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

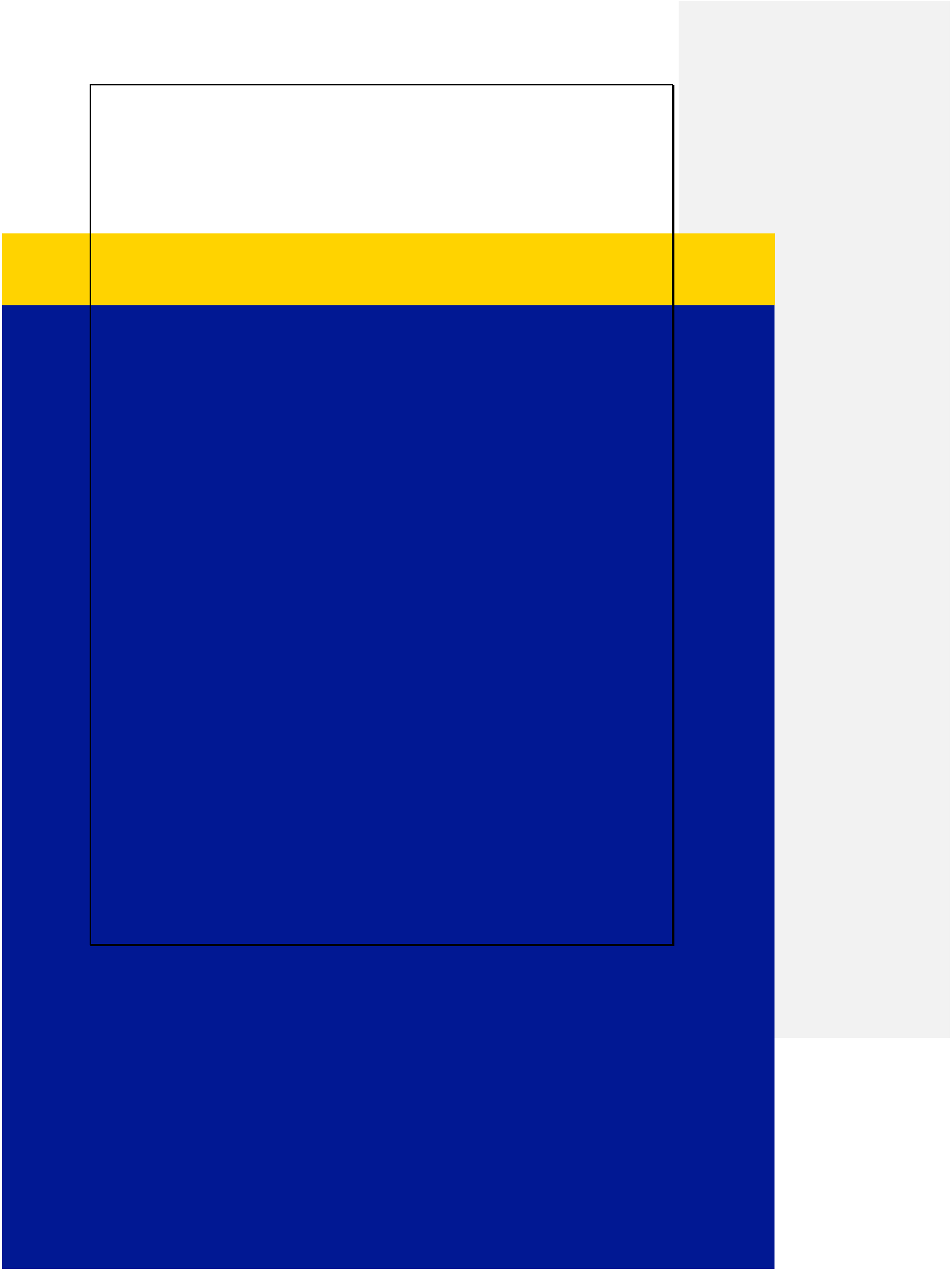
Final Report

Best Practice Guidelines

& Templates for JVCP Tool Kit

December 18, 2014

LEYSMITH ATTORNEYS-AT-LAW



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Final Report

Project No. ATN/CF-12160-RG, RG-X1044; RG-CC2066

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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

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Executive Summary

This assignment commenced with a kick-off meeting on April 9th 2014, between the Project Manager for the JVCP, 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. With expected completion date of September 30, 2014, the Consultant's Inception Report was submitted and approved in July 2014. The First Report was delivered on September 11th and was reviewed with the JVCP and the Bank. Revisions based on the review have now been submitted. This Final Report contains the deliverables for the First and Second Reports which comprise all results required by 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.

In fulfilment of the requirements, the Consultants collected relevant background documentation, conducted 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 agreed to the foregoing assessments of the prospects for the evolving Jamaica Venture Capital and Private Equity industry. The best practice guidelines and principles, which are applicable to the Jamaican context, are provided in this Report.

We have found that 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 main Gaps were identified by Patricia

Freitas in the September 2013 market Report[1] on Creating a Venture Capital Ecosystem in Jamaica, include:

- Need for improved understanding of the asset class
- No data available on venture capital and private equity
- Need to improve industry data on companies. In fact as we attempted to complete a matrix of Stakeholder Needs, the absence of industry data on companies proved an impediment to any useful assessment in this regard.
- There is no local pension fund which invests in venture capital and private equity
- There are not yet any established local venture fund managers. The recent call of the DBJ for Fund Managers will hopefully stage a bend in this gap.
- Absence of local venture capital funds – currently there are no funds operating in Jamaica. Previous experience via the Trafalgar Development Fund as well as the Caribbean Investment Fund[2] which was operated as a Limited Liability partnership by Caribbean Equity Partners will prove useful for any emerging fund. In the case of the latter fund, the CIF in its 5 year investment phase utilized buyouts and venture capital to acquire equity in companies[3].
- Need for a network of angel investors. The first such network was recently established in early September 2014.
- Absence of diaspora connection into the local venture capital efforts

[1] See *Creating a Venture Capital Ecosystem in Jamaica- Strategic and Implementation Plan.* Freitas for the Development Bank of Jamaica DBJ, Kingston September 2013.

[2] The Caribbean Investment Fund (CIF) was agreed on in 1993 by Caricom governments to pump at last US$50million of equity into businesses and projects throughout the region over a 10year-span. The CIF was conceptualized as a series of investment funds. Performance was less than desired. Assets were sold off in 2008 – at which time the fund had only realized US$17.7million which it investments. CIF was managed by Caribbean Equity Partner, a company under contract to ICWI. Capital for CIF was put up by nine entities – led by the MIF (investment arm of the IDB) which provided just over 21%; European Investment Bank (EIB) with 20%, the Inter-American Investment Corporation (IIC), Caribbean Development Bank (CDB), Delta Airlines and AIC Limited, a mutual fund company.

[3] Only a small percentage of the CIF funds went into venture capital and this did not work well. Plans for CIF to help raise equity for companies by taking them public also fizzled and this failure was blamed on the constraint of the small size of enterprises. At the time, management felt that Caribbean capital markets are too small and illiquid and most companies do not contemplate going public.

- Need to build experience in developing the venture capital industry in Jamaica
- Need for improved and deliberate focus on innovation
- Lack of professional financial management of companies
- Need for coordination of the many independent initiatives which promote new companies
- Need for deliberate improvement in corporate governance of companies
- Start-up companies have limited access to service providers and adequate support.

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. Further in this Report, we provide clear simple descriptions to guide the use and application of the documents drafted so as to bolster the relevance and utility of the VC Tool Kit.

Between the Inception Report and this Final Report, the Consultants completed the following main tasks:

- Complete List of relevant international organization data;
- Outline Matrix of Stakeholder needs/isolate Gaps;
- Compared/Assessed applicability 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); These Documents were presented in the First Report on September 11, 2014.
- Reviewed and revised documents prepared and reports with the JVCP and IDB Team feedback between September and October, 2014.
- Further revisions have been conducted during November and December 2014.

Due to the delays occasioned during review of the Inception Report, the Bank kindly extended the completion of this project to October 31st, 2014, then November 30, 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. The latter are now provided in this Final Report and are also separately contained in the First Report.

You will find appended to this Report, revised drafts of the standardized documents submitted in September 2014, including agreements, forms of documents and provisions/principles to govern the relationships between the various parties. These are the documents, 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 as well as regulators.

Background

This Report (primarily comprising the Best Practice Guidelines and standardized documents in Appendices I – XVIII) 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 have completed the main tasks of the assignment. The preceding work under the Programme, we discovered, has already provided a map of stakeholders, as well as confirmed the components of the Jamaica VC market,

organizational assesssments and stakeholder perspectives on the mandate of the Jamaica VC Programme.

We also found that a clear foundation for this assignment was provided by the work which 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 are therefore properly 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 is 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 Jamaica VC Programme 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 confirm 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.

Various international organizations 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 Best Practice Guidelines prepared by the Consultants are developed around these three governing principles.

The Consultants agree with the position iterated in the Terms of Reference that these guidelines may not be prescriptive as each agreement/transaction will no doubt 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 (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 handling the administrative matters related to the assignment.

Prioritisation:

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

- Drafting and Preparation of Templates, legal documents and guidelines appropriate to Jamaica.
- Preparation of Best Practice Guidelines – collation of materials from international organizations and analyzed for applicability to the Jamaica VC framework
- Completed assessment of the Jamaica VC environment and framework
- Developed an understanding of Stakeholder Needs
- Completed Comparative Analysis of international best practice and standardized documents etc. utilized in established VC environments and emerging markets.

Primary Research. The Consultants completed legal research and review of international best practice in the VC and PE markets; as well as a review of the Jamaica VC framework. Gaps were identified in so far as they would potentially impact on the utility of the documents developed under this assignment. Finally a list of international organizations data was prepared.

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 and emerging VC environments.

Drafting & Document Preparation

The first draft of documents utilised in the VC process are complete and have been included in the Annex to this Report. Further revisions based on feedback from the Bank and DBJ JVCP will be completed as needed to refine the templates, agreements, standard form letters and guidelines. Other documents may 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 and are have been submitted for approval having been reviewed and revised following from consultation with the Consultants, the Bank and the JVCP Project Manager:

- Letter of Intent for equity-based financing (Also Term Sheet)
- Due Diligence Request List (Checklist and Full Form of Request are provided)
- Certificate of Incorporation of a VC
- The Subscription Agreement (or Purchase Agreement)
- Shareholder's Agreement/Investor Rights Agreement
- Right of First Refusal and Co-Sale Agreement[4]
- Warrants (if applicable and Form of warrants)[5]
- Promissory Notes[6]; Quasi-Equity or Convertible Notes/Form of Debt Agreement[7]

[4] 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.

[5] Supra.

[6] This has been included in the Tool Kit in contemplation of scenarios where the target is near insolvent and VC wishes to obtain downside protection or the 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.

[7] This form of debt instrument is included in the Tool Kit in view of the existing regulatory regime which prohibits companies from taking deposits of cash without having a licence so to do. This Convertible Note/Debt agreement is

- Founders' Agreement[8]
- Form of Confidential Information and Invention Assignment Agreement
- Legal Opinion
- Non Disclosure and Confidentiality Agreement[9]
- Board Observer Agreements
- Investor Guidelines & Restrictions
- Investment Management Agreement
- Limited Partnership Agreement
- Fund Management Agreement

It is our view that consultations amongst stakeholders and prospective users 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.

This Final Report contains the results of all the activities undertaken as part of the assignment .

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therefore provided in anticipation of scenarios where an investee is in need of **quick capital injection** and the Investor is hereby able to invest in such a company/venture without breaching regulatory restraints on deposit taking institutions, which are regulated by the FSC.

[8] Usually a company is started by someone who will be the person who is the majority shareholder (the brain behind the business) in an investee company. This is the person who would most often remain in position as an employee/Founder and the relationship between the Investor and the Founder is therefore governed by the Founder's Agreement.

[9] Although usually forming part of the Limited Partnership Agreement, these are in the local scenario often proposed as stand-alone agreements.

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[10] proposes an Act structured to cover the following areas:

1. Preliminary

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

2. Registration of Venture Capital Companies
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

PART I

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

The legislation governing and/or considered relevant to the regulation of activities within 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 2004
- The Copyright Act, 1993 and suite of Intellectual Property Legislation including
- The Designs Act 1890
- The Jamaica Intellectual Property Act 2001
- The Merchandise Marks Act, 1888
- The Patent Act, 1857(amendments pending)
- Protection of Geographical Indications Act
- The Trade Marks Act, 2001
- The Layout Designs – (Topographies) Act
- The Income Tax Act, 1955
- The Employees Share Ownership Plan Act, 1995
- Securities (Mutual Fund) Act, 1993 and Regulations
- Securities Act, 1993
- 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, 2001
- The Financial Services Commission Act, 2001 & Regulations
- The Money Lending Act
- The Unit Trusts Act, 1971
- The Proceeds of Crime Act, 2007
- *The Money Laundering Act, 1998 – (now replaced by the Proceeds of Crime Act)
- The Arbitration Act, 1900
- The Bankruptcy and Insolvency Act, 2014
- The Omnibus Tax Incentives Legislation, 2013
- The Jamaica Stock Exchange Rules; also Rule Amendments as promulgated
- The Bank of Jamaica Act, 1960
- The Banking Act, 1992

- The Bankruptcy and Insolvency Act 2014
- The Charities Act 2013
- The Jamaica Deposit Insurance Act, 1998
- The Fair Competition Act, 1993
- Financial Investigations Division Act, 2010
- General Consumption Tax Act, 1991
- Consumer Protection Act, 2005
- Conveyancing Act, 1889
- Corruption Prevention Act, 2001
- Pensions Act, 1947
- Credit Reporting Act, 2010
- Debenture Registration Act, 1887
- Debtors Act, 1872
- Government Securities (Confirmation of Undertakings) Act, 1962
- Industrial Incentives Act, 1956
- The Arbitration Act
- The Arbitration (Recognition of Enforcement) Act, 2001
- Interpretation Act, 1968
- Jamaica Export Free Zones Act, 1982
- Jamaica international Financial Services Authority Act, 2011
- Jamaica Central Securities Depository Rules
- Loans to Small Business Act, 1956

Assessment of Local VC Infrastructure/environment

Below we outline some local considerations which will have implications on the adoption in Jamaica 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

Outlined below are some issues we have ascertained from initial consultations[11] as to why VC Funds have not yet been successful in the Caribbean from the experience of fund managers. They include:

1. The lack of an organized and efficient capital market[12] in the Caribbean is a hindrance to effective venture capital 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 has been 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. To an extent, the absence of the patience to ride the waves of private equity business, has frustrated several VC efforts in the region in the past.

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

[11] 1st Interview conducted with Mr. Peter Blackman, Act. Director, Private Sector Development Unit, Caribbean Development Bank and 2nd Interview conducted with Douglas Hewson of AIC Caribbean Fund, Portland Caribbean Fund II; also Managing Partner, Portland Private Equity Ltd.

[12] Ibid, 2 and 3. See also our earlier comments related to the under-performance of the Caribbean Investment Fund

Some International PE & VC Organizations

The following are some international organizations which are concerned with the promotion of private equity and venture capital industry best practice in different regions worldwide. Further brief notes are provided on a wider number of organizations in Appendix to this Report.

AMEXCAP (Mexican Association of Private Equity & Venture Capital Funds).

AMEXCAP is an independent industry association which monitors the activity of Mexican private equity industry and updates its members with information about executed transactions and fundraising. AMEXCAP also makes available several statistics related to the industry.

BVCA (The British Private Equity & Venture Capital Association)

The British Private Equity & Venture Capital Association (BVCA) is the industry body and public policy advocate for the private equity and venture capital industry in the UK. They advance the case for private equity and venture capital as the engine room of entrepreneurship and economic growth. As members support growing businesses, the BVCA supports the collective impact of the members' investment by demonstrating its value to Government, the media and society at large. More than 500 firms make up the BVCA membership The BVCA represents 230 private equity, midmarket and venture capital firms with an accumulated total of over $200 billion funds under management; as well as nearly 300 professional advisory firms, including legal, accounting, regulatory and tax advisers, corporate financiers, due diligence professionals, environmental advisers, transaction services providers, and placement agents. Additional members include international investors and funds-of funds, secondary purchasers, academics and fellow national private equity and venture capital associations globally.

Members and the wider industry community are provided with a comprehensive portfolio of services and best practice standards including leading professional development courses, research, networking opportunities, proprietary publications and topical conferences, all designed to ensure members and their teams have access to the broad range of skills and tools required to drive their firms and the industry forward. See www.bvca.co.uk ; +44 (0)20 7420 1800

CVCA (Canada's Venture Capital & Private Equity Association)

The CVCA – Canada's Venture Capital & Private Equity Association, was founded in 1974 and is the sole national representative of Canada's venture capital and private equity industry. Its over 1800 members are firms and organizations which manage the majority of Canada's pools of capital designated to be committed to venture capital and private equity investments.

CVCA members' collectively manage over $85 billion. CVCA's members actively collaborate to increase the flow of capital into the industry and expand the range of profitable investment opportunities. This is accomplished by the CVCA undertaking a wide variety of initiatives, ranging from developing comprehensive performance and valuation statistics, education and networking activities to promoting the industry's interests with governments and regulatory agencies. See www.cvca.ca

EMPEA (Emerging Markets Private Equity Association)

The Emerging Markets Private Equity Association (EMPEA) is an independent, global membership association whose mission is to catalyze private equity and venture capital investment in emerging markets around the world. With access to an unparalleled global network, EMPEA provides its members a competitive edge for raising funds, making good investments and managing exits to achieve superior returns. At 2012, there were over 300+ member firms, representing nearly 60 countries and more than US$1 trillion in assets under management, include the leading institutional investors and private equity and venture capital fund managers across developing and developed markets.

EMPEA believes that private equity can provide superior returns to investors while creating significant value for companies, economies and communities in emerging markets. Despite significant differences across emerging market regions, private equity firms face important common challenges and opportunities. EMPEA's global programming addresses these challenges through industry data, research, analysis, conferences, peer-to-peer networking and advocacy. In pursuit of its mission, EMPEA works closely with national and regional venture capital associations, as well as international organizations and local governments. SEE www.empea.org

ILPA (Institutional Limited Partners Association)

The ILPA is a non-profit organization committed to serving limited partner investors in the global private equity industry by providing a forum for: facilitating value-added communication, enhancing education in the asset

class, and promoting research and standards in the private equity industry. Initially founded as an informal networking group, the ILPA is a voluntary association funded by its members. The ILPA membership has grown to include more than

138 member organizations from 10 countries, who in total have assets under management in excess of two trillion U.S. dollars. Members of the ILPA manage more than US$300 billion of private equity capital. The ILPA membership comprises corporate and public pension plans, endowments and foundations, insurance companies and other institutional investors in private equity. The ILPA holds semi-annual meetings for members.

LAVCA (Latin American Private Equity and Venture Capital Association)

The Latin American Private Equity and Venture Capital Association (LAVCA) is comprised of over 150 firms, from leading global investment firms active in the region to local fund managers from Mexico to Argentina. Member firms control assets in excess of $50 billion, directed at capitalizing and growing Latin American businesses. LAVCA plays an active role in the advocacy of sound public policy, and publishes annual ranking of the PE/VC environments of 12 key markets in Latin America.

LAVCA also produces targeted research and proprietary industry data, with nearly 200 firms reporting annual fundraising, exits and investments. In addition, the association's activities include investor education programmes targeting global and Latin American LPs and networking forums in the US, Chile, Peru and Colombia. See www.lavca.org

PART II

Private Equity and Venture Capital –Best Practice Guidelines for the Jamaica Venture Capital Programme (JVCP)

Background

In this section of the report we propose best practice guidelines and principles based on research and in keeping with conclusions from the Programme's assessment of the local VC environment – and as a prescription for development of the VC ecosystem in Jamaica. For the most part, the principles and guidelines proposed have been adopted from best practice guidelines for Private equity and venture capital industries globally .

The Guidelines also comprise adaptation of recommendations from developed and emerging markets as we consider necessary for the Jamaican industry, currently in the nascent stages of its development. These principles apply to the different types of private equity- whether: *Venture Capital*, which comprises

- Seed capital
- Spin out capital
- Start up capital
- Early Stage financing

OR *Development Capital*, which contemplates:

- Expansion/growth capital
- Replacement capital
- Buy out or Buy In

It is argued[13] that demand for Private Equity is seen in a market environment where there is a high level of entrepreneurial activity and innovation as well as private equity credible as investors or buyers. The Infrastructure for the private equity industry in Jamaica has already been significantly addressed by the JVCP Legal, Market and Practical assessments completed under the JVCP by Consultants, prior to this assignment. The conclusions therein are heavily relied on by the Consultants in preparing this report.

[13] See Leamon, Lerner, Garcia Robles' *Study on the Evolving Relationship between LP and GPs*, September 2012, prepared for the Multilateral Investment Fund's Fund Manager meeting.

The legal and fiscal environment as well as broader factors such as the political and economic stability of the country will have significant impact on the Private Equity infrastructure in Jamaica as the industry evolves.

As the Jamaican industry evolves and VC activity increases, it will be important to focus on exit routes for investors – and to encourage options alternative to the stock markets by increasing the presence in market of strategic buyers.

Early practical considerations for the Development Bank of Jamaica as it encourages the development of the ecosystem should also be on the Investment Criteria and Due Diligence:

A. Investment Criteria:

(1) A deliverable deal
(2) Management
(3) Value creation strategy
(4) Operation and financial position of the company
(5) The deal itself

B. Due Diligence must be exercised carefully in respect of :

1. Planning and Managing
2. Management Due Diligence:

- Verification of CVs
- Past performance
- Are objectives congruent
- Team compatibility
- Reference and backgrounds

3. Legal Due Diligence:

- Regulatory environment
- Intellectual Property issues
- Exposure to litigation
- Contractual risks

4. Technology Due Diligence:

- Technological performance
- Competitive technologies

- Obsolescence and renewal
- Intellectual Property ownership

5. Operational Due Diligence:

    - Identify weaknesses
    - Scope for improvements
    - Test depth of management
    - Assess what additional resources are required

6. Financial Due Diligence:

    - Review of projects
    - Accounting and reporting systems
    - Past performance
    - Budgeting
    - Cash generation and working capital
    - Specific issues
    - Informal feedback
    - Control systems
    - Tax compliance
    - Funding position post -transaction

7. Vendor Due Diligence: prepared at the start of the Sale Process in order to speed up the sales process, entice more buyers, identify value leakage and to help to write the Information Memorandum. Note this often does not address key investor issues.
8. Commercial Due Diligence: this is necessary in order to establish the credibility of the revenue projections in the investee company's business plan; providing an objective, impartial assessment of the company's markets and its position in them; testing and evaluating the key strategic drivers in the company's business plan.

    - Choice of advisers
    - Validating the top line
    - Market research
    - Customer referencing

9. Environment and Specialist Due Diligence:

    - Contamination and related issues

- Potential for future liabilities
- Risks and remedies
- Pension provisions
- Insurance

Use of term "Private Equity"

Unless otherwise isolated, the use of the term Private equity is to be considered interchangeable with venture capital in this Report. In a broad sense – private equity is meant to include investments in early stage ventures, management buyouts, management buy ins, infrastructure, mezzanine debt and such similar transactions as well as growth or development capital.

Recommendation – Adoption of Global Best Practice Guidelines

Some of the international organizations upon which we relied to develop these guidelines include:

1. Institutional Limited Partners Association - (ILPA) Private Equity Principles
2. Emerging Markets Private Equity Association (USA), Asia – EMPEA Guidelines – Key elements of legal and tax regimes for the development of Private Equity, 2012
3. National Venture Capital Association (NVCA)[14] Valuation Guidelines
4. International Private Equity and Venture Capital- Valuation Guidelines[15]

The Institutional Limited Partners Association (ILPA) Private Equity Principles, September 2011 have been strongly relied on in determining relevant guidelines for the Jamaican PE and VC industry. These guidelines are considered global best practice and have been adopted by a significant number of international organizations concerned with private equity and venture capital. We have also buttressed these guidelines where applicable with recommendations contained in the study[16] of Josh Lerner and Susan Garcia Robles on the evolving relationship between LPs and GPs – especially as these contain lessons learned from emerging markets.

[14] http://www.nvca.org/index.php?option=com_content&view=article&id=109&Itemid=138
[15] See at http://www.privateequityvaluation.com; consistent with US GAAP and US IRFS
[16] Ibid, MIF 2012

These guidelines are intended to be applicable across the whole range of private equity funds and financial instruments which are held by such funds. Many of the terms of the guidelines iterated here are buttressed by regulatory requirements which govern the financial services sector and the stock exchange in Jamaica (See the Financial Services Commission Regulations and rules as well as the Jamaica Stock Exchange Rules and Rule Amendments promulgated under the Securities Act). To the extent that there may be any conflict found between these guidelines and the local regulatory, legislative requirements or professional standards which apply to the particular stakeholders in the industry, the latter should take precedence.

The primary purpose of the guidelines is to encourage effective relationship and communication between LPs and GPs. It is held as a global industry view that the private equity industry is developed and strengthened where the relationship between LPs and GPs is open, mutually beneficial and the interests of both stakeholders is balanced appropriately.

The primary goal of these guidelines is to facilitate the establishment of a robust private equity industry in Jamaica which operates in support of the long term benefit of **all** its participants and contains some of the key principles that are found throughout global best practice and have served to further a partnership between LPs and GPs.

According to global best practice, the JVCP confirms that three guiding principles form the essence of an effective private equity partnership:

1. Alignment of Interest – of all parties in VC transactions
2. Governance – reflect a refined and effective governance model which features close partnership, tailored financing, shared objectives and motivation and rewards – with the central focus on value to the shareholder.
3. Transparency – to ensure trust, fairness and contribute to effective relationships between LPs and GPs and other stakeholders.

The Best Practice Guidelines

Introduction

One of the tasks completed under this assignment was to identify and review the best practice guidelines, templates and documentation from international organizations and advise how they may be adopted in Jamaica. We have found the ILPA guidelines focused on the LP and GP relationship in the private equity framework to be applicable to Jamaica; and given the fact that there are important lessons being learned in emerging markets in private equity, we have also found it useful to place reliance on the Emerging Markets Private Equity Association (EMPEA) Guidelines. These cover the overarching legal and regulatory environment in which private equity activity takes place. The EMPEA Guidelines are concentrated on the following as desirable features of an environment that encourages growth of private equity and venture capital:

1. Effective, clear and flexible corporate and securities laws;
2. Conformity to international standards of business integrity and anti-corruption;
3. Clear, consistent and internationally competitive taxation;
4. Reliable and consistent approach to dispute resolution and enforcement;
5. Non-discriminatory treatment of cross-border investment;
6. Efficient, transparent and fair regulatory environment;
7. Transparent and reliable rules for expropriation;
8. Stable and fair framework for property rights;
9. Flexibility in insolvency proceedings and fairness for stakeholders;
10. Ability to contract freely, with minimum prescription by statute.

The EMPEA Guidelines are more directly aligned to the broader macro-economic environment and fiscal space within which private equity activity will occur, and for this reason, we recommend their adaptation into the Jamaican framework governing private equity. Care will need to be taken to ensure that as reform continues to the Jamaican tax regime the main principles contained in these Guidelines would remain appropriate. Of interest, we note that each pillar of the EMPEA Guidelines can also be linked to the Pillars of global competitiveness[17], which we consider particularly critical for Jamaica at this time.

[17] see WEF. Global Competitiveness Report 2013, and Michael Porter's Pillars of Competitiveness.

Based on the foregoing reasons, we represent the best practice guidelines in two sections: (1) to deal with the overall PE industry environment; and (2) to deal with the relationships within the private equity/venture capital transactional environment.

It is the intention of the JVCP that the principles iterated in these Guidelines should apply to the overall development of the industry as well as to the partnership agreements and management of funds and inform discussions between each GP and its respective LPs. Notwithstanding, all stakeholders (Including regulators, LPs and GPs alike) will have to work together to develop the relevant rules and understandings as well as agree on the **same set of expectations when entering into partnership**. Such clarity and mutual understanding should go a long way in ensuring an effective relationship at the epicenter of every deal or venture.

It is not the intention of the JVCP that these guidelines are to be applied as the checklist for all partnerships. The Programme accepts that each partnership ought properly to be considered in its own right and in a holistic manner. These guidelines cannot adequately, if at all, prescribe for the range and flexibility of market conditions, especially in the now-evolving private equity industry of Jamaica.

Below in this document, we provide a brief outline of the main governing principles, which we consider applicable to the Jamaican context. We include some overarching discussion of the application of the principles as well as look in closer detail at some specific aspects or points which should be prioritized.

The JVCP Tool Kit of standardized Documents and Templates contains standardized documents and user templates which include provisions that reflect most of these main principles.

Some detail is also provided in the Best Practice Guidelines on:

A. Carry Claw back Best practice Considerations;
B. Financial Reporting (for the GP)
C. LPAC Best Practices.

The JVCP encourages deliberation and discussion of these principles and invites your feedback as we work to develop a vibrant and relevant Private Equity and Venture Capital industry for Jamaica.

Contact us at: JAMAICA VENTURE CAPITAL PROGRAMME, Development Bank of Jamaica Limited, 11A-15 Oxford Road, Kingston 5, Jamaica West Indies:

Telephone: 876 929 4000- Fax: 876 929 6055 Email: mail@dbankjm.com
Website: www.dbankjm.com

A. Private Equity Industry Framework - Guidelines

These are the Best Practice Framework Guidelines which were referred to above. Drawn primarily from the EMPEA Guidelines, they are meant to encourage dialogue and interaction among private equity firms, their investors and regulators in the market.

1. **Effective, clear and flexible corporate and securities laws, with the ability to negotiate rights in capital structures.**

   The corporate and securities laws should be designed to provide liquidity to businesses and their investors, to foster fundraising through public offerings, to encourage local and international listings and to promote the development of the local capital market. The laws should provide for:

   (i) limited liability for investors who provide capital, but do not take an active role in the management of the investment vehicle,
   (ii) ability to flexibly negotiate equity and debt interests in both corporate and partnership structures, - encourage different classes of equity structures and debt interest
   (iii) mandatory disclosure of directors' and officers' conflicts of interest,
   (iv) directors' and officers' fiduciary duties,
   (v) reasonable protections for minority investors, and
   (vi) flexibility with respect to share repurchases, treasury shares and distributions of cash and other assets.

2. **Conformity to international standards of business integrity and anti-corruption.**

   Regulators should demonstrate effective enforcement and support a culture of business integrity, transparency and anti-corruption. In addition the GOJ should maintain adherence to international conventions and buttress national legislation to combat corruption and money laundering,

3. **Clear, consistent and internationally competitive taxation.**

   Private equity is encouraged where there is a tax system that promotes the long-term growth of capital and allow foreign and domestic private

equity investors to pool their capital in an investment vehicle. Key features of such tax systems minimize the risk of onerous treatment of foreign investors, e.g., protection from additional or double taxation at the level of the vehicle or on distributions by the vehicle as well as certainty with respect to the local tax liability. Tax filing obligations in such systems are not unnecessarily onerous and there are minimal delays in refunds of withholding tax where a country agrees not to exercise its taxing right in respect of payments to, or on disposals by, foreign investors.

4. **Reliable and consistent approach to dispute resolution and enforcement.**

   Given that private equity investments often take the form of minority stakes with influence but not control, reliable, consistent, fair and efficient dispute resolution mechanisms are critical, including the recognition and enforcement of arbitral awards and foreign court judgments in accordance with international norms.

5. **Non-discriminatory treatment of cross-border investment.**

   Flows of private equity capital are often international in nature, due to the pooled structure of most vehicles and the need to accommodate investors from multiple jurisdictions. In order to attract robust private equity investment, the Jamaican environment should not be excessively or unnecessarily discriminatory in terms of: foreign ownership of assets (i.e., only as necessary to protect legitimate national interests); investments abroad by domestic investors; fundraising and promotion by foreign private equity managers to institutional and other sophisticated investors within the country. Additionally, such regimes allow for currency convertibility at market-based or dependably managed rates of exchange and movements of currency in and out of the country, and provide for a fair and flexible means of allowing foreign expertise to operate locally.

6. **Efficient, transparent and fair regulatory environment.**

   Private equity tends to thrive in markets where the regulatory regime is clear, efficient, transparent, independent and fair. In such markets, there are minimal restrictions on allocations to private equity as an asset class and regulation of the asset class itself is linked to identifiable policy objectives, such as the encouragement of appropriate standards of behaviour in the financial sector, the maintenance of stable financial

markets, the discouragement of anti-competitive behaviour and other internationally recognized policy objectives.

7. Transparent and reliable rules for expropriation.

As expropriation poses a direct danger to the preservation of capital in an investment, private equity investors require very clear rules around the specific circumstances in which the state is permitted to expropriate private property and the way in which investors must be compensated when such expropriation occurs. Any such laws should be consistent with the country's multilateral and bilateral investment treaty obligations, as well as international norms.

8. Stable and fair framework for property rights.

A stable framework for property rights is pivotal to investment in privately held companies and assets, therefore investors seek a framework that provides: (i) an accessible and easily searchable means of (a) recording title to real property, mortgages, liens and other security interests and (b) obtaining basic information concerning local companies, (ii) a cost-effective means of transferring title to real property and shares in local companies and registering a security interest, and (iii) the protection of intellectual property rights. The recent advances in legislation to provide for establishment of credit bureaus, sharing of information between government departments, protection of secured interests in personal property are some of the ways Jamaica has been setting the stage for improved stability and fairness in the domestic framework for property rights.

9. Flexibility in insolvency proceedings and fairness for stakeholders.

Systems that best protect the interests of all stakeholders feature bankruptcy regimes that provide for:

(i) the appointment of independent administrators in bankruptcy and insolvency proceedings;
(ii) the recognition of the priority of secured creditors and other negotiated preferences and subordination arrangements;,
(iii) a fair means of proposing and approving restructuring initiatives; and

(iv) the ability to challenge pre-insolvency transactions in a manner that accords with international norms.

10. Ability to contract freely, with minimum prescription by statute.

Markets with greater private equity investment afford private equity investors and their investee companies sufficient flexibility to execute their strategies efficiently. Jamaica should therefore encourage a private equity industry and regulatory structures which allow a business and its investors to contract freely, to freely negotiate the terms of loans, bonds, shares and other securities. Success will also be determined by a business and investors freedom to choose foreign law to govern their contracts, so that businesses and their investors also enjoy the freedom to implement transaction structures and instruments that incorporate best available practices for their industry.

B. Governing principles for Relationships between LPs and GPs:

1. ALIGNMENT OF INTEREST

Alignment of interest between LPs and GPs is best achieved when GPs wealth creation is primarily derived from carried interest and returns generated from a substantial equity commitment to the Fund. It is also best achieved where the GPs receive a percentage of profits after LP return requirements are met.
It is agreed in developed and emerging markets alike that where GPs seek to create wealth through excessive management, transaction or other fees and income sources, the alignment of interest between the parties is reduced/weakened.

An ***all contributions plus preferred return back first*** waterfall is best practice. This model allows the (investor) Limited Partner to receive all of their invested capital (capital contributions) plus Preferred returns back once the fund terms comes to an end, before profits are distributed to the GP.
There are various ways in which investment is structure to distribute returns. LPAs contain waterfall terms which allow managers and investors to tailor the timing of distribution of profits to the particular characteristics of the fund or venture. From a time value of money point of view, the option of deferring carried interest until capital contributions and preferred returns are paid, is considered better for investors and worse for managers. So the balancing of interests arises at this stage of structuring.

Where a deal-by-deal waterfall is used, significant carry escrow accounts and/or effective clawback mechanisms can be used to help to ensure that LPs are fully repaid in a timely manner when the GP has received carry it has not earned.
Alignment of interests can be achieved through many different combinations of the elements here or new approaches. Each element must be given consideration when evaluating alignment of interest.

How the Clawback evolved:
In the beginnings of the private equity fund business, the Fund Manager only received distributions of their Promote *after the Limited Partners had received all of their invested capital back*, which would likely not be until the end of the life of the fund (funds are typically 7-10 years in length). Thus, any Promote Payments that were made after the fund was liquidated could be

precisely allocated at that point in time to not exceed the maximum share of fund-level profits for which the General Partners were eligible.
Over time, and at the time[18] when the capital markets were awash in equity capital, strong fund Sponsors with proven high-performance track records[19] successfully negotiated earlier ("front-loaded") distributions of their Promote, so they could be rewarded sooner for big wins that happen earlier in the life of the fund.
The clawback came about to protect the fund's Limited Partners from the possibility of either **a)** the fund not achieving its targeted Preferred Return levels when measured as of the end of the fund due to weak performance and/or losses on transactions that came later in the life of the fund, or **b)** the GP having received, as of the end of the fund, profits totaling more than their contractual ceiling percentage amount.

The clawback works in the following way: as of the end of the fund's life, at which point all investments have been liquidated, the Limited Partners have the right to "claw back" what, at that point in time, can then be calculated and classified as "excess" carried interest distributions made to the General Partners up to the point at which the General Partnership's share of cumulative net fund profits no longer exceeds the nominal ceiling amount to which they were limited. This can be challenging for the General Partners, who have likely spent those promote distributions years ago.
GPs need to be very careful about what they agree to with Limited Partners. GPs might be able to extend the fund's life somewhat to try to ride out a bad market, but it is not to be expected that the Limited Partners would allow the GP to extend the life of the fund indefinitely.

CARRY/WATERFALL

Waterfall Structure

- Global Best practice is to use a standard all-contributions-plus-preferred-return-back-first model.
- Enhance the deal-by-deal model:
    - Return of all realized cost for given investment with continuous make-up of partial impairments and write-offs, and return of all fees and expenses to date (as opposed to pro rata for the exited deal).
    - For purposes of waterfall, all unrealized investments must be valued at lower of cost or fair market value.

[18] Early to mid 2000s., applicable mainly to US and Developed market funds
[19] such as Blackstone Group, New York USA

    - Escrow accounts with significant reserves should be required practice (30% of carry distributions or more) as well as additional reserves to cover potential clawback liabilities.
- The preferred return should be calculated from the day capital is contributed to the point of distribution.

Carried Interest Calculation

- Alignment is improved when carried interest is calculated on the basis of net profits (not gross profits) and on an after-tax basis (i.e. foreign or other taxes imposed on the fund are not treated as distributions to the partners).
- No carry should be taken on current income or recapitalizations until the full amount of invested capital is realized on the investment.

Clawback

- Clawbacks should be created so that when they are required they are fully repaid in a timely manner.
- The clawback period must extend beyond the term of the Fund, including liquidation and any provision for LP giveback of distributions.
- A Brief Note on clawback best practice considerations is provided below as a Guide.

MANAGEMENT FEE AND EXPENSES

Management Fee Structure

- Management fees should be based on reasonable operating expenses and reasonable salaries, as excessive fees tend to create misalignment of interests
- During the formation of a new fund, the GP should provide prospective LPs with a fee model to be used as a guide to analyze and set management fees
- Management fees should take into account the lower levels of expenses generally incident to the formation of a follow-on fund, at the end of the investment period, or if a fund's terms is extended

Expenses

- The management fee should encompass all normal operations of a GP to include, include, at a minimum, overhead, staff compensation, travel, deal sourcing and other general administrative items as well as interactions with LPs.

- The economic arrangement of the GP and its placement agents should be fully disclosed as part of the due diligence materials provided to prospective limited partners. Placement agent fees are often required by law to be expense borne entirely by the GP

TERM OF FUND

- Fund extensions should be permitted in 1 year increments only and be approved by a majority of the LPAC or LPs
- Absent LP consent, the GP must fully liquidate the fund within a one year period following expiration of the fund term

GENERAL PARTNER FEE INCOME OFFSETS

- Transaction, monitoring, directory, advisory, exit fees, and other consideration charged by the GP should accrue to the benefit of the Fund.

GENERAL PARTNER COMMITMENT

- The GP should have a substantial equity interest in the fund, and it should be contributed in cash as opposed to being contributed through the waiver of management fees
- GPs should be restricted from transferring their real or economic interest in the GP in order to ensure continuing alignment with the LPs
- The GPs should not be allowed to co-invest in select underlying deals but rather its whole equity interest shall be via a pooled fund vehicle.

RECOMMENDATIONS FOR GP:

- Carefully choose LPs. Choose LPs who bring more than just money to the table. Especially in Jamaica where the industry is new, Networks and experience are also critical criteria for the LP that is chosen.
- Balance persons with predominantly narrow missions (social interests for example) against the nature of private equity and be careful to note that high net-worth individuals are often not in it for the long term investment that is private equity.
- Provide information to all LPs not just those on the Investment Committee or the LPAC
- Ensure that LPs advice is sought and borne in mind in making decisions.

RECOMMENDATIONS FOR LPs:

- To ensure alignment of interest choose your GPs carefully. Consider at the stage of completing due diligence where there is alignment with your investment strategy. Ask – do you want what the GP provides.
- Trust the GP to perform/fulfill their fiduciary duties.
- As concerns asset allocations, career paths and incentive schemes create and encourage a long-term culture. Adjust measurement and incentive programmes toward this long term appreciation of private equity.
- Ensure that the terms of the Limited Partnership Agreement are fully understood. Negotiate at due diligence stage not after signing agreement.
- Always be prepared for meetings
- Share information as fully as possible.

STANDARD FOR MULTIPLE PRODUCT FIRMS

- Key-persons should devote substantially all their business time to the fund, its predecessors and successors within a defined strategy, and its parallel vehicles. The GPs must not close or act as a general partner for a fund with substantially equivalent investment objectives and policies until after the investment period ends, or the fund is invested, expended, committed, or reserved for investments and expenses
- The GP should not invest in opportunities that are appropriate for the fund through other investment vehicles unless such investment is made on a pro-rata basis under pre-disclosed co-investment agreements established prior to the close of the fund.
- Fees and carried interest generated by the GP of a fund should be directed predominantly to the professional staff responsible for the success of that fund
- Any fees generated by an affiliate of the GP, such as an advisory or in-house consultancy, whether charged to the Fund or an underlying portfolio company, should be reviewed and approved by a majority of the LPAC.

2. GOVERNANCE

For the most part private equity funds are based on long-term, illiquid structures where the GP maintains sole investment discretion. LPs agree to such structures where they have confidence in the group/team of investment professionals and also have a clear understanding of the investment strategy and parameters.

A Limited Partnership Agreement ("LPA") cannot make advance provision for all circumstances and outcomes, LPs must therefore ensure that the appropriate mechanisms are in place to navigate and resolve unforeseen conflicts as well as changes to the investment team or other parameters of the fund. An effective LPAC enables LPs to fulfill their duties defined in the partnership agreement and to provide to the GP as appropriate during the life of the partnership. See Appendix C for further discussion.

TEAM

The investment team is a critical consideration for any investor wishing to make a commitment to a fund. Therefore key man provisions should ensure that any significant change in that team allows LPs to reconsider and reaffirm their decision to commit.

- Automatic suspension of investment period, which will become permanent unless a defined super-majority of LPs in interest vote to re-instate within 180 days, when a key-man event is triggered or for cause (e.g. fraud, material breach of fiduciary duties, material breach of agreement, bad faith, gross negligence, etc.)
- Situations impacting a principal's ability to meet the specified "time and attention" standard should be disclosed to all LPs and discussed with, at a minimum, the LPAC
- LPs should be notified of any changes to personnel and immediately notified when key provisions are tripped
- Changes to key-man provisions should be approved by a majority of the LPAC or LPs.

INVESTMENT STRATEGY

The stated investment strategy is an important dimension that LPs rely on when making a decision to commit to a fund. Most LPs commit to Private Equity funds within the context of a broad portfolio of investments – whether alternative or not- and select each fund for the specific strategy and clue proposition it presents to them. It is critical that the fund' strategy is well defined and consistent:

- Investment purpose clause clearly outlines/defines the investment strategy
- Authority to invest in debt instruments, publicly traded securities and pooled investment vehicles is explicitly included in the agreed strategy for the fund.
- Funds have appropriate limitations on investment and industry concentration. May consider investment pace limitations where and if appropriate.
- Where an LP has articulated an exclusion policy, proscribing the use of its capital in certain sectors and/or jurisdiction(s), the GP should accommodate this policy. Consider increased concentration effects on remaining LPs and transparency of process and policies must be required in the event of a non-ratable allocation

FIDUCIARY DUTY

GPs are usually quite discreet about operating of partnerships. As a result, care must be taken to avoid inclusion of provisions which allow the GP to reduce or escape its fiduciary obligations/duties:

- GPs should present all conflicts to the LPAC for review and seek prior approval for any conflicts and/or interactions or transactions that are not at arm's-length. Consult the LPAC in all cases. A GP should not clear its own conflicts
- Because of the high standard of fiduciary duty which applies to the GP, there should not be provisions that allow for the GP to be exculpated in advance or indemnified for conduct constituting material breach of the partnership agreement, breach of fiduciary duty or other "for-cause" events.
- Most LPs must be able to remove the GP or terminate the fund for cause
- Conditions precedent and other removal mechanisms should be constructed in such a way that LPs are able to act in anticipation of damage to their interests. To the extent that there are mitigating factors, LPs would take these into consideration in evaluating their response of the "for cause" event(s).
- Where an all-partner clawback is appropriate to allow the fund to indemnify the GP; this should be limited to a reasonable proportion of committed capital and in no circumstance should this be more than 25% and is to be limited to a reasonable period – for example – two years following date of distribution.

Independent auditors assist the LP to monitor the GP in respect of the performance of its fiduciary and other duties to the fund. In other instances,

third party support might be necessary. Auditors should be engaged on behalf of the fund and should alert the LPAC to any known conflicts of interest in relation to performing such duties.

- Auditor to present their professional view on valuations and relevant matters to the LPAC on an annual basis.
- Auditor to answer questions at AGM of the fund.
- List of members of LPAC should be made available to auditors in addition to all other usual material/information.
- LPs to be notified of changes in the independent external auditor of the fund
- Auditors to review capital accounts with specific attention to management fees, partnership expenses and carried interest calculations to provide independent verification of distributions to the GP and LP.
- Where the LPAC is looking into important matters regarding the governance of the fund, the LPAC or a reasonable minority of the LPAC may engage independent counsel at the fund's expense.

CHANGES TO THE FUND

Because the Private equity partnership is usually of a long term character, the terms and governance of the fund must be as well defined as possible *ab initio*, but should also have built in flexibility so that they can be adapted to changing circumstances. LPs should have option to suspend or terminate the fund – with of course – the appropriate protections for the interests of the GP.

- Any amendment to the LPA should require first the approval of a majority in interest of the LPs .

- Certain amendments should require a super-majority approval.

- Any amendment that negatively affects the economics of a particular LP should require that LPs consent.
- No fault rights upon two-thirds in interest vote of LPs for:
    - Suspending commitment period
    - Terminating commitment period
- No fault rights upon three-quarters in interest vote of LPs for:
    - Removal of GP
    - Dissolution of fund

RESPONSIBILITIES OF THE LPAC

Throughout the global PE/VC industry the role of the LPAC has been evolving in recent years, primarily in response to:

(1) requirements for increased transparency into the operations of the GP and Fund – especially because these affect the LPs fiduciary duties
(2) increased complexity which is occasioned by involvement with multi-product firms, and
(3) most recently, in developed and developing markets alike, the resultant pressures caused by the financial crisis worldwide.

It is important to note that the LPAC has no formal responsibility in a Private equity or venture capital partnership. Its role and responsibilities would however be defined by the LPA and is usually limited to the following:

- review and approve transactions which pose conflicts of interest – such as cross-fund investments and related party transactions. This would be especially useful for the JVCP given the relatively small size of the market and the industry itself having few players who are in some ways – related parties.
- Review and approve methodology applied for portfolio company valuations (and in some cases, approving the valuations themselves.)
- Any other consent or approval which has been defined in the LPA.

It is recommended globally as best practice that the LPAC should engage with the GP on discussions of partnership operations including, but not limited to the following:

- Auditors
- Compliance
- Allocation of partnership expenses
- Conflicts
- Team developments
- New business initiatives of the firm

Please note however that the LPAC is not to serve as representative or proxy for the broader base of LPs and should not replace frequent, open communications between GPs and all LPs.

Where LPs serve on the LPAC and receive sensitive information – such information must be kept in the strictest confidence and subject to express non-disclosure obligations placed on the LP.

LPAC members should support the GP in sanctioning any LP in breach of such obligation to confidentiality.

The LP that accepts a seat on the LPAC should commit the necessary time and attention to the fund. LPAC members should attend and participate in all meetings of the LPAC, properly prepared and responsibly fulfill their duties.

LPAC members should be able to take into account their own interest in voting on the LPAC and should be appropriately indemnified.

3. TRANSPARENCY

Especially in a new industry and given the perception of low levels of confidence and trust between parties in financial relationships, transparency is a critical aspect of the LP/GP relationship. GPs should provide detailed financial, risk management, operational, portfolio and transactional information regarding fund investments. This assists the LP in fulfilling their fiduciary duties and to act on proposed amendments or consents.

MANAGEMENT AND OTHER FEES

- All fees generated by the GP (whether transaction, monitoring, management, redemption etc.) should be periodically and individually disclosed and classified in each financial report and with each capital call and distribution notice
- All fees charged to the fund or any portfolio company by an affiliate of the GP should also be disclosed and classified in each audited financial report.

CAPITAL CALLS AND DISTRIBUTION NOTICES

- Capital calls and distributions should provide information consistent with Standard Reporting Format (such as ILPA Standardized Reporting Format)
- GP should provide estimates of quarterly projects on capital calls and distributions

DISCLOSURE RELATED TO THE GENERAL PARTNER

The following should be immediately disclosed to LPs upon occurrence:

- Where any legal or regulatory body of any jurisdiction has made an enquiry
- Where there are any material or contingent liabilities arising during the life of the fund
- Where there has been any breach of any of the provisions of the LPA or other fund documents

Other activities relating to changes in the actual or beneficial economic ownership, voting control of the GP.

Activities relating to changes or transfers to legal entities who are a party to any related document of the fund should be disclosed in writing to the LP upon occurrence. These activities may include, but are not limited to:

- Formation of publicly listed vehicles
- Sale of ownership in the management company to other parties
- Public offering of shares in the management
- Formation of other investment vehicles

RISK MANAGEMENT

GP Annual reports should include portfolio company and fund information on material risks and how they are managed. They should include:

- Concentration risk at fund level
- Foreign exchange risk at fund level
- Leverage risk at fund and portfolio company levels
- Realization risk (change in exit environment) at fund and portfolio company levels
- Strategy risk (change in or divergence from investment strategy) at portfolio company level
- Reputation risk at portfolio company level
- Extra-financial risks, including environmental, social and corporate governance risks, at fund and portfolio company levels
- More immediate reporting may be required for material events

FINANCIAL INFORMATION

- Annual Reports:– Funds should provide information consistent with FSC/JSE/JVCP Standardized Reporting for portfolio Companies and Fund information at the end of each year (within 90 days of year-end) to investors.
- Quarterly Reports:- Funds should provide information consistent with the FSC/JSE/JVCP Standardized Reporting for portfolio companies and fund information at the end of each quarter (within 45 days of the end of the quarter) to investors
- Ensure compliance with Jamaica Stock Exchange (JSE) Rules (JSE Rule Amendments)
- Ensure compliance with Finance Services Commission Requirements on information

- Ensure compliance with all other regulatory, professional standards for information sharing/reporting (for example, the OUR licencee information requirements, annual reports)

LIMITED PARTNER INFORMATION

- a list of LPs. Including contact information, excluding (if or to the extent allowed by the FSC, JSE and other regulation in Jamaica) those LPs that specifically request to be excluded from the list
- Closing documents for the Fund, including the final version of the partnership agreement and side letters
- LPs receiving sensitive information described above must keep such information confidential. Agreements should clearly state that LPs may discuss the fund and its activities amongst themselves. LPs should support the General Partner in taking appropriate sanctions against any LP that breaches this confidentiality.

NOTE ON CARRY CLAWBACK BEST PRACTICE CONSIDERATIONS

Below are some of the fundamental considerations developed by the ILPA to ensure best practice in Clawback situations.

These are considered necessary guidance due to the fact that, although rarely used, carry clawback situations do significantly challenge the GP-LP relationship. Where clawback occurs the prospects for alignment of interest is lessened. Below are some "building blocks" which the ILPA suggest should form part of the Fund's best practice.

1. **Seek to avoid Clawback** by minimizing excess carry distributions: Apply/implement capital back waterfalls; Where deal-by-deal carry is the selected vehicle, use the NAV coverage test to ensure sufficient margin of error on valuations; or instill interim clawbacks which are triggered upon specified events (key man or insufficient NAV coverage);
2. **Ensure GPs guarantee themselves**. The ILPA recommends joint and severability of individual GP members as a best practice because LPs contract with the GP as a whole rather than with individual members. Where this is not done, there may alternatively, be a guarantee of the entire clawback repayment by either: (a) a substantial parent company; or (b) an individual GP member; or (c) a subset of GP members. Where repayment is not aligned to the carry distributions, an escrow account (at least 30%) may provide an effective way to guarantee clawback.
3. **Ensure Fair treatment of Tax Burden**. GPs receive tax distributions from the Fund in order to pay their tax liabilities on carry (capital gains tax treatment). Where the GP doesn't receive carry, the tax paid is lost because there are limitations on the GPs ability to carry back losses to offset the gains on which the tax was paid. The rate should be based on the actual tax situation of the individual GP member and should take into account, loss carry forwards and carry backs; the character of the fund income and deductions for government tax payments; any ordinary deduction or loss as a result of any clawback contribution or related capital account shift; any change in taxation between date of LPA and the clawback.

   Among other ILPA recommendations, ensure that any tax advances made to the GP are returned immediately if they are in excess of the actual tax liability.

4. **Fix the Formula for Clawback**: the Clawback amount should be the lesser of excess carry or total carry paid, net of taxes which are actually paid. If

there are errors in the formula stipulated then there will be an impact on Fund cash flows. Specifically, the tax amount should not simply be subtracted from the amount owed under the clawback. The clawback formula should take into account what is the preferred return.

PART III

THE JAMAICA VENTURE CAPITAL PROGRAMME

MODEL DOCUMENTS

Summary of Jamaica Venture Capital Programme Model Documents!

The following is a summary/description of the relevant legal documents (see Annexures I - XV) to be used in the JVCP Toolkit by parties to a venture capital financing;

1. **The Letter of Intent/Term Sheet;**

This is the document that basically "kicks off" the venture capital financing. It is the document that commits the parties as to how they will be participating in the venture. It is usually drafted by the venture capital firm ("VCF") but is presented here as one of the suite of documents. The letter of intent is also known as the "term sheet". The letter of intent has 3 main purposes. They are as follows:

(a) to set out the material terms upon which the venture capital term will invest in the company "the target";
(b) to lock-up the target for investment for a for investment for a reasonable period of exclusivity in order to enable the venture capital firm to complete its business and legal due diligence; and
(c) to provide ample time to finalize the definitive documents and to close the financing.

[The basic objectives of the parties in the negotiating the term sheet are as follows. From the perspective of the VCF its objective is to lock up the target as long as possible to enable the buyer to make a reasoned determination as to the merits and value of the investment. During the due diligence phase, issues may come to light that may cause the venture capital firm to renegotiate some of the terms of the proposed investment. From the perspective of the target its objective is to limit the exclusivity period completely, or to keep the time frame short.

2. **The Due Diligence Request List**

The due diligence list is a prelude to the actual due diligence exercise to be carried out on the target by the VCF. This list comes immediately after the term sheet is signed. The purpose of the due diligence list is a checklist of the various matters the VCF wishes to ascertain about the target. It is a precursor to the actual due diligence exercise.

The actual due diligence which follows on the checklist is to allow the VCF to:

(a) make an informed investment decision and prepare for negotiations by identifying potential risks or problems in the company;
(b) confirm that the value and purchase price per share determined during the term sheet negotiation actually reflects the appropriate value for the company;
(c) become intimately familiar with the company so that the venture capital firm can provide guidance, support and assistance to the company on a going-forward basis; and
(d) learn about the company's and industry's background so that the VCF can independently assess the representations from disclosure schedules provided by the company in the transaction.

As for the target, the due diligence exercises the inescapable corporate housekeeping and is a necessary step for attracting investors because it shows organization on part of the target and compliance with relevant laws. It also serves the collateral purpose of establishing the basis for the target's representation warranties and disclosure schedules which are a necessary part of the Purchase Agreement.

3. The Certificate of Incorporation including the Bye-laws of the target

As simple as it seems this may be the most important document in a venture capital financing. The Certificate of Incorporation and the Bye-laws of the target as well as the articles of association establish and define the nature and substantive provisions of the shares to be purchased in the target, especially the rights attaching to the preferred shares which is the usual vehicle by which the VCF takes a stake in the target. The bye-laws or articles of association define most of the key economic and non-economic rights preferences and privileges of the preferred shares as well as the ordinary shares. Special attention needs to be paid to the conversion rights set out in this document and they may have to be altered to accommodate the terms of the VCF's capital investment.
Most venture capital financings generally require an amendment to the Articles of Association consistent with the nature of the financing so it is very important that this document be studied carefully and understood so that the appropriate amendments can be made to it prior to closing. The incorporating documents also state what is the authorized share capital of the target and this too needs special attention as amendments will in

most, if not all cases, be made to accommodate the capital injection by the VCF.

4. The Subscription or Purchase Agreement

The Subscription or Purchase Agreement is the definitive agreement in which the one or more of the VCF(s) agree to purchase and the target agrees to sell equity securities at a specified price. The scope of the Subscription/Purchase Agreement will vary according to the nature of the transaction that the parties intend to accomplish. Usually the parties intend to achieve the following in the Subscription/Purchase Agreement:

(a) identify the purchase price, the number and type of securities being purchased and the closing date(s);
(b) disclose to the VCF and other investors material issues relating to the company's business;
(c) aid the target in getting certain exemptions under laws if they exist such as special tax considerations;
(d) identify any conditions precedent to closing; and
(e) address the parties' remedies in the event of a breach, including indemnity rights, governing laws and dispute resolution provisions which apply to any controversy.

5. The Limited Partnership Agreement (LPA).

The LPA is an agreement which protects the investor with a wide array of rights. The articles of association and other by laws of the company usually cover such rights as liquidation preferences, anti-dilution protection, voting rights redemption provision and such other rights. The VCF will however be looking for additional protection beyond those found in the articles of incorporation. These range from rights such as pre-emptive rights in future financings information and observer rights along with certain other protective covenants. The LPA is designed to provide contractual rights to the VCF from the target

6. The Rights of First Refusal and Co-Sale Agreement.

The basic function of this agreement is to enable the VCF to limit the targets founders and existing significant shareholders to enter into certain arrangements restricting the disposition of their shares and requiring those

shareholders to sell their shares under certain defined circumstances. The basic purpose of this agreement is to align the interests of the founders and other significant shareholders with the interests of the VCF by, among other things, preventing them from "cashing out" their equity positions in advance of the financial investors. These provisions also typically enable the VCF to require (if certain conditions are met) that the other shareholders sell their shares in the company when the VCF determines it is a strategic time to sell the entire business.

These provisions sometimes overlap with other provisions in the LPA both with respect to timing and effect - with the other rights granted to the target and/or its equity holders. While it is admitted that the rights of first refusal (or first offer) and co-sale rights can be included in one agreement with the such other rights, separating the rights of first refusal and co-sale rights can be included in one agreement with such other rights, separating the rights of first refusal and co-sale rights from such other rights enables the parties thereto to have certain continuing contractual rights (such as with respect to amendments to the co-sale obligations) even after a Founder no longer has a significant operational role with the company. This may benefit the VCF in that the approval of a Founder is not necessary for modifications to voting and other rights following departure of a Founder.

7. Form of Warrants

Usually, the Investors will require that certain details regarding the Company's operations and status be warranted by the Founders and the Company.

The list of items to be warranted as to the status of the company are not comprehensive and the list provided herein is only intended to guide the parties as to the warranties that are likely to be included in the Subscription/Limited Partnership 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.

8. Promissory Note/ Convertible Note or Debenture

It is acknowledged that venture capital financing is mostly structured as preferred equity financings they can sometimes be structured as straight debt or convertible debt transactions. (i.e. debt convertible into equity).

The following are some of the reasons why a VCF may prefer to fund a transaction by debt rather than equity:

(a) the VCF already holds a significant senior equity position and does not believe that additional equity will increase its overall return;
(b) the target is near insolvent and the VCF wishes to obtain downside protection. This is because debt holders especially secured debt holders receive priority treatment over equity holders in an insolvency);
(c) the company is already venture backed and the issuance of senior equity securities would require the consent of the existing investors or result in anti-dilution adjustments;
(d) the target is in need of quick cash to cover an unanticipated shortfall and there is insufficient time to prepare a valuation.

The Promissory Note, Convertible Note and Convertible Debenture are all instruments which have the debt feature to cover the above mentioned possibilities but the ability to be converted to equity after it has received the cash infusion and the parties have had more to assess strategically in what direction they wish the target to go.

9. The Founders Agreement/Employment Agreement

The founders of the target often require protection and clarity in the case where the VCF has taken a role in the target. Because the founder's ownership interest may be diluted significantly by the new investment the founder(s) require(s) certain protections and clarity going forward. The target will also seek and the VCF may require certain restrictions and protections to be imposed on the founders to protect the target and in anticipation of requirements from future investors. These agreements include raft of provisions ranging from non-competition provisions, vesting (or reverse vesting) of equity options, intellectual property assignment provisions (covering previously developed as well as future IP created) and confidentiality and non-solicitation of employee provisions.

10. Form of Confidential Information and Proprietary Rights Agreement.

The Confidential Information and Proprietary Rights Agreement is designed to address that conundrum facing early stage companies in how to disclose intellectual property and other proprietary and confidential information to potential investors, and others whilst preserving the confidentiality of such information. The typical way to accomplish this

is to have seekers of such information execute a Confidential Information and Proprietary Rights Agreement.

11. Legal Opinion

It is customary for counsel to the issuer in a venture capital financing to deliver an opinion letter to the investors at closing in which the issuer's counsel renders its professional judgment on certain legal matters regarding the issuer and the transaction, subject to certain assumptions and limitations. All this is embodied in an opinion letter issued under the letterhead of the legal counsel for the issuer. It gives comfort to other legal counsel in the transaction who are not associated with the issuer and if the assumptions hold good and the representations are false the issuers counsel can be sued on this document.

12. Board Observer Agreement

The Board Observer Agreement intends to achieve the objective of giving to the VCF direct access to Board Meetings where he does not wish to have a seat on the Board of Directors or is used in situations where the VCF desires to be a Director but there are insufficient Directorships available at the time. Because there is confidential information being discussed at Board Meetings and there may be conflicts of interest between the Company and the interests of the Board Observer it is important that there be a written contract setting forth the ground rules regarding such observer status.

13. Investment Guidelines/Restrictions

These guidelines contain financing and governance restrictions which guide the Board of Directors of a VCF in making decisions to invest in a target.

14. Fund Management Agreement

The Fund Management Agreement intends to cover the details of the relationship between Fund and Fund Manager – it is an agreement that contemplates that once the VCF plans to invest in a company - they have a draft agreement which would stipulate how the VCs fund will be managed by that entity. This agreement is usually effected by and between a registered investment adviser and an investor and contains provisions which authorize the fund manager to act on behalf of the

investor in managing the assets in the agreement. It is important that instances where the manager is authorized to act in his own discretion are governed within the context of the outlined and agreed investment strategy.

15. Convertible Debenture – see #8

ANNEXURES

A "template" set of model legal documents for venture capital investments has been prepared by the Programme's legal advisors. This Tool Kit consists of:

Appendix I - Form of Letter of Intent for equity based financing

Appendix II - Form of Due Diligence Request List (Outline & Detailed List)

Appendix III- Form of Certificate of Incorporation of a VC (as per Table A, Companies Act of Jamaica)

Appendix IV- Form of the Subscription Agreement

Appendix V- Form of the Shareholder's (LPA) Agreement

Appendix VI - Form of Right of First Refusal & Co-Sale Agreement

Appendix VII- Form of Warrants

Appendix VIII- Form of Promissory Note

Appendix IX- Form of Founder's Agreement

Appendix X-Form of Confidentiality & Invention Assignment Agreement

Appendix XI- Form of Legal Opinion/Opinion Letters

Appendix XII- Form of Board Observer Agreement

Appendix XIII Investment Guidelines

Appendix XIV Form of Investment Management Agreement

Appendix XV Form of Fund Management Agreement

Appendix XVI Form of Limited Partnership Agreement

*Non Disclosure Agreement (included in LPA)

Appendix XVII Convertible Debenture

Appendix XVIII Abbreviations

Appendix XIX List of Documents Used

Appendix XX International Organization Data

Appendix XXI DBJ/IDB Terms of Reference
Appendix XXII Consultants' Work Plan

Appendix I
Form of 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 Subscription Agreement (the "Subscription 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.

Brief Summary of Transaction:	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: The Fund - $**[OUR INVESTMENT]**; Other investors - $**[OTHER INVESTORS, IF ANY]**. 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.] The price per Preferred Share will be $**[PER SHARE]** per share (the "Purchase Price").	
Outstanding Capitalization:	See attached capitalization table, Appendix A.	
Tentative Closing:	On or before **[CLOSING DATE]** (the "Closing")	
Use of Proceeds:	The investment will be used to **[**fund product development, begin the Company's marketing efforts, fund working capital, and recruit a management team.**]**	
[Option Plan:	**[# SHARES]** shares of the Company's Share Capital shall be allocated to the Company's share option plan (the "Option Plan") which shall represent **[PERCENT]**% of the share capital of the Company on a fully diluted basis after the Closing.]	
Representations and	Standard representations and warranties given by the Company	

Warranties:	and the Investors in connection with the sale of a significant block of share capital.
Dividend Policy:	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 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)**.]**
Liquidation Preference:	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.
Conversion Ratio; Anti-Dilution:	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**[{**broad-based**}{**narrow-based**}** weighted average**]** **[**full ratchet**]** anti-dilution and other customary adjustments.
Automatic Conversion:	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").
Voting Rights:	The holders of Preferred Shares shall vote together with the holders of Ordinary Shares on an as-if-converted basis.

Registration Rights:	Upon the vote of a **[**majority**]** of the Ordinary Shares issuable upon conversion of the Preferred Shares, the holders of such 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. **[{FOUNDERS}** 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.**]**	
Lock Up:	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.
Information and Reporting:	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.
Participation in Future Offerings:	The Investors shall have the preemptive right to participate in any future sales of 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.
Transfer to Affiliates and/or	An Investor may, at his option, transfer any or all of its investment

Partners:	to its affiliates.
Board of Directors:	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.]
Consents:	For so long as **[PERCENTAGE]**% 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.	
Directors and Officers Insurance; Expenses:	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.	
Employment Agreement; Key Man Insurance:	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 **[_____]**.	
Shareholders' Agreement:	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.	
[Warrants]: **[Warrant**	[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 Warrant. All such Warrants shall be exercisable for [5] years [and shall have a cashless exercise provision]. [Warrants ("the Warrants") will be issued for [___%] coverage on the aggregate amount of	

Coverage]:	Preferred Share being purchased. The Warrants shall have an exercise price of [$.001] per share, with a purchase price of [$.001] per share. Additionally the Warrants shall be exercisable for [5] years and shall have a cashless exercise provision. The number of shares of Preferred Stock to be issued under the Warrants upon exercise thereof shall equal [___%] of the aggregate purchase price for the Preferred Stock divided by the price per share of the Preferred Stock. By way of example, if the 1,000,000 shares of Preferred Stock are issued at $1 per share for an aggregate of $1,000,000, then the number of shares of Preferred Stock to be issued under the Warrants upon exercise thereof shall equal ____.]
[Strategic Relationship]:	[In the event that [_____] ("the Strategic Investor") shall enter into a definitive agreement with the Company to deploy the [Company technology] in [_____], the Company shall issue the Strategic Investor warrants to acquire an aggregate of [_____] shares of the Company's Ordinary Shares at an exercise price equal to [the price per share paid for the Preferred Stock].] [On or after the [fifth] anniversary of the Closing Date,

[Mandatory Redemption] : 	any holder of the Preferred Stock will have the right to require the Company to redeem (out of funds legally Share will have the right to require the Company to redeem (out of funds legally available), for cash, the Preferred Share at a redemption price equal to the greater of (i) the Preferred Share purchase price per share, plus accrued and unpaid dividends, and (ii) the fair market value of the Preferred Share as determined by an independent appraisal conducted by an investment bank selected by the Company with the consent of the Purchasers. [Such redemption shall be evidenced by an interest bearing note from the Company with scheduled principal amortization over a period not to exceed [two years].] [If a holder of any series of Preferred Share fails to participate in any future Qualified Financing (as defined below), on a full pro rata basis, then such holder will lose its anti-dilution price protection on all Preferred Share that it owns and will have all such Preferred Stock converted to Ordinary Shares, and will forfeit all of its rights, if any, to rights of first refusal to participate in future financing, rights of repurchase, rights of co-sale, registration rights, and any informational or inspection rights; but nonetheless	

[Pay to Play]:	will still be subject to any lock-up restrictions. If such holder participates in a future Qualified Financing but not to the full extent of its pro rata share, then a percentage of its Preferred Share shall be converted into Ordinary Shares (subject to the same terms, conditions, and forfeiture of rights as set forth in the preceding sentence) equal to the percentage of its pro rata contribution that it fails to contribute. A Qualified Financing is any financing by the Company that the Board of Directors determines is subject to this provision and there is a condition of the financing that the Preferred Stock shall be purchased pro rata among the stock holders of the Company, regardless of whether the purchase price for the new series of Preferred Stock is higher or lower than the purchase price for any other series of Preferred Shares.]
Standstill:	The Company agrees that prior to **[CLOSING DATE]**, 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.	
Confidentiality:	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 negotiations with respect to the Transaction are terminated.	
Public Non-Disclosure:	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.	
Expenses:	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.	
Contingencies:	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

Outline Form

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

Form 2 - Detailed Checklist

DUE DILIGENCE REQUEST

FORM OF DUE DILIGENCE REQUEST LIST

[NAME OF COMPANY]

PRELIMINARY DUE DILIGENCE REQUEST LIST

[DATE]

Set forth below is a preliminary list of documents and other information relating to [NAME OF COMPANY] (the "Company") that we will need to review in connection with the contemplated transaction between us. Requests for documents and other information regarding the Company extend to similar documents and other information regarding all predecessors, subsidiaries, and affiliates of the Company. This is a preliminary request and additional documentation and other information may be required as our due diligence investigation progresses.

This request calls both for specific items and more general categories of information. To the extent a general request for information is made, all documents and other information or materials relating to such request should be provided, including without limitation, correspondence, memoranda, and international communications. Please provide copies of all documents which are in written form. If applicable information exists which is not in written form, such information should be brought to our attention and summarized in writing.

This Preliminary Due Diligence Request List is extensive and we recognize that some items may not exist or may be inapplicable to the Company. Should this be the case, please advise us of that fact. Thank you in advance for your cooperation.

1. Corporate Records
    a. Certified copies of the Company's and each subsidiary's Certificate of Incorporation and all subsequent amendments or restatements thereof, including pending amendments.
    b. Copies of the Company's and each subsidiary's By-laws and all subsequent amendments or restatements thereof, including pending amendments.
    c. Minutes of all meetings of directors, committees of directors and shareholders, including copies of any written notices (if given) or waivers thereof and any written consent to action without a meeting.
    d. List of all parishes and foreign countries in which the Company and each subsidiary is qualified to do business; list of parishes, states or locales where property is owned or leased or where employees are located; and copies of all documents evidencing qualification to do business in Jamaica or foreign country.
    e. List all locations throughout Jamaica and countries in which the Company and each subsidiary contemplates undertaking business operations, either directly or through other parties.
    f. Samples of common and preferred share certificates, warrants, options, debentures and any other outstanding securities and access to share registers \ and share transfer ledgers of the Company.
    g. Copies of any voting trust, shareholder or other similar agreements covering any portion of the Company's or any subsidiary's share capital.
    h. Corporate and tax compliance certification from the government of Jamaica as well as tax good standing certificates for the Company and each subsidiary from all jurisdictions where the Company and each subsidiary is qualified to do business (long form if available)
    i. Copies of all agreements containing registration or preemptive rights or assignment of such rights.
    j. Any acquisition or other plan of acquisition, reorganization, readjustment, liquidation or succession to which the Company or any subsidiary has been a party since its incorporation.
    k. Information on all planned acquisitions and dispositions.
    l. A list of all affiliate companies and all subsidiaries, corporations, partnerships, associations, joint ventures and other business entities in which the Company or any subsidiary owns, directly or indirectly, an interest, including a brief description of the nature of the interest.

m. A list of all attorneys who represent the Company and its subsidiaries and affiliates.
n. Current organizational chart for the Company and its subsidiaries.

2. Government/Statutory Relations and Filings
   a. All material governmental permits, licences, etc., of the company and its subsidiaries.
   b. Any citations and notices received from local/domestic and foreign government agencies since inception, including those of any predecessor, or with continuing effect from an earlier date.
   c. Any pending or threatened investigations and governmental proceedings.
   d. Any government permits, licenses and consents presently in force (together with information regarding any such permits, licences or consents which have been canceled or terminated) required to carry out the business or operations of the Company and each subsidiary, including such permits, licences or consents required by foreign, local or regional authorities, and any evidence of exemption from any such permit or licence requirement.
   e. Any applications for any government permits, licences or consents, including those of any predecessor corporations.
   f. Any material reports to and correspondence with any domestic or foreign government entity, municipality or agency, including the OUR, FTC, FCC, NEPA, FSC, TAJ, KSAC or Parish Council, ORC Jamaica, BOJ, including those of any predecessor corporations.

3. Financial Information
   a. Financial, operating and marketing plans for the next three to five years, including projected income statements, cash flows, balance sheets and lists of assumptions.
   b. Financial statements (audited to the extent available), including historical quarterly financial statements for the past three years.
   c. Description of and reason for any change in accounting methods or principles.
   d. National tax returns filed in the past three years.
   e. Audit adjustments proposed by the TAJ.
   f. Sales, use and franchise tax reports.
   g. Detailed list, aging schedule and analysis for accounts receivable and accounts payable as of a recent date.

h. List and brief description of all reports used by management on a regular basis (internal and industry).
i. Capital expenditure programmes.
j. Disclosure documents used in private placements of securities, institutional or bank loan applications or in connection with the sale of assets during the last five years.
k. Pricing policies, including commission and rate schedules.
l. Inventory valuation and description.
m. Cash flow and working capital analysis
n. Significant correspondence with independent public accountants, including management letters.
o. Any reports, studies and projections prepared by management on business, financial condition or planned operations, including business plans.
p. Any reports and studies prepared by outside consultants on business or financial condition.
q. Recent analyses of the company or its industries prepared by investment bankers, engineers, management consultants, accountants or others, including marketing studies, credit reports and other types of reports, financial or otherwise.
r. Reports and materials prepared for the Board of Directors or a Committee thereof.
s. Dollar amount of current backlog orders and amount as of one year ago. Please provide an analysis of current backlog, including firm commitments, "soft" orders and cancelable contracts.
t. A net Operating Loss analysis with respect to the Company.

4. Securities Outstanding
   a. A table, indicating the title, authorized amount and amount outstanding as of a recent date, of all indebtedness and securities of the Company and each subsidiary, indicating interest rates, maturity dates, and numbers of shares reserved for specific purposes.
   b. Records setting forth all issuances or grants of shares, options, warrants, and convertible and nonconvertible long-term debt securities by the Company and each subsidiary, listing the names of the recipients, the amounts issued or granted, the consideration received, the dates of the issuances or grants and the number of shares.

c. Current shareholder list; current list of holders or options, warrants and conversion privileges, including vesting schedules, exercise/conversion prices and exercise dates.
d. Share option plans, forms of option agreements, and list of all options proposed to be granted, if any, including the names and addresses of proposed grantees and the number of options to be granted to each. Copies of any other stock-related plans for employees, officers or directors.
e. All communications with shareholders, including annual reports.
f. Any disclosure documents or agreements relating to sales of securities by the Company, including any private placement memoranda or other offering circulars.
g. Any agreements or other documentation (including related permits relating to repurchases, redemptions, exchanges, conversion or similar transactions involving the Company's or any subsidiary's securities.
h. Permits and consents for the issuance or transfer of the Company's or any subsidiary's securities and all notices, registration documents or other correspondence with governmental entities relating to any such issuance or transfer, including all evidence of qualification or exemption.
i. All documents defining the rights of holders of long term debt, senior common or preferred securities of the Company and each subsidiary.

5. Material Contracts.
a. Bank line of credit agreements, including any associated agreements, amendments, renewal letters, notices, etc.
b. Any loans by or to the Company or any subsidiary and guarantees by the Company or any subsidiary of third party obligations.
c. Any agreements restricting the payment of cash dividends.
d. Other outstanding loan agreements or guarantees, including all security agreements, financing statements and the like, as well as a list of the identity and filing location of any financing statements relating to property of the Company or any subsidiary or evidencing a security interest of the Company or any subsidiary. Include all correspondence relating to such documents.
e. Contracts with suppliers or customers upon which the Company's or any subsidiary's business is or is expected to be materially dependent.

f. All sales, marketing, distributorship, sales representative, franchise, license, royalty, management and all output and requirements contracts or agreements to which the Company or any subsidiary is a party.
g. All material advertising contracts to which the Company or any subsidiary is a party.
h. All model purchase, sales, service, distributorship or sales representative agreements used by the Company or any subsidiary, including purchase order and invoice forms.
i. Any contract agreement understanding or other transaction to which the Company or any subsidiary and any director, officer, employee, promoter, voting trustee, 5% shareholder or underwriter are or were parties.
j. If any material contract, agreement, understanding or transaction is not evidenced by a writing, please describe it.
k. Copies of all insurance policies currently in force, including insurance policies covering property of the Company or any subsidiary, "key person" policies, health, life and other employee insurance policies, product liability policies, and officer or director liability policies and copies of all liability insurance policies in force in any of the last three years.
l. Partnership, joint venture, association, alliance, or research and development agreements. If any such agreements are not evidenced by writing, please describe them.
m. Any material contract for the acquisition or sale of property, plant or equipment of the Company or any subsidiary.
n. Any other material contract which remains to be performed in whole or in part or which was made or succeeded to within the past five years by the Company or any subsidiary.
o. Commission, brokerage, finders and agency agreements.
p. Contracts outside the ordinary course of business.
q. Construction agreements and performance guarantees.
r. Research support agreements or consulting agreements.
s. Any guaranty agreements.
t. Any agreements with competitors.
u. Any agreements with governmental agencies or institutions.
v. Equipment leases in excess of One Million Jamaican dollars.
w. Recapitalization or underwriting agreements.
x. Pilot or "beta" site contracts (both executed and proposed)
y. Advise if there are any facts or circumstances that may give rise to the cancellation or termination of, or claim for damages or loss

under, any of the agreements, arrangements or understandings referred to herein.

6. Litigation and audits
   a. All letters which have been sent to auditors in connection with year-end and current interim audits, including "litigation letters".
   b. Copy of any auditors' letters to management regarding internal accounting controls, including compliance with the POCA, FSC Act.
   c. All letters from the Company's attorneys to the Company's independent public accountants regarding litigation in which the Company or any subsidiary is or may be involved.
   d. Active litigation and arbitration files, including letters asserting claims, complaints, answers, etc. (non-privileged material only).
   e. Any settlement documents relating to past or present litigation.
   f. Any decrees, orders, or judgments of courts or governmental agencies applicable to the Company or any subsidiary.
   g. Description of any warranty claims which have been made against the Company, or any partnership or joint venture in which the Company or any subsidiary is involved. If such claims have been resolved, include a description of their resolution.
   h. Information regarding any litigation to which the Company or any subsidiary is a party or in which it may become involved, including letters asserting claims, complaints, answers, etc., and memoranda describing oral communications relating to the threat of litigation or other claims. Please include potential litigation relating to asserted claims – e.g., employees who may be in breach of noncompetition agreements with prior employers.
   i. Correspondence, memoranda or notes concerning inquiries from the tax authorities, occupational safety and health authorities, environmental authorities or any other governmental regulatory body.
   j. Copies of local and foreign income tax returns. Have all returns been filed? Have there been any audits?
   k. Summary description of any contingent or possible liabilities which are not covered by insurance in the ordinary course of business and which are not carried on the Company's balance sheet or in the notes thereto, including guarantees, warranties, material oral commitments or understandings and others.

7. Products and Services: Customers and Suppliers: Competition
   a. List of principal products and services (including those under development) in each line of business, with short descriptions of the products and services, their respective prices and their stage of development. Also indicate any class of similar products and services which accounted for 10% or more of total revenue in any of the last three years.
   b. Detailed breakdown of revenue and profits by product and services for the last three years.
   c. Samples of marketing sales literature used for various products and services.
   d. What is the Company's warranty policy?
   e. List of customers of the Company during the past 24 months and the annual sales for each customer.
   f. List of current principal suppliers and their products, giving dollar amounts purchased in the last year.
   g. List of the Company's principal competitors by product, service, region, etc. Please describe the basis upon which they compete with the Company and any competitive advantage the Company enjoys over such competitors (or vice-versa).
   h. List of all the Company's memberships in any trade, merchants, marketing or other professional or industry-related organization.
   i. All press releases, articles, or brochures issued to the financial or any general press.
   j. All articles from trade, scientific, financial or other publications in the Company's possession or known to the Company, concerning the Company.

8. Intellectual Property and Proprietary Information
   a. List of any trademarks, copyrights, tradenames, servicemarks and any challenges to their validity.
   b. List of all foreign and domestic patents and patent applications, copyright protections and other procedures to protect trade secrets. Provide any patent licences held by the Company or any subsidiary, or other licences of technology from third parties. Describe any challenges to the validity of patents or other intellectual property rights of the Company or any subsidiary, and provide any opinions of Counsel which have been issued regarding the Company's or any subsidiary's patents. What is the Company's policy regarding intellectual property rights in inventions, discoveries,

trade secrets, formulas, techniques, processes, etc. developed by employees?

c. List of proprietary processes controlled by the Company or any subsidiary and other trade secrets.
d. Permits for conduct of business, including licences, franchises, concessions, distributorship agreements, and export or import licences and permits. Has the Company or any subsidiary received notice of any violation of the term or conditions of any such permits, licences or agreements?
e. Secrecy, confidentiality, inventions, nondisclosure and noncompetition agreements, and all other agreements relating to the protection of intellectual property.
f. Communications to and from third parties relating to the validity or infringement of Company's patents, technology, trade secrets, trademarks, servicemarks , tradenames and copyrights.

9. Employees

a. Description of any significant labour problems or union (industrial) activities the Company or any subsidiary has experienced or expects to experience, including and strikes, hearings held, notices or other communication from employees or a labour union relating to a material grievance or the initiation of proceedings or collective bargaining. List of demands submitted by unions or other labour organization during the last five years.
b. Management and organization chart.
c. List of employees, with titles and brief job descriptions.
d. List of former employees who have left the Company or any subsidiary in the past twelve (12) months and a brief description of the circumstances of their leaving.
e. Any manuals, memoranda or summaries pertaining to Company policies on vacation, termination, promotion etc.
f. Any employee handbook, manuals, guidelines and bulletins.
g. Copy of any payroll contracts.
h. Does the Company have a non-discrimination policy or Plan? Has the Company been audited/investigated by the Ministry of Labour/Industrial Disputes Tribunal with respect to any nondiscrimination plan/policy? If so, provide any documents or correspondence related to the audit/investigation.
i. Does the Company have a drug testing programme?
j. What is the Company's worker's compensation status/rating?

k. Employee benefit and profit-sharing plans, including share option, share purchase, deferred compensation and bonus plans or arrangements, management incentive agreements, severance agreements, employee pension, share ownership or retirement plans.
l. Contracts and collective bargaining agreements with unions and other labour organizations.
m. All documents relating to compliance with governmental regulations relating to labour and employment matters.
n. Employment, consulting and non-solicitation agreements and loan contracts with officers, directors or employees.
o. List of loans from insiders to the Company or any subsidiary and from the Company or any subsidiary to insiders.
p. List of assets or properties used by the Company in which any officer, director, shareholder or employee has an interest.

10. Officers and Directors
    a. Resume for each officer and director.
    b. Founders agreements, management employment agreements and indemnification agreements, if any.
    c. Schedule of all compensation paid during the last three fiscal years to officers, directors and key employees showing separately: salary, bonuses and non-cash compensation (such as use of cars, property and so on).
    d. Copies of any agreement or insurance policy providing for indemnification of any officer or director.

11. Physical Facilities
    a. List the location of each facility either owned or leased by the Company or any subsidiary or where the Company or any subsidiary is operating its business.
    b. Deeds or legal descriptions of real property and buildings.
    c. All outstanding leases, sublease, rental agreements and the like for real property as well as a list of the identity and filing location of any document giving record notice of an interest in any such agreements.
    d. Purchase and sale agreements, purchase options or other agreements with respect to the purchase, sale or lease of real property.

e. List of any other interests in real property, including partnership interests.
f. Any documents showing any certification of compliance with, or any deficiency with respect to, regulatory standards of the facilities or facilities used by the Company or any subsidiary in connection with its business since inception or the real property on which any such facility is located, including permits relating thereto.
g. Liens for taxes or assessments, mortgages, zoning or other land use restrictions and other encumbrances of any kind.
h. Description of current (or future, if different) uses of real property (owned or leased) and uses prior to occupation by the Company or any subsidiary and current or future construction at or on at or on real property (owned or leased).
i. With respect to land and buildings owned, list of the original cost, date of acquisition, age of building, type of construction, depreciation rates used and allowed by the TAJ or Inland Revenue Department, depreciation reserve, net book value, and property and other taxes currently being paid for each building.
j. Copies of title papers, title insurance policies, abstracts, title opinions, appraisals, surveys, zoning, government permits and related opinions, and all agreements relating to or affecting real property.
k. With respect to land and building leased, a list of leasehold improvements, showing total cost by major items, amortization reserve, rates used and present unamortized cost. Copies of plans and current bills for taxes, operating expenses or other assessments.
l. Copies of all licences and/or permits related to the operation of each facility whether owned or leased. With respect to leased property, copies of all correspondence and notices between landlord and tenant and copies of any non-disturbance and/or subordination agreement with landlord's lenders. Copies of all insurance policies related to all owned and leased real property including, without limitation, public liability insurance, fire and other casualty insurance and any insurance coverage for contents and business interruption. Copies of any engineering reports and or structural inspections for all real property whether owned or leased.
m. Copies of all insurance policies relating to the business, assets or properties of the Company, giving insurance company, policy number, terms of coverage, property or risk covered, appraisal value of covered property (where appropriate), extent or coverage.

12. Environmental Matters
    a. Description of any hazardous materials used, sorted, manufactured or located at any facility owned, leased, operated or used by the Company either now or in the past, or that the Company either now or in the past, or that the Company ships or transports, the quantities or hazardous materials on site at any time and the manner of storage and disposition. (Hazardous materials means any substance or any material containing a substance that could be considered toxic or hazardous under national law, including solvents, petroleum, pesticides, paints, asbestos-containing materials, lead-based batteries, radioactive materials and PCB containing transformers.)
    b. Description of the Company's and each subsidiary's operations, including process-flow diagrams as appropriate.
    c. Copies of hazardous materials management plans filed with applicable agencies.
    d. List of any environmental liabilities, conditions or issues known to the Company or any subsidiary, including any copies or any notices of violation from any governmental agency, and a description of any pending or threatened regulatory, judicial, administrative or other actions relating to environmental matters, or any known violations or potential violations of applicable environmental laws.
    e. Description of any business facility of the Company or any subsidiary which emits or has emitted any discharge of hazardous material into the air, soil or groundwater.
    f. Description of all wastes, hazardous and non-hazardous that are disposed of on and off site, including locations of disposal and list of off-site recycling or disposal facilities. Please include any information concerning whether off-site facilities to which the Company or any subsidiary has been sent waste have been the subject of government proceedings.
    g. Copies of all local government and/or national permits, certificates, registration, plans and approvals relating to environmental matters. Copies of all pending applications for all permits, certificates, registrations plans and approvals relating to environmental matters. Any reports, notices, or correspondence relating to any purported violation of environmental rules or regulations.
    h. Any reports, studies and other materials relating to environmental (impact) assessments or audits, whether internal or external, any engineering or consultant reports and any sampling results from any

soil, air or water tests relating to any real property or facility owned, leased or operated by the Company or any subsidiary.

i. List of all above-ground and underground storage tanks on any Company or subsidiary site whether now active or inactive, and copies of permits relating to such tanks. Please describe the tanks, including the capacity of the tanks, the materials stored in the tanks and any containment devices.
j. List any employee exposure or workers' compensation claims relating to environmental matters and any instances in the past which the Company or any subsidiary has corrected unsafe working conditions.
k. List all Standard industrial Codes applicable to the Company's and each subsidiary's operations.

13. Other material Information.
    a. Please provide any other information which may be deemed material to the Company, its subsidiaries and affiliates.

Appendix III

Form of Certificate of Incorporation of a VC

SCHEDULES

FIRST SCHEDULE (Sections 2, 8, and 392 Companies Act 2004)

Tables A, B, C and D

TABLE A

PART I

Articles for Management of a Company Limited by shares

THE COMPANIES ACT

ARTICLES OF INCORPORATION

Company Limited by Shares

Articles for Management of a Company Limited by shares

1. **Name of Company** .....

   (a) **Situation of Registered Office** .....

2. **Main Business of Company** .....

3. Liability of Members:—

Limited by Shares

4. **Form of Company**: Public Private

The company is a private company and accordingly—

(a) the right to transfer shares is restricted in manner hereinafter prescribed;

(b) subject to section 25 (1) (b) of the Act, the number of members of the company(exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company were while in such employment and have continued after the determination of such employment to be members of the company) is limited to twenty:
Provided that where two or more persons hold one of more shares in the company jointly they shall for the purpose of this regulation be treated as a single member;

(c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;

(d) any invitation to the public to deposit money for fixed periods or payable on call whether bearing or not bearing interest is prohibited;

(e) subject to the exceptions provided for in the Fourteenth Schedule any person other than the holder is prohibited from having any interest in any of the company's shares; and

(f) the company shall not have power to issue share warrants to bearer.

5. **Authorized Capital** (if any)..... (Public Companies should have an authorized minimum share capital of at least $500,000.00).

6. Article(s)..... shall apply/ shall not apply

7. In these articles— "the Act" means the Companies Act;
"the seal" means the common seal of the company;
"secretary" means any person appointed to perform the duties of the secretary of the company.
Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

Shareholders Rights

8. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise as the company may from time to time by ordinary resolution determine.

9. Subject to the provisions of section 56 of the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may by special resolution determine.
10. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these articles relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.
11. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.
12. The company may exercise the powers of paying commissions conferred by section 53 of the Act, provided that the rate per centum or the

amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section and the rate of commission shall not exceed the rate of 10 per centum of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per centum of such price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

13. Except as required by law, no person shall be recognize by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognized (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these articles or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.
14. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within two months after allotment or lodgment of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or several certificates each for one or more of his shares upon payment of Two Dollars for every certificate after the first or such less sum as the directors shall from time to time determine. Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid up thereon. Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.
15. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of Two Dollars or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company of investigating evidence as the directors think fit.
16. The company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company nor shall the company make a loan for any purpose whatsoever on the security of its shares or those of its holding company.

Lien

17. The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.
18. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.
19. To give effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the sale.
20. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

21. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed one fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so

specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

22. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by instalments.
23. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
24. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding 5 per centum per annum as the directors may determine, but the directors shall be at liberty to waive payment of such interest wholly or in part.
25. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
26. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
27. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) 5 per centum per annum, as may be agreed upon between the directors and the member paying such sum in advance.

Transfer of Shares

28. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.
29. Subject to such of the restrictions of these regulations as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

30. The directors may decline to register the transfer of a share (not being a fully paid share) to a person of whom they shall not approve, and they may also decline to register the transfer of a share on which the company has a lien.

31. The directors may also decline to recognize any instrument of transfer unless—

(a) a fee of Two Dollars or such lesser sum as the directors may from time to time require is paid to the company in respect thereof;
(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and
(c) the instrument of transfer is in respect of only one class of share.

32. If the directors refuse to register a transfer they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

33. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, provided always that such registration shall not be suspended for more than thirty days in any year.

34. The company shall be entitled to charge a fee not exceeding Two Dollars on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, notice in lieu of distringas, or other instrument.

Transmission of Shares

35. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

36. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof.

37. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these articles relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.
38. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company: Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days the directors may there-after withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

Forfeiture of Shares

39. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
40. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.
41. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
42. A forefeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a

sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

43. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

44. A statutory declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

45. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock

46. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

47. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same articles, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; and the directors may from time to time fix the minimum amount of stock transferable but so that such minimum shall not exceed the value of the shares from which the stock arose.

48. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage

(except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

49. Such of the articles of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

Alteration of Capital

50. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

51. The company may by ordinary resolution—

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the articles subject nevertheless to the provisions of section 65 (1)(d) of the Act;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

52. The company may by special resolution reduce its share capital, any capital redemption reserve fund in any manner and with, and subject to, any incident authorized, and consent required, by law.

General Meetings

53. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of the company and that of the next. Provided that so long as the company holds it first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

54. All general meetings other than annual general meeting shall be called extraordinary general meetings.

55. The directors may, whenever they think fit, convene an extraordinary general meeting, an extraordinary general meeting shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 128 of the Act. If at any time there are not within the Island sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

56. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company: Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per centum of the shares giving that right.

57. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

58. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.
59. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members present in person shall be a quorum.
60. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.
61. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting.
62. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.
63. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

64. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

(a) by the chairman; or
(b) by at least three members present in person or by proxy; or
(c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
(d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

65. Except as provided in article 67, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
66. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.
67. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

Votes of Members

68. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in

person shall have one vote, and on a poll every member shall have one vote for each share of which he is the holder.

69. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

70. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, or other person in the nature of a committee or receiver appointed by that court, and any such committee, receiver, or other person may on a poll vote by proxy.

71. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

72. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

73. On a poll votes may be given either personally or by proxy.

74. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

75. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy, of that power or authority shall be deposited at the registered office of the company or at such other place within the Island as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or in the case of a poll not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

76. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

" Company, Limited I/ We , of , being a member/members of the abovenamed company, hereby appoint of ,or failing him, of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company to be held on the day of , and at any adjournment thereof.

Signed this day of ."

77. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

" Company, Limited

I/We ..... of , ... being a member/members of the abovenamed company, hereby appoint .....of ..... , or failing him, ... of ....., as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, as the case may be] general meeting of the company to be held on the day of , and at any adjournment thereof.

Signed this day of ."

This form is to be used *in favour of the resolution. Unless otherwise ———— against instructed, the proxy will vote as he thinks fit.

- ***Strike out whichever is not desired.***

78. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
79. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, on the transfer of the share in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Corporations acting by Representatives at Meetings

80. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors

81. The number of directors and the names of the first directors shall be determined in writing by the subscribers of the articles or a majority of them.
82. The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.
83. The shareholding qualification for directors may be fixed by the company in general meeting, and unless and until so fixed no qualification shall be required.
84. A director of the company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any

remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise direct.

85. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not at any time, without the previous sanction of the company in general meeting, exceed the amount of the share capital of the company for the time being issued, but nevertheless no lender or other person dealing with the company shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

Powers and Duties of Directors

86. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any of these articles, to the provisions of the Act and to such articles, being not inconsistent with the aforesaid articles or provisions, as may be prescribed by the company in general meeting; but no articles made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that article had not been made.

87. The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to

such conditions as they may think fit and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

88. The company may exercise the powers conferred by section 32 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

89. The company may exercise the powers conferred upon the company by virtue of sections of the Act with regard to the keeping of branch registers of holders of debentures and members and the directors may (subject to the provisions of those sections) make and vary such articles as they may think fit respecting the keeping of any such registers.

90. -(1) A director who is, in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature and extent of his interest at a meeting of the directors in accordance with section 183 of the Act.

(2) A director shall not vote in respect of any contract or arrangement in which he is interested, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting, but neither of these prohibitions shall apply to—

(a) any arrangement for giving any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company; or

(b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(c) any contract by a director to subscribe for or underwrite shares or debentures of the company; or

(d) any contract or arrangement with any other company in which he is interested only as an officer of the company or as holder of shares or other securities, and these prohibitions may at any time be suspended or relaxed to any extent, and either generally or in respect of any particular contract,

arrangement or transaction, by the company in general meeting.

(3) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with his office of director for such period and on such terms (as to remuneration and otherwise) as the directors may determine and no director or intending director shall be disqualified by his office from contracting with the company either with regard to his tenure of any such other office or place of profit or as vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director is in any way interested, be liable to be avoided, nor shall any director so contracting or being so interested be liable to account to the company for any profit realized by any such contract or arrangement by reason of such director holding that office or of the fiduciary relation thereby established.

(4) A director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any such office or place of profit under the company or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.

(5) Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director; provided that nothing herein contained shall authorize a director or his firm to act as auditor to the company.

91. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, indorsed, or otherwise executed, as the case may be, in such manner as the directors shall from time to time by resolution determine.

92. The directors shall cause minutes to be made in books provided for the purpose—

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors, and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

93. The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.

Disqualification of Directors

94. The office of director shall be vacated, if the director—

(a) ceases to be a director by virtue of section 177 of the Act; or
(b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
(c) becomes prohibited from being a director by reason of any order made under sections 180 and 182 of the Act; or
(d) becomes of unsound mind; or
(e) resigns his office by notice in writing to the company; or
(f) shall for more than six months have been absent without permission of the directors from meetings of the directors held during that period.

Rotation of Directors

95. At the first annual general meeting of the company, all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.
96. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
97. A retiring director shall be eligible for re-election.
98. The company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election be

deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

99. No person other than a director retiring at the meeting shall unless recommended by the directors be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

100. The company may from time to time by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

101. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

102. The company may by ordinary resolution remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

103. The company may by ordinary resolution appoint another person in place of a director removed from office under article 102, and without prejudice to the powers of the directors under article 101 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. A person appointed in place of a director so removed or to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

104. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at

any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the Island.

105. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

106. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

107. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

108. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any articles that may be imposed on it by the directors.

109. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

110. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

111. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

112. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Managing Director

113. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.
114. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.
115. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers.

Secretary

116. The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.
117. No person shall be appointed or hold office as secretary who is—

(a) the sole director of the company; or
(b) a corporation the sole director of which is the sole director of the company; or
(c) the sole director of a corporation which is the sole director of the company.

118. A provision of the Act or these articles requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

The Seal

119. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be

countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Dividends and Reserve

120. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.
121. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.
122. No dividend shall be paid otherwise than out of profits.
123. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.
124. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this article as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.
125. The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.
126. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and

may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

127. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other moneys payable in respect of the shares held by them as joint holders.

128. No dividend shall bear interest against the company.

Accounts

129. The directors shall cause proper books of account to be kept with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
(b) all sales and purchases of goods by the company; and
(c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

130. The books of account shall be kept at the registered office of the company, or, subject to subsections (3) and (4) of section 144 of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

131. The directors shall from time to time determine whether and to what extent and at what time and places and under what conditions or articles the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorized by the directors or by the company in general meeting.

132. The directors shall from time to time, in accordance with sections 145 and 147 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred in those sections.

133. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to every person registered under article 37. Provided that this article shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the Joint holders of any shares or debentures.

Capitalization of Profits

134. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or towards paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid or partly in the one way and partly in the other, and the directors shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this article, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

135. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and

things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorize any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalization or (as the case may require) for the payment by the company on their behalf, by the application thereto of their respective profits resolved to be capitalized, of the amounts as any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Audit

136. Auditors shall be appointed and their duties regulated in accordance with sections 154 to 157 of the Act.

Notices

137. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address or (if he has no registered address within the Island) to the address if any, within the Island supplied by him to the company for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.
138. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first-named in the register of members in respect of the share.
139. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the Island supplied for the purpose by the persons claiming to be so entitled, or (until such an

address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

140. Notice of every general meeting shall be given in any manner hereinbefore authorized to—

(a) every member except those members who (having no registered address within the Island) have not supplied to the company an address within the Island for the giving of notices to them;
(b) every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a member where the member but for his death or bankruptcy would be entitled to receive notice of the meeting; and
(c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

Winding up

141. If the company shall be wound up the liquidator may, with the sanction of an extraordinary resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

142. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 389 of the Act in which relief is granted to him by the Court.

PART II

Regulations for the Management of a Private Company Limited by Shares

1. The regulations contained in Part I of Table A (with the exception of articles 30 and 59) shall apply.
2. The company is a private company and accordingly—

   (a) the right to transfer shares is restricted in manner hereinafter prescribed;

   (b) the number of members of the company (exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company were while in such employment and have continued after the determination of such employment to be members of the company) is limited to twenty:

   Provided that where two or more persons hold one or more shares in the company jointly they shall for the purpose of this regulation be treated as a single member;

   (c) any invitation to the public to subscribe for any shares or debentures of the company is prohibited;

   (d) any invitation to the public to deposit money for fixed periods or payable on call whether bearing or not bearing interest is prohibited;

   (e) subject to the exceptions provided for in the Twelfth Schedule to the Act any person other than the holder is prohibited from having any interest in any of the company's shares;

   (f) the company shall not have power to issue share warrants to bearer.

3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share whether or not it is a fully paid up share.
4. No business shall be transacted at any general meeting unless a quorum of members are present at the time when the meeting proceeds to business; save as herein otherwise provided two members present in person or by proxy shall be a quorum.

5. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorized representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

Appendix IV

Form of SUBSCRIPTION AGREEMENT

[or PURCHASE AGREEMENT]

This Subscription 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 Jamaican 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©.

"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.

[© 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 subscription 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 hare 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 subscription 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 labour 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. Labour Relations. No labour 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 labour union, and, to the Company's knowledge, no labour union has requested or has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labour 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 labour 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, Jamaica and the Financial Services Commission Act of Jamaica, as well as each "employee share ownership plan" within the meaning of the Employees Share Ownership Plan Act, Jamaica 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 subscription 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 share subscription 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 the 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 a 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 SUBSCRIPTION 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 Subscription 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 Subscription 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 Subscription 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

[Limited Partnership 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 Subscription Agreement of even date herewith (the "Subscription Agreement");

WHEREAS, as a condition to consummating the transactions contemplated by the Subscription 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 of Jamaica and any successor agency established by or under 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 Investor Directors.

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 [xxxxxxxx] 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 Subscription 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 Subscription Agreement) in accordance with the terms of the Subscription 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 governed by and construed in accordance with the laws of the Jamaica and without regard to any conflicts of laws concepts which would apply the substantive law of some other jurisdiction.

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, 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 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.]

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

Form of 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 Subscription Agreement dated of even date herewith (the "**Subscription Agreement**").
B. As an inducement to the Investors to purchase the Purchased Shares pursuant to the Subscription 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 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.

10.5.1 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, 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 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.]

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 List 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 Hire Purchase 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 Kingston, Jamaica.

(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 Subscription 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 Jamaica, without giving effect to principles governing conflicts of law.

(g) The Company irrevocably consents to the exclusive jurisdiction of any court located in Jamaica 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.

ENFORCEMENT: 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, 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, 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.]

[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

1. Date **2. Amount of Advance** **3. Amount of Principal Paid** **4. Unpaid Principal Balance** **5. Notation Made by:**				
1	2	3	4	5

Appendix IX

Form of Founders' Agreement

Form of Founder's (Employment) Agreement

THIS FOUNDER's (EMPLOYMENT) AGREEMENT (the "Agreement") is made as of this ____ day of _____, 20__ between _____ Company Limited a company registered in accordance with the laws of Jamaica and having its principal office at [insert address] (the "Company"), and [insert name], an individual residing at [insert address] (the "Executive"); and

WHEREAS, the parties hereto wish to enter into an employment agreement to employ the Executive as the [insert title] of the Company and to set forth certain additional agreements between the Executive and the Company.

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

1. Duties and Scope of Employment.

(a) Positions and Duties. As of the Effective Date, Executive will serve as the [insert title] of the Company. Executive will render such business and professional services in the performance of his duties, consistent with Executive's position within the Company, as shall reasonably be assigned to him by the Board of Directors of the Company (the "Board") [or his direct report], including without limitation, the management and authority with respect to, and responsibility for, the day-to-day business and affairs of the Company. [insert any specific tasks]

(b) Obligations. During the Employment Period (as defined below), Executive will perform his duties faithfully and to the best of his ability and will devote his full business efforts and time to the Company. For the duration of the Employment Period, Executive agrees not to actively engage in any other employment, occupation or consulting activity for any direct or indirect remuneration without the prior approval of the Board; [provided that nothing shall prohibit the Executive without the consent of the Board of Directors, from (a) participating on a reasonable number of boards of directors of companies unaffiliated with the Company (none of which is a competitor of the Company), (b) managing his personal investments, (c) delivering lectures or otherwise participating in speaking engagements, or (d) participating in charitable or educational

activities, to the extent, in the case of each of the foregoing, such activities do not materially adversely affect Executive's duties hereunder]. During the Employment Period, Executive shall work in the Company's [_____] office[; provided, that Executive may work from Executive's _____ residence from time-to-time, but only as is reasonably necessary and only to the extent it does not detract from the performance of Executive's duties.]

2. Employment Term.

(a) Subject to the provisions for termination hereinafter provided, the term of this Agreement shall commence on the Effective Date and shall continue for a period of ____ (__) year[s] (the "Initial Term"). The term of such employment shall continue year to year (a "Renewal Term") after the expiration of the Initial Term unless and until terminated by either party upon written notice to the other party given not less than three (3) months prior to the end of the then current term. The period of Executive's employment under this Agreement (whether under the Initial Term or a Renewal Term (if applicable)) is referred to herein as the "Employment Period."

(b) The parties agree that, subject to the severance obligations set forth in this Agreement, Executive's employment with the Company may be terminated at any time by the Company without advance notice, and whether with or without Cause (as defined below). Executive agrees to provide the Company with [thirty (30)] days prior written notice of his intention to terminate his employment.

3. Compensation.

(a) Base Salary. During the Employment Period, the Company will pay Executive as compensation for his services a base salary of $_____ per annum (the "Base Salary"). The Base Salary shall be paid periodically in accordance with the Company's normal payroll practices and be subject to the usual, required withholding. Such base salary shall be subject to review each year for possible increase by the Board of Directors in its sole discretion, but shall in no event be decreased from its then existing level during the Employment Period.

(b) Discretionary Bonus. During each calendar year of the Employment Period commencing with 200_, the Executive shall be eligible to earn an annual bonus targeted at [fifty (50%)] of Executive's base salary and such additional amount as may be determined by the Board of Directors, in its sole discretion, in accordance with a Company annual bonus program for senior executives. The payment of any annual bonus under any such program shall be contingent upon the Company achieving certain performance goals established in good faith by the Board of Directors. The Executive and the Board of Directors shall mutually agree in advance of each year on such goals. Except as otherwise provided herein, such annual bonus shall be paid within three (3) months of the end of the fiscal year.

(c) Equity Grant.

(i) The Company shall grant to the Executive as of the Effective Date the option to purchase _____ (_____) shares of the ordinary shares ("Ordinary Shares") of the Company (the "Share Options"). The exercise price per share for the Share Options will be the fair market value of the Ordinary Shares of the Company on the date of grant. The Share Options will be evidenced by a share option agreement between the Company and the Executive containing the terms set forth in this Agreement and such further terms and conditions as are usual and customary for the Company and its senior executives (the "Share Option Agreement").

(ii) Except as otherwise provided herein or unless the Board of Directors shall otherwise accelerate the vesting schedule provided for herein or generally accelerate the vesting schedule for all of its senior executives (which acceleration shall then apply to the Executive), the Share Options will vest and become exercisable as to [25%] of the Ordinary Shares subject thereto on the first anniversary of the Effective Date and thereafter shall vest and become exercisable in equal [quarterly] [monthly] installments until fully vested on the fourth anniversary of the date hereof. [To the maximum extent permitted by law, the Share Options shall be designated as incentive share options.] Immediately prior to (but contingent upon) the closing of a change in control (as defined in Section 6(b) below), fifty percent (50%) of the unvested Share Options held by Executive shall immediately become vested and exercisable.

(iii) Further, the Executive shall be eligible to receive additional awards under any other share option or equity based incentive

compensation plan or arrangement adopted by the Company during the Employment Period for which senior executives are eligible. The level of the Executive's participation in any such plan or arrangement shall be in the sole discretion of the Company's Board of Directors.

(d) Employee Benefits. During the Employment Period, the Executive shall be entitled to participate in all of the employee benefit plans, programs and arrangements of the Company in effect during the Employment Period which are generally available to senior executives of the Company, subject to and on a basis consistent with the terms, conditions and overall administration of such plans, programs and arrangements. In addition, during the Employment Period, the Executive shall be entitled to fringe benefits and perquisites comparable to those of other senior executives of the Company, including, but not limited to, a comprehensive medical and dental plan, a competitive life insurance plan, short term and long term disability coverage, a 401(k) plan, and four weeks of vacation pay per year, to be used in accordance with the Company's vacation pay policy for senior executives. The Company reserves the right to cancel or change the benefit plans and programs it offers to its employees at any time.

(e) Expenses. The Company will reimburse Executive for his reasonable out-of-pocket travel, entertainment and other expenses incurred by Executive in the furtherance of or in connection with the performance of Executive's duties hereunder, in accordance with the Company's expense reimbursement policy as in effect from time to time. All such expenses shall be supported by vouchers and statements in a form reasonably satisfactory to the Company.

4. Termination of Employment.

(a) Termination for Cause by the Company. The Company may terminate the Executive's employment hereunder for cause. For purposes of this Agreement and subject to the Executive's opportunity to cure as provided in Section 4(c) hereof, the Company shall have "cause" to terminate the Executive's employment hereunder if such termination shall be the result of:

(i) willful fraud, embezzlement or material misappropriation or dishonesty in connection with the Executive's performance hereunder;
(ii) the deliberate or intentional failure by the Executive to perform his duties hereunder, or gross negligence in the course of the Executive's performance of his duties that results in material harm to the Company or a material violation by the Executive of any written Company policy; or
(iii) the conviction for, or plea of *nolo contendere* to a charge of commission of, a felony which is materially and demonstrably injurious to the Company.

(b) Termination for Good Reason by the Executive. The Executive shall have the right at any time to terminate his employment with the Company for good reason. For purposes of this Agreement and subject to the Company's opportunity to cure as provided in Section 4(c) hereof, the Executive shall have "good reason" to terminate his employment hereunder if such termination shall be the result of:

(i) a material diminution during the Employment Period in the nature or scope of Executive's authority, duties, responsibilities, powers, functions, reporting relationship or title as set forth in Section 2 hereof;
(ii) a breach by the Company of the compensation or benefits provisions set forth in Section 3 hereof;
(iii) a breach by the Company of any of the material terms of this Agreement, other than as specifically provided herein; or
(iv) notice by the Company of non-renewal of the Agreement pursuant to Section 1 hereof; or
(v) relocation of the principal office of the Company or the Executive's principal place of employment to a location more than [25] miles from the Company's headquarters in _____ without the Executive's written consent; or
(vi) a change in control as described in Section 6 hereof.

Notwithstanding the foregoing, delivery by the Executive of notice to the Company that he does not intend to renew this Agreement shall not constitute "good reason" unless such notice fulfills the requirements of this Section 4(b).

(c) Notice and Opportunity to Cure. Notwithstanding the foregoing, it shall be a condition precedent to the Company's right to terminate the Executive's employment for "cause" and the Executive's right to terminate his employment for "good reason" that (1) the party seeking the termination shall first have given the other party written notice stating with specificity the reason for the termination ("breach") and (2) if such breach is susceptible of cure or remedy, a period of thirty days from and after the giving of such notice shall have elapsed without the breaching party having effectively cured or remedied such breach during such 30-day period, unless such breach cannot be cured or remedied within thirty days, in which case the period for remedy or cure shall be extended for a reasonable time (not to exceed thirty days) provided the breaching party has made and continues to make a diligent effort to effect such remedy or cure.

(d) Termination Upon Death or Permanent and Total Disability. The Employment Period shall be terminated by the death of the Executive. The Employment Period may be terminated by the Board of Directors if the Executive shall be rendered incapable of performing his duties to the Company by reason of any medically determined physical or mental impairment that can be expected to result in death or that can be expected to last for a period of either (i) six or more consecutive months from the first date of the Executive's absence due to the disability or (ii) six months during any twelve-month period (a "Permanent and Total Disability"). If the Employment Period is terminated by reason of Permanent and Total Disability of the Executive, the Company shall give 30 days' advance written notice to that effect to the Executive.

5. Consequences of Termination.

(a) Without Cause or for Good Reason. In the event of a termination of the Executive's employment during the Employment Period (i) by the Company other than for "cause" (as provided for in Section 4(a) hereof) or (ii) by the Executive for "good reason" (as provided for in Section 4(b) hereof) the Company shall pay the Executive and provide him with the following:

(i) [Lump-Sum] Payment. A [lump-sum] cash payment (net of any required tax withholding) together with any amounts payable pursuant to Section [7] hereof shall, [payable within thirty (30)

days after the Executive's termination of employment], equal to the sum of the following:

(A) Salary. The greater of Executive's then-current base salary payable over (1) the remainder of the Initial Term or (2) a period of twelve (12) months (the greater being defined herein as the "Severance Period"); plus,

(B) Bonuses. The annual bonus amounts for the fiscal year of the Company in which the termination occurred, with such bonus amounts to be calculated based on the Executive's then-current salary and the applicable target bonus percentages that would have been used for such year. In the absence of an established target percentage for any future year, the target bonus percentage in effect for the year of termination shall be used as the applicable target bonus percentage for any such future year. In the case of a fiscal year that would not be completed within the remainder of the Severance Period, the bonus amount shall be calculated as described above but shall be pro-rated for such portion of the fiscal year (on the basis of the number of calendar days prior to termination as a percentage of 365 days). For purposes of all annual bonus amounts calculated as provided above in respect of the Severance Period, it shall be assumed that the Company's target and the Executive's goals would have been achieved; plus,

(C) Earned but Unpaid Amounts. Any previously earned but unpaid salary through the Executive's final date of employment with the Company, and any previously earned but unpaid bonus amounts for any completed fiscal year prior to the date of the Executive's termination of employment.

(ii) Equity.

(A) Vesting. The Executive's right to purchase Ordinary Shares of the Company pursuant to any Share Options or share option plan shall vest and become exercisable as to [fifty percent (50%)] of any unvested options.

(B) Exercise In the event the Ordinary Shares of the Company is publicly traded as of the date of termination of the Executive's employment, the Executive will have a period to exercise his

option to purchase Ordinary Shares of the Company pursuant to any vested Share Option which shall be the later of (w) six (6) months from the date of a termination of his employment that is subject to this Section 5 and (x) one (1) month after the elimination of all restrictions that may be imposed by underwriters in connection with any public offering of the securities of the Company In the event the Ordinary Shares of the Company is not publicly traded, the Executive will have until the Ordinary Shares of the Company becomes publicly traded in which case the provisions of (w) and (x), as the case may be, shall apply. Notwithstanding anything to the contrary contained herein, in no event shall the Executive be permitted to exercise any Share Options after ten years from the date the Share Options were granted by the Board of Directors.

(iii) Other Benefits. Continued coverage during the Severance Period under all health, life, disability and similar employee benefit plans and programs of the Company on the same basis as the Executive was entitled to participate immediately prior to such termination, provided that the Executive's continued participation is possible under the general terms and provisions of such plans and programs. In the event that the Executive's participation in any such plan or program is barred, the Company shall arrange to provide the Executive with benefits substantially similar (including all tax effects) to those which the Executive would otherwise have been entitled to receive under such plans and programs from which his continued participation is barred.

(b) Other Termination of Employment. In the event that the Executive's employment with the Company is terminated during the Employment Period by the Company for "cause" (as provided for in Section 4(a) hereof) or by the Executive other than for "good reason" (as provided for in Section 4(b) hereof), the Company shall pay the Executive (or his legal representative) (i) all earned but unpaid salary and bonuses prorated to the date of the Executive's termination of employment and (ii) any other vacation pay and other expenses which the Company is obligated to pay or reimburse the Executive. All Share Options that have not vested prior to the date of such termination of Employment for cause or

other than for good reason and all vested Share Options not exercised by the Executive prior to the date of such termination of Employment shall terminate and be of no further force and effect. Except as set forth in this Section 5(b), the Company shall have no further obligations to the Executive.

(c) Withholding of Taxes. All payments required to be made by the Company to the Executive under this Agreement shall be subject to the withholding of such amounts, if any, relating to tax, and other payroll deductions as the Company may reasonably determine it should withhold pursuant to any applicable law or regulation.

(d) No Other Obligations. The benefits payable to the Executive under this Agreement are not in lieu of any benefits payable under any employee benefit plan, program or arrangement of the Company, except as provided specifically herein, and upon termination the Executive will receive such benefits or payments, if any, as he may be entitled to receive pursuant to the terms of such plans, programs and arrangements. Except for the obligations of the Company provided by the foregoing and this Section 5, the Company shall have no further obligations to the Executive upon his termination of employment.

(e) No Mitigation or Offset. The Executive shall have no obligation to mitigate the damages provided by this Section 5 by seeking substitute employment or otherwise and there shall be no offset of the payments or benefits set forth in this Section 5.

(f) Death or Disability. In the event of the termination of the Executive's employment during the Employment Period due to death or disability (as provided in Section 4(d) hereof), the Company agrees that: (i) the Company shall pay the Executive the amounts provided for in Sections 5(a)(i) and 5(a)(iii) (to the extent applicable) above plus any earned but unpaid salary prorated through the date of death or, in the case of disability, the Executive's final date of employment with the Company, and (ii) the Executive's right to purchase Ordinary Shares of the Company pursuant to any Share Option or share option plan shall fully vest and become exercisable.

6. Non-Compete.

(a) The Executive acknowledges and agrees that during the course of his employment with the Company, the Executive shall have access to past, present or future strategies, plans, business activities,

methods, processes and/or information of the Company which are not only confidential and/or trade secrets, but may also afford the Company certain competitive or strategic advantages in the marketplace. Accordingly, in consideration of the Executive's employment by the Company and compensation and other benefits, during the Employment Period and for a period of [one (1) year] after the Executive's employment with the Company is terminated, the Executive shall not directly or indirectly:

(i) as an individual proprietor, partner, shareholder, officer, manager, member, employee, director, joint venturer, investor, lender, consultant, or in any other capacity whatsoever (other than as the holder of not more than one percent (1%) of the total outstanding equity interests of a publicly held company), compete with the Company by engaging in the business (the "*Restricted Business*") of [INSERT DESCRIPTION OF RESTRICTED BUSINESS]; [provided that, the Executive may be an employee of or Consultant to an entity which engages in the Restricted Business so long as the Executive does not himself engage in the Restricted Business by virtue of such employment or consulting relationship]; or

(ii) solicit, divert or take away, or attempt to divert or to take away, the business or patronage of the Company with respect to the Restricted Business;

(iii) disparage the reputation of the Company, its affiliates or their respective shareholders, members, partners, owners, officers, directors, employees and agents; or

(iv) recruit, solicit or induce, or attempt to induce, any employee of the Company to terminate his or her employment with, or otherwise cease his or her relationship with, the Company. For purposes hereof "*employee*" shall mean any person who is or was employed by Company during the time Executive renders services to Company.

(b) The provisions of this Section shall be enforced to the fullest extent permissible under the laws and public policies applied to each jurisdiction in which enforcement is sought. If any particular provision or portion of this Section shall be adjudicated by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction, such provision shall, as to the jurisdiction with respect to which such adjudication is made, be amended so as to extend only over the maximum period of time, range of activities or geographic area as to which it may be enforceable.

7. Change in Control Agreement.

(a) Termination Protection. In the event of a change in control, the Executive shall be entitled to receive the severance payments and benefits set forth in Section [4(a)(i) through (iii) above].

(b) For purposes of this Agreement, a "change in control" shall be deemed to have occurred if and when:

(i) individuals who during any 12-month period constitute the entire Board as of the beginning of the period and any new directors whose election by the Board, or whose nomination for election by the Company's stockholders, shall have been approved by a vote of at least a majority of the directors then in office who either were directors at such time or whose election or nomination for election shall have been so approved shall cease for any reason to constitute a majority of the members of the Board;

(ii) any person shall after the date hereof become the beneficial owner directly or indirectly, of securities of the Company representing 50% or more of the voting power of all then outstanding securities of the Company having the right under ordinary circumstances to vote in an election of the Board (including, without limitation, any securities of the Company that any such person has the right to acquire pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise, shall be deemed beneficially owned by such person); excluding, however, acquisition of beneficial ownership resulting from the following: (1) any acquisition directly from the Company, other than an acquisition by virtue of the exercise of a conversion privilege unless the security being so converted was itself acquired directly from the Company, (2) any acquisition by the Company and (3) any acquisition by an employee benefit plan (or related trust) sponsored or maintained by the Company;

(iii) there shall be consummated any corporate transaction, including a consolidation or merger, of the Company in which the Company is not the continuing or surviving corporation or pursuant to which shares of the Company's capital are converted into cash, securities or other property, other than a consolidation or merger of the Company in which the holders of

the Company's voting shares immediately prior to the consolidation or merger shall, upon consummation of the consolidation or merger, own at least 50% of the voting shares of the surviving entity after such consolidation or merger; or

(iv) there shall be consummated any sale, lease, exchange or transfer (in any single transaction or series of related transactions) of all or substantially all of the assets or business of the Company.

8. Indemnity.

The Company shall, to the fullest extent permitted by law and by its Certificate of Incorporation and By-laws, indemnify Executive and hold him harmless for any acts or decisions made by him in good faith while performing his duties pursuant to this Agreement. In addition, the Company shall maintain and keep in effect a directors' and officers' liability insurance policy for the benefit of its officers and directors with minimum coverage of not less than $Xm.

9. Notice.

All notices, requests and other communications pursuant to this Agreement shall be in writing and shall be deemed to have been duly given, if delivered in person or by courier, telegraphed, telexed or by facsimile transmission or sent by express, registered or certified mail, postage prepaid, addressed as follows:

If to the Executive:

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

If to the Company:

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

Either party may, by written notice to the other, change the address to which notices to such party are to be delivered or mailed.

10. Arbitration.

Except as specifically provided herein, any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration, conducted before a single arbitrator (to be mutually agreed upon), in accordance with Arbitration Act of Jamaica. If the parties cannot agree on a single arbitrator, each party shall appoint one arbitrator who shall then jointly appoint a single arbitrator. Judgment shall be final and may be entered on the arbitrator's award in any court having jurisdiction. [The Company shall bear the expense of any such arbitration proceeding and shall reimburse the Executive, regardless of the outcome, for all of his reasonable costs and expenses relating to such arbitration proceeding, including, without limitation, reasonable attorneys' fees and expenses. In no event shall the Executive be required to reimburse the Company for any of the costs or expenses relating to such arbitration proceeding.]

11. Waiver of Breach.

Any waiver of any breach of this Agreement shall not be construed to be a continuing waiver or consent to any subsequent breach on the part either of the Executive or of the Company.

12. Non-Assignment; Successors.

Neither party hereto may assign his or its rights or delegate his or its duties under this Agreement without the prior written consent of the other party; provided, however, that (i) this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Company upon any sale of all or substantially all of the Company's assets, or upon any merger, consolidation or reorganization of the Company with or into any other corporation, all as though such successors and assigns of the Company and their respective successors and assigns were the Company; and (ii) this Agreement shall inure to the benefit of and be binding upon the heirs, assigns or designees of the Executive to the extent of any payments due to them hereunder. As used in this Agreement, the term "Company" shall be deemed to refer to any such successor or assign of the Company referred to in the preceding sentence.

13. Severability.

To the extent any provision of this Agreement or portion thereof shall be invalid or unenforceable, it shall be considered deleted therefrom and the remainder of such provision and of this Agreement shall be unaffected and shall continue in full force and effect.

14. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument

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

16. Entire Agreement.

This Agreement, together with the agreements specifically referred to herein and the Confidential Information, Assignment of Rights, Non-Solicitation and Non-Competition Agreement effective _____ between the parties hereto, constitutes the entire agreement by the Company and the Executive with respect to the subject matter hereof and except as specifically provided herein, supersedes any and all prior agreements or understandings between the Executive and the Company with respect to the subject matter hereof, whether written or oral. This Agreement may be amended or modified only by a written instrument executed by the Executive and the Company.

17. Acknowledgment.

Executive acknowledges that he has had the opportunity to discuss this matter with and obtain advice from his private attorney, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

[The remainder of this page is intentionally left blank.

Signature pages follow.]

IN WITNESS WHEREOF, the undersigned parties hereto have executed this as of the date first written above.

THE COMPANY:

By: _____,

Name:

Title:

Address:

THE EXECUTIVE

Print Name:

Title:

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 to 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.

OR

[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, 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 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.]

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 Subscription Agreement

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, Subscription Agreement dated [DATE] (the "Subscription Agreement") among the Company and you. This opinion letter is being rendered to you pursuant to Section __ of the Subscription 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 Subscription 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 Subscription 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 Subscription 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 Subscription 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 Subscription 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 Subscription 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 Subscription 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 Subscription 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 Subscription Agreement and consummation at the Closing of the transactions contemplated by the Subscription 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 ay 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 Subscription 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 Board Observer Agreement

[COMPANY LETTERHEAD]

[_____], 200[__]

Ladies and Gentlemen:

In consideration for the purchase by [Purchaser Name], a corporation ("Purchaser"), from [Company Name], a Jamaican corporation (the "Company"), of _____ shares of Series [_____ Convertible] Preferred Shares of the Company (the "Preferred Shares"), pursuant to a [Series _____ Preferred] Share Purchase Agreement dated as of the date hereof (the "Purchase Agreement"), the Company and Purchaser hereby agree to the terms and obligations of this side letter agreement (this "Agreement"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

1. Confidentiality.

1.1 Confidential Information. The term "Confidential Information" shall mean (a) all confidential, proprietary, or trade secret information disclosed by a party hereto (the "Disclosing Party") or its representatives to the other party hereto (the "Receiving Party") or its representatives, in tangible form that bears a "confidential", "proprietary", "secret" or similar legend, all copies thereof, and all discussions relating to any of the foregoing information, whether those discussions occur prior to, concurrent with, or following the disclosure of such information, (b) with respect to each party, the terms and conditions (collectively, the "Financing Terms") of this Agreement, the Ancillary Agreements and the Purchase Agreement, all exhibits, restatements and amendments to each of the foregoing (collectively, the "Financing Agreements"), and the existence of the Financing Agreements and (c) with respect to the Company, any oral disclosures made during any meeting of the Board or any committee thereof, for those portions of such meetings where the Observer (as defined below) was in attendance.

1.2 Treatment of Confidential Information.

(a) Except as otherwise permitted under this Agreement, each Receiving Party agrees that it will maintain the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances, and each Receiving Party agrees that it will not disclose any of the Disclosing Party's Confidential Information to any employees or any third parties, except to those of the Receiving Party's employees, parent companies and majority-owned subsidiaries who have a need to know and who have agreed to abide by nondisclosure terms at least as comprehensive as those set forth herein; provided that the Receiving Party will be liable for breach of any such nondisclosure terms by any such employee or entity. For purposes of this Agreement, "employees" shall include independent contractors of each party. The Receiving Party shall not make any copies of the Confidential Information received from the Disclosing Party except as necessary for its employees, parent company and majority-owned subsidiaries with a need to know, and any such permitted copies shall be identified as belonging to the Disclosing Party and marked "confidential", "proprietary" or with a similar legend.

(b) Notwithstanding anything to the contrary in this Agreement, the Receiving Party will not be liable for the disclosure of any Confidential Information which is: (i) rightfully in the public domain other than by breach of a duty to the Disclosing Party; (ii) rightfully received from a third party without any known obligation of confidentiality; (iii) rightfully known to the Receiving Party without any limitation on use or disclosure prior to its receipt from the Disclosing Party; (iv) independently developed by employees of the Receiving Party without use or reference to the Confidential Information of the Disclosing Party; or (v) generally made available to third parties by the Disclosing Party without restriction on disclosure.

© This Agreement constitutes the sole and entire agreement between the parties with respect to the Confidential Information and all restrictions thereon; it supersedes any and all prior or contemporaneous oral or written agreements, negotiations, communications, understandings and terms, whether express or implied regarding the Confidential Information.

(d) Either party may, at any time, request in writing the return or destruction of all or part of its Confidential Information previously disclosed, and all copies thereof, and the Receiving Party will promptly comply with such request, and certify in writing its compliance.

(e) Both parties understand and acknowledge that no license under any patents, copyrights, trademarks or mask works is granted to or conferred upon either party in this Agreement or by the disclosure of any Confidential Information by one party to the other as contemplated hereunder, either expressly, by implication, inducement, estoppel or otherwise, and that any license under such intellectual property rights must be express and in writing. As between the parties, title to or the right to possess all Confidential Information disclosed by a party hereunder will remain in the party disclosing the same.

1.3 Permitted Disclosures. Notwithstanding the foregoing: (i) the Company may disclose any of the Financing Terms and the Financing Agreements to its current or bona fide prospective investors, employees, investment bankers, lenders, accountants, attorneys, potential acquirers, joint venturers and other such parties, provided that the Company will request that any such parties agree to be bound by customary nondisclosure obligations and, to the extent such custom dictates, the Company will make good faith efforts to obtain any such party's execution of a non-disclosure agreement, and will otherwise inform such parties of the confidential nature of the Financing Terms and the Financing Agreements disclosed by marking them as "Confidential"; (ii) the Company may disclose (other than in a press release or other public announcement described in Section 1.2 above), solely the fact that Purchaser is an investor in the Company to any third parties without obtaining the prior consent of Purchaser and without other nondisclosure obligations; and (iii) the Company shall have the right to disclose to third parties any information regarding the Financing Terms disclosed in a press release or other public announcement by Purchaser.

1.4 Legally Compelled Disclosure. In the event that either party is requested or becomes legally compelled (including without limitation, pursuant to any applicable law or regulations) to disclose the existence of any of the Confidential Information of the other party, other than as permitted under this Agreement, the Receiving Party shall do so and shall make good faith efforts to provide the Disclosing Party with prompt written notice of that fact before such disclosure and, upon the Disclosing Party's request, will use its commercially reasonable efforts to fully cooperate with the Disclosing Party, at the Disclosing Party's expense, to seek a protective order, confidential treatment, or other appropriate remedy with respect to the disclosure. In such event, the Receiving Party shall furnish for disclosure only that portion of the confidential information which is legally required and shall exercise its commercially reasonable efforts to obtain

reliable assurance that confidential treatment will be accorded such confidential information to the extent reasonably requested by the Disclosing Party and to the maximum extent possible under law. Each Receiving Party agrees that it will provide the Disclosing Party (to the extent legally permissible and practicable under the circumstances) with drafts of any documents, press releases or other filings in which the Receiving Party is required to disclose this Agreement, the other Financing Agreements, the Financing Terms or any other Confidential Information subject to the terms of this Agreement at least five (5) business days prior to the filing or disclosure thereof, and that it will make good faith efforts to make any changes to such materials as reasonably requested by the Disclosing Party to the extent permitted by law.

1.5 Notices. All notices required under this section shall be made pursuant to Section _____ of the Purchase Agreement.

2. Press Releases. Purchaser may, at its sole and absolute discretion, issue a press release disclosing that Purchaser has invested in the Company (the "Purchaser Press Release"), including without limitation, the details of such investment. The Company shall not issue any press release regarding the financing contemplated by the Financing Agreements prior to the date on which Purchaser releases the Purchaser Press Release (the "Press Release Date"). The Company may, beginning the day after the Press Release Date and ending ninety (90) days after the date of the Initial Closing, issue a press release disclosing that Purchaser has invested in the Company, provided that (a) the press release does not disclose any of the Financing Terms, (b) the press release discloses only the entire amount invested in the investment round, without disclosing the amount invested by Purchaser or any other investor, and (c) the final form of the press release is approved in advance in writing by Purchaser. Purchaser's name and the fact that Purchaser is an investor in the Company can be included in a reusable press release boilerplate statement which may be posted on the Company's website, so long as Purchaser has given the Company its initial approval of such boilerplate statement and the boilerplate statement is reproduced in exactly the form in which it was approved. No other announcement regarding Purchaser in a press release, conference, advertisement, announcement, professional or trade publication, mass marketing materials or otherwise to the general public may be made without Purchaser's prior written consent.

3. Board Observer.

3.1 Purchaser Representative.

(a) So long as (i) Purchaser beneficially owns, either directly or indirectly, at least 10% shares of Preferred Shares (or any security issued or issuable on conversion thereof) of the Company (such number to be proportionately adjusted for share splits, share dividends, recapitalization, conversions and similar events) and (ii) Purchaser does not have a representative serving on the Board (a "Purchaser Director"), the Company will permit a representative of Purchaser (the "Observer") to attend all meetings of the Board and all committees thereof (whether in person, telephonic or other) in a non-voting, observer capacity, and shall provide to Purchaser, concurrently with the members of the Board, and in the same manner, notice of such meeting and a copy of all materials provided to such members; provided, that the Observer shall agree to use all information so provided only in connection with Purchaser's investment in the Company; and provided further, that such Observer shall not concurrently manage or otherwise actively participate in any investment by Purchaser in any competitor of the Company in Jamaica or those markets to which its products and/or services are exported. The Company may, in its sole discretion, invite one or more additional representatives of Purchaser to attend meetings of the Board as additional Observers; provided that the terms set forth in this Agreement shall apply to all such additional Observers and to the attendance of any such additional Observers. A majority of the Board shall have the right to exclude any Observers from portions of meetings of the Board or omit to provide the Observers with certain information if such members of the Board believe in good faith, based on the advice of Company counsel, that such exclusion or omission is necessary in order to (a) preserve the Company's attorney-client privilege, or (b) fulfill the Company's obligations with respect to confidential or proprietary information of third parties (provided, however, that the Observers shall not be so excluded unless all other persons whose receipt of such materials or presence at a meeting would result in a violation of such third party confidentiality obligations are also excluded). In addition, a majority of the Company's directors on the Board shall have the right to exclude the Observers from portions of meetings of the Board or omit to provide the Observer with certain information if such meeting or information involves information or analysis which may pose a conflict of interest for Purchaser, or if deemed by the Board that inclusion of the Observer would not be in the best interest of the Company.

(b) Termination of Observer Rights. The rights set forth in paragraph 2.1(a) shall terminate and be of no further force or effect immediately (i) upon the consummation of the sale of shares of the Company's ordinary shares in an initial public offering or upon an acquisition or an asset transfer whichever event shall occur first.

4. Disclaimer of Corporate Opportunity Doctrine. The Company acknowledges that Purchaser will likely have, from time to time, information that may be of interest to the Company ("Information") regarding a wide variety of matters including, by way of example only, (a) Purchaser's technologies, plans and services, and plans and strategies relating thereto, (b) current and future investments Purchaser has made, may make, may consider or may become aware of with respect to other companies and other technologies, products and services, including, without limitation, technologies, products and services that may be competitive with the Company's, and (c) developments with respect to the technologies, products and services, and plans and strategies relating thereto, of other companies, including, without limitation, companies that may be competitive with the Company. The Company recognizes that a portion of such Information may be of interest to the Company. Such Information may or may not be known by the Observer. The Company, as a material part of the consideration for this Agreement, agrees that Purchaser and its Observer shall have no duty to disclose any information to the Company or permit the Company to participate in any projects or investments based on any Information, or to otherwise take advantage of any opportunity that may be of interest to the Company if it were aware of such Information, and hereby waives, to the extent permitted by law, any claim based on the corporate opportunity doctrine or otherwise that could limit Purchaser's ability to pursue opportunities based on such Information or that would require Purchaser or any Observer to disclose any such Information to the Company or offer any opportunity relating thereto to the Company.

5. Additional Information Rights. In addition to, and not in substitution for, any information or related rights granted in the Financing Agreements or otherwise, so long as Purchaser holds any shares or Preferred Shares (or any security issued or issuable upon conversion or exchange thereof) of the Company, the Company agrees to provide Purchaser with copies of the current versions of the Financing Agreements (fully-executed) and the Company's then current Articles of Association in each case, reflecting all amendments and restatements

thereto through the date of request, promptly following a request by Purchaser. The copies of the documents provided under this Section 3 may be delivered in either hardcopy or electronic format (Portable Document Format (PDF)).

6. Miscellaneous.

6.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of Jamaica without reference to the rules governing the conflicts of law.

6.2 Amendment; No Waiver. This Agreement may not be amended or modified without the written consent of Purchaser and Company, nor shall any waiver be effective against any party unless in writing and executed by such party. The failure of either party to enforce any right resulting from breach of any provision of this Agreement by the other party will not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.

6.3 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Prior to the Initial Closing, Purchaser may transfer or assign its rights and obligations under this Agreement to one or more of its affiliates; provided that no such transfer or assignment shall relieve Purchaser of its obligations hereunder or enlarge, alter or change any obligation hereunder of the Company or due to Purchaser.

6.4 Severability. If any provision of this Agreement shall be declared void or unenforceable by any judicial or administrative authority, the validity of any other provision and of the entire Agreement shall not be affected thereby.

6.5 Enforceability: Conflicts. In all events, the terms and provisions of this Agreement shall be enforceable notwithstanding any conflicting term or provision set forth in any of the other Financing Agreements. In the event of any conflict between any term or provision of this Agreement and any term or provision set forth in any of the other Financing Agreements, such term or provision of this Agreement shall prevail over such term or provision set forth in any of the other Financing Agreements.

6.6 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,, 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, 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.]

6.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Please confirm that the above correctly reflects our understanding and agreement with respect to the foregoing matters by signing the enclosed copy of this letter and returning such copy to the Company.

Very truly yours,

[COMPANY NAME]
By:
Name:
Title:

Agreed and Accepted:
[PURCHASER NAME]
By:
Name:
Title:

Appendix XIII

Form of Investment Guidelines/Restrictions for the JVCP

Types of Investment

1. The Fund will invest in private sector companies in the Jamaica, which have a clear potential for achieving above average growth and profitability.

2. The Fund will invest only in companies, which have the potential to make a positive contribution to the region's economies, and it will not invest in companies whose activities could have significant adverse social or environmental effects.

3. The Fund will concentrate on providing risk capital for start-ups, expansions, rationalisations, reconstructions or reorganisations (including, without limitation, privatisations**).**

4. The Fund will only invest in companies whose owners and management are reputable and have a clear and successful business track record.

5. The Fund will normally invest directly in companies by the subscription of new shares or securities rather than purchase existing shares or securities from third parties.

6. The Fund may make additional investments in existing investee companies if such investments are expected to contribute to the growth of the investee company and to secure an acceptable return for the Fund.

7. Where appropriate, the Fund may join with other financial institutions to co-finance investments.

8. Investments will be allowed only within the following sectors in the region:

a) agriculture, livestock, horticulture and forestry;
b) fisheries;
c) mining and mineral extraction;
d) industrial enterprises;
e) water, electricity and gas;
f) transport and communications;
g) residential property development;
h) the operation of hotels and the promotion of tourism and travel;
i) processing, storage or marketing of any products of one or more of the above- mentioned activities;
j) construction and engineering;
k) private hospitals, medical, dental or veterinary services, schools, colleges and businesses providing education and training services (subject to national government approval);

l) merchanting, wholesaling, warehousing, stockholding and packaging;
m) providing or improving factories, and industrial or commercial premises;
n) leasing;
o) supply of food and beverages;
p) providing financial, management, consultancy and various other services;
q) technology.

9. Investments will not be allowed under any circumstances in:

a) armaments;
b) tobacco;

10. The Fund will require investee companies to comply with the environmental guidelines issued by the Inter-American Development Bank.
11. The Fund will invest only in companies incorporated with limited liability.

Structure of Investments

(a) Investments will be by way of subscription for ordinary or preferred shares or such other equity-type investment instruments, including subordinated debt, available under the law of Jamaica, that are in the best interests of the Fund and appropriate to individual investments. Investments in short term debt instruments (such as working capital loans) will be limited to 5 per cent of the Fund's committed capital per investee and 15 per cent of committed capital in aggregate. Such advances will only be made to investee companies where the Fund has an existing equity investment.
(b) The Fund will take up to 49 per cent of the ordinary share capital of its investee companies but will not normally take majority shareholdings.
(c) The Fund will require the promoter and/or an investee company to make, or have already made, a substantial investment in the company.
(d) The Fund will seek to avoid any restriction on its rights to transfer its shares in investee companies, subject to reasonable consultation with other shareholders.
(e) Dividend policy will be agreed with the other shareholders in investee companies prior to investment.
(f) Where possible, a clear exit route for disposing of the Fund's investment will be agreed with the other shareholders in investee companies prior to investment. This may include the right to buy out the other shareholders in order to sell the company as a whole.

(g) The Fund will require investee companies to apply the funds invested in such companies in such manner as the Fund and the investee companies shall agree.

Size of Investment and Portfolio Balance

(a) The Fund will balance its portfolio by investing in a mix of established and new companies and across business sectors.
(b) The Fund will ordinarily make initial investments of between the equivalent of US $250,000 and US$2.5m.
(c) No more than 15% of the Fund's committed capital will be invested in any one

company

(d) No more than 30% of the Fund's Committed Capital will be invested in any one sector.

Required Return

1. The Fund will undertake its investments on the basis of objective analysis. It will aim to maximise its return for each investment.
2. The Fund will aim to make investments only in companies where:

a) the projected financial internal rate of return from the income stream accruing to the Fund and the proceeds from the disposal of the risk capital investment at the time of appraisal is at least 25% in USS current terms; and
b) there is a reasonable probability of generating a positive cash flow from the investment within two years, or a clear exit strategy.

3. The Fund will seek to realise its investments at the earliest appropriate opportunity, consistent with its policy of maximising returns to its investors. The Fund will also aim to realise all its investments within 10 years of starting business.
4. The Fund will seek to receive its returns in US dollars as far as possible.

Appendix XIV

FORM OF INVESTMENT MANAGEMENT AGREEMENT

THIS INVESTMENT MANAGEMENT AGREEMENT (this "AGREEMENT") is effective as of XXXXXX, 2014 by and among XXXXXXXX ("The Investors ") and XXXXXX ,a company incorporated under the laws of Jamaica ("the Company").

RECITALS

WHEREAS:

The Company wishes to provide the Investors with certain rights with regard to the equity interests of the Investors and to set forth their understanding with regard to the operations, control and management of the Company; and

WHEREAS, the Investors have requested to be granted, and the Company has agreed to grant to the Investors the right to review the Books and Records
(as defined below) of the Company and the Books as well as the Records of its subsidiaries and to consult with the Investors on the management of the Company and it's respective subsidiaries regarding operations.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and for other good and
valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

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

a. "BENEFICIAL OWNERSHIP" means the power, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, to (i) vote, or to direct the voting of, a security; and (ii) dispose, or to direct the disposition of, such security. "Beneficially Owns" shall mean having Beneficial Ownership.
b. "COMPANY BOARD" means the Board of Directors of the Company.
c. "VOTING SECURITIES" shall mean with respect to any entity, all debt or equity securities of such entity entitled to vote for the board of

directors, board of managers or other similar body elected or appointed to
manage the business of such entity.

2. Designation and Election of Directors.

a. During the term of this Agreement, the Investors shall be entitled to nominate one director to serve as a member of the Company's Board (the "Investor Nominee"). Additionally, during the term of this Agreement, the Investors shall have the right to appoint one non-voting board observer to the Company Board, who will be entitled to attend all meetings of the Company Board and receive all copies of all materials provided to the Company Board (including, without limitation, minutes of previous board meetings of such Company Board), provided that such observer shall have no voting rights with respect to any actions taken or elected not to be taken by the Company Board (the "Company Board Observer"). The Company reserves the right to withhold any information and to exclude the Company Board Observer from any meeting or portion thereof if access to such information or attendance at such meeting would adversely affect the attorney-client privilege between the Company and its counsel or result in a conflict of interest. For the avoidance of doubt, no Company Board Observer shall have voting rights or fiduciary obligations to the Company or the stockholders but each shall be bound by the same confidentiality obligations as the members of the Company Board.

b. The Investors hereby designate Mr. XXXXXX as the Investor Nominee and as the Company Board Observer.

c. If the Acquisition Nominee or the Company Board Observer shall be unable or unwilling to serve prior to his or her election or appointment to the Company Board, the Investors shall be entitled to nominate a replacement who shall then be the respective Investor Nominee or Company Board Observer for the purposes of this Agreement. If, following election or appointment to the Company Board, the Investor Nominee or the Company Board Observer shall resign or be removed for cause or be unable to serve by reason of death or disability, the Investors shall, within 30 days of such event, notify the Company Board

in writing of a replacement, and all parties hereto shall take such steps as may be necessary to elect or appoint such replacement to the Company Board to fill the unexpired term of the Investor Nominee or Company Board Observer.

d. Each party hereto agrees not to take any action without the written consent of the Investors which consent may be given or withheld in the Investor's sole discretion, to remove, whether or not for cause, the Investor Nominee from the Company Board following his or her election thereto, including, without limitation, by decreasing the size of the Company Board such that there are an insufficient number of directors on the Company Board to permit the Investors to exercise its rights to nominate the Investor Nominee to the Company Board pursuant to this Section 2.

3. Information.

a. The Company shall keep proper books of record and account in which full and correct entries shall be made of all financial transactions and the assets and business of the Company or their subsidiaries (as the case may be) in accordance with generally accepted accounting principles in Jamaica, and the Company shall provide the Investors with reasonable access to the Books and Records of XXX Corp. and the Company and their subsidiaries, including without limitation, financial data (including projections) and operating data covering each of such entities, their businesses, operation and financial performance (the "BOOKS AND RECORDS"). The Company shall, and shall cause their subsidiaries to, provide the Investors with reasonable access to all Books and Records during regular business hours and allow the Investors to make copies and abstracts thereof.

b. The Investors shall have the right to consult from time to time with the management of the Company and their subsidiaries at their respective place of business regarding operating and financial matters.

4. Miscellaneous.

a. Each party hereto agrees to execute and deliver such documents and take such further actions as may be necessary or desirable to effect the purposes and objectives of this Agreement.

b. This Agreement may not be amended or modified except by a written instrument signed by each of the parties hereto. The waiver by any party of such party's rights under this Agreement in any particular instance or instances, whether intentional or otherwise, shall not be considered as a continuing waiver which would prevent subsequent enforcement of such rights or of any other rights.

c. This Agreement with respect to the Company shall automatically terminate when the Investors and all of their affiliates collectively no longer Beneficially Own any Voting Securities of the Company and this Agreement with respect to the Investors .

d. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if sent by recognized courier delivery service, return receipt requested, to the following parties at the following addresses or to such other parties and at such other addresses as shall be specified by like notices:

If to the **Investors** at:

xxxxxxxxxxx
Attention: xxxxxxxx

with a copy to:

xxxxxxxxxx
Attn: XXXXXXXX.

If to the **Company**:
XXXXXXXXXX, at their respective registered office.

with a copy to:

xxxxxxxxxxx
Attn: xxxxxx

Notice so given shall be deemed to be given and received on the second business day after sending by recognized courier delivery service, return receipt requested.

e. The parties acknowledge and agree that the breach of the provisions of this Agreement by any party could not be adequately compensated with monetary damages, and the parties hereto agree, accordingly, that injunctive relief and specific performance shall be appropriate remedies to enforce the provisions of this Agreement and waive any claim or defense that there is an adequate remedy at law for such breach; provided, however, that nothing herein shall limit the remedies herein, legal or equitable, otherwise available and all remedies herein are in addition to any remedies available at law or otherwise.

f. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable under any applicable law, then such contravention or invalidity shall not invalidate the entire Agreement. Such provision shall be deemed to be modified to the extent necessary to render it legal, valid and enforceable, and if no such modification shall render it legal, valid and enforceable then this Agreement shall be construed as if not containing the provision held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

g. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their heirs, administrators, executors, successors and assigns. The Investors may assign its rights and interest in this Agreement to any of its affiliates without need for the consent of any other party hereto, and each of such other parties agrees that it will acknowledge such an assignment upon the request by the Investors.

h. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

i. The parties agree that this Agreement shall be governed by and construed in accordance with the laws of Jamaica, excluding any laws thereof which would direct application of law of another jurisdiction.

j. 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, 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, 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.]

k. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, with the same effect as if each party had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

l. When the context requires, the gender of all words used herein shall include the masculine, feminine and neuter and the number of all words shall include the singular and plural.

[signature pages follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

The Investors: XXXXXXXXXX

The Company: XXXXXXXXX

Appendix XV

Fund Management Agreement

FORM OF FUND MANAGEMENT AGREEMENT

This **FUND MANAGEMENT AGREEMENT** (this "Agreement") is made as of the XX day of 20XX by and between, [ ] a limited liability company duly incorporated under the laws of Jamaica (the "Fund") and, (the "Fund Manager").

WHEREAS:

The Fund has been organized for the primary purpose of making debt and equity investment to companies in Jamaica to meet their financing needs, as described in the Fund's limited liability company agreement, dated as of the date hereof (as the same may be amended from time to time, the "Fund Agreement"); and

(a) This Agreement is subject to the abovementioned Fund Agreement, which by reference is incorporated as a part of this Agreement,"); and

© The Fund is desirous of appointing the Fund Manager to act as investment manager of the Fund and the Fund Manager desires to provide the Fund with such services, all on the terms and conditions hereinafter contained.

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

2. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings given to them below or further detailed in the Fund Agreement:

"Administrator: The third-party fund administrator approved by the Board and retained to provide administrative services to the Company.

"Affiliate": When used with reference to a specified Person at a specified time, any Person which, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with another Person, and any officer, director, general partner, manager, managing member, trustee or holder of 10% or more of the voting securities or beneficial interests of such Person. The term "control" as used herein (including the terms, "controlled by" and "under common control with") means possession of the power to direct or

cause the direction of the management and policies of the Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement": This Fund Management Agreement, including the annexes and schedules hereto, as the same may be amended and/or restated from time to time.

"Board": The board of directors listed from time to time on Annex B, as the same may be amended, modified or supplemented thereto in accordance with this Agreement.

"Calendar Year": Any twelve (12) month period commencing on January 1 and ending on December 31.

"Commitment": For any Member, the amount set forth in the related Subscription Agreement and opposite its name on Annex A hereto, as amended from time to time (i) to take account of Commitments made by Members on Subsequent Closing Dates and (ii) as otherwise provided in this Agreement.

"Commitment Period": The period from the date of the Initial Closing Date to the date that is the third (3rd) anniversary of the Initial Closing Date. The Commitment Period may not be extended without the consent of a Supermajority of Members.

"Conflicts Committee": a committee that is established by the Company under the Fund Agreement to address conflicts of interest situations, arrangements or transactions that may be submitted to it from time to time. The Conflicts Committee shall be comprised of three members, one selected by private Members, one selected by the sponsor Members and one selected by the other Members.

"Counsel": Legal counsel to the Company.

"Directors": Persons appointed to the Board from time to time by the Members, as provided in the Fund Agreement. The initial Directors of the Company are listed on Annex B hereto, which Annex shall be updated from time to time to reflect any changes in the composition of the Board.

"Drawdown": As defined in the Fund Agreement.

"Drawdown Date": As defined in the Fund Agreement.

"Drawdown Notice": As defined in the Fund Agreement.

"Fund Investment": Means any investment by the Company, directly or indirectly through subsidiaries or special purpose vehicles, including any Debt Investment, other than Permitted Temporary Investments.

"Fund Manager": , a company incorporated under the laws of [ ], or any replacement or substitute Fund Manager engaged by the Company pursuant to the Fund Agreement.

"**Initial Closing Date"**: The date of the initial subscription of the Company's offering of Interests.

"Interest": The interest of a Member in the Company, including a Member's share of net Income, net loss and right to receive distributable proceeds pursuant to this Agreement, and the right, if any, to participate in the business and the affairs of the Company, including the right, if any, to vote on, consent to or otherwise participate in any decision or action of or by the Members and the right to receive information concerning the Company, in each case to the extent expressly provided in this Agreement or otherwise required by the operation of law.

"Investee Company": Means any Person in which any Fund Investment has been made either directly or indirectly by the Company.

"Investment Guidelines": Shall mean the Investment Guidelines of the Company approved by the Investment Issues Committee pursuant to the Fund Agreement and ratified by the Board.

"Investment Issues Committee": The Committee established by the Company comprised of three members, one selected by a Majority-in-Interest of the Private Members, one selected by a Majority-in-Interest of the Sponsor Members and one selected by a Majority-in-Interest of the Other Members, and which acts as an intermediary body facilitating communications and decision making between the Board and the Fund Manager's internal credit committee. The Investment Issues Committee duties shall include: (i) directing all credit related questions from the Directors to the Fund Manager's internal credit committee, (ii) if any of the Directors specifically request, causing one member of the Investment Issues Committee to participate in the Fund Manager's internal credit committee (provided that such participation will be limited to those investment proposals related to the Company only), and (iii) reviewing with the Fund Manager and proposing for approval to the Board (or, in the case of clause (B) below, a Supermajority of Members) the following policies: (A) cash management and investment policies; (B) Investment Guidelines; (C) reserve guidelines and provisioning, (D) distribution policy and (E) policies concerning Company borrowing.

"Management Fee": the amount paid by the Company to the Fund Manager have for provision by the Fund Manager of asset management services and administrative services to the Fund. The Management Fee shall be paid by the Company as an Operating Expense under the terms specified in this Agreement.

"Members": The parties listed as Members in the Fund Agreement, as amended from time to time, in their capacities as Members of the Company, and, for purposes of the allocation and distribution provisions contained in the Fund Agreement, an Assignee.

"MFIs": regulated or non-regulated creditworthy microfinance institutions, microfinance banks, specialized financial intermediaries, commercial banks, *financieras*, non-governmental organizations and cooperatives (collectively, "MFIs"), which facilitate funding to small and micro enterprises in the Caribbean and that meet the company's Investment Guidelines, as adopted by the Investment Issues Committee and the Board from time to time.

"Operating Expenses": all costs and expenses of the Company's activities and operations (other than Manager Expenses, and only to the extent not borne or reimbursed by an Investee Company) and further described in the Fund Agreement.

"Permitted Temporary Investments": Investments made by the Company of funds (including any reserves) on a temporary basis pending the use of those funds in connection with the acquisition of Fund Investments, the payment of anticipated expenses or distributions to Members, in bank accounts in one or more banking corporations and/or their Affiliates with a financial strength rating equal to or higher than "AA" by Standard and Poor's Rating Services or an equivalent rating by Fitch Ratings and having an unrestricted capital surplus of at least $250,000,000 or the equivalent, commercial paper rated not lower than A-1 by Standard & Poor's Corporation or P-1 by Moody's Investors Service, Inc. with maturities of not more than 12 months and one day, or Canadian or European Union government and agency obligations with maturities of not more than one year and one day from the date of acquisition.

"Person": Any individual, partnership, corporation, limited liability company, joint venture, joint-stock company, unincorporated organization or association, trust (including the trustees thereof, in their capacity as such), any government and any agency, department or political subdivision thereof.

"**U.S. dollars and $"**: Unless otherwise specified the term U.S. dollars and references to dollar amounts using the symbol "$" are to be construed as meaning United States dollars.

3. Appointment.

3.1 The Fund hereby appoints the Fund Manager to serve as Fund's investment manager, and the Fund Manager accepts such appointment to manage the Fund's assets and to oversee the administration of the Fund pursuant to the terms of this Agreement and the Fund Agreement, any Financing Documents (as defined below) and in accordance with the Investment Guidelines and such procedures, directions or guidelines consistent herewith as may be delivered to the Fund Manager by the Fund or its designees from time to time.

3.2 To enable the Fund Manager to exercise fully its authority as provided herein, the Fund hereby constitutes and appoints the Fund Manager as the Fund's agent and attorney (by virtue of the attached Power of Attorney) with full power and authority (without the need for further approval of the Board, except as otherwise specified in this Agreement or the Fund Agreement) for and on the Fund's behalf to negotiate, make and dispose of Fund Investments and to execute any

agreements on behalf of the Fund in connection therewith as well as any agreements with any service providers to the Fund the engagement of which has been approved by the Board; provided that the authority conferred hereby shall terminate upon the expiration or termination of this Agreement and may be modified or revoked by the Board at any time.

4. Responsibilities of the Fund Manager. Subject to the supervision of the Board, the Fund Manager shall manage the assets of the Fund and shall oversee the administration and provision of services to the Fund as provided herein and in the Fund Agreement. Without limiting the foregoing, the Fund Manager shall, in accordance with and subject to the provisions of this Agreement, the Fund Agreement, including the Investment Guidelines, any Financing Documents, and applicable laws and regulations:

4.1 provide the Fund with regular advice, reports and recommendations in connection with the investment strategy and management of Fund assets;

4.2 propose investments to be made in the form of an investment pipeline, to be provided to the Board no less often than once per quarter;

4.3 permit one member of the Investment Issues Committee selected by such committee to participate in the Fund Manager's internal credit committee discussions and deliberations with respect to investment proposals related to the Fund;

4.4 analyze, investigate, review, evaluate and structure Fund Investments, including identification of potential MFIs or other borrowers;

4.5 negotiate and cause the Fund to make Fund Investments, and supervise the preparation and review of all documents required in connection with making or financing of each Fund Investment;

4.6 prepare Drawdown Notices;

4.7 manage, monitor and supervise Fund Investments and other Fund assets and the performance of Investee Companies in all respects, including the compliance of Investee Companies with affirmative and negative covenants to the Fund, and keep the Board fully informed at all times on matters relating to the Fund Investments;

4.8 analyze, investigate, structure and advise as to potential dispositions of Fund Investments, and evaluate offers made by potential acquirers thereof;

4.9 negotiate and, subject to the approval of the Board, dispose of Fund Investments, and supervise the preparation and review of all documents required in connection therewith;

4.10 advise and assist the Fund in connection with hedging currency, interest rate and similar risks;

4.11 cooperate with the Investment Issues Committee and facilitate the accomplishment of its duties set forth in the Fund Agreement, including without limitation, preparing drafts of the Fund policies listed therein for presentation to the Board;

4.12 to the extent an investment opportunity of the Fund exceeds the amount to be invested by the Fund, use reasonable commercial efforts to notify and cooperate with the Members with respect to co-investment opportunities;

4.13 at the request of the Board, negotiate borrowings by the Fund, and take all reasonable steps to ensure the Fund's compliance with the terms of any credit agreement or other documents related to any Credit Facility (collectively, the "Financing Documents");

4.14 assist the Fund in establishing accounting policies, reconciling accounting issues which may arise with respect to operations and consulting with the Fund's independent accountants, legal counsel and custodians as may be necessary in connection therewith;

4.15 not later than thirty (30) days before the end of any Calendar Year, provide the Board with an expected Drawdown schedule together with any plans relating to Fund Investments for the succeeding Calendar Year;

4.16 not later than sixty (60) days before the end of any Calendar Year, provide the Board with a proposed budget for the Fund for the following Calendar Year in the format of Annex 1 hereto (the "Proposed Budget") setting forth projected line items and Annual Investment Management Fees for the coming Calendar Year and to negotiate and consult with the Board regarding same in accordance with Section 9.3 hereof;

4.17 cause the Fund's accountants and auditors to prepare the financial statements and tax returns of the Fund required to be prepared pursuant to the Fund Agreement or as may be required by government agencies and otherwise as the Board or the Fund Manager determines is appropriate;

4.18 prepare or cause to be prepared and furnished to the Fund written reports, valuations, calculations, budgets and other matters as required by the Fund Agreement or otherwise as reasonably requested by the Board, including reports on the performance and risks of the portfolio;

4.19 cause one or more of its representatives to serve as the Secretary of the Board, prepare agendas, briefing materials, financial reports and other information for meetings of Members, the Board or any Fund committees and prepare or cause to be prepared minutes of all meetings of the Members and the Board;

4.20 with the approval of the Board, open and maintain one or more non-Jamaican bank accounts for and in the name of the Fund, make Permitted Temporary Investments on behalf of the Fund, and change any of the Fund's depository banks or depository arrangements upon receipt of any direction from the Board to do so;

4.21 advise and assist the Fund's custodian (if any is selected by the Board) on all custodial matters;

4.22 recommend, arrange for and obtain or cause to be obtained such insurance policies for the Fund Manager, the Board, the Fund and the Fund Investments as the Board from time to time may require;

4.23 oversee, supervise, cooperate with and monitor the performance of service providers to the Fund, including without limitation, the Administrator, the Fund's custodian, Fund's auditors and legal professionals, and providers of foreign exchange and hedging services, and to take all actions reasonably necessary for the Fund to engage such Persons, and

4.24 perform all reasonable acts necessary or appropriate to effect the foregoing and to facilitate the performance of its obligations and provide such other investment, management and administrative services to the Fund as are consistent herewith and the Fund Agreement. For the

avoidance of doubt, the Fund Manager shall not be liable to perform any administrative services to the Fund that are to be provided to the Fund by any Administrator engaged by the Fund to perform the same.

5. Time Commitment and Exclusivity.

5.1 The Fund Manager agrees that certain employees of the Fund Manager shall be dedicated to the Fund and will ensure that such employees provide such portion of their time as is required to manage the affairs of the Fund to the reasonable satisfaction of the Board. In this regard the Fund Manager agrees that throughout the term of this Agreement, will be the Board's primary contact, will lead the Fund Manager's management team for the Fund and will otherwise be actively involved in this engagement. The Fund Manager further agrees that it will be actively involved in this engagement. If any of Fund Manager's management team ceases to remain an employee of the Fund Manager or otherwise ceases to be actively involved in this engagement, the Fund Manager will promptly notify the Board and, as soon as practicable, but in any event within forty-five (45) days, will appoint one or more replacements of comparable experience who have been approved by the Board.

5.2 For purposes of this Section 4.2 "Ramp-Up Period" shall mean the period until the earlier of (a) the end of the Commitment Period or (b) the initial time at which at least 75% of Fund Capital (as defined below) has been invested in, called for contribution for, or committed by the Fund for the making of, Fund Investments; and "Fund Capital" shall mean the sum of the Commitments of the Members and the Debt Commitments of the Fund.

5.2.1 *During the Ramp-Up Period*:

(a) all prospective investment opportunities identified by the Fund Manager or any of its Affiliates that are within the scope of the Fund's investment objectives and guidelines shall be made available to the Fund (up to the amount permitted by and subject to the limitations contained in the Investment Guidelines) before being offered to any other Person;

(b) without the prior consent of xxx% -in-Interest of the Members, neither the Fund Manager nor any of its Affiliates

shall sponsor, manage or advise any investment vehicle, other than the Fund, whose primary purpose is making or acquiring loans to MFIs in the Caribbean (a "Competing Fund"); *provided*, *however*, that the foregoing restriction shall not apply to so long as such fund does not make investments or otherwise deploy capital in the Caribbean after the date hereof in excess of $x million in the aggregate, per annum or such greater amount as may be agreed by the Board.

5.2.2 *After the Ramp-Up Period*, in allocating prospective investment opportunities identified by the Fund Manager or any of its Affiliates that are within the scope of the Fund's investment objectives and guidelines among the Fund and any other Person managed by it, the Fund Manager shall fairly allocate such opportunities, taking into account the purpose and investment guidelines of the Fund and such other Persons' purposes and investment guidelines; *provided*, that the Fund Manager shall use commercially reasonable efforts to cause the Fund to have the right to purchase its *pro rata* share of any such investment opportunity up to the amount permitted by and subject to the limitations contained in the Investment Guidelines, with such *pro rata* share being determined based on the Fund's and such other Persons' respective capital available for such investment.

5.3 If the Fund Manager or any of its Affiliates (including, without limitation, any other investment vehicles or accounts sponsored, managed or advised by the Fund Manager or its Affiliates) is permitted under the terms of this Agreement to co-invest (or to cause an Affiliate to invest) with the Fund, any such investment shall be made at substantially the same time and on terms no better than the terms of the Fund's, Fund Investment in the applicable Investee Company, and the Fund Manager (or its Affiliate) shall dispose of such investment at substantially the same time as the Fund in each case subject to such investment limitations and restrictions applicable to each such Person. For avoidance of uncertainty, if the Board rejects an investment opportunity presented to the Fund by the Fund Manager, the Fund Manager and its Affiliates may participate in such opportunity without any other restrictions.

5.4 Except as provided herein, nothing in this Agreement shall be construed to restrict the right of the Fund Manager or its Affiliates to act

and continue to act as managers or advisors for others or to perform investment management or other services for any other Person.

6. Representations, Warranties and Covenants of the Fund Manager.

6.1 The Fund Manager represents and warrants that:

6.1.1 the Fund Manager is a duly formed and validly existing société anonyme in good standing under the laws of xxxxxx with full corporate power and authority to conduct its business as contemplated in this Agreement;

6.1.2 this Agreement has been duly authorized, executed and delivered by the Fund Manager and upon due authorization, execution and delivery by the Fund, shall constitute the valid and legally binding agreement of the Fund Manager enforceable in accordance with its terms against the Fund Manager, subject to applicable bankruptcy, insolvency, reorganization or other similar laws and general principles of equity;

6.1.3 a true and complete list of the equity owners of the Fund Manager is attached hereto as Exhibit 5.1.3 and a true and correct list of any outstanding options, warrants, convertible securities, calls, rights, commitments, preemptive rights or other similar agreements or instruments or understandings of any character to which the Fund Manager is a party or by which the Fund Manager is bound, obligating the Fund Manager to issue, deliver or sell, or cause to be issued, delivered or sold, contingently or otherwise, additional equity interests in the Fund Manager or any other securities or obligations convertible into or exchangeable for such equity interests or to grant, extend or enter into any such option, warrant, convertible security, call, right, commitment, preemptive right or similar agreement;

6.1.4 the services provided by the Fund Manager under this Agreement will be carried on by the Fund Manager in the ordinary course of its usual trade or business;

6.1.5 neither the Fund Manager nor any of its Affiliates has engaged any Person in such a manner as to give rise to a valid claim against the Fund or any Member for any placement fee or similar compensation in connection with the organization of the Fund; and

6.1.6 the personnel of the Fund Manager who will be responsible for carrying out this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement.

6.1.7 neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein will violate (i) any law, statute, regulation, vote, order, injunction or approval of any government or political subdivision or any agency, central bank or other instrumentality or either, or any court, tribunal, arbitrator or self-regulatory organization, in each case whether domestic, foreign or international and including any applicable anti-money laundering laws and regulations, or (ii) any provision of the organizational documents of the Fund Manager, or any material indenture, agreement or instrument to which the Fund Manager is a party or result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or instrument.

6.1.8 the Fund Manager has obtained all necessary licenses, approvals, and authorizations from all appropriate local and (where relevant) foreign governmental authorities for the performance of its obligations under this Agreement, including, but not limited to, registration as an investment/financial services/securities professional/adviser under the Securities Act of 2001, and Financial Services Commission Act of 1995, as amended, or is exempt from such registration.

6.1.9 the Fund Manager and each of its members, principals, and employees have complied in all material respects with the requirements of and have performed all acts mandated by the Jamaican and any relevant foreign government in order for it or them to act under the terms and conditions of this Agreement and that it and they will continue so to comply with such requirements and to perform such acts throughout the term of this Agreement.

5.2. The Fund Manager represents that within the last ten years neither the Fund Manager nor, to its knowledge after due inquiry, any of its Affiliates or any principal or director thereof has been: (i) convicted of, pleaded guilty or no contest to, or made a similar admission to committing (A) any crime involving (1) any investment or investment-related business, (2) fraud, false statements or material omissions, (3) wrongful taking of property or (4) bribery, forgery, counterfeiting or extortion or (B) any other crime which involves a potential punishment of one year or longer in prison; (ii) enjoined (which injunction has not been lifted) by any court of competent jurisdiction in connection with any investment-related activity or been found by any court of competent jurisdiction to have violated any investment-related statutes or regulations; or (iii) the subject of, or a

defendant in (A) any inquest, enforcement action or prosecution (or settlement in lieu thereof) brought by a governmental authority relating to a violation of securities, tax, fiduciary or criminal laws or (B) a civil action (or settlement in lieu thereof) brought by the investors in an investment vehicle or account for violation of duties owed to such investors. The Fund Manager further represents that there is no pending or threatened action or proceeding involving the Fund Manager, or to its knowledge after due inquiry, any other which would, if adversely determined, have a materially adverse effect upon the ability of the Fund Manager to perform its obligations under this Agreement.

5.3 The Fund Manager covenants, warrants and agrees that:

5.3.1 in the event that any of the representations contained in Section 5.1 or 5.2 shall no longer be true (assuming such representations were made at such later date) or if there is any change in ownership of over 15% in the equity ownership of the Fund Manager, the Fund Manager will provide prompt written notice thereof to the Board, together with a reasonably detailed written explanation of the circumstances relating thereto;

5.3.2 it shall perform its duties under this Agreement in accordance with all applicable laws and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent Person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, for the exclusive benefit and protection of the participants and beneficiaries of the Fund;

5.3.3 through the use of signature cards, such representatives of the Fund Manager or of the Fund as the Board may designate, shall be authorized to draw against any and all funds in the bank accounts for the Fund referred to in this Agreement, and the Board shall approve all individuals having signature authority over the Fund's bank accounts; however, the authority of any individual to draw against any of the Fund's bank accounts referred to in this Agreement may be terminated at any time by the Board with prior notice to the Fund Manager, and the Fund's monies shall not be commingled with the funds of any other Person;

5.3.4 in the event that an enforcement action is brought against an individual by any governmental or regulatory agency with respect to any such Person's actions in the securities industry, upon any such Person's receipt of notice of such action, the Fund Manager shall deliver prompt written notice thereof and a reasonably detailed written explanation thereof to the Board, and the Fund Manager will deliver prompt written notice of the disposition of any such action to the Board;

5.3.5 the Fund Manager shall institute, maintain and comply with (and shall ensure that the Fund shall institute, maintain and comply with) appropriate internal procedures and controls in compliance with applicable Jamaican or foreign laws **and** following best international standards for the purpose of (a) preventing the Fund from being used for money laundering, the financing of terrorist activity, fraud, or other corrupt or illegal purposes or practices, and (b) ensuring that the Fund will not enter into any transaction with, or for the benefit of any individuals or institutions named on the lists of sanctioned persons promulgated by Major Organized Crime Agency (MOCA), Financial Investigations Division (FID), Caribbean Financial Action Task Force (CFATF), Office of Foreign Assets Control (OFAC), the United Kingdom of Great Britain and Northern Ireland and/or the United Nations Security Council or its committees pursuant to Security Council Resolution 1267 (1999), 1373 (2001) or related or successor resolutions in connection with money laundering or anti-terrorism matters (as currently set forth at www.un.org/terrorism);

5.3.6 the Fund Manager shall not cause the Fund to make any payment to any Person in violation of the Proceeds of Crime Act 2007 , as amended from time to time), or any other applicable anti-money laundering statute or regulation;

5.3.7 the Fund Manager shall not commit or engage in (and shall not cause the Fund to commit or engage in) any Prohibited Practice. "Prohibited Practice" means any of the following:

(a) impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of such party to improperly influence the actions of a party;

(b) an arrangement between two or more parties designed to achieve an improper purpose including influencing improperly the actions of another party;

(c) ©offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(d) any act or omission, including a misrepresentation that knowingly or recklessly misleads or attempts to mislead a party to obtain a financial or other benefit or to avoid an obligation; and

(e) an Obstructive Practice. An "Obstructive Practice" means in connection with any investigation by the Fund, the Board or any governmental authority into allegations of Prohibited Practices committed or engaged in by the Fund Manager, or any of its Affiliates or any other Person acting on

behalf of the Fund Manager or any of its Affiliates (i) deliberately destroying, falsifying, altering or concealing evidence material to such investigation or making false statements to investigators in order to materially impede such investigation; (ii) threatening, harassing or intimidating any Person to prevent such Person from disclosing knowledge of matters relevant to such investigation or from pursuing such investigation; or (iii) taking any action intended to materially impede the exercise of the rights to access, information and inspection provided to the Fund or the Board under this Agreement.

5.3.8 In connection with any proposed Fund Investment, the Fund Manager shall seek advice of reputable counsel or accountants to confirm that (a) the limited liability of the Members will be recognized to the same extent in all material respects as is provided to the Members under the Act and the Fund Agreement, (b) the making of a Fund Investment will not subject any Member to any obligation to file returns in respect of any taxes or pay taxes measured by or in respect of such Member's income in such jurisdiction (in each case, with respect to income other than income arising from Fund Investments in such jurisdiction) which obligations such Member would not have been subject to but for the making of such Fund Investment (other than any form or declaration required to establish a right to the benefit of any applicable tax treaty or exemption from or reduced rate of withholding or similar taxes, or in connection with an application for a refund of withholding or similar taxes), and (c) whether any withholding or other taxes may be imposed on income of the Fund to be received in respect of a Fund Investment by any such jurisdiction.
Any such withholding taxes shall be required to be subject to a gross up obligation of the borrower. The Fund Manager shall notify the Investment Issues Committee if it is unable to obtain any such advice with respect to any investment and shall thereafter not make any Fund Investment in such jurisdiction without the prior written consent of the Board expressly authorizing the Fund Manager to invest in such jurisdiction; and

5.3.9 If the Fund Manager is subject to any examination, inspection, or other similar process by any regulatory authority, including, without limitation, the Financial Securities Commission that are alleging material violations of laws, rules or regulations, the Fund Manager shall deliver prompt written notice thereof to the Board, and shall promptly provide to the Board any comments or other communication from such regulatory authority in

respect of such examination, inspection, or similar process (which may be appropriately redacted by the Fund Manager to protect any client confidences).

5.3.9 The Fund Manager will at all times maintain insurance adequate in light of its obligations and potential liabilities under this Agreement. All such policies or binders of insurance will be valid and enforceable in accordance with their terms and will at all times remain in full force and effect, and provide professional liability limits of at least $0,000,000 per occurrence. The Fund Manager will promptly notify the Board in writing should it receive notice of cancellation or non-renewal of any such policy or binder. The Fund Manager will, upon request, provide the Board with a list and brief description of the nature, amount and name(s) of carrier(s) of all such insurance. The Fund Manager will promptly notify the Board in writing in the event that any such coverage is modified, cancelled or otherwise terminated. For purposes of this paragraph only, the term "promptly" shall mean within ten (10) days of the date on which the applicable event occurred.

5.4 The foregoing representations, warranties, covenants and agreements are understood to be relied upon by the Fund with respect to its retention of the Fund Manager.

6. Limitations.

6.1. The Fund has delivered to the Fund Manager a copy of the Fund Agreement, including all Annexes and Exhibits thereto, and will deliver to it all future amendments and supplements thereof.

6.2 Notwithstanding anything to the contrary, the Fund Manager shall at all times comply with all applicable provisions of the Fund Agreement (including, without limitation, the Investment Guidelines), all applicable laws and regulations, and all applicable procedures or policies adopted by the Board or the Fund from time to time not inconsistent herewith, copies of which shall be provided to the Fund Manager. Without limiting the foregoing, the Fund Manager shall also consult with the Investment Issues Committee as contemplated in the Fund Agreement. The Fund Manager acknowledges that the Investment Issues Committee of the Fund will notify the Fund Manager within ten (10) business days of the receipt of credit related objections with respect to proposed Fund Investments from any Directors or of the Board's objection to any prospective Fund Investment. Notwithstanding anything to the contrary, the Fund Manager shall not make any Fund Investment over any such objection.

6.3 The Fund Manager shall exercise its powers and duties hereunder subject at all times to the Investment Guidelines and to the control and review of its activity and decisions by the Board.

7. **Conflicts of Interest**. The Fund Manager shall disclose to the Conflicts Committee of the Fund any actual or potential conflicts of interest between the Fund Manager and/or its Affiliates and the Fund or any Investee Company (including, without limitation, any conflict described in Section 6.3 of the Fund Agreement), and the Fund Manager hereby agrees to abide by any resolution of the Fund's Conflicts Committee and Board in connection therewith. Without limiting the foregoing, the Fund Manager acknowledges and agrees that it shall promptly disclose to the Conflicts Committee in writing any actual or potential conflict of interest it or its Affiliates may have that could reasonably be expected to impair its ability to make unbiased and objective investment decisions, including prior to the making of any proposed Fund Investment that would involve the Fund investing in or selling investments to, the Fund Manager or any of its Affiliates or any Person in which the Fund Manager or any of its Affiliates (including, without limitation, any other investment vehicles or accounts sponsored, managed or advised by the Fund Manager or its Affiliates (including,), holds an interest (in equity or debt) and shall report to the Fund no less than twice annually (together with the report on Fund Investments to be provided pursuant to the Fund Agreement), if any such other Person has made a debt or equity investment in or divested its interest in any Investee Company.

8. **Delegation of Duties.** The Fund Manager may be entitled to delegate, subject to the prior approval of the Board and at its own expense, its nonmaterial functions or duties to any Person whom it may consider appropriate, provided that such delegation shall not limit the Fund Manager's liability hereunder in respect of such functions and duties hereunder.

9. **Fees.** In consideration of the management services rendered, the Fund shall pay a management fee ("Management Fee") to the Fund Manager during the term of this Agreement in accordance with this Section 9.

9.1 Beginning on the Initial Closing Date and thereafter on a monthly basis no later than the 15th day of each of the following months during the term of this Agreement, the Fund shall pay to the Fund Manager a minimum monthly base management fee of USD/JA$ (the "Minimum Fee").

9.2 Beginning with the payment of the second installment of the Minimum Fee, and thereafter together with the payment of the Minimum Fee, the Fund Manager shall also be entitled to receive as additional compensation the excess, if any, of (x) 1/12th of the Annual Investment Manager Fee (as set forth on Annex 1 hereto and as the same shall be amended in accordance with Section 9.3 below) corresponding to the aggregate portfolio size of the outstanding Fund Investments ("AUM") determined at the end of the prior month in accordance with the valuation methodology to be established by the Board *over* (y) the Minimum Fee. By way of example, if the AUM at the end of the prior month was $65,000,000, the amount payable pursuant to this Section 9.2 would be $29,583.33 ($82,083.33 (1/12th of $985,000 (the Annual Investment Management Fee corresponding to $65,000,000)) less $52,500 = $29,583.33).

9.3 Upon delivery of the Proposed Budget in accordance with Section 3.18, the Board shall have thirty (30) days to review and consult with the Fund Manager regarding the same. If the Proposed Budget is approved by the Board, it shall be used to calculate the additional consideration payable pursuant to Section 9.2. If the Board does not approve the Proposed Budget within thirty (30) days of its receipt, the Board and the Fund Manager shall seek to negotiate a mutually acceptable budget for the upcoming Calendar Year taking into account all factors including the expected duties and related expenses of the Fund Manager conducting its activities as proposed hereby. In the event a new budget has not been agreed upon prior to the expiration of the Calendar Year, the Fund shall pay to the Fund Manager a monthly amount in respect of the Management Fee equal to the greater of (x) the Minimum Fee and (y) the average amount paid per month pursuant to Section 9.1 and 9.2 above during the last six months of the then expired Calendar Year until such time as either this Agreement has been terminated or a new budget has been agreed. All payments of the Management Fee shall be made in U. S. dollars or the Jamaican dollar equivalent at the time of payment via electronic transfer to such bank account(s) of the Fund Manager as indicated in writing to the Fund in the respective invoice.

9.4 Investment-Related Fees.

9.4.1 If the Fund Manager or any of its Affiliates (including, without limitation, their respective employees or officers) shall receive any directors, advisory, consulting, transaction, break-up, commitment or any other fees or income relating to Fund Investments (collectively referred to as

"Investment-Related Fees") from any Investee Company or prospective Investee Company, the next monthly installment of the Management Fee shall be reduced by an amount equal to one hundred percent (100%) of all such Investment-Related Fees. If Investment Related Fees exceed the amount of the next monthly installment of the Management Fee, the excess shall be rolled over to reduce the Management Fee for the subsequent monthly periods until fully utilized. For purposes of this Agreement, in the case of Investment-Related Fees paid in consideration other than cash, such fees shall be deemed to have been received by the remunerated Person when such consideration has been exercised, or disposed of for cash, and shall be deemed to be in an amount equal to the proceeds of such disposition or the value of the property received upon exercise; provided, that any such non-cash remuneration shall be deemed disposed of or exercised no later than the termination of this Agreement. If there remains any excess Investment-Related Fees at the end of the term of this Agreement, such excess shall be paid by the Fund Manager to the Fund.

9.4.2 For the avoidance of doubt, Investment-Related Fees shall exclude the receipt of reimbursement of out-of-pocket expenses due to the Fund Manager or its Affiliates from Investee Companies or any prospective Investee Companies.

9.4.3 Any Investment-Related Fees received or payable to the Fund Manager or its Affiliates shall be detailed on a monthly basis to the Board.

9.4 In the event the period in respect of which a Management Fee is payable is less than one month, the Management Fee payable in respect of such period shall be prorated for the actual number of days elapsed in such month.

10. Expenses.

10.1 The Fund Manager shall bear all operating and overhead expenses incurred in connection with the management of the Fund, except for Operating Expenses, which Operating Expenses shall be borne by the Fund. Such operating and overhead expenses to be borne by the Fund Manager shall include, without limitation, all costs, expenses and fees associated with (i) salaries, wages and other compensation and benefits of personnel, (ii) any office space, furniture, fixtures, equipment, facilities, software, supplies and necessary routine management support services incurred by the Fund Manager for providing the services described herein, (iii) all travel and other out-of-pocket expenses of officers and employees

of the Fund Manager in connection with the discovery, identification or investigation of investment opportunities, including general background investigation of industries, entities, or securities suitable for investment; (iv) expenses of the Fund Manager related to monitoring compliance by Investee Companies; and (v) travel expenses of the officers and employees of the Fund Manager associated with monitoring the Fund's indebtedness and negotiating transactions approved by the Fund; provided, however, that all out-of-pocket expenses incurred in connection with work-outs or restructurings of Fund Investments shall to the extent approved by the Board be borne by the Fund and treated as Operating Expenses.

10.2 The Fund shall reimburse the Fund Manager for all out-of-pocket Operating Expenses paid by the Fund Manager; provided that prior to incurring any Operating Expense not provided for in the Fund budget that would exceed $000,000.00, the Fund Manager shall obtain the approval of the Board. On a quarterly basis, the Fund Manager shall provide the Board with a schedule setting forth all Operating Expenses charged to the Fund during the preceding quarter. The Fund Manager agrees to discuss any such report with the Board upon request and will produce additional information reasonably requested by the Board in connection therewith.

10.3 During the term of this Agreement, no provision of the Fund Agreement regarding and defining "Operating Expenses" shall be amended without the consent of the Fund Manager if such amendment would adversely affect the right of the Fund Manager to be reimbursed for its out of pocket expenses pursuant to this Section 10.

10.4 The Fund Manager shall not incur or cause to be incurred, and hereby represents that it has not so incurred or caused to be incurred, any expense that would be an "Organizational Expense" for purposes of the Fund Agreement without the prior written consent of the Board.

11. Termination.

11.1 Effective from the date hereof, the term of this Agreement shall be **00** years, renewable automatically for successive periods of years and not to exceed the Term of the Fund, subject to either party giving written notice of non-renewal not less than one hundred and twenty (120) days prior to any such anniversary.

11.2 Notwithstanding Section 11.1,

Either the Fund or the Fund Manager may terminate this Agreement with at least one hundred and twenty (120) days prior written notice to the other; provided that if the Fund Manager gave such notice, the Fund shall have the right to terminate this Agreement with immediate effect at any time. In addition, the Fund may terminate this Agreement with immediate effect upon a change of control of the Fund Manager (for this purpose defined as a change in ownership of over 15% of equity ownership interests in the Fund Manager).

11.3 This Agreement may be terminated by the Fund at any time with immediate effect for Cause (as defined below) by providing written notice to the Fund Manager. For purposes of this Agreement, "Cause" means:

(i) The entering by a court of competent jurisdiction, regulatory authority or self-regulating organization of a permanent injunction prohibiting the Fund Manager from acting as a manager of the Fund or any other institutional management position;

(ii) the Fund Manager (or any Affiliate) becoming a Defaulting Member under the Fund Agreement; or

(iii) The Incapacity of the Fund Manager.

11.4 In case of termination of this Agreement, the Fund Manager shall (a) be obliged to deliver forthwith to the Fund or to any successor manager or other Person as may be appointed by the Fund all books and records or other property of the Fund, including documents and certified copies held by it, and (b) prepare and deliver to the Board a full accounting showing all payments collected for the Fund's account and all expenses paid on the Fund's account, covering the period following the date of the last accounting furnished to the Fund.

12. Indemnities and Exculpation.

12.1 The Fund Manager shall indemnify the Fund's Members, Directors, committee members and officers from and against any and all claims, proceedings, damages, loss and liability made or taken against or suffered or incurred by such Persons as a result of Disabling Conduct (as defined below) of the Fund Manager in the performance or non-performance of this Agreement, provided that such claims, proceedings, damages, loss and liability are not covered by appropriate insurance of the Fund Manager.

12.2 The Fund shall indemnify the Fund Manager and its officers, employees and agents from and against any and all claims, proceedings, damages, taxes, loss and liability made or taken against or suffered or incurred by the Fund Manager in its capacity as manager of the Fund except insofar as the same arises as a result of Disabling Conduct on the part of such indemnified parties.

12.3 The Fund Manager shall not be liable for any losses suffered by the Fund arising from any depreciation in the value of the portfolio or from the income derived from it except insofar as the same arises as a result of Disabling Conduct on the part of the Fund Manager.

12.4 For purposes of this Agreement, "Disabling Conduct" means: (i) conduct, action or inaction constituting (a) gross negligence, willful misconduct, breach of any fiduciary duty in connection with the performance of its obligations as contemplated by this Agreement or any material violation of law relating to the Fund or its activities, or (b) fraud; (ii) any material breach of any provision of this Agreement, which shall not have been cured within forty-five (45) days after notice thereof, provided that no cure period shall apply for breaches of Sections 5.3.5, 5.3.6 or 5.3.7; (iii) any material misrepresentation hereunder; or (iv) commission of (A) a crime which involves a potential punishment of one year or longer in prison, (B) a violation of any other statute involving misappropriation or embezzlement or (C) a crime involving moral turpitude or depraved action;

12.5 Prior to seeking indemnification from the Fund hereunder, the Fund Manager shall use its commercially reasonable efforts to seek recovery under any other indemnity or any insurance policies by which it is indemnified or covered, as the case may be, and the Fund Manager shall obtain the written consent of the Fund prior to entering into any compromise or settlement which would result in an obligation of the Fund to indemnify the Fund Manager hereunder.

12.6 The Fund Manager shall not be liable for any act or omission or any errors of judgment or for any loss, liability, cost or expense incurred or sustained by the Fund or any of its Members or Affiliates in connection with the matters to which this Agreement relates, except losses, liabilities, costs and expenses incurred or sustained by the Fund or any of its Members or Affiliates that result from acts or omissions of the Fund Manager that are made in bad faith or that constitute Disabling Conduct.

12.7 The indemnitor shall advance to the indemnitee, in the case of Sections 12.1 or 12.2, the reasonable costs and expenses of investigating and/or defending such claim (other than a claim between the Fund and Fund Manager for which expenses shall not be advanced), subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent that a court or other tribunal of competent jurisdiction subsequently determines that the indemnitee was not entitled to indemnification hereunder.

13. Confidentiality.

13.1 The Fund Manager shall at all times maintain and preserve the utmost confidence in relation to all aspects of the Fund and/or its business and shall not, other than in connection with the performance of its responsibilities and duties hereunder or with the prior authorization of the Board, disclose or make available to any Person any confidential document or other confidential information or matters relating to any aspects of the Fund and/or its business or the Members, or use such records, information or matters for any purpose. In addition, the Fund Manager shall use commercially reasonable efforts to prevent any such disclosure or transmission as aforesaid by a third party.

13.2 The Fund agrees and understands that the Fund Manager may disclose information in relation to the Fund and/or its business if and to the extent required to do so by any applicable law, statute or other regulation or by any court order or similar process enforceable in any relevant jurisdiction, in which case the Fund Manager shall (to the extent reasonably practicable) first notify the Board and provide it a reasonable opportunity in light of the circumstances to object to, or limit, such disclosure in a manner permitted by applicable law.

13.3 The provisions of this Section 13 shall survive the termination of this Agreement.

14. Assignment. This Agreement may not be assigned by the Fund Manager without the prior consent of the Fund.

15. Notices. Any notices required to be delivered hereunder shall be in writing and must be delivered either by hand in person, by facsimile transmission, by electronic communication, by certified mail, return receipt requested or by internationally recognized overnight delivery service and shall be deemed given when so delivered by hand (with written or electronic confirmation of receipt), sent by facsimile transmission (with confirmation of receipt of transmission from

sender's equipment), by electronic communication (with confirmation of delivery from sender's equipment) or, if mailed by certified mail, three (3) days after the date of deposit in the mail, or if delivered by overnight delivery service when received by the addressee, in each case at the appropriate addresses set forth below.

To the Fund Manager:

With a copy to:

To the Fund:

care of the Chairperson of the Board, at the address provided in Annex A of the Fund Management Agreement for the Member that appointed the Chairperson together with a copy to:

and copies to such other Persons as may be designated by the Chairperson.

The address or addressee to receive notice for any party may be changed by such party from time to time by giving notice in the foregoing manner. Any notice required under this Agreement may be waived by the person entitled to notice.

16. **Entire Agreement; Amendment**. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, shall not be modified, waived, or terminated orally and may only be amended by an agreement in writing signed by the parties hereto.

17. **Governing Law and Disputes.** This Agreement shall be governed by and construed in accordance with the laws of Jamaica. All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules (the "Rules") of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the Rules. The language of the arbitration shall be English. The place of arbitration shall be Kingston, Jamaica.

18. **Miscellaneous**.

18.1 This Agreement is intended to create, and creates, a contractual relationship for services to be rendered by the Fund Manager acting in the ordinary course of its business as an independent contractor and is not intended to create, and does not create, a partnership, joint venture or any like relationship among the parties hereto (or any other parties).

18.2 The headings used herein are for convenience of reference only and shall not be construed as limited or affecting in any way the provisions of this Agreement.

18.3 If any one or more of the covenants, agreements, provisions, or terms of this Agreement shall be held contrary to express law or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remainder of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

18.4 Each party to this Agreement shall be responsible for its own expenses incurred in connection with the preparation and negotiation thereof.

18.5 Fund Manager does not guarantee the future performance of the Fund or any specific level of performance, the success of any investment decision or strategy that the Fund Manager may use, or the success of the Fund Manager's overall investment management of the Fund. The Board understands that the Fund will be subject to various market, currency, economic and business risks, and that any investment decisions made with respect to the Fund by the Fund Manager will not always yield profitable results.

[signature page follows]

IN WITNESS WHEREOF the duly authorized representatives of the parties hereto have signed this Agreement as of the day and year first above written, in two counterparts, one to be received by the Fund and one to be received by the Fund Manager.

THE FUND MANAGER

By: _____
Name:
Title:

THE FUND

By: _____
Name:
Title:

SCHEDULE 1

(see attached)

Exhibit 5.1.3

Fund Manager Ownership

As of the Date Hereof

(see attached)

SCHEDULE B

Board of Directors

(see attached)

APPENDIX XVI – FORM OF LIMITED PARTNERSHIP AGREEMENT

LIMITED PARTNERSHIP AGREEMENT OF
[PARTNERSHIP NAME]

This Partnership Agreement (the "Agreement") is effective [Date],

BETWEEN: **[FIRST PARTY NAME]** (the "General Partner"), a company organized and existing under the laws of Jamaica, with its head office located at:
[COMPLETE ADDRESS]

AND: **[SECOND PARTY NAME]** (the " a Limited Partner"), a company organized and existing under the laws of the [State/Country] of [STATE/Country], with its head office located at:
[COMPLETE ADDRESS]

AND: **[THIRD PARTY NAME]** (the " a Limited Partner"), a company organized and existing under the laws of the [State/ Country] of [State/Country], with its head office located at:

[COMPLETE ADDRESS]

WITNESSETH:

WHEREAS the General Partner and the Limited Partners wish to constitute themselves a Limited Partnership under the provisions of Limited Partnership Act as defined below and to be bound by the terms and conditions of the present Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

DEFINITIONS AND INTERPRETATION

Definitions

In this Agreement and in all other related documents, except where there is an express provision to the contrary or if the context requires another interpretation, the following words, terms and expressions have the following meanings:

Auditor" - a partnership of which the partners are members of an international recognized firm of auditors and who are appointed from time to time by the General Partner and approved by the Limited Partners as auditors for the Partnership; in the

event that no such auditors have been appointed and approved at such a date, this word means the accountants duly mandated by the Limited Partners with respect to the financial period in question or, failing this, any chartered accountant specially designated by the Limited Partners for this purpose; if there are no Auditors or chartered accountants appointed for the financial period in question, or if the latter refuse their mandate, and if the concerned parties cannot agree upon the choice of a specially designated chartered accountant within a period of [xxxxx] days, they shall then have recourse to the provisions governing arbitration provided under the Arbitration Act of Jamaica in order to appoint one or three accountants, as the case may be, who shall carry out the mandate in accordance with the parameters herein provided:

“Capital Account” · that account identified under paragraph 15.1 of this Agreement;

“Capital Contribution” · the initial contribution and all other contributions made or agreed to be made from time to time by a Partner to the capital of the Partnership, less amounts distributed to this Partner as reimbursement of capital;

“Carried Interest” means the General Partner’s [Percentage%] interest in the Net Benefit and Net Loss allocated to the General Partner pursuant to Section 14.5.2

“Certificate” · a certificate of ownership indicating that the registered holder thereof is the owner of the number of Units stated therein;

“Co·Investing Limited Partner” any Limited Partner that made a commitment in excess of $XX and that has provided written notice to the General Partner of its interest in being offered Co·Investment Opportunities to invest not less than $XX offered pursuant to to Section 18 within [number] days after the creation of the Partnership, or the case of a Partner admitted after the creation of the Partnership, within [number] days after its admission as Limited Partner to the Partnership.

“Co·Investment Opportunity” has the meaning set forth in section 18.2 hereof.

“Current Account” · that account identified under paragraph 15.2 of this Agreement

“Capital” · is synonymous with the term “common shares” used in the relevant provisions of the Companies Act or such other legislation pertaining to limited partnerships;

“Capital Contribution” · the initial contribution and all other contributions made or

agreed to be made from time to time by a Partner to the capital of the Partnership, less amounts distributed to this Partner as reimbursement of capital;

“Evaluator” - the independent expert designated by a Limited Partner in accordance with the provisions of subparagraph 19.1.5 of this Agreement;

“Evaluation Panel” or “Evaluator Panel”- the panel of Evaluators appointed in accordance with section 19.1.5

“Fair Market Value of the Interest” or “Fair Market Value of the Subject Interest” - that value of the Interest as referred to under Section 19 of this Agreement;

“Declaration” - the declaration signed and filed pursuant to the Companies and the LPA and forming the present Limited Partnership, as amended from time to time

“General Partner” - the General Partner or any Person admitted to the Partnership as the substitute of a General Partner appointed in accordance with this Agreement;

“Initial Contribution” - the first investment of [number], Units for a subscription price of [xxxxxx] for each Unit, and for which [name], [name] and the General Partner have each subscribed respectively to [number], [number] and [number] Units representing to each of them respectively a sum of [Number], [Number] and [Number], for a total sum of [Number] as set forth in Exhibit C

“Income Tax Act” - the Income Tax of Jamaica;

“Interest” - i) the share of a Partner in the Partnership at the time when such Interest needs to be determined, plus any evidence of indebtedness of the Partnership to such Partner held by it, and ii) if such Partner is a Limited Partner, the shares beneficially held by such Limited Partner or by a Person of the Same Group as such Limited Partner, as the case may be, in the share capital of the General Partner as well as any evidence of indebtedness of the General Partner to such Limited Partner or to such Person of the Same Group as such Limited Partner, held by it;

“LPA” -the Limited Partnership Act,[Year] the legislation passed by the Jamaican Parliament on (Date) governing the formation and operation of Limited Partnerships in Jamaica;

“Long Term Debt/Equity Ratio” of the Partnership - that certain long term debt/equity ratio as determined and revised from time to time by way of Special

Resolution, such ratio being initially set at [number[]: after deduction of any incentives, grants or loans from any entity concerned with the making of such grants in the ordinary course of its business;

"Limited Partner"- A party to this Limited Partnership Agreement whose liability is restricted to its Capital Contribution pursuant to this agreement and who enjoys no management responsibility in terms of the operations of the Limited Partnership.

"Management Costs" - a reasonable allocation as determined from time to time in the form of fees for the exercise by the General Partner of the mandate of the manager of the Partnership, including all expenses incurred by the General Partner in managing, furnishing administrative services and conducting the business of the Partnership

"Net Benefit" and "Net Loss" - for any period, i) for Net Benefit, the amount by which the total income of the Partnership for the period in question exceeds all expenses for the same period, and ii) for Net Loss, the amount by which the total income of the Partnership is exceeded by all expenses for that period. Net Benefit and Net Loss of the Partnership shall be computed in accordance with the generally accepted accounting principles in Jamaica consistently applied and reported upon by the Partnership's Auditor;

"Partner(s)" - both the General Partner and the Limited Partners;

Partnership" - the Limited Partnership formed by virtue of this Agreement in accordance with the provisions of the LPA;

"Person" - a natural person, a corporation, including a bank, a legal person, a partnership of persons, a joint venture, an association, a trust, an entity not constituted as a partnership, a fiduciary, a testamentary executor, a tutor, a curator or other mandatory;

"Person of the Same Group" - the relationship between [number] Persons, when:

i) one is a subsidiary of the other, or when these two Persons are under the control of the same Person, as provided for in the Companies Act of Jamaica; or when

ii) one is an officer or a director of the other Person or of another Person belonging to the same group as the other Person; or when

iii) one does not deal at arms' length, within the meaning of the Income Tax Act

"Shareholders Agreement" - that certain Agreement identified under paragraph 16.1 and entered into by [individual name] and [individual name] with respect to their respective shareholdings in the share capital of the General Partner;

"Special Resolution" - a resolution passed by more than [Percentage Number %] of the votes cast at a duly called meeting of the Partners, or at any adjournment thereof;

"Third Evaluator" - the independent expert designated in accordance with the provisions of subparagraph 19.1.9 of this Agreement;

"Third Party Purchaser" - any Person other than a signatory hereof and only includes a Person who is not a Person of the Same Group as a Partner;

Units" - a joint participation in the Partnership as provided for in this Partnership Agreement;

"Working Capital Ratio" - that certain working capital ratio (current assets to current liabilities) as determined and revised from time to time by way of Special Resolution, such ratio being initially set at [Number].

For the purposes of this Agreement, save any disposition to the contrary and unless the context requires a different interpretation:

(a) the titles and subtitles in this Agreement are only included for the convenience of the parties and do not form part of this Agreement, neither do they serve to interpret this Agreement or any of its provisions or to define or limit its scope or intention;

(b) the word "including", when it follows a term or general statement, is not to be interpreted as limiting that term or that general statement to the specific matters stated immediately after such a term or a general statement or to analogous matters, the intention being that the term or general statement will designate all other matters which could reasonably fall within its largest possible scope;

(i) the calculations and accounting terms which are not otherwise defined have the meaning which is attributed to them by the generally accepted accounting principles in Jamaica and, as the case may be, recommended from time to time by the [Company Name];

(ii) the reference to the laws of Jamaica includes all its regulations, all amendments, and any law or regulation which completes or replaces that law or those regulations;

(iii) this Agreement shall be and remain binding upon the parties hereto and their representatives, successors and assignees and shall continue to bind the surviving [Company Name] hereto as between themselves;

(iv) unless the context requires otherwise, the masculine gender shall be deemed to include the feminine gender, corporations, partnerships, unions or other associations, and the singular shall be deemed to include the plural, as the case may be, whenever the context so requires; and

(v) in the computation of any delay provided herein, the provisions of the Interpretation Act shall apply.

1. FORMATION

1.1 The parties hereby form a Limited Partnership (Partnership) under and pursuant to provisions of the LPA.

1.2 This Certificate of Limited Partnership shall be filed with the [Registrar of Companies] and thereafter the partners shall execute and cause to be filed and otherwise published such original or amended certificates evidencing the formation and operation of this Limited Partnership as may be required under the laws of Jamaica and of any other country where the Partnership shall determine to do business.

1.3 The General Partner is hereby authorized and empowered by all the Limited Partners to prepare, file, and publish either the original or any amended or modified Certificates of Limited Partnership as may be necessary or desirable and each Limited Partner specifically designates and appoints the General Partner, for and on his or her behalf, as his or her attorney for the exclusive purposes of signing and attesting to such original or amended Certificates of Limited Partnership.

1.4 The purpose of the Partnership shall be as follows: [state business of partnership here] more particularly described in Exhibit "B."

[Add, if appropriate]

Further, the Partnership shall engage in the [alteration and repair of the improvement, and personal property located in the subject real property.]

2. NAMES AND PLACE OF BUSINESS

2.1 The name of the Limited Partnership shall be [name].

2.2 The business of the Partnership shall be conducted under that name and under such variations of the name as may be necessary to comply with the laws of Jamaica and such other countries within which the Partnership may do business or make investments.

2.3 The principal place of business shall be located at [address] and additional places of business may be located elsewhere.

2.4. The name and address of the General Partner of the Partnership are:

[Name] [Address]

2.6 There are no other General Partners of this Partnership and no other person or entity has any right to take part in the active management of the business affairs of the Partnership.

2.7 The names and addresses or places of residence of the Limited Partners of this Partnership are set forth in Exhibit "A" attached to this Agreement and by this reference made a part of this agreement. There are no other Limited Partners to the Partnership other than those listed in the attached Exhibit "C."

3. TERM OF PARTNERSHIP

3.1 The Partnership shall commence as of the date of this Agreement and shall continue in existence until [Year], unless it is sooner terminated, liquidated, or dissolved as provided below.

4. CONTRIBUTIONS OF CAPITAL

4.1 The capital to be contributed initially to the Partnership by the General Partner

and all the Limited Partners shall be cash.

4.2 The Initial Contribution of each Partner, General and Limited, shall be the sum set opposite his or her name in the attached Exhibit "C."

4.3 Each partner shall be personally liable to the Partnership for the full amount of his or her Initial Contribution.

4.4 The Limited Partners shall be required to make additional capital contributions to the Partnership, on written request by the General Partner, relative to the Partner's pro rata share (the ownership percentage set opposite the name of each Limited and General Partner in Exhibit "C") of all costs, expenses, or charges with respect to the operation of the Partnership.

[add, if appropriate]
and the ownership operation, maintenance, and upkeep of any Partnership property including but not limited to ad valorem taxes, debt amortization (including interest payments), insurance premiums, repairs, professional fees, wages, and utility costs] to the extent such costs, expenses, or charges exceed the income, if any, derived from the Partnership and the proceeds of any loans made to the Partnership.

4.4.1. If any Partner fails or refuses to make its Initial Contribution in the entire amount of the initial capital called for and/or the additional capital as called for, the General Partner shall be authorized to declare forfeited that Partner's capital account and ownership interest as liquidated damages for the failure.

4.5 The contribution of each Partner to the Capital of the Partnership shall be the price paid at the time of subscription of the Units purchased by such Partner. The General Partner shall not be bound to contribute to the Capital other than the price paid at the time of subscription of the Units purchased by such General Partner and its skill and industry.

Units and Subscription

4.6 Each Unit shall only be registered in the name of one Person. Furthermore, each Unit gives the right to each beneficial owner to one vote at any meeting of the Partners and carries the same rights and obligations, without privilege nor preference.

4.7. Each Unit carries all the rights and obligations that relate to the benefits and losses of the Partnership as stated in Section 14 of this Agreement and, as aforesaid, is issued for a consideration of [Amount] per Unit (the "Subscription Price").

4.8 A Unit shall not be divided into fractions and the Partnership shall not accept any subscription for
a fraction of a Unit, shall not register the transfer of a fraction of a Unit and shall not recognize a right that relates to it and which is less than a full Unit, except for purposes of putting into operation a fractioning of Units.

4.9 Upon acceptance of a subscriber by the General Partner as Limited Partner and upon payment of the Subscription Price, the General Partner shall deliver or cause to be delivered, within [Number] days of the date of such an acceptance and payment to the new Limited Partner, a Certificate of Units, which the new Limited Partner holds. Each Certificate must be signed by an officer of the General Partner.

4.10 A Certificate may be sent by prepaid mail or sent to the Limited Partners' address and neither the General Partner, nor the Partnership is liable for any loss incurred by the new Limited Partner which may result from the loss of the Certificate following its sending in such a manner.

4.11 No transfer of Units shall be valid unless the Certificate representing such Units has been remitted to the General Partner and has been endorsed in order to be transferred in accordance with the provisions of Section 21 of this Agreement. A new Certificate for the Units duly transferred shall be issued and delivered to the transferee by the General Partner. In the case where a transfer does not include all of the Units represented by a Certificate, a new Certificate representing the non-transferred Units shall be issued by the General Partner to the transferor.

4.12 If a Certificate is lost, mutilated or destroyed, the General Partner shall issue or cause to be issued another Certificate to the Limited Partner after having received proof of such loss, mutilation or destruction deemed satisfactory and upon having received an indemnity deemed appropriate in the circumstances.

5. DUTIES AND POWERS OF THE GENERAL PARTNER

5.1. The General Partner shall be the sole partner authorized to manage the business of the Partnership, with full power and authority to fulfill the business. Except for any contrary provision in this Agreement, the General Partner shall have full capacity, power and authority for the benefit and in the name of the Partnership and at the expense of the Partnership to accomplish any act or formality, to take any measure, to make any decision and sign and deliver any act, agreement or document that is necessary or accessory to the pursuit of the activities of the Partnership and, in no event, shall it be bound to follow the advice of any Limited Partner with respect to such activities and fulfillment of the business.

5.2. The General Partner, acting as agent and mandatory of the Partnership, is vested, for the benefit and in the name of the Partnership, with all necessary powers and, without limiting the generality of the foregoing, the General Partner:

5.2.1. shall act as registrar and as transfer agent for the Units;

5.2.2. may acquire assets, moveable as well as immoveable;

5.2.3. may propose to the Limited Partners any subsequent investment or distribution or increase of Units;

5.2.4. shall enter into one or several agreements with third parties in view of contracting, at the expense of the Partnership, the whole or part of the functions related to the management or the direction of the business of the Partnership;

5.2.5. may nominate and remove agents and grant or withdraw power of attorney;

5.2.6 shall draw, make, sign and issue bills of exchange, debt securities and other negotiable and non-negotiable instruments for the purposes of putting into operation the business of the Partnership;

5.2.7. shall enter into loan agreements with one or more lenders that provide for the terms and conditions of the loans granted to the Partnership, which the General Partner will deem appropriate, and give all

guarantees that are in compliance with the terms of such agreements;

5.2.8. shall guarantee, if and when requested by creditors of the Partnership, the payment of the monies borrowed by the Partnership or of any other debt or commitment of the Partnership and assume all charges, negotiating fees, access fees and other debts incurred or to be incurred relating to such loans secured by hypothecation, pledge or other charge on the whole or part of the present and future property of the Partnership, and issue, re-issue or sell bonds, debentures or other instruments which evidence the obligations of the Partnership;

5.2.9. may cause the making of improvements to the properties of the Partnership or the enlargement of such properties, the demolition of such properties and their rebuilding or modification, and enter into any agreement necessary towards that end;

5.2.10. may execute any lease agreement or renewal of lease relating to the land upon which could be situated the Plant, as the case may be;

5.2.11. may grant a lease or a license for the use of the whole or part of the assets of the Partnership in the normal course of the business;

5.2.12. may sell properties and grant options and other commitments relating to the transfer of properties in the normal course of business;

5.2.13. shall retain the services of legal counsel, accountants, experts, advisers and consultants in all matters, which the General Partner will deem appropriate, and to follow or not the advice of such Persons;

5.2.14. shall execute, in relation, respectively, to the interest of each Partner, each and every choices, determinations or prescribed designations under the Income Tax Act of Jamaica or any other law or statute to the same effect in force in [Country], in a province or in any other jurisdiction; such choices, determinations or prescribed designations shall not be made to the detriment of any Partner; furthermore, if one Partner may benefit from such choices, determinations or prescribed designations and the other Partners do not benefit from same, the parties agree to do all things and sign all reasonable documentation in order to favor such Partner;

5.2.15. shall open and use one or several bank accounts and nominate or replace from time to time the signatories of such accounts;

5.2.16. shall pay the fees, the capital expenses and other disbursements of the Partnership;

5.2.17. may enter into any agreement with any Person relatively to the exercise of its powers and of its responsibilities under this Agreement and delegate to such Person all power and authority it might hold under this Agreement, but no agreement or delegation of this kind will release the General Partner of its obligations under this Agreement;

5.2.18. shall institute any legal action or assume any defense in any action or proceeding relating to the business of the Partnership;

5.2.19. may invest funds for which the Partnership has no immediate need for its business operations, on condition that such investments consist of short term liquid investments in which the capital is sufficiently secured, such as: government bonds, certificates of deposit, short term credit instruments, interest bearing accounts and such other forms of investments as described in applicable law;

5.2.20. shall file reports required by any governmental authority or other authority;

5.2.21. shall act within the limits of the annual budget of the Partnership unless authorized otherwise in virtue of any other agreement to that respect.

5.3. The General Partner shall subscribe and maintain in effect or shall cause to be subscribed and maintained in effect, in the name of the Partnership, at the expense and for the advantage of the Partnership, relating to any property of the Partnership and to its business, liability insurance, all-risk insurance, insurance for the interruption of activities and any other insurance of the type which is customary to subscribe to in Jamaica for similar activities or similar property.

6. OWNERSHIP OF PARTNERSHIP PROPERTY

6.1 All real property, including all improvements placed or located thereon, and all personal property acquired by the Partnership shall be owned by the Partnership, such ownership being subject to the other terms and provisions of this Agreement.

6.1.1. Each Partner hereby expressly waives the right to require partition of any Partnership property or any part thereof.

7. FINANCIAL MATTERS AND REPORTS

7.1. The first financial period of the Partnership and of the General Partner shall terminate on [Date]. The following financial periods of the Partnership shall terminate on the [Date] of [Month] of each year.

7.2. The General Partner shall hold complete and precise accounting records, ledgers as well as registers indicating the activities of the Partnership, at the principal place of business of the Partnership during the existence of the Partnership. Insofar as the General Partner considers such information not to be of a confidential nature, such records, ledgers and registers shall be available to any Limited Partner or to its duly authorized representative for inspection, verification and copy, during business hours; the General Partner shall register in a precise and complete manner all transactions and other affairs relating to the business and to the internal affairs of the Partnership.

7.3. The Partnership shall, with respect to each financial year, claim solely for income tax purposes the maximum amount of capital cost allowance and any other expenses, which it may claim under the provisions of the Income Tax of in force at the time unless otherwise agreed by the Limited Partners.

7.4. The General Partner shall appoint, subject to approval by Special Resolution of the Limited Partners, on an annual basis an Auditor of the accounts of the Partnership, who will report in accordance with the standards established by the Institute of Chartered Accountants of Jamaica in the manner described in paragraph 7.5.

7.5. Within [Number] days following the end of the financial period, the General Partner shall forward to each Limited Partner:

7.5.1. an annual report for the financial period containing:

7.5.1.1 the audited financial statements of the Partnership and of the General Partner at the end of and for the financial period, prepared in accordance with the provisions of this Agreement as well as the comparative financial statements of the previous financial period, including a balance sheet, a profit and loss statement, a statement of changes in financial position and, as the case may be, a statement of Partners' equity;

7.5.1.2 a report by the Auditor as described above on such financial statements containing no important reservation as to the extent of the audits;

7.5.1.3 a report on the allocations and distributions to the Partners; and

7.5.1.4 all other information which, in the opinion of the General Partner, is of importance to the business of the Partnership;

7.5.2. the information concerning the amount of taxable Income or, tax losses as well as credits and imputations to that Limited Partner's Capital Account and Current Account;

7.5.3. all other information which is necessary to allow such Limited Partner to produce declarations required under the Income Tax Act relating to income which it has made from the Partnership during the financial period; and

7.5.4. an Auditor's certificate establishing that all distributions of taxable income and tax losses, and all allocations of Net Benefit and Net Loss appearing in such financial statements and in other documents have been carried out in compliance with this Agreement.

7.6. The funds and the assets of the Partnership shall be kept separately from the funds and assets of the General Partner or of any other Person.

8. MANAGEMENT OF PARTNERSHIP AFFAIRS

8.1 The General Partner shall have sole and exclusive control of the Limited Partnership.

8.1.1. Subject to any limitations expressly set forth in this Agreement, the General Partner shall have the power and authority to take such action from time to time as the General Partner may deem to be necessary, appropriate, or convenient in connection with the management and conduct of the business and affairs of the Limited Partnership, including without limitation the power to:

8.1.2. Acquire or dispose of real property (including any interest in real property) for cash, securities, other property, or any combination of them, on such terms and conditions as the General Partner may, from time to time, determine (including, in instances where the property is encumbered, on either an assumption or a "subject to" basis);

8.1.3 Finance the Partnership's activities either with the seller of the property or by borrowing money from third parties, all on such terms and conditions, as the General Partner deems appropriate. In instances where money is borrowed for Partnership purposes, the General Partner shall be, and hereby is, authorized to pledge, mortgage, encumber, and grant security interest in Partnership properties for the repayment of such loans.

8.1.4 Acquire, own, hold, improve, manage, and lease the property, either alone or in conjunction with others through partnerships, limited partnerships, joint ventures, or other business associations or entities;

8.1.5 Employ, retain, or otherwise secure or enter into other contracts with personnel or firms to assist in the acquisition, development, improvement, management, and general operation of the Partnership properties, including, but not limited to, real estate brokers or agents, supervisory, development and/or building management agents, attorneys, accountants, and engineers, all on such terms and for such consideration as the General Partner deems advisable; and

8.1.6 Take any and all other action which is permitted under the LPA and which is customary or reasonably related to the acquisition, ownership,

development, improvement, management, leasing, and disposition of real, personal, or mixed property.

8.2 The General Partner shall exercise ordinary business judgment in managing the affairs of the Partnership.

8.2.1 Unless fraud, deceit, or a wrongful taking shall be involved, the General Partner shall not be liable or obligated to the Limited Partners for any mistake of fact or judgment made by the General Partner in operating the business of the Partnership resulting in any loss to the Partnership or its Partners.

8.2.2 The General Partner does not, in any way, guarantee the return of the Limited Partners' capital or a profit from the operations of the Partnership.

8.2.3 Neither shall the General Partner be responsible to any Limited Partner because of a loss of his or her investment or a loss in operations, unless it shall have been occasioned by fraud, deceit, or a wrongful taking by the General Partner.

8.2.4 The General Partner shall devote such attention and business capacity to the affairs of the Partnership as may be reasonably necessary.

8.2.4.1 In this connection, the parties hereby acknowledge that the General Partner may be the manager or general partner of other partnerships and may continue to manage other partnerships, and may continue to engage in other distinct or related business.

8.3 All Partners recognize that sometimes there are practical difficulties in doing business as a limited partnership occasioned by outsiders seeking to satisfy themselves regarding the capacity of the General Partner to act for and on behalf of the Partnership, or for other reasons.

8.4 The Limited Partners hereby specifically authorize the General Partner to acquire all real and personal property, arrange all financing, enter contracts, and complete all other arrangements needed to effect the purposes of this Partnership, either in the General Partner's own name or in the name of a nominee, without having to disclose the existence of this Partnership.

8.5 If the General Partner decides to transact the Partnership business its own name or in the name of a nominee, the General Partner shall place a written declaration of trust in the Partnership books and records that acknowledges the capacity in which the nominee acts and the name of the Partnership as true or equitable owner.

8.6 The General Partner may be removed by the affirmative vote of [Specify Percentage] ([number %]) in interest, not in number, of the Limited Partners.

8.6.1 The written notice of a General Partner's removal shall be served on the General Partner by certified mail.

8.6.2 The notice shall set forth the day on which the removal is to be effective, which date shall not be less than [Number] days after the service of the notice on the General Partner.

8.6.3 On the removal of the General Partner, the Limited Partners shall elect a new General Partner on the vote of [Specify Percentage] ([Number %]) in interest, not in number, of the Limited Partners, at a special meeting called for that purpose.

8.6.4 The removal of a General Partner shall cause the General Partner's interest in the Partnership to be converted to a Limited Partnership interest but shall not alter or change the rights or responsibilities pursuant to paragraphs 21.2 and 21.3 of this Agreement.

8.7 The General Partner and/or the General Partner's assignees or appointees shall receive a management fee, payable monthly, which shall not exceed [Specify Percent] (Number %) of the gross revenue, that is, of the total monthly receivables of the Partnership.

8.8 The Limited Partners shall not have either the obligation or the right to take part, directly or indirectly, in the active management of the business.

8.8.1. No Limited Partner is authorized to do or perform any act or deed in the name of, for, or on behalf of either the General Partner or the Partnership.

8.8.2. No Limited Partner is authorized to and shall not be permitted to do

any act or deed that will cause the Limited Partner to be classified as a General Partner of the Partnership.

9. LIABILITIES

9.1 The liability of the General Partner arising from carrying on the business affairs or operations of the Partnership or for the debts of the Partnership is unrestricted.

9.1.1. The liability of the Limited Partners with regard to the Partnership in all respects is restricted and limited to the amount of the actual Capital Contributions that each Limited Partner makes.

9.2 Nothing in this Agreement shall prevent or act against a loan of funds from the General Partner or a Limited Partner to the Partnership on a promissory note or similar evidence of indebtedness, for a reasonable rate of interest.

9.1.2 Any Partner lending money to the Partnership shall have the same rights regarding the loan, as would any person or entity making the loan that was not a Partner of the Partnership.

10. PROHIBITED TRANSACTIONS

10.1 During the time of organization or existence of this Limited Partnership, neither the General nor the Limited Partners shall do any one of the following:

10.1.1. Use the name of the Partnership, or any substantially similar name, or any trademark or trade name adopted by the Partnership, except in the ordinary course of the Partnership's business;

10.1.2. Disclose to any non-partner any of the Partnership business practices, trade secrets, or any other information not generally known to the business community;

10.1.3. Do any other act or deed with the intention of harming the business operations of the Partnership;

10.1.4. Do any act contrary to the Limited Partnership agreement,

except with the prior expressed approval of all Partners;

10.1.5. Do any act, which would make it impossible to carry on the intended or ordinary business of the Partnership;

10.1.6. Admit a judgment against the Partnership;

10.1.7. Abandon or wrongfully transfer or dispose of Partnership property, real or personal; or

10.1.8. Admit another person or entity as a General or Limited Partner.

10.2 The General Partner shall not use, directly or indirectly, the assets of this Partnership for any purpose other than for carrying on the business of the Partnership, for the full and exclusive benefit of all its Partners.

11. RESTRICTIONS ON TRANSFERS

11.1 Except as set forth below, no Limited Partner shall sell, assign, transfer, encumber, or otherwise dispose of any interest in the Partnership without the written consent of the General Partner.

11.2 In the event that a Limited Partner receives a bona fide offer for the purchase of all or a part of its interest in the Partnership, the Limited Partner shall either refuse the offer or give the General Partner written notice setting out full details of the offer, which notice shall, among other things, specify the name of the offeror, the percentage of interest in the Partnership covered by the offer, terms of payment, including whether the offer is for cash or credit, and, if on credit, the time and interest rate, as well as any and all other consideration being received or paid in connection with the proposed transaction, as well as any and all other terms, conditions, and details of the offer.

11.2.1. Upon receipt of the notice with respect to the offer, the General Partner shall have the exclusive right and option, exercisable at any time during the period of [number] days from the date of the notice, to purchase the interest in the Partnership covered by the offer at the same price and on the same terms and conditions of the offer as set out in the notice.

11.2.2. If the General Partner decides to exercise the option, the General Partner shall give written notification of this decision to the Limited Partner desiring to sell, and the sale and purchase shall be closed within [specify length of time] thereafter.

11.2.3. If the General Partner does not elect to exercise the option, the General Partner shall notify in writing the other members of the Limited Partnership regarding the terms of the offer. Should any individual Limited Partner or group of Limited Partners decide to exercise the option to purchase, notification of this decision shall be given in writing to the General Partner to be transmitted in writing to the selling Limited Partner within the same period provided above for notification of a General Partner's exercise of the option, and the sale and purchase shall be closed within [specify length of time] thereafter.

11.2.4 If none of the Limited Partners elects to exercise this option, the selling Limited Partner shall be so notified in writing by the General Partner and shall be free to sell the interest in the Partnership covered by the offer. The sale, if permitted, shall be made strictly upon the terms and conditions and to the person described in the required notice.

11.2.5. Any assignment made to anyone not already a Partner shall be effective only to give the assignee the right to receive the share of profits to which the assignor would otherwise be entitled, shall not relieve the assignor from liability for additional contributions of capital, shall not relieve the assignor from liability under the provisions of this Partnership Agreement, and shall not give the assignee the right to become a substituted Limited Partner. Neither the General Partner nor the Partnership shall be required to state the tax consequences to a Limited Partner or to a Limited Partner's assignee arising from the assignment of a Limited Partnership interest.

11.2.6. The Partnership shall continue with the same basis and capital amount for the assignee as was attributable to the former owner who assigned the Limited Partnership interest.

11.2.7. The Partnership interest of the General Partner cannot be voluntarily assigned or transferred except when such an assignment or transfer occurs by operation of law.

11.3 Where the Limited Partner is a an individual then on his death, the General Partner shall have an obligation to purchase from the estate of the deceased Limited Partner, and the estate of the deceased Limited Partner shall have an obligation to sell to the General Partner, the deceased Partner's interest in the Partnership, at the price and on the terms and conditions set forth in this Paragraph.

11.4 The purchase price for the deceased Limited Partner's proportionate interest in the Partnership shall be the deceased Limited Partner's proportionate interest in the fair market value of the Partnership property, determined as provided below, together with the assumption of all liability for any outstanding indebtedness, liabilities, liens, and obligations relating to the Partnership or the Partnership property.

11.4.1. Within [Number] days after the death of the deceased Limited Partner, the General Partner shall name an appraiser and within [Number] days after the death of the deceased Limited Partner the executor or other legal representative of the estate of the deceased Limited Partner shall name an appraiser.

11.4.2. If either party fails to name an appraiser within the specified time, the other party may select the second appraiser. The two (2) appraisers so selected shall proceed promptly to determine the fair market value of the Partnership property, taking into consideration any outstanding indebtedness, liabilities, liens, and obligations relating to the Partnership property.

11.4.3. The determination of the fair market value of the Partnership property by the two (2) appraisers selected as provided above shall be final and binding on all parties. If the two (2) appraisers so selected are unable to agree on the fair market value of the Partnership property, they shall select a third appraiser whose determination as to fair market value shall be final and binding on all parties.

11.5.4. The appraisers shall deliver a written report of their appraisal or the appraisal of the third appraiser, as the case may be, to the General Partner and to the executor or other legal representative of the estate of the deceased Limited Partner.

11.5.5. Each party shall pay the fee and expenses of the respective

appraiser selected by such party, and if a third appraiser shall be appointed, the fee and expenses of the third appraiser shall be borne one-half (l/2) by the General Partner and one-half (l/2) by the estate of the deceased Limited Partner.

11.5.6. During the period between the date of death and the date the purchase price is paid to the estate of the deceased Limited Partner, the General Partner shall contribute the deceased Limited Partner's share of any contribution required to be made to the Partnership under the provisions of this Agreement; provided, however, that the amount of any such payment made by the General Partner during the period between the date of the deceased Limited Partner's death and the date of the appraisers' report shall be deducted from the amount of the purchase price to be paid to the estate of the deceased Limited Partner.

11.5.7. The purchase price shall be evidenced by a negotiable promissory note in a principal amount equal to the purchase price of the deceased Limited Partner's interest in the Partnership as computed as provided in this Agreement, and providing for interest at the rate of [Rate] percent (Rate] %) per annum, payable in [number and frequency] installments, and containing acceleration and other customary clauses.

11.5.8. The note shall bear interest from the date of death of the deceased Limited Partner with the first principal and accrued interest payment being due and payable [Number of Months] following the date of death.

11.5.9. The General Partner shall have the right to prepay any and all installments of the note at any time with no premium or penalty.

11.5.10. On delivery of the note and the assumption by the General Partner of all liability of the deceased Limited Partner for any outstanding indebtedness, liabilities, liens, and obligations relating to the Partnership, the estate of the deceased Limited Partner shall have no further interest in the Partnership or in its business or assets, and the executor or other legal representative of the estate of the deceased Limited Partner shall execute and deliver such deeds, conveyances, and other instruments as may be reasonably necessary to evidence and render fully effective the transfer of the interest of the deceased Limited Partner in the Partnership and its business assets.

11.5.11. The interest of the deceased Limited Partner shall be acquired by the General Partner, who shall become a Limited Partner to the extent of such interest.

12. RELATIONSHIP BETWEEN PARTNERS

12.1

No Limited Partner shall:

12.1.1. have the right or pretend to have the right to participate in the management or the control of the business of the Partnership and the fulfillment of the business, except as expressly provided for or permitted by this Agreement;

12.1.2. have the right or pretend to have the right to make commitments in the name of the Partnership, or oblige or bind the Partnership;

12.1.3. have the right or pretend to have the right to make any commitments in the name of another Partner, or otherwise oblige or bind another Partner except by way of a resolution of the Limited Partners;

12.1.4. be a party, in the name of the Partnership, to any judicial proceedings based on a claim made by the Partnership or against the Partnership;

12.1.5. be able to file or register or permit to be filed or registered, a privilege, a notice of opposition or a charge against the property of the Partnership which relates to the share of such Partner in the Partnership; or

12.1.6. seek to obtain the partition or the sale, judicial or otherwise, of the property of the Partnership.

12.2. Each Limited Partner or each Person who is the transferee of the interest that it represents, as Limited Partner, names and irrevocably appoints by this Agreement the General Partner, with full powers of substitution, as its agent and nominee to act in its name, with full powers and full authority to sign, under its seal or otherwise, to sign

under oath, to recognize, to deliver and to have registered or filed, in its name and in its place, according to the required formalities:

12.2.1. this Agreement, the Declaration, any amendment to them and any other document necessary to form and maintain in existence and in good standing the Partnership as a limited partnership in any jurisdiction where the Partnership may do business or hold property, or so that it may conform to the [Country] of such jurisdiction, in order to maintain the limited liability for the Limited Partners under such laws, including the amendments to the Declaration which may be necessary to reflect any change in the Partners or in the ownership of its shares;

12.2.2. any document or necessary amendment to the Declaration that is required to reflect any modification to this Agreement which is authorized in accordance with its provisions;

12.2.3. any document required which relates to the dissolution or the winding-up of the Partnership or the transformation of the Partnership into a corporation;

12.2.4. any document which relates to the admission of Limited Partners and to the transfer of Units;

12.2.5. any document regarding the business of the Partnership, which must be filed with a governmental body;

12.3 The General Partner, effective as of the last day of any calendar year of the Partnership, may voluntarily withdraw from the Partnership as General Partner.

12.3.1. Any such withdrawal shall have the effect of terminating the Partnership as of the close of business on that day.

12.3.1. The insolvency death, incapacity, or resignation of the General Partner shall result in the termination of the Partnership as of the close of business on the last day of the calendar year in which the event occurs.

12.4 The Partnership may be terminated on any date specified in a notice of termination, signed by the General Partner and by a majority of all the Limited

Partners. As used in this Agreement, a majority of the Limited Partners means Limited Partners having in the aggregate a majority of the capital interest of the Limited Partners in the Partnership as of the time the notice of termination is executed.

12.4.1 The insolvency death or incapacity of a Limited Partner shall have no effect on the life of the Partnership, which shall continue.

12.5 On the termination of the Partnership, regardless of how it is terminated, the affairs of the Partnership shall be wound up by the General Partner.

12.5.1. If for any reason there is no General Partner, or if the General Partner refuses to serve or is incapable of serving, a majority in interest, not in number, of the Limited Partners may appoint or designate a Trustee in Liquidation who shall serve to wind up the affairs of the Partnership.

12.5.2. The Trustee in Liquidation need not be a commercial corporate trustee, need not be bonded, and may be a Limited Partner. Whoever serves to wind up the affairs of the Partnership, the following procedure shall be followed:

12.5.3. On termination, the assets of the Partnership shall be applied to payment of the outstanding Partnership liabilities, although an appropriate reserve may be maintained and the amount determined by the General Partner or Trustee in Liquidation for any contingent liability, until that contingent liability is satisfied.

12.5.4. The balance of the reserve, if any, shall be distributed together with any other sum remaining after payment of the outstanding Partnership liabilities to the Partners as their interest appears on Exhibit "C," unless otherwise provided in this Agreement.

12.5.6. At the time of the termination of the Partnership, no Partner, either General or Limited, shall be liable to the Partnership for the repayment of any deficit in his or her capital account resulting from the allocation of non-cash items such as depreciation to that Partner's capital account; provided, however, that any deficit resulting from cash withdrawals by the Partner shall be repaid to the Partnership and be available for distribution hereunder.

12.6 Nothing contained in this Agreement shall defeat the right of either a Limited or a General Partner to require and to obtain a court-supervised winding up, liquidation, and dissolution of the Partnership.

12.6.1 No Partner shall be entitled to demand a distribution be made in Partnership property, but the General Partner may make or direct property distributions to be made, using the property's fair market value as of the time of distribution as the basis for making the distribution.

13. REPRESENTATIONS AND WARRANTIES OF LIMITED PARTNERS

13.1 Each Limited Partner warrants and represents the following:

13.1.1 That it is incorporated in [Country] and is the beneficial owner of the interest standing in its name, and that this investment in the Partnership is permissible by the laws of [Country].

13.1.2 It enjoys the legal capacity and the right to subscribe to the share capital of the Partnership and to do all that is required under this Agreement, and all the necessary approvals of the directors, shareholders and members of the Limited Partner or otherwise have been given in order to authorize the signature of the subscription form and to do all that is required under this Agreement;

13.1.3 That it is a sophisticated investor and the nature and amount of the capital contributions it agrees to make hereunder is consistent with its investment program, and that it has sufficient liquid assets to meet promptly all calls for additional contributions and to absorb the loss of the entire investment in the Partnership.

13.1.4 That it has been furnished with sufficient written and oral information about the Partnership, the General Partner, and the business of the Partnership to allow it to make an informed investment decision prior to purchasing an interest in the Partnership, and has been furnished access to any additional information that it may require.

13.1.5 That it is fully familiar with the business proposed to be conducted by the Partnership and with the Partnership's use and proposed use of the

Capital Contributions.

13.1.6 That the offer and sale of its interest in the Partnership have been made in the course of a negotiated transaction involving direct communication between the Limited Partner and the General Partner on behalf of the Partnership.

13.1.7 That it has either:

13.1.7.1 had experience in business enterprises or investments entailing risk of a type or to a degree substantially similar to those entailed in an investment in the Limited Partnership; or

13.1.7.2 obtained independent financial advice with respect to the investment in the Partnership.

14. COMPENSATION OF GENERAL PARTNER

14.1 The Partnership shall pay the Management Costs and shall reimburse the General Partner for all the expenses, which it has incurred in the performance of its functions under this Agreement, including reasonable fees, which have been directly incurred up to the date of the execution of this Agreement for and to the advantage of the Partnership. Except for the first year of operation, the Management Costs are to be approved by the Limited Partners by Special Resolution.

14.2 Any amount which, in accordance with the provisions of this Agreement, must be attributed or distributed to the Partners shall be allocated between them proportionally to the pro rata share of Capital Contributions held by each Partner in relation to the total amount of Capital held by all the Partners at the time when such attribution is made or at the time when the right to such distribution is determined (without regard to the number of days during which any Partner has been a Partner or has held any shares).

14.3 The Net Benefit of the Partnership during a financial period, from which the amounts indicated in paragraph 14.1 have been deducted, shall be, at the end of such a financial period, credited:

14.3.1 firstly, to the Current Accounts of the Limited Partners up to an amount equal to [percentage %] of the Net Benefit of the Partnership;

14.3.2 secondly, to the Current Accounts of the General Partner as to the balance of the Net Benefit of the Partnership.

14.4 Net Loss for each financial period shall be divided between the Limited Partners in proportion to their respective contributions. The General Partner shall not participate in the resolution of Net Loss, except to the extent of its liability toward third parties. Any loss in respect of any financial year shall be charged to undistributed Net Benefit and then to the Capital. If the loss exceeds the total of the undistributed Net Benefit and the Capital, the General Partner shall be liable towards third parties for such excess loss. The Limited Partners shall not be liable for any loss, or other debts or liabilities of the Partnership to any extent beyond their respective contributions to the Capital and Current Accounts.

14.5. As long as the Partnership has not been dissolved and unless the Partnership does not have sufficient assets to answer for the obligations of the Partnership and for all other claims against it, the General Partner shall cause to be declared and distributed by the Partnership, subject however to paragraph 14.7, within [Number] days following the end of a financial period of the Partnership, to the persons who were Limited Partners at the end of that financial period, the lesser of the following amounts:

14.5.1. the amount by which the total cumulative Net Benefit of the Partnership at the end of that financial period exceeds the whole of the distributions made by the Partnership to the Limited Partners before that time; the total of the excess of the available funds of the Partnership on any reserves agreed upon in the annual budget for the following year at the end of that previous financial period;

14.5.2 [Percentage Number%] to the General Partner until the aggregate Net Benefit allocated to the General Partner equals [Percentage number%] of the excess of the aggregate Net Benefit allocated to the Partners and the General Partner over the aggregate Net Loss previously allocated to such Partner and the General Partner

14.6. The General Partner may at any time cause to be distributed by the Partnership to the Partners amounts in the same manner, according to its assessment, as if the distribution had been made according to paragraphs 14.3 and 14.5, and as if the financial period in effect had terminated immediately prior to such distribution.

14.7. Notwithstanding the foregoing, the General Partner will not cause to be distributed by the Partnership to the Partners any amounts according to paragraphs 14.3 and 14.5 if after such distribution the positive Working Capital Ratio or the Long Term Debt/Equity Ratio of the Partnership is not respected.

15. CAPITAL ACCOUNTS AND CURRENT ACCOUNTS

15.1. The General Partner shall open in the books of the Partnership as many Capital Accounts as there are Partners. The Capital Contribution to the Capital of the Partnership are to be credited, and the amounts distributed to the Limited Partner as reimbursement of capital to be debited, for the purpose of such accounts.

15.2. The General Partner shall open in the books of the Partnership as many Current Accounts as there are Partners, the Net Benefit being credited, the Net Loss and the distributed amounts other than the reimbursement of capital being debited, for each of those accounts,.

15.3. The participation of a Partner in the Partnership shall not end solely because of the existence of a debit balance in one or several of the accounts kept in accordance with the present Section.

16 ACCESSORY AGREEMENTS

16.1 Notwithstanding the provisions of Section 17 hereafter, on or prior to the Closing, the Partnership shall have entered into with Affiliates of the parties or third parties several agreements well known to the parties. Furthermore and notwithstanding the provisions of Section 17 hereafter, on or prior to the Closing, [Company Name], and [Company Name], shall have entered into a Shareholders Agreement with respect to the General Partner, providing, among other things for certain aspects of

the administration and financing of the General Partner, the regulation of the holding of the shares in the capital of the General Partner and the prevention of any disagreement regarding these matters.

17. CONFLICTS OF INTEREST

17.1 The General Partner may, in the name of the Partnership, enter into any agreements with Persons of the Same Group, but such agreements must be entered into on terms and conditions which are at arms' length and competitive for the Partnership and such Persons of the Same Group.

18. LIMITED PARTNERS' RIGHT TO SELL PARTNERSHIP PROPERTY AND CO-INVESTMENT RIGHTS

18.1 The General Partner may be directed to sell property on written instructions executed by Limited Partners owning collectively at least [Number] percent ([Number %) in interest, not in number, in the Partnership.

18.2 The General Partner may in its sole discretion offer each Co-Investment Limited Partner the opportunity to invest by way of additional Capital Contributions in the business (on terms no more favourable in the aggregate than those offered to the Partnership) by delivery of written notice thereof (a "Co-Investment Opportunity"). The aggregate amount available to be co-invested in any such opportunity shall be offered to each Co-Investing Limited Partner. In the event any Co-Investment Opportunity is over-subscribed, each Co-Investing Limited Partner electing to participate will be cut-back pro-rata based on the amounts of their respective subscriptions for co-investment. In the event that any co-investment opportunity is under-subscribed, each Co-Investing Limited Partner will be entitled to co-invest the portion that it requests and the Partnership will be free to either keep the overage or otherwise syndicate the remaining portion of any such investment opportunity. The terms of such offer and co-investment (including the timing and other closing mechanics) shall be described in the notice thereof delivered by the General Partner.

19. FAIR MARKET VALUE OF THE INTEREST

19.1. For the purposes of this Agreement, the Fair Market Value of any Interest, part of Interest or amount, including without limitation a Partner's Interest (the "Subject Interest"), shall be determined as follows and shall not take into account any minority discounts:

19.1.1. no later than [Number] days after the receipt by either Limited Partner of a notice from the other Limited Partner that a determination of Fair Market Value of the Subject Interest is required under the terms of this Agreement (the "Determination Notice"), each of the Limited Partners shall submit at the same time to the Auditor a confidential written evaluation of its determination of the Fair Market Value of the Subject Interest;

19.1.2. if one Limited Partner does not submit its evaluation as and when provided for in subparagraph 19.1.1 above, the Fair Market Value of the Subject Interest, for all purposes of this Section, shall be the evaluation submitted pursuant to subparagraph 19.1.1 above by the other Limited Partner;

19.1.3. however, if each of the Limited Partners submits its evaluation as provided in subparagraph 19.1.1 above, these [Number] evaluations shall be forthwith disclosed simultaneously by the Auditor to the Limited Partners and, if, as calculated by the Auditor, there is less than a [Percentage %] per cent difference between the [Number] evaluations submitted, then the Fair Market Value of the Subject Interest, for all purposes of this Section, shall be the arithmetic average of the [Number] evaluations submitted by the Limited Partners;

19.1.4. if, as calculated by the Auditor, there is more than a [Percentage [Number]%] percent difference between the two evaluations submitted by the Limited Partners, then the Auditor shall, by written notice delivered forthwith to the Limited Partners, request the Limited Partners to constitute an Evaluation Panel for determining the Fair Market Value of the Subject Interest;

19.1.5. each of the Limited Partners, by written notice to the Auditor delivered no later than [Number] days after the delivery of the aforementioned notice by the Auditor, shall designate an evaluator (the

"Evaluator") which is not an evaluator listed in the most recent list of Third Evaluators. In the event one of the Limited Partners fails to designate an Evaluator within such [Number]-day period, the Fair Market Value of the Subject Interest, for all purposes of this Section, shall be the evaluation previously submitted by the other Limited Partner who has so designated an Evaluator.

19.1.6. If both Limited Partners designate an Evaluator within the [Number] day period, either Limited Partner may request the party whose name appears first on the then current List of Third Evaluators to act as Third Evaluator on the Evaluation Panel, and, if the first party refuses or is unable to act, then the second and if it refuses or is unable to act, then the third and if it refuses or is unable to act, then the fourth. Upon selection of the Third Evaluator, the Evaluator Panel will be constituted on such date comprising the three Evaluators so designated. If, at any time, any Evaluator shall resign, it may be replaced by the party designating it or, if the Third Evaluator resigns, it shall be replaced by the next Third Evaluator on the then current List of Third Evaluators, provided that in no case will the time limits herein set forth be extended to accommodate such replacement.

19.1.7. the Evaluation Panel shall, within [Number] days after it is constituted, produce and deliver to the Auditor and to the Limited Partners, a written submission pertaining to the methods agreed upon by the Evaluators for the purposes of the determination of the Fair Market Value of the Subject Interest (the "Methods of Evaluation"). In the event that the Evaluators cannot agree on such Methods of Evaluation, the method determined by the Third Evaluator shall be the written submission for this purpose; notwithstanding any provisions to the contrary, such Methods of Evaluation shall have to set a price for the Fair Market Value of the Subject Interest, which price should not take into account the existence of any Special Purchaser as this expression is hereinafter defined in subparagraph 19.1.15;

19.1.8. the Limited Partners may, within [Number] days after the receipt of such written submission, by unanimous agreement, instruct the Auditor by notice in writing to submit a proposal in writing (the "Proposal") to the Evaluators setting out alternative methods of Evaluation which the Evaluation Panel shall use in place of the written submission under subparagraph 19.1.6 above. In the event that a Proposal is not submitted

to the Evaluators within the time provided for, the Evaluators shall be authorized and instructed to proceed with the Evaluation in accordance with the written submission under subparagraph 19.1.7 above. Each of the Evaluators shall submit its respective Evaluation report (the "Evaluation Reports") in writing to the Auditor and to the Limited Partners within [number] days (the "Evaluation Period") after the final determination of the Methods of Evaluation;

19.1.9. for the purposes of this Section, the Fair Market Value of the Subject Interest shall be the one Evaluation which is neither the highest nor the lowest of the three Evaluations submitted within the Evaluation Period, or if only [Number] Evaluations are submitted within the Evaluation Period, shall be the average of such two Evaluations, or if only one Evaluation is submitted within the Evaluation Period, shall be that Evaluation (the "Binding Evaluation Report");

19.1.10. for the purposes of this Section, the Limited Partners hereby agree that the "List of Third Evaluators" shall be the following (or in each case, their respective affiliates in the appropriate jurisdictions as the Third Evaluator may determine):

i) [Individual Name], Chartered Accountant;

ii) [Individual Name], Chartered Accountant;

iii) [Individual Name], Chartered Accountant;

iv) such other qualified party designated by the President of the Institute of Chartered Accountants of Jamaica on application by either Limited Partner;

v) the Limited Partners may at all times, by unanimous consent, change the List of Third Evaluators to the Auditor duly signed by the Limited Partners.

vi) The Limited Partners hereby agree that all Evaluators designated pursuant to this Section shall be independent experts and not associated

with either of the Limited Partners or any of their Affiliates, shall be recognized professionals in the field of business evaluations and shall be members of a recognized professional order;

vii) and if any evaluator listed in the then current List of Third Evaluators does not meet these criteria, it will automatically be deleted from the then current List of Third Evaluators;

19.1.11 the Third Evaluator who accepts to act shall, within [Number] days of receiving notice in writing by the Auditor deliver written notice to the Auditor and the Limited Partners signifying its acceptance and setting out the amount of its reasonable remuneration. If either Limited Partner does not accept the amount of remuneration specified by such Third Evaluator, such Limited Partner may request, within [Number] days of receiving the written notice from the Third Evaluator, that the next Third Evaluator on the List of Third Evaluators be appointed in place of the Third Evaluator previously appointed;

19.1.12 each of the designated Evaluators shall, upon accepting the position of Evaluator, sign and deliver to the Auditor an undertaking to proceed to its Evaluation with the utmost confidentiality and secrecy and not to communicate, directly or indirectly, with the other Evaluators nor with any third party with respect to any information relating to its Evaluation (except the Methods of Evaluation which shall be determined in accordance with this Section) and this before the delivery of the Evaluation reports of the Evaluators to the Auditor;

19.1.13 subject to the provisions of paragraph 19.1.4. all professional fees payable to each of the first two Evaluators shall be borne by the Limited Partner appointing it and the fees payable to the Third Evaluator shall be borne by the Limited Partners equally;

19.1.14 the Limited Partners shall co-operate with the Evaluators and supply all necessary information as may be reasonably requested in order to enable the Evaluators to perform their work, subject to appropriate measures to maintain confidentiality;

19.1.15 for the purposes of the present Section 18, "Special Purchaser" means a person or a group of persons who, for one or several reasons, is willing to pay a price for the Interest higher than any other purchaser would pay, because, among other things, of its desire to obtain information on a competitor, or its ability to generate higher earnings as a result of economies of scale available to such purchaser following the acquisition, or of a reduction of risk, following the acquisition, resulting from the elimination of competition, the acquisition of an assured source of supply, or the retention of a viable market or key personnel.

20. DIVESTMENT OF INTEREST BY LIMITED PARTNER: RIGHT OF FIRST REFUSAL TO REMAINING LIMITED PARTNERS

20.1. A Limited Partner, may never sell, assign, transfer, give, exchange, alienate or otherwise dispose (collectively called "sell"), in any manner whatsoever, "any part" of its Interest to a Third Party Purchaser. Moreover, on or before the [date] day of [month], [year] (the "Initial Dead-Lock Period"), a Limited Partner may not sell "all" of its Interest to a Third Party Purchaser. After the Initial Dead-Lock Period, a Limited Partner may sell "all, but not less than all", of its Interest to a Third Party Purchaser, ("the Offeror Limited Partner") provided it has first offered said Interest to the remaining Limited Partners ("the Offeree Limited Partners") in conformity with and in the order set out in the following provisions dealing respectively with Internal and External Offers and provided that Offeror Limited Partner has in either case elected or is deemed to have elected not to purchase same according to its rights to do so under the provisions of the present Section 20.

20.2. In the event that the Offeror Limited Partner wishes to sell, at any time after the Initial Dead-Lock Period, all of its Interest in the Partnership and the General Partner (the "Offered Interest"), it must first offer said Offered Interest to the Offeree Limited Partner in conformity with the provisions of this Section 20.

20.3. The Offeror Limited Partner must first send to [the Offeree Limited Partner written notice (the "Notice of Intention to Sell") indicating its intention to sell the Offered Interest [number] days after the date of receipt by the Offeror Limited Partner of this Notice of Intention to Sell; the following provisions shall therefore apply:

20.3.1. the Notice of Intention to Sell shall mention the terms and conditions of the proposed sale, the sale price per Unit and in the capital of the General Partner and the portion of the Selling Price representing any indebtedness of the General Partner or of the Partnership to the Offeror Limited Partner as well as the modalities of payment of the Selling Price;

20.3.2. the Offeree Limited Partner then has [Number] days from the date of receipt by it of the Notice of Intention to Sell to:

20.3.3. elect to purchase the Offered Interest (the "Option to Purchase"), the whole according to the same Selling Price, modalities of payment, terms and conditions as stipulated in the Notice of Intention to Sell;

- or -

20.3.4. elect not to take advantage of its "first" right of first refusal granted by subparagraph 20.3.3 (the "Option to Permit the Sale") and thus to permit the Offeror Limited Partner to dispose of the Offered Interest to any Third Party Purchaser, subject however to the provisions of paragraph 20.4 hereinafter dealing with the "second" right of first refusal in favor of the Offeree Limited Partner;

20.3.5. this "first" right of first refusal shall be exercised by Offeree Limited Partner by means of a written notice which must be sent to the Offeror Limited Partner within the prescribed [Number] -day delay using the mechanism set out in subparagraph 28.1.1; this notice must indicate the option elected by the Offeree Limited Partner that is: the Option to Purchase or the Option to Permit the Sale; should the latter fail to deliver its written notice in conformity with the preceding provisions and within the delay granted, it shall be deemed to have exercised the Option to Permit the Sale;

20.3.6. in the event that Offeree Limited Partner elects the Option to Purchase, then the Offeror Limited Partner must purchase, at closing, the Offered Interest at the Selling Price, modalities, terms and conditions set in the Notice of Intention to Sell;

20.3.7. in the event that the Offeree Limited Partner elects or is deemed to have elected the Option to Permit the Sale, then the Offeror Limited Partner may, subject however to paragraph 20.4 hereinafter dealing with

a "second" right of first refusal in favor of the Offeree Limited Partner, within [number] months after the expiry of the [Number]-day delay provided for in subparagraph 20.3.2, proceed to sell the Offered Interest to any Third Party Purchaser it may wish, in any way whatsoever and according to the price, modalities of payment and such other terms and conditions the Offeror Limited Partner deems appropriate at its discretion;

20.3.8. as a condition to the validity of the sale of the Offered Interest and to its inscription in the records of the Partnership and of the General Partner, the Third Party Purchaser must sign at closing, the undertakings provided for in Schedule A annexed hereto, along with all requested documents required under the Shareholders Agreement; should there be a failure to sell the Offered Interest within the delay granted and in accordance with this Section 20, the Offeror Limited Partner may not dispose of the Offered Interest without offering it again to the Offeree Limited Partner in accordance with the mechanism set out in this Section 20;

20.3.9. in the event of a failure of the Offering Limited Partner and the Offeree Limited Partner to agree upon the date or place of closing, the closing for the sale of the Offered Interest according to subparagraphs 20.3.3 and 20.3.4, shall take place at the head office of the General Partner, [Specify City Time], on the [Number] day following the expiry of the [number]-day delay stipulated in subparagraph 20.3.2.

External Offer

20.4. Where Offeror Limited Partner has elected to sell all of its Interest pursuant to the provisions of paragraph 20.1 and has therefore sent to the Offeree Limited Partner the Notice of Intention to Sell in conformity with the provisions of paragraph 20.3 and if, after having given to [the Offeree Limited Partner said "first" right of first refusal, the Offeree Limited Partner has elected or is deemed to have elected the Option to Permit the Sale, then, if the Offeror Limited Partner still wishes to sell all of its Interest and if the [Number]-month delay indicated in subparagraph 20.3.5 has not expired, the following provisions shall first apply:

20.4.1. the Offeree Limited Partner must first have received from a Third Party Purchaser, a written offer (the "Offer") made in good faith mentioning the conditions of the proposed sale, the full description of the

Interest (the "Offered Interest"), the sale price per Unit and per share in the share capital of the General Partner and the portion of the sale price representing any indebtedness of the Partnership or of the General Partner to the Offeror Limited (the "Selling Price") as well as the modalities of payment of the Selling Price;

20.4.2. the Offer must also, in order to be considered hereunder, fully and clearly disclose the Third Party Purchaser, be accompanied by an affidavit of a director of the Offeror Limited Partnerattesting the intention of the Offeror Limited Partner to accept such Offer, and also be accompanied by a deposit of at least [Percentage %] percent of the Selling Price (the "Deposit") and stipulate that the Selling Price for the Offered Interest shall be paid in [Type] currency; for the purposes of these presents, the information to be given in the Offer on the identity of the Third Party Purchaser must reveal the following :

20.4.3. it must give sufficient details in order for the Offeror Limited Partner to determine if the Third Party Purchaser or, as the case may be, the real beneficiary of the purchase of the Offered Interest, is a suitable Limited Partner as this expression is defined in subsection 20.4.7; without limiting the generality of the foregoing, and if need be, this information shall include details of the controlling shareholders or major affiliates of the Third Party Purchaser or the ultimate beneficiary of the purchase if the Third Party Purchaser is a Person of the Same Group of the Third Party Purchaser or a person acting in trust or otherwise on behalf of a buyer;

20.4.4. the Offeree Limited Partner must then send to the Offeror Limited Partner, attaching thereto a signed copy of the Offer as well as said affidavit and proof of payment of the Deposit, a written notice (the "Notice of Intention to Sell") indicating its intention to accept the Offer and thereby dispose of the Offered Interest in favor of the Third Party Purchaser;

20.4.5. the Offeror Limited Partner] then has [number] days from the date of receipt by it of the Notice of Intention to sell to either:

20.4.5.1. elect to purchase (the "Option to Purchase") the Offered Interest, the whole according to the same Selling Price, modalities, terms and conditions as stipulated in the Offer;

- or-

20.4.5.2. elect not to take advantage of its "second" right of first refusal granted by this paragraph 20.4 (the "Option to Permit the Sale") and thus to permit the Offeror Limited Partner to dispose of the Offered Interest to the Third Party Purchaser, for the Selling Price and according to the modalities, terms and conditions indicated in the Offer;

- or-

20.4.5.3. elect to refuse to permit the sale to the Third Party Purchaser based on the provisions of subparagraph 20.4.7 (the "Option to Refuse the Sale");

20.4.7. this right of first refusal shall be exercised by means of a written notice which must be sent to Offeror Limited Partner within the prescribed [Number]-day delay using the mechanism set out in subparagraph 28.1.1; this notice must indicate the option elected by Offeree Limited Partner, that is: the Option to Purchase, the Option to Permit the Sale or the Option to Refuse the Sale; should the latter fail to deliver its written notice in conformity with the preceding provisions and within the delay granted, it shall be deemed to have exercised the Option to Permit the Sale;

20.4.7. in the event that Offeree Limited Partner elects the Option to Purchase, then it must purchase, at closing, the Offered Interest at the Selling Price, modalities, terms and conditions set in the Offer;

20.4.8. in the event that the Offeree Limited Partner elects or is deemed having elected the Option to Permit the Sale, then [the Offeror Limited Partner must, within [Number] days after the expiry of the [Number]-day delay provided in subparagraph 20.3.2, proceed to sell the Offered Interest to the Third Party Purchaser, but on the express condition that this sale take place strictly in accordance with the same Selling Price, modalities, terms and conditions as provided for in the Offer of the Third Party Purchaser and that the Offeror Limited Partner send to the Offeree Limited Partner, at the latest, on the [number] day following the expiry of the said [number]-day delay, a certified true copy, (by means of an affidavit of a director of the Offeror Limited Partner of the Sale Purchase Agreement and other relevant agreements attesting of the transaction concluded with the Third Party Purchaser;

20.4.9. the right for the Offeree Limited Partner to elect to Refuse the Sale according to subparagraph 20.4.5.3. is subject to the following provisions :

20.4.9.1. the Offeree Limited Partner may refuse to permit the sale if, pursuant to normal business practice, and on valid, specific grounds, it determines that the Third Party Purchaser is not a suitable Limited Partner. For the purposes of these presents, a Third Party Purchaser could be considered an unsuitable Limited Partner any Special Purchaser, as defined in subparagraph 20.4.9.2, who is not reasonably acceptable to the Offerre Limited Partner;

20.4.9.2. the expression "Special Purchaser" for the purposes of this subparagraph 20.4.9 shall mean a person or a group of persons who is willing to pay a price for the Offered Interest higher than any other purchaser would pay, because i) of its desire to obtain information on a competitor, or ii) of its ability to generate higher earnings as a result of economies of scale available to such purchaser following the acquisition, or iii) of a reduction of risk following the acquisition resulting from the elimination of competition, the acquisition of an assured source of supply, or the retention of a viable market or key personnel;

20.4.10. the Offeree Limited Partner's Option to Refuse the Sale may only be exercised by written notice to that effect sent to the Offeree Limited Partner within the prescribed [number]-day delay stating the said specific grounds and using the mechanism set out in subparagraph 27.1.1; forthwith upon the Offeree Limited Partner's exercise of the Option to Refuse the Sale, [the Offeror Limited Partner may require that the Fair Market Value of the Offered Interest be determined in accordance with the provisions of Section 19 as of the date of the Offer and, within [number] days of such determination, may require that the Offeree Limited Partner purchases the Offered Interest at the Fair Market Value of same as so determined, whereupon, Offeree Limited Partner shall purchase the said Offered Interest at Closing;

20.4.11. as a condition to the validity of the sale of the Offered Interest and to its inscription in the records of the Partnership and of the General Partner, the Third Party Purchaser must sign at closing the undertakings provided for in Schedule A annexed hereto, along with all requested documents required under the Shareholders Agreement; should there be a failure to sell the Offered Interest within the delay granted and in accordance with the provisions of this paragraph 20.4, the Offeror Limited Partner may not dispose of its Offered Interest without offering them again to Offeree Limited Partner in accordance with the mechanism set out in this Section 20;

20.4.12. in the event of a failure from the Offeror Limited Partner and the Offeree Limited Partner to agree on the date of closing, the closing for the sale of the Offered Interest pursuant to subparagraphs 20.3.8 and 20.3.9 or subparagraph 20.4.8, as the case may be, shall take place at the head office of the General Partner, at [hour] o'clock, [City Time], on the [Number] day following the expiry of the [Number] day delay stipulated in subparagraph 20.3.5. hereinabove.

21. GENERAL PROVISIONS REGARDING SALE AND TRANSFER OF INTEREST AND MATERIAL CHANGE TO A LIMITED PARTNER

7. General provisions regarding sale and transfer of Interest

21.1. The Interest of any Limited Partner shall be transferred pursuant to the Transfer Form hereto attached as Schedule A and sent to the General Partner duly signed with the Certificates, the certificates representing the Units of in the capital of the General Partner to be transferred, the deeds of assignment necessary to assign the indebtedness of the General Partner to the Offeror-assignor and such other documents required under the Shareholders Agreement. Upon receipt by the General Partner of the documents above mentioned, the transferee shall become a substitute Limited Partner and except if otherwise provided for, shall benefit from the advantages and assume the obligations attached to the status of a Limited Partner.

21.2. A Limited Partner shall not sell any portion of its Interest without selling a proportionally equal number of Units in the share capital of the General Partner and amount of indebtedness of the General Partner to it, respectively to the number of Units in the capital of the General Partner held by it and to the total amount of indebtedness of the Partnership to it. Where the Offeror Limited Partner is concerned, the transfer of Units shall cause a similar transfer of Units of the General Partner by the Person of the Same Group as the Offeror Limited Partner holding the Units of the General Partner. For example, a Limited Partner wishing to sell one third of its Interest, shall sell one third of all its Units in the share capital of the General Partner it holds and assign one-third in value of the indebtedness of the General Partner to it.

Material change to a Limited Partner

21.3

21.3.1 the Offeror Limited Partner hereby represents and warrants to the Offeree Limited Partner that, according to its books and records, all of the issued and outstanding shares are registered, at the date of execution of the present Agreement, in the name of and beneficially owned by [number] a wholly owned subsidiary (the "wholly owned subsidiary") of [Number] [Company Name]. (the "the Offeror Limited Partner Principal").

21.3.2 Subject to the provisions of paragraph 21.3.3 hereinafter, the Offeror Limited Partner Principal shall not dispose, in any way whatsoever, while this Agreement remains in force, of any of its shares of the in the share capital of its wholly owned subsidiary or permit the sale of the shares held by said wholly owned subsidiary in the share capital of the Offeror Limited Partner other than to another one of its wholly owned subsidiaries and so long that, in such a case, the the Offeror Limited Partner Principal remains, directly or via wholly owned subsidiaries, the sole owner of shares of the Offeror Limited Partner. In that regard, the Offeror Limited Partner personally guarantees the respect of such an undertaking by the the Offeror Limited Partner Principal and further undertakes not to approve or have approved any transfer of shares of its share capital and not to make or authorize any registration in its books and records of such a transfer contrary to the preceding provisions.

21.3.3 Notwithstanding the provisions of paragraph 21.3.2 above, it is hereby expressly agreed that the the Offeror Limited Partner Principal or the wholly owned subsidiary may dispose of any of its shares respectively held in the wholly owned subsidiary or in the Offeror Limited Partner, so long that, after such a disposition, the the Offeror Limited Partner Principal either directly or indirectly remains the holder of at least [Percentage%] + [Number] of the voting shares of the Offeror Limited Partner. Moreover, nothing herein shall be interpreted as preventing any sale, assignment, transfer, issuance, exchange or other type of alienation or disposition of shares in the share capital of the the Offeror Limited Partner Principal.

21.3.4. The Offeree Limited Partner hereby represents and warrants to the Offeror Limited Partner that, according to its books and records, all of the issued and outstanding shares in its share capital are registered, at the date of execution of the present Agreement, in the name of the Offeree Limited

Partner ("the Offeree Limited Partner"), a wholly owned subsidiary of [Specify] (or "the Offeree Limited Partner Principal).

21.3.5. The Offeree Limited Partner Principal shall not dispose, in any way whatsoever, while this Agreement remains in force, of any of its shares in the share capital of the Offeree Limited Partner other than to any one of its other wholly owned subsidiaries or permit the sale of the shares held by the Offeree Limited Partner in the share capital of the Offeree Limited Partner other than to another one of its wholly owned subsidiaries and so long that, in such a case, the the Offeree Limited Partner Principal remains, directly or indirectly, the sole owner of shares of the Offeree Limited Partner.

21.3.6. To that end, the Offeree Limited Partner personally guarantees the respect of such an undertaking by the the Offeree Limited Partner Principal and further undertakes not to approve or have approved any transfer of shares of its share capital and not to make or authorize any registration in its books and records of such a transfer contrary to the preceding provisions. Moreover, nothing herein shall be interpreted as preventing any sale, assignment, transfer, issuance, exchange or other type of alienation or disposition of shares of the capital stock of the the Offeree Limited Partner Principal or as preventing the the Offeree Limited Partner Principal to acquire shares of the capital stock of the Offeree Limited Partner from the Offeree Limited Partner or as otherwise preventing the the Offeree Limited Partner Principal to dispose of its shares held in the share capital of the Offeree Limited Partner should same exercise its rights to dispose of its shares held in the Offeree Limited Partner in conformity with the foregoing provisions.

22. DIVESTMENT OF INTEREST BY THE OFFEROR LIMITED PARTNER: "PIGGY BACK" TO THE BENEFIT OF OFFEREE LIMITED PARTNER

22.1. Where the Offeror Limited Partner has elected to sell all of its Interest to a Third Party Purchaser and has therefore sent to Offeree Limited Partner the Notice of Intention to Sell in conformity with the provisions of paragraph 20.1 and if, after having given to the Offeree Limited Partner the special right of first refusal, the Offeree Limited Partner has elected or is deemed to have elected the Option to Permit the Sale, then, if [the Offeror Limited Partner still wishes to sell all of its Interest (but then to a Third Party Purchaser and not to [the Offeree Limited Partner, it may do so subject to the provisions of section 20 and to the following provisions :

22.1.1. the Offeror Limited Partner must first have received from a Third Party Purchaser, a written Offer (the "Offer") made in good faith mentioning the conditions of the proposed sale, the intention to acquire all of the Interest of the Offeror Limited Partner (the "Offered Interest"), the sale price per Unit and classes of shares in the capital of the General Partner and the portion of the sale price representing any indebtedness of the General Partner or of the Partnership to the Offeror Limited Partner (the "Selling Price") as well as the modalities of payment of the Selling Price;

22.1.2. the Offeror Limited Partner must then send to the Offeree Limited Partner, attaching thereto a signed copy of the Offer, a written notice (the "Notice of Intention to Sell") indicating its intention to accept the Offer and thereby to dispose of the Offered Interest in favor of the Third Party Purchaser;

22.1.2.1. "Piggy back" – the Offeree Limited Partner shall have the right to advise the Offeror Limited Partner of its wish also to sell to the Third Party Purchaser all the Interest which it holds, which notice must be sent to Offeror Limited Partner according to the provisions of sub-paragraph 28.1.1 and received by the Offeror Limited Partner at its head office, to the attention of the President and the Secretary, within [number] days following the time of deliverance of the Notice of Intention to Sell;

22.1.2.2. upon receipt of such notice, the Offeror Limited Partner undertakes to arrange that the Third Party Purchaser also purchases the Interest held by the Offeree Limited Partner in accordance with the same Selling Price per Unit, and other terms and conditions agreed upon by it with the Third Party Purchaser for the sale of its own Interest, failing which the Offeror Limited Partner shall not proceed to sell its Interest to the Third Party Purchaser.

23. GENERAL PROVISIONS REGARDING SALE AND TRANSFER OF INTEREST AND MATERIAL CHANGE TO A LIMITED PARTNER

General provisions regarding sale and transfer of Interest

23.1. The Interest of either Limited Partner shall be transferred pursuant to the Transfer Form hereto attached as Schedule A and sent to the General Partner duly signed with the Certificates, the certificates representing the Units in the capital stock of the General Partner to be transferred, the Deeds of assignment necessary to assign the indebtedness of the General Partner to the

Offeror-assignor and such other documents required under the Shareholders Agreement. Upon receipt by the General Partner of the documents above mentioned, the transferee shall become a substitute Limited Partner and except if otherwise provided for, shall benefit from the advantages and assume the obligations attached to the status of a Limited Partner.

23.2. A Limited Partner shall not sell any portion of its Interest without selling a proportionally equal number of Units in the capital the General Partner and amount of indebtedness of the General Partner to it, respectively to the number of Units and shares in the capital of the General Partner held by it and to the total amount of indebtedness of the Partnership to it. Where the Offeror Limited Partner is concerned, the transfer of Units shall cause a similar transfer of shares of the General Partner by the Person of the Same Group as the Offeror Limited Partner holding the shares of the General Partner. For example, a Limited Partner wishing to sell one third of its Interest, shall sell one third of all its Units and of all the shares in the capital of the General Partner it holds and assign one-third in value of the indebtedness of the General Partner to it.

8. Special Provisions Regarding Transformation Of The Partnership Into A Corporation

23.3. In any event where the Offeror Limited Partner will exercise its rights to purchase the Offeree Limited Partner's Interest or would reach an agreement with the Offeree Limited Partner to purchase the Offeree Limited Partner's Interest, directly or through a related entity, the Offeror Limited Partner will have the exclusive and irrevocable option to request that the Partnership be transformed into a corporation before the purchase so that the Offeror Limited Partner will buy shares of the new corporation in which the assets would have been transferred instead of acquiring shares of the Partnership. This option shall have to be exercised in writing within [Number] days from the date of exercise of the Option to Purchase granted under the provisions of the present Agreement or from the date where the Offeror Limited Partner and the Offeree Limited Partner would have mutually agreed upon the sale of the Interest to the Offeror Limited Partner.

23.4 Should this option be exercised by the Offeror Limited Partner, the relevant provisions of the present Agreement shall apply "mutatis mutandis" and the Fair Market Value of the Interest or, as the case may be, the Selling Price shall be adjusted accordingly. the Offeree Limited

Partner specifically agrees to grant the Offeror Limited Partner said option on the condition however that the exercise of such option shall not have a material negative financial impact on the net price it will receive from the sale of its Interest. The Offeree Limited Partner further agrees and undertakes to sign and authorize the filing of any tax election forms so that said transaction could be made without tax implications or at a lower tax level.

24. PARTNERS' MEETINGS

24.1. The General Partner may at any time, in accordance with paragraph 24.3, call a Partners' meeting and it must call such a meeting upon receipt of a written request from the Limited Partners who hold [Percentage] or more of the Units in circulation, such request indicating the purpose of the meeting with sufficient details to permit the drafting of a notice that is in compliance with the requirements of paragraphs 19.4.

24.2. Should the General Partner fail to call a Partners' meeting within [Number] days upon receiving a request to that effect, any Limited Partner who is a party to the request may cause such a meeting to be called for the purpose indicated in such request.

24.3. The General Partner shall call an annual Partners' meeting, which will be held within [Number] days of the end of the financial period of the Partnership. During such meeting one or several officers of the General Partner shall report on the business of the Partnership during the preceding financial period and shall present the financial statements of the Partnership for such period.

24.4. A written notice of at least [Number] days and of at the most [Number] days prior to the date of any Partners' meeting shall be given to each Partner, to each director of the General Partner and to the Auditor, indicating the hour, the date and the place of the meeting and such notice shall also indicate, with sufficient details, all matters which must be voted on at the meeting, including the agenda of the meeting, but without necessarily including the text of every resolution which is proposed for adoption.

24.5. All meetings will be held in [Country] or in [Country], at the place chosen by the person who calls the meeting or at any other place in the world if all Partners mutually agree.

24.6. The Chairman of the Board of directors of the General Partner, or in his absence, the President of the General Partner, or in his

absence, the Vice-president or the Secretary of the General Partner, or in their absence, any other Person present who is appointed by Ordinary Resolution, shall chair the meeting.

24.7. Subject to paragraph 24.9, the quorum at the Partners' meeting shall consist of [Number] Person or more present at the commencement of the meeting, holding or representing by proxy, a total of [Percentage %] or more of the shares issued. No such quorum is required in the case of the appointment of the Chairman of the meeting.

24.8. A Partner who is a corporation may appoint an officer, a director or a natural person whom, authorized as its representative, for the purpose of assisting, voting, and acting on its behalf at the meeting, and such Partner may, in the same manner, revoke such appointment, and, for all the purposes of a meeting other than for the delivery of a notice, the natural person thus appointed shall be deemed to be the holder of each share held by the corporation which he represents.

24.9. If the quorum is not reached within [Number] hour(s) from the time fixed for the holding of any such meeting, said meeting shall be adjourned by the Chairman of the meeting to a date that is not less than [Number] days and not more than [Number] days after the date fixed for the initial meeting, as determined by the Chairman of the meeting, at the time and place chosen by the Chairman of the meeting. The Chairman of the meeting shall give or order that there be given a written notice of at least [Number] day indicating the date, the hour and the place of the reconvened meeting to each of the Partners, to each director of the General Partner and to the Auditor, and it will not be necessary to repeat the description of the purpose of the meeting in such notice. At the reconvened meeting, the quorum shall consist of [Number] Person(s) or more present at the commencement of the meeting, holding or representing by proxy, a total of [Percentage %] or more of the issued shares and such Partners may deliberate on the matters for which the meeting was originally convened.

24.10. During any meeting, each Partner has the right to one vote for each share held.

24.11. The officers and directors of the General Partner, the legal counsel of the Partnership and the representatives of the Auditor may be present at any Partners' meeting and address any such meeting.

24.12. Any matter submitted at a Partners' meeting which does not require the adoption of a Special Resolution shall be decided by way of an Ordinary Resolution, by show of hands, unless a secret ballot is requested by a Partner or by the Chairman of the meeting prior to the matter being put to a vote or after the announcement of the result of the vote by show of hands, but before the meeting proceeds to another point on the agenda of the meeting, at which time a vote by way of secret ballot shall proceed.

24.13. During any vote for which no ballot is required or requested, a declaration by the Chairman of the meeting of any result by show of hands, on any matter, shall be final and without appeal.

24.14. The Chairman of the meeting shall have the right to vote with respect to any shares held by him, by a corporation for which he is the representative or for a Person by whom he holds a proxy without, however, casting the deciding or casting vote.

24.15. A resolution shall bind each Partner as well as his heirs, testamentary executors, tutors, curators or other mandataries, successors and holders of a title, whether or not the Partner has been present or represented by proxy at the meeting at which the resolution was adopted or whether the Partner has voted or not against such resolution.

24.16. A Limited Partner may be present at a Partners' meeting in Person or may be represented by a Person appointed by way of a written proxy and a vote at the Partners meeting may be cast in Person or by a proxy holder.

24.17. A proxy, for an annual or special meeting of the Partners or for any other meeting, shall, circumstances permitting, be formulated in the following manner or following any other form to the same effect:

"We, [Individual Name], having our head office at [Full Address] being a Partner of [Number] [Company, Limited hereby appoint [Specify] or in the absence of the latter, [Specify] as our proxy to be present and vote for us and on our behalves at the Partners meeting of [Number] [And Company Limited] which will be held on the [Date] day of [Year], and at any reconvened meeting.

IN WITNESS WHEREOF, we have signed this [Date] day of [Year]."

24.18. The proxy shall be signed by an officer or a duly authorized mandatary of such corporation, which makes the nomination. Any individual may be appointed as a proxy holder, should he be a Partner or not.

24.19. A proxy signed by a Limited Partner or on its behalf, shall be deemed valid unless contested at the time of its use or prior to its use and the Person who contests such proxy shall have the burden to prove, to the satisfaction of the Chairman of the meeting at which such proxy is to be used, that such proxy is not valid, and any decision of the Chairman of the meeting concerning the validity of the proxy is final and without appeal.

24.20. A vote cast in accordance with the terms of a proxy shall be valid notwithstanding incapacity, insolvency, or the bankruptcy of the Limited Partner on behalf of whom the proxy has been given and notwithstanding the revocation of such proxy, unless a written notice of such incapacity, insolvency, bankruptcy or revocation is received by the Chairman of the meeting prior to such vote.

24.21. The rules and procedures to follow during a Partners' meeting and which are not prescribed by this Agreement shall be determined by the Chairman and his decision shall be final and without right to appeal.

24.22. A resolution in writing, signed by all the Partners entitled to vote on that resolution at a meeting of the Partners is as valid as if it had been passed at a meeting of the Partners duly called. A copy of a resolution in writing shall be kept in the minutes book of the Partnership.

24.23. The General Partner shall keep the minutes of the deliberations and resolutions of the Partners' meeting and all other written resolutions adopted in lieu of the Partners' meeting in the Minutes' book. Upon the signature by the Chairman of the meeting or by the Chairman of the following meeting, such Minutes shall constitute conclusive proof of the business dealt with at the meeting and such meeting shall be deemed to have been duly convened and held and all such deliberations and resolutions which appear are deemed to have been duly held and adopted.

24.24. The choice of a substitute General Partner may be made at a special meeting of the Limited Partners called for that purpose or at the end of the meeting during which the General Partner was removed or has resigned. The substitute General Partner shall become a member of the Partnership immediately prior to the withdrawal of the removed or resigning General Partner.

25. CHANGE, RESIGNATION OR REMOVAL OF THE GENERAL PARTNER

25.1. Subject to the provisions of the present Section, the General Partner may resign by giving a written notice of at least [Number] days prior to such resignation to all the Limited Partners. Such resignation shall take effect on the day upon which a Declaration indicating the nomination of the substitute General Partner is filed.

25.2. The General Partner shall be deemed to have resigned as General Partner upon bankruptcy, insolvency, winding-up, dissolution or liquidation of the General Partner, or following the nomination of a trustee in bankruptcy, receiver or receiver-manager of the business of the General Partner, but such resignation shall only take effect on the date on which the Declaration indicating the nomination of the substitute General Partner is filed.

25.3. The General Partner may be removed at any time as General Partner by Special Resolution of the Limited Partners on condition that such resolution appoints a substitute General Partner for the Partnership as a replacement for the General Partner who has been removed.

25.4. At the time of the nomination of the substitute General Partner or on the occasion of the resignation or removal of the General Partner, the resigning or removed General Partner shall take all the necessary measures to transfer the management, the administration, and the control of the business of the Partnership as well as its records, ledgers, registers and accounts to the substitute General Partner, and he shall sign and deliver all such titles, certificates, declarations and other necessary documents to execute such a transfer.

25.5. The substitute General Partner shall become a party to this Agreement upon signing a copy of it, and he shall agree to be bound by all its provisions and he shall agree to assume all obligations, duties and responsibilities of the General Partner by virtue of this Agreement from the date at which he becomes a party to it.

26. NON-COMPETITION AND CONFIDENTIALITY UNDERTAKINGS BY LIMITED PARTNERS

26.1. The Limited Partners hereby acknowledge and agree that they have been and will be given access to or otherwise have come and will come into contact with and/or have possessed and will possess information, knowledge, contacts and experience relating to the fabrication and commercialization of [Specify] including information relating to trade secrets, inventions, know-how, formulas, processes and methods (collectively, "Confidential Information"), which are considered by the Limited Partners to be valuable, secret, confidential and proprietary.

26.2. The Limited Partners hereby acknowledge and agree that the Confidential Information is valuable, secret, confidential and proprietary and belongs to [Specify] or to other affiliates or subsidiaries of [Specify](other than the General Partner) and they undertake and agree that they will not, at any time, or for any time, or for any purpose(s) whatsoever, make public, disclose, divulge, furnish, release, transfer, sell or otherwise make available to any person, any of the Confidential Information or otherwise use, directly or indirectly, for any purpose(s) other than as may be expressly permitted in writing by [Specify].

26.3. The Limited Partners hereby agree and covenant that they shall not, as long as they remain a Limited Partner in the Partnership and for a period of [Number] years after the closing of the sale of its Interest in the Partnership (the "Term"), directly or indirectly, either individually, in partnership or jointly or in conjunction with any person or persons, firm, association, syndicate, company or corporation, as principal, agent or investor (except as the holder of less than [Percentage %] the outstanding shares of a publicly traded corporation) or in any matter whatsoever own, manage, operate, control, carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit their names or any part thereof to be used or employed by such person or persons, firm, association, syndicate, company or corporation engaged in or concerned with or interested in the business of fabrication or of commercialization of [Specify] within the Territory of [Specify].

27. DISSOLUTION OF THE PARTNERSHIP

27.1. Causes of dissolution.

The Partnership shall be dissolved on [Date], or upon the occurrence of one of the following events, whichever comes first:

27.1.1. the approval of such dissolution by mutual agreement of the Limited Partners;

27.1.2. the occurrence of an event which renders illegal or impossible the continuation of the business of the Partnership;

27.1.3. the sale of all or substantially all the assets of the Partnership;

27.1.4. the accomplishment of the business for which the Partnership was contracted; or

27.1.5. [Number] days after the deemed resignation of the General Partner by virtue of paragraph 25.2, except if a substitute General Partner is appointed within [Number] days following such resignation.

Should, by any circumstance(s), the Partnership be dissolved for any reason not contemplated in this Agreement, each Partner shall do all things necessary, and execute all such documents as may be required, to renew, reinstate or continue the Partnership if permitted by the Laws of Jamaica].

27.2. The Partnership shall not be dissolved or extinguished by the resignation, the removal, the incompetence, the bankruptcy, the insolvency, the dissolution, the liquidation or the putting into receivership of the General Partner (subject to subparagraph 27.1.5) or of a Limited Partner, or by the admission, the resignation or the withdrawal of a General Partner or of a Limited Partner.

Kayanne E. Ande..., 12/19/2014 12:35 PM

Comment [1]: Check against section 26.1.5. and discuss with DAL

27.3. Upon the dissolution of the Partnership other than by virtue of paragraph 27.1.5, the General Partner may act as a receiver or, if a Special Resolution allows it, as a receiver-manager of the Partnership.

27.4. If the dissolution is made in accordance with subparagraph 27.1.5, or if the General Partner cannot or will not act as receiver, the Partners may, by Special Resolution, appoint an appropriate Person to act as receiver or as receiver-manager who can manage the assets of the Partnership with all the powers of the General Partner and receive all reasonable fees and expenses incurred in the execution of its functions.

27.5. If the Partnership is dissolved and not thereafter renewed, reinstated or continued, an audit of the assets and liabilities thereof shall be made by the Auditor. The assets of the Partnership shall be sold as a going concern, if

practicable, or otherwise liquidated as promptly as possible by the Receiver in place at that time and any Partner may be a Purchaser of any or all assets thereof. The proceeds of such sale and liquidation shall be applied in the following order or priority:

27.5.1. firstly, to the payment of the debts of the Partnership and the expenses of the liquidation;

27.5.2. secondly, to the repayment to the Limited Partners of the unexpended amounts contributed by them to the Capital, subject to paragraph 26.6;

27.5.3. thirdly, to the distribution of the portion of the balance of the undistributed Net Benefit to be allocated to the General Partner;

27.5.4. fourthly, the remainder of the proceeds, if any, shall be allocated and distributed to each Limited Partner in accordance with paragraph 14.2;

27.5.5. it is to be noted that the present paragraph 27.5 shall not be deemed applicable to a dissolution arising from bankruptcy or insolvency.

27.6. Upon dissolution, a Limited Partner shall not demand the reimbursement of its contribution to the Capital from other sources than to the assets of the Partnership, and if such assets remaining after the payment of all the debts and obligations is insufficient so that the Limited Partners cannot be reimbursed their contributions to the Capital of the Partnership, the Limited Partners have no recourse against the General Partner.

27.7. The dissolution of the Partnership shall not take place prior to the filing and publishing of a notice in compliance with the laws of Jamaica.

28. AMENDMENTS TO THIS AGREEMENT

28.1. This Agreement shall be amended only by writing and with the consent of the Limited Partners provided that:

28.1.1. the present Section shall not be amended without the unanimous consent of the Limited Partners present in Person or represented by proxy at a meeting called for this purpose; and

28.1.2. no amendment shall be made to this Agreement which will have the effect of reducing the portion of the General Partner in the net income of the Partnership, or reduce the interest of the Limited Partners in the Partnership, or modify the liability of a Limited

Partner, or allow the Limited Partner to exercise control over the activities of the Partnership, or modify the rights of a Limited Partner, or vote at a meeting or to convert the Limited Partnership into a General Partnership.

28.2. The General Partner may, without prior notice to or consent from any Limited Partner, amend from time to time any provisions of this Agreement, if such amendment is to cure an ambiguity or to correct or to complete any provisions contained herein, which may be defective or inconsistent with any other provisions contained herein and if the cure, correction or supplemental provision does not and shall not adversely affect the Interest of the Limited Partners. Upon the request of a Limited Partner, the General Partner is authorized to base such amendments on the opinion or the report of any experts and it may pay such experts any reasonable fee for their advice.

29. NOTICES

29.1. Any notice (including any notice to be given under the provisions of Section 19), and any demand, payment, request or other communication (hereinafter, in this Section, called a "notice"), required or permitted to be given or made to any parties hereunder, shall be in writing and shall be well and sufficiently given or made if:

29.1.1. delivered in person during normal business hours on a business day and left with a receptionist or other responsible employee at the relevant addresses set forth below; or

29.1.2. except during any actual or imminent general interruption of postal services due to strike, lockout or other causes, sent by prepaid registered mail, deposited in a post office; or

29.1.3. sent by telex, telegraph, telecopier or other form of recorded communication that produces a paper copy, charges prepaid and confirmed by registered mail sent as aforesaid.

29.2. Any such notice given pursuant to subparagraphs 29.1.1 and 29.1.2 hereof shall be sent to the parties at their respective addresses set out below:

a) in the case of a notice to the General Partner, at :

[NUMBER]
[NUMBER]
[NUMBER]
Attention: [NUMBER]

Telecopy: ([NUMBER]) [NUMBER]

b) in the case of a notice to a Limited Partner, at :

[NUMBER]

[NUMBER]

[NUMBER]

Attention: [NUMBER]

Telecopy: ([NUMBER]) [NUMBER]

c) with a copy to :

[INDIVIDUAL NAME]
[FULL ADDRESS]
[STATE/PROVINCE]
Attention: Mr. [INDIVIDUAL NAME]

- and· Mr. [INDIVIDUAL NAME]

Telecopy: [FAX NUMBER] or [FAX NUMBER]

d) in the case of a notice to [NUMBER] [COMPANY NAME], at :

[FULL ADDRESS]
[STATE/PROVINCE]
Attention: the Secretary
Telecopy: [FAX NUMBER]

29.3. Subject to the provisions of Section 29.4, a notice so given shall be deemed to have been given and to have been received on the day of delivery, if so delivered, on the [NUMBER] businesday (excluding each day during which there exists any general interruption of postal services due to a strike, lockout or other causes) following the mailing thereof, if so mailed, and on the day of telexing, telegraphing, telecopying or sending of the same by other means of recorded communication, provided such day is a business day and if not, on the first business day thereafter.

29.4. A Limited Partner may, from time to time, change its address for the purposes of service under this Agreement, by giving written notice to the General Partner and to the other Limited Partners. The General Partner may change its address by giving written notice of such change of address to each Limited Partner.

30. FINAL PROVISIONS

30.1. The General Partner and the Limited Partners agree that this Agreement shall be governed by and interpreted in accordance to the laws of Jamaica. The courts of Jamaica [shall have non-exclusive jurisdiction with respect to any matter arising hereunder or related hereto.

30.2. This Agreement may be executed in as many counterparts as are deemed necessary by the General Partner and, when so executed, each said counterpart is as valid and binding to all parties hereto as every other such counterpart.

30.3. Any default by the General Partner following its failure to carry out any act within the prescribed delay will be deemed to have been remedied if such act is carried out within [Number] days after a Limited Partner has given to the General Partner notice requiring such default to be remedied.

30.4. This Agreement shall constitute the entire Agreement between the parties with respect to the provisions contained herein and there are no other written or oral agreements or representations.

30.5. All the provisions of this Agreement are distinct. In the event where any provision of this Agreement is declared illegal or invalid for any reason, such illegality or invalidity will not affect the legality or validity of the other provisions and conditions of this Agreement.

30.6. The present Agreement shall bind the successors, executors, administrators and other legal representatives and, as is permissible, the respective successors and transferees of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on [Date].

(Signatures follow)

GENERAL PARTNER

Authorized Signature

Print Name and Title

FIRST LIMITED PARTNER

Authorized Signature

Print Name and Title

SECOND LIMITED PARTNER

Authorized Signature

Print Name and Title

THIRD LIMITED PARTNER

Authorized Signature

Print Name and Title

SCHEDULE A

TRANSFER FORM

I, the undersigned, , residing and domiciled at , a Limited Partner of [Specify] and Company, Limited (the "Partnership") and a shareholder of [Specify], the General Partner of the Partnership, sell, assign and transfer in virtue of these presents, to:

(name of the Assignee)
(address)

Units in the Partnership, and I shall sign and deliver to the General Partner every necessary documents to duly transfer such Units. I also assign the Assignee a total amount of [Specify] representing the indebtedness of the General Partner to me, as provided by the Limited Partnership Agreement and I shall sign and deliver to the General Partner every necessary deeds of assignment or such indebtedness.

The Assignee declares that it has taken cognizance of the Limited Partnership Agreement entered into originally by [Specify], [Specify] and [Specify] as of [date] and of the Shareholders Agreement entered into between [Speficy] and [Specify] as of [Date] in connection with the General Partner.

The Assignee hereby declares that it is entirely satisfied and it expressly agrees to be bound by each and every provisions of the Limited Partnership Agreement above-mentioned as a contracting party as if it had originally signed this Agreement.

The Assignee further hereby declares that it complies entirely with the warranties set out in the Limited Partnership Agreement.

Dated and signed at [Specify].

[Address], this [Date].

Exhibit B
The Nature of the Business

Exhibit C
Initial Capital Contribution

Appendix XVII

Form of 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] 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], [parish], 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 cheques 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 of 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 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 and Insolvency Act 2014 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 Subscription Agreement, (ii) the Shareholder's 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 duly 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 of 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 subsidiary.

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 of 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].

Appendix XVIII - ABBREVIATIONS USED IN THIS REPORT

COJ	Companies Office of Jamaica
DBJ	Development Bank of Jamaica
GOJ	Government of Jamaica
GOTT	Government of Trinidad & Tobago
IDB	Inter-American Development Bank
JVCP	Jamaica Venture Capital Programme
MOF	Ministry of Finance
PE	Private Equity
QIC	Qualified Investee Company
VC	Venture Capital
VCF	Venture Capital Firm
VC Entity	Venture Capital Company
GP	General Partner
LP	Limited Partner
LPA	Limited Partner Agreement
FSC	Financial Services Commission of Jamaica

Appendix XIX - List of Documents reviewed by the Consultants

For the preparation of this report, the Consultants referred to and reviewed the following documents:

1. Market Report – The Venture Capital Industry in Jamaica – Practical Assessment (Patricia Freitas) May 2013
2. Market Report – Creating a Venture Capital Ecosystem in Jamaica – Strategic & Implementation Plan (Patricia Freitas) September 2013
3. Venture Capital: Driving Development in Latin America (Farfan, Garcia-Robles, Granda and Landsberger - Multilateral Investment Fund) IADB 2012;
4. Latin American – Law & Business Report Volume 19, No# 6 June 2011 Published by World Trade Executive, a part of Thomson Reuters;
5. First Legal Report on: Legislative And Regulatory Reform of the Venture Capital Regime in Jamaica, Myers Fletcher & Gordon, Attorneys-at-law – version July 2013
6. 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
7. Josh Lerner and Ann Leamon, "*Creating a Venture Ecosystem: FINE's INOVAR Project*", HBS Working Paper, 12-099, May 2012, http://www.hbs.edu/research/pdf/12-099.pdf

International Organization data which guided the Consultants in developing their recommendations for best practice guidelines for the private equity industry in Jamaica include the following:

1. *ILPA Private Equity Principles* – Version 2.0, January 2011. Institutional Limited Partners Association (ILPA) accessed May 2014.
2. Leamon, Lerner & Robles, "*The Evolving Relationship Between LPs and GPs*". *A Study prepared for the Multilateral Investment Fund's Fund Manager Meeting,* September 2012
3. EMPEA Guidelines- *Key Elements of legal and tax regimes optimal for the development of private equity*. 2012 EMPEA, Washington DC. USA http://www.empea.org, accessed August 2014

4. IPEV International Private Equity and Venture Capital Valuation Guidelines - Edition December 2012, http://www.privateequityvaluation.com/ipev-board/valuation-guidelines/ipev-valuation-guidelines/index.html, accessed May - August 2014

5. LAVCA Guidelines (Adopted IPEV Valuation Guidelines above)

6. OECD *Model Convention with Respect to Taxes on Income and Capital, 2003;* 2010 Update to the Model Tax Convention.
7. UNCITRAL *Model Law on International Commercial Arbitration*

APPENDIX XX

INTERNATIONAL ORGANIZATIONS IN PRIVATE EQUITY & VENTURE CAPITAL

Below are brief introductory notes on international organizations which are concerned with the promotion of private equity and venture capital industry in several economies across the world. This information is drawn mainly from the IPEV database – as outlined in the International PE & VC Valuation Guidelines 2012.

ABVCAP – Brazil Association of Private Equity & Venture Capital

AMEXCAP (Mexican Association of Private Equity & Venture Capital Funds). AMEXCAP is an independent industry association which monitors the activity of Mexican private equity industry and updates its members with information about executed transactions and fundraising. AMEXCAP also makes available several statistics related to the industry.

AFIC (Association Française des Investisseurs pour la Croissance). Established in 1984, AFIC has 280 active members covering all types of private equity activities in France. In addition, AFIC has 200 associate members from a wide range of related professions who support and advise investors and entrepreneurs in the structuring and management of their partnerships. With responsibilities in the areas of compliance, private equity market with its members, the AFIC:

- works as a knowledgeable partner and independent information point for journalists, entrepreneurs, potential investors, private and public institutions as well as international bodies that are interested in Austria's private equity industry, its development and structure as well as its activities and performance.
- acts as the official representative of the industry actively engaged in improving the tax-related, legal and economic policy environments in close connection with respective policy makers.
- As a proactive networking institution, promotes cooperation inside the industry as well as interaction with complementary players from other fields in order to intensify information flows and create learning loops.
- Acts as an interface to international organizations exchanging experience, information and knowledge with other Private Equity and Venture Capital Associations in Europe, with the European Commission and further relevant institutions in order to put international best practice at work for Austria.

AFRICInvest. Deals with investments, over 110 portfolio investments and over 750 million dollar assets under management - private equity in 22 African countries. Focus on building trust and sharing success.

AVCAL (Australian Private Equity and Venture Capital Association). AVCAL represents the interests of Australia's venture capital and private equity industry. AVCAL's 50 investor members have $10 billion under management. AVCAL's roles include: promotion of the industry, education of practitioners, public policy development, staging networking events, application of valuation & disclosure guidelines, benchmarking IRRs, development of industry standard Limited Partnership agreement. AVCAL conducts about 40 networking events annually across Australia, and leverages its online presence at www.avcal.com.au for maximum efficiency.

BVCA (The British Private Equity & Venture Capital Association). The British Private Equity & Venture Capital Association (BVCA) is the industry body and public policy advocate for the private equity and venture capital industry in the UK. They advance the case for private equity and venture capital as the engine room of entrepreneurship and economic growth. As members support growing businesses, the BVCA supports the collective impact of the members' investment by demonstrating its value to Government, the media and society at large. More than 500 firms make up the BVCA membership The BVCA represents 230 private equity, midmarket and venture capital firms with an accumulated total of over $200 billion funds under management; as well as nearly 300 professional advisory firms, including legal, accounting, regulatory and tax advisers, corporate financiers, due diligence professionals, environmental advisers, transaction services providers, and placement agents. Additional members include international investors and funds-of funds, secondary purchasers, academics and fellow national private equity and venture capital associations globally.

Members and the wider industry community are provided with a comprehensive portfolio of services and best practice standards including leading professional development courses, research, networking opportunities, proprietary publications and topical conferences, all designed to ensure members and their teams have access to the broad range of skills and tools required to drive their firms and the industry forward. See www.bvca.co.uk ; +44 (0)20 7420 1800

BVA (Belgian Venture Capital & Private Equity Association vzw/asbl). BVA was founded in 1986 as a professional association. Its mission is to:

•• Animate the Belgian private equity and venture capital industry by deploying a series of activities for its members and for other stakeholders in the prosperity of the VC/PE sector in Belgium. The objectives are: to foster active networking amongst members of the BVA and between members of the BVA and other third parties, to provide extensive information to its members on all topics relevant to the VC/PE industry, to improve the quality of the operation of the sector.

•• Promote the well-being of the Belgian private equity and venture capital industry towards all relevant third parties. The objectives of the promotional activities are:

- to pro-actively represent the Belgian VC/PE industry to third parties as the industry's recognized spokesperson,
- to conduct active lobbying for (i) improvements to or (ii) the removal of obstacles from the structural context in which the Belgian VC/PE industry operates,
- to contribute to the continuous development of business in the industry.

CAPE (China Association of Private Equity). The CAPE is a voluntary union and non profit social group, jointly established by private equity industry players. CAPE has been guided and supported by relevant state authorities; adhering to the principles of "Standardization, Internationalization, and Marketization", it provides services to various funds and intermediary institutions registered in China. They are also committed to building the self-regulatory discipline of the PE industry, safeguarding the legitimate rights and interests of members, improving member's professional capabilities, strengthening communication and cooperation among members as well as domestic and foreign PE investors, in order to promote the sound development of China's PE industry. CAPE's main tasks are:

•• Building the self-regulatory mechanisms of the PE industry
•• Promoting the sound operation of China's PE industry and improving the regulatory environment
•• Providing series of fund registration services
•• Organizing relevant activities, building a communications platform for industry players
•• Building an industry database, media platform, education and training

system;

improving research capability

•• Cooperating with foreign institutions, upgrading industrial influence. See www.chinacape.org.

BVK (Bundesverband Deutscher Kapitalbeteiligungs - gesellschaften – German Private Equity and Venture Capital Association e. V.). BVK was founded in 1989. BVK represents most of the German private equity and venture capital firms as well as the German branches of foreign private equity and venture capital firms. As at March 31, 2005, BVK represented more than 180 private equity and venture capital firms. Apart from full membership BVK offers associate membership to companies and organizations working in this particular business sector, i.e. accountants, lawyers, consultants etc. BVK serves as a link between government and business and represents its members' views, needs and problems while supplying information and discussing any particular political and economic subject with the relevant governmental institutions. Science and research are becoming more and more interested in private equity and venture capital issues. BVK supports universities, colleges and their students with their research activities and problem solving.

On the international level BVK exchanges information with other national organizations in the economic sector and other international private equity and venture capital associations.

CVCA (Canada's Venture Capital & Private Equity Association. The CVCA – Canada's Venture Capital & Private Equity Association, was founded in 1974 and is the sole national representative of Canada's venture capital and private equity industry. Its over 1800 members are firms and organizations which manage the majority of Canada's pools of capital designated to be committed to venture capital and private equity investments.

CVCA members' collectively manage over $85 billion. CVCA's members actively collaborate to increase the flow of capital into the industry and expand the range of profitable investment opportunities. This is accomplished by the CVCA undertaking a wide variety of initiatives, ranging from developing comprehensive performance and valuation statistics, education and networking activities to promoting the industry's interests with governments and regulatory agencies. See www.cvca.ca

CVCA (China Venture Capital Association). The China Venture Capital Association ("CVCA") is a member-based trade organization established to promote the interest and the development of venture capital ("VC") and private equity ("PE") industry in the Greater China Region. Currently CVCA has close to 100 member firms, which collectively manage over US$100 billion in venture capital and private equity funds. CVCA's member firms have long and rich experience in private equity and venture capital investing worldwide and have made many successful investments in a variety of industries in China, including information technology, telecommunications, business services, media and entertainment, biotechnology, consumer products, and general manufacturing. CVCA's mission is to foster the understanding of the importance of venture capital and private equity to the vitality of the Greater China economy and global economies; to promote government policies conducive to the development of VC and PE industry; to promote and maintain high ethical and professional standards; to facilitate networking and knowledge sharing opportunities among members; and to provide research data, industry publications and professional development for PE and VC investors. CVCA is incorporated in Hong Kong with a representative office in Beijing. Funding for CVCA's activities come from membership dues. CVCA's membership is open to all China-focused professional venture capital and private equity organizations and corporate venture capital investors, and is also open to the related professional companies, which can join as CVCA associate members. CVCA has three liaison officers in Shanghai, Xi'an and Silicon Valley respectively facilitating local networking and communication.

EMPEA (Emerging Markets Private Equity Association). The Emerging Markets Private Equity Association (EMPEA) is an independent, global membership association whose mission is to catalyze private equity and venture capital investment in emerging markets around the world. With access to an unparalleled global network, EMPEA provides its members a competitive edge for raising funds, making good investments and managing exits to achieve superior returns. At 2012, there were over 300+ member firms, representing nearly 60 countries and more than US$1 trillion in assets under management, include the leading institutional investors and private equity and venture capital fund managers across developing and developed markets.

EMPEA believes that private equity can provide superior returns to investors

while creating significant value for companies, economies and communities in emerging markets. Despite significant differences across emerging market regions, private equity firms face important common challenges and opportunities. EMPEA's global programming addresses these challenges through industry data, research, analysis, conferences, peer-to-peer networking and advocacy. In pursuit of its mission, EMPEA works closely with national and regional venture capital associations, as well as international organizations and local governments. SEE www.empea.org

CVCA (Czech Venture Capital and Private Equity Association). CVCA is an association representing companies active in the private equity and venture capital industry in the Czech Republic. CVCA has full members (private equity and venture capital fund managers) and associated members (companies providing advisory services to the private equity and venture capital industry). CVCA has 14 full members and 16 associated members as of May 2005. CVCA's priorities are:

- increasing the awareness about private equity/venture capital among entrepreneurs, state administration and general public,
- promoting interests of CVCA members in contact with the government and other state authorities,
- providing information on the private equity/ venture capital industry in the Czech Republic,
- providing platform for discussion among members of CVCA.

DVCA (Danish Venture Capital and Private Equity Association). DVCA is an association with the goal of strengthening its member's business, network, and competences. DVCA includes a broad range of high tech investors in Denmark. The organization covers the whole investment chain from individual business angels over venture capital companies to private equity and institutional investors. DVCA was founded in 2000 and was in 2004 merged with the formerly known Danish Business Angel Network. The association is situated in the Old Stock Exchange, Slotsholmsgade, Copenhagen. See www.dvca.dk.

FVCA (The Finnish Venture Capital Association). The Finnish Venture Capital Association (FVCA) was established in 1990. The main objective of the FVCA is to enhance public confidence in venture capital and private equity,

and also to increase awareness of venture capital and private equity as a part of established financial markets.

The FVCA aims to improve the conditions for venture capital/private equity activity in Finland by overseeing the general interests and business-ethics of the industry together with governmental and other institutions as well as by assisting in improving professional practices, cooperating with other national associations, and generating statistics regarding the industry. The FVCA also strives to develop the business environment by, among other things, contributing to the creation and development of appropriate legal, fiscal and operational environments for investors as well as entrepreneurs. FVCA also defines best practices and operational principles for the industry, while requiring members to comply with the FVCA Code of Conduct. The association also creates a unique network of contacts within the Finnish private equity and venture capital industry by providing a forum for exchange of views and experiences among its members and interest groups.

FVCA has 39 full members who represent the vast majority of the Finnish venture capital and private equity companies. Full membership has been approved for equity investors and risk financiers representing private and public investment capital, captive funds and corporate ventures. In addition, the FVCA has 51 associate members. Associate membership can be given to organizations and individuals with an interest in the venture capital and private equity industry. See www.fvca.fi

EVCA (European Private Equity and Venture Capital Association). The EVCA is the voice of European private equity. It represents venture capital, mid-market private equity, the large majority investors and institutional investors, speaking for 700 member firms and 400 affiliate members. In the last seven years, EVCA members have invested EUR 160 billion in 7,000 companies across Europe, making a valuable contribution to growth and innovation. The EVCA shapes the future direction of the industry, while promoting it to stakeholders like entrepreneurs, business owners and employee representatives. They explain the PE/VC industry to the public and engage in debate with policymakers, so that its members can conduct their business effectively. The EVCA is responsible for the industry's professional standards, demanding accountability, good governance and transparency from our members and spreading best practice through training courses. The EVCA has 25 dedicated staff working in Brussels to make sure the industry is heard.

HKVCA (Hong Kong Venture Capital Association). Hong Kong Venture Capital Association was established on November 12, 1987 with the objectives of promoting and protecting the interests of the venture capital and private equity industry, networking and cooperation on regional and international front, and in raising the professional standards of the market. Its 120 members are engaged in all levels of venture capital, expansion capital and buyout activities in China, Japan, Korea, Australia, Taiwan, Thailand, Singapore, and other markets in Asia. It is committed to the promotion of the venture capital industry as a financial and business partner to businesses and the creation of an environment that creates sound partnerships. It is dedicated to developing a high standard of professionalism in the market to ensure investor confidence in the asset class. The Association provides an effective channel of communication for members to share information on developments within the industry in Hong Kong/PRC as well as on a regional and international level. It also works closely with the government and various trade bodies to further the interests of the industry.

HVCA (Hungarian Venture Capital and Private Equity Association). HVCA represents virtually every major source of funds and expertise of private equity in Hungary. HVCA aims to promote the development of the industry, and to create and follow the highest possible professional and ethical standards. HCVA was set up in 1991 and has developed considerably since then: the original five members have grown to 26 full members, 29 associate members and 9 individual members as at December 2012.

The Association provides a regular forum for the exchange of ideas among members, high-level discussions on the topical issues of the venture capital and private equity industry and the future trends. As the official representative of the industry it is in constant discussion with the financial and legislator institutions of the Hungarian State and with other professional organizations.

ILPA (Institutional Limited Partners Association). The ILPA is a non-profit organization committed to serving limited partner investors in the global private equity industry by providing a forum for: facilitating value-added communication, enhancing education in the asset class, and promoting research and standards in the private equity industry. Initially founded as an informal networking group, the ILPA is a voluntary association funded by its members. The ILPA membership has grown to include more than

138 member organizations from 10 countries, who in total have assets under management in excess of two trillion U.S. dollars. Members of the ILPA manage more than US$300 billion of private equity capital. The ILPA membership comprises corporate and public pension plans, endowments and foundations, insurance companies and other institutional investors in private equity. The ILPA holds semi-annual meetings for members.

IVCA (Irish Venture Capital Association). The IVCA is the representative body of the venture capital industry in Ireland. The association was established in 1985 to represent the views of its members and to promote the Irish venture capital industry. IVCA seeks to encourage co-operation and best practices within the industry and to facilitate those seeking venture capital. The IVCA also continuously works with those individuals and organizations committed to fostering an economic and regulatory climate conducive to the growth and development of an enterprising economy.

LAVCA (Latin American Private Equity and Venture Capital Association). The Latin American Private Equity and Venture Capital Association (LAVCA) is comprised of over 150 firms, from leading global investment firms active in the region to local fund managers from Mexico to Argentina. Member firms control assets in excess of $50 billion, directed at capitalizing and growing Latin American businesses. LAVCA plays an active role in the advocacy of sound public policy, and publishes annual ranking of the PE/VC environments of 12 key markets in Latin America.

LAVCA also produces targeted research and proprietary industry data, with nearly 200 firms reporting annual fundraising, exits and investments. In addition, the association's activities include investor education programmes targeting global and Latin American LPs and networking forums in the US, Chile, Peru and Colombia. See www.lavca.org

LPEQ (LPEQ Listed Private Equity). LPEQ is an association of international listed private equity companies. Our goal is to increase awareness and understanding of listed private equity among institutional and retail investors, their advisers, commentators and the public. See www.LPEQ.com

LVCA (Latvian Venture Capital Association). To promote the development of venture capital sector in Latvia, the six biggest companies that operate in the venture capital sector in Latvia founded a public organization: called the Latvian Venture Capital Association. The founders of the association are fund management companies that manage investment funds of different value and function profile.

LVCA has the following missions: to inform businessmen and society about venture capital financing possibilities, to promote the exchange of opinions and experience of the members of the association, to represent opinions and interests of the members in negotiations with public authorities, to organize and to ensure cooperation with international or other countries' venture capital associations.

MENA Private Equity Association. The MENA Private Equity Association is a non-profit entity committed to supporting and developing the private equity and venture capital industry in the Middle East and North Africa. The Association aims to foster greater communication within the region's private equity and venture capital network and facilitate knowledge sharing in order to encourage overall economic growth, and will actively promote the industry's successes to local stakeholders and build trust with investors, regulators and the public regionally and internationally.

NVCA (Norwegian Venture Capital & Private Equity Association). NVCA is a non-profit association supporting the interests of the companies active in the Norwegian industry. NVCA was established in 2001 by the leading players, and represents today around 40 Norway-based private equity and venture capital firms, the vast majority of such firms in Norway. The 20 associated members are service providers to the industry such as lawyers, advisors, investors and corporate finance companies. The purpose of the association is to promote an efficient private equity market, to improve the regulations of the industry, to promote entrepreneurship and to ensure political focus on Norway's position as a strong and attractive country for international investments. NVCA provides knowledge, analysis and general information to the Government and media to communicate the importance of the industry and it's role in the national innovation system and the general industrial development in Norway. NVCA is in this way the public face of the industry providing services to its members, investors and entrepreneurs as well as the Government and media.

NVP (Nederlandse Vereniging vanParticipatiemaatschappijen). The Dutch Private Equity & Venture Capital Association acts in the interests of private equity companies in the Netherlands. The aims of the NVP are: in cooperation with the government, work on an adequate regulatory framework for the private equity sector and its clients; inform entrepreneurs and businesses about the financing possibilities of private equity; inform investors about the characteristics of private equity as an asset class; raise awareness and improve the image of private equity to achieve aforementioned goals; contribute to further raising the level of professionalism of the private equity sector. The NVP has about 70 members and 85 associated members. Members of the NVP represent 95% of the number of private equity investments and about 85% of the total invested capital in the Netherlands. See www.nvp.nl.

NZVCA (New Zealand Private Equity & Venture Capital Association Inc.). The NZVCA's mission is to develop a world-best venture capital and private equity environment for the benefit of investors and entrepreneurs in New Zealand. Our activities cover the whole spectrum of investment in New Zealand private enterprise including Angel investment, seed and early-stage venture capital through to development capital and private equity (including management buy-outs and buy-ins).

PSIK (Polish Private Equity and Venture Capital Association). PSIK represents private equity management firms operating in Poland. Its mission is to promote and develop the private equity and venture capital industry in Poland. PSIK comprises 87 institutions: 41 private equity management firms (full members) and 46 associate members that are law and consulting companies as well as banks cooperating with the private equity and venture capital industry. The full members have more than EUR 21 billion under management and have invested in more than 700 Polish and CEE companies. See www.psik.org.pl.

Réseau Capital. (Quebec's Private Equity and Venture Capital Association). Reseau Capital, Quebec's Private Equity and Venture Capital Association, is the only private equity association that brings together all stakeholders involved in the Quebec investment chain. The mission of Reseau Capital is to contribute to the development and efficient operation of the private equity industry, which plays a major role in the development and financing of businesses in Qubec. Founded in 1989, Reseau Capital has more

than 425 members representing private equity, labour-sponsored and other retail funds and public investment companies as well as banks and insurance companies, accounting and law firms, along with many professionals working in the field.

Main objectives. Reseau Capital works to promote the private equity industry in Qubec through activities in five areas: training (provide members with access to training to keep them current on various issues they encounter and ways to deal with them), information (identify and effectively communicate information, particularly about the industry and various issues, to meet members' needs), networking (organize events for members to meet and network with other industry stakeholders, develop or enhance business relationships, and advance their knowledge in a friendly environment), promotion (promote understanding of the private equity ecosystem and inform direct and indirect industry players, the media, government authorities and the general public about the industry's achievements and economic contributions) and representation (ensure that the mutual interests of its members are taken into account by the various regulatory and governmental bodies when establishing policies or regulations and solve challenges in the private equity industry in the mutual interest of various members). The full members have more than EUR 21 billion under management and have invested in more than 700 Polish and CEE companies.

RVCA (Russian Private Equity and Venture Capital Association). RVCA was set up in 1997. The central office of RVCA is situated in St. Petersburg. Today RVCA unites about 60 members more than half of them are private equity and venture capital funds. RVCA's mission is to contribute to establishment and development of venture industry in Russia. RVCA's goals are: to create a political and entrepreneurial environment favorable for investment activity in Russia, to represent RVCA's interests in political and administrative agencies, in mass media, in financial and industrial circles in Russia and abroad, to provide informational support and create communicative forums for Russian venture market players, to create the stratum of experts qualified to work in venture business companies. RVCA is the unique professional organization in Russia units the progressive financial institutions investing in private Russian companies. RVCA is generally accepted in the business community and by the Russian Government.

SAVCA (South African Venture Capital and Private Equity Association). SAVCA is a non-profit company based in South Africa that represents the interests of the participants of the private equity and venture capital industry in Southern Africa. All the key participants in the industry are members of the Association. Membership of SAVCA provides a high level of endorsement and denotes a high level of professionalism and integrity for the member firm. SAVCA plays a meaningful role in the Southern African private equity and venture capital industry by promoting the industry and its members, promoting self-regulation, setting professional standards, lobbying, disseminating information on the industry, arranging training for the staff of its members and researching the industry in South Africa.

SAVCA represents over 70 private equity and venture capital fund managers, the industry has over R 100 billion (US$ 12.5 billion) in funds under management with approximately 400 professionals. See www.savca.co.za

SECA (Swiss Private Equity and Corporate Finance Association). SECA is the representative body for Switzerland's private equity, venture capital and corporate finance industries. SECA has the objective to promote private equity and corporate finance activities in Switzerland. Members of the SECA include equity investment companies, Banks, Corporate Finance Advisors, Auditing Companies, Management Consultants and Private Investors. The association is a non-profit organization and has the following purposes: to promote corporate finance and private equity activities in the public and the relevant target groups, to promote the exchange of ideas and the cooperation between members, to contribute to the professional education and development of the members and their clients, to represent the members views and interests in discussion with government and other bodies, to establish and maintain ethical and professional standards. In addition to promoting corporate finance in the public, SECA provides a platform to its members to exchange information and experiences. The main activities of SECA are: seminars and events about relevant topics, publication of statistics about private equity investment and management buyout activities in Switzerland, weekly edition of a free SECA eNewsletter, contacts of other associations and state bodies.

SLOVCA (The Slovak Venture Capital Association). SLOVCA was created in 1995 with primary purpose to increase the awareness of private equity and venture capital to the public, such as the entrepreneurs, investment and banking institutions and the economic, political and regulatory bodies in Slovakia. The mission of SLOVCA includes five key

objectives: to provide information to those seeking capital for new and existing enterprises, to represent the interests of members before the government and other related institutions/ agencies, to provide a forum for networking for members to exchange views and practices, to provide education and training for members of SLOVCA and others, to encourage the highest standards of business practices.

SVCA (Singapore Venture Capital & Private Equity Association). Established in 1992, the Singapore Venture Capital & Private Equity Association (SVCA) is a not-for-profit organization formed to foster the growth of venture capital (VC) and private equity (PE) in Singapore and around the region. From a humble start of 2, membership now exceeds 100 and continues to grow with the industry's development. Since its inception, SVCA has championed various efforts to promote the local VC/PE industry through talks, workshops, seminars, conferences and networking events. The thrusts of SVCA continues to be (1) fostering a greater understanding of the importance of venture capital and private equity to the Singapore economy in support of entrepreneurship and innovation; (2) representing the local VC/PE industry in and outside of Singapore; (3) nurturing an environment conducive for advancing VC/PE investment and profession; and (4) providing a platform to match fund-seeking businesses with our members and the investment community.

See www.svca.org.sg.

SVCA (The Swedish Private Equity and Venture Capital Association). The SVCA represents around 110 private equity firms as well as business, angels and service providers. Sweden is one of the leading private equity markets with annual private equity investments over 1% of the national GDP. The Association was established 1985 and its objective is to work towards a well-functioning private equity industry in Sweden. This is done by supplying information and working for the professional development of the industry. SVCA aims to inform about how the industry functions and what frameworks are needed to facilitate entrepreneurs and investors so that together they can help the development of the Swedish economy and industry that is necessary for the country's future prosperity. We also inform about how investments in private equity funds have yielded a good profit over the long term for pension funds and other institutional investors. We work for the professional development of players active in the industry through education,

ethical guidelines, transparency and valuation principles, networking and seminars with the participation of international colleagues, amongst many other things. See www.svca.se

Appendix XXI - DBJ/IDB Terms of Reference

TERMS OF REFERENCE

Facility to Support Phase II of the Caribbean Growth Forum (RG-CC2066)

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

BACKGROUND

Compete Caribbean 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.

Specifically, the Program will increase: (i) donor harmonization and coherence, and contribute to the development of national and regional private sector development strategies; (ii) the ability of Caribbean governments to promote a competitive, growth-oriented business and investment climate; and (iii) innovation, productivity, value added production, sales and sustainability in key Caribbean clusters and value chains, and product sophistication, productivity and exports of individual firms.

The proposed 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. Consequently, 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.

The Ecosystem for VC investing in Jamaica. The lack of an environment conducive to VC investing is caused by both demand-side and supply-side factors, which have resulted in the underdevelopment of the long-term risk capital market. These factors (i.e. gaps in the ecosystem) include a macroeconomic 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. An underdeveloped legal and regulatory venture-capital framework has resulted in limited rules and regulations governing the actions of market participants. In addition, there has been no transparent or easily replicated mechanism through which investor funds, particularly institutional funds, may be mobilized.

Furthermore, the level of readiness of many entrepreneurs to receive investment is currently low for a number of reasons. These include significant levels of business informality and information asymmetry, the latter arising from poor record-keeping, which results in financial and other business information not being readily verifiable. Many SMEs also have weak or non-existent governance structures, limited management capability, limited financial capacity, due to highly leveraged capital structures and a lack of adequate collateral to meet required credit standards. These firms need capacity-building (training in corporate governance, running a profitable business, marketing) in order to attract investment capital, and to create a sustainable 'deal-flow' of opportunities for venture capital investors.

As a result of impediments on both the supply and demand side, there has been no incentive for VC stakeholders to become involved in the market, besides a few discrete transactions. In their view, significant resources would be required on their part to undertake the multi-faceted programme needed to bridge the developmental gaps.

The Government of Jamaica is committed to the development of a venture capital and private equity market and, in that regard; the GOJ through the Development Bank of Jamaica (DBJ) is undertaking a number of initiatives to ensure broad-based and sustainable development of the venture capital industry. 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.

One of 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.

Various international organizations have developed standardized guidelines, templates, rules and legal agreements to be adopted by practitioners within the industry, with the aim of establishing best practices[20] to ensure:

- Alignment of interests
- Governance
- Transparency

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.

GENERAL OBJECTIVES

[20] ILPA www.ilpa.org

The objectives of the consultancy are therefore to identify and develop the relevant documentation and guidelines necessary to support the venture capital and private equity industry.

Main Activities

The Consultant will be required 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.

The Consultant will be expected 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 ([21] 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.

[21] GPs, LPs – General Partners, Limited Partners – this nomenclature is applicable to offshore funds as the local Limited Partnership legislation may not be relevant at this time. However the best practice guidelines will be applicable where local fund manager and investor relationships are similar in nature to the relationships between GPs and LPs.

DELIVERABLES

The Consultant will be required to produce the following:

	Deliverables	Timeline for Delivery (approx.)
1	Inception Report and Work Plan outlining activities to be undertaken during the period of the consultancy and the duration of each activity	1 week after signing
2	First Report detailing the results of the assessment of the best practices framework and a listing of the applicable documentation as developed by the international organizations and adopted by private equity and venture capital stakeholders in established VC and PE environments. This Report must indicate inter alia, any comparative information and best practices in operation in other jurisdictions.	4 weeks after approval of Work Plan
3	Second Report with annexures showing the relevant documentation together with the modifications made to these documents in the context of the Jamaican jurisdiction.	4 weeks after approval of First Report
4	Finalised documentation and guidelines	3 weeks after approval of Second report and annexures
5	Electronic copies of all documents and precedents	On completion of assignment

SCHEDULE OF PAYMENT

The consultant will be paid in five (5) lump sum payments as follows:

1. 10% upon signature of the contract.

20% on submission and acceptance of the Inception Report and Work Plan

20% on submission and acceptance of the First Report

20% on submission and acceptance of the Second Report, which report should include all the relevant draft documentation.

30% on submission and acceptance of the Final Report, including all documentation and guidelines, as well as electronic copies of all documents and precedents.

COORDINATION

The technical responsibilities of this consultancy will be coordinated by Winsome Leslie, MIF Senior Specialists, (MIF/MIF) and administrative responsibility of this consultancy will be coordinated by Wayne Beecher, MIF Senior Specialist (MIF/CJA).

The consultancy will be supported by a committee within the Development Bank of Jamaica (DBJ), which will consist of the Project Manager for the Jamaica Venture Capital Programme. The Consultant will be expected to provide advice and collaborate with the DBJ's Project Execution Unit which includes a Venture Capital Consultant and the Fund Advisor.

Characteristics of the Consultancy

Consultancy Category & Modality: Local lump sum

Duration: From February 3 to June 30, 2014

Work Location: Jamaica, no travel required. The Consultant will be responsible for accommodation, office supplies, internet and e-mail services, telephone connections, computers, and all consumables required for the proper execution of the contract.

Qualifications and Experience

The Consultant is required to have the following minimum qualifications and experience:

Bachelor's Degree in Law (LLB) and Legal Education Certificate

a. Attorney-at-law with a minimum of ten (10) years' experience in corporate law; a working knowledge of and experience in a financial and regulatory environment will be considered an asset
b. Knowledge of financial laws and systems and regulatory practices in Jamaica and other jurisdictions

c. Excellent oral and written communication skills
d. Good interpersonal skills and the ability to interact and communicate with persons and institutions at all levels
e. Strong research skills
f. Experience in and an understanding of capital markets; in particular, a working knowledge of the Jamaican capital market and its links with international markets and the operations of venture capital and private equity markets.
g. Language: Fluency in written and spoken English is required.

Confidentiality

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.
The Consultant will be required to execute a Confidentiality Agreement on the award of the Contract

Appendix XXII - Consultant Work Plan

Table 1 below shows the project plan for the Delivery of the reports as stated in the Terms of Reference.

Table 1

Outputs/Deliverables as per TORs	Main Tasks & Activities to be done	Estimated Resources/work days	Date for Delivery
Inception Report with Work Plan	Collect data and copies of reports and work already completed under JVCP	8 days	May 6 , 2014
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.	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;	32 working days after approval of Inception Report	
First Report Submitted	Report Preparation Reviewed and comments received	Comments/Approval 7 days after submission	July 31, 2014
Develop and/or modify existing documentation from those sources, in	Revise First Report after comments from Project Execution Unit and Team; Review Jamaican VC tool kit as currently exists	32 working days	

Outputs/Deliverables as per TORs	Main Tasks & Activities to be done	Estimated Resources/work days	Date for Delivery
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 ([22]GPs, LPs), investee companies and service providers	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); Hold further consultations with the Project Execution Unit and Team as and when practicable and necessary; Complete Second Report containing all required documentation including rules agreements and templates for stakeholder relationships/activities.		
Second Report Submitted	Report preparation: reviewed and comments received	Comments/Approval 7 days after submission	September 10, 2014
Complete Drafting of All Annexures and tweaking to Jamaica VC framework	Revise Second Report if necessary; Embark upon Third phase of legal drafting to refine and modify documents and guidelines in accordance with local VC imperatives and stakeholder needs. This might necessitate focused consultation with select stakeholders. Upon approval of Second Report, finalize drafting of all documents and formatting electronic versions, revise and complete Final Report including all annexures;	28 working days	October 10, 2014

Outputs/Deliverables as per TORs	Main Tasks & Activities to be done	Estimated Resources/work days	Date for Delivery
Final Report Submitted	Report Preparation, reviewed and comments received	7 days after submission	October 15, 2014 – October 20, 2014
Final Report Approved & Project Completed	Submit Finalised Documentation and guidelines together with electronic copies of all documents and precedents.	Approval 7 days after submitted	October 31, 2014

END OF DOCUMENT