

SARC/44622573.07

Shareholders agreement in relation to SOBC Sandell Holding  
Company Limited

Dated 17<sup>th</sup> November 2016

**The Management Shareholders**  
(As herein defined)

**Sandell Holdings Ltd**  
(The Investor)

**SOBC Sandell Holding Company Limited**  
(The Company)

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**List of Agreed Form Documents**

1. The Certificate
2. The SOBC Sandell Relationship Agreement

## Shareholders Agreement

Dated 17<sup>th</sup> November 2016

### Between

- (1) The persons whose names and addresses are set out in Schedule 1 hereto (the **Original Management Shareholders**);
- (2) **Sandell Holdings Ltd** a company incorporated in Bermuda with registered number 49850 having its registered office at Aon House, 30 Woodbourne Avenue, Pembroke HM 08, Bermuda (the **Investor**); and
- (3) **SOBC Sandell Holding Company Limited** a company incorporated in Delaware with registered number 6180432 having its registered office at Corporate Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 (the **Company**).

### Recitals

The Original Management Shareholders and the Investor have agreed to carry on the Business (as defined below) through the Company.

### It is agreed

#### 1 Definitions and Interpretation

##### 1.1 Definitions

In this Agreement the following definitions shall apply.

**acting in concert** means, pursuant to an agreement or understanding (whether formal or informal), cooperating to obtain or consolidate an interest, or interests, in shares carrying in aggregate more than 50% of the voting rights of a company or corporation.

**Ancillary Agreements** means the Certificate and any other agreement or arrangement referred to herein.

**Associate** means:

- (a) in relation to any company or other body corporate, any holding company or parent undertaking of the company or body corporate and any subsidiary or subsidiary undertaking of such holding company or parent undertaking and any subsidiary or subsidiary undertaking of the company or body corporate from time to time; and
- (b) in relation to Stephanie Mocatta and Richard Whatton (being Original Management Shareholders), SOBC Limited so long as SOBC Limited is wholly owned by Stephanie Mocatta and Richard Whatton; and
- (c) in relation to Brian Johnston (being an Original Management Shareholder), Pentland Services LLC, so long as Pentland Services LLC is wholly owned by Brian Johnston.

**Bad Leaver** means a Management Director who ceases to be a Director of the Company and is not a Good Leaver.

**Board** means the board of Directors comprising the Investor Directors and the Management Directors in each case from time to time.

**Business** means the business of insurance and reinsurance and such other expansion, development or evolution of such business as carried out from time to time by the Company and the Group from the Effective Date.

**Business Day** means a day other than a Saturday or Sunday or a bank holiday or public holiday in New York.

**Certificate** means the certificate of incorporation of the Company filed with the Secretary of State of Delaware on October 12, 2016, as amended on October 20, 2016 in the agreed form and as subsequently amended from time to time in accordance with this Agreement.

**Chairman** means the chairman (if any) from time to time of the Board.

**Common Share** means a share of USD\$0.001 par value common stock of the Company.

**Defaulting Shareholder** means a Shareholder who commits or suffers an Event of Default.

**Directors** means the Management Directors and the Investor Directors of the Company in each case from time to time appointed pursuant to this Agreement and **Director** means any one of them.

**Effective Date** means 1 November 2016.

**Encumbrance** means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.

**Event of Default** means, in relation to a Shareholder, where:

- (a) it commits a breach of this Agreement and either:
  - (i) the breach is not capable of being remedied, or
  - (ii) the Defaulting Shareholder does not remedy that breach:
    - (A) in respect of any breach relating to payment within five Business Days of receiving a Notice from any non-defaulting Shareholder requiring it to remedy that breach, or
    - (B) in respect of any other breach, as soon as possible and in any event within 15 Business Days of it receiving a Notice from any non-defaulting Shareholder requiring it to remedy that breach,
- (b) it is insolvent or unable to pay its debts as they fall due,
- (c) it sells, assigns, transfers or otherwise disposes of, or grants any option or other contractual right over or attempts to do the same to any of or in respect of any of its Shares or any legal or beneficial interest in its Shares in breach of this Agreement; or

- (d) it is prosecuted and found guilty of fraud, or is in breach of any relevant laws or regulations which the Directors determine in their absolute discretion may give rise to any regulatory difficulties or problems including in relation to the involvement of the Shareholder (or any person on whose behalf the Shareholder is holding any Shares) with the Company and the Group.

**Experts** mean a firm of accountants appointed in accordance with Clause 8.8 to determine the Fair Price.

**Fair Price** means the price per Share determined in writing by the Experts on the following bases and assumptions:

- (a) valuing each of the relevant Shares as a proportion of the total value of all the issued Shares in the capital of the Company without any premium or discount being attributable to the percentage of the issued share capital of the Company which they represent or for the rights or restrictions applying to the relevant Shares;
- (b) if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
- (c) the sale is to be on arms' length terms between a willing seller and a willing buyer;
- (d) the relevant Shares are sold free of all Encumbrances; and
- (e) reflecting any other factors which the Experts reasonably believe should be taken into account.

**Family Member** means in relation to a Shareholder who is an individual (or a deceased or former Shareholder who is an individual) a spouse, civil partner (as defined under the applicable law in the Shareholders state or country of residence), widow or widower, child or grandchild over the age of 18 (including step or adopted or illegitimate child and their issue).

**Family Trust** means as regards any particular Shareholder who is an individual (or deceased or former Shareholder who is an individual) any trust (whether arising under a settlement, declaration of trust or other instrument by whomsoever, whosoever or wheresoever made, or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the Shares in question is for the time being vested in any person other than the particular Shareholder and/or any of the Family Members of that Shareholder (and so that for this purpose a person shall be considered to be beneficially interested in a Share if such Share or the income thereof is liable to be transferred or paid or applied or appointed to or for the benefit of any such person or any voting or other rights attaching thereto are exercisable by or as directed by any such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons).

**Good Leaver** means a Management Director who ceases to be an employee and/or Director of the Company by reason of:

- (a) retirement with the agreement of the Company;
- (b) death;
- (c) termination of that person's employment with the Company due to unfair dismissal or redundancy or wrongful dismissal;

- (d) illness or disablement of that person giving rise to permanent incapacity to continue in employment as a Director as certified by a qualified medical practitioner; or
- (e) adverse personal circumstances as determined by the Directors in their absolute discretion.

**Group** means the Company and its subsidiaries from time to time.

**Group Company** means a company in the Group.

**Investors** means the Investor, any of its Permitted Transferees who acquire Shares in accordance with Clause 8.2 and any other Shareholder who adheres to or otherwise becomes party to this Agreement as an "Investor".

**Investor Director** means any Director appointed to the Board by the Investors in accordance with Clause 4.3.

**Joinder Agreement** means a joinder agreement in the form set out in Schedule 3.

**Management Director** means any Director appointed to the Board by the Management Shareholders in accordance with Clause 4.3.

**Management Shareholders** means the Original Management Shareholders, any of their Permitted Transferees who acquire Shares in accordance with Clause 8.2 and any other Shareholder who adheres to or otherwise becomes party to this Agreement as a "Management Shareholder".

**Permitted Condition** means a condition requiring the grant of a bona fide consent, clearance, approval or permission necessary to enable the relevant person to be able to complete a transfer of Shares under (1) its constitutional documents or pursuant to any relevant law or regulation (2) the rules or regulations of any stock exchange on which it or its holding company is quoted or listed or (3) the requirements of any governmental, statutory or regulatory authority or body in those jurisdictions where that person carries on business.

**Permitted Transfer** means a transfer of Shares made in accordance with Clause 8.2.

**Reserved Matter** means any matter listed in Schedule 2.

**Shareholder** means a holder for the time being of any Share or Shares.

**Share** means a share of any class in the share capital of the Company.

**SOBC** means SOBC Holdings Plc, a public limited company incorporated in England and Wales with registered number 09306149.

**SOBC Run-Off Business** means the management and realisation of the insurance and reinsurance businesses owned by SOBC and its subsidiaries as at the Effective Date.

**SOBC Sandell Relationship Agreement** means the Agreement in the agreed form dated on or around the date of this Agreement between the Investor and SOBC setting out certain arrangements between them in connection with the acquisition by the Investor or certain loan notes issued by SOBC and the proposed acquisition by the Investor, subject to obtaining necessary regulatory approvals, of all the issued B ordinary shares in the capital of SOBC,

representing 50% of the equity share capital of SOBC (the remaining 50% of the equity share capital of SOBC being held by the Original Management Shareholders).

## 1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) the index and headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (b) references to this Agreement or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time;
- (c) references to any recital, clause, paragraph or Schedule are to those contained in this Agreement, and references to a Part of a Schedule are to the part of the Schedule in which the reference appears and all Schedules to this Agreement are an integral part of this Agreement;
- (d) the expression **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;
- (e) references to a **party** mean a party to this Agreement including that party's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- (f) references to a **director** shall, where the context allows, include reference to the alternate of such director;
- (g) references to a **subsidiary** shall include reference to any entity in which the Company directly or indirectly has an ownership interest;
- (h) a document is in the **agreed form** if it is in the form of a draft agreed between and initialled by or on behalf of the Shareholders on or before the date of this Agreement;
- (i) references to any gender shall include the others; and words in the singular include the plural and vice versa;
- (j) references to **legislation** include any statute, bylaw, regulation, rule, subordinate or delegated legislation or order; and reference to any **legislation** is to such legislation as amended, modified or consolidated from time to time and to any legislation replacing it or made under it;
- (k) references to a **person** (or to a word importing a person) shall be construed so as to include:
  - (i) an individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body;

- (ii) that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person; and
- (iii) and references to a person's **representatives** shall be to its officers, employees, legal or other professional advisers, sub-contractors, agents, attorneys and other duly authorised representatives;
- (l) **in writing** includes any communication made by letter or fax but does not include e-mail or other forms of electronic communication;
- (m) the words **include**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and
- (n) the words **other** and **otherwise** shall not be construed ejusdem generis with any foregoing words where a wider construction is possible.

## **2 Purpose of the Company**

The parties shall procure that the business of the Company shall exclusively be the Business.

## **3 Status of the Company**

The parties acknowledge that as at the date of this Agreement the Company is established and organised as detailed in Schedule 1.

## **4 The Board and Management**

### **4.1 Major decisions to be referred to the Board**

All significant policy and management decisions of the Company and/or the Business (including the matters set out in Clause 7 below) shall be referred to the Board before implementation.

### **4.2 Action by the Board**

The Board shall act by majority vote, except in relation to any Reserved Matter in which case no decision or action shall be taken unless the prior written consent of the Investors required under Clause 7 has been received by the Company.

### **4.3 Directors**

The Board shall comprise not more than seven Directors. The Management Shareholders shall have the exclusive right to appoint, remove or replace five Directors. The Directors appointed by the Management Shareholders shall be known as the **Management Directors**. The Management Directors at the date of this Agreement shall be the Original Management Shareholders as specified in Schedule 1.

The Investors shall have the exclusive right to appoint, remove or replace two Directors. The Directors appointed by the Investors shall be known as the **Investor Directors**. The Investor Directors at the date of this Agreement shall be as specified in Schedule 1.

The Investors may elect not to appoint any Directors in which case and for so long as they have not nominated a Director they may send a representative to attend all Board meetings and shall be entitled to receive (at the same time as the Directors) all notices, minutes and other papers circulated to the Directors.

#### **4.4 Chairman**

The Chairman of the Company shall be such Director as is agreed between the Management Shareholders and the Investors. The Chairman shall not have a second or casting vote.

#### **Board meetings**

Subject to the provisions of the Certificate, the Board may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Subject to Clause 7, the Board shall act by majority vote.

#### **4.5 Quorum**

The quorum for meetings of the Board shall be three Directors, of whom one at least shall be an Investor Director.

#### **4.6 Resignation of Management Shareholders as Directors**

If a Management Shareholder and his Permitted Transferees cease to hold any Shares, such Management Shareholder shall immediately resign as a Director.

#### **4.7 Investor Directors may pass information to their appointor**

An Investor Director may from time to time disclose to the Investors and their representatives such information as he has regarding the Business and the Group.

#### **4.8 Group Companies**

All references to Company, Board, Investor Director(s) or Management Director(s) in Clauses 4.2 to 4.7 shall include a reference to any other Group Company, its board of directors, its nominated director(s) or its director(s) (as appropriate), so that each of those Clauses shall (where the context admits) also apply to every other Group Company, its board of directors, its nominated director(s) or director(s) (as appropriate), save in each case in respect of any Group Company which the Investor shall notify to the Company that such Clauses shall not apply.

### **5 Provision of Finance and Asset Management**

#### **5.1 Provision of finance**

It is the parties' intention that the Company initially be financed by debt provided by the Investor or its Associates on such terms as may be agreed between the Investor and the Company, provided that nothing in this Agreement shall impose any liability or obligation on the Investor or any of its Associates to provide any finance to the Company (by debt or otherwise) without the written consent of the Investor.

#### **5.2 Asset management**

It is the parties' further intention that, without limitation to Clause 7 below, all insurance and re-insurance assets acquired by the Company shall be acquired or owned by a Group Company, to which the Investor or an Associate of the Investor will provide investment management services on the terms of an investment management agreement entered into with the relevant Group Company on terms agreed between the parties.

## **6 Obligations of Management Shareholders**

The Management Shareholders each agree and undertake to the Investors and the Company that he or she will devote his or her whole working time, attention and abilities to the Business and to the SOBC Run-Off Business, such time to be allocated between the Business and the SOBC Run-Off Business, and the costs thereof to be allocated between the Company and SOBC, in each case as shall be determined by the Board of Directors in accordance with the terms of the SOBC Sandell Relationship Agreement.

## **7 Reserved Matters**

### **7.1 List of Reserved Matters**

The Company agrees, so far as it lawfully may, and the Shareholders agree to procure, so far as is within their powers as Shareholders or under this Agreement, that the matters listed in Schedule 2 in relation to each Group Company shall require and shall only be implemented if the Company shall have received the prior written consent of the Investors.

### **7.2 Group Companies**

The parties shall procure that each Group Company (other than the Company) shall comply with the provisions of Clauses 7.1 as if references in that clause and in Schedule 2 to the Company were references to the relevant Group Company.

## **8 Transfer of Shares**

### **8.1 General prohibition on Share transfers**

No Shareholder shall sell, transfer, assign, pledge, charge or otherwise dispose of any beneficial or other interest in any Share or create a trust or Encumbrance over any Share (and for which purpose a reference to a Share shall include a beneficial or other interest in a Share), except subject to and in accordance with this Clause 8. Any sale, transfer or other disposal pursuant to this Clause 8 shall be referred to as a **Permitted Transfer**.

### **8.2 Associated parties**

8.2.1 Subject to compliance with Clause 8.10, a Shareholder (the **Original Shareholder**) may sell, transfer, assign, pledge, charge or otherwise dispose of a beneficial or other interest in any Share or create a trust or Encumbrance over any Share (and for which purpose a reference to a Share shall include a beneficial or other interest in a Share) to any of the following persons (each a **Permitted Transferee**):

- (a) any Associate (where relevant);
- (b) any Family Member (where relevant); or
- (c) any Family Trust (where relevant).

- 8.2.2 Any Permitted Transferee holding Shares pursuant to Clause 8.2.1 may, at any time transfer its Shares back to the relevant Original Shareholder without being required to comply with Clause 8.3.
- 8.2.3 Where the Permitted Transferee is a Family Member, the transmittee(s) of any such person shall within 10 Business Days of that Family Member's death execute in favour of the Original Shareholder (or any Permitted Transferee of the Original Shareholder) and deliver to the Company a transfer of the Shares held by such Family Member without any price or other restriction.
- 8.2.4 Where the Permitted Transferee is a Family Trust, such Family Trust shall no later than 5 Business Days prior to it ceasing to be a Family Trust execute in favour of the Original Shareholder (or any Permitted Transferee of the Original Shareholder) and deliver to the Company a transfer of the Shares held by such Family Trust without any price or other restriction.
- 8.2.5 Where the Permitted Transferee is an Associate of the Original Shareholder, the Permitted Transferee shall no later than 5 Business Days prior to it ceasing to be an Associate of the Original Shareholder, execute in favour of the Original Shareholder (or any Permitted Transferee of the Original Shareholder) and deliver to the Company a transfer of the Shares held by such Associate of the Original Shareholder without any price or other restriction.
- 8.2.6 If a Permitted Transferee fails to make a transfer in accordance with Clauses 8.2.2, 8.2.3, 8.2.4 or 8.2.5, a Transfer Notice shall be deemed to have been given in respect of all of the Shares held by the Permitted Transferee.
- 8.2.7 In circumstances where Clause 8.2.5 applies:
- (a) the Company shall be constituted the agent and attorney of such Permitted Transferee for the purpose of taking such actions as are necessary to effect the proposed transfer;
  - (b) the Directors may authorise an officer of the Company or a Shareholder to complete, execute and deliver on behalf of such Permitted Transferee all or any necessary documents;
  - (c) the Company may receive any purchase money due to the Permitted Transferee in trust for the Permitted Transferee (without any obligation to pay interest) and give good discharge for it; and
  - (d) the Company may enter (as appropriate) any Shareholder as the holder of the Shares acquired by it.

### **8.3 Pre-emption rights on the transfer of Shares**

- 8.3.1 A Shareholder wishing to transfer any of his Shares (**Selling Member**) shall, subject to the other provisions of this Clause 8, comply with this Clause 8.3.
- 8.3.2 The Selling Member shall in a dated notice in writing to the Company (**Transfer Notice**) set out details of the proposed transfer or other disposal or dealing, specifying:
- (a) the Shares affected (**Sale Shares**);

- (b) the price per Share at which the Selling Member is prepared to sell the Sale Shares (or if no price per Share is specified, then such price as may be determined by the Board) (**Sale Price**);
- (c) the identity and address of any proposed transferee (**Purchaser**); and
- (d) whether the proposed transfer by the Selling Member is subject to any Permitted Condition (but the absence of any reference to a Permitted Condition shall not obviate the need for a Permitted Condition where relevant).

8.3.3 Subject to this Clause 8, the Transfer Notice shall irrevocably and unconditionally constitute and appoint the Company as the agent and attorney of the Selling Member in relation to the transfer of the Sale Shares, even if the Transfer Notice contains a provision to the contrary. A Transfer Notice shall not be revocable without the consent of the Board.

8.3.4 Within 7 days of receiving the Transfer Notice, the Company shall by notice in writing offer the Sale Shares at the Sale Price to:

- (a) in the case of any Sale Shares which are held by a Management Shareholder, all of the other Management Shareholders (other than the Selling Member and/or a Permitted Transferee (where relevant)) on a pro-rata basis; or
- (b) in the case of any Sale Shares which are held by an Investor, the other Investors (other than the Selling Member and/or a Permitted Transferee (where relevant)),

inviting each relevant Shareholder under either Clause 8.3.4(a) or (b) above to state in writing to the Company within 14 days of the offer (**Offer Period**) whether it:

- (i) wishes to purchase all or some of the Sale Shares offered to it on a pro-rata basis at the Sale Price (and in each such case such Shareholder shall be an **Accepting Member**);
- (ii) wishes to purchase all of the Sale Shares offered to it including additional Shares in the event that any Management Shareholders or, as applicable, Investors shall elect not to take up their pro-rata entitlement; or
- (iii) does not wish to purchase any of the Sale Shares offered to it,

and if the Shareholder does not notify the Company in accordance with this Clause 8.3.4 it shall be deemed to have declined the offer.

8.3.5 If the Accepting Member gives notice to the Company in accordance with Clause 8.3.4(i) that it wishes to purchase only some of the Sale Shares offered to it at the Sale Price, the Selling Member must transfer such Sale Shares to the Accepting Member at that price and otherwise in compliance with this Clause 8 and the Certificate.

8.3.6 If the Accepting Member gives notice to the Company in accordance with Clause 8.3.4(i) that it wishes to purchase all of the Sale Shares offered to it at the Sale Price or in accordance with Clause 8.3.4(ii) that it wishes to purchase a greater number of Sale Shares at the Sale Price than was offered to it, then the Company shall on expiry of the Offer Period allocate the Sale Shares as follows:

- (a) an Accepting Member shall be entitled to that proportion, without involving fractions, of the Sale Shares that its shareholding, at the expiry of the Offer Period, bears to the

total shareholdings at such date of all Accepting Members, without involving fractions (**Pre-emption Proportion**), or the amount of the Sale Shares to which its acceptance relates, whichever is the less; and

- (b) if relevant, an Accepting Member who wishes to purchase more than its Pre-emption Proportion (**Excess Proportion**) shall receive that proportion of any remaining unallocated Shares as its Excess Proportion bears to the total Excess Proportions of any Accepting Members who also wish to purchase Excess Proportions.

8.3.7 In the event that, following the application of the preceding provisions of this Clause 8.3, there are no or insufficient acceptances of all of the Sale Shares (the Sale Shares for which there are no or insufficient acceptances being the **Remaining Shares**), within 7 days thereafter the Company shall by notice in writing offer the Remaining Shares at the Sale Price to:

- (a) if the Remaining Shares were previously offered under Clause 8.3.4(a) above to the Management Shareholders, to the Investors; or
- (b) if the Remaining Shares were previously offered under Clause 8.3.4(b) above to the Investors, to the Management Shareholders,

inviting each relevant Shareholder to state in writing to the Company within 14 days of the offer (**Further Offer Period**) whether it:

- (i) wishes to purchase all or some of the Remaining Shares offered to it on a pro-rata basis at the Sale Price (and in each such case such Shareholder shall be a **Further Accepting Member**);
- (ii) wishes to purchase all of the Remaining Shares offered to it including additional Remaining Shares in the event that any Investors or, as applicable, Management Shareholders shall elect not to take up their pro-rata entitlement; or
- (iii) does not wish to purchase any of the Remaining Shares offered to it,

and if the Shareholder does not notify the Company in accordance with this Clause 8.3.7 it shall be deemed to have declined the offer.

8.3.8 If the Further Accepting Member gives notice to the Company in accordance with Clause 8.3.7(i) that it wishes to purchase only some of the Remaining Shares offered to it at the Sale Price, the Selling Member must transfer such Sale Shares to the Further Accepting Member at that price and otherwise in compliance with this Clause 8 and the Certificate.

8.3.9 If the Further Accepting Member gives notice to the Company in accordance with Clause 8.3.7(i) that it wishes to purchase all of the Remaining Shares offered to it at the Sale Price or in accordance with the Clause 8.3.7(ii)8.3.7(b)(ii) that it wishes to purchase a greater number of Remaining Shares at the Sale Price than was offered to it, then the Company shall on the expiry of the Further Offer Period allocate the Remaining Shares as follows:

- (a) a Further Accepting Member shall be entitled to that proportion, without involving fractions, of the Remaining Shares that its shareholding, at the expiry of the Further Offer Period, bears to the total shareholdings at such date of all Further Accepting Members, without involving fractions (**Pre-emption Proportion**), or the amount of the Remaining Shares to which its acceptance relates, whichever is the less; and

- (b) if relevant, a Further Accepting Member who wishes to purchase more than its Pre-emption Proportion (**Excess Proportion**) shall receive that proportion of any remaining unallocated Remaining Shares as its Excess Proportion bears to the total Excess Proportions of any Further Accepting Members who also wish to purchase Excess Proportions.

8.3.10 The Company shall within 5 Business Days of the expiry of the Offer Period and, if applicable, the Further Offer Period notify the Accepting Members and the Further Accepting Members of their allocation and shall inform the Selling Member of the identity of the Accepting Members and the Further Accepting Members and the number of Sale Shares allocated to them. Fractional entitlements shall be rounded down to the nearest whole number (save where such rounding would result in not all Sale Shares being allocated, in which case, the allocation of any such fractional entitlements shall be determined by the Directors). No allocation shall be made to a Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy.

8.3.11 Within:

- (a) 5 Business Days of receiving notification from the Company pursuant to Clause 8.3.10 where there is no Permitted Condition, or
- (b) 5 Business Days of satisfaction or waiver (if permitted) of any Permitted Condition, the relevant party(ies) using all reasonable endeavours to satisfy or waive (if permitted) such Permitted Condition,

the Selling Member shall transfer the Sale Shares to the Accepting Members and the Further Accepting Members in accordance with their respective allocations and the Accepting Members and the Further Accepting Members shall pay the Sale Price.

8.3.12 In the event that, following the application of the preceding provisions of this Clause 8.3, there are no or insufficient acceptances of all the Remaining Shares, the Company may either:

- (a) elect to purchase all or some of the Sale Shares not taken up by existing Shareholders at the Sale Price, which must be purchased in accordance with applicable law and the Certificate; or
- (b) allocate and transfer the remaining Shares to such persons as it may determine on such terms as the Directors may determine (acting by simple majority).

8.3.13 If the Company elects not to purchase all of the Sale Shares which have not been taken up or allocate and transfer such Sale Shares to such persons as the Directors may determine, the Company shall inform the Selling Member within 5 Business Days of such election, and subject to Clause 8.10 and as may be otherwise provided in this Agreement, the Selling Member may then transfer any or all of the Sale Shares which have not been taken up to the proposed transferee identified in the Transfer Notice at a price not less than the Sale Price and subject to any other terms as the Directors may determine.

#### **8.4 Drag along**

8.4.1 If a Shareholder majority (being the holders of at least 75% by nominal value of the Common Shares in issue for the time being) (the **Selling Shareholders**) wish to transfer all of their interest in their Shares (**Sellers' Shares**) to a bona fide purchaser on arm's-length terms (**Proposed Buyer**), the Selling Shareholders shall have the option (**Drag Along Option**) to

require all the other holders of Shares on the date of the request including the Company in respect of any Shares held in treasury (if any) (**Called Shareholders**) to sell and transfer all (but not some only) of their respective interests in their Shares to the Proposed Buyer (or as the Proposed Buyer may direct) in accordance with the provisions of this Clause 8.4.

8.4.2 The Selling Shareholders may exercise the Drag Along Option by giving written notice to that effect (**Drag Along Notice**) to the Called Shareholders at any time before the completion of the transfer of the Selling Shareholders' Shares to the Proposed Buyer. The Drag Along Notice shall specify:

- (a) that the Called Shareholders are required to transfer all of their interest in their Shares (**Called Shares**) pursuant to this Clause 8.4;
- (b) the identity of the Proposed Buyer;
- (c) the price per Share for the Called Shares which shall, for each Called Share, be an amount equal to the price per Share offered by the Proposed Buyer for each of the Selling Shareholders' Shares;
- (d) any other terms, being terms offered by the Proposed Buyer to each of the Selling Shareholders; and
- (e) the proposed date of completion (if practicable) of the transfer of the Called Shares, subject to any Permitted Condition having been satisfied or waived (if permitted), which date shall be the same date for completion of the transfer of the Sellers' Shares,

and, once given, a Drag Along Notice may not be revoked.

8.4.3 Within:

- (a) 10 Business Days of receiving the Drag Along Notice where there is no Permitted Condition; or
- (b) 10 Business Days of satisfaction or waiver (if permitted) of any Permitted Condition, the relevant party/ies using all reasonable endeavours to satisfy or waive (if permitted) such Permitted Condition,

the holders of the Sellers' Shares and the Called Shares shall transfer their Shares to the Proposed Buyer and the Proposed Buyer shall pay the price per Share as specified in the Drag Along Notice and any other relevant terms specified in the Drag along Notice.

8.4.4 On completion of the sale of the Sellers' Shares and the Called Shares in accordance with Clause 8.4.3, the Selling Shareholders and the Called Shareholders shall deliver stock transfer forms for their Shares in favour of the Proposed Buyer (or as the Proposed Buyer may direct), together with the share certificate(s) in respect of those Shares (or a suitable indemnity in respect thereof).

8.4.5 If any of the Selling Shareholders or Called Shareholders fails to deliver to the Proposed Buyer (or as a Proposed Buyer may direct) a duly executed stock transfer form (or forms) in respect of the Shares held by it (together with the share certificate(s) in respect of those Shares (or a suitable indemnity in respect thereof)) the defaulting Selling Shareholder or Called Shareholder shall be deemed to have appointed any person nominated for the purpose by the Company to be its agent and attorney to execute and deliver all necessary

transfers on its behalf, against receipt by the Company (on trust for such holder) of the consideration payable for the relevant Shares. After the Proposed Buyer (or person(s) nominated by the Proposed Buyer) has been registered as the holder of any relevant Shares, the validity of such proceedings shall not be questioned by any person. Failure to produce a share certificate shall not impede the registration of any transfer of Shares under this Clause 8.4.

8.4.6 Any transfer of Sellers' Shares or Called Shares to a Proposed Buyer (or as the Proposed Buyer may direct) pursuant to a sale in respect of which a Drag Along Notice has been duly served shall not be subject to the pre-emption provisions of Clause 8.3.

8.4.7 No transfer shall be permitted pursuant to Clauses 8.2, 8.3, 8.5, 8.6 or 8.7 in the event that there is service of a Drag Along Notice (save in respect of any such transfer which has completed before the date of service of such Drag Along Notice).

## **8.5 Tag along**

8.5.1 The provisions of this Clause 8.5 shall apply if, in one or a series of related transactions, one or more Shareholders (**Sellers**) propose to transfer any of their Shares (**Proposed Transfer**) which would, if carried out, result in any person (**Buyer**), and any person acting in concert with the Buyer, acquiring in excess of 50 per cent of the issued share capital of the Company.

8.5.2 The Sellers shall procure that, prior to signing any definitive agreement relating to the Proposed Transfer, the Buyer shall make an offer (**Offer**) to each Shareholder and, in respect of all Shares held in treasury, the Company (each an **Offeree**) to buy all of the Shares held by such Offerees on the date of the Offer for a consideration in cash per Share (the **Offer Price**) that is at least equal to the highest price per Share offered, paid or to be paid by the Buyer (or any person(s) acting in concert with the Buyer) for any Shares in connection with the Proposed Transfer or any transaction involving the Buyer (or any person(s) acting in concert with the Buyer) in the six calendar months preceding the date of the Offer.

8.5.3 The Buyer may make the Offer by notice in writing (an **Offer Notice**) addressed to each Offeree at any time before the completion of the transfer of the Shares held by the Sellers. The Offer Notice shall specify:

- (a) the identity of the Buyer (and any person(s) acting in concert with the Buyer);
- (b) the Offer Price and any other terms and conditions of the Offer being the same terms offered by the Buyer to the Sellers;
- (c) the number of Shares which would be held by the Buyer (and any persons acting in concert with the Buyer) on completion of the Proposed Transfer and on completion of the Shares held by the Offerees, subject to any Permitted Condition having been satisfied or waived (if permitted); and
- (d) the proposed date of completion (if practicable) of the Proposed Transfer and transfer of the Shares held by the Offerees, subject to any Permitted Condition having been satisfied or waived (if permitted), which date shall be the same date for completion of the transfer of the Shares held by the Sellers and the Offerees,

and the Offer Notice shall invite each Offeree to state in writing to the Buyer, with a copy to the Company, within 14 days of the Offer Notice, whether it accepts the Offer (each an

**Accepting Offeree**) and if the Offeree does not notify the Buyer in accordance with this Clause 8.3.5 it shall be deemed to have declined the Offer.

8.5.4 Within:

- (a) 10 Business Days of accepting the Offer where there is no Permitted Condition; or
- (b) 10 Business Days of satisfaction or waiver (if permitted) of any Permitted Condition, the relevant party/ies using all reasonable endeavours to satisfy or waive (if permitted) such Permitted Condition,

the Sellers and the Accepting Offerees shall transfer their Shares to the Buyer and the Buyer shall pay the consideration payable as specified in the Offer and in accordance with any other relevant terms specified in the Offer.

8.5.5 On completion of the sale of the Sellers' Shares and the Shares held by the Accepting Offerees in accordance with Clause 8.5.4, the Sellers and the Accepting Offerees shall deliver stock transfer forms for their Shares in favour of the Buyer (or as the Buyer may direct), together with the share certificate(s) in respect of those Shares (or a suitable indemnity in respect thereof).

8.5.6 If any of the Sellers or Accepting Offerees fail to deliver to the Buyer (or as a Buyer may direct) a duly executed stock transfer form (or forms) in respect of the Shares held by it (together with the share certificate(s) in respect of those Shares (or a suitable indemnity in respect thereof)) the defaulting Sellers or Accepting Offerees shall be deemed to have appointed any person nominated for the purpose by the Company to be its agent and attorney to execute and deliver all necessary transfers on its behalf, against receipt by the Company (on trust for such holder) of the consideration payable for the relevant Shares. After the Buyer (or person(s) nominated by the Buyer) has been registered as the holder of any relevant Shares, the validity of such proceedings shall not be questioned by any person. Failure to produce a share certificate shall not impede the registration of any transfer of Shares under this Clause 8.5.

8.5.7 If the Buyer fails to make the Offer to all of the Shareholders in accordance with this Clause 8.5, the Sellers shall not be entitled to complete the Proposed Transfer and the Company shall not register any transfer of Shares the subject of the Proposed Transfer.

## **8.6 Event of Default**

8.6.1 If an Event of Default occurs, the Defaulting Shareholder shall notify the other Shareholders as soon as possible, and, if it does not, the Defaulting Shareholder shall be deemed to have given such notice of the Event of Default on the first day on which any one of the non-defaulting Shareholders becomes aware of such Event of Default. A notice of an Event of Default given, or deemed to be given, under this Clause 8.6.1 is a **Default Offer**.

8.6.2 Pursuant to a Default Offer, the Defaulting Shareholder and each Permitted Transferee of such Defaulting Shareholder who holds Shares (**Defaulting Shareholder Group**) shall be deemed to offer to sell all of the Shares held by it at the date of the Default Offer (**Default Shares**) to the Shareholders who are not part of the Defaulting Shareholder Group (in accordance with Clause 8.6.5). The price per Default Share shall be equal to 90 per cent of the Fair Price (as calculated pursuant to Clause 8.8) (such price being the **Default Price**).

- 8.6.3 From the time a Default Offer is made under Clause 8.6.2 until the Default Shares are transferred:
- (a) the Defaulting Shareholder Group shall not exercise any voting rights attached to the Default Shares and any requirement contained in this Agreement or the Certificate for a certain number of Shareholders to be present at a meeting of the Company to constitute a quorum shall be met without the attendance or presence of the Defaulting Shareholder Group notwithstanding that a particular number or certain type of Shareholder is normally required in order to constitute a quorum;
  - (b) the Defaulting Shareholder Group shall cease to have the right to appoint any Director(s);
  - (c) except as required by law, the Defaulting Shareholder Group shall not be entitled to receive or request any information from the Company under this Agreement or the Certificate;
  - (d) the Defaulting Shareholder Group shall cease to receive dividends or other distributions; and
  - (e) the Defaulting Shareholder Group shall cease to participate in any future issue and allotment of Shares.

8.6.4 Subject to this Clause 8, the Default Offer shall irrevocably and unconditionally constitute and appoint the Company as the agent and attorney of each member of the Defaulting Shareholder Group in relation to the transfer of the Default Shares, even if the Default Offer contains a provision to the contrary. A Default Offer shall not be revocable without the consent of the Board.

8.6.5 Within 5 Business Days of the Default Price having been determined, the Company shall by notice in writing offer the Default Shares at the Default Price to:

- (a) in the case of any Default Shares which are held by a Management Shareholder or his Permitted Transferee, the Management Shareholders (other than the Defaulting Shareholder Group (where relevant)); or
- (b) in the case of any Default Shares which are held by an Investor or his Permitted Transferee, the Investors (other than the Defaulting Shareholder Group (where relevant)),

inviting each relevant Shareholder to state in writing to the Company within 14 days of the Default Offer (**Default Offer Period**) whether it:

- (i) wishes to purchase all or some of the Default Shares offered to it on a pro-rata basis to their existing shareholding at the Default Price (and in each such case such Shareholder shall be an **Accepting Shareholder**);
- (ii) wishes to purchase all of the Default Shares offered to it including additional Shares in the event that any Management Shareholders or, as applicable, Investors shall elect not to take up their pro-rata entitlement; or
- (iii) does not wish to purchase any of the Default Shares offered to it,

and if the Shareholder does not notify the Company in accordance with this Clause 8.6.5 it shall be deemed to have declined the offer.

- 8.6.6 If the Accepting Shareholder gives notice to the Company in accordance with Clause 8.6.5(b)(i) that it wishes to purchase some only of the Default Shares offered to it at the Default Price, the Defaulting Shareholder Group must between them transfer such Default Shares to the Accepting Shareholder at that price and otherwise in compliance with this Clause 8 and the Certificate.
- 8.6.7 If the Accepting Shareholder gives notice to the Company in accordance with Clause 8.6.5(i) that it wishes to purchase all of the Default Shares offered to it at the Default Price or in accordance with Clause 8.6.5(ii) that it wishes to purchase a greater number of Default Shares at the Default Price than was offered to it, then the Company shall on expiry of the Default Offer Period allocate the Default Shares as follows:
- (a) an Accepting Shareholder shall be entitled to that proportion, without involving fractions, of the Default Shares that its shareholding, at the expiry of the Default Offer Period, bears to the total shareholdings at such date of all Accepting Shareholders, without involving fractions (**Pre-emption Proportion**), or the amount of the Default Shares to which its acceptance relates, whichever is the less; and
  - (b) if relevant, an Accepting Shareholder who wishes to purchase more than its Pre-emption Proportion (**Excess Proportion**) shall receive that proportion of any remaining unallocated Shares as its Excess Proportion bears to the total Excess Proportions of any Accepting Shareholders who also wish to purchase Excess Proportions.
- 8.6.8 In the event that, following the application of the preceding provisions of this Clause 8.6, there are no or insufficient acceptances for all of the Default Shares (the Default Shares for which there are no or insufficient acceptances being the **Remaining Default Shares**), within 7 days thereafter the Company shall by notice in writing offer the Remaining Default Shares at the Default Price to:
- (a) if the Remaining Default Shares were previously offered under Clause 8.6.5(a) above to the Management Shareholders, to the Investors; or
  - (b) if the Remaining Default Shares were previously offered under Clause 8.5.4(b) above to the Investors, to the Management Shareholders,

inviting each relevant Shareholder to state in writing to the Company within 14 days of the offer (**Further Default Offer Period**) whether it:

- (i) wishes to purchase all or some of the Remaining Default Shares offered to it on a pro-rata basis to their existing shareholding at the Default Price (and in each such case such Shareholder shall be a **Further Accepting Shareholder**);
- (ii) wishes to purchase all of the Remaining Default Shares offered to it including additional Remaining Default Shares in the event that any Investors or, as applicable, Management Shareholders shall elect not to take up their pro-rata entitlement; or
- (iii) does not wish to purchase any of the Remaining Default Shares offered to it,

and if the Shareholder does not notify the Company in accordance with this Clause 8.6.8 it shall be deemed to have declined the offer.

- 8.6.9 If the Further Accepting Shareholder gives notice to the Company in accordance with Clause 8.6.8(i) that it wishes to purchase some only of the Remaining Default Shares offered to it at the Default Price, the Defaulting Shareholder Group must between them transfer such Remaining Default Shares to the Further Accepting Shareholder at that price and otherwise in compliance with this Clause 8 and the Certificate.
- 8.6.10 If the Further Accepting Shareholder gives notice to the Company in accordance with Clause 8.6.8(i) that it wishes to purchase all of the Remaining Default Shares offered to it at the Default Price or in accordance with the Clause 8.6.8(ii) that it wishes to purchase a greater number of Remaining Default Shares at the Default Price than was offered to it, then the Company shall on the expiry of the Further Default Offer Period allocate the Remaining Default Shares as follows:
- (a) a Further Accepting Shareholder shall be entitled to that proportion, without involving fractions, of the Remaining Default Shares that its shareholding, at the expiry of the Further Default Offer Period, bears to the total shareholdings at such date of all Further Accepting Shareholders, without involving fractions (**Pre-emption Proportion**), or the amount of the Remaining Default Shares to which its acceptance relates, whichever is the less; and
  - (b) if relevant, a Further Accepting Shareholder who wishes to purchase more than its Pre-emption Proportion (**Excess Proportion**) shall receive that proportion of any remaining unallocated Remaining Default Shares as its Excess Proportion bears to the total Excess Proportions of any Further Accepting Shareholders who also wish to purchase Excess Proportions.
- 8.6.11 The Company shall within 5 Business Days of the expiry of the Default Offer Period and, if applicable, the Further Default Offer Period notify the Accepting Shareholders and the Further Accepting Shareholders of their allocation and shall inform the Defaulting Shareholder Group of the identity of the Accepting Shareholders and the Further Accepting Shareholders and the number of Default Shares allocated to them. Fractional entitlements shall be rounded down to the nearest whole number (save where such rounding would result in not all Default Shares being allocated, in which case, the allocation of any such fractional entitlements shall be determined by the Directors). No allocation shall be made to a Shareholder of more than the maximum number of Default Shares which he has stated he is willing to buy.
- 8.6.12 Within:
- (a) 5 Business Days of receiving notification from the Company pursuant to Clause 8.6.11 where there is no Permitted Condition, or
  - (b) 5 Business Days of satisfaction or waiver (if permitted) of any Permitted Condition, the relevant party(ies) using all reasonable endeavours to satisfy or waive (if permitted) such Permitted Condition,

the Defaulting Shareholder Group shall transfer the Default Shares to the Accepting Shareholders and the Further Accepting Shareholders in accordance with their respective allocations and the Accepting Shareholders and the Further Accepting Shareholders shall pay the Default Price.

- 8.6.13 On completion of the sale of the Default Shares, the Defaulting Shareholder Group shall deliver stock transfer forms for their Shares in favour of the Accepting Shareholders and the Further Accepting Shareholders, together with the share certificate(s) in respect of those Shares (or a suitable indemnity in respect thereof).
- 8.6.14 If any member of the Defaulting Shareholder Group fails to deliver to the Accepting Shareholders or the Further Accepting Shareholders a duly executed stock transfer form (or forms) in respect of the Default Shares held by it (together with the Share certificate(s) in respect of those Shares (or a suitable indemnity in respect thereof)) the relevant member of the Defaulting Shareholder Group shall be deemed to have appointed any person nominated for the purpose by the Company to be its agent and attorney to execute and deliver all necessary transfers on its behalf, against receipt by the Company (on trust for such holder) of the consideration payable for the relevant Shares. After the Accepting Shareholders and the Further Accepting Shareholders have been registered as the holders of any relevant Shares, the validity of such proceedings shall not be questioned by any person. Failure to produce a share certificate shall not impede the registration of any transfer of Shares under this Clause 8.6.
- 8.6.15 In the event that there are no or insufficient acceptances of all of the Default Shares, the Company may either:
- (a) elect to purchase all or some of the Default Shares not taken up by existing Shareholders at the Default Price, which must be purchased in accordance with applicable law and the Certificate; or
  - (b) allocate and transfer the remaining Shares to such persons as it may determine on such terms as the Directors may determine (acting by simple majority).
- 8.6.16 If the Company elects not to purchase all of the Default Shares which have not been taken up or allocate and transfer such Default Shares to such persons as the Directors may determine, the Company shall inform the Defaulting Shareholder within 5 Business Days of such election, and the provisions of Clause 8.6.3 shall continue to apply.

## **8.7 Good Leaver and Bad Leaver**

- 8.7.1 The provisions of this Clause 8.7 shall apply in respect of any Management Director who becomes either a Good Leaver or a Bad Leaver.
- 8.7.2 If a Management Director becomes either a Good Leaver or a Bad Leaver, that Management Director shall be deemed to have given a notice (**Leaver Notice**) in respect of all of the Shares held by the Management Director and each Permitted Transferee of such Management Director who holds Shares (**Management Director Group** and each individually a **Management Director Group Member**) on the date on which he ceased to be an employee and/or a Director (**Management Shares**).
- 8.7.3 Pursuant to the Leaver Notice:
- (a) where the Management Director is a Good Leaver, he and each other Management Director Group Member shall be deemed to offer to sell such percentage of his Management Shares (such percentage as determined below) to the relevant Shareholders at a price per Management Share equal to the Fair Price (as calculated pursuant to Clause 8.8), such relevant percentage being:

- (i) at least 75% of his shareholding if the Management Director departs within his first year of service;
- (ii) at least 50% of his shareholding if the Management Director departs within his second year of service; and
- (iii) at least 25% of his shareholding if the Management Director departs within his third year of service,

but the Management Director Group shall not be obliged to offer to sell any of its shareholding if the Management Director departs within his fourth year of service or thereafter; and

- (b) where the Management Director is a Bad Leaver, he and each other Management Director Group Member shall be deemed to offer to sell all of his Management Shares to the relevant Shareholders at the lower of either the Fair Price or the price per Share which the Management Director paid to acquire the Management Shares (and where the Management Director acquired Management Shares on more than one occasion the price per Share shall be the price which he paid to acquire his first Management Shares).

8.7.4 From the time a Management Director becomes a Good Leaver (in which case (b) below shall apply) or a Bad Leaver (in which case all of (a) to (e) below shall apply):

- (a) the Management Director Group shall not exercise any voting rights attached to his Shares and any requirement contained in this Agreement or the Certificate for a certain number of Shareholders to be present at a meeting of the Company to constitute a quorum shall be met without the attendance or presence of the Management Director Group notwithstanding that a particular number or certain type of Shareholder is normally required in order to constitute a quorum;
- (b) the Management Director Group shall cease to have the right to appoint any Director(s) and shall cease to be a Director himself (if he has not already done so);
- (c) except as required by law, the Management Director Group shall not be entitled to receive or request any information from the Company this Agreement or under the Certificate;
- (d) the Management Director Group shall cease to receive dividends or other distributions; and
- (e) the Management Director Group shall cease to participate in any future issue and allotment of Shares.

8.7.5 The Leaver Notice shall irrevocably and unconditionally constitute and appoint the Company as the agent and attorney of each Management Director Group Member in relation to the transfer of his Management Shares, even if the Leaver Notice contains a provision to the contrary. A Leaver Notice shall not be revocable without the consent of the Board and shall be notified (to the extent not already done) to all relevant Shareholders (as determined in accordance with Clause 8.7.6).

8.7.6 Within 5 Business Days of the relevant price having been determined pursuant to Clause 8.7.3 (**Relevant Price**), the Company shall by notice in writing offer the Management Shares at the Relevant Price to the other Management Shareholders inviting each other Management

Shareholder to state in writing to the Company within 14 days of the Leaver Notice (**offer period**) whether he:

- (i) wishes to purchase all or some of the Management Shares offered to him on a pro-rata basis to their existing shareholding at the Relevant Price (and in each such case such Shareholder shall be an **accepting shareholder**);
- (ii) wishes to purchase all of the Management Shares offered to him on a pro-rata basis to their existing shareholding at the Relevant Price, including any additional Shares in the event that any Management Shareholders shall elect not to take up their pro-rata entitlement; or
- (iii) does not wish to purchase any of the Management Shares offered to him,

and if any relevant Shareholder does not notify the Company in accordance with this Clause 8.7.6 he shall be deemed to have declined the offer.

8.7.7 If the accepting shareholder gives notice to the Company in accordance with Clause 8.7.6(i) that he wishes to purchase some only of the Management Shares offered to him at the Relevant Price, the Management Director Group must between them transfer such Management Shares to the accepting shareholder at that price and otherwise in compliance with this Clause 8 and the Certificate.

8.7.8 If the accepting shareholder gives notice to the Company in accordance with Clause 8.7.6(i) that he wishes to purchase all of the Management Shares offered to him at the Relevant Price or in accordance with Clause 8.7.6(ii) that he wishes to purchase a greater number of Management Shares at the Relevant Price than was offered to him, then the Company shall on expiry of the offer period allocate the Management Shares as follows:

- (a) an accepting shareholder shall be entitled to that proportion, without involving fractions, of the Management Shares that his shareholding, at the expiry of the offer period, bears to the total shareholdings at such date of all accepting shareholders, without involving fractions (**Pre-emption Proportion**), or the amount of the Management Shares to which his acceptance relates, whichever is the less; and
- (b) if relevant, an accepting shareholder who wishes to purchase more than his Pre-emption Proportion (**Excess Proportion**) shall receive that proportion of any remaining unallocated Shares as its Excess Proportion bears to the total Excess Proportions of any accepting shareholders who also wish to purchase Excess Proportions.

8.7.9 In the event that, following the application of the preceding provisions of this Clause 8.7, there are no or insufficient acceptances for all of the Management Shares (the Management Shares for which there are no or insufficient acceptances being the **Remaining Management Shares**), within 7 days thereafter the Company shall by notice in writing offer the Remaining Management Shares at the Relevant Price to the Investors inviting each Investor to state in writing to the Company within 14 days of the offer (**further offer period**) whether it:

- (i) wishes to purchase all or some of the Remaining Management Shares offered to it on a pro-rata basis to their existing shareholding at the Relevant Price (and in each such case such Shareholder shall be a **further accepting shareholder**);

- (ii) wishes to purchase all of the Remaining Management Shares offered to it on a pro-rata basis to their existing shareholding at the Relevant Price, including additional Remaining Management Shares in the event that any Investors shall elect not to take up their pro-rata entitlement; or
- (iii) does not wish to purchase any of the Remaining Management Shares offered to it,

and if any relevant Shareholder does not notify the Company in accordance with this Clause 8.7.9 it shall be deemed to have declined the offer.

8.7.10 If the further accepting shareholder gives notice to the Company in accordance with Clause 8.7.9(i) that it wishes to purchase some only of the Remaining Management Shares offered to it at the Relevant Price, the Management Director Group must between them transfer such Remaining Management Shares to the further accepting shareholder at that price and otherwise in compliance with this Clause 8 and the Certificate.

8.7.11 If the further accepting shareholder gives notice to the Company in accordance with Clause 8.7.9(i) that it wishes to purchase all of the Remaining Management Shares offered to it at the Relevant Price or in accordance with the Clause 8.7.9(i) that it wishes to purchase a greater number of Remaining Management Shares at the Relevant Price than was offered to it, then the Company shall on the expiry of the further offer period allocate the Remaining Management Shares as follows:

- (a) a further accepting shareholder shall be entitled to that proportion, without involving fractions, of the Remaining Management Shares that its shareholding, at the expiry of the further offer period, bears to the total shareholdings at such date of all further accepting shareholders, without involving fractions (**Pre-emption Proportion**), or the amount of the Remaining Management Shares to which its acceptance relates, whichever is the less; and
- (b) if relevant, a further accepting shareholder who wishes to purchase more than its Pre-emption Proportion (**Excess Proportion**) shall receive that proportion of any remaining unallocated Remaining Management Shares as its Excess Proportion bears to the total Excess Proportions of any further accepting shareholders who also wish to purchase Excess Proportions.

8.7.12 The Company shall within 5 Business Days of the expiry of the offer period and, if applicable, the further offer period notify the accepting shareholders and the further accepting shareholders of their allocation and shall inform each Management Director Group Member (or any relevant person on his behalf) of the identity of the accepting shareholders and the further accepting shareholders and the number of Management Shares allocated to them. Fractional entitlements shall be rounded down to the nearest whole number (save where such rounding would result in not all Management Shares being allocated, in which case, the allocation of any such fractional entitlements shall be determined by the Directors). No allocation shall be made to an accepting shareholder of more than the maximum number of Management Shares which he has stated he is willing to buy.

8.7.13 Within:

- (a) 5 Business Days of receiving notification from the Company pursuant to Clause 8.7.12 where there is no Permitted Condition, or

- (b) 5 Business Days of satisfaction or waiver (if permitted) of any Permitted Condition, the relevant party(ies) using all reasonable endeavours to satisfy or waive (if permitted) such Permitted Condition,

each Management Director Group Member (or any relevant person on his behalf) shall transfer his Management Shares to the accepting shareholders and the further accepting shareholders in accordance with their respective allocations and the accepting shareholders and the further accepting shareholders shall pay the Relevant Price.

- 8.7.14 On completion of the sale of the Management Shares, each Management Director Group Member (or any relevant person on his behalf) shall deliver stock transfer forms for his Management Shares in favour of the accepting shareholders and the further accepting shareholders, together with the share certificate(s) in respect of those Shares (or a suitable indemnity in respect thereof).
- 8.7.15 If any Management Director Group Member (or any relevant person on his behalf) fails to deliver to the accepting shareholders or the further accepting shareholders a duly executed stock transfer form (or forms) in respect of the Management Shares held by him (together with the Share certificate(s) in respect of those Shares (or a suitable indemnity in respect thereof)) such Management Director Group Member shall be deemed to have appointed any person nominated for the purpose by the Company to be his agent and attorney to execute and deliver all necessary transfers on his behalf, against receipt by the Company (on trust for such holder) of the consideration payable for the relevant Shares. After the accepting shareholders have been registered as the holder of any relevant Shares, the validity of such proceedings shall not be questioned by any person. Failure to produce a share certificate shall not impede the registration of any transfer of Shares under this Clause 8.7.
- 8.7.16 In the event that there are no or insufficient acceptances of all of the Management Shares, the Company may either:
  - (a) elect to purchase all or some of the Management Shares not taken up by existing Shareholders at the Relevant Price, which must be purchased in accordance with applicable law and the Certificate; or
  - (b) allocate and transfer the remaining Management Shares to such persons as it may determine on such terms as the Directors may determine (acting by simple majority).
- 8.7.17 If the Company elects not to purchase all of the Management Shares which have not been taken up or allocate and transfer such Management Shares to such persons as the Directors may determine, the Company shall inform the Management Director (or any relevant person on his behalf) within 5 Business Days of such election, and the provisions of Clause 8.7.4 (where relevant) shall continue to apply.

## **8.8 Fair Price**

- 8.8.1 Pursuant to Clauses 8.6 or 8.7 the Company shall (where relevant) appoint an independent firm of accountants as the Experts, requiring the Experts to determine the Fair Price within 20 Business Days of their appointment and to notify the Company in writing of their determination.
- 8.8.2 The Shareholders shall be entitled to make submissions to the Experts including oral submissions and will provide (or procure that the Company provides) the Experts with such

assistance and documents as the Experts may reasonably require for the purpose of reaching a decision, subject to them agreeing such confidentiality provisions as the Shareholders may reasonably impose.

- 8.8.3 The Directors will give the Experts access to all accounting records or other relevant documents, subject to them agreeing such confidentiality provisions as the Directors (acting by way of simple majority) may reasonably impose.
- 8.8.4 To the extent not provided for in this Clause, the Experts may, in their reasonable discretion, determine such other procedures to assist with the valuation as they consider just or appropriate, including (to the extent they consider necessary), instructing professional advisers to assist them in reaching their valuation.
- 8.8.5 The Experts shall act as expert and not as arbitrator and their written determination shall be final and binding on the Shareholders (in the absence of manifest error or fraud). If any difficulty arises in applying any of the bases and assumptions used in calculating the Fair Price, then the Experts shall resolve that difficulty in whatever manner they think fit in their absolute discretion.
- 8.8.6 The cost of obtaining the Experts' valuation shall be borne by the proposed transferor of the Shares.

## **8.9 General terms on transfers of Shares or purchase of own Shares**

- 8.9.1 Any transfer of Shares shall be on the following terms
  - (a) the Shares are transferred free from all Encumbrances, and
  - (b) the Shares are transferred with the benefit of all rights attaching to them as at the transfer date of those Shares.
- 8.9.2 Where a Shareholder wishes to transfer all of the Shares held by it pursuant to this Clause 8, this shall include any Shares acquired by that Shareholder after the date on which it indicated that it wishes to transfer all of its Shares.

## **8.10 Transfers conditional on transferee's agreement**

It shall be a condition of any allotment or transfer of Shares to any person (including a Permitted Transferee not being an existing shareholder of the Company) that the allottee or transferee shall enter into a deed substantially in the form of Schedule 3 agreeing to become party to and to be bound by the terms of this Agreement and thereafter any reference to a party or Shareholder herein shall be deemed to include a reference to such allottee or transferee as if named herein as a party.

## **9 Restrictive covenants**

### **9.1 Definitions in this Clause**

For the purpose of this Clause the following words and expressions shall have the following meanings.

**Covenanting Shareholder** means a Management Shareholder in his capacity as covenantor under this Clause.

**Restricted Area** means North America, the United Kingdom and Bermuda and any other jurisdiction in which any part of the SOBC Run-Off Business is located.

**Restricted Business** means the business of insurance and reinsurance and such other expansion, development or evolution of such business as may compete with the business of the Group as carried out from time to time.

**Restricted Period** means, in the case of each Management Shareholder, the period from the date of this Agreement until such Management Shareholder ceases to hold any Shares and has ceased to be a Director.

## **9.2 Restrictions**

Each Management Shareholder covenants with the other Shareholders and with the Company that such Management Shareholder shall not (except through the Company or SOBC), whether directly or indirectly, alone or jointly with or on behalf of any other person, or as principal, partner, agent, shareholder, director, employee, consultant or otherwise howsoever, at any time during the Restricted Period carry on or assist with or provide advisory services in connection with or be interested in any Restricted Business within the Restricted Area.

## **9.3 Exceptions to restrictions**

Nothing in this Clause shall prevent a Management Shareholder from:

- (a) holding shares or other securities in a company whose shares are listed or dealt in on any recognised investment exchange which confer not more than 3 per cent of the votes which could normally be cast at a general meeting of that company; and
- (b) providing management services to the SOBC Run-Off Business in accordance with the SOBC Sandell Relationship Agreement.

## **9.4 Reasonableness of restrictions**

The restrictions set out in this Clause are considered reasonable by the Management Shareholders and necessary for the protection of their proprietary and commercial interests and those of the Group.

## **9.5 Effect of partial invalidity**

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

## **10 Announcements and Confidentiality**

### **10.1 No announcements without agreement**

Save as required by law or with the prior written consent of the other parties no statement or announcement of any nature relating to the subject matter of or the transaction referred to in this Agreement or any Ancillary Agreement or the establishment or operations of the Company or any other Group Company shall be made to the public, the press or otherwise unless in a form previously agreed in writing between the Shareholders.

## **10.2 Shareholders' confidentiality obligations**

Each Shareholder shall at all times keep confidential and shall not use (other than for the benefit of the Group) any confidential information which they may have or acquire in relation to the customers, business, finances, assets or affairs of the Group or any other party, save for any information:

- (a) which is publicly available or becomes publicly available otherwise than as a result of a breach of this Clause;
- (b) which is disclosed to that party by a third party which did not acquire the information under an obligation of confidentiality;
- (c) which is required to be disclosed by law.

## **10.3 Company's confidentiality obligations**

The Company shall and shall procure that each of its subsidiaries shall observe a similar obligation of confidence to that set out in Clause 10.2 in favour of each Shareholder.

## **10.4 Duration of confidentiality obligations**

The obligations in this Clause shall continue to apply after termination of this Agreement and after any party has ceased to be party to this Agreement without limit in time.

## **11 No partnership**

Nothing in this Agreement, and no action taken under this Agreement, shall create a partnership or establish a relationship of principal and agent between any of the parties or (save as otherwise stated herein) otherwise authorise any party to bind any other party for any purpose.

## **12 Entire Agreement and Severance**

### **12.1 Entire agreement**

This Agreement together with the Ancillary Agreements sets out the entire agreement between the parties, and supersedes any previous agreement between them in relation to the subject matter of this Agreement and the Ancillary Agreements.

### **12.2 Acknowledgment by parties**

Each party acknowledges that:

- (a) in entering into this Agreement and the Ancillary Agreements, it does not rely on, and shall have no remedy in respect of, any representation (whether negligent or otherwise) made to it by any person (whether a party to this Agreement or not) which is not expressly set out or referred to in this Agreement;
- (b) the only remedy available to it in respect of any representation or warranty expressly set out or referred to in this Agreement shall be for breach of contract in respect of that term of this Agreement; and

- (c) nothing in this Clause shall operate to exclude or restrict any liability for fraudulent misrepresentation.

### **12.3 Conflict with the Certificate**

The parties intend that the provisions of this Agreement shall prevail over the Certificate in the event of conflict and, accordingly, the Shareholders shall, if necessary, exercise all voting and other rights and powers available to them as Shareholders or under this Agreement to procure any amendment to the Certificate required to give effect to the provisions of this Agreement.

### **12.4 Severance**

If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

## **13 Amendments**

This Agreement may not be changed, altered, waived or, save as provided in Clause 16, terminated without the written consent of the parties.

## **14 No assignment**

Save as results from a transfer of Shares as permitted under this Agreement, no party may assign its rights under this Agreement.

## **15 Remedies and Waivers**

### **15.1 No waiver or discharge**

No default by any party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of all other parties. A waiver by a party of a default by another party will not prevent the first party from subsequently requiring compliance with the waived obligation.

### **15.2 Saving for future waivers**

No waiver by any party of any default by another party in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

### **15.3 Failure to exercise etc. not a waiver**

No failure to exercise, nor delay or omission by any party in exercising, any right, power or remedy conferred on it under this Agreement or provided by law shall:

- (a) affect that right, power or remedy; or
- (b) operate as a waiver of it.

No single or partial exercise by any party of any right, power or remedy shall prevent any further exercise of that right, power or remedy or the exercise of any other right, power or remedy.

#### **15.4 Rights and remedies cumulative**

The rights, powers and remedies conferred on the parties by this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

#### **16 Duration**

The rights and obligations of each Shareholder shall continue and be enforceable by or against it only while it or any of its Permitted Transferees is a Shareholder of the Company save for:

- (a) rights and obligations in respect of Clause 9 which shall continue to have effect notwithstanding a party ceasing to be a Shareholder or termination of this Agreement; and
- (b) rights and obligations in respect of antecedent breaches of this Agreement or the Certificate.

#### **17 Execution of different copies**

The parties may execute this Agreement in any number of copies and on separate copies. Each executed copy counts as an original of this Agreement and all the executed copies form one instrument.

#### **18 Notices**

##### **18.1 Service**

Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand, sent by prepaid recorded delivery or registered post, or registered airmail, and shall be addressed to the party to be served specified in Schedule 1 in the case of:

- (a) a company at its registered office for the time being; and
- (b) an individual to the address specified at the beginning of this Agreement.

or to such other address as a party may notify to the other party in writing as being its address for such purpose.

##### **18.2 Receipt**

Any notice or other communication under this Agreement shall only be effective when received. Any notice or communication delivered by hand shall be deemed served at the time of delivery, any notice or communication sent by post shall be deemed served on the second Business Day (for inland mail) or the fifth Business Day (for overseas mail) after the date of posting.

**19 Governing Law and Jurisdiction**

**19.1 Governing law**

This Agreement is governed by and is to be construed in accordance with Delaware law.

**19.2 Jurisdiction**

The parties agree to submit to the non-exclusive jurisdiction of the Delaware courts as regards any claim or matter arising out of or in connection with this Agreement.

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

## Schedule 1 – Particulars of the Company

**Name:** SOBC Sandell Holding Company Limited

**Registered Number:** 6180432

**Registered office:** Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801

**Directors:**

**Management Directors:** Stephanie Mocatta  
Richard Whatton  
Thomas Hodson  
Brian Johnston  
Harry Witcher

**Investor Directors:** Richard F. Ecklord  
Justin D. Meadlin

**Share Capital:** 1,000 Common Shares of USD\$0.001 each

**Shareholders:**

<b>Name</b>	<b>No. and type of Shares subscribed</b>	<b>Total subscription price (including any premium)</b>
Stephanie Mocatta (through SOBC Limited)	100 Common Shares	\$1
Richard Whatton (through SOBC Limited)	100 Common Shares	\$1
Harry Witcher	100 Common Shares	\$1
Thomas Hodson	100 Common Shares	\$1
Brian Johnston (through Pentland Services LLC)	100 Common Shares	\$1

Sandell Holdings Ltd 500 Common \$5  
Shares

## Schedule 2 – Reserved Matters

For the purposes of this Schedule any reference to material shall mean material in the context of the Group as a whole at the relevant time.

- 1 Entering into any material transaction involving an acquisition or disposal of any Group Company or all or a material part of the business of any Group Company or the acquisition or disposal of an asset with net worth in excess of 10% of the Group's total net assets (other than in each case by or to another Group Company).
- 2 Any Group Company entering into a joint venture or partnership (other than in the ordinary course of that Group Company's business).
- 3 Any Group Company incurring any material borrowing or other material indebtedness.
- 4 Any proposed material change in the nature of the Business or cessation of any material business operation of any Group Company (other than in the ordinary course of that Group Company's business).
- 5 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 6 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 7 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 8 Altering the Company's certificate or articles of incorporation.
- 9 Changing the Company's auditors or any professional advisers.
- 10 Changing the Company's accounting reference date or accounting policies.
- 11 Adopting or approving the Company's annual accounts.
- 12 Approving a business plan or annual budget (or other budget of the Group) or amending any business plan or annual budget (or other budget) previously approved by the Board and the Investors.
- 13 Paying any dividend or making any distribution.
- 14 Acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
- 15 Entering into any agreement not on bona fide arms' length terms or any agreement with any director or with any Shareholder or with any Associate (not being another Group Company) of a Shareholder.
- 16 Entering into any material or long-term agreement.
- 17 Making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.

- 18 Granting any service or consultancy agreement to any person or varying or terminate any such agreement.
- 19 Paying any Directors' fees and expenses.
- 20 Registering any transfer or allotment of Shares except in accordance with Clause 8 (Transfer of Shares) and the Certificate.
- 21 Exercising any of the powers and discretions of the Directors under Clause 8 (Transfer of Shares).
- 22 Initiating or settling any litigation or arbitration (other than the collection of debts arising in the ordinary course of trading).
- 23 Exercising any of the powers and discretions of the Directors under Clause 6 (Obligations of Management Shareholders).

## Schedule 3– Joinder Agreement

### Joinder Agreement

#### Dated

#### Between

- (1) \*\* [insert name of transferee/allottee] (the **New Shareholder**) a company incorporated in \*\* with registered number \*\* and having its registered office at \*\* ; and
- (2) **[Insert names of current Management Shareholders here or in separate schedule];**
- (3) **[Insert names of current Investors here or in separate schedule];** and
- (4) **SOBC Sandell Holding Company Limited** (the **Company**) a company incorporated in Delaware with registered number 6180432 and having its registered office at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

#### Recitals

By virtue of the [transfer][allotment] referred to in the Schedule to this Agreement the New Shareholder became entitled subject, inter alia, to the execution of this Agreement, to the Shares (the **New Shareholder's Shares**) in the capital of the Company referred to in the Schedule

#### This agreement witnesses:

- 1 In this Agreement (including the recitals to this Agreement):
  - (a) the **Shareholders Agreement** means the shareholders agreement dated \*\* and made between the Original Management Shareholders (as defined therein) (1), Sandell Re Ltd (2) and the Company (3); and
  - (b) terms and expression defined in the Shareholders Agreement shall have the same meaning when used in this Agreement unless the context requires or admits otherwise.
- 2 In consideration of the sum of one US dollar now paid by the Company (on behalf of itself and each other party hereto other than the New Shareholder) to the New Shareholder, receipt whereof is hereby acknowledged, the New Shareholder hereby covenants with and undertakes to each other party to this Agreement and to the Company as trustee for all other parties who hereafter become bound by the Shareholders Agreement pursuant to an agreement in a similar form to this Agreement and entered into pursuant to the Shareholders Agreement, to adhere to and be bound by the provisions of the Shareholders Agreement as if the New Shareholder had been an original party to the Shareholders Agreement.
- 3 It is agreed and acknowledged that the New Shareholder shall be a [Management Shareholder/Investor] for the purposes of the Shareholders Agreement.
- 4 **[In the case of a transfer to a Permitted Transferee:** Notwithstanding anything contained in this Agreement or the transfer of the New Shareholder's Shares to the New Shareholder by the transferor and the entry by the New Shareholder into this Agreement, nothing in this

Agreement shall in any way release, discharge or diminish the liability of the transferor from the due and prompt performance of its obligations under the Shareholders Agreement.

**[in the case of all other transfers:** Save as provided in Clause 16 of the Shareholders Agreement, the Company and the Shareholders hereby release the transferor from its obligations under the Shareholders Agreement.]

**In witness** whereof this agreement has been duly executed

**Schedule**

<b>Transferor</b> **	<b>Transferee</b> **	<b>Shares</b> **	<b>Price</b> **
<b>Allottee</b> **	<b>Shares</b> **	<b>Price</b> **	

IN WITNESS WHEREOF, the parties have executed this Agreement on

STEPHANIE MOCATTA

*Stephanie Mocatta*

RICHARD WHATTON

*[Signature]*

THOMAS HODSON

*[Signature]*

BRIAN JOHNSTON

*[Signature]*

HARRY WHITCHER

*[Signature]*

SANDELL HOLDINGS LTD

by: *[Signature]*  
Name: *RICHARD P. ECKHART*  
Title: *DIRECTOR*

SOBC SANDELL HOLDING COMPANY LIMITED

by: *Stephanie Mocatta*  
Name: *STEPHANIE MOCATTA*  
Title: *DIRECTOR*

