or enforceability against the Company of this Agreement, the other Transaction Documents and the Articles or (d) the rights, remedies or benefits available to, or conferred upon, the Purchasers under this Agreement, the other Transaction Documents and the

Articles; provided, that none of the following, alone or in combination, shall be considered a Material Adverse Effect: (x) events, circumstances, changes or effects that generally affect [**describe industry**], in each case except to the extent the Company is disproportionately affected in a material and adverse manner].

“Material Contracts” has the meaning set forth in Section 3.12.

“Material Permits” has the meaning set forth in Section 3.22.

“Ordinary Shares” shall mean the ordinary shares in the share capital of the Company to be issued to the Purchaser(s\_

“Person” means an individual, firm, partnership, limited liability company, corporation, association, trust, estate, joint venture, unincorporated organization, government, governmental department or agency or political subdivision thereof or other entity.

“Plan” has the meaning set forth in Section 3.02(c).

“Projections” has the meaning set forth in Section 3.31.

“Purchasers Indemnities” has the meaning set forth in Section 6.01.

“Rights” has the meaning set forth in Section 3.15(a).

“Rules have the meanings attributed to it in section 3:18(b) of this Agreement..”

“Purchasers” has the meaning set forth in the Preamble.

“Preferred Shares” has the meaning set forth in Section 2.01.

“Tax Return” shall mean any report, return, document, declaration or other information or filing required to be supplied to any Taxing Authority, including information returns, any documents with respect to accompanying payments of estimated Taxes, or with respect to or accompanying requests for extensions of time in which to file any such return, report, document, declaration or other information.

“Taxes” shall mean any and all taxes, charges, fees, levies or other assessments, including income, gross receipts, excise, real or personal property, sales, withholding, social security, retirement, unemployment, occupation, use, goods and services, license, value added, capital, net worth, payroll, profits, franchise, transfer and recording taxes, fees and charges, and any other taxes, assessment or similar

charges imposed by any Taxing Authority, including any interest, fines, penalties or additional amounts attributable to or imposed upon any such taxes or other assessments.

“Taxing Authority” shall mean the Tax Administration Jamaica or any taxing authority, whether national or foreign.

“Transaction Documents” means, collectively, this Agreement, and [ ].

“Warrants” means the warrants, dated the date hereof, issued by the Company to the Purchasers pursuant hereto in substantially the form of the warrant certificate attached hereto as Exhibit B, to purchase up to an additional [***number of shares***] of Preference Shares [***price per share***] per share.

“Warrant Shares” means the number of shares issued or issuable upon the exercise of the Warrants.

#### SECTION 1.02. Rules of Construction.

The definitions in Article I shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references herein to Articles, Sections and Exhibits and Schedules shall be deemed to be references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. All Schedules attached hereto shall be deemed incorporated herein as if set forth in full herein. The terms “clause(s)” and “subparagraph(s)” shall be used herein interchangeably. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” All accounting terms not defined in this Agreement shall have the meanings determined by GAP as in effect from time to time. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to a Person are also to its permitted successors and permitted assigns. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified, supplemented or restated, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. In this Agreement, references to “knowledge” mean the actual knowledge of any of the directors and senior officers of the Company, after reasonable inquiry, and such directors and officers shall make such inquiry as is reasonable under the circumstances.

## ARTICLE II

### AUTHORIZATION, SALE AND ISSUANCE OF PREFERRED STOCK AND WARRANTS

SECTION 2.01. Sale and Issuance of Shares and Preferred Shares. Subject to the terms and conditions of this Agreement, the Purchasers agree, severally and not jointly, to purchase from the Company, and the Company agrees to sell and issue to the Purchasers, at the Closing, the ordinary Shares [**number of shares**] shares in the share capital of the Company (the Ordinary Shares) at a cash purchase price of \$[**price per share**] and/or the [**number of shares**] (the "Preferred Shares") of the Preferred Shares, at a cash purchase price of \$[**price per share**] share of Preference Share (each Purchaser to receive the number of Ordinary and/or Preferred Shares set forth next to such Person's name on Exhibit E).

[SECTION 2.02. Issuance of Warrants. Subject to the terms and conditions set forth in this Agreement, the Company shall issue to the Purchasers at the Closing, for no further cash consideration, the Warrants (each Purchaser to receive the number of Warrants set forth next to such Person's name on Exhibit E).]

SECTION 2.03. Closing. The closing of the purchase and sale of the Preferred Shares and the issuance of the Warrants if any, (the "Closing") shall take place at [**time of closing**] at the offices of [**closing address**], on the date hereof, or at such other time and place as may be agreed upon between the Purchasers and the Company (the "Closing Date"). At the Closing, the Company shall deliver to each Purchaser against payment by or on behalf of the Purchaser of the aggregate purchase price set forth next to such Person's name on Exhibit E, by wire transfer of immediately available funds to such account as the Company shall designate in writing (a) a single share certificate (or more, if requested by the Purchaser), registered in the name of the Purchaser, representing the Ordinary and/or Preferred Shares and if any,) a warrant certificate for the Warrants in the name of the Purchaser.

SECTION 2.04. Subsequent Sales of Shares. At any time on or before the [ ] day following the Closing or at such later time as the Company and Purchasers holding at least [ ]% of the then outstanding Ordinary and/or Preferred Shares may mutually agree, the Company may sell up to the balance of the authorized shares of Ordinary and/or Preferred Shares not sold at the Closing to such persons (the "Additional Purchasers") as may be approved by Purchasers holding at least [ ]% of the then outstanding Ordinary and/or Preferred Shares. All such sales made at any additional closings (each an "Additional Closing"), (i) shall be made on the terms and conditions set forth in this Agreement, (ii) the representations and warranties of the Company set forth in Section 3 (and the Disclosure Schedule) shall be made of the Closing and the Company shall have no obligation to update any such disclosure and (iii) the representations and warranties of the Additional Purchasers in Section 4

shall be made as of the date of such Additional Closing. The List of Purchasers, shall be amended by the Company without the consent of Purchasers to include any Additional Purchasers upon the execution by such Additional Purchasers of a counterpart signature page hereto. Any shares of Preferred Stock sold pursuant to this Section 2.04 shall be deemed to be “Preferred Shares” for all purposes under this Agreement and any Additional Purchasers thereof shall be deemed to be “Purchasers” for all purposes under this Agreement. In addition, each additional Purchaser shall become a party to the other Transaction Documents and have the rights and obligations thereunder by execution and delivery to the Company of additional counterpart signatures to each such agreement, and any Additional Purchaser shall be considered an “Investor” (as defined in such agreements) for purposes of each such agreement.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth on the disclosure schedule attached hereto (the “Disclosure Schedule”) (which exceptions shall be deemed to be representations and warranties as if made hereunder and shall correspond solely to the section numbers of Article III to which they expressly correspond), the Company hereby represents and warrants to the Purchasers, as of the date hereof, as follows:

SECTION 3.01. Incorporation, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the Jamaica. The Company is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction necessary to conduct its business as currently conducted and currently planned to be conducted except for such jurisdictions where the failure to be so qualified or in good standing, as the case may be, has not had and could not reasonably be expected to have a Material Adverse Effect. The Company has the requisite corporate power and authority to own and operate its properties and assets, to carry on its business as currently conducted and as currently planned to be conducted, to execute and deliver this Agreement and the other Transaction Documents and to perform its obligations under this Agreement and the other Transaction Documents. The Company is not in violation of any provisions of the Articles or the Company’s Bylaws.

SECTION 3.02. Capitalization. The authorized share capital of the Company immediately prior to the Closing, consists of:

(a)  of xxxx ordinary shares, of which  shares are issued and outstanding as of the Closing Date.



(b) [ ] of xxxx preferred shares, none of which are issued and outstanding immediately prior to the Closing and [ ] of which will be issued to the Purchasers at the Closing and [ ] of which are reserved for issuance upon conversion of the Warrants. The rights, preferences and privileges of the Preferred Shares are as stated in the Articles.

[(c) In connection with the [Issuer Name] Share Plan (the “Plan”) duly adopted by the Board and approved by the shareholders of the Company, (i) the Company has reserved [ ] shares of ordinary shares for issuance to directors, officers, employees and consultants of the Company, (ii) [ ] shares of ordinary shares have been issued pursuant to restricted share purchase agreement or the exercise of outstanding options and are included in the issued and outstanding shares of ordinary shares set forth in Section 3.02(a), (iii) options to purchase [ ] shares of ordinary shares have been granted and remain outstanding and (iv) [ ] shares of ordinary shares remain available for future issuances to directors, officers, employees and consultants of the Company.

(d) All shares of the Company’s issued and outstanding share capital (i) have been duly authorized, are validly issued and are fully paid and nonassessable, (ii) were issued in compliance with all applicable laws concerning the issuance of shares and (iii) except as set forth in the [other Transaction Document] are not subject to a right of first offer as of the Closing.

(e) Except for (i) the conversion privileges of the Preferred Shares, (ii) the Warrants and (iii) Ordinary Shares of (or options therefor) reserved for issuance under the Plan, there are no existing options, warrants, calls, preemptive (or similar) rights, subscriptions or other rights, agreements, arrangements or commitments of any character obligating the Company to issue, transfer or sell, or cause to be issued, transferred or sold, any shares in the share capital of the Company or other equity interests in the Company or any securities convertible into or exchangeable for such shares in the capital of the Company or other equity interests, including the Preferred Shares, the Warrants and, and there are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any shares of its capital or other equity interests. The issue and sale of the Preferred Shares, the Warrants if any will not obligate the Company to issue or sell, pursuant to any preemptive right or otherwise, the Ordinary Shares of the Company or other securities to any Person and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under such securities.

(f) Schedule 3.02(f) sets forth the capitalization of the Company immediately following the Closing, including the number of shares of the following: (i) issued and outstanding Ordinary Shares, including vesting schedule and repurchase price, (ii)

issued share options, including vesting schedule and exercise price, (iii) share options not yet issued but reserved for issuance and (iv) warrants or share purchase rights, if any. Except for (A) the conversion privileges of the Preferred Shares and the Warrants, (B) the rights provided in the [other Transaction Document] and (C) the securities and rights described in Section 3.02(c) of this Agreement and Schedule 3.02(f), there are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or agreements, orally or in writing, to purchase or acquire from the Company any its Ordinary Shares or Preferred Shares, or any securities convertible into or exchangeable for Ordinary Shares or Preferred Shares.

(g) None of the Company's share purchase agreements or share option documents contains a provision for acceleration or vesting (or lapse of a repurchase right) or other changes in the vesting provisions or other terms of such agreement or understanding upon the occurrence of any event or combination of events. The Company has never adjusted or amended the exercise price of any share option previously awarded, whether through amendment, cancellation, replacement grant, repricing or any other means. Except as set forth in the Articles, the Company has no obligation (contingent or otherwise) to purchase or redeem any of its share capital.

SECTION 3.03. Authorization. All corporate action on the part of the Company and its directors and officers necessary for the authorization, execution and delivery of this Agreement and the other Transaction Documents by the Company, the performance of all of the Company's obligations under this Agreement and the other Transaction Documents, the filing and performance of the Articles and the authorization, sale, issuance and delivery of the Preferred Shares, the Warrants if any has been taken or will be taken prior to the Closing. Each of this Agreement and the other Transaction Documents, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except as limited by laws of general application relating to insolvency reorganization or other similar laws affecting creditors' rights generally and by laws relating to the availability of specific performance, injunctive relief or other general equitable remedies.

SECTION 3.04. Valid Issuance of the Shares.

(a) The Ordinary Shares, Preferred Shares and the Warrants (if any), when issued, sold and delivered in accordance with the terms of this Agreement for the consideration set forth in this Agreement, will be validly issued, fully paid and nonassessable and not subject to any encumbrances, preemptive rights, restrictions on transfer or any other similar contractual rights of the shareholders of the

Company or any other Person (other than the Purchasers) other than restrictions on transfer under the Transaction Documents and all applicable laws. The Company has reserved from its duly authorized share capital the ordinary shares issuable upon conversion of the Warrant, and upon issuance in accordance with the terms of the Articles and the Warrant upon payment of the exercise price thereunder, will be validly issued, fully paid and nonassessable and not subject to any encumbrances, preemptive rights, restrictions on transfer or any other similar contractual rights of the stockholders of the Company or any other Person (other than the Purchasers) other than restrictions on transfer under the Transaction Documents and all applicable laws.

(b) Subject to the accuracy of the Purchaser's respective representations and warranties in Article IV, the offer, sale and issuance of the Ordinary Shares and/or Preferred Shares and the Warrants (if any), will be issued in compliance with all applicable laws.

SECTION 3.05. Financial Statements. The Company has furnished to the Purchasers true and complete copies of the Company's [audited][unaudited] balance sheet (and supporting schedules) as of [●] and the related [audited][unaudited] statements of income, shareholders' equity and cash flows for the period ended [●] (the "Financial Statements"). The Financial Statements, together with the notes thereto, are complete and correct in all material respects and present fairly the financial position of the Company as of the dates specified and the results of their operations and cash flows for the periods specified, in each case in conformity in all material respects with GAP applied on a consistent basis during the periods involved, except as indicated therein or in the notes thereto. The Financial Statements do not contain any items of special or nonrecurring income or any other income not earned in the ordinary course of business except as expressly specified therein. To the knowledge of the Company, all of the accounts receivable and notes receivable owing to the Company, including all accounts receivable and notes receivable set forth on the Financial Statements, constitute valid and enforceable claims other than accounts receivable and notes receivable which individually and in the aggregate would not result in a Material Adverse Effect if unpaid, and are good and collectible in the ordinary course of business in all material respects, net of any reserves shown on the Financial Statements applicable thereto (which reserves are adequate and were calculated on a basis consistent with GAP), and no further services are required to be provided in order to complete the sales and to entitle such Person to collect in full.

SECTION 3.06. Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any national or local governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, except for filings pursuant to applicable laws. The

execution and delivery by the Company of this Agreement and the other Transaction Documents, the consummation of the transactions contemplated herein and therein, and the issuance of the Ordinary Shares, Preferred Shares, the Warrants and do not require the consent or approval of the shareholders of, or any lender to, the Company.

SECTION 3.07. No Conflict; Compliance With Laws.

(a) The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents, and the consummation of the transactions contemplated hereby and thereby, including the issuance of the Ordinary Shares Preferred Shares, the Warrants (if any), do not and will not (i) conflict with or violate any provision of the Articles or the Bylaws of the Company, (ii) breach, conflict with or result in any violation of or default (or an event that with notice or lapse of time or both would become a default) under, or give rise to a right of termination, amendment, acceleration or cancellation (with or without notice or lapse of time, or both) of any obligation, contract, commitment, lease, agreement, mortgage, note, bond, indenture or other instrument or obligation to which the Company is a party or by which it or any of its properties or assets are bound, except such as could not reasonably be expected to result in a Material Adverse Effect, or (iii) result in a violation of any statute, law, rule, regulation, order or restriction applicable to the Company or any of its properties or assets, or any judgment, writ, injunction or decree of any court, judicial or quasi-judicial tribunal applicable to the Company or any of its properties or assets.

(b) The Company (i) is not in default under or in violation of (and no event has occurred that, with notice or lapse of time or both, would result in a default by the Company), nor has the Company received notice of a claim that it is in default under or that it is in violation of, any obligation, contract, commitment, lease, agreement, mortgage, note, bond, indenture or other instrument or obligation to which it is a party or by which it or any of its properties or assets is bound (whether or not such default or violation has been waived) and (ii) is not in violation of any statute law, rule, regulation, order or restriction applicable to the Company or any of its properties or assets, or any judgment, writ, injunction or decree of any governmental authority, including, all foreign, and national laws relating to taxes, environmental protection, occupational health and safety, product quality and safety, communications and employment and labor matters, except in each case (set forth in clause (i) and (ii) above) such as has not had or could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.08. Brokers or Finders. Except as set forth on Schedule 3.09, the Company has not dealt with any broker or finder in connection with the transactions

contemplated by this Agreement and the other Transaction Documents, and the Company has not incurred, or shall not incur, directly or indirectly, any liability for any brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement and the other Transaction Documents, or any transaction contemplated hereby or thereby.

SECTION 3.09. Absence of Litigation. Except as set forth on Schedule 3.10, there are no pending or, to the Company's knowledge, threatened actions, suits, claims, proceedings or investigations against or involving the Company or any of its Affiliates. None of the Company is a party to or subject to the provisions of any order, writ, injunction, judgment or decree of any governmental agency or instrumentality.

SECTION 3.10. No Undisclosed Liabilities; Indebtedness. Except as set forth in the Financial Statements, the Company does not have any liabilities or obligations, contingent or otherwise, other than liabilities and obligations that arose in the ordinary course of business since the date of the most recent Financial Statements delivered to the Purchasers and that have not had, and could not reasonably be expected to have, a Material Adverse Effect. Except for indebtedness reflected in the Financial Statements, or arising in the ordinary course of business since the date of the most recent Financial Statements delivered to the Purchasers and set forth on Schedule 3.11, the Company has no indebtedness outstanding as of the date hereof. The Company is not in default with respect to any outstanding indebtedness or any instrument relating thereto.

SECTION 3.11. Contracts. Except for the agreements explicitly contemplated hereby or set forth on Schedule 3.12, there are no agreements, understandings, instruments, contracts or proposed transactions to which the Company is a party or by which it is bound which may involve (a) obligations of, or payments to, the Company in excess of \$[**designate an amount**] (other than obligations of, or payments to, the Company arising from purchase or sale agreements entered into in the ordinary course of business), (b) the license of any patent, copyright, trade secret or other proprietary right to or from the Company (c) any matter upon which the business of the Company is substantially dependent or which is otherwise material to the business of the Company, (d) a guarantee of performance by the Company or involving any agreement to indemnify or act as surety for any Person by the Company, or any other Contract to be contingently or secondarily liable for the obligations of any Person by the Company, (e) limits or restricts the ability of the Company or the Company to compete or otherwise to conduct its business as currently conducted and currently planned to be conducted, (f) a joint venture, partnership, alliance or similar agreement or understanding involving a sharing of profits or expenses, (g) sales agency, marketing or franchising contract the termination or non-extension of which would result in a Material Adverse Effect or (h) grants a power of attorney, agency or similar authority to another Person or

entity by the Company (each, a “Material Contract” and collectively, the “Material Contracts”). All of the Material Contracts are valid, legal, binding and in full force and are enforceable by the Company in accordance with their respective terms, except as such may be limited by, insolvency, reorganization or similar laws affecting creditors’ rights generally and by general equitable remedies. Neither the Company nor, to the Company’s knowledge, any other party to the Material Contracts, is in material default under any of such Material Contracts. The Company has not entered into any letter of intent, memorandum of understanding or other similar document (i) with any representative of any corporation or corporations regarding the merger of the Company with or into any such corporation or corporations, (ii) with any representative of any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Company would be disposed of, or (iii) regarding any other form of liquidation, dissolution or winding up of the Company.

SECTION 3.12. Title to Assets. The Company has good and marketable title to all real and personal property owned by it that is material to the business of the Company, in each case free and clear of all liens and encumbrances, except those, if any, disclosed in the Financial Statements or incurred in the ordinary course of business consistent with past practice. Any real property and facilities held under lease by the Company are held by it or them under valid, subsisting and enforceable leases (subject to laws of general application relating to, insolvency, reorganization, or other similar laws affecting creditors’ rights generally and other equitable remedies) with which the Company is in compliance in all material respects.

SECTION 3.13. Labor Relations. No labor or employment dispute exists or, to the knowledge of the Company, is imminent or threatened, with respect to any of the employees or consultants of the Company that could reasonably be expected to result in a Material Adverse Effect. The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and, to the Company’s knowledge, no labor union has requested or has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending or, to the Company’s knowledge, threatened which could reasonably be expected to result in a Material Adverse Effect, nor is the Company aware of any labor organization activity involving its employees. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company has complied in all material respects with all applicable state and equal employment opportunity laws and with other laws related to employment. No employee of the Company has been granted the right to continued employment by the Company or to any material compensation following termination of employment with the Company.

The Company is not aware that any officer, key employee or group of employees intends to terminate his, her or their employment with the Company, nor does the Company have a present intention to terminate the employment of any officer, key employee or group of employees.

#### SECTION 3.14. Intellectual Property.

(a) The Company is the sole and exclusive owner of, or has the exclusive right to use, all right, title and interest in and to all material foreign and domestic patents, patent rights, trademarks, service marks, trade names, brands, copyrights (whether or not registered and including pending applications for registration) and other proprietary rights or information, owned or used by the Company (collectively, the “Rights”), and in and to each material invention, software, trade secret, and technology used by the Company (the Rights and such other items, the “Intellectual Property”), and, to the Company’s knowledge, the Company owns and has the right to use the same, free and clear of any claim or conflict with the rights of others (subject to the provisions of any applicable license agreement). Schedule 3.15(a) contains a true and complete list of the Company’s patents, trademarks, copyrights and domain names and pending patent, trademark and copyright applications.

(b) Except as set forth on Schedule 3.15(b), there have been no claims made, or to the knowledge of the Company, are there any pending or threatened claims, against the Company asserting the invalidity, abuse, misuse, or unenforceability of any of the Intellectual Property or asserting any conflict of the Intellectual Property with the rights of others, and, to the Company’s knowledge, there are no reasonable grounds for any such claims.

(c) Each of the Founders has executed a confidential information and invention assignment agreement, substantially in the form(s) delivered to the Purchasers. No such employee has excluded works or inventions made prior to his or her employment with the Company from his or her assignment of inventions pursuant to such employee’s confidential information and invention assignment agreement. Each consultant to the Company that has had access to the Company’s intellectual property has entered into an agreement containing appropriate confidentiality and invention assignment provisions. To the knowledge of the Company, no officer, employee or consultant of the Company is in violation of such confidential information and invention assignment agreement or any prior employee contract or proprietary information agreement with any other corporation or third party.

SECTION 3.16. Subsidiaries; Joint Ventures. The Company has no subsidiaries and (a) does not otherwise own or control, directly or indirectly, any other Person and (b) does not hold equity interests, directly or indirectly, in any other Person. The Company is not a participant in any joint venture, partnership, or similar arrangement material to the business of the Company.

SECTION 3.17. Taxes. The Company has filed (or has had filed on its behalf), will timely file or will cause to be timely filed, all material Tax Returns (as defined below) required by applicable law to be filed by it or them prior to or as of the date hereof, and such Tax Returns are, or will be at the time of filing, true, correct and complete in all material respects. The Company has paid (or has had paid on its behalf) or, where payment is not yet due, has established (or has had established on its behalf and for its sole benefit and recourse) or will establish or cause to be established in accordance with GAP on or before the date hereof an adequate accrual for the payment of, all material Taxes due with respect to any period ending prior to or as of the date hereof. There are no claims or assessments pending against the Company for any material alleged deficiency in any Tax, and the Company has not been notified in writing of any material proposed Tax claims or assessments against the Company. No Tax Return of the Company is or has been the subject of an examination by a Taxing Authority. The Company has withheld from each payment made to any of its past or present employees, officers and directors, and any other Person, the amount of all material Taxes and other deductions required to be withheld therefrom and paid the same to the proper Taxing Authority within the time required by law.

SECTION 3.18. Pensions and Benefits.

(a) Schedule 3.18 contains a true and complete list of each “employee benefit plan” within the meaning of the Income Tax Act and the Financial Services Commission Act, as well as each “employee share ownership plan” within the meaning of the Employees Share Ownership Plan Act, 1995 and the rules and regulations promulgated thereunder, including all retirement, profit sharing, share option, share bonus share purchase, severance, fringe benefit, deferred compensation, and other employee benefit programs, plans, or arrangements, whether or not subject to the foregoing Acts under which (i) any current or former directors, officers, employees or consultants of the Company has any present or future right to benefits and which are contributed to, sponsored by or maintained by the Company or (ii) the Company has any present or future liability. All such programs, plans, or arrangements shall be referred to as a “Company Plan” and collectively, the “Company Plans.”

(b) Each Company Plan has been established and administered in all material respects in accordance with its terms and in compliance with the applicable provisions of the Financial Services Commission Act, the Income Tax Act, the Employees Share Ownership Plan Act, and the rules and regulations promulgated thereunder (the “Rules”), and other applicable laws, rules and regulations; (ii) each Company Plan which is intended to be qualified within the meaning of the above Acts is so qualified and has received a favorable determination letter as to its qualification, and to the Company’s knowledge nothing has occurred, whether by action or failure to act, that could reasonably be expected to cause the loss of such



qualification;

(c) With respect to any Company Plan and to the Company's knowledge, (i) no actions, suits or claims (other than routine claims for benefits in the ordinary course) are pending or threatened and (ii) no administrative investigation, audit or other administrative proceeding by the Tax Administration Jamaica, the Ministry of Labour, the Financial Services Commission, or other governmental agencies are pending, threatened or in progress.

SECTION 3.19. Material Changes. Except as set forth on Schedule 3.21, since [ ], the Company has conducted its business only in the ordinary course, consistent with past practice, and since such date there has not occurred any event, act, condition or occurrence of whatever nature, whether singly or in conjunction with any other event, act, condition or occurrence which has had or could reasonably be expected to have a Material Adverse Effect. Since [ ], there has not occurred:

(a) any [material adverse] change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business consistent with past practice;

(b) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently conducted and as it is currently proposed to be conducted);

(c) any waiver by the Company of a valuable right or of a material debt owed to it;

(d) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business consistent with past practice and that is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and as it is currently proposed to be conducted);

(e) the execution by the Company of any material contract or arrangement, or any material change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject;

(f) any material increase in any compensation arrangement or agreement with any employee not in the ordinary course of business consistent with past practice (including the continued issuance of options to employees);

(g) any sale, assignment or transfer of any patents, trademarks, copyrights, trade secrets, other intangible assets or licenses regarding the same;

(h) any resignation or termination or notice of resignation or termination of employment of any key employee of the Company (and to the best of the Company's knowledge, any impending resignation or termination of employment of any such employee);

(i) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company;

(j) any mortgage, pledge, transfer of a security interest in, or lien, created by the Company, with respect to any of its material properties or assets, except liens for taxes not yet due or payable;

(k) any loans or guarantees made by the Company to or for the benefit of its employees, stockholders, officers or directors, or any members of their immediate families, other than travel and other advances made in the ordinary course of its business consistent with past practice;

(l) any declaration, setting aside or payment or other distribution in respect of any of the Company's share capital;

(m) any redemption or repurchase of any of the Company's shares other than redemptions or repurchases of the Company's shares from terminated employees, officers, directors, consultants or other persons performing services for the Company at cost (or the lesser of cost or fair market value) pursuant to any share purchase agreement entered into in the ordinary course of business consistent with past practice in connection with such Person's employment with the Company which permits the Company to repurchase such shares at cost upon termination of employment with the Company; or

(n) any agreement or commitment by the Company to do any of the things described in this Section 3.21.

SECTION 3.22. Regulatory Permits. The Company possesses all certificates, approvals, authorizations and permits issued by the appropriate regulatory authorities, and any similar authority, necessary to conduct its business as now being conducted or proposed to be conducted, the lack of which could reasonably be expected to result in a Material Adverse Effect (the "Material Permits"), and the Company is not in default in any material respect under, and has not received any written notice of proceedings relating to the revocation or modification of, any Material Permits.

SECTION 3.23. Transactions with Affiliates and Employees. Other than as set forth in Schedule 3.23, none of the Affiliates, officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company, is presently a party to any transaction or agreement with the Company (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any Affiliate, officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an Affiliate, officer, director, trustee or partner.

SECTION 3.24. Insurance. The Company is insured by insurers of recognized financial responsibility and national standing against such losses and risks and in such amounts as are prudent and customary for the business in which the Company is engaged. The Company has no reason to believe that it will not be able to renew existing insurance coverage for itself as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary or appropriate to continue business. A list of the Company's current insurance policies is set forth on Schedule [3.24].

SECTION 3.25. Solvency. Based on the consolidated financial condition of the Company as of the date hereof, to the best of the Company's knowledge, (a) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known and contingent liabilities) as they mature; (b) the Company's assets do not constitute unreasonably small capital to carry on its business for the current fiscal year as now conducted and as proposed to be conducted, including its capital needs taking into account the particular capital requirements of the business conducted by the Company, projected capital requirements and capital availability thereof; and (c) the current cash flow of the Company, together with the proceeds the Company would receive were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its debts when such amounts are required to be paid. The Company has no present intention to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt), although the Purchasers and the Purchasers understand that the Company currently plans to enter into certain capital raising transactions as set forth in the Projections.

SECTION 3.26. Disclosure. All disclosure provided to the Purchasers regarding the Company, its business and the transactions contemplated hereby, including the Schedules to this Agreement furnished by or on behalf of the Company, taken as a whole is true and correct and does not contain any untrue statement of material fact or omit to state any material fact necessary in order to make the statements

made therein, in the light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that the Purchasers neither make nor has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Article IV.

SECTION 3.27. No Breach by Employees. The Company is not aware that any of its employees is obligated under any contract or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would materially interfere with the use of his or her efforts to promote the interests of the Company or that would conflict with the Company's business as presently conducted. Neither the execution and delivery of this Agreement, nor the carrying on of the Company's business by the employees of the Company, nor the conduct of the Company's business as presently conducted, will, to the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to use any inventions of any of its employees made prior to their employment by the Company.

SECTION 3.28. Environmental and Safety Laws.

(a) The Company is not in material violation of any applicable statute, law, or regulation relating to the environment or occupational health and safety. To the best of the Company's knowledge, Hazardous Materials have not at any time been generated, used, treated or stored on any property, plants or other facilities ever owned, leased, or operated by the Company, in violation of any applicable law, ordinance, rule, regulation, order, judgment, decree or permit or which would require remedial action under any applicable law, ordinance, rule, regulation, order, judgment, decree or permit, and the Company has not received any notice of any such violation with respect to Hazardous Materials.

(b) To the best of the Company's knowledge, there has been no spill, discharge, leak, emission, injection, escape, dumping or release of any kind onto any property now owned or leased by the Company (or onto any other property ever owned or leased by it, or by any predecessor entity at any such location), or into the environment surrounding any such property, of Hazardous Materials, other than those permissible under applicable laws, statutes or regulations or allowable under applicable permits. There are no past, pending or threatened Environmental Claims against the Company or, to the best of the Company's knowledge, any property now or previously owned or leased by the Company. The Company has not received any notice, nor does the Company have reason to believe that any such notice will be received, of an Environmental Claim in connection with any property now owned or leased by the Company or any other property ever owned or leased by it.

(c) To the best of the Company's knowledge, there is no condition or occurrence on any property now or previously owned or leased by the Company or any property adjoining or in the vicinity of any such property that could reasonably be anticipated (i) to form the basis of an Environmental Claim against the Company or (ii) to cause any property of the Company to be subject to any restrictions on the ownership, occupancy, use or transferability of such property under any Environmental Law.

(d) To the best of the Company's knowledge, Hazardous Materials have not been transported from any property now owned or leased by the Company (or any other property ever owned or leased by it) in a manner that could give rise to liability under any Environmental Law, nor has the Company retained or assumed any liability, contractually or by operation of law, with respect to the generation, treatment, storage or disposal of Hazardous Materials, which transportation or retained or assumed liabilities could result in any liability to the Company under any Environmental Law.

[(e) The representations and warranties made in this Section 3.28 are the exclusive representations and warranties of the Sellers relating to environmental matters.]

SECTION 3.29. Obligations to Related Parties. Except as set forth in the Financial Statements, no Affiliate, employee, officer, director, consultant or shareholder of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them other than (a) for payment of salary for services rendered, (b) reimbursement for reasonable expenses incurred on behalf of the Company and (c) for other standard employee benefits made generally available to all employees (including share option agreements outstanding under any share option plan approved by the Board and stock purchase agreements approved by the Board). To the Company's knowledge, none of such Persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except in connection with the ownership of stock in publicly-traded companies. To the Company's knowledge, no employee, officer, director or shareholder, nor any member of their immediate families, is, directly or indirectly, interested in any material contract with the Company (other than such contracts as relate to any such Person's ownership of share capital or other securities of the Company).

SECTION 3.30. Obligations of Management. Each officer and key employee of the Company is currently devoting substantially all of his or her business time to the conduct of the business of the Company. The Company is not aware that any officer or key employee of the Company is planning to work less than full time at the

Company in the future. No officer or key employee is currently working or, to the Company's knowledge, plans to work for a competitive enterprise, whether or not such officer or key employee is or will be compensated by such enterprise.

SECTION 3.31. Projections. The Company has delivered to the Purchasers copies of projections of the Company for the period from [ ] through [ ] and attached hereto as Schedule 3.31 (the "Projections"). The Projections are based on good faith estimates and assumptions made by the management of the Company as of the Closing Date; provided, however, that the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and the differences may be material.

SECTION 3.32. Merger. There are no pending, unresolved or outstanding claims, actions, or legal proceedings of any kind in any jurisdiction with regard to (a) the failed merger between the Company and [ ] , or (b) any other outstanding legal issue or claim regarding [ ] or its affiliates or creditors.

[SECTION 3.33. Subsidiaries. The Company (i) has no subsidiaries, (ii) does not own, directly or indirectly, any securities issued by any other corporation or business organization and (iii) is not a partner or participant in any joint venture or partnership of any kind.]

[SECTION 3.34. Books and Records. All accounts, ledgers, material files, documents, instruments, papers, books and records relating to the business, operations, conditions (financial or other), results of operations, and assets and properties of the Company (collectively, the "**Books and Records**"), each as supplied to the Purchasers and their respective representatives, are true, correct, complete and current in all material respects, there are no material inaccuracies or discrepancies of any kind contained or reflected therein, and they have been maintained in accordance with relevant legal requirements and industry standards, as applicable, including the maintenance of an adequate system of internal controls. The minute books of the Company, as made available to the Purchasers and their respective representatives, contain complete and accurate records of all meetings of and corporate actions or written consents by the shareholders and the board of directors of the Company, and, to the extent that such minute books are deficient, all material information not contained in such minutes has been conveyed to the Purchaser in other written form.]

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS

The Purchasers, severally and not jointly, hereby represent and warrant to the Company as follows (provided that the following representations and warranties do not lessen or obviate the representations and warranties of the Company set forth in this Agreement):

SECTION 4.01. Purchase Entirely for Own Account. Each Purchaser is acquiring the Ordinary and/or Preferred Shares and the Warrants (if any) for its own account and not for resale or with a view to distribution thereof without the prior written consent of the Company.

SECTION 4.02. Purchaser's Status. Each Purchaser certifies and represents to the Company that it is duly authorized by its principals or in the case of a corporate entity the requisite authority to make the purchase herein.

SECTION 4.03. No Public Market. Each Purchaser understands that no public market now exists for any of the securities issued by the Company, and that the Company has made no assurances that a public market will ever exist for the Ordinary Shares, Preferred Shares, the Warrants, if any.

SECTION 4.04 Information Concerning the Company.

(a) Each Purchaser has been given full access to all material information concerning the condition, properties, operations, and prospects of the Company. Each Purchaser and its advisors (if any) have had an opportunity to ask questions of, and to receive information from, the Company and persons acting on the Purchaser's behalf concerning the terms and conditions of the purchase of the Ordinary Shares, the Preferred Shares and the Warrants if any, and to obtain any additional information necessary to verify the accuracy of the information and date received by the Purchaser.

(b) Each Purchaser has made, either alone or together with its advisors (if any), such independent investigation of the Company, its management, and related matters as it deems to be, or of its advisors (if any) have advised to be, necessary or advisable in connection with the purchase of the Ordinary Shares, Preferred Shares and the Warrants if any, and of its advisors (if any) have received all information and data which it and its advisors (if any) believe to be necessary in order to reach an informed decision as to the advisability of purchasing the Preferred Shares and the Warrants.

SECTION 4.07 Acknowledgment of Purchaser. Each Purchaser acknowledges and understands that (i) an investment in the Company involves a high degree of risk and should not be made unless it is prepared to, and can afford to, lose its entire

investment; (ii) the Company makes no representation or warranty that any Purchaser will receive a return of its investment in the Company; and (iii) each Purchaser has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of purchasing the Ordinary Shares the Preferred Shares and the Warrants if any, and has so evaluated the merits and risks of such purchase.

## ARTICLE V CONDITIONS PRECEDENT

SECTION 5.01. Conditions Precedent to the Obligation of the Purchasers and the Purchasers to Consummate the Closing. Each Purchaser's respective obligation to purchase the Shares at the Closing is subject to the fulfillment on or before the Closing of each of the following conditions, unless waived by the Purchasers:

(a) Each representation and warranty made by the Company contained herein that is qualified by materiality shall be true and correct, and each representation and warranty made by the Company contained herein that is not qualified by materiality shall be true and correct in all material respects, in each case on and as of the Closing Date. The Company shall have performed or complied in all material respects with all covenants, agreements and conditions herein required to be performed or complied with by the Company on or prior to the Closing.

(b) No proceeding challenging this Agreement or any of the Transaction Documents, or the transactions contemplated hereby or thereby, or seeking to prohibit, alter, prevent or materially delay the Closing, shall have been instituted before any court, arbitrator or governmental body, agency or official or shall be pending against or involving the Company.

(c) This Agreement and the other Transaction Documents, and the transactions contemplated hereby and thereby, and the filing and performance of the Articles shall not be prohibited by any law, rule, governmental order or regulation. All necessary consents, approvals, licenses, permits, orders and authorizations of, or registrations, declarations and filings with, any governmental or administrative agency or of or with any other Person with respect to any of the transactions contemplated by this Agreement and the other Transaction Documents shall have been duly obtained or made and shall be in full force and effect.

(d) All corporate and other proceedings required to carry out the transactions contemplated by this Agreement and the other Transaction Documents, and all instruments and other documents relating to such transactions to be consummated at the Closing shall be reasonably satisfactory in form and substance to the Purchasers and the Purchasers shall have received copies of such instruments and documents which it shall have reasonably requested in connection with such



transactions.

(e) The Purchasers shall have received from [*Company's counsel*], counsel to the Company, an opinion addressed to the Purchasers, dated the Closing Date and substantially in the form of Exhibit F hereto.

(f) The [other Transaction Document] shall have been executed and delivered to the Purchasers by the Company and the Purchasers.

(g) The [other Transaction Document] shall have been executed and delivered to the Purchasers by the Company and the Founders and each other holder of equity securities of the Company.

(h) The Company shall have adopted and filed the Articles with the Companies Office of Jamaica, which Articles shall continue to be in full force and effect at Closing.

(i) The Purchasers shall have received from the Company an original certificate representing the Ordinary Shares, the Preferred Shares and an original warrant certificate representing the Warrants if any, in the form of Exhibit B, in each case for the number of Ordinary Shares, the Preferred Shares and the number of Warrants if any, set forth next to each such Purchaser's name on Exhibit E.

(j) The Company shall have delivered to the Purchasers a secretary's certificate substantially in the form of Exhibit H hereto, dated the Closing Date and signed by the secretary or another appropriate executive officer of the Company.

(k) The Company shall have delivered to the Purchasers a compliance certificate substantially in the form of Exhibit G hereto, dated the Closing Date and signed by the Company's chief executive officer and chief financial officer certifying that the conditions set forth in Section 5.01(a) have been met.

(l) The Company shall have delivered to the Purchasers a certificate issued by the Companies Office of Jamaica dated as of the date hereof, with respect to the good standing of the Company.

(m) The Purchasers shall have completed all business, technical, legal and financial due diligence on the Company to the reasonable satisfaction of the Purchasers.

SECTION 5.02. Conditions Precedent to the Obligation of the Company to Consummate the Closing. The obligation of the Company to consummate the Closing and to issue and sell the Ordinary Shares, the Preferred Shares and the Warrants if any to the Purchasers at the Closing is subject to the satisfaction of the following conditions precedent:

(a) The representations and warranties of the Purchasers contained herein shall be true and correct in all material respects on and as of the Closing Date. The Purchasers shall have performed or complied in all material respects with all of their respective covenants, agreements and conditions herein required to be performed or complied with by such Purchasers on or prior to the Closing.

(b) The [other Transaction Document] shall have been executed and delivered by the Purchasers.

## ARTICLE VI INDEMNIFICATION

SECTION 6.01. Indemnification. The Company agrees to indemnify, defend and hold harmless each Purchaser and its Affiliates and their respective officers, directors, agents, employees, subsidiaries, partners, members and controlling Persons (collectively, the “Purchasers Indemnitees”) to the fullest extent permitted by law from and against any and all claims, losses, liabilities, damages, deficiencies, judgments, assessments, fines, settlements, costs or expenses (including administrative, judicial or regulatory proceedings, interest, penalties, costs of investigation and reasonable fees, disbursements and other charges of counsel) (collectively, “Losses”), as and when incurred, based upon, arising out of or otherwise in respect of any breach by the Company of any representation, warranty, covenant or agreement of the Company contained in this Agreement or in any other Transaction Document, or for any Losses claimed by any broker or placement agent in connection with the transactions contemplated hereby or thereby.

SECTION 6.02. Notice of Claim. As promptly as possible after receipt by a Purchaser Indemnitee of notice of the threat, assertion or commencement of any claim, action or proceeding, the Purchaser Indemnitee will, if a claim for indemnification in respect thereof is to be made under this Article VI, notify the Company in writing of the commencement thereof and the Company shall have the right to participate in and, to the extent the Company desires, to assume at its expense the defense thereof with counsel mutually satisfactory to the parties; provided, however, that, the failure to notify the Company promptly of the threat, assertion or commencement of any such claim, action or proceeding shall not relieve the Company of any liability to the Purchaser Indemnitee under this Article VI except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Company.

SECTION 6.03. Defense of Claim. If any Purchaser Indemnitee shall have

reasonably concluded that there may be one or more legal defenses available to the Purchaser's Indemnitee which are different from or additional to those available to the Company, or that such claim or litigation involves or could have an effect upon matters beyond the scope of the indemnity provided in this Article VI, the Company shall not have the right to assume the defense of such action on behalf of the Purchaser Indemnitee, and the Company shall reimburse the Purchaser Indemnitee for the fees and expenses of one separate counsel, for all Purchaser Indemnitees, which are reasonably related to the matters covered by the indemnity agreement provided in this Article VI. Subject to the foregoing, a Purchaser Indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the Company. The Company shall not be liable for any settlement of any proceeding effected without its written consent, which consent shall not be unreasonably withheld. The Company shall not, without the prior written consent of the relevant Purchaser Indemnitee, effect any settlement of any pending proceeding in respect of which the Purchaser Indemnitee is a party, unless such settlement includes an unconditional release of the Purchaser Indemnitee from all liability on claims that are the subject matter of such proceeding.

SECTION 6.04. Applicability; Exclusivity. The Company and the Purchasers hereby acknowledge and agree that the indemnification provisions set forth in this Article VI are the Purchasers' sole and exclusive remedy for any and all claims relating to any breach or purported breach of any representation, warranty, covenant or agreement set forth in this Agreement.

## ARTICLE VII MISCELLANEOUS PROVISIONS

SECTION 7.01. Publicity. Except to the extent required by applicable laws, rules, regulations or stock exchange requirements, the Company shall not, without the prior written consent of the Purchasers, disclose or publish the name of the Purchasers or any of its Affiliates in any press release or public announcement or on any website. Except to the extent required by applicable laws, rules, regulations or stock exchange requirements, the Company shall not, without the written consent of the Purchasers, make any public announcement or issue any press release with respect to the terms and conditions of, and transactions contemplated by, this Agreement.

SECTION 7.02. Use of Proceeds. The proceeds from the sale of the Ordinary

Shares and the Preferred Shares shall be used by the Company to (a) pay the Company's fees and expenses incurred in connection with this offering and (b) for general corporate and working capital purposes as indicated in the approved operating and capital budget of the Company attached hereto as Exhibit I.

SECTION 7.03. Rights Cumulative. Each and all of the various rights, powers and remedies of the parties shall be considered to be cumulative with and in addition to any other rights, powers and remedies which such parties may have at law or in equity in the event of the breach of any of the terms of this Agreement. The exercise or partial exercise of any right, power or remedy shall neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.

SECTION 7.04. Notices. All notices, requests and other communications to any party hereunder shall be in writing (including a facsimile or similar writing) and shall be addressed as follows:

(a) if to the Purchasers, to:

[purchaser name, address and contact numbers. Repeat if necessary]

with a copy (which shall not constitute notice) to:

[counsel for the purchaser]

(b) if to the Company, to:

[issuer name, address and contact numbers]

with a copy (which shall not constitute notice) to:

[counsel for the issuer]

(c) if to any Purchasers, to such Person at the address set forth next to such Person's name on Exhibit E.

Any party may from time to time change its address for the purpose of notices or other communications to the other party by a notice specifying a new address, but no change shall be effective until it is actually received by the party sought to be charged with its contents.

Each such notice, request or other communication shall be effective (i) if given by facsimile, at the time such facsimile is transmitted and the appropriate confirmation is received (or, if such time is not during a Business Day, at the beginning of the next

such Business Day), (ii) if given by registered or certified mail [ ] Business Days (or, if to an address outside Jamaica, [ ] days) after such communication is deposited in the mails with first-class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified pursuant to this Section 7.04.

SECTION 7.05. Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement and the other Transaction Documents; provided, however, that the Company shall, at the Closing, reimburse the reasonable fees and expenses of [●], counsel to the Purchasers, up to [*designate an amount*].

SECTION 7.06. Severability. In the event one or more provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

SECTION 7.08. Governing Law. This Agreement shall be governed by and construed in accordance with the internal and substantive laws of the Jamaica and without regard to any conflicts of laws concepts which would apply the substantive law of some other jurisdiction.

SECTION 7.09. Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

SECTION 7.10. Assignment. The rights and obligations of any party hereto shall inure to the benefit of and shall be binding upon the authorized successors and permitted assigns of such party. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchasers. The Purchasers may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company and the Purchasers. The Purchasers may assign or transfer any or all of its rights under this Agreement to any Person to which it may sell, assign, transfer or otherwise dispose of any of its Preferred Shares or Warrants free of any rights of first offer or co-sale rights under the [other Transaction Document]; provided, however, that such assignee or transferee agrees in writing to be bound, with respect to the transferred Preferred Shares or Warrants by the provisions hereof and of the other Transaction Documents that apply to such assigning or transferring Purchasers, whereupon such assignee or transferee shall be deemed to be a "Purchaser" for all purposes of this Agreement.

SECTION 7.11. Survival. The respective representations and warranties given by the parties hereto shall survive the Closing Date and the consummation of the transactions contemplated herein, without regard to any investigation made by any party or knowledge of the subject matter thereof for a period of one (1) year after the date on which the Purchasers first receive Financial Statements audited by independent public accountants of national standing (other than the representations and warranties set forth in Section 3.05, 3.08, 3.09, 3.15, 3.17, 3.18, 3.19, 3.24, 3.28, 3.32, which shall survive for ***[designate a period of time]***). The respective covenants and agreements agreed to by a party hereto shall survive the Closing Date and the consummation of the transactions contemplated herein in accordance with their respective terms and conditions.

SECTION 7.12. Entire Agreement. This Agreement, the Exhibits and Schedules hereto, the Articles, and the other Transaction Documents constitute the entire agreement between the parties hereto respecting the subject matter hereof and thereof and supersede all prior agreements, negotiations, understandings, representations and statements respecting the subject matter hereof and thereof, whether written or oral.

SECTION 7.13. Amendments. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, supplemented, modified, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company, the Purchasers who, after giving effect to the Closing, will be the holders of a majority of the Preferred Shares.

SECTION 7.14. No Third Party Rights. This Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person (including any shareholder or debtholder of the Company) other than the parties hereto; provided however, that each of the Purchaser's Indemnitees that are not the Purchasers are entitled to all rights and benefits as third party beneficiaries of Article VI of this Agreement.

SECTION 7.15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. The parties hereto confirm that any facsimile copy of another party's executed counterpart of this Agreement (or its signature page thereof) will be deemed to be an executed original thereof.

SECTION 7.16. Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence

therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party to this Agreement, shall be cumulative and not alternative.

SECTION 7.17. JURISDICTION; VENUE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO MAY BE BROUGHT IN THE COURTS OF JAMAICA I.E. THE SUPREME COURT OF JUDICATURE OF JAMAICA, THE COURT OF APPEAL AND UNITED KINGDOM BASED PRIVY COUNCIL AND UPON DELIVERY OF THIS AGREEMENT, THE PARTIES HERETO ACCEPT FOR THEMSELVES AND IN RESPECT OF THEIR RESPECTIVE PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVIENS, WHICH ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN THE AFORESAID COURTS.

[Alternative: Dispute Resolution. To the fullest extent permitted by the laws of Jamaica and other applicable law, any controversy, claim or dispute arising out of or relating to this Agreement or any breach hereof shall be resolved exclusively by arbitration conducted before three arbitrators (a "Qualified Arbitrator"), each of whom shall be selected in accordance with the Arbitration Act. Within 30 days after receipt by any party of a demand for arbitration under this Section 7.17, each adverse party to such arbitration shall notify the other parties of its selection of one Qualified Arbitrator to serve as an arbitrator. Within 30 days after such designation of the two adverse party-appointed arbitrators, those two arbitrators shall consult and appoint a Qualified Arbitrator as the third arbitrator. If either adverse party shall fail to appoint its respective arbitrator within such 30-day period, then the other party shall have the right to appoint such arbitrator on behalf of the non-appointing party. Judgment upon any such arbitration award may be entered by in the Supreme Court of Judicature of Jamaica. Each party hereby consents to the jurisdiction of the Supreme Court of Judicature of Jamaica for such purposes and irrevocably waives any objection to the laying of venue of any such action in such court or that any such court is an inconvenient forum. In the event of any such arbitration, the prevailing party shall be awarded its costs and reasonable attorney's fees as part of the award, and the costs of the arbitration shall be borne by the parties on such equitable basis as the arbitrators shall determine. Nothing in this Section 7.17 shall be construed as preventing any party from seeking conservatory, injunctive or similar relief (but in any event, not damages) in any of the foregoing courts and each party irrevocably

waives any objection to the laying of venue of any such action in such court or that any such court is an inconvenient forum.]

SECTION 7.18. Further Assurances. Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.

SECTION 7.19. Interpretation. The parties agree that they have been represented by counsel during the negotiation, preparation and execution of this Agreement, and, therefore, waive the application of any applicable law, order or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

SECTION 7.20. Exculpation. Each of the Purchasers hereby acknowledges and agrees that (a) it is not relying upon any Purchaser or any person, firm, or corporation, other than the Company and its officers and Board, in making its investment decision to purchase securities of the Company pursuant to this Agreement, and (b) the Purchasers shall not be, and none of its affiliates, persons, officers, directors, partners, managers, members, agents or employees shall be, liable to any Purchasers, and no Purchasers, and none of its affiliates, persons, officers, directors, partners, managers, members, agents or employees, shall be liable to the Purchasers, in each case for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Company's securities as contemplated in this Agreement.

(The remainder of this page is left intentionally blank.)

IN WITNESS WHEREOF, this [***Name of Issuer***] ORDINARY SHARES and PREFERRED SHARE PURCHASE AGREEMENT is executed as of the date first written above.

[NAME OF ISSUER]

By:  
Name:  
Title:

[Name of Purchaser]

By:  
Name:  
Title:



Number of Preferred Shares:

Number Warrants: if any

Aggregate Purchase Price:

[page break]

EXHIBIT A

ARTICLES OF INCORPORATION

[page break]

EXHIBIT B

FORM OF WARRANTS (if any)

[page break]

EXHIBIT C

[FORM OF TRANSACTION DOCUMENT]

[page break]

EXHIBIT D

[FORM OF TRANSACTION DOCUMENT]

[page break]

EXHIBIT E

LIST OF PURCHASERS

[page break]

EXHIBIT F

FORM OF LEGAL OPINION OF [*Issuer's Counsel*]

[page break]

EXHIBIT G

[Name of Issuer]

#### FORM OF COMPLIANCE CERTIFICATE

Pursuant to Section 5.01 of the Share Purchase Agreement, dated [ ] (the "Agreement"), by and among [*Issuer*], a [**limited liability company under the Companies Act**] (the "Company"), [Name of Purchaser if there is a primary purchaser], and the persons listed on Exhibit E thereto, the undersigned certifies on behalf of the Company as follows:

(a) He is the [Chief Executive Officer/President/Chief Financial Officer] of the Company;

(b) The Company has performed and complied with all covenants, agreements and conditions contained in the Agreement to be performed by the Company on or prior to the Closing in all respects; and

(c) Except as set forth in the Disclosure Schedule, the representations and warranties of the Company set forth in Article III of the Agreement are true and correct as of the date hereof.

Capitalized terms used but not defined herein have the meanings ascribed to them in the Agreement.

(The remainder of this page is left intentionally blank.)

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [ ].

[Name of Issuer]

By:

Name:

Title:

[page break]

EXHIBIT H

[Name of Issuer]

#### FORM OF SECRETARY'S CERTIFICATE

Reference is made to that certain Share Purchase Agreement dated as of [ ] (the "Agreement"), by and among [*Issuer*], a [*limited liability company*] (the "Company"), [*Purchaser if there is a primary purchaser*], and the persons listed on Exhibit E thereto. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement. This certificate is being delivered pursuant to Section 5.01 of the Agreement.

I, [name of secretary], do hereby certify that I am the Secretary of the Company, and that, as such, I am authorized to execute this certificate on behalf of the Company, and do hereby further certify that:

1. [Attached hereto as Exhibit [ ] is a true and complete copy of the resolutions duly adopted by the [shareholders] of the Company on [date of resolutions] authorizing the transactions contemplated by the Agreement.]

2. Attached hereto as Exhibit [ ] is a true and complete copy of the resolutions duly adopted by the Board on [date of resolutions] authorizing the transactions contemplated by the Agreement.

3. Attached hereto as Exhibit [ ] is a true and complete copy of the Amended Articles of Incorporation of the Company, (the "Articles"), as amended to date.

4. Attached hereto as Exhibit [ ] is a true and complete copy of the Bylaws of the Company, as amended to date.

5. The resolutions referred to in paragraphs 1 and 2 above were adopted in compliance with the Company's Amended and Articles of Incorporation and Bylaws and are in full force and effect as of the date hereof and have not been amended, modified or rescinded.

(The remainder of this page is left intentionally blank.)

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [\_\_\_\_\_].

Secretary

EXHIBIT I  
OPERATING AND CAPITAL BUDGET

[page break]

#### DISCLOSURE SCHEDULE

This Disclosure Schedule is made and given pursuant to Article III of the Share Purchase Agreement, dated as of [\_\_\_\_], 200[\_\_\_] (the "Agreement"), by and among [***Name of Issuer***], a [**limited liability company**] (the "Company"), [Name of Purchaser if there is a primary purchaser] and the persons listed on Exhibit E thereto. All capitalized terms used but not defined herein shall have the meanings as defined in the Agreement, unless otherwise provided. The section numbers below correspond solely to the section numbers of Article III in the Agreement.

**Appendix V**  
**Form of SHAREHOLDERS AGREEMENT**  
**[ Investor Rights Agreement]**

THIS SHAREHOLDERS AGREEMENT (this “Agreement”) is made as of \_\_\_\_\_, \_\_\_\_\_ by and among (i) \_\_\_\_\_, a incorporated in accordance with the laws of Jamaica (the “Company”), (ii) the founding shareholder of the Company as set forth on Exhibit A-1 attached hereto (the “Founder”) and the other holders of the ordinary shares, of the Company (the “Ordinary Shares”) as set forth on Exhibit A-1 (the Founder and such other holders of Ordinary Shares collectively referred to as the “Ordinary Shareholders”), [(ii) the holders of the Series A Convertible Preferred Shares, [\$X.0001] per share, of the Company (the “Series A Shares”) as set forth on Exhibit A-2 attached hereto (the “Series A Holders”)] and (iii) the holders of the Series B Convertible Redeemable Preferred Shares, [\$x.xx] per share, of the Company (the “Series B Shares”) as set forth on Exhibit A-3 attached hereto (the “Investors”). The Ordinary Shareholders, the Series A Holders and the Investors may be referred to herein individually as a “Shareholder” and collectively as “Shareholders.”

WHEREAS, the Company proposes to issue and sell up to an aggregate of \_\_\_\_\_ shares of its Series B Shares pursuant to the terms of a Series B Convertible Share Purchase Agreement of even date herewith (the “Purchase Agreement”);

WHEREAS, as a condition to consummating the transactions contemplated by the Purchase Agreement, the Company and the Shareholders are entering into this Agreement; and

WHEREAS, the Board of Directors of the Company has determined that it is in the best interests of the Company that the Company enter into this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**2. GENERAL PROVISIONS**

**2.1 Shares Subject to this Agreement.** The Shareholders agree that the terms and restrictions of this Agreement shall apply to all shares of Share Capital (as defined herein) of the Company which any of them now owns or hereafter acquires by any means, including without limitation, by purchase, assignment, conversion of convertible securities or operation of law, or as a result of any share dividend, share

split, reorganization, reclassification, whether voluntary or involuntary, or other similar transaction, and to any shares of Share Capital of any successor in interest of the Company, whether by sale, merger, consolidation or other similar transaction, or by purchase, assignment or operation of law (the “Shares”).

2.2 No Partnership Relationship. Notwithstanding, but not in limitation of, any other provision of this Agreement, the parties understand and agree that the creation, management and operation of the Company shall not create or imply a general partnership between or among the Shareholders and shall not make any Shareholder the agent or partner of any other Shareholder for any purpose.

2.3 Legend. Each certificate representing Shares held of record or beneficially owned by the Shareholders shall bear a legend in substantially the following form, until such time as the Shares represented thereby are no longer subject to the provisions hereof:

“The sale, transfer or assignment of the securities represented by this certificate are subject to the terms and conditions of an Investor Rights Agreement among the Company and certain holders of its outstanding share capita. Copies of such agreement may be obtained at no cost by written request by the holder of record of the certificate to the Secretary of the Company.”

2.4 Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

“Affiliate” means, with respect to any specified Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person. For purposes hereof, the term “control,” or a variation thereof, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, Shareholders that are controlled, directly or indirectly, by the same Person, or by different Persons that are Affiliates of one another, shall be deemed Affiliates for purposes of this Agreement.

“

“Certificate of Incorporation” means the Company’s [amended and restated] certificate of incorporation filed with the Companies Office of Jamaica on or about the date hereof, as amended and/or restated from time to time.

“Commission” means the Financial Services Commission and any successor agency of the Financial Services Commission Act.

“GAP” means generally accepted accounting principles of the Institute of Chartered Accountants of Jamaican and as applied in Jamaica from time to time.

“Guarantee” means any obligation, contingent or otherwise, of any Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person in any manner, whether directly or indirectly, and including, without limitation, any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (ii) to purchase property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness, or (iii) to maintain working capital, equity capital or other financial statement condition of the primary obligor so as to enable the primary obligor to pay such Indebtedness; provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit, in either case, in the ordinary course of business.

“Indebtedness” means, with respect to any Person, (i) all obligations of such Person for borrowed money, or with respect to deposits or advances of any kind (other than deposits, advances or excess payments accepted in connection with the sale by such Person of products or services in the ordinary course of business), (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid (other than obligations accepted in connection with the purchase by such Person of products or services in the ordinary course of business), (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services (other than accounts payable to suppliers incurred in the ordinary course of business and paid when due), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien or security interest on property owned or acquired by such Person whether or not the obligations secured thereby have been assumed, (vii) all obligations of such Person under leases required to be accounted for as capital leases under GAP, and (viii) all Guarantees of such Person.

“Intellectual Property Rights” means any and all patents, patent applications, patent disclosures and patent rights, whether domestic or foreign, and all related continuation, continuation-in-part, divisional, reissue, re-examination, utility model, certificate of invention and design patents, patent applications, registrations and applications for registrations, trade secrets, confidential business information, laboratory notebooks, algorithms, biological, chemical or other processes, compounds, DNA sequence, cell lines, fungi, yeast, copyrights and registrations and applications for registration thereof, mask works and registrations and applications for registration thereof, copyrightable works, claims of infringement against third parties, licenses, permits, license rights to or of technologies, contract rights with employees, consultants or third parties, tradenames and registrations and applications for

registration thereof, trademarks and servicemarks, trademark or servicemark applications, trademark or servicemark rights, designs, trade dress, logos, internet domain names, databases, computer programs, software, applications and other computer software interfaces, object code, source code, know-how, customer and supplier lists, research and development information, financial marketing and business data, pricing and cost information, business and marketing plans, inventions and discoveries, and other such rights generally classified as intangible, intellectual property assets in accordance with GAP.

“Lien” means (i) any interest in property (whether real, personal or mixed and whether tangible or intangible) which secures an obligation owed to, or a claim by, a Person other than the owner of such property, whether such interest is based on the common law, statute or contract, including, without limitation, any such interest arising from a lease, mortgage, charge, pledge, security agreement, conditional sale, trust receipt or deposit in trust, or arising from a consignment of bailment given for security purposes (other than a trust receipt or deposit given in the ordinary course of business which does not secure any obligation for borrowed money), (ii) any encumbrance upon such property which does not secure such an obligation, and (iii) any exception to or defect in the title to or ownership interest in such property, including, without limitation, reservations, rights of entry, possibilities of reverter, encroachments, easements, rights of way, restrictive covenants and licenses. For purposes of this Agreement, any Person shall be deemed to be the owner of the leasehold or other interest in any property which it has acquired or holds subject to a lease and the owner of any property which it has acquired or holds subject to a conditional sale agreement or other similar arrangement pursuant to which title to the property has been retained by or vested in some other Person for security purposes.

“Ordinary Shares” means (i) the Ordinary Shares, as otherwise defined in this Agreement, (ii) any other Share Capital of the Company, however designated, authorized on or after the date hereof, which shall neither be limited to a fixed sum or percentage of par value in respect of the rights of the holders thereof to participate in dividends nor entitled to a preference in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Company and (iii) any other securities into which or for which any of the securities described in clause (i) or (ii) may be converted or exchanged pursuant to a plan of recapitalization, reorganization, merger, consolidation, sale of assets or other similar transaction.

“Person” means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization, or a government or any agency or political subdivision thereof.

“Preferred Share” means the Series A Shares and Series B Shares.



“Qualified Initial Public Offering” means the first underwritten public offering of Ordinary Shares of the Company and offered on a firm commitment basis pursuant to the procedures laid down by the Jamaica Stock Exchange for a public offering of shares (i) at an initial public offering price per share not less than [\$X.00] (subject to equitable adjustment whenever there shall occur a dividend, distribution, combination of shares, reclassification or other similar event with respect to the Ordinary Shares) and (ii) resulting in gross proceeds to the Company of not less than [\$XX,000,000].

“Sale of the Company” means a single transaction or group of related transactions pursuant to which a Person or Persons will acquire (a) Share Capital of the Company possessing the voting power to elect a majority of the Company’s Board of Directors or more than fifty percent (50%) of the voting power of the Company (whether by merger, reorganization or consolidation or sale or transfer of the Company’s Share Capital); or (b) all or substantially all of the Company’s assets determined on a consolidated basis.

“Series A Securities” means (i) Ordinary Shares or other securities issued or issuable upon the conversion of the Series A Shares and (ii) any Ordinary Shares or other securities issued or issuable with respect to any of the foregoing upon any share split, dividend, recapitalization, reorganization, merger, consolidation, sale of assets or similar event

“Series B Securities” means (i) Ordinary Shares or other securities issued or issuable upon the conversion of the Series B Share and (ii) any shares of Ordinary Shares or other securities issued or issuable with respect to any of the foregoing upon any share split, dividend, recapitalization, reorganization, merger, consolidation, sale of assets or similar event

Share Capital” means, as to any Person that is a corporation, the authorized shares of such Person’s Share Capital, including all classes of common, preferred, voting and nonvoting Share Capital, and, as to any Person that is not a corporation or an individual, the ownership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise control over such Person.

“Subsidiary” or “Subsidiaries” means any corporation, partnership, limited liability company, trust or other entity of which the Company and/or any of its other

Subsidiaries directly or indirectly owns at the time a majority of the outstanding shares of any class of equity security of such corporation, partnership, limited liability company, trust or other entity.

### 3. PREEMPTIVE RIGHTS

3.1 Prohibitions on New Issuances. The Company shall not issue, sell, exchange, agree or obligate itself to issue, sell or exchange, or reserve or set aside for issuance, sale or exchange (a “New Issuance”) any (i) shares in the Share Capital of the Company, (ii) warrants, options or other rights to purchase Shares of the Company (collectively, “Rights”) or (iii) debentures or other securities convertible into or exchangeable for shares in the Share Capital of the Company (collectively, “Convertible Securities”), other than in an Exempt Issuance (as defined in Section 3.4), unless in the case of each New Issuance, the Company shall have first offered to sell such securities (the “Offered Securities”) to the Founder, Series A Holders and Investors in accordance with the provisions of this Article 3.

3.2 Right to Purchase Offered Securities. Each time the Company proposes to enter into a New Issuance of Offered Securities (other than an Exempt Issuance), the Company will deliver to the Founder, each Series A Holder and each Investor (the “Preemptive Right Holders”) a notice (the “Offer Notice”) stating (i) its bona fide intention to offer such Offered Securities, (ii) the type and amount of Offered Securities to be offered and (iii) the price and other terms and conditions upon which it proposes to offer such Offered Securities. Each Preemptive Right Holder shall have the right to purchase up to such portion of the Offered Securities equal to the total amount of Offered Securities multiplied by a fraction, the numerator of which equals the number of shares of Ordinary Shares of the Company then held by such Preemptive Right Holder plus the number of Ordinary Shares issuable to such Preemptive Right Holder upon conversion of all shares of Preferred Share then held by such Preemptive Right Holder, and the denominator of which equals the total number of shares of Ordinary Shares of the Company then outstanding plus the total number of shares of Ordinary Shares of the Company issuable upon conversion of all shares of Preferred Shares then outstanding. The percentage of Offered Securities that each Preemptive Right Holder is entitled to purchase pursuant to this Section 3.2 shall be referred to as such Preemptive Right Holder’s “Preemptive Proportionate Share.” Each Preemptive Right Holder shall exercise, if at all, its right to purchase up to such Preemptive Right Holder’s Preemptive Proportionate Share of the Offered Securities as set forth in the Offer Notice by providing written notice to the Company delivered not later than thirty (30) days after the receipt by such Preemptive Right Holder of the Offer Notice specifying the number of Offered Securities such Preemptive Right Holder wishes to purchase. If such Preemptive Right Holder fails to exercise its right to purchase within such aforesaid 30-day period, such right shall expire with respect to such New

Issuance (except as provided in Section 3.3). The Company shall promptly inform, by written notice (the “Oversubscription Notice”), each Preemptive Right Holder that elects to purchase its full Pre-emptive Proportionate Share of the Offered Securities (each, a “Fully-Exercising Investor”) of any Preemptive Right Holder that fails to elect to purchase its full Pre-emptive Proportionate Share of the Offered Securities and specifying the total number of Offered Securities not elected to be purchased by the Preemptive Right Holders pursuant to this Section 3.2. The Fully-Exercising Investors shall have the right to purchase up to the balance of such Offered Securities by providing written notice to the Company delivered not later than ten (10) days after receipt of the Oversubscription Notice specifying the additional number of Offered Securities such Fully-Exercising Investor wishes to purchase. If the amount of such Offered Securities elected to be purchased by such Fully-Exercising Investors exceeds the amount of Offered Securities available, such Fully-Exercising Investors shall be entitled to purchase the Offered Securities on a pro rata basis in accordance with their respective Preemptive Proportionate Shares or as they may otherwise agree to among themselves.

3.3 Sale of Offered Securities. If all of the Offered Securities have not been purchased by the Preemptive Right Holders pursuant to Section 3.2 hereof, then the Company shall have the right, for a period of sixty (60) days commencing on the first day immediately following the expiration of all of the rights of the Preemptive Right Holders under Section 3.2 to elect to purchase the Offered Securities, to issue the Offered Securities at not less than, and on terms no more favorable than, the price and other terms specified in the Offer Notice. If for any reason the Offered Securities are not issued within such period and at such price and on such terms, the right to issue the Offered Securities in accordance with the Offer Notice shall expire and the provisions of this Agreement shall continue to be applicable to the Offered Securities.

3.4 Exempt Issuances. The rights set forth above shall not apply to issuances (the “Exempt Issuances”) in which shares in the Share Capital of the Company, Rights or Convertible Securities are issued:

(i) as a dividend or distribution payable pro rata to all holders of Ordinary Shares or other securities of the Company;

(ii) to employees, consultants, advisors and directors of the Company in the form of Ordinary Shares or options to purchase shares of Ordinary Shares pursuant to an equity incentive plan or arrangement approved by the Company’s Board of Directors, provided that, not more than an aggregate of \_\_\_\_\_ of Ordinary Shares or options to purchase Ordinary Shares (such amount inclusive of shares and options outstanding on the date hereof and subject to equitable adjustment whenever there shall occur a dividend, distribution, combination of shares, reclassification or other similar event with respect to the Ordinary

Shares), are issued by the Company pursuant hereto;

(iii) in connection with the conversion or exercise of any Rights or Convertible Securities outstanding on the date hereof in accordance with the terms thereof existing on the date hereof and upon the conversion of any Preferred Share;

(iv) in a Qualified Initial Public Offering;

(v) for consideration other than cash or cash equivalents pursuant to a merger, consolidation, acquisition or similar transaction approved by the Board of Directors of the Company (including the Investor Directors);

(vi) pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar institution approved by the Board of Directors of the Company (including the Investor Directors); or

(vii) to a strategic partner of the Company in connection with (A) joint venture, manufacturing, marketing or distribution arrangements or (B) technology transfer or development arrangements, provided that, the purpose of such issuance is not to raise capital and, provided further, that, such issuance is approved by the Board of Directors of the Company (including the Investor Directors).

3.5 Termination. The respective rights and obligations of the parties under this Article 3 shall terminate immediately prior to the consummation of the Company's Qualified Initial Public Offering.

#### 4. TRANSFER OF REGISTRABLE SECURITIES;

4.1 Notice of Proposed Transfer. Prior to any proposed sale, pledge, hypothecation or other transfer of any Ordinary Shares, Series A Shares or Series B Shares the holder thereof shall give written notice to the Company of its intention to effect such sale, pledge, hypothecation or other transfer.

4.2 Changes in Ordinary Shares. If, and as often as, there is any change in the Ordinary Shares by way of a share split, dividend, combination or reclassification, or through a merger, consolidation, reorganization or recapitalization, or by any other means, appropriate adjustment shall be made in the provisions hereof so that the rights and privileges granted hereby shall continue with respect to the Preferred Share or Ordinary Shares as so changed.

## 5. AFFIRMATIVE COVENANTS OF THE COMPANY

The Company covenants and agrees with the Investors that it will perform and observe the following covenants and provisions, and will cause each Subsidiary, if and when such Subsidiary exists, to perform and observe the following covenants and provisions as applicable to such Subsidiary.

5.1 Financial Statements; Other Reports. The Company and each Subsidiary will maintain proper books of account and records in accordance with U.S. generally accepted accounting principles (“GAP”) applied on a consistent basis, and will deliver to each Investor owning at least [XXXXXX] shares of Series B Shares (subject to equitable adjustment whenever there shall occur a dividend, distribution, combination of shares, reclassification or other similar event affecting the Series B Shares) (each, a “Rights Holder”):

(a) Quarterly Reports. As soon as practicable and, in any event, within thirty (30) days after the end of each of the first three (3) quarters of each fiscal year of the Company, an unaudited consolidated balance sheet of the Company and its Subsidiaries as of the end of such quarter and the unaudited related statements of income and Shareholders’ equity and of cash flows of the Company for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, setting forth in each case in comparative form the corresponding figures for the corresponding period of the preceding fiscal year and the projections for such current year, all in reasonable detail and prepared in accordance with GAP consistently applied (except for the absence of footnotes and subject to normal immaterial year-end adjustments consistent with past practice), and duly certified by the Chief Financial Officer or Treasurer of the Company.

(c) Annual Reports. As soon as practicable and, in any event, within ninety (90) days after the end of each fiscal year of the Company, a copy of the annual audit report for such year for the Company, including therein a consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal year and statements of income and Shareholders’ equity and of cash flows of the Company for such fiscal year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, all duly certified by the Company’s independent public accountants.

(d) Projections. As soon as practicable and, in any event, at least thirty (30) days prior to the commencement of each fiscal year, a business plan, in detail for the fiscal year, monthly operating expense and

profit and loss projections, quarterly cash flow projections and a capital expenditure budget for the fiscal year including itemization of provisions for officers' compensation and each Subsidiary's operation, and, as soon as practicable, any revisions or modifications to any of the foregoing. The business plans, projections and budgets so delivered, and any proposed revisions and modifications thereto, shall have been approved by the Company's Board of Directors, including the Investor Directors (as defined in Section 5.3).

(e) Written Reports. Promptly upon receipt thereof, any written report submitted to the Company by independent public accountants in connection with an annual or interim audit of the books of the Company and its Subsidiaries made by such accountants.

(f) Shareholder Reports. Promptly after sending, making available, or filing the same, such reports and financial statements as the Company shall send or make generally available to all of the Shareholders of the Company.

(g) Notice of Proceedings. Promptly after the commencement thereof, notice of all actions, suits and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, materially affecting the Company or its Subsidiaries, any Intellectual Property Rights of the Company or its Subsidiaries, or any other assets of the Company or its Subsidiaries or any key employee or officer (in their capacity as such).

(h) Notice of Adverse Changes. Promptly after the occurrence thereof and in any event within five (5) business days after it becomes aware of each occurrence, notice of any material adverse change in the business, assets, properties, management, prospects, operations or financial condition of the Company or its Subsidiaries.

(i) Commission Reports and Other Information. Promptly upon becoming available: (i) copies of all financial statements, minutes, reports, press releases, notices, proxy statements and other documents sent by the Company to its Shareholders or released to the public and copies of all regular and periodic reports, if any, filed by the Company with the Commission the Jamaica Stock Exchange, the Companies Office of Jamaica or any other regulatory or self-regulatory organization having jurisdiction over the Company; and (ii) any other financial or other information available to management of the Company that any of the Rights Holders shall have reasonably requested.

In addition to the foregoing, the Company shall also provide the information specified in Sections 4.1(a), (b) and (c) to each Series A Holder and Common Holder.

Neither the foregoing provisions of this Section 5.1 nor any other provision of this Agreement shall be in limitation of any rights which a Shareholder may have with respect to the books and records of the Company and its Subsidiaries, or to inspect their properties or discuss their affairs, finances and accounts, under the laws of the jurisdictions in which they are incorporated.

5.2 Inspection and Other Information. Each Rights Holder and such agents, advisors and counsel as such Rights Holder may designate, may, at its expense, visit and inspect any of the properties of the Company and each Subsidiary, examine the books of account of the Company and each Subsidiary, take extracts therefrom and discuss the affairs, finances and accounts of the Company and each Subsidiary with its officers, employees and accountants (and by this provision the Company and each Subsidiary hereby authorizes such accountants to discuss with such Rights Holder and such persons its finances and accounts), at reasonable times and with reasonable prior notice during normal business hours. All such visits and inspections shall be conducted in a manner which will not unreasonably interfere with the normal business operations of the Company and each Subsidiary. The Company and each Subsidiary will furnish to each such Rights Holder such other information as it from time to time may reasonably request.

5.3 Independent Accountants. The Company will retain independent public accountants of recognized national standing approved by the Company's Board of Directors, including the directors designated by the Investors (the "Investor Directors"), who shall certify the Company's consolidated financial statements at the end of each fiscal year. In the event the services of the independent public accountants so selected, or any firm of independent public accountants hereafter employed by the Company are terminated, the Company will promptly thereafter notify each Rights Holder and will request the firm of independent public accountants whose services are terminated to deliver to each Rights Holder a letter of such firm setting forth the reasons for the termination of their services. In the event of such termination, the Company will promptly thereafter engage another such firm of independent public accountants in accordance with the provisions of the first sentence of this Section 5.3.

5.4 Maintenance of Insurance; Directors and Officers Insurance. The Company and each Subsidiary shall maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Company operates. The Company shall maintain directors' and officers' liability insurance in such amounts and upon terms reasonably acceptable to the Board of Directors, including the

5.5 Key-Person Life Insurance. The Company will use commercially reasonable efforts to obtain within thirty (30) days following the date hereof, and thereafter the Company shall maintain, key man life insurance on the life of \_\_\_\_\_ (the “Key Man Policy”), which Key Man Policy shall be in such amount and on terms reasonably acceptable to the Majority Investors, with the proceeds from such policies to be payable to the order of the Company. The Company will not cause or permit any assignment of the proceeds of the Key Man Policy or change in beneficiary, and will not borrow against any such policy. The Company will include each Rights Holder as a notice party to the Key Man Policy, and will request that the issuer of such policy provide each Rights Holder with thirty (30) days’ notice before such policy is terminated (for failure to pay premiums or otherwise) or assigned, or before any change is made in the designation of the beneficiary thereof.

5.6 Preservation of Corporate Existence. The Company and each Subsidiary will preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, and qualify and remain qualified as a foreign corporation in each jurisdiction in which such qualification is necessary or desirable in view of its business and operations or the ownership of its properties. The Company and its Subsidiaries will use its best efforts to maintain all of its properties used or useful in the conduct of its business in good condition, repair and working order (normal wear and tear excepted) and cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section 5.6 shall prevent the Company or any of its Subsidiaries from discontinuing the operation and maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of such Person’s business and could not, individually or in the aggregate, have a material adverse effect on the business, assets, properties, operations, prospects, condition (financial or otherwise) or liabilities of the Company and its Subsidiaries, taken as a whole (a “Material Adverse Effect”). The Company shall preserve and maintain all Intellectual Property Rights owned or possessed by it and necessary to the conduct of its business, except where the failure to preserve and maintain such Intellectual Property Rights would not, either individually or in the aggregate, have a Material Adverse Effect.

5.7 Compliance With Laws. The Company will comply, and cause each of its Subsidiaries to comply, with all applicable laws, rules, regulations and orders of any governmental authority, noncompliance with which could, individually or in the aggregate, have a Material Adverse Effect.



5.8 Compensation. All executive compensation and all policies relating thereto shall be approved in advance by the Company's Board of Directors, including the Investor Directors.

5.9 New Developments; Employee Agreements. The Company and each Subsidiary shall cause all technological developments, patentable or unpatentable inventions, discoveries, improvements or other similar Intellectual Property Rights of the Company or its Subsidiaries by their officers, employees, consultants or independent contractors to be documented in accordance with appropriate professional standards, cause all officers, employees, consultants and independent contractors to execute appropriate assignment agreements to the Company and such Subsidiary, as the case may be, and, where possible and appropriate, cause all officers, employees, consultants and independent contractors to file and execute United States and foreign patent, copyright or similar applications relating to and protecting such developments on behalf of the Company or such Subsidiary. The Company shall, upon employing or otherwise engaging any person, (i) obtain from each such person a confidentiality and invention assignment agreement and (ii) at the election of the Board of Directors, obtain a non-competition agreement from such person, each in a form reasonably satisfactory to the Board of Directors, including the Investor Directors.

5.10 Prompt Payment of Taxes, Etc. The Company and each Subsidiary shall promptly pay and discharge, or cause to be paid and discharged, when due and payable, all lawful taxes, assessments and governmental charges or levies imposed upon the income, profits, property or business of the Company or any Subsidiary, provided, however, that any such tax, assessment, charge or levy need not be paid if the validity thereof is being contested in good faith by appropriate proceedings and if the Company or such Subsidiary shall have set aside on its books adequate reserves with respect thereto, and provided further, that the Company and each Subsidiary will pay all such taxes, assessments, charges or levies forthwith upon the commencement of proceedings to foreclose any Lien which may have attached as security therefor. The Company and each Subsidiary shall promptly pay or cause to be paid when due all other indebtedness incident to operations of the Company and each Subsidiary.

5.11 Maintenance of Leases. The Company and its Subsidiaries shall at all times comply with each provision of all leases to which any of them is a party or under which any of them leases property if the breach of such provision could have, either individually or in the aggregate, a Material Adverse Effect.

5.12 Compliance with Agreements. The Company and its Subsidiaries shall duly comply with all of the provisions of the contracts, obligations, agreements, plans, arrangements and commitments to which any of them is a party or by which any of them is bound if the breach of such provision could have, either individually

or in the aggregate, a Material Adverse Effect.

5.13 Reservation of Ordinary Shares. The Company shall reserve and maintain a sufficient number of shares of Ordinary Shares for issuance upon conversion of all of the outstanding Preferred Shares.

5.14 Repurchase Agreements. The Company and each employee or officer of the Company who hereafter acquires shares of the Company's Share Capital from the Company, or any option or right to acquire shares of the Company's Share Capital from the Company, shall enter into an agreement in such form as approved by the Board of Directors (including the Investor Directors) pursuant to which the Company shall have the right to repurchase such shares of the Company's Share Capital from such employee or officer upon the cessation of his or her employment with the Company and provide a right of first refusal in favor of the Company in the event such employee or officer desires to transfer any such shares.

5.15 Vesting Schedules. All options or restricted shares to be granted to officers, employees, consultants and independent contractors of the Company or its Subsidiaries after the date of this Agreement shall vest and become exercisable or non-forfeitable, as the case may be, no more rapidly than (i) as to \_\_\_\_\_ percent (\_\_\_\_%) of the total shares granted at the end of the first year following the date of the grantee's commencement of service with the Company or its Subsidiaries and (ii) as to the remaining \_\_\_\_\_ percent (\_\_\_\_%) of the shares granted on a \_\_\_\_\_ basis over the next \_\_\_\_ (\_\_\_\_) years, except to the extent as otherwise approved by the Board of Directors (including the Investor Directors).

5.16 Board Observer Rights. For so long as an Investor holds at least [xxxxxxx] shares of Series B Shares (subject to equitable adjustment whenever there shall occur a dividend, distribution, combination of shares, reclassification or other similar event with respect to the Series B Shares), each such Investor shall be entitled to designate an individual to attend all meetings of its Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and, provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney- client privilege between the Company and its counsel or would result in disclosure of confidential information of the Company if such Investor or its representative is a competitor of the Company.

5.18 Termination. The respective rights and obligations of the parties

under this Article 5 shall terminate upon the consummation of the Company's Qualified Initial Public Offering.

## 6. MISCELLANEOUS

6.1 Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either (i) delivered by hand, (ii) made by facsimile transmission, (iii) sent by overnight courier or (iv) sent by registered or certified mail, return receipt requested, postage prepaid.

If to the Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax \_\_\_\_\_

If to the Ordinary Shareholders: To the addresses set forth on Exhibit A-1 hereto.

If to the Series A Holders: To the addresses set forth on Exhibit A-2 hereto.

If to the Investors: To the addresses set forth on Exhibit A-3 hereto.

All notices, requests, consents and other communications hereunder shall be deemed to have been given either (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above, (ii) if made by facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next business day (or if sent overseas, on the second business day) following the day such notice is delivered to the courier service or (iv) if sent by registered or certified mail, on the fifth business day (or if sent overseas, on the tenth business day) following the day such mailing is made.

6.2 Entire Agreement. This Agreement, together with the Purchase Agreement and the Certificate, embody the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof, including, without limitation, the Investor Rights Agreement. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

6.3 Waivers and Amendments. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in any particular instance), only with the written consent of the Company and the Majority Investors; provided, however, that in the event that such amendment or waiver adversely effects the rights or obligations of the Ordinary Shareholders or the Series A Holders without having a similar adverse effect on the rights of the Investors, such amendment or waiver shall also require the written consent of the Ordinary Shareholders holding a majority of the then outstanding shares of Ordinary Shares or the written consent of the Series A Holders holding a majority of the then outstanding shares of Series A Shares, as the case may be. Any waiver or amendment effected in accordance with the terms hereof shall be binding upon all Shareholders and the Company. Upon the effectuation of each such waiver or amendment, the Company shall promptly give written notice thereof to the Shareholders who have not previously consented thereto in writing. Exhibits A-1, A-2 and A-3 hereto shall be amended from time to time to reflect the acquisition or disposition or transfer of any Share Capital by any party hereto in accordance with the terms hereof or to add as a party to this Agreement any Additional Purchaser (as defined in the Purchase Agreement) in accordance with the terms of the Purchase Agreement without further action by the Shareholders or the Company.

6.4 Successors and Assigns. All statements, representations, warranties, covenants and agreements in this Agreement shall be binding on the parties hereto and shall inure to the benefit of the respective successors and assigns of each party hereto. Nothing in this Agreement shall be construed to create any rights or obligations except among the parties hereto.

6.5 Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of Jamaica, without giving effect to the conflicts of law principles thereof.

6.6 Severability. In the event that any court of competent jurisdiction shall determine that any provision, or any portion thereof, contained in this Agreement shall be unenforceable in any respect, then such provision shall be deemed limited to the extent that such court deems it enforceable, and as so limited shall remain in full force and effect. In the event that such court shall deem any such provision, or portion thereof, wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

6.6 Interpretation. The parties hereto acknowledge and agree that: (i) each party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision; (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; and (iii) the terms and provisions

of this Agreement shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

6.7 Headings and Captions. The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

6.8 Enforcement. Each of the parties hereto acknowledges and agrees that the rights acquired by each party hereunder are unique and that irreparable damage would occur in the event that any of the provisions of this Agreement to be performed by the other parties were not performed in accordance with their specific terms or were otherwise breached. Accordingly, in addition to any other remedy to which the parties hereto are entitled at law or in equity, each party hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by any other party and to enforce specifically the terms and provisions hereof in the Supreme Court of Judicature of Jamaica to which the parties have agreed hereunder to submit to jurisdiction.

6.9 No Waiver of Rights, Powers and Remedies. No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing among the parties hereto, shall operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, shall preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto shall not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement shall entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand.

6.10 Counterparts. This Agreement may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.11 Aggregation of Shares. All shares in the Share Capital of the Company held by any Shareholder and its Affiliates shall be aggregated for determining the availability of any rights under this Agreement.

6.12 Confidentiality. Each Shareholder agrees to hold all confidential information received pursuant to this Agreement in confidence, and not to use or disclose any of such information to any third party, except to the extent that such information may be made publicly available by the Company and other than to monitor and maintain its investment in the Company; provided, however, that any Shareholder may, in the ordinary course of business, provide the financial results of the Company to its Shareholders, partners or members in the same manner such information is provided by such Shareholder with respect to its portfolio companies.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed by their duly authorized representative this Shareholders Agreement as of the date first written above.

**COMPANY:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ORDINARY SHAREHOLDERS:**

**SERIES A HOLDERS:**

**INVESTORS:**

**Appendix VI**  
**Right of First Refusal and Co-Sale Agreement**

[COMPANY]

RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT

This Right of First Refusal and Co-Sale Agreement (this “**Agreement**”) is made and entered into as of [Date] by and among \_\_\_\_\_, a Company incorporated under the laws of Jamaica (the “**Company**”), those investors in the Company listed on Exhibit A attached hereto (the “**Investors**”), \_\_\_\_\_ (the “**Founder**”), those persons listed on Exhibit B attached hereto (the “**Ordinary Shareholders**”) and those persons who become shareholders of the Company as set forth herein (the “**Additional Ordinary Shareholders**”). The Founder, the Ordinary Shareholders and the Additional Ordinary Shareholders are sometimes collectively referred to herein as the “**Shareholders**,” and each is sometimes referred to as a “**Shareholder**,” and the Investors, the Founder, the Ordinary Shareholders and the Additional Ordinary Shareholders are sometimes collectively referred to herein as the “**Holders**,” and each is sometimes referred to as a “**Holder**.”

A. The Investors are concurrently herewith purchasing shares of Series A Convertible Preferred Shares, par value \$X.XX per share, of the Company (the “**Series A Shares**” or the “**Purchased Shares**”) pursuant to a Series A Preferred Share Purchase Agreement dated of even date herewith (the “**Purchase Agreement**”).

B. As an inducement to the Investors to purchase the Purchased Shares pursuant to the Purchase Agreement, the Company and the Holders desire to enter into this Agreement to set forth their agreements and understandings with respect to restrictions on transfer and the right of Investors to require a sale of the Company in certain cases.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises herein contained, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. **CERTAIN DEFINITIONS.** For purposes of this Agreement, the following terms have the following meanings:

1.1 “**IPO**” means the Company’s initial public offering of its shares pursuant to the Companies Act 2004 and as well as rules and procedures of the Jamaica Stock Exchange (“**JSE**”) if the said shares are to be listed on the JSE.

1.2 “**Shares**” means and includes all Series A Shares and shares in the authorized share capital of the Company issued and outstanding at the relevant time plus (a) all

Ordinary Shares that may be issued upon exercise of any options, warrants and other rights of any kind that are then outstanding, and (b) all Ordinary Shares that may be issued upon conversion of (i) any convertible securities, including, without limitation, the Series A Share and debt securities then outstanding that are by their terms then convertible into or exchangeable for Ordinary Shares or (ii) any such convertible securities issuable upon exercise of outstanding options, warrants or other rights that are then outstanding.

1.3 “**Transfer**” and “**Transferred**” mean and include any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including but not limited to transfers to receivers, levying creditors, trustees or receivers in insolvency proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, made by any Holder, except for:

(a) any bona fide pledge of Share(s) and/or the acquisition of such Shares by the pledgee pursuant to such pledge if the pledgee executes a counterpart copy of this Agreement and becomes bound thereby as a Holder and the pledge was pursuant to a bona fide loan transaction that creates a mere security interest;

(b) any transfers of Share(s) by gift during a Holder’s lifetime or on a Holder’s death by will or intestacy to such Holder’s “Immediate Family” (as defined below) or to a trust for the benefit of Holder or Holder’s Immediate Family, provided that each transferee or other recipient executes a counterpart copy of this Agreement and becomes bound thereby as a Holder. As used herein, the term “**Immediate Family**” will mean Holder’s spouse, the lineal descendant or antecedent, brother or sister, of Holder or Holder’s spouse, or the spouse of any lineal descendant or antecedent, brother or sister of Holder, or Holder’s spouse, whether or not any of the above are adopted;

(c) any transfer of Share(s) by a Holder made (i) pursuant to a statutory merger or statutory consolidation of the Company with or into another company or companies, (ii) pursuant to the winding up and dissolution of the Company, or (iii) to the public pursuant to provisions of the Companies Act and/or the rules and procedures of the JSE (or the equivalent law of another jurisdiction);

(d) any transfers to any affiliate of a Holder, or any member, shareholder, limited or general partner of such a Holder, provided that (i) such transfers are made in compliance with applicable law and (ii) the transferee or other recipient executes a counterpart copy of this Agreement and becomes bound thereby as a Holder; or

(e) any transfers of Share(s) to the Company or to an Investor pursuant to such Company’s or Investor’s, as the case may be, exercise of its respective right of first refusal or right of co-sale hereunder.



## 2. RIGHT OF FIRST REFUSAL.

2.1 **General.** No Holder shall during his lifetime Transfer any Share now or hereafter held or acquired by such Holder (the **"Selling Shareholder"**) except upon receipt of a written bona fide third party offer, who may be a Holder (a **"Third Party Offer"**) and after such Selling Shareholder shall first deliver a written notice (the **"Transfer Notice"**) to the Company specifying (i) the name and address of the individual or entity making the Third Party Offer (the **"Proposed Transferee"**), (ii) the number and class or series of Share(s) which the Selling Shareholder wishes to sell (the **"Offered Share"**), (iii) the cash or other purchase price offered for the Offered Share(s) (the **"Offered Price"**), (iv) the date and time of closing of the proposed transfer of Offered Share(s) (the **"Closing"**), (v) any other material terms and conditions of the Transfer and (vi) a copy of the Third Party Offer. The Transfer Notice shall constitute an irrevocable offer by the Selling Shareholder to sell to the Company the Offered Share(s) at the price and on the same terms and conditions contained in the Transfer Notice. Upon the request of the Company, the Selling Shareholder shall promptly furnish to the Company such other information as may be reasonably requested to establish that the Third Party Offer and Proposed Transferee(s) are bona fide.

2.2 **Company's Right of First Refusal.** The Company shall have the right but not the obligation to purchase all or any part of the Offered Share(s) by providing the Selling Shareholder notice of its intent to purchase all or any part of the Offered Share(s) within seven (7) days from the Transfer Notice date pursuant to Section 2.1 above. If, at the end of the seven (7) day period the Company does not elect to purchase all or any part of the Offered Share, the Selling Shareholder shall submit a written notice to each Investor in a form substantially the same as the Transfer Notice to the Company.

2.3 **Investor's Right of First Refusal.** Within fifteen (15) days following its receipt of the Transfer Notice from the Selling Shareholder (the **"Investor Acceptance Period"**), each Investor interested in exercising its right of first refusal shall notify the Company and the Selling Shareholder as to the number of shares of the Offered Share(s), if any, that such is electing to purchase (each such notice being an **"Investor Acceptance"**). Each Investor Acceptance shall be deemed to be an irrevocable commitment to purchase from the Selling Shareholder that number of shares of the Offered Share(s) that the Investor has elected to purchase pursuant to its Investor Acceptance. If the number of shares of Offered Share(s) is less than the total number included in all Investor Acceptances (as verified by the Company), then the number of shares of Offered Share(s) shall be allocated as nearly as practicable among the Investors who elected to purchase Offered Share(s) in the proportion that the number of shares held by each electing Investor represents to the total number of shares held by all of the Investors electing to purchase Offered Share(s).

Within five (5) days of the end of the Investor Acceptance Period, the Company shall notify each Investor of any shares of remaining Offered Share(s), and each Investor may purchase any non-purchasing Investor's portion on a pro rata basis and such Investors shall have five (5) days to notify the Selling Shareholder and the Company of its desire to purchase such additional Offered Shares (the **"Pro Rata Investor Acceptance Period"**). Purchase by the Investors shall occur not later than five (5) days after the end of the Pro Rata Investor Acceptance Period. Failure by an Investor to deliver an Investor Acceptance within the specified respective fifteen (15) or five (5) day period shall be deemed a waiver by such Investor of its right to purchase any of the Offered Share(s).

**2.4 First Refusal Right Must Be Exercised In Full.** If the Company and/or the Investors, severally and/or jointly (as applicable), fail to exercise in full the right of first refusal with respect to the Offered Share(s) within the period or periods specified in the foregoing provisions of this Section 2, then, subject to the Right of Co-Sale (as defined below), all the Offered Share(s) may be sold by the Selling Shareholder at any time within one hundred twenty (120) days after the date the Transfer Notice was made to the Company. No Transfer hereunder shall be valid until the transferee shall have executed and delivered to the Company a counterpart signature page to this Agreement and the Voting Agreement between the Company and the Holders (as such terms are defined therein) dated \_\_\_\_\_ (the **"Voting Agreement"**). Such transferee shall thereafter be subject to all of the rights and obligations under this Agreement and the Voting Agreement as a Holder. If the Offered Share(s) is not so transferred during such one hundred twenty (120) day period, then the Selling Shareholder will not transfer any of such Offered Share(s) without complying again in full with the provisions of this Agreement.

**2.5 Purchase Price.** The purchase price for the Offered Share to be purchased by the Company or by an Investor exercising its respective right of first refusal under this Agreement will be the Offered Price and will be payable as set forth in Section \_\_\_\_ hereof. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration will be determined by the Board of Directors of the Company in good faith, which determination will be binding upon the Company, the Investors and the Selling Shareholder absent fraud or manifest error.

**2.6 Payment.** Payment of the purchase price will be made, at the option of the Company or, as the case may be, by an Investor, (a) in cash (by certified check or wire transfer of immediately available funds), (b) by cancellation of all or a portion of any outstanding indebtedness of the Selling Shareholder to the Company or such Investor, as the case may be, or (c) by any combination of the foregoing.

**2.7 Rights of Shareholder.** Upon the date that payment is made for the Offered Share(s) purchased by the Company and/or the Investors pursuant to their

respective rights of first refusal hereunder, the Selling Shareholder will have no further rights as a holder of such Offered Share(s) and the Selling Shareholder will forthwith cause all certificate(s) evidencing such Offered Share(s) to be surrendered to the Company for cancellation, and, as to purchase by Investor(s), for transfer to the purchasing Investor(s).

### 3. RIGHT OF CO-SALE.

**3.1 Right of Co-Sale.** If the Company and Investors have waived or failed to timely exercise their Rights of First Refusal to acquire all of the Offered Share(s), each Investor not electing to exercise such Rights of First Refusal (each an "**Eligible Investor**") will have the right to participate in the transfer of any Offered Share(s) not transferred to the Company or to the Investors (the "**Co-Sale Eligible Share**") in the manner set forth herein (the "**Right of Co-Sale**"). Pursuant to this Section, each Eligible Investor may transfer to the Proposed Transferee(s) identified in the Transfer Notice such Investor's Pro Rata Share of the Co-Sale Eligible Share(s), by giving written notice to the Selling Shareholder within ten (10) days after the end of the Investor Acceptance Period specifying the number of shares and type of Share(s) that such Eligible Investor desires to transfer to each Proposed Transferee by exercising the Right of Co-Sale. For purposes of this Section, an Eligible Investor's "**Pro Rata Share**" will be defined as a fraction, the numerator of which is the number of shares then owned by such Eligible Investor, and the denominator of which is the number of shares then owned by all Eligible Investors plus the number of shares held by the Selling Shareholder who proposes the Transfer, in each case, assuming conversion of all convertible securities and the exercise of options, warrants and other purchase rights.

**3.2 Consummation of Co-Sale.** Each Eligible Investor, in exercising the Right of Co-Sale, may effect such Eligible Investor's participation in such Transfer by delivering to the Selling Shareholder at the Closing to such transferee one or more certificates, properly endorsed for Transfer, representing such Share(s) to be Transferred by such Investor. At the Closing, such certificates or other instruments will be transferred and delivered to the Proposed Transferee(s) set forth in the Transfer Notice in consummation of the transfer of the Offered Share(s) pursuant to the terms and conditions specified in the Transfer Notice, and the Shareholder will remit, or will cause to be remitted, to such Eligible Investor within seven (7) days after such Closing that portion of the proceeds of the Transfer to which such Eligible Investor is entitled by reason of such Eligible Investor's participation in such transfer pursuant to the Right of Co-Sale. In the event that any Eligible Investor electing to exercise such Eligible Investor's Right of Co-Sale fails to deliver the share certificates as specified above at the Closing, such Eligible Investor shall have waived his Right of Co-Sale therefor and the Selling Shareholder shall be entitled to complete the Transfer at the Closing without participation by the waiving Eligible Investor. If all of the Offered Share(s) is not Transferred at the Closing, however, the Selling

Shareholder must again comply with the Right of Co-Sale requirements with respect to any future proposed Transfer thereof.

**3.3 Founder Exception.** Notwithstanding the provisions of this Section 3, the Founder shall be permitted to sell up to an aggregate of [10]% of his holdings as of the date of this Agreement without subjecting such sale or sales to the co-sale provisions; provided, however, that such sales shall not (a) occur more than one time in any six month period, (b) shall not occur more than four times in the aggregate, and (c) shall not be to more than four purchasers in the aggregate (provided that purchasers who are, at the time of such sale, shareholders of the Company shall not count for the purposes of the limitation on the number of purchasers). Any sales in excess of such amounts or outside of the above restrictions shall remain subject to the provisions of this Section 3.

**3.4 Put Right.** If (i) a Seller Shareholder Transfers any Share(s) in contravention of the Right of Co-Sale under this Agreement (a “Prohibited Transfer”), or (ii) if the Proposed Transferee of Offered Share(s) desires to purchase a class, series or type of share(s) offered by Seller but not held by a Selling Shareholder, or (iii) the Proposed Transferee is unwilling to purchase any securities from an Eligible Investor, such Eligible Investor may, by delivery of written notice to such Seller (a “Put Notice”) within ten (10) days after the later of (a) the closing to such Proposed Transferee and (b) the date on which such Eligible Investor becomes aware of the Prohibited Transfer or the terms thereof, require such Selling Shareholder to purchase from such Eligible Investor that number of Preferred Share(s) (on an as-converted basis) or Ordinary Shares, as determined herein, that is equal to the number of shares such Eligible Investor would have been entitled to transfer to the purchaser (the “Put Shares”). Such sale shall be made on the following terms and conditions:

(a) The price per share at which the Put Shares are to be sold to Selling Shareholder shall be equal to the price per share that the Eligible Investor would have received at the closing of such Prohibited Transfer if such Eligible Investor had sold such Put Shares at such closing. Such purchase price of the Put Shares shall be paid in cash or such other consideration as Selling Shareholder received in the Prohibited Transfer or at the closing. The Selling Shareholder shall also reimburse the Eligible Investor for any and all fees and expenses, including, but not limited to, legal fees and expenses, incurred pursuant to the exercise or attempted exercise of such Eligible Investor’s Rights of Co-Sale pursuant to Section 3.1 above or in the exercise of its rights under this Section 3.4 with respect to the Put Shares.

(b) The closing of such sale to Selling Shareholder will occur within ten (10) days after the date of such Eligible Investor’s Put Notice to such Seller. At such closing, the Eligible Investor shall deliver to Selling Shareholder the certificate or certificates representing the Put Shares to be sold, each certificate to be properly endorsed for

transfer, and immediately upon receipt thereof, such Seller shall pay the aggregate purchase price therefor, and the amount of reimbursable fees and expenses, as specified above.

**4. MULTIPLE SERIES, CLASSES OR TYPES OF SHARE(S).** If the Co-Sale Eligible Share(s) consists of Ordinary Share(s) and the Share(s) held by the Eligible Investors consists, in whole or in part, of one or more series or classes of share(s) convertible into Ordinary Share(s), the Eligible Investors shall convert such number of shares into Ordinary Share(s) so that the shares to be delivered to the Proposed Transferee shall consist entirely of Ordinary Share(s).

**5. REFUSAL TO TRANSFER.** Any attempt by any Selling Shareholder to transfer any Share(s) in violation of any provision of this Agreement will be void. The Company will not (a) transfer on its books any share(s) that has been sold, gifted or otherwise transferred in violation of this Agreement or (b) treat as owner of such Share(s), or accord the right to vote to, or pay dividends to, any purchaser, donee or other transferee to whom such Share(s) may have been so transferred. The proceeds of any Transfer made without compliance with the terms of this Agreement shall be deemed held in a constructive trust for the benefit of the Eligible Investors in such amounts as would have been received by each such Eligible Investor had the Selling Shareholder complied with the terms of this Agreement and shall be distributed as soon as possible to such Eligible Investor.

**6. Drag-Along Right.**

**6.1** In the event that (i) the Company's Board of Directors, (ii) holders of a majority of the voting power of the Purchased Shares, and (iii) holders of a majority of the voting power of all of Ordinary Shares of the Company (voting as a single class on an as-if-converted basis) ("**Drag-Along Holders**") indicate their acceptance, at any time, to Transfer all of the Shares held by such Drag-Along Holders in an M&A Event (as defined below) (the "**Required Acceptance**"), such Drag-Along Holders shall have the right to require the remaining Holders to dispose of their Shares under the same terms and conditions that the Drag-Along Holders are selling their Shares. The Drag-Along Holders shall exercise the rights under this Section 6 by delivering a notice (the "**Drag-Along Notice**") to the other Holders, at their respective addresses on file with the Company, stating (A) the *bona fide* intention to Transfer all of their respective Shares, (B) the price for which the Shares will be sold, (C) the name of the proposed Transferee and (D) all other material terms and provisions relating to the proposed Transfer.

**6.2** If a Required Acceptance has been obtained and the Company is unable, for any reason whatsoever, to secure any holder of Shares signature to any applicable documents in connection with such M&A Event, then by signing this Agreement such holder hereby irrevocably designates and appoints the Company's Board of Directors or any member of the Company's Board of Directors as such holder's

agent and attorney-in-fact, to act on behalf of and in his stead to execute and file any such required document and to do all other lawfully permitted acts to further such proposed transaction.

6.3 The Holders who are required to sell their Shares pursuant to this Section 6 shall deliver, within 20 days of delivery of the Drag-Along Notice, one or more certificates, properly endorsed for transfer (which represent the number of Shares that such Holders are required to sell pursuant to this Section 6) to the Secretary of the Company, who shall serve as custodian of the certificates until authorized in writing to deliver the certificates to the proposed purchaser upon consummation of the M&A Event.

6.4 The share certificate or certificates delivered by the Holders required to sell their Shares pursuant to this Section 6 shall be transferred by the selling Drag-Along Holders to the proposed purchaser in consummation of the M&A Event, and such selling Drag-Along Holders, on the date of the consummation of the Transfer, shall cause the proposed purchaser to remit to the Holders required to sell their Shares pursuant to this Section 6 that portion of the sale proceeds to which such Holders are entitled by reason of the participation in such Transfer.

6.5 For purposes of this Section 6, “M&A Event” shall mean the (i) sale, lease, transfer, exclusive license or other disposition of all or substantially all of the assets of the Company to a third party in a bona fide arm’s length transaction; (ii) the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of shares of the Company representing fifty percent (50%) or more of the outstanding voting power of the Company; or (iii) the sale of all or substantially all of the issued and outstanding share capital of the Company to a third party in a *bona fide* arm’s length transaction.

**7. Employee Share Incentives.** The Investors acknowledge that the Company has reserved and/or may reserve a certain number of shares of its Ordinary Shares for grant or sale to employees, officers, directors and advisors of the Company (the “**Option Shares**”), in such amounts and in such manner -- including incentive and non-qualified share options, restricted share grants, share bonuses or other share incentive programs -- as the Board of Directors of the Company shall, from time to time, determine; provided, however, that it shall be a condition to the issuance of any Option Shares pursuant to grants or sales made on or after the date hereof that the recipient thereof agrees to execute and deliver to the Company a counterpart of this Agreement upon receipt of Ordinary Shares of the Company pursuant to which such optionee shall become an Additional Ordinary Shareholder under this Agreement; and provided, further, that the Company shall use reasonable efforts to cause any employee receiving Option Shares pursuant to grants or sales made prior to or after the date hereof to execute and deliver to the Company a counterpart of

this Agreement pursuant to which such optionee shall become an Additional Ordinary Shareholder under this Agreement. Upon such execution and delivery, Exhibit B hereto shall be deemed amended to include the name of such employee and/or such optionee and such employee and/or such optionee shall be deemed to be an Additional Ordinary Shareholder.

#### 8. RESTRICTIVE LEGEND AND STOP-TRANSFER ORDERS.

8.1 **Legend.** Each Holder understands and agrees that the Company will cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents or instruments evidencing ownership of Shares by the Shareholder:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RIGHTS OF FIRST REFUSAL, RIGHTS OF CO-SALE AND DRAG-ALONG RIGHTS AS SET FORTH IN A RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT DATED AS OF \_\_\_\_\_, AS AMENDED FROM TIME TO TIME. A COPY OF SUCH AGREEMENT IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY. SUCH AGREEMENT IS BINDING ON TRANSFEREES OF THESE SHARES.

8.2 **Stop Transfer Instructions.** Each Holder agrees, to ensure compliance with the restrictions referred to herein, that the Company may issue appropriate “stop transfer” certificates or instructions and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its records.

#### 9. TERMINATION.

This Agreement shall terminate upon the first to occur of the following:

(a) The execution by (i) the Company, (ii) Shareholders holding a majority of the shares of the then issued and outstanding Shares, and (iii) Investors holding a majority of the voting power of the then outstanding Purchased Shares, of a written agreement to terminate this Agreement;

(b) The consummation of the IPO; or

(c) Immediately prior to the closing of an Acquisition or Asset Transfer (as such terms are defined in the Company’s Amended Restated Articles of Association).

#### 10. MISCELLANEOUS PROVISIONS.

10.1 **Notices.** Any notice required or permitted to be given to a party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given to such party under this Agreement on the earliest of the following:

(a) the date of personal delivery;

(b) one (1) business day after transmission by facsimile or telecopier, addressed to the other party at its facsimile number or telecopier address specified herein (or hereafter noticed to the parties hereto), with confirmation of transmission;

(c) one (1) business day after deposit with a return receipt express courier for Jamaican deliveries, or three (3) business days after such deposit for deliveries outside of the Jamaica; or

(d) seven (7) business days after deposit in the Jamaican mail by registered or certified mail (return receipt requested) for Jamaican deliveries.

All notices not delivered personally or by facsimile will be sent with postage and/or other charges prepaid and properly addressed to the party to be notified at the address set forth below such party's signature on this Agreement or on an exhibit hereto, or at such other address as such other party may designate by ten (10) days advance written notice to the other parties hereto. All notices for delivery outside Jamaica will be sent by facsimile or by express courier. Any notice given hereunder to more than one person will be deemed to have been given, for purposes of counting time periods hereunder, on the date effectively given to the last party required to be given such notice. Notices to the Company will be marked "Attention: President."

#### **10.2 Binding on Successors and Assigns; Inclusion Within Certain Definitions.**

This Agreement, and the rights and obligations of the parties hereunder, will inure to the benefit of, and be binding upon, the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives and any transferee of Shares. Any permitted transferee of a Shareholder who is required to become a party hereto will be considered a "Shareholder" for purposes of this Agreement without the need for any consent, approval or signature of any party hereto.

**10.3 Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible and such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had (to the extent not enforceable) never been contained herein.

#### **10.4 Amendment; Transfer of Right.**

**10.4.1** Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either



retroactively or prospectively), only with the written consent of (a) the Company, (b) holders of a majority of the voting power of the Shares then outstanding and (c) Investors holding a majority of the voting power of the then outstanding Purchased Shares held by Investors. Any amendment effected in accordance with this Section will be binding upon the Company, the Investors, the Shareholders and each of their respective successors and assigns; provided, that any amendment that affects any Holder or group of Holders in a materially adverse manner that is different than any other Holder or group of Holders of the same class or series of securities will require, as applicable, the separate approval of such affected Holder or of the holders of a majority of Shares then outstanding and held by such affected group of Holders.

10.4.2 If an Investor sells or transfers some or all of such Investor's Shares, then any transferee of such Investor shall be subject to all rights and obligations under this Agreement as the Investor from whom such Shares were acquired would have if such Investor owned the Share(s) so transferred.

10.5 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Jamaica, excluding that body of law pertaining to conflict of laws. The parties hereto agree to submit to the jurisdiction of the Courts of Jamaica with respect to the breach or interpretation of this Agreement or the enforcement of any and all rights, duties, liabilities, obligations, powers, and other relations between the parties arising under this Agreement.

10.6 **Obligation of Company; Binding Nature of Exercise.** The Company agrees to use its best efforts to enforce the terms of this Agreement, to inform each Investor of any breach hereof (to the extent the Company has knowledge thereof) and to assist each Investor in the exercise of such Investor's rights and performance of such Investor's obligations hereunder.

10.7 **Adjustments for Share Splits, Etc.** Wherever in this Agreement there is a reference to a specific number of shares of any class or series or dollar amount per share, then, upon the occurrence of any subdivision, combination, dividend or recapitalization of such class or series of shares, the specific number of shares or dollar amount per share so referenced in this Agreement shall automatically be proportionally adjusted to reflect the effect on the outstanding shares of such class or series of shares by such subdivision, combination, dividend or recapitalization.

10.8 **Counterparts; Facsimile.** This Agreement may be executed in any number of counterparts and by facsimile, each of which when so executed and delivered will be deemed an original, and all such counterparts together will constitute one and the same agreement.

10.9 **Entire Agreement.** This Agreement, including all exhibits hereto, each of which is incorporated herein by reference, constitutes the entire agreement of the

parties with respect to the specific subject matter hereof and supersedes all other agreements or understandings, whether oral or written, between or among the parties hereto with respect to such subject matter.

**10.10 Calculation; Binding Effect of Company Notices.** All calculations of an Investor's pro rata share for the purposes of the rights of first refusal or co-sale rights will be made by the Company as of the date of the Company's notice in which such pro rata share appears. The pro rata share of an Investor as shown on any notice required hereunder to be delivered by the Company will be binding upon the parties hereto absent fraud or manifest error.

**10.11 Headings.** The captions and headings of this Agreement are included for ease of reference only and will be disregarded in interpreting or construing this Agreement. Unless otherwise stated, all references herein to sections and exhibits will refer to sections of and exhibits to this Agreement.

[The remainder of this page is intentionally left blank.  
Signature pages follow.]

**IN WITNESS WHEREOF,** the undersigned parties hereto have executed this Right of First Refusal and Co-Sale Agreement as of the date first written above.

**THE COMPANY:**

\_\_\_\_\_

By: \_\_\_\_\_,

Name:

Title:

Address:

**THE ORDINARY SHAREHOLDERS:**

\_\_\_\_\_

\_\_\_\_\_

**THE FOUNDER**

\_\_\_\_\_

**THE INVESTORS:**

\_\_\_\_\_

By: \_\_\_\_\_

Print Name:

Title:

---

By: \_\_\_\_\_

Print Name:

Title:

[page break]

EXHIBIT A

INVESTORS

EXHIBIT B

ORDINARY Shareholders

**Appendix VII**  
**Form of Warranties**

**Proposed warranties**

The Investors will require the following items to be warranted by the Founders and the Company:

Status of the Company

Latest available audited accounts

Management accounts covering the period from latest audited accounts to completion of the proposed investment

Position since audited accounts date

Business Plan

Ownership of Assets and HP Liabilities

Employment contracts

Intellectual Property

No outstanding liabilities to executives

Pension Plan

No litigation pending or threatened

No breaches of existing or recent contracts

Register of members correct/no other share issues committed

Insurance Policies up to date

Loans/guarantees

Taxation

Property leasehold – terms/rights/obligations

These items above are not comprehensive and are only intended to provide a guide to the warranties that are likely to be included in the Investment Agreement. Additional items may require warranting following due diligence. The objective of these and other warranties will be to ensure that Founders and the Company have provided the investors with accurate information on matters upon which the investors have based their investment decision.

**Appendix VIII**  
**Form of Promissory Note**

THIS NOTE IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AS SET FORTH herein.

**[NAME OF COMPANY]**

**\_\_\_% [Senior][Subordinated][Secured][Convertible][Demand]**  
**Promissory Note**

\$ \_\_\_\_\_, 20\_\_\_\_

[NAME OF COMPANY], a company organized under the laws of Jamaica (the "Company"), for value received, promises to pay to \_\_\_\_\_, with an address at \_\_\_\_\_ or its successors or permitted assigns (the "Holder"), the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) [(the "Maximum Principal Amount"), or, if less, the aggregate principal amount outstanding under this Note,] in lawful money of the [Jamaica] [the United States], with interest thereon to be computed from the date hereof on the unpaid principal balance at the rate and as herein provided.

[The Company may borrow and repay hereunder at any time, up to a maximum aggregate amount outstanding at any one time equal to the Maximum Principal Amount provided, that no Event of Default (as defined below) has occurred hereunder. All advances made by the Holder to the Company hereunder and all payments made to the Holder on account of principal hereof shall be noted by the Holder on the schedule of advances and payments of principal that is attached as Schedule A hereto and hereby made a part hereof; provided, however, that any error or omission by the Holder in this regard shall not affect the obligation of the Holder to pay the full amount of the principal balance and interest on all advances made to the Company by the Holder.]

All agreements herein made are expressly limited so that in no event whatsoever, whether by reason of advancement of proceeds hereof, acceleration of maturity of the unpaid balance hereof or otherwise, shall the amount paid or agreed to be paid to the Holder for the use of the money advanced or to be advanced hereunder exceed the maximum rate permitted by law (the "Maximum Rate"). If, for any circumstances whatsoever, the fulfillment of any provision of this Note or any other agreement or instrument now or hereafter evidencing, securing or in any way relating to the debt evidenced hereby shall involve the payment of interest in excess of the Maximum Rate, then, *ipso facto*, the obligation to pay interest hereunder shall be reduced to the Maximum Rate; and if for any circumstance whatsoever, the Holder shall ever receive interest, the amount of which would exceed the amount

collectible at the Maximum Rate, such amount as would be excessive interest shall be applied to the reduction of the principal balance remaining unpaid hereunder and not to the payment of interest. This provision shall control every other provision in any and all other agreements and instruments existing or hereafter arising between the Company and the Holder with respect to the debt evidenced hereby.

**1. [Security.**

This Note and the Company's obligations hereunder are collateralized by a security interest in certain of the Company's assets pursuant to a Collateral Pledge and Security Agreement, dated as of even date herewith (the "Security Agreement"), by the Company, in favor of the Holder. Additionally, the obligations under this Note are guaranteed by \_\_\_\_\_ pursuant to that certain Guarantee, dated as of even date herewith, in favor of the Holder (the "Guarantee"). If an Event of Default (as defined below) shall have occurred and the principal amount of this Note shall become due and payable, the Holder shall be entitled to exercise, in addition to any right, power or remedy permitted in law or equity, all such Holder's remedies under the Security Agreement and the Guarantee.]

**2. Ranking of Note.**

**(a) Subordination.**

**(i)** This Note shall be junior and subordinate to the rights of \_\_\_\_\_ (together with its successors and assigns, the "Senior Lender") with respect to \$\_\_\_\_\_ or such lesser amount as may be advanced by the Senior Lender to the Company and/or any affiliate of the Company as evidenced by the Promissory Note, dated as of \_\_\_\_\_, \_\_\_\_\_, in favor of the Senior Lender, together with any related documents, and such additional advances of the foregoing as may be approved by the Holder in writing (collectively, the "Senior Debt").

**(ii)** The payment of the principal of and interest on this Note (including, without limitation, upon any redemption or repurchase of the indebtedness evidenced hereby) shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full of all Senior Debt in cash or other payment satisfactory to the Senior Lender.

**(iii)** No provision of this Section 2(a) shall prevent the occurrence of any default or Event of Default with respect to this Note.

**(iv)** No payment shall be made with respect to the principal of or interest on this Note (including, without limitation, any repurchase of the indebtedness evidenced hereby) without the prior approval of the Senior Lender if (A) a default in the payment of principal, premium, if any, interest or other obligations in respect of the Senior Debt occurs and is continuing beyond any applicable grace period, or (B) a default, other than a payment

default, on any Senior Debt occurs and is continuing that then permits the Senior Lender to accelerate its maturity, in either case, unless and until such default shall have been cured or waived or shall have ceased to exist, and then only if the Holder receives a notice of the default from the Senior Lender or the Company.

**(v)** Following any suspension in payments pursuant to the foregoing Section 2(a)(iv), provided that the Company or the Holder has received the approval of the Senior Lender, which approval shall not be unreasonably withheld or delayed, the Company may and shall resume payments on and distributions in respect of, this Note upon (A) in the case of a payment default, the date upon which any such payment default is cured or waived or ceases to exist, or (B) in the case of a non-payment default, the earlier of (x) the date upon which such default is cured or waived or ceases to exist, and (y) 90 days after the applicable notice is received by the Holder if the maturity of such Senior Debt has not been accelerated.

**(vi)** Upon any payment or distribution of the assets of the Company, to creditors upon dissolution, total or partial liquidation or reorganization of, or similar proceeding relating to the Company, the Senior Lender will be entitled to receive payment on the Senior Debt in full before any payment is made on account of this Note.

**(vii)** Except as shall be specifically prohibited by this Section 2(a), nothing contained herein shall prevent the Company from making any scheduled payment of principal of or interest on this Note.

**(viii)** The Senior Lender shall have the right to rely upon this Section 2(a), and no amendment or modification of the provisions contained herein shall diminish the rights of the Senior Lender unless such Senior Lender shall have agreed in writing thereto.

**(b) Seniority.**

**(i)** The Company, for itself, its successors and assigns, covenants and agrees, that the payment of the principal of and interest on this Note is senior in right of payment to the payment of all existing and future Junior Debt (as defined below). "Junior Debt" shall mean all existing and future Indebtedness (as defined below) other than [(A) the Senior Debt, (B) capital lease obligations existing on the date hereof, (C) Indebtedness permitted under Section \_\_\_\_ hereof, and (D)] as [otherwise] agreed to by the Holder in writing. "Indebtedness" shall mean (x) any liability of the Company for borrowed money, (1) evidenced by a note, debenture, bond or other instrument of indebtedness (including, without limitation, a purchase money obligation), including any given in connection with the acquisition of property, assets or service, or (2) for the payment of rent or other amounts relating to capitalized lease obligations; (y) any liability of others of the nature described in clause (1) which the Company has guaranteed or which

is otherwise its legal liability; and (z) any modification, renewal, extension, replacement or refunding of any such liability described in clause (x) or (y); provided, that Indebtedness does not include unsecured trade credit.

(ii) The Company covenants and agrees to cause any current holder of Junior Debt and to cause any future holder of Junior Debt permitted to be incurred pursuant to this Note to execute such subordination agreements, instruments or waivers as may be necessary to reflect the terms set forth herein.

(iii) Until the payment in full of all amounts of principal of and interest on this Note, and all other amounts owing under this Note, no payment may be made with respect to the principal of or other amounts owing with respect to any Junior Debt, or in respect of any redemption, retirement, purchase or other acquisition thereof, provided that the Company may pay scheduled interest thereon so long as no Event of Default shall have occurred and be continuing.

(iv) Upon any payment or distribution of the assets of the Company, to creditors upon dissolution, total or partial liquidation or reorganization of, or similar proceeding relating to the Company, the Holder of the Note will be entitled to receive payment in full before any holder of Junior Debt is entitled to receive any payment.

### **3. Interest; Payments.**

(a) Principal of, and any accrued and unpaid interest on, this Note shall be due and payable [on any date and time on or after \_\_\_\_\_, \_\_\_\_\_ upon demand by the Holder (such date and time hereinafter referred to as the "Maturity Date"),] unless it has been previously prepaid [or converted] in full in accordance with the terms hereof.

(b) Until this Note is [converted or] paid in full, interest on this Note shall accrue from the date hereof (the "Issue Date") at the Applicable Rate (calculated on the basis of a 360-day year consisting of twelve 30 day months). For purposes of this Note, the Applicable Rate shall mean \_\_%, except in the event that the Company fails to pay the Holder any portion of the principal and/or interest due on the Maturity Date in which case the Applicable Rate shall thereafter be \_\_%.

(c) If the Maturity Date would fall on a day that is not a Business Day (as defined below), the payment due on the Maturity Date will be made on the next succeeding Business Day with the same force and effect as if made on the Maturity Date. "Business Day" means any day which is not a Saturday or Sunday and is not a day on which banking institutions are generally authorized or obligated to close in the city of [CITY, STATE].

(d) Payment of principal and interest on this Note shall be made by



wire transfer of immediately available funds to an account designated by the Holder or by check sent to the Holder's address set forth above or to such other address as the Holder may designate for such purpose from time to time by written notice to the Company, in such coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts.

**(e)** [Subject to Section 2(a),][t]he Company may [voluntarily][, but only with the written consent of the Holder,] prepay this Note [in whole or in part at any time and from time to time][without penalty][, each such prepayment to be accompanied by the payment of accrued interest to the date of each prepayment on the amount prepaid [together with an additional prepayment fee equal to \_\_\_% of the amount prepaid].

**(f)** [Subject to Section 2(a),][w]ithin [three] business days following the closing of the sale of any of the Company's assets (other than in the ordinary course of business)[, any debt financing or the sale of New Securities (as defined below), which sale does not constitute a Qualified Financing], the Company shall [give the Holder written notice thereof and, if requested by the Holder within the 30-day period following such notice] mandatorily prepay the lesser of (i) the unpaid principal amount of this Note, together with all accrued and unpaid interest thereon, and (ii) in the event that the net cash proceeds of such asset sale or sale of securities is insufficient to prepay the entire amount referred to in (i), then such portion of the unpaid principal amount of this Note, amount of all accrued and unpaid interest thereon as shall equal the balance of the net cash proceeds of the asset sale or sale of securities. [As used herein, "New Securities" shall mean any shares of capital stock or securities exercisable, convertible or exchangeable for capital stock issued by the Company[, other than (A) shares of Common Stock issued or issuable pursuant to the Company's [NAME OF STOCK OPTION PLAN], as in effect on the Issue Date, (B) shares of Common Stock issued upon exercise or conversion of options or warrants issued and outstanding as of the date hereof, and (C) shares issued in respect of outstanding shares of Common Stock in connection with any subdivision of shares, recapitalization, stock dividend or stock split.].]

**(g)** [The obligations to make the payments provided for in this Note are absolute and unconditional and not subject to any defense, set-off, counterclaim, rescission, recoupment or adjustment whatsoever. The Company hereby expressly waives demand and presentment for payment, notice of non-payment, notice of dishonor, protest, notice of protest and diligence in taking any action to collect any amount called for hereunder, and shall be directly and primarily liable for the payment of all sums owing and to be owing hereon, regardless of and without any notice, diligence, act or omission with respect to the collection of any amount called for hereunder.]

#### 4. **Conversion.**

**(a) Optional Conversion.** Unless previously paid in full, at any time after [the Issue Date][\_\_\_\_\_, \_\_\_\_], at the Holder's option, the outstanding principal balance of this Note and all accrued and unpaid interest thereon (collectively, the "Note Value") shall convert into shares of the Company's [Common Stock, par value \$\_\_ per share ("Common Stock")]; provided, that, in the event the Holder elects to convert this Note as aforesaid, it shall deliver to the Company written notice of such election (a "Conversion Notice"). The conversion of this Note into shares of [Common Stock] shall take place on the second business day following the Company's receipt of the Holder's Conversion Notice or on such other date and at such other time as may be mutually agreed to by the Company and the Holder (such date hereinafter referred to as the "Optional Conversion Date"). The number of shares of [Common Stock] into which this Note shall be convertible shall be determined by dividing (i) the Note Value, by (ii) \$\_\_\_\_\_.

**(b) Conversion upon a Qualified Financing.** Unless previously paid in full, this Note shall convert into Qualified New Securities (as defined below) as of the closing of a Qualified Financing (as defined below). For purposes hereof, a "Qualified Financing" shall mean an equity financing of the Company[, on terms satisfactory to the Holder,] the gross proceeds of which, in the aggregate, equal or exceed \$\_\_\_\_\_ or such other amount as shall be agreed upon by the Company and the Holder, and "Qualified New Securities" shall mean the New Securities issued in connection with such Qualified Financing. The number of shares of Qualified New Securities into which this Note shall be convertible shall be determined by dividing (i) the Note Value, by (ii) [\_\_\_\_% of ]the price per share at which the Qualified New Securities are sold in the Qualified Financing; provided, that, if a Qualified Financing consists of two or more capital raises, the price per share shall be deemed to be the weighted average purchase price for such capital raises computed on a fully-converted to Common Stock basis. In the event that more than one class or series of Equity Securities are issued in a Qualified Financing, then the portion of this Note convertible into each such class or series shall correspond to the percentage that each such class or series represents of all of the New Qualified Equity Securities so issued calculated based on the gross proceeds to the Company derived from each such class and series.

**(c) Issuance of Conversion Shares.** Upon conversion of this Note pursuant to Section 4(a) or (b), the Holder shall be deemed to be the holder of record of the shares of Common Stock or shares of Qualified New Securities, as applicable, issuable upon such conversion (in either case, the "Conversion Shares"), notwithstanding that the transfer books of the Company shall then be closed or certificates representing such Conversion Shares shall not then have been actually delivered to the Holder. As soon as practicable after the Optional Conversion Date or the closing of the Qualified Financing, as applicable, the Company shall issue and

deliver to the Holder a certificate or certificates for the Conversion Shares registered in the name of the Holder or its designee(s); provided, that the Company, by notice given to the Holder promptly after the Optional Conversion Date or the closing of the Qualified Financing, as applicable, may require the Holder, as a condition to the delivery of such certificate or certificates, to present this Note to the Company.

**(d) Delivery of Certificates.** The issuance of any Conversion Shares, and the delivery of certificates or other instruments representing such shares or other securities, shall be made without charge to the Holder for any tax or other charge in respect of such issuance. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of any certificate in a name other than that of the Holder, and the Company shall not be required to issue or deliver any such certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

**(e) No Rights of Shareholder.** The Holder shall not have, solely on account of such status as a holder of this Note, any rights of a shareholder of the Company, either at law or in equity, or any right to any notice of meetings of shareholders or of any other proceedings of the Company, except as provided in this Note.

**(f) Reservation of Shares.** The Company shall at all times reserve and keep available out of its authorized and unissued capital stock, solely for the purpose of providing for the exercise of the conversion rights provided for under this Section 4, such number of shares of Common Stock and shares of Qualified New Securities as shall, from time to time, be sufficient for issuance upon conversion of this Note in full. The Company covenants that all Conversion Shares shall be validly issued, fully paid, nonassessable, and free of preemptive rights.

**(g) [Shareholders' Agreement.** Upon conversion of this Note and as a condition to the issuance of any Conversion Shares, if not already a party thereto, the Holder will enter into and become a party to that certain Shareholders' Agreement dated as of \_\_\_\_\_ by and among the Company and its shareholders signatory thereto, as in effect on the date of this Note (a copy of which has been provided to the Holder as an Exhibit to the Purchase Agreement), or hereafter amended with the consent of the Holder.]

**5. Representations and Warranties.** The Company represents and warrants to the Holder as follows:

**(a)** the Company is a corporation, duly incorporated, validly existing and in good standing under the laws of \_\_\_\_\_;

(b) the execution, delivery and performance by the Company of this Note is within the Company's powers, have been authorized by all necessary action, and do not contravene the Company's certificate of incorporation or bylaws or any law or other contractual restriction binding on or affecting the Company or its assets or properties;

(c) no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Company of this Note; and

(d) this Note constitutes the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms.

#### **6. Negative Covenants.**

The Company covenants and agrees with the Holder that, so long as any amount remains unpaid on this Note, unless the prior written consent of the Holder is obtained, the Company shall not:

(a) Increase or decrease the size, or change the composition, of the Company's Board of Directors;

(b) Amend the Company's certificate of incorporation or bylaws [in any manner which would adversely effect the rights of the Holder or holders of Common Stock];

(c) Create, issue or allot any debt securities or equity securities other than (i) options approved by the compensation committee of the Board of Directors and shares of Common Stock issued upon exercise of such options pursuant to the Company's [NAME OF STOCK OPTION PLAN], and (ii) shares of Common Stock issued upon exercise or conversion of options or warrants issued and outstanding as of the date hereof;

(d) Increase, reduce, convert, subdivide, consolidate or reclassify any class or series of the Company's capital;

(e) Take any action that results in any merger, corporate reorganization, sale of capital stock constituting 51% or more of the Company's outstanding voting stock or sale of all or substantially all of the Company's assets;

(f) Make any single expenditure or series or related expenditures which is in excess of \$\_\_\_\_\_ above the budgeted expenditures approved by the Board of Directors;

**(g)** Create, assume, or suffer to exist, or permit the Company to create, incur, assume or suffer to exist, Indebtedness in an aggregate amount exceeding \$\_\_\_\_\_ at any time outstanding[, other than [the Indebtedness represented by the several Bridge Notes, a Qualified Financing and \_\_\_\_\_];

**(h)** Approve any annual budget or annual business plan;

**(i)** Establish, amend or terminate any employee benefit, pension or retirement plan or trust, profit sharing plan or trust, stock option, stock purchase or stock bonus plan or any other incentive plan or program for all or any of the Company's employees;

**(j)** Sell or otherwise dispose of any of the Company's assets (or lease or license any assets in such a manner as to have the same economic effect as a sale or disposition) other than in the ordinary course of business;

**(k)** Repurchase or redeem any equity securities, except for the repurchase or redemption of securities from employees or consultants upon termination of their employment or service pursuant to agreements providing for such repurchase or redemption;

**(l)** Hypothecate, pledge, mortgage, charge or otherwise encumber the whole of the Company's assets or any part thereof except in the ordinary course of business[, other than to secure Indebtedness represented by the several Bridge Notes and \_\_\_\_\_];

**(m)** Institute any proceedings or act for the liquidation, winding-up or dissolution of the Company or cease the Company's operations;

**(n)** Commit an act of bankruptcy, make an assignment for the benefit of the Company's creditors, propose a compromise or arrangement to its creditors or take any action to have a receiver appointed with respect to any part of its assets;

**(o)** Hire, fire or amend the employment terms of any executive officer or key employee[, unless previously approved by the compensation committee of the Board of Directors];

**(p)** Declare or pay any dividend, including a stock dividend or other distribution of the assets of the Company, to any shareholder of the Company;

**(q)** Enter into, renew or modify any employment agreement, consulting agreement or other agreement of a similar nature with a *bona fide* estimated value (including estimated bonuses, commissions and any other remuneration) greater

than \$\_\_\_\_\_, unless approved by the compensation committee of the Board of Directors;

**(r)** Initiate or undertake, or permit any subsidiary to initiate or undertake, any litigation or course of defense in connection with a litigation brought against the Company, or settle any litigation or claim that could have a material adverse effect on the Company or on any of its directors or officers, or if the amount of such litigation, settlement or defense exceeds \$\_\_\_\_\_;

**(s)** Adopt or otherwise enter into a stock option plan in which more than \_\_\_\_\_ of the shares issued and outstanding from time to time are set aside for issuance pursuant to options, nor enter into a stock option agreement whereby any single employee could acquire more than 100,000 common shares upon exercise of such employee's options;

**(t)** Enter into a new line of business or change its primary line of business;

**(u)** Engage or dismiss the Company's primary auditors;

**(v)** Enter into, terminate, modify or amend any contract or commitment out of the ordinary course of business or involving in excess of \$\_\_\_\_\_ or as would adversely affect the rights of the Holder;

**(w)** Commence or consummate an underwritten public offering of the Company's equity securities or select any underwriter for a public offering;

**(x)** Enter into any transaction with any officer, director or shareholder of the Company, or any of its respective affiliates, or any entity in which any officer, director or shareholder of the Company or any of their respective affiliates may have an interest, except for normal employment arrangements and benefit programs on reasonable terms;

**(y)** Create any subsidiary, unless such subsidiary shall be a wholly-owned subsidiary and such subsidiary guarantees the Company's obligations under this Note;

**(z)** Permit any subsidiary to authorize or issue any capital stock, membership units, partnership interests or other equity securities, or any option, warrant, put, call, note, debenture or other right exercisable, convertible or exchangeable for such subsidiary's equity securities, to any person or entity other than to the Company; or

**(aa)** Agree to, or permit any subsidiary to agree to, take any actions set

forth above.

7. **Affirmative Covenants.** The Company covenants and agrees with the Holder that, so long as any amount remains unpaid on this Note, the Company shall deliver to the Holder:

(a) financial information in the form specified by the Holder, including monthly financial statements within 15 days after month-end, quarterly financial statements within 45 days after quarter-end, and annual financial statements within 90 days of year-end, each with comparisons to annual budget, operations reports and such other information as the Holder may reasonably request;

(b) not less than 30 days prior to the commencement of each fiscal year, an annual business plan, including a budget and detailed financial projections for the Company and its subsidiaries, if any, for each quarter during such period, all in reasonable detail, together with underlying assumptions and approved by a majority of the Board of Directors;

(c) promptly upon the Company's learning thereof, notice of the institution or threat of any litigation, suit, investigation or administrative proceeding that could reasonably be expected to have a material adverse effect on the Company's or any subsidiary's business, affairs, assets, prospects, operations, employee relations or condition, financial or otherwise, whether or not the claim is considered by the Company to be covered by insurance;

(d) promptly upon the occurrence thereof (but in no event later than five days after discovery thereof) notice of any material breach of, or material default under, any other material agreement or arrangement to which the Company or any of its subsidiaries is a party or by which any of them is bound;

(e) promptly upon the occurrence thereof, notice of any event which has had, or could reasonably be expected to have, a material adverse impact on the business, affairs, assets, prospects, operations, employee relations or condition, financial or otherwise, of the Company or any of its subsidiaries, including, but not limited to, any material disputes with customers;

(f) copies of any documents or data furnished to the Company's shareholders regarding the Company or its affairs, simultaneously with the furnishing of such documents or data to such shareholders; and

(g) promptly after the Company shall obtain knowledge of the occurrence of any Event of Default (as defined below) or any event which with notice or lapse of time or both would become an Event of Default (an Event of Default or such other event being a "Default"), a notice specifying that such notice is a "Notice of Default" and describing such Default in reasonable detail, and, in such

Notice of Default or as soon thereafter as practicable, a description of the action the Company has taken or proposes to take with respect thereto.

In addition, the Company covenants and agrees with the Holder that, so long as any amount remains unpaid on this Note, the Company shall permit the Holder and its representatives to visit and inspect the properties and the books and records of the Company and each of its subsidiaries.

#### **8. Events of Default.**

**(a)** The occurrence of any of the following events shall constitute an event of default (an “Event of Default”):

**(i)** a default in the payment of the principal or interest on this Note or on any Bridge Note, when and as the same shall become due and payable [and a continuance of such default for three days or more following receipt of written notice from the Holder or from the holder of such Bridge Note, as applicable, of such default] (a “Payment Default”);

**(ii)** the Company’s failure to convert any portion of the Note Value as provided in this Note (a “Conversion Default”);

**(iii)** a default in the performance, or a breach, of any covenant or agreement of the Company contained in this Note (other than a Payment Default or Conversion Default)[, the Security Agreement] or in any other agreement or arrangement between the Company and the Holder, and continuance of such default or breach for a period of 15 days after receipt of written notice from the Holder of such default or breach[ or after the Company had or should have had knowledge of such breach];

**(iv)** any material breach of a representation, warranty or certification made by the Company in or pursuant to this Note[or the Security Agreement];

**(v)** the occurrence of any event such that any indebtedness of the Company equal to or exceeding \$\_\_\_\_\_ which is owed to a person or entity other than the Holder could be accelerated, whether or not such acceleration has taken place;

**(vi)** a final judgment or judgments for the payment of money in excess of \$\_\_\_\_\_ in the aggregate shall be rendered by one or more courts, administrative or arbitral tribunals or other bodies having jurisdiction against the Company and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within 60 days from the date of entry thereof and the Company shall not, within such 60-day period, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal; and/or



(vii) the entry of a decree or order by a court having jurisdiction adjudging the Company a bankrupt or insolvent, or approving a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company, under federal bankruptcy law, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, and the continuance of any such decree or order unstayed and in effect for a period of 60 days; or the commencement by the Company of a voluntary case under federal bankruptcy law, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under federal bankruptcy law or any other applicable federal or state law, or the consent by the Company to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or similar official of the Company or of any substantial part of the property of the Company, or the making by the Company of an assignment for the benefit of creditors, or the admission by the Company in writing of its inability to pay its debts generally as they become due, or the discontinuance of the business, dissolution, winding up, liquidation or cessation of the existence by or of the Company, or the taking of corporate action by the Company in furtherance of any such action.

(b) Nothing contained in Section 8(a) above shall in any way limit or be construed as limiting the right of the Holder to demand payment of the principal of, and any accrued and unpaid interest on, this Note at any time or after \_\_\_\_\_, \_\_\_\_\_ pursuant to Section 3(a) of this Note.

9. **Remedies Upon Default.** Upon the occurrence of an Event of Default referred to in Section 8(a)(vii), the principal amount then outstanding of, and the accrued interest on, this Note shall automatically become immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Company. Upon the occurrence of an Event of Default referred to in Sections 8(a)(i) through (vi), the Holder, by notice in writing given to the Company, may declare the entire principal amount then outstanding of, and the accrued interest on, this Note to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately, without presentation, demand, protest or other formalities of any kind, all of which are expressly waived by the Company. The Holder may institute such actions or proceedings in law or equity as it shall deem expedient for the protection of its rights and may prosecute and enforce its claims against all assets of the Company, and in connection with any such action or proceeding shall be entitled to receive from the Company payment of the principal amount of this Note plus accrued interest to the date of payment plus reasonable expenses of

collection, including, without limitation, reasonable attorneys' fees and expenses actually incurred. For the avoidance of doubt, the foregoing is not intended as an exclusive remedy and the Holder may enforce any other rights under this Note, [the Security Agreement, the Guaranty,] any [other] agreement or otherwise under applicable law.

**10. Reclassifications and Reorganizations.** In case of any reclassification or reorganization of the Common Stock or, in the case of any merger or consolidation of the Company with or into another entity (excluding a merger or consolidation in which the Company is the continuing entity that does not result in any reclassification or reorganization of the Common Stock) or, in the case of any sale or conveyance to another corporation or entity of all or substantially all of the assets or other property of the Company in connection with which the Company is dissolved, subject to the terms and provisions of Section 4 of this Note, the Holder shall thereafter have the right to convert this Note into the kind and amount of shares of stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon dissolution following any such sale or transfer, that the Holder would have received if the Holder had converted this Note pursuant to Section 4(a) hereof immediately prior to such event. The provisions of this Section 10 shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers.

**11. Miscellaneous.**

**(a)** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties; provided, however, that neither party may assign any of its rights or obligations hereunder without the prior written consent of the other[, except that the Holder may assign all or any portion of its rights hereunder to an affiliate of the Holder without such consent]. Assignment of all or any portion of this Note in violation of this Section 11(a) shall be null and void. Nothing in this Note, expressed or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Note, except as expressly provided in this Note.

**(b)** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed delivered (i) when received, if delivered by hand, (ii) one Business Day after being sent by nationally recognized overnight courier service, (iii) three Business Days after being sent by certified or registered mail, return receipt requested postage prepaid, or (iv) upon confirmed transmission when sent by facsimile or other electronic transmission if sent during normal business hours of the recipient and otherwise on the next Business Day (provided, that any facsimile or other electronic transmission is followed by delivery via another method permitted hereby), addressed (A) if to the Company, at its

address at \_\_\_\_\_; to the attention of \_\_\_\_\_;  
(B) if to the Holder, at its address at \_\_\_\_\_; to the  
attention of \_\_\_\_\_; or (C) in either case, to such other address as the party  
shall have furnished in writing in accordance with the provisions of this Section  
11(b). Any notice given by means other than as set forth above shall be deemed  
effective upon receipt.

**(c)** Upon receipt of evidence satisfactory to the Company, of the loss, theft, destruction or mutilation of this Note (and upon surrender of this Note if mutilated), including an affidavit of the Holder thereof that this Note has been lost, stolen, destroyed or mutilated together with an indemnity against any claim that may be made against the Company on account of such lost, stolen, destroyed or mutilated Note, and upon reimbursement of the Company's reasonable incidental expenses, the Company shall execute and deliver to the Holder a new Note of like date, tenor and denomination.

**(d)** No course of dealing and no delay or omission on the part of the Holder or the Company in exercising any right or remedy shall operate as a waiver thereof or otherwise prejudice the Holder's or the Company's rights, powers or remedies, as the case may be. No right, power or remedy conferred by this Note upon the Holder or the Company shall be exclusive of any other right, power or remedy referred to herein or now or hereafter available at law, in equity, by statute or otherwise, and all such remedies may be exercised singly or concurrently.

**(e)** If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of this Note shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms. This Note may be amended only by a written instrument executed by the Company and the Holder hereof. Any amendment shall be endorsed upon this Note, and all future Holders shall be bound thereby.

**(f)** This Note shall be governed by and construed in accordance with the laws of the State of [New York], without giving effect to principles governing conflicts of law.

**(g)** The Company irrevocably consents to the exclusive jurisdiction of any federal court located in the State of \_\_\_\_\_ sitting in \_\_\_\_\_ County, \_\_\_\_\_ in connection with any action or proceeding arising out of or relating to this Note, any document or instrument delivered pursuant to, in connection with or simultaneously with this Note, or a breach of this Note or any such document or instrument.

*[Remainder of this page left intentionally blank.]*

*Signature page to follow.]*

**IN WITNESS WHEREOF**, the Company has caused this Note to be executed and dated the day and year first above written.

[NAME OF COMPANY]

By: \_\_\_\_\_

Name:

Title:

SCHEDULE A

**ADVANCES AND PAYMENTS OF PRINCIPAL**

D a t e	A m o u n t  o f A d v a n c e	A m o u n t  o f P r i n c i p a l  P a i d	U n p a i d  P r i n c i p a l B a l a n c e	Not ati on Ma de by

**Appendix IX**  
**Founders' Agreement**

## Appendix X

### Form of Confidential Information and Proprietary Rights Agreement

This Restricted and Confidential Information and Proprietary Rights Agreement (this “**Agreement**”) is entered into as of \_\_\_\_\_, by and between [\_\_\_\_], Company Limited a Company incorporated under the laws of Jamaica (the “**Company**”), and the employee of the Company whose name is set forth on the signature page hereto (the “**Employee**”).

WHEREAS, the Company is willing to employ or continue to employ the Employee upon certain representations, warranties and covenants by the Employee as to, among other things, the use of Restricted Information and/or Confidential Information (as such terms are defined in Sections 1.a. and 2.a. of this Agreement, respectively) and as to the ownership of Proprietary Rights (as defined in Section 3.a. below); and

WHEREAS, the Employee is willing to make certain representations and warranties to, and covenants with, the Company as to, among other things, the use of Restricted and Confidential Information and the ownership of Proprietary Rights as a condition of employment or continued employment by the Company;

NOW, THEREFORE, in consideration of the Company’s employment or continued employment of the Employee, the Employee represents and warrants to, and agrees with, the Company, as follows:

#### **1. FORMER EMPLOYMENT**

##### **a. Restricted Information.**

For the purposes of this Agreement, “**Restricted Information**” shall mean information or material proprietary either to any former employer of the Employee or to any person for whom the Employee performed services as a consultant or independent contractor (all such former employers and persons being referred to hereinafter as “**Former Employers**”), or designated as confidential by a Former Employer and not generally known to persons other than those employed by the Former Employer, which is information or material which the Employee developed or obtained knowledge of, or to which the Employee had access, in connection with or as a result of the Employee’s relationship with the Former Employer. Information publicly known that is generally employed in the trade at or after the time the Employee first learned of such information, or generic information or knowledge which the Employee would have learned in the course of work or employment in the trade other than on behalf of a Former Employer, shall not be deemed part of any Restricted Information.

b. Non-Disclosure of Restricted Information.

The Employee covenants and agrees with the Company that he or she will not, during his or her employment by the Company or thereafter, disclose to the Company or its employees, representatives or agents, or make any use of during the course of his or her duties as an employee of the Company, any Restricted Information.

**2. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

a. Confidential Information.

For the purposes of this Agreement, “**Confidential Information**” shall mean information or material proprietary to the Company or designated as confidential by the Company and not generally known to persons not employed by or associated with the Company, which the Employee develops or which the Employee may obtain knowledge of or access to in connection with or as a result of the Employee’s relationship with the Company (including information conceived, originated, discovered or developed in whole or in part by the Employee). Confidential Information includes, but is not limited to, the following types of information and information of a similar nature (whether or not reduced to writing): works of authorship, discoveries, ideas, concepts, software in various stages of development, designs, drawings, specifications, techniques, models, data, source code, object code, documentation, diagrams, flow charts, research, development, processes, procedures, know-how, marketing techniques and materials, marketing and development plans, customer names and other information related to customers, price lists, pricing policies and financial information, business plans, prospects and opportunities (such as possible expansions or contractions of business operations or possible acquisitions or dispositions of businesses or facilities) which may have been discussed or considered by the management of the Company, the identity of employees and/or customers of the Company and information of operational strengths and weaknesses of the Company, vendor and customer lists, reimbursement amounts, procedures or sources, operational methods, methods of doing business, technical processes, formulae, inventions, research projects, strategic plans, product information and production, and products and works developed or under development by the Company, and any work product conceived, created, reduced to any medium of expression and/or produced as part of the activities of the Employee for the Company, including all written, graphical, pictorial, visual, audio, and audiovisual elements relating thereto. Confidential Information also includes: any information described above which the Company obtains from any other party and which the Company treats as proprietary or designates as confidential, whether or not owned or developed by the Company; and any information from or pertaining to the Company’s customers which is designated as

confidential by the Company's customers.

Confidential Information shall not include any information or materials which are in the public domain during the period of the Employee's employment or thereafter; provided, that such information or materials are not in the public domain as a consequence of disclosure by the Employee in violation of Section 2 of this Agreement.

b. Non-Disclosure of Confidential Information.

The Employee covenants and agrees with the Company that, during his or her employment by the Company and thereafter, the Employee will hold all Confidential Information in confidence for the sole benefit of the Company and will not directly or indirectly reveal, report, publish, disclose or transfer any Confidential Information to any person or entity other than the Company or its employees so authorized to have access to such Confidential Information at the time of such disclosure, or to such other persons to whom the Employee has been specifically instructed by an officer of by the Board of Directors of the Company to make such disclosure and, in all cases, only to the extent required in the course of the Employee's duties on behalf of the Company. The Employee further agrees, on his or her own behalf and on behalf of his or her heirs and representatives, that upon termination of his or her employment by the Company, all notes, letters, documents, records and any other written, printed or recorded materials, which are then in the Employee's possession or control and which may contain any Confidential Information, shall be delivered to the Company and that no copies or summaries of any such information shall be retained or used by the Employee for any purpose whatsoever, and that the Employee shall delete all such information from his or her personal computers and similar electronic devices.

### 3. OWNERSHIP OF PROPRIETARY RIGHTS

a. Proprietary Rights.

For the purposes of this Agreement, "**Proprietary Rights**" shall mean all right, title and interest (including any copyrights, patent rights, trademarks, servicemarks and trade names) in and to, or associated with, or arising from, any and all notes, data, reference materials, sketches, drawings, memoranda, documentation, and any and all work product conceived, created, reduced to any medium of expression and/or produced as part of the activities of Employee for the Company, including all written, graphical, pictorial, visual, audio, and audiovisual elements relating thereto, software code or records in any way incorporating or reflecting any Confidential Information and any original works of authorship, derivative works, inventions, developments, concepts, know-how, improvements, trade secrets or ideas, whether or not fixed in a tangible medium of expression,



which are conceived or developed in whole or in part by the Employee alone or in conjunction with others, whether or not conceived or developed during regular working hours by, or in association with, the Company, which are made through the use of any Confidential Information or any of the Company's equipment, facilities, supplies, or trade secrets, or which relate to the Company's business or the Company's actual or demonstrably anticipated research and development, or which result from any work performed by the Employee for the Company.

b. Ownership of Proprietary Rights.

The Employee covenants and agrees with the Company that all Proprietary Rights shall belong exclusively to the Company, and the Employee agrees to assign and hereby assigns to the Company, all rights, title and interest throughout the world in and to all Proprietary Rights. The Employee agrees to promptly make full written disclosure to the Company, and will hold in trust for the sole right and benefit of the Company, all Proprietary Rights. The Employee agrees that, upon request of the Company and without any separate remuneration or compensation, the Employee shall take such action and execute and deliver such documents and instruments as may be necessary or proper to vest in the Company all right, title and interest in and to all such Proprietary Rights. Without limiting the foregoing, the Employee further agrees that for any original works of authorship created by the Employee, the Company shall be deemed the author thereof under the Copyright Act; provided, however, that in the event and to the extent such works do not constitute "works made for hire" as a matter of law, the Employee agrees to irrevocably assign and transfer, and hereby irrevocably assigns and transfers to the Company, all right, title and interest in and to such works, including but not limited to copyrights.

c. Maintenance of Records.

The Employee covenants and agrees to take commercially reasonable measures to keep and maintain adequate and current written records of all inventions and works of authorship made by the Employee (solely or jointly with others) during the term of the Employee's relationship with the Company. The records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, laboratory notebooks, and any other format. The records will be available to and remain the sole property of the Company at all times. The Employee agrees not to remove such records from the Company's place of business except as expressly permitted by the Company policy which may, from time to time, be revised at the sole election of the Company. The Employee agrees to return all such records (including any copies thereof) to the Company at the time of termination of employment with the Company.

d. Recordation of Rights.

The Employee covenants and agrees to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's, or its designee's, rights in the inventions and any copyrights, patents, trademarks, servicemarks, moral rights, or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company or its designee of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, recordations, and all other instruments which the Company or its designee shall deem necessary in order to apply for, obtain, maintain and transfer such rights, or if not transferable, waive such rights, and in order to assign and convey to the Company or its designee and any successors, assigns and nominees the sole and exclusive rights, title and interest in and to such inventions, and any copyrights, patents or other intellectual property rights relating thereto. The Employee further agrees that the obligation to execute or cause to be executed, when it is in the Employee's power to do so, any such instrument or papers shall continue after the termination of this Agreement until the expiration of the last such intellectual property right to expire in any country of the world. If the Company or its designee is unable because of the Employee's mental or physical incapacity or unavailability or for any other reason to secure the Employee's signature to apply for or to pursue any application for any Jamaican or foreign patents, copyrights, or other registrations covering inventions or works of authorship assigned or to be assigned to the Company or its designee as above, then the Employee hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as the Employee's agent and attorney in fact, to act for and on the Employee's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent, copyright or other registrations thereon with the same legal force and effect as if originally executed by the Employee. The Employee hereby waives and irrevocably to the Company or its designee any and all claims, of any nature whatsoever, which the Employee now or hereafter has for infringement of any and all proprietary rights assigned to the Company or such designee.

#### **4. REMEDIES**

Any breach of the provisions of Sections 2, 3 or 4 of this Agreement may result in the immediate termination of the Employee's employment with the Company. The Employee and the Company specifically acknowledge and agree that any breach of the provisions of Sections 2, or 3 of this Agreement is likely to result in irreparable injury to the Company and that remedies at law alone will be an inadequate remedy for such breach, and that in addition to any other remedy it may have, the Company shall be entitled to enforce the specific performance of this Agreement by the Employee and to seek both temporary and permanent injunctive

relief (to the extent permitted by law or in equity) without the necessity of proving actual damages.

## **6. GENERAL PROVISIONS**

### **a. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be considered and have the force and effect of an original.

### **b. Governing Law.**

This Agreement shall be governed by the laws of the Jamaica. This Agreement contains the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior representations and understandings, whether oral or written. In the event that any provision hereof or any obligation or a grant of rights by the Employee hereunder is found invalid or unenforceable pursuant to judicial decree or decision, any such provision, obligation or grant of rights shall be deemed and construed to extend only to the maximum extent permitted by law, and the remainder of this Agreement shall remain valid and enforceable according to its terms.

### **c. Enforceability.**

The Employee acknowledges and agrees that the restrictive covenants contained in this Agreement are severable and separate. If at any time any of the restrictive covenants in this Agreement shall be deemed invalid or unenforceable by the laws of the jurisdiction wherein it is to be enforced, by reason of being vague or unreasonable as to duration, or geographic scope, or scope of activities restricted, or for any other reason, such agreements or covenants shall be considered divisible as to such portion, and such agreements or covenants shall become and be immediately amended or reformed to include only such agreements or covenants as are deemed reasonable and enforceable by the court or other body having jurisdiction of this Agreement, to the full duration, geographic scope and scope of restricted activities deemed reasonable and thus enforceable by said court or body; and the parties agree that such agreements or covenants, as so amended and reformed, shall be valid and binding as though the invalid or unenforceable portion had not been included therein.

### **d. Copies of Agreement.**

During the Term and for a period of twelve (12) months thereafter, the Employee will immediately inform the Company of the identity of any new employer of the Employee. The Employee agrees to provide to the Company, and

that the Company may similarly provide in its discretion, a copy of this Agreement to any business or enterprise which the Employee may directly or indirectly, own, manage, operate, finance, join or control, or in which the Employee participates in the ownership, management, operation, financing, or control, or with which the Employee may be connected as a partner, officer, director, employee, consultant, agent, independent contractor or any other manner.

e. At Will Employment.

The Employee acknowledges and agrees that, subject to the terms of any employment agreement between the Employee and the Company to the contrary, the Employee's employment with the Company is "at will," meaning that either the Employee or the Company may terminate the Employee's employment with the Company at any time and for any reason (or no reason) upon notice to the other party. This at-will relationship cannot be changed except pursuant to a writing signed by a duly authorized officer of the Company.

THE EMPLOYEE ACKNOWLEDGES THAT IN EXECUTING THIS AGREEMENT, THE EMPLOYEE HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND THE EMPLOYEE HAS READ AND UNDERSTANDS ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THE EXECUTION OF THIS AGREEMENT IS THE EMPLOYEE'S OWN FREE ACT AND VOLUNTARY ACT AND DEED.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Agreement to be signed by its duly authorized representative below, and the Employee has hereunto set his or her hand, all as of the date first set forth above.

**Appendix XI**  
**Form of Legal Opinion**

**§ 14.03 Form of Closing Opinion For Issuance of Series \_\_ Preferred Shares**

[DATE]

To the Investors Listed on the  
Schedule of Investors to the  
Company, Inc. Share Purchase Agreement

dated [DATE]

Ladies and Gentlemen:

We have acted as counsel for Company, Inc., a company under the laws of Jamaica (the “Company”), in connection with the issuance and sale of shares of its Series \_\_ Preferred Shares pursuant to the Company, Share Purchase Agreement dated [DATE] (the “Share Purchase Agreement”) among the Company and you. This opinion letter is being rendered to you pursuant to Section \_\_ of the Share Purchase Agreement in connection with the Closing of the sale of the Series \_\_ Preferred Shares. Capitalized terms not otherwise defined in this opinion letter have the meanings given them in the Share Purchase Agreement.

In connection with the opinions expressed herein, we have made such examination of matters of law and of fact as we considered appropriate or advisable for purposes hereof. As to matters of fact material to the opinions expressed herein, we have relied upon the representations and warranties as to factual matters contained in and made by the Company pursuant to the Share Purchase Agreement and upon certificates and statements of government officials and of officers of the Company. With respect to our opinion in paragraph 3 regarding issued and outstanding share capital of the Company, such opinion is based solely on our review of a certificate of incorporation of the Company and of the Company’s records and resolutions of the Company’s Board of Directors relating to such issuances. We have also examined originals or copies of such corporate documents or records of the Company as we have considered appropriate for the opinions expressed herein. We have assumed for the purposes of this opinion letter the genuineness of all signatures, the legal capacity of natural persons, the authenticity of the documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as certified, facsimile or photostatic copies, and the authenticity of the originals of such copies.

In rendering this opinion letter we have also assumed: (A) that the Share Purchase Agreement and Investors’ Rights Agreement [and \_\_\_\_\_] (collectively, the “Transaction Agreements”) have been duly and validly executed and delivered

by you or on your behalf, that each of you has the power to enter into and perform all your obligations thereunder and has taken any and all necessary corporate, partnership or other relevant action to authorize the Transaction Agreements, and that the Transaction Agreements constitute valid, legal, binding and enforceable obligations upon you; (B) that the representations and warranties made in the Stock Purchase Agreement by you are true and correct; (C) that any wire transfers, drafts or checks tendered by you will be honored; (D) if you are a corporation or other entity that you have filed any required income or similar tax returns.

As used in this opinion letter, the expression “we are not aware” or the phrase “to our knowledge,” or any similar expression or phrase with respect to our knowledge of matters of fact, means as to matters of fact that, based on the actual knowledge of individual attorneys within the firm principally responsible for handling current matters for the Company (and not including any constructive or imputed notice of any information), and after an examination of documents referred to herein and after inquiries of certain officers of the Company, no facts have been disclosed to us that have caused us to conclude that the opinions expressed are factually incorrect; but beyond that we have made no factual investigation for the purposes of rendering this opinion letter. Specifically, but without limitation, we have not searched the files of any courts and we have made no inquiries of securities holders or employees of the Company, other than such officers. No inference as to our knowledge of the existence or absence of any fact should be drawn from our representation of the Company or the rendering of the opinions set forth below.

This opinion letter relates solely to the laws of the Jamaica and we express no opinion with respect to the effect or application of any other laws. Special rulings of authorities administering such laws or opinions of other counsel have not been sought or obtained.

Based upon our examination of and reliance upon the foregoing and subject to the limitations, exceptions, qualifications, and assumptions set forth below and except as set forth in the Share Purchase Agreement or the Schedule of Exceptions thereto, we are of the opinion that as of the date hereof:

1. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the Jamaica, and the Company has the requisite corporate power and authority to own its properties[, as known to us,] and to conduct its business as, to our knowledge, it is presently conducted.

2. The Company has the requisite corporate power and authority to execute, deliver, and perform the Transaction Agreements. Each of the Transaction Agreements has been duly authorized, executed and delivered by the Company and constitutes a valid and binding obligation of the Company, enforceable by you

against the Company in accordance with its terms.

3. The capitalization of the Company is as follows:

(a) Preferred Shares. The Company has \_\_\_\_\_ authorized shares of Preferred Shares, \$\_\_\_\_\_ per share (the "Preferred Shares"), of which (i) \_\_\_\_\_ shares have been designated [Series A Preferred Shares], of which, to our knowledge, \_\_\_\_\_ shares are currently issued and outstanding, and (ii) \_\_\_\_\_ shares have been designated Series B Preferred Shares and some or all of which may be purchased pursuant to the Share Purchase Agreement. Such \_\_\_\_\_ shares of outstanding Series A Preferred Shares have been duly authorized and validly issued, are nonassessable and, to our knowledge, are fully paid. [Describe other outstanding series of preferred shares here.] The shares of Series B Preferred Shares to be purchased at the Closing have been duly authorized and, upon purchase at the Closing pursuant to the terms of the Stock Purchase Agreement, will be validly issued, nonassessable and fully paid. The respective rights, privileges, restrictions and preferences of the Series A[, Series \_\_\_\_] and Series \_\_\_\_ Preferred Shares are as stated in the [form of the] Company's Restated [Articles of Association [attached as Exhibit A to the Share Purchase Agreement] [as filed with the Companies Office of Jamaica.

(b) Ordinary Shares. The Company has \_\_\_\_\_ authorized ordinary shares \$\_\_\_\_\_ per share (the "Ordinary Shares"), of which, to our knowledge, \_\_\_\_\_ shares are currently issued and outstanding. Such outstanding ordinary shares have been duly authorized and validly issued, are nonassessable, and, to our knowledge, are fully paid.

(c) The Ordinary Shares issuable upon conversion of the Series B Preferred Shares to be purchased at the Closing has been duly and validly reserved for issuance and, when and if issued upon such conversion in accordance with the Company's Restated [Articles of Association, will be validly issued, fully paid and nonassessable.

(d) There are no statutory or preemptive rights nor, to our knowledge, are there any options, warrants, conversion privileges or other rights (or agreements for any such rights) outstanding to purchase or otherwise obtain from the Company any of the Company's equity securities, except for (i) the conversion privileges of the Series A Preferred Shares, (ii) the conversion privileges of the Series B Preferred Shares, (iii) warrants to purchase ordinary shares, (iv) outstanding options to purchase ordinary shares of pursuant to the Company's [insert name of Company's share option issuance plan] and (v) the right of first offer as set forth in Section \_\_\_\_ of the Investors' Rights Agreement.

4. Other the laws stated in paragraph 9 hereof the Company's execution and delivery of, and its performance and compliance as of the date hereof with the

terms of, the Transaction Agreements do not violate any provision of any law, rule or regulation applicable to the Company or any provision of the Company's Restated [Articles] or Bylaws and do not constitute a default or breach under the provisions of any judgment, writ, decree or order specifically identified in the Schedule of Exceptions [or the material provisions of any of the material agreements specifically identified in [Schedule \_\_\_\_ to][Section \_\_\_\_ of] the [Schedule of Exceptions].

5. All consents, approvals, filings or authorizations of any governmental authority on the part of the Company required in connection with the execution and delivery of Share Purchase Agreement and consummation at the Closing of the transactions contemplated by the Share Purchase Agreement have been obtained, and are effective, and we are not aware of any proceedings, or written threat of any proceedings, that question the validity thereof.

6. We are not aware that there is any action, proceeding, or governmental investigation pending, or threatened in writing, against the Company which questions the validity of the Transaction Agreements or the right of the Company to enter into the Transaction Agreements [nor are we aware of any litigation pending, or threatened in writing, against the Company by reason of the proposed activities of the Company, the past employment relationships of its officers, directors or employees, or negotiations by the Company with possible investors in the Company or its business].

7. Our opinions expressed above are specifically subject to the following limitations, exceptions, qualifications and assumptions:

8. The legality, validity, binding nature and enforceability of the Company's obligations under the Transaction Agreements may be subject to or limited by (1) insolvency, reorganization, arrangement, moratorium, fraudulent transfer and other similar laws affecting the rights of creditors generally; (2) general principles of equity (whether relief is sought in a proceeding at law or in equity), including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, and the discretion of any court of competent jurisdiction in awarding specific performance or injunctive relief and other equitable remedies; and (3) without limiting the generality of the foregoing, (a) principles requiring the consideration of the impracticability or impossibility of performance of the Company's obligations at the time of the attempted enforcement of such obligations, and (b) the effect of Jamaica's court decisions and statutes which indicate that provisions of the Transaction Agreements which permit any of you to take action or make determinations may be subject to a requirement that such action be taken or such determinations be made on a reasonable basis in good faith or that it be shown that such action is reasonably necessary for your protection.



9. We express no opinion as to the Company's or this transaction's compliance or noncompliance with applicable Proceeds of Crime and Corruption Prevention Act and other applicable anti-corruption statutes and regulations thereunder.

10. We express no opinion concerning the past, present, or future fair market value of any securities.

11. We express no opinion as to the enforceability under certain circumstances of any provisions indemnifying a party against, or requiring contributions toward, that party's liability for its own wrongful or negligent acts, or where indemnification or contribution is contrary to public policy or prohibited by law.

12. We express no opinion as to the enforceability under certain circumstances of any provisions prohibiting waivers of any terms of the Transaction Agreements other than in writing, or prohibiting oral modifications thereof or modification by course of dealing. In addition, our opinions are subject to the effect of judicial decisions, which may permit the introduction of extrinsic evidence to interpret the terms of written contracts such as the Transaction Agreements.

13. We express no opinion as to the effect of any applicable statute or case law or equitable principle which provides that a court may refuse to enforce, or may limit the application of, a contract or any clause thereof which the court finds to have been unconscionable at the time it was made or contrary to public policy.

14. Our opinions in paragraphs 4 and 5 are limited to laws and regulations normally applicable to transactions of the type contemplated in the Transaction Agreements and do not extend to licenses, permits and approvals necessary for the conduct of the Company's business. In addition and without limiting the generality of the previous sentence, we express no opinion herein with respect to the effect of any land use, safety, hazardous material, environmental or similar law, or any local or regional law. Further, we express no opinion as to the effect of or compliance with any laws or regulations applicable to the transactions contemplated by the Transaction Agreements because of the nature of the business of any party thereto other than the Company. Also, we express no opinion with respect to any patent, copyright, trademark or other intellectual property matter, or as to the statutes, regulations, treaties or common laws of any nation, state or jurisdiction with regard thereto.

15. In connection with our opinion in paragraph 4 relating to the agreements listed on [the Schedule of Exceptions], we have not reviewed, and express no opinion on, (i) financial covenants or similar provisions requiring financial calculations or determinations to ascertain whether there is any such conflict or (ii)

provisions relating to the occurrence of a "material adverse event" or words of similar import. In addition, our opinion relating to the agreements listed on [the Schedule of Exceptions] is subject to the effect of judicial decisions which may permit the introduction of extrinsic evidence to interpret the terms of written contracts or allow non-written modifications of written contracts. Moreover, to the extent that any of the agreements listed on [the Schedule of Exceptions] are governed by the laws of any jurisdiction other than Jamaica our opinion relating to those agreements is based solely upon the plain meaning of their language without regard to interpretation or construction that might be indicated by the laws governing those agreements.

16. We express no opinion as to your compliance with any foreign law relating to your legal or regulatory status or the nature of your business.

17. We express no opinion as to the effect that further issuances of shares to the extent that notwithstanding its reservation of shares the Company may issue so many ordinary shares that there are not enough remaining authorized but unissued ordinary for the conversion of the Series \_\_\_ Preferred Stock (or may issue securities which by antidilution adjustment so reduce the Conversion Price (as such term is defined in the Company's Restated [Articles of Association or By-Laws the Series \_\_\_ Preferred Shares and/or other Company derivative securities that the outstanding shares of the Series \_\_\_ Preferred Stock become convertible for more ordinary shares than remain authorized but unissued).

18. Our opinions with regard to each respective Transaction Agreement do not extend to other agreements or instruments (or forms of agreements or instruments) which may be attached thereto as exhibits.

19. This opinion letter is rendered as of the date first written above solely for your benefit in connection with the Share Purchase Agreement and may not be delivered to, quoted or relied upon by any person other than you, or for any other purpose, without our prior written consent. Our opinion is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company. We assume no obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinions expressed herein.

Very truly yours,

---

[FIRM NAME]

**Appendix XII**

**Form of Non Disclosure Agreement and Confidentiality Agreement**

**Appendix XIII**  
**TBC - Form of Observer Agreements**

**Appendix XIV**

**TBC - Investor Guidelines & Restrictions/ Financing Plans**

**Appendix XV**  
**TBC - Form of Fund Management Agreement**

**Appendix XVI**  
**CONVERTIBLE DEBENTURE**

This Convertible Debenture (the "Agreement") is effective [DATE],

BETWEEN: [COMPANY NAME] (the "Company"), a company organized and existing under the laws of Jamaica, with its registered office located at:

[ COMPLETE ADDRESS]

AND: [DEBENTURE HOLDER NAME] (the "Debenture Holder"), a company organized and existing under the laws of [Country/State/Province] of], with its registered office located at:

[COMPLETE ADDRESS]

No. [IDENTIFYING NUMBER]

1. PROMISE TO PAY

1.1. [COMPANY NAME] (hereinafter called the "Company"), for value received, promises to pay upon presentation of this Debenture to the registered holder hereof or his / her registered assigns, at [FULL ADDRESS], [STATE/PROVINCE], or at any other address in [COUNTRY] indicated by the registered holder hereof:

1.1.1. The principal sum of [AMOUNT] in lawful money of [COUNTRY] (the “Principal”);

1.1.2. Interest thereon from the date of this Debenture, both before and after default, in like money, at the rate of [PERCENTAGE %] percent per annum, calculated and compounded annually and not in advance, and payable quarterly in advance by the delivery of [NUMBER] post-dated checks at the beginning of each fiscal year of the Company, with interest on all overdue amounts of Principal or interest, calculated and compounded [daily at the same rate, from the date that the such amount of Principal or interest becomes due to the actual date of payment];

## 2. REDEMPTION OF THE DEBENTURE

2.1. The Company may redeem the Debenture at any time after the [NUMBER] anniversary of the date of its issuance upon the following terms and conditions:

2.1.1. The Company must advise the debenture holder in writing not less than [NUMBER] days prior to the date of redemption of its intention to exercise its redemption rights;

2.1.2. The redemption may be effected only for an amount at least equal to the Principal plus a compounded annual rate of return of [PERCENTAGE] percent calculated over the said [NUMBER] year period, which compounded rate of return shall take into account all interest pursuant to subsection 1.1.2;

2.1.3. This Debenture may not be redeemed unless and until the Company shall have paid to the debenture holder in full all amounts of accrued interest in addition to the redemption price contemplated in subsection 2.1.2.

2.2. The debenture holder shall have the right to demand the redemption or conversion of the present Debenture at any time in the event of a default pursuant to Section 6 hereof, in which event the



redemption price shall be equal to the sum of all accrued but unpaid interest plus an amount equal to the amount set out at subsection 2.1.2 hereof.

### 3. CONVERSION OF THE DEBENTURE

3.1. At any time during the period between the date of issuance hereof and the [NUMBER] anniversary of such date the debenture holder shall have the option to convert the Principal pursuant to the present Debenture or any part thereof (including all accrued interest and unpaid interest on the unpaid interest) into such number of [SPECIFY CLASS] ordinary shares in the share capital of the Company (or any class of shares issued as a result of the redesignation or reclassification of the [SPECIFY CLASS] ordinary shares, hereinafter the “Shares”) calculated as follows, by tendering at any time during normal business hours the Debenture together with a duly completed conversion notice in the form annexed hereto (“the Conversion Date”).

3.2. The conversion price shall be calculated per share on a fully diluted basis and on the assumption that the fair market value of the Company, immediately prior to the exercise by the debenture holder of its conversion rights, is [AMOUNT] ) (“the Conversion Price”).

3.3. For purposes of this Debenture, the phrase “fully diluted” or “on a fully diluted basis” shall mean, when determining the issued and outstanding ordinary shares of the Company, the aggregate of all issued and outstanding ordinary shares and the number of ordinary shares that would be issued on the full exercise of all options, warrants and other rights of any kind and whether or not contingent, to acquire or be issued from share capital of the Company.

3.4. Once the debenture holder shall have complied with the provisions of Section 3.1, the number of shares to be issued upon the exercise of the conversion right in respect of this Debenture shall be deemed to have been issued and the debenture holder shall be deemed to be registered holder of such shares as of and from the Conversion Date.

3.5. The Company shall immediately after the Conversion Date deliver to the debenture holder following the exercise of its conversion right a certificate for the shares registered in the name of the debenture holder for the number of Shares to which the debenture holder is entitled.

3.6. Should the debenture holder opt to convert the entire amount contemplated in Section 3.1, the delivery pursuant to subsection 3.4 of the certificate for the appropriate number of Shares registered in the debenture holder's name shall constitute the performance of all the obligations of the Company pursuant to this Debenture, such that all amounts due and payable pursuant to this Debenture shall be deemed to have been paid.

3.7. Should the debenture holder opt to convert less than the entire amount contemplated in Section 3.1, then upon the conversion of the present Debenture, the debenture holder shall be entitled to receive a new debenture upon the terms and conditions herein contained for the balance of the Principal not converted.

3.8. In the event that at any time prior to the conversion of this Debenture there shall occur:

3.8.1. an amalgamation, consolidation or other reorganization of the Company, or

3.8.2. any change in the rights, privileges, conditions and restrictions attaching to the shares of the Company then issued and outstanding, (collectively, a "Change") while this Debenture remains issued and outstanding then in whole or in part then such Change shall be effected in such manner that the shareholders of the Company may receive shares or rights bearing the same privileges, characteristics and rights as the shares; and

3.8.3. the debenture holder shall retain its right to convert the Debenture into shares or rights of the same nature and for the same amounts as if the debenture holder had exercised its conversion rights immediately prior to such Change becoming effective;

3.8.4. in the event that the Company should amalgamate with another entity while the Debenture remains issued and outstanding in whole or in part, the Debenture shall be deemed to be the convertible debenture of the resulting entity; and

3.8.5. any conversion pursuant to this Article 3 shall be a conversion into such number of shares of the resulting entity determined by calculating the Conversion Price as set out above immediately prior to the effective date of such amalgamation.

3.9. The Company shall assume and pay all expenses in connection with the issuance of the shares and any legal fees resulting from the conversion of this Debenture.

3.10. The Company undertakes in favor of the debenture holder so long as any conversion right in respect of this Debenture may be exercised to ensure that any and all shares issued upon the conversion of this Debenture shall be duly and validly issued and allotted and shall be fully paid and non-assessable, free of any prior subscription or other rights.

3.11. No fraction of a share shall be issued upon the conversion of this Debenture and the number of Shares to be issued upon such conversion shall be rounded to the nearest full number of shares, with [NUMBER] of a share being rounded up.

3.12. In the event of a default pursuant to Section 6 hereof, the debenture holder shall be entitled to convert the Debenture upon the terms and conditions of Sections 3.3 to 3.10 hereof, which shall apply mutatis mutandis, provided however that in such case the Conversion Price shall be the book value (without giving effect to such conversion) per share of the shares, on a fully diluted basis, based on the last audited annual financial statements of the Company for the fiscal year end immediately preceding the conversion date.

3.13. For purposes of this Debenture, “book value” shall mean the unadjusted book value of the shares of the Company, as determined in the last annual balance sheet of the Company, without deferring R&D or other expenses and without further adjustments other than the following: such Book Value of the Shares shall be adjusted, as required, by the Auditors of the Company, at the expense of the Company, according to the sole valuation of said Auditors, to take into account the purchases or redemptions of shares and dividends declared or accumulated, as the case may be, of the Company, from the date of its last annual balance sheet;

3.14 No adjustment shall be made for the purpose of taking into account any profits, losses or extraordinary items from the date of the last fiscal period up to the date of the event by reason of which the Auditors are required to act hereunder; moreover, no revaluation of the book value of the assets of the Company, from the date of the last balance sheet shall affect the book value of the shares; such valuation for the purposes of adjustments shall be made by the Auditors and their decision is final and binding upon all interested parties.

#### 4. ISSUANCE OF A REPLACEMENT DEBENTURE IN THE EVENT OF LOSS

4.1. In the event of the deterioration, loss, destruction or theft of this Debenture, the Company shall, subject to Section 4.2, issue, sign and deliver a new Debenture bearing the same date, the same Principal amount and the same terms and conditions as the debenture so deteriorated, lost, destroyed or stolen, in exchange for and in replacement of such deteriorated debenture or in cancellation of such lost, destroyed or stolen debenture.

4.2. The debenture holder shall assume the cost of issuance of the replacement debenture and shall also, as a condition to its issuance, provide to the Company proof of the deterioration, loss, destruction or theft of the original debenture which is reasonably acceptable to the Company and the debenture holder may further be required to deliver to the Company, at its option, an indemnity in an amount and a form satisfactory to the Company and to pay the reasonable fees incurred by the Company with respect to such replacement.

## 5. GENERAL UNDERTAKINGS OF THE COMPANY

The Company undertakes in favor of the debenture holder:

5.1. To pay or cause to be paid the Principal when due hereunder;

5.2. To pay or cause to be paid all accrued interest promptly when due hereunder (including in the event of default to do so, all interest on any accrued but unpaid interest) on the date, at the place and in the tender and manner mentioned herein;

5.3. To pay or cause to be paid the annual royalty promptly when due hereunder, including in the event of default to do so, all interest on any accrued but unpaid royalties on the date, at the place and in the tender and manner mentioned herein;

5.4. To maintain its corporate existence at all times while this Debenture remains outstanding in whole or in part; furthermore, throughout such period, the Company shall not move its assets or operations outside the [SPECIFY] area;

5.5. To maintain books of account in conformity with generally accepted accounting principles, but in any case for the purpose of calculating book value for the debenture conversion in case of default without deferring R&D expenses, and to provide to the debenture holder within [NUMBER] days following each fiscal year end of the Company its audited annual financial statements and within [NUMBER] days after the end of each month of its fiscal year its monthly financial statements; and

5.6. Not to do any of the things and not to take any of the decisions mentioned in Schedule A hereto without obtaining the prior written consent of the debenture holder; the debenture holder shall be entitled to exercise its veto rights conferred hereunder within [NUMBER] business days of written notice from the Company to such effect or within [NUMBER] business days of written notice from the Company should same state that the matter is urgent; should the debenture holder fail to respond in writing within the applicable delay, the board of directors may adopt the resolution contemplated by the notice given to the debenture holder pursuant to this Section 5.6.

## 6. DEFAULT AND EXECUTION

6.1. An event of default shall occur if:

6.1.1. the Company shall fail to pay any amount of Principal when due and payable hereunder;

6.1.2. the Company shall fail to pay any amount of interest when due and payable hereunder and such default shall continue for a period of [NUMBER] days following receipt by the Company of notice of such default;

6.1.3. the Company shall fail to pay the royalty when due and payable hereunder and such default shall continue for a period of [NUMBER] days following receipt by the Company of notice of such default;

6.1.4. if a declaration or order of a court having jurisdiction in the premises is entered adjudging the Company as insolvent under the laws of of Jamaica, as amended from time to time, or any other bankruptcy, insolvency or analogous law of Jamaica, or issuing sequestration or process of execution against, or against any substantial part of, the property of the Company or the shares, or appointing a receiver of, or of any substantial part of, the property of the Company, or ordering the winding-up or

liquidation of its affairs, and any such declaration or order is not contested or appealed and continues unchanged and in effect for a period of [NUMBER] days;

6.1.5. if a creditor shall take possession of, register a prior notice of hypothecary right or withdraw authorization to collect claims with respect to the property of the Company or any part thereof which is, in the opinion of the debenture holder, a substantial part thereof, or if a creditor shall take or purport to take possession or to assert a prior claim or lien in respect of any property of the Company, or if a distress or execution or any similar process be levied or enforced there against any of the foregoing and remain unsatisfied for such period as would permit such property or such part thereof to be sold thereunder;

6.1.6. if a resolution is passed or a petition filed for the winding-up or liquidation of the Company or if the Company institutes proceedings under the Companies Act or any other, insolvency or analogous law or is adjudicated insolvent, or consents to (or fails to contest in good faith) the institution of insolvency proceedings against it or makes (or serves notice of intention to make) any proposal under the Bankruptcy or Insolvency law of Jamaica.

6.1.7. or any other, insolvency or analogous law to Jamaica or consents (or fails to contest in good faith) to the filing of any such petition or to the appointment of a receiver of, or of any substantial part of, the property of the Company or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due or takes corporate action in furtherance of any of the aforesaid purposes, or should the Company's financial situation deteriorate to the point of compromising its survival;

6.1.8. if the Company shall fail to maintain the debt/equity and working capital financial ratios set out in Schedule B hereto in respect of any agreement with any creditor, including without limitation the debenture holder;

6.1.9. in the event of any default by the Company pursuant to one or more of (i) the Purchase Agreement, (ii) the Investor Rights Agreement, (iii) any other agreement between, inter alia, the Company and the debenture holder or (iv) any agreement between the Company as debtor and any third party as creditor, which default continues for a period of [NUMBER] days or more following receipt by the Company of notice of such default;

6.1.10. if the Company should fail to maintain its assets and operations within Jamaica;

6.1.11. if the debenture holder shall discover any fraud, false declaration in or falsification of the documents submitted to it by the Company in connection with this investment;

6.1.12. should any circumstance occur or come to the attention of the debenture holder which may, in its opinion, substantially affect in a negative manner the state of affairs, the assets or the financial position of the Company;

6.1.13. should there be any change in the control of the Company's business, the ultimate control of the Company or the nature of its operations, without the prior approval by the debenture holder.

6.2. Subject to Section 6.3, should an event of default occur or persist, the debenture holder may, at its option, by written notice to the Company as provided for in Article [NUMBER] hereof:

6.2.1. demand the redemption of the Debenture and the Company shall thereupon pay without delay to the debenture holder the redemption price contemplated in subsection 2.2 hereof or

6.2.2. demand the conversion of the debenture in accordance with Article [NUMBER] hereof or

6.2.3. demand that security satisfactory to the debenture holder be provided in respect of the assets of the Company. Once made, the payment provided for in subsection 6.2.1 shall be deemed to liberate the Company from its obligations pursuant hereto such that all amounts due pursuant to this Debenture shall be deemed to have been paid.

6.3. Should an event of default occur, the debenture holder may, at its option, exercise its rights by any act, proceeding, recourse or procedure authorized or permitted by law and may file its proof and any other documents necessary or desirable so that the request of the debenture holder may be considered in any liquidation or other proceeding with respect to the Company.

6.4. No recourse by the debenture holder shall be subject to the exercise of any other recourse and all recourses may be exercised independently or together.

6.5. The delay or omission of the Company to exercise any recourse mentioned above shall not invalidate any such recourse nor be interpreted as a waiver of any default hereunder.

## 7. CHANGE OF CONTROL OF THE COMPANY

7.1. For the purposes hereof, “change of control” shall mean any transaction or group of transactions by one or more shareholders having the effect of permitting, after the date hereof, any person other than the existing shareholders to claim [PERCENTAGE %] percent or more of the issued and outstanding voting shares in the share capital of the Company at the time of such change of control or of the transaction intended to give effect thereto.

7.2. As soon as possible following any offer of sale, purchase, exchange or redemption which would result in a change of control, the Secretary of the Company shall advise in writing the debenture holder that such an offer has been made and shall attach a copy of the offer to such notice together with all such other documents as the Secretary or the Company, in their discretion, may consider necessary or useful in order to permit the debenture holder to exercise its rights hereunder.

7.3. Subject to this Article [NUMBER], if an offer of sale, purchase, exchange or redemption which would result in a change of control is made, the debenture holder may, in its absolute discretion, by written notice to the Company in the manner contemplated in Article [NUMBER] hereof, demand the redemption of the Debenture and the Company shall thereupon without delay pay to the debenture holder the redemption price provided for in section 2.2.

## 8. RANKING

The present Debenture shall be subordinate to all secured, guaranteed and preferred indebtedness of the Company.

## 9. NOTICE

Other than in the case of a general disruption or interruption in postal services provided for below, all notices to be given hereunder shall be deemed to be validly given to the holders thereof if sent by telecopier or by ordinary mail, postage prepaid, by letter or circular addressed to such party at its post office address and shall be deemed to have been received at the time effectively received if given by



telecopier, and on the [NUMBER] business day of uninterrupted postal service following the day of mailing or at the time of actual delivery, if delivered.

9.1. If to the Company:

[COMPANY NAME]

[FULL ADDRESS]

Telecopier: [FAX NUMBER]

with a courtesy copy to:

[INDIVIDUAL NAME]

[COMPANY NAME]

[FULL ADDRESS]

Telecopier: [FAX NUMBER]

9.2. If to the debenture holder:

Telecopier:

with a courtesy copy to:

[INDIVIDUAL NAME]

[FULL ADDRESS]

Attention: [INDIVIDUAL NAME]

Telecopier: [FAX NUMBER]

The Company or the debenture holder, as the case may be, may from time to time notify the other in accordance with the provisions hereof, of any change of address, which thereafter, until changed by like notice, shall be its address for all purposes of this Agreement. In the event of actual or threatened postal interruption, notice shall be made by delivery or telecopy. Receipt of a courtesy copy of any notice or other communication shall not be a condition to the effectiveness thereof.

10. ASSIGNMENT OF DEBENTURE

The present Debenture is assignable in accordance with and under the circumstances permitted by the Investor Rights Agreement between, inter alia, the Company, the debenture holder and the other shareholders of the Company.

11. INTERPRETATION

The division of this Debenture into articles and the insertion of titles shall not serve other than for purpose of consultation and shall have no effect on the interpretation hereof.

12. GOVERNING LAW

This debenture and all documents ancillary hereto shall be governed by and interpreted in accordance with the Laws of Jamaica, without regard to any Jamaica conflicts of law principles applicable therein. Each of the parties hereto irrevocably agrees to the non-exclusive jurisdiction of the courts of the Jamaica.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [place of execution] on the date indicated above.

COMPANY

DEBENTURE HOLDER

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

#### FORM OF TRANSFER

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

(PLEASE PRINT NAME AND ADDRESS OF TRANSFEREE)

The present Debenture (or [AMOUNT] of the aggregate of the Principal thereof together with all amounts of interest thereon and all other amounts payable in respect thereof, and hereby irrevocably constitutes and appoints attorney to transfer the said Debentures on the register for the [Convertible Debentures of the within mentioned Company, with full power of substitution in the premises.

If less than the aggregate of the Principal thereof and all amounts of interest thereunder of the present Debenture is to be transferred, indicate in the space provided the amount of the aggregate of the Principal thereof and all amounts of interest and thereunder to be transferred.

Dated:

#### SIGNATURE OF TRANSFEROR

(The signature of the transferor of the within Debentures authorizing this transfer must be guaranteed by a the Company, or a bank or other financial institution licensed carry on business in Jamaica or a notary public).

## FORM OF CONVERSION NOTICE

TO: [COMPANY NAME]

The undersigned, registered holder of the within Debentures, hereby irrevocably elects to convert the present Debenture (or [AMOUNT] of the aggregate of the Principal thereof and all amounts of interest thereunder) for [SPECIFY] ordinary shares of Company in accordance with the terms and conditions of the present Debenture and directs that the [SPECIFY] common shares of Company transferable and to be delivered upon exchange be transferred and delivered to the person indicated below. (If [SPECIFY] ordinary shares of Company are to be transferred to a person other than the holder, all requisite transfer taxes must be tendered by the undersigned).

If less than the aggregate of the Principal of and all amounts of interest under the present Debenture is to be exchanged, indicate in the space provided the amount of the aggregate of the Principal thereof and all amounts of interest thereunder to be exchanged.

Dated: [DATE]

### SIGNATURE OF REGISTERED HOLDER

(If [SPECIFY] ordinary shares of Company are to be transferred to a person other than the registered holder, a form of transfer substantially in the form of the above Form of Transfer must be completed and the registered holder's signature must be guaranteed by a bank or other financial institution licensed carry on business in Jamaica or a notary public).

Name:

(Print name in which [SPECIFY] ordinary shares of Company transferable upon conversion are to be transferred, delivered and registered)

(ADDRESS)

(AND POSTAL CODE)

### SCHEDULE A

### DECISIONS REQUIRING CONSENT OF DEBENTURE HOLDER

1. Filing articles of amendment or of continuance into another jurisdiction in respect of, or repealing or amending the by-laws of, the Company or any subsidiary .
2. Making any change to the rights, restrictions, conditions or privileges attaching to the shares of, or to the authorized or issued share capital of, or to any share option plan of, the Company or any subsidiary, or issuing or redeeming shares, warrants, options, conversion rights or any other equity securities of the Company or any Subsidiary.
3. Approving the operating budgets, capital expenditures budgets and research and development budgets of the Company and its subsidiaries; or changing the auditors of the Company or any s.
4. Creating any subsidiary of the Company or of its subsidiary, whether wholly or partially owned, or selling, transferring, redeeming or converting Shares, warrants, options, conversion rights or any other equity securities of any subsidiary of the Company, or agreeing to purchase or acquire shares in the capital of any body corporate or all or any substantial part of the assets of another person, firm, Company or partnership.
5. Declaring dividends on shares of any class of the Company or any subsidiary.
6. Taking any action to wind-up, dissolve or terminate the corporate existence of the Company or any subsidiary or taking any action which may lead to or result in a material change in the business of the Company or any subsidiary .
7. Entering into any agreement for the purchase or sale of any asset other than in the ordinary course of the business of the Company or if provided for in the annual budgets of the Company or any subsidiary once approved by the Debenture Holder.
8. The sale, lease, exchange or disposition by the Company or any subsidiary of its entire undertaking, property or assets or any substantial part thereof.
9. Entering into an amalgamation, merger or consolidation, joint venture or partnership with any other Person.

10. Except in the ordinary course of its business to arm's length third parties, directly or indirectly making loans or advances to or investments in, or giving security for or guaranteeing the debts and obligations of, any other Person; or, entering into any transaction or contract between the Company or any subsidiary and any Person with whom the Company does not deal at arm's length or the control (as such term is defined in the Banking Act of Jamaica) of which is held, directly or indirectly, by an officer or employee of the Company or any subsidiary .
11. Any purchase or disposition of fixed assets or any loan, borrowing or other financial undertaking of or by the Company or any subsidiary in excess, in each case, of [AMOUNT] per event or per fiscal year, except if provided for in the annual budgets of the Company once approved by the Debenture Holder.
12. Any public offering of any of the securities of the Company or any subsidiary .
13. Any purchase, sale, encumbering or licensing by the Company or any subsidiary of any technology, patents, know-how, trade marks or industrial designs.
14. Settling any legal proceeding instituted by or against the Company or any subsidiary.
15. Increasing the base remuneration of any director or officer of the Company or its subsidiary who, directly or indirectly, owns and controls shares in the share capital of the Company or any subsidiary , by more than the latest annual increase of the consumer price index.
16. Approving the hiring or dismissal of any member of the Key Management Personnel of the Company ("Key Management Personnel" means any individual occupying any position with the Company which is higher than or at the same level as department manager or business unit manager).
17. Approving or granting bonuses or similar incentives to employees and advances to shareholders.
18. Permitting any employee of the Company or any consultant hired by the Company to publish any scientific article related to the activities of the Company or to participate in any interview having as its subject any proprietary technology developed by the Company.
19. Any change in the bankers of the Company or the signing authority in respect of such bankers.

20. Any relocation of the Company's operations or assets outside Jamaica.

21. Any change in the project for which the present investment was made, as described in the financing letter dated [DATE] addressed by [SPECIFY] to the Company and accepted by it on [DATE] and as amended by [SPECIFY] letter dated [DATE] to the Company, including without limitation any abandonment in whole or in part thereof.

## SCHEDULE B

### DEBT / EQUITY RATIOS

The Company shall maintain the following ratios:

1. A working capital ratio equal to or greater than [SPECIFY];
2. A ratio of total debt to net worth (net worth being defined as total shareholders' equity and advances subordinated to the Bank less advances to directors and affiliated companies less intangible assets) (including grants and the debentures issued to the Investors) of less than [SPECIFY]; and
3. A ratio of deferred expenses with respect to retained earnings equal to or less than [SPECIFY].