

CLAYTON UTZ

Execution Version

Note Subscription Agreement

HFA Holdings Limited
Issuer

APH HFA Holdings, L.P.

PA HFA Holdings, LLC

each a Subscriber

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This Note Subscription Agreement is made at Sydney on 3 December 2010

Parties

HFA Holdings Limited ACN 101 585 737 of Level 5, 151 Macquarie Street, Sydney NSW (the Issuer)

APH HFA Holdings, L.P. of 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands (Apollo)

PA HFA Holdings, LLC of 9 West 57th Street, New York, NY 10019, USA (PAHFA)

Background

- A. The Issuer proposes to issue the Convertible Notes on the Issue Date in accordance with this Agreement and the other Transaction Documents.
- B. Apollo and PAHFA have each agreed to subscribe for the Convertible Notes on the terms and conditions set out in this Agreement.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

Accounts means a balance sheet, an income statement, a statement of cash flow and, if for a financial year and required by law, a statement of changes in equity for the year, together with any statements, reports (including any directors' and auditors' reports) and notes attached to or intended to be read with any of them.

Agreed Terms means the terms of employment of the Key Employees as set out in the term sheets agreed between the Issuer and the Key Employees or as otherwise approved by Apollo on or before the date of this Agreement.

Announcement means the announcement to be released to ASX in relation to the Transaction as agreed between the Issuer and Apollo and appearing in Schedule 3.

Annual Budget means the budgeted profit and loss forecast, and capital expenditure forecasts, for the consolidated Group for a Financial Year, approved in accordance with clause 5.2(b)(xi) or 5.3(b) of this Agreement, together with any other cashflow statements, balance sheet forecasts or similar reports that the Board and Apollo may from time to time agree in writing are to be considered part of the Annual Budget.

Apollo Change in Control Event occurs in respect of Apollo when Apollo ceases to be:

- (a) wholly beneficially-owned; and
- (b) Controlled,

by Apollo Global Management, LLC and/or its Affiliates.

ASX means Australian Securities Exchange or ASX Limited ACN 008 624 691, as the context requires.

AUM means assets under management.

Board means the board of directors of the Issuer.

Break Fee means US\$750,000.

CFC means a controlled foreign corporation as defined in the Code.

Code means the U.S. Internal Revenue Code of 1986, as amended.

Competing Proposal means a proposed transaction or arrangement pursuant to which a person other than Apollo or any of its Affiliates would, if the proposed transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) directly or indirectly acquire, have a right to acquire or otherwise acquire an economic interest in, all or a substantial part of the business of the Issuer or any of its subsidiaries;
- (b) acquire a relevant interest in more than 20% of the ordinary shares in the Issuer or otherwise acquire control of the Issuer within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge with the Issuer whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure or other synthetic merger or any other transaction or arrangement.

Conditions means the conditions set out in clause 3.1 of this Agreement and **Condition** means any one of them.

Convertible Note Conditions means the terms and conditions of the Convertible Notes as set out in Schedule 1 to the Convertible Note Deed Poll, as amended, varied or replaced from time to time.

Convertible Note Deed Poll means the Convertible Note Deed Poll made by the Issuer dated on or about the date of this Agreement.

Convertible Note means a convertible note created on the terms set out in the Convertible Note Deed Poll and the Convertible Note Conditions and issued or proposed to be issued (as the context requires) by the Issuer under this Agreement and a reference to a Convertible Note outstanding as at a particular date means a Convertible Note that has not been redeemed on or prior to that date.

Corporations Act means the *Corporations Act 2001* (Cth).

Director means a person from time to time appointed to, or acting in the capacity of, the office of director of the Issuer, and includes any alternate director duly appointed and acting as a director.

Director Changes means the increase in the number of Directors appointed to the Board from five (5) to eight (8).

End Date means 15 March 2011 (or such later date as agreed between the Issuer and Apollo).

Exclusivity Period means the period commencing on the date of this Agreement and ending on the earlier of:

- (a) the date this Agreement is lawfully terminated in accordance with its terms;
- (b) the Issue Date; and
- (c) the end of the Issue Period.

Explanatory Memorandum means the explanatory memorandum to be prepared by the Issuer in respect of the Shareholder Approval in accordance with the terms of this Agreement and to be despatched to Issuer Shareholders.

Financial Indebtedness means any present or future indebtedness (whether being principal, premium, interest or other amounts) for or in respect of:

- (a) money borrowed or raised (including, for the avoidance of doubt, intercompany indebtedness);
- (b) liabilities under or in respect of any acceptance or acceptance credit; or
- (c) any notes, bonds, debentures, debenture stock, loan stock, hybrid securities or other securities offered, issued or distributed whether by way of public offer, private placing, acquisition consideration or otherwise and whether issued for cash or in whole or in part for a consideration other than cash.

Financial Year means the financial year of the Issuer for the purposes of the Corporations Act.

Group means the Issuer and each Related Body Corporate of the Issuer from time to time and **Group Member** means each of them as the context requires.

Independent Expert means the independent expert to be engaged by the Issuer to express an opinion on whether the Transaction is fair and reasonable.

Issue Date means the date, as agreed by the Issuer and Apollo, on which the Convertible Notes are to be issued by the Issuer and subscribed for by the Subscribers as contemplated under this Agreement, being a date occurring not later than the End Date, provided that if such date is not agreed by the Issuer and Apollo immediately after the Conditions have been satisfied or waived, the Issue Date shall be the date designated as such by the Issuer, provided that any such date is no later than the earlier of the End Date and the date that is 15 Business Days after each of the Conditions are satisfied or waived.

Issue Period means the period of time commencing on (and including) the date of this Agreement and ending on (and including) the End Date.

Issue Price means US\$75,000,000, being 100% of the initial aggregate Principal Amount of the Convertible Notes to be issued by the Issuer and subscribed by the Subscribers in accordance with, and subject to the terms of, this Agreement.

Issuer Shareholder means a person whose name is entered in the register of members of the Issuer from time to time as the holder of Ordinary Shares.

Key Employees means certain employees of the Issuer and/or its subsidiaries as set out in Schedule 2 of this Agreement.

Listing Rules means the official listing rules of ASX.

Marketing Agreement means the Marketing Agreement to be entered into between a subsidiary of the Issuer and AP CM, LLC, an affiliate of Apollo, on or about the date of this Agreement in connection with the provision by that affiliate of Apollo of specified marketing services for the investment funds of the Issuer's Lighthouse subsidiaries.

Options means options granted by the Issuer to acquire by way of issue Ordinary Shares as provided in clause 9 of this Agreement.

Option Terms means terms and conditions of the Options as set out in Schedule 1 of this Agreement.

Ordinary Shares means fully paid ordinary shares in the Issuer.

Participation Rights means the participation rights attached to the Convertible Notes as provided in Condition 2.7 of the Convertible Note Conditions.

Permitted Indebtedness means any Financial Indebtedness:

- (a) incurred under the Transaction Documents;
- (b) incurred under the Senior Financial Indebtedness as defined in the Convertible Note Conditions;
- (c) in respect of any hedging arrangement relating to the Senior Financial Indebtedness;
- (d) which is limited recourse or non-recourse in nature (and not indebtedness referred to in paragraph (e) below) and which in aggregate do not, at any time, exceed US\$10,000,000 (or the equivalent in other currencies);
- (e) which is Permitted Intercompany Indebtedness; or
- (f) which is an accounts payable incurred in the ordinary course of business.

Permitted Intercompany Indebtedness means any Financial Indebtedness incurred between Group Members that are Australian residents for tax purposes and under which no interest is payable.

PFIC means a passive foreign investment company as defined in the Code.

Proportion means, in relation to each Subscriber, the proportion of the aggregate initial Principal Amount of Convertible Notes to be subscribed by that Subscriber on the Issue Date in accordance with clause 2.2(a) of this Agreement.

Regulation S means Regulation S under the Securities Act.

Related Entity of a party means another entity which is:

- (a) related to the first entity within the meaning of section 50 of the Corporations Act; or
- (b) in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the first entity.

Representative of a party means:

- (a) any Related Entity of that party;
- (b) any director, officer or employee of that party or of a Related Entity of that party; and
- (c) the professional advisers retained by that party or a Related Entity of that party.

ROFR means the Right of First Refusal Agreement, to be entered into among the Specified Shareholders and one or more Subscribers pursuant to which such Subscribers shall be granted a right of first refusal over dispositions of certain Ordinary Shares held by such Specified Shareholders, in each case, on the terms further described in Schedule 4.

Securities Act means the U.S. Securities Act of 1933, as amended.

Share Consolidation means a consolidation by the Issuer of 4 Ordinary Shares on issue as at the record date for the consolidation into 1 Ordinary Share.

Shareholder Consolidation Approval means the approval by the requisite majority of the holders of Ordinary Shares of the Issuer in favour of a resolution substantially in the form set out in Schedule 5.

Shareholder General Approval means the approval by the requisite majorities of the holders of Ordinary Shares of the Issuer in favour of resolutions substantially in the form set out in Schedule 6.

Specified Shareholders means those Issuer Shareholders previously identified and notified in writing by Apollo to the Issuer for the purpose of the ROFR.

Subscribers means each of Apollo and PAHFA and **Subscriber** means Apollo or PAHFA, as the context requires.

Superior Proposal means a Competing Proposal which:

- (a) is bona fide and in the determination of the Issuer's Board acting in good faith, is reasonably capable of being completed without undue delay, taking into account both the nature of the Competing Proposal and the identity of the person or persons making it; and
- (b) in the determination of the Issuer's Board acting in good faith, after receiving advice from the Issuer's external legal and financial advisers, would, if completed substantially in accordance with its terms, be reasonably likely to lead to a transaction more favourable to Issuer Shareholders than the Transaction.

Transaction means the transactions contemplated in this Agreement, the other Transaction Documents and the Shareholder Approval.

U.S. Person means U.S. person as defined in Regulation S.

Westpac means Westpac Banking Corporation (ABN 33 007 457 141).

Westpac Amendment means the Second Amendment and Restatement Deed dated on or about the date of this Agreement between the Issuer and Westpac and others amending and restating the Westpac Facilities Agreement.

Westpac Facilities Agreement means Cash Advance Facilities Agreement dated 1 November 2007 between the Issuer, Westpac and others, as amended from time to time.

Westpac Facility means the cash advance facility provided by Westpac to the Issuer under the Westpac Facilities Agreement.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

- (d) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a Statute includes its delegated legislation and a reference to a Statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) a reference to time is to local time in Sydney;
- (j) where time is to be determined by reference to a day or event, that day or the day of that event is to be excluded;
- (k) when the date on or by which any act, matter or thing is to be done is not a Business Day, the act, matter or thing must (unless expressly provided otherwise) be done on the next Business Day unless that day falls in the following calendar month, in which case, on the immediately preceding Business Day;
- (l) to avoid doubt, when a period of notice is expressed in **clear Business Days**, the day on which the notice is given, and the day of the thing in respect of which notice is required to be given, are not to be counted in calculating that period;
- (m) **includes** in any form is not a word of limitation; and
- (n) a reference to **A\$** or **Australian dollar** is to Australian currency and a reference to **US\$** or **US dollar** is to the currency of the United States of America.

1.3 Convertible Note Deed Poll Definitions

Subject to clause 1.4, unless defined in this Agreement, words and phrases defined in the Convertible Note Deed Poll (including by reference to another document) have the same meaning in this Agreement. Where there is any inconsistency in a definition between this Agreement and the Convertible Note Deed Poll, this Agreement prevails.

1.4 Incorporated Definitions and Other Provisions

Notwithstanding anything to the contrary in clause 1.2(d), where in this Agreement a word or expression is defined by reference to its meaning in the Convertible Note Deed Poll or there is a reference to the Convertible Note Deed Poll or to a provision of the Convertible Note Deed Poll, any amendment to the meaning of that word or expression, to the Convertible Note Deed Poll or to that provision (as the case may be) will be of no effect for the purposes of this Agreement unless and until the amendment is consented to by all parties to this Agreement.

1.5 Obligations Several

The obligations of each Subscriber and the Issuer under this Agreement are several and independent and:

- (a) **(Failure of one party does not relieve others):** the failure of any party to perform its obligations will not relieve the other parties of their respective obligations except where the performance of the second-mentioned obligations is dependent or conditional upon the performance of the first-mentioned obligation;
- (b) **(A party not responsible for failure of others):** no party will be responsible for the failure of any other party to perform its obligations unless expressly provided in this Agreement; and
- (c) **(Separate enforcement):** each party may separately enforce its rights against any other party.

1.6 Share Capital

The number of Options to be granted under clause 9 and the Exercise Price of those Options as stated in Schedule 1 assume that the Share Consolidation will be implemented on or prior to the Issue Date. If the Share Consolidation does not take effect on or prior to the Issue Date, those references will be construed as follows:

- (a) **(Number of Options):** the number of Options to be granted under clause 9 will be multiplied by 4;
- (b) **(Exercise Price):** the Exercise Price will be A\$2.00 per Option (as adjusted under clause 6 of the Option Terms); and
- (c) **(Number of Ordinary Shares):** the number of Ordinary Shares which a Holder of an Option is entitled to acquire under clause 2.1 of the Option Terms will remain 1 Ordinary Share per Option.

2. Issuance and Subscription

2.1 Terms of Convertible Notes

The Convertible Notes will be issued upon the terms and conditions provided for in the Convertible Note Deed Poll and the Convertible Note Conditions and in accordance with the terms agreed pursuant to this Agreement.

2.2 Issue of Convertible Notes

Subject to the Convertible Note Deed Poll, the Convertible Note Conditions and the provisions of this Agreement, the Issuer shall on the Issue Date:

- (a) **(Issue):** create and issue the Convertible Notes with an aggregate initial Principal Amount of US\$75,000,000 to the Subscribers as follows;
 - (i) Convertible Notes with an aggregate initial Principal Amount of US\$50,000,000 shall be issued to Apollo; and
 - (ii) Convertible Notes with an aggregate initial Principal Amount of US\$25,000,000 shall be issued to PAHFA; and
- (b) **(ASX Notice):** provide to ASX a notice complying with section 708A(12C)(e) and 708A(12D) (as inserted by ASIC Class Order [CO 10/322]) of the Corporations Act.

2.3 Subscribers to Subscribe

Subject to the terms of this Agreement, and in reliance on the representations and warranties contained in it, each Subscriber must subscribe for its Proportion of the Convertible Notes to

be issued by the Issuer as provided in clause 2.2 by paying or causing to be paid its Proportion of the Issue Price to the Issuer on the Issue Date.

2.4 Use of Proceeds

Unless otherwise agreed by each Subscriber, the Issuer will use the proceeds of issue of the Convertible Notes for the following purposes:

- (a) **(Partial Repayment of Westpac Facility):** the partial repayment of US\$65,000,000 (or its Australian dollar equivalent) in principal amount outstanding under the Westpac Facility;
- (b) **(Payment of Transaction Fees and Expenses):** the payment of all fees and expenses incurred by the Issuer in connection with the Transaction and the reimbursement of expenses incurred by Apollo in connection with the Transaction as provided in clause 8.1 of this Agreement; and
- (c) **(General Corporate Purposes):** the balance, if any, for its own general corporate purposes.

3. Conditions Precedent

3.1 Conditions

The Subscribers will not be obliged to subscribe for, and the Issuer shall not be obliged to create or issue, the Convertible Notes to be issued on the Issue Date upon the terms and conditions provided for in the Convertible Note Deed Poll unless each of the following conditions precedent is satisfied or waived in accordance with clause 3.2:

- (a) **(Shareholder Approval):** the Shareholder General Approval has been obtained;
- (b) **(Employment Agreements):** the Issuer has entered into employment agreements with the Key Employees on the Agreed Terms;
- (c) **(ROFR):** the Specified Shareholders have entered into the ROFR;
- (d) **(Director Changes):** the Director Changes have been effected by the Issuer Shareholders electing, Grant Kelley, James Zelter and Anthony Civalo as additional Directors (and any further persons as alternate Directors), approved in writing by Apollo and at least 1 of those directors has been appointed to each of the sub-committees of the Board;
- (e) **(Westpac Amendment):** the Westpac Amendment has been executed and all conditions precedent under the Westpac Amendment have been satisfied or waived under clause 3 of the Westpac Amendment, except for any conditions to that document requiring (i) net proceeds of the issue of the Convertible Notes to be paid to Westpac in partial repayment of amounts owing under the Westpac Facility or (ii) the satisfaction of the conditions precedent under this Agreement;
- (f) **(Regulatory Approval):** all necessary ASX and other regulatory approvals (including Foreign Investment Review Board approval, if applicable) or waivers in connection with the Transaction have been obtained and are in effect;
- (g) **(Marketing Agreement):** the Marketing Agreement has been executed and is in effect;
- (h) **(Independent Expert Report):** a report by the Independent Expert has been provided to the holders of Ordinary Shares in relation to the issue of the Convertible Notes (including the Participation Rights), the grant of the Options, the acquisition

of Ordinary Shares on the conversion of Convertible Notes and the exercise of Options, and the other transactions contemplated in this Agreement, the other transaction contemplated by this Agreement, the other Transaction Documents and the Shareholder Approval;

- (i) **(Opinion of Independent Expert):** in the report of the Independent Expert referred to in Condition 3.1(h), the Independent Expert must conclude that the Transaction (including the issue of the Convertible Notes (including the Participation Rights), the grant of the Options, the acquisition of Ordinary Shares on the conversion of Convertible Notes and the exercise of Options, and the other transactions contemplated in this Agreement, the other Transaction Documents and the Shareholder Approval) is, in the opinion of the Independent Expert, fair and reasonable; and
- (j) **(Issuer representation):** the representation made by the Issuer under clause 6.2(j)(ii) is true and accurate on the Issue Date.

3.2 Benefit and waiver of conditions precedent

- (a) **(All parties):** The Conditions in clauses 3.1(b), 3.1(d), 3.1(e) and 3.1(f) are for the benefit of both Apollo and the Issuer and any breach or non-fulfilment of them may only be waived (if capable of waiver) with the written consent of both parties, which consent each party may give or withhold in its absolute discretion.
- (b) **(Apollo):** The Conditions in clauses 3.1(c), 3.1(h) and 3.1(j) are for the sole benefit of Apollo and any breach or non-fulfilment of them may only be waived by Apollo giving its written consent.
- (c) **(Issuer):** The Conditions in clauses 3.1(g) and 3.1(i) are for the sole benefit of the Issuer and any breach or non-fulfilment of it may only be waived by the Issuer giving its written consent.
- (d) **(Waiver):** A party entitled to waive a Condition pursuant to this clause 3.2 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the Condition applies must take place on or prior to the End Date. The Condition in clause 3.1(a) is for the benefit of both Apollo and the Issuer and cannot be waived.
- (e) **(Other remedies):** If a party waives the breach or non-fulfilment of any of the Conditions, that waiver will not preclude it from suing the other party for any breach of this Agreement including, without limitation, a breach that resulted in the non-fulfilment of the Condition that was waived.

3.3 Reasonable endeavours

Each Subscriber and the Issuer will use their respective reasonable endeavours to procure that each of the Conditions is satisfied as soon as reasonably practicable after the date of this Agreement or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require).

3.4 Conditions not fulfilled

- (a) **(Consultation):** If:
 - (i) any Condition is not satisfied or, where capable of waiver, waived by the date specified in this Agreement for its satisfaction or an event occurs which would or is likely to prevent a Condition precedent being satisfied by the date specified in this Agreement; or

- (ii) a circumstance occurs with the result that a Condition is not capable of being fulfilled and, if the Condition is able to be waived by a party under clause 3.2 the party does not waive the Condition within five Business Days after the occurrence of the circumstance,

then Apollo and the Issuer must consult in good faith with a view to determining whether:

- (iii) to extend the relevant date for satisfaction of the Condition; or
- (iv) to extend the End Date.

- (b) **(Termination):** Subject to clause 3.4(d), if a Condition becomes incapable of being satisfied before the End Date and Apollo and the Issuer are unable to reach agreement under clause 3.4(a) within five Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied, then unless the relevant Condition (where capable of waiver) is waived:

- (i) in relation to the Conditions in clauses 3.1(a), 3.1(b), 3.1(d), 3.1(e) and 3.1(f) either Apollo or the Issuer may terminate this Agreement by giving the other notice without any liability to any party by reason of that termination alone;
- (ii) in relation to the Conditions in clauses 3.1(c), 3.1(h) and 3.1(j), Apollo may terminate this Agreement by giving the Issuer notice without any liability to any party by reason of that termination alone; and
- (iii) in relation to the Conditions in clauses 3.1(g) and 3.1(i), the Issuer may terminate this Agreement by giving Apollo notice without any liability to any other party by reason of that termination alone.

- (c) **(Outstanding Condition):** Subject to clause 3.4(d) and notwithstanding clause 3.4(b), a party entitled to the benefit of a Condition may on the End Date, if that Condition has not been satisfied or waived in accordance with clause 3.2 on or before the End Date, terminate this Agreement by giving the other parties notice without any liability to any party by reason of that termination alone.

- (d) **(No termination):** A party will not be entitled to terminate this Agreement pursuant to clause 3.4(b) or 3.4(c) if the relevant Condition has become incapable of satisfaction, or has not been satisfied, as a result of a breach of this Agreement by that party (or in the case of Apollo, a breach by a Subscriber).

3.5 Convertible Note Deed Poll

The Subscribers acknowledge that the Convertible Notes issued under this Agreement are governed by the terms of the Convertible Note Deed Poll and the Convertible Note Conditions and agree to be bound by the terms of the Convertible Note Deed Poll and the Convertible Note Conditions.

3.6 Termination for Breach

- (a) **(Notice):** If, prior to the Issue Date, a party (the **Defaulting Party**) breaches or fails to comply with or satisfy any of its obligations under this Agreement then:
 - (i) the Issuer (where the Defaulting Party is any or all of the Subscribers); or
 - (ii) a Subscriber (where the Defaulting Party is the Issuer),

(in either case the **Non-Defaulting Party**) may give the Defaulting Party a notice requiring the Defaulting Party to satisfy those obligations or rectify the breach within a period of 4 clear Business Days after the date of the notice and specifying that time is of the essence in relation to that notice.

For clarity, where the Defaulting Party is a Subscriber, notice is to be given to all Subscribers.

- (b) **(Remedies for failure to comply with Notice):** If the Defaulting Party fails to comply with a notice given under the previous paragraph, the Non-Defaulting Party may without limiting its other rights or remedies available under this Agreement or at law:
- (i) immediately terminate this Agreement by notice in writing, in which case the Non-Defaulting Party may seek damages for breach of this Agreement; or
 - (ii) seek specific performance of this Agreement, in which case:
 - A. if specific performance is obtained the Non-Defaulting Party may also seek damages for breach of this Agreement; and
 - B. if specific performance is not obtained the Non-Defaulting Party may then terminate this Agreement and may seek damages for breach of this Agreement.

For clarity, where the Defaulting Party is a Subscriber, the remedy chosen by the Issuer must be exercised jointly against or in relation to all Subscribers.

4. Interdependence

Execution of this Agreement and the Convertible Note Deed Poll are interdependent so that, if any one of them is not executed, none of them will be taken to have been executed.

5. Acknowledgement and Covenants

5.1 Subscribers Acknowledgement

Each Subscriber acknowledges and agrees that:

- (a) **(No Information memorandum):** the Issuer does not intend to prepare or distribute an information memorandum or any offering document in connection with the issue of the Convertible Notes;
- (b) **(Investment risk):** the holding of a Convertible Note is subject to investment risk, including possible delays in repayment and loss of income and principal invested;
- (c) **(Terms and conditions):** it has inspected and satisfied itself regarding the terms and conditions of the Transaction Documents including all representations and warranties of the Issuer contained in the Transaction Documents;
- (d) **(Independent investigation):** it has made its own independent investigation of the terms of the Convertible Notes and the financial condition, affairs and credit worthiness of the Issuer, after taking all appropriate advice from qualified professional persons; and
- (e) **(Inside Information):** some or all of the information provided by the Issuer or any of its Related Bodies Corporate pursuant to this Agreement or any other

Transaction Document may be relevant to the price or the value of securities of the Issuer or a Related Body Corporate of the Issuer. Accordingly, each Subscriber agrees to, and agrees to ensure that any of its Affiliates or any director, officer or employee of the Subscriber or of an Affiliate of the Subscriber who receives access to any part of such information provided by the Issuer or any of its Related Bodies Corporate pursuant to this Agreement or any other Transaction Document, complies with the insider trading provisions of the Corporations Act or any other insider trading or market abuse provisions of any other relevant securities laws in any jurisdiction in respect of any such information.

5.2 Issuer Covenants

- (a) **(Positive Covenants):** Subject to clause 5.2(c), for so long as the Subscribers and other Affiliates of Apollo hold in aggregate Convertible Notes that are outstanding and convertible into Ordinary Shares that would comprise more than 20% of the total Ordinary Shares then on issue, the Issuer agrees:
- (i) **(Board Observer Rights):** that, to the extent that there are no Directors previously nominated by Apollo that are currently on the Board, Apollo may nominate a representative who will be entitled to attend and observe any meeting of the Board (other than a meeting relating to any matter involving any Subscriber or relating to any matter that a director representing Apollo or a Subscriber would be restricted from considering or voting upon);
 - (ii) **(Information Rights):** subject to any confidentiality, privacy or general trust law obligations owed by the Issuer or any of its Related Bodies Corporate to any person in relation to whom the information or documents furnished relate, to furnish to Apollo:
 - A. as soon as practicable and in any event no later than 120 days after the end of each of its Financial Years, a copy of the consolidated audited Accounts for the Issuer for that Financial Year;
 - B. as soon as practicable and in any event no later than 90 days after the end of the first half of each of its Financial Years, a copy of the consolidated unaudited Accounts for the Issuer for that half year;
 - C. a copy of its monthly management reporting financial statements;
 - D. a copy of the monthly AUM trends for the Issuer's investment funds (including inflows, outflows and performance for each Lighthouse and HFAAM/Certitude fund managed by the Issuer); and
 - E. a copy of any formal Board papers and accompanying materials (other than any paper or material relating to any matter involving any Subscriber), provided that if the Issuer determines that any such papers or materials contain any confidential or commercially sensitive information, the Issuer will only be obliged to provide to Apollo parts of those papers or materials that do not contain such confidential or commercially sensitive information; and

(iii) **(Notification Events):** to immediately notify Apollo of any of the following events upon becoming aware of the same:

- A. particulars of any material litigation, arbitration or action in connection with or against it or its assets; and
- B. particulars of any proposed compulsory acquisition.

(b) **(Negative Covenants):** Subject to clause 5.2(c), for so long as the Subscribers and other Affiliates of Apollo hold in aggregate Convertible Notes that are outstanding and convertible into Ordinary Shares that would comprise more than 20% of the total Ordinary Shares then on issue, the Issuer must not, and must not agree to, and must ensure that its Subsidiaries will not, and will not agree to, without the prior written consent of Apollo:

(i) **(Restricted Indebtedness):** incur any Financial Indebtedness other than any Permitted Indebtedness;

(ii) **(Restricted Equity Issuances):** issue equity securities or other securities convertible into Ordinary Shares (other than on conversion of the Convertible Notes or exercise of the Options):

- A. in a manner or of a type which would not allow the Subscribers to maintain their pre-issuance *pro rata* ownership interest in the Issuer (on an as-converted basis); or
- B. that would require the approval of holders of Ordinary Shares in the Issuer,

provided that no consent of Apollo is required in relation to any issue of securities to employees or officers of the Issuer (or of a Related Entity of the Issuer) in accordance with any employee or executive share, option or performance right schemes or an issue in lieu of dividends in respect of Ordinary Shares or by way of dividend reinvestment pursuant to any election by a holder of Ordinary Shares;

(iii) **(Amendment of Share Rights):** amend, vary or cancel any rights attaching to the Ordinary Shares (including by amending any of its constituent documents) or split, combine, reclassify, repurchase, redeem or otherwise acquire any equity securities issued by the Issuer;

(iv) **(Extraordinary Dividends):** declare or pay any Extraordinary Dividends;

(v) **(No merger):** consolidate or amalgamate with, or merge with or into, or transfer all or substantially all of its assets to, another entity that is not a Related Body Corporate of the Issuer; provided that no consent of Apollo is required under this clause 5.2(b)(v) in relation to any offer made to all (or as nearly as may be practicable all) Issuer Shareholders, or all (or as nearly as may be practicable all) Issuer Shareholders other than the offeror and/or any associate (as defined in section 12 of the Corporations Act) of the offeror, to acquire the whole or any part of the Ordinary Shares in the Issuer;

(vi) **(Investments):** except as otherwise approved in an Annual Budget, make any capital investment, acquisition or divestiture that exceeds A\$5,000,000 (or the equivalent in other currencies);

- (vii) **(Solvent scheme of arrangement):** propose or implement a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
 - (viii) **(Valuable Contracts and no new Business):** except as otherwise approved in an Annual Budget and excluding any Permitted Indebtedness, enter, terminate or amend any contract with a value greater than A\$5,000,000 (or the equivalent in other currencies) or commence any new business that the Issuer or any of its Related Bodies Corporate was not engaged in or conducting on or prior to the Issue Date;
 - (ix) **(Affiliate and Non-Arm's Length Transactions):** enter into any transaction with any Related Entity or any transaction that is not on an arm's length basis and that would require the approval of holders of Ordinary Shares, provided that, it may, without the prior written consent of Apollo, enter into any transaction whose terms would be more favourable to it than if the transaction was entered into on an arm's length basis;
 - (x) **(Termination or Amendment of Employment Terms):** except as otherwise provided for in an Annual Budget, terminate or amend in any material respects the employment terms of any Key Employee, employ any person to perform a similar role to a Key Employee, increase the compensation of any Key Employee or any other employee to the extent such increase is outside the ordinary course consistent with past practice, or pay any discretionary bonuses, provided, that the foregoing shall not prohibit the termination of any employee (x) for cause (as defined in the applicable employment agreement) or (y) if no employment agreement definition of cause applies, for fraud, moral turpitude, actions that could bring the Issuer or any Related Entity, as the case may be, into disrepute, or non-compliance with laws in relation to performance of the employee's duties;
 - (xi) **(Annual Budget):** except as otherwise provided in clause 5.3(b), approve an Annual Budget or any intentional deviation therefrom of 10% or greater in respect of total operating expenditure for the relevant Financial Year or incur any item or related series of capital expenditure not in an Annual Budget that is in excess of A\$2,000,000 (or the equivalent in other currencies);
 - (xii) **(Material Settlement):** settle any material claim, litigation or other proceeding in an amount greater than A\$2,000,000 (or the equivalent in other currencies);
 - (xiii) **(Tax elections):** make, change or revoke any material tax election; provided, however, that if such action is required by applicable law, the Issuer may take such action without Apollo's prior written consent but must notify Apollo in writing, prior to making such change; or
 - (xiv) **(Increase in Directors):** cause the appointment of more than eight (8) Directors to the Board.
- (c) **(Expiry of covenants):** If an Apollo Change in Control Event occurs, the Issuer shall have no obligations under clauses 5.2(a), 5.2(b) or 5.4 and any rights of any Subscriber under clauses 5.2(a), 5.2(b) or 5.4 will be immediately cancelled.

5.3 Consent of Apollo

- (a) **(General):** Except as otherwise provided in clause 5.3(b), if any consent, waiver or approval is required from Apollo under this Agreement or any other Transaction Document in respect of any act, matter or thing, the Issuer will give written notice to Apollo seeking such consent, waiver or approval and if no decision is provided by Apollo within twenty (20) calendar days of receipt of such notice, Apollo shall be deemed to have provided its requisite consent, waiver or approval to such act, matter or thing.
- (b) **(Approval of Annual Budget):** If a written request by the Issuer for approval of an Annual Budget by Apollo is made and Apollo does not provide its approval to such Annual Budget as so proposed:
- (i) the Issuer is permitted to continue to operate on a basis consistent with the existing or most recent approved Annual Budget; and
 - (ii) the Issuer and Apollo shall engage in discussions in an effort to agree on an Annual Budget mutually satisfactory to the Issuer and Apollo, provided that, in the event that no such agreement is reached by the date that is thirty (30) calendar days from the date of written request by the Issuer for such approval, then the Annual Budget shall be determined after consideration of the same by majority vote of each of:
 - A. an independent member of the Board chosen by the Issuer;
 - B. the then current Chief Executive Officer of the Issuer or an executive as nominated by the then current Chief Executive Officer of the Issuer; and
 - C. a person designated by Apollo for such purpose (who need not be a Director of the Issuer, unless the Board includes one or more Directors nominated by Apollo or an Affiliate of Apollo, in which case Apollo's designee must be one of those Directors).

5.4 Undertaking by Issuer

The Issuer undertakes that if, after the date of this Agreement:

- (a) **(RSUs):** any grant or issue of rights, securities or Ordinary Shares (including shares other than Ordinary Shares) (rights) are made to a person pursuant to the HFA Employee Performance Rights Plan; and
- (b) **(Transfer Shares):** any Ordinary Shares to be issued or transferred to a person on vesting or exercise of such rights are Ordinary Shares to which paragraph (b) of the definition of Transfer Shares (as defined in the Right of First Refusal Agreement) (Transfer Shares) applies,

it will, if requested by Apollo in writing prior to the grant or issue of rights referred to in paragraph (a), as soon as is practicable after such grant or issue of rights but, in any event, no later than the date on which Ordinary Shares are to be issued or transferred to a person on the vesting or exercise of such rights, seek approval of its shareholders, including for the purposes of item 7 of section 611 of the Corporations Act, required to permit those Ordinary Shares to be Transfer Shares. For the avoidance of doubt, the Issuer's entitlement to grant or issue the rights referred to in paragraph (a), shall not be affected by the result of any shareholders vote as to whether any Ordinary Shares (to be issued or transferred pursuant to the vesting or exercise of such rights) are to become Transfer Shares.

6. Representations and warranties

6.1 By the Subscribers

Each Subscriber (other than in respect of paragraph (n), which applies only to Apollo) represents and warrants for the benefit of the Issuer as follows in respect of itself (but not the other Subscriber) that:

- (a) **(Status):** it is duly incorporated and validly existing and it has the power to own assets and carry on its business;
- (b) **(Power):** it has the power to enter into and comply with its obligations under the Transaction Documents to which it is a party;
- (c) **(Due authority and benefit):** it has taken all corporate action to enter into, deliver and perform each Transaction Document to which it is a party and carry out the transactions contemplated by them and its entry and performance of its obligations under the Transaction Documents to which it is a party are for its corporate benefit;
- (d) **(Binding obligations):** the obligations assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable in accordance with their terms, subject to any necessary stamping and equitable principles and laws affecting creditors' rights generally;
- (e) **(Authorisations):** it has in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, comply with its obligations under them and allow them to be enforced;
- (f) **(Non-conflict with other obligations):** the execution and delivery of the Transaction Documents to which it is a party and the performance by it of its obligations under the Transaction Documents do not (and will not) conflict with:
 - (i) any law or regulation applicable to it; or
 - (ii) its constituent documents;
- (g) **(No immunity):** it does not enjoy immunity from suit or execution in relation to its obligations under the Transaction Documents to which it is party;
- (h) **(US status):** it is either:
 - (i) an institutional "accredited investor" (an **Institutional Accredited Investor**), that satisfies one of the criteria of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act, that is acquiring the Convertible Notes for its own account or for the account or benefit of one or more persons each of whom is an Institutional Accredited Investor over which it exercises sole investment direction, for investment purposes and not with a view to the resale or distribution thereof, in each case in accordance with any applicable securities laws of any state of the United States or any other jurisdiction; or
 - (ii) a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Convertible Notes in an offshore transaction meeting the requirements of Regulation S;
- (i) **(Due diligence):** it acknowledges that (i) it has had access to all such information regarding the Issuer and the Convertible Notes, the Options and the Ordinary Shares

and has made all such investigation with respect thereto as it deems necessary or appropriate to make its investment decision, and it has consulted its own independent advisors or otherwise made its own assessment and has satisfied itself concerning the relevant tax, legal, currency and other economic considerations relevant to its investment in the Convertible Notes, the Options and the Ordinary Shares, (ii) it has had the opportunity to ask questions to the Issuer concerning the terms and conditions of the offer of the Convertible Notes and the Options and concerning the Issuer, and (iii) in making its investment decision, it has relied and will rely on its own investigation and its consultations with its independent advisors, and it has not relied, nor will it rely, on any information, representation, warranty (in each case either express or implied) or statement made by or on behalf of the Issuer, other than those set forth in the Transaction Documents;

- (j) **(Restricted securities):** it understands that the Convertible Notes, the Options and the Ordinary Shares to be issued on conversion of any Convertible Note or exercise of any Option are being offered and sold in reliance on an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. It further understands that any Convertible Notes, Options and Ordinary Shares issued on conversion of any Convertible Note or the exercise of any Option offered to or purchased by it in the United States are "restricted securities" as defined in Rule 144(a)(3) under the Securities Act, and agree that so long as the Convertible Notes, Options or Ordinary Shares issued on conversion of any Convertible Note or exercise of any Option are restricted securities, it will only transfer such Convertible Notes, Options and Ordinary Shares in accordance with paragraph (k) below;
- (k) **(Disposal):** it understands that there will be no public offering of the Convertible Notes, the Options and the Ordinary Shares to be issued on conversion of any Convertible Note or exercise of any Option, in the United States and the Convertible Notes, the Options and the Ordinary Shares to be issued on conversion of any Convertible Note or exercise of any Option have not been and will not be registered under the Securities Act or with any state or other jurisdiction of the United States, nor approved or disapproved by the U.S. Securities and Exchange Commission or any state securities commission in the United States. It agrees that, in the future, if it or any other person for whose account or benefit it is acquiring any Convertible Notes, Options or Ordinary Shares issued on conversion of any Convertible Note or exercise of any Option, decides to offer, sell, pledge, transfer or otherwise dispose of the Convertible Notes, Options or Ordinary Shares it will only do so and it will inform such other person that it may only do so, if such Convertible Notes, Options or Ordinary Shares are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii)(A) (in the case of Ordinary Shares only) in standard (regular way) transactions on the ASX where neither the seller nor any person acting on its behalf knows, or has reason to know, that the sale has been prearranged with, or that the purchaser is, a person in the United States or is a U.S. Person or is acting for the account or benefit of, a person in the United States or a U.S. Person or (B) otherwise to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring such Convertible Notes, Options or Ordinary Shares in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in

each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. It acknowledges and agrees that offers, sales, pledges or transfers pursuant to (v) above must be made only after the purchaser of the Convertible Notes, Options or Ordinary Shares has delivered to the Issuer such information, certificates and opinions as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions, which may include an opinion of counsel as to the availability of the relevant exemption from the registration requirements of the Securities Act in a form reasonably satisfactory to the Issuer;

- (l) **(Transfer):** it agrees to notify any transferee to whom it subsequently reoffers, resells, pledges or otherwise transfers any Convertible Notes, Options or Ordinary Shares issued on conversion of any Convertible Note or exercise of any Option of the foregoing restrictions on transfer, and it acknowledges that, to the maximum extent permitted by law, the Issuer reserves the right to refuse to record any transfer of Convertible Notes, Options or Ordinary Shares that are sold or otherwise transferred in a manner other than that specified in paragraph (k) above or which do not comply with the transfer provisions set out in this Agreement, the Convertible Note Deed Poll or the Convertible Note Conditions;
- (m) **(Certificate):** it understands that in the event the Convertible Notes, the Options or the Ordinary Shares issued on conversion of any Convertible Note or exercise of any Option, are held in certificated form, such certificated Convertible Notes, Options or Ordinary Shares will bear the legend set forth in Annex A of Schedule 1 of the Convertible Note Deed Poll (in the case of the Convertible Notes), Annexure A (in the case of Options) or Annexure B (in the case of Ordinary Shares), in each case for so long as they are "restricted securities" as defined in Rule 144(a)(3) under the Securities Act; and
- (n) **(Relationship with Apollo):** it is a wholly-owned indirect subsidiary of Apollo Global Management, LLC and its Affiliates.

6.2 By the Issuer

The Issuer represents and warrants for the benefit of each Subscriber that:

- (a) **(Status):** it is duly incorporated and validly existing and it has the power to own assets and carry on its business;
- (b) **(Power):** it has the power to enter into and comply with its obligations under the Transaction Documents;
- (c) **(Due authority and benefit):** it has taken all corporate action to enter into, deliver and perform each Transaction Document and carry out the transactions contemplated by them and its entry and performance of its obligations under the Transaction Documents are for its corporate benefit;
- (d) **(Binding obligations):** the obligations assumed by it in each Transaction Document are legal, valid, binding and enforceable in accordance with their terms, subject to any necessary stamping and equitable principles and laws affecting creditors' rights generally;
- (e) **(Authorisations):** it has in full force and effect the authorisations necessary for it to enter into the Transaction Documents, comply with its obligations under them and allow them to be enforced;
- (f) **(Taxes):** it has timely paid all material taxes as required by law;

- (g) **(No immunity):** it does not enjoy immunity from suit or execution in relation to its obligations under the Transaction Documents;
- (h) **(Pari passu ranking):** its obligations under each Convertible Note are subordinated to the Senior Financial Indebtedness on the terms set out in Condition 2.3(c) of the Convertible Note Conditions, but rank at least *pari passu* in right and priority with all its other present and future direct, unsubordinated, unconditional and unsecured obligations other than those obligations as may be preferred by provisions of law that are both mandatory and of general application;
- (i) **(Compliance with law; No conflict):**
 - (i) it is in compliance in all material respects with the Corporations Act, the Listing Rules, the Constitution of the Issuer, and all other laws and regulations applicable to it, including in relation to the execution and delivery by it of the Transaction Documents and the performance by it of its obligations under the Transaction Documents; and
 - (ii) it is not aware of any:
 - A. action taken or proposed to be taken, or any order, directive or regulation made or proposed to be made; or
 - B. actual or proposed prosecution or enforcement action, by any Government Authority in respect of the Issuer or its controlled entities that is likely to have a material adverse effect on a business of the Issuer or any of its controlled entities;
 - (iii) the execution and delivery by it of any Transaction Documents and the performance by it of its obligations under the Transaction Documents do not (and will not) conflict with any material contract to which the Issuer or any of its Subsidiaries is a party or by which it is bound; and
- (j) **(Issued Capital):**
 - (i) as of the date of this Agreement, the outstanding share capital of the Issuer is 469,330,171 Ordinary Shares; and
 - (ii) if, on the Issue Date, all the outstanding Convertible Notes were to be converted to Ordinary Shares in accordance with the Convertible Note Conditions, such Ordinary Shares would represent not less than 38.29% (or such other percentage agreed to by the Issuer and Apollo) of the share capital of the Issuer on a fully diluted basis (for the avoidance of doubt, ignoring for these purposes interest that has accrued under the Convertible Notes). For the purposes of this representation, the fully diluted share capital of the Issuer shall be calculated on the basis that it (i) includes any performance rights that have been issued, or approved by the Board but not yet issued, under the HFA Employee Performance Rights Plan, and (ii) excludes the potential dilution resulting from any exercise of the Options.

6.3 Reliance on Representations and Warranties

Each party acknowledges that the other party has entered this Agreement in reliance on the representations and warranties in this clause 6.

6.4 Warranties separate

Each representation and warranty in this Agreement is to be treated as a separate representation and warranty and is not limited by reference to any other representation or warranty or any other provision of this Agreement.

6.5 Survival

Each representation and warranty in this Agreement will remain in full force and effect after the date of this Agreement.

7. Notices

7.1 Method of Delivery

Subject to clause 7.3, any notice, request, certificate, approval, demand, consent, recommendation or other communication to be given under this Agreement must:

- (a) **(In writing and signed by an Authorised Officer):** be in writing and, except in the case of communications by email, signed by an authorised officer of the party giving the same; and
- (b) **(Delivery):** be:
 - (i) left at the address of the addressee;
 - (ii) sent by prepaid ordinary post to the address of the addressee;
 - (iii) sent by facsimile to the facsimile number of the addressee; or
 - (iv) sent by email by an authorised officer of the party giving the notice to the addressee's specified email address,

notified by that addressee from time to time to the other parties as its address for service pursuant to this Agreement.

7.2 Deemed Receipt

A notice, request, certificate, approval, demand, consent, recommendation or other communication under this Agreement is deemed to have been received:

- (a) **(Delivery):** where delivered in person, upon receipt;
- (b) **(Post):** where sent by post, on the 3rd (7th if outside Australia) day after posting;
- (c) **(Fax):** where sent by facsimile, on production by the dispatching facsimile machine of a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) **(Email):** where sent by email, on the date that the email is received.

However, if the time of deemed receipt of any notice is not before 5.00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day.

7.3 Email

A notice, request, certificate, demand, consent, recommendation or other communication to be given under this Agreement may only be given by email where the recipient has agreed that

that communication or communications of that type, may be given by email. For the avoidance of doubt, any such agreement must be in writing and refer specifically to this Agreement, and no such agreement may be implied, inferred or deemed to arise as a result of any other conduct or dealing, including the use by employees or representatives of email as a means of communication with other parties for the purposes of the administration of this Agreement.

8. Fees, Costs and Expenses

8.1 Reimbursement of Costs and Expenses of Apollo

The Issuer agrees to reimburse Apollo for its costs and expenses incurred in connection with the transactions contemplated under this Agreement and the other Transaction Documents (including costs, charges and expenses of each Subscriber or Apollo Global Management, LLC in relation to the negotiation, preparation, execution, delivery, stamping, registration and completion of the Transaction Documents) on the dates and in the aggregate amounts as follows:

- (a) **(Initial amount):** on the date of this Agreement, US\$500,000; and
- (b) **(Issue Date):** on the Issue Date on which all of the Convertible Notes are issued by the Issuer and subscribed by the Subscribers in accordance with this Agreement, US\$1,500,000,

in each case, by crediting each such amount to an account notified in writing by Apollo to the Issuer for this purpose. With the prior written agreement of all parties, the amount payable by the Issuer to Apollo on the Issue Date may be set off against amounts payable by the Subscribers to the Issuer on the Issue Date.

8.2 Payments

Unless expressly provided otherwise in writing, all payments by the Issuer under this Agreement are to be made, subject to all applicable laws, regulations and directives, to each Subscriber or Apollo, as the case may be, in US dollars in immediately available funds not later than 5.00 pm (Sydney) time on the due date to the account that that Subscriber or Apollo, as the case may be, from time to time designates, or as otherwise agreed between the Issuer and such Subscriber or Apollo, as the case may be.

8.3 No set-off or counterclaim

Subject to clauses 8.5 and 8.6, all payments by the Issuer under this Agreement, whether of principal, interest or other amounts due under this Agreement, will be free of any set-off or counterclaim except with the payee's prior written agreement.

8.4 Stamp Duties

- (a) **(Issuer must pay):** The Issuer will pay all stamp, loan, transaction, documentary, excise, registration and similar Taxes payable under Australian law (including fines and penalties, financial institutions duty and federal debits tax under Australian law) which may be payable to or required to be paid by any appropriate authority or determined to be payable in connection with the execution or delivery of this Agreement; and
- (b) **(Issuer must indemnify):** The Issuer will indemnify and keep indemnified each Subscriber against any loss or liability incurred or suffered by it as a result of the delay or failure by the Issuer to pay such Taxes.

8.5 Goods and Services Tax

- (a) **(Interpretation):** Except where the context suggests otherwise, words or expressions used in this clause 8.5 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- (b) **(Consideration is GST exclusive):** Any consideration to be paid or provided for a supply made under or in connection with this Agreement unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.
- (c) **(Gross up of consideration):** Despite any other provision in this Agreement if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is payable (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):
- (i) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**'GST exclusive consideration'**) shall be increased by, and the recipient of the supply (**'Recipient'**) must also pay to the Supplier, an amount equal to the GST payable on the supply (**'GST Amount'**); and
 - (ii) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- (d) **(Reimbursements - net down):** If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.
- (e) **(Tax invoices):** The Recipient need not pay the GST Amount for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a tax invoice for the supply to which the GST Amount relates.

8.6 Deductions and Withholdings

If at any time an applicable law or Tax Event obliges the Issuer to make a deduction or withholding in respect of Taxes from a payment by the Issuer under this Agreement, the Issuer:

- (a) **(Notice):** must notify the payee of the obligation promptly after becoming aware of such obligation (and set forth in reasonable detail the nature of the Tax Event, if applicable) and endeavour to give such notice at least 10 days prior to making such deduction or withholding;
- (b) **(Not Exceed Minimum):** must ensure that the deduction or withholding does not exceed the minimum amount required by law;
- (c) **(Obligation to Minimise):** will, subject to clause 15(a), use its reasonable efforts to minimise the amount of any such deduction or withholding to the extent that doing so is lawful and reasonably commercially practicable;
- (d) **(Pay Government Agency):** must pay to the relevant Government Agency on time the full amount of the deduction or withholding and promptly deliver to the payee a copy of any receipt, certificate or other proof of payment reasonably acceptable to Apollo; and

- (e) **(No Gross-up)**: will not be obliged to make any additional payments to the payee in relation to that withholding or deduction.

provided, however, that clauses 8.6(b) and (c) shall not apply (i) if no Tax Event exists at that time or (ii) following the conversion of all Convertible Notes in respect of which the Issuer is required to make such deduction or withholding.

9. Options

In consideration for Apollo agreeing to enter into this Agreement, subject to obtaining the requisite Shareholder Approval, the Issuer grants to the Subscribers an aggregate of 31,250,000 Options on a post Share Consolidation basis on the terms set out in this clause 9 and Schedule 1 and allocated between the Subscribers as follows:

- (a) **(Apollo)**: 20,833,333 Options to Apollo; and
- (b) **(PAHFA)**: 10,416,667 Options to PAHFA.

The grant of the Options, and all other rights of the Subscribers and obligations of the Issuer with respect to the Options, only become effective on and from the Issue Date on which all of the Convertible Notes are issued by the Issuer and subscribed by the Subscribers in accordance with this Agreement.

10. Public announcements

10.1 Announcement

Immediately after the execution of this Agreement, the Issuer must issue the Announcement to the ASX.

10.2 Other Issuer announcements

- (a) **(Other Announcements of Transaction)**: Subject to clauses 10.2(b) and 10.2(c), each party must consult with the other prior to making any other public announcement in connection with the Transaction.
- (b) **(Announcement required by law)**: Subject to clause 10.2(c), where a party is required by law or the Listing Rules to make any announcement or make any disclosure in relation to the Transaction, it must, to the extent practicable, consult with the other party as to the content of that announcement or disclosure, unless acting reasonably a party considers that an immediate announcement is required to be made.
- (c) **(Announcement in response to Competing or Superior Proposal)**: The Issuer will not be required to consult with or seek prior approval from Apollo for any public announcement or disclosure that is made in response to a Competing Proposal or a Superior Proposal.

11. Recommendation and intentions

11.1 Issuer Directors recommendation

The Issuer's Board must, in the Announcement and in the Explanatory Memorandum, unanimously recommend that Issuer Shareholders vote in favour of giving the Shareholder Approval, without any qualification other than that the recommendation is subject to:

- (a) **(No Superior Proposal)**: no Superior Proposal being made; and

- (b) **(Fair and reasonable):** the Independent Expert concluding that the Transaction is fair and reasonable (or having given such a report, not giving a report changing that opinion).

11.2 Director intentions

The Issuer must use its best endeavours to procure that each Director declares in the Announcement and in the Explanatory Memorandum his or her intention, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Transaction is fair and reasonable, to vote in favour of giving the Shareholder Approval any Ordinary Shares in which they have a relevant interest and in respect of which they have power to vote, without any qualification other than that the intention is subject to:

- (a) **(No Superior Proposal):** no Superior Proposal being made; and
- (b) **(Fair and reasonable):** the Independent Expert concluding that the Transaction is fair and reasonable (or having given such a report, not giving a report changing that opinion).

11.3 Change of recommendation or intentions

The Issuer's Board may change or withdraw its recommendation, and ceases to have obligations under clause 11.2, if:

- (a) **(Not fair and reasonable):** the Independent Expert gives a report that fails to conclude that the Transaction is fair and reasonable (or having given such a report that, in the opinion of the Independent Expert, the Transaction is fair and reasonable, gives a report changing that opinion for any reason to conclude that the Transaction is not fair and reasonable);
- (b) **(Superior Proposal):** the Issuer's Board determines that a Competing Proposal constitutes a Superior Proposal; or
- (c) **(Breach of duty):** the Issuer's Board has determined in good faith, after receiving written legal advice from the Issuer's external legal advisers, that failing to do so is reasonably likely to constitute a breach of its fiduciary or statutory duties.

11.4 Termination following change of recommendation

Any party may terminate this Agreement at any time by notice in writing to the other parties if the Issuer's Board changes or withdraws its recommendation in accordance with clause 11.3. Any notice of termination given by the Issuer under this clause 11.4 must identify the paragraph in clause 11.3 pursuant to which the Issuer's Board has changed or withdrawn its recommendation.

12. Exclusivity

12.1 Competing Proposals

- (a) **(No solicitation):** During the Exclusivity Period, the Issuer must not, and must ensure that its Representatives do not, except with the prior written consent of Apollo, solicit or invite any Competing Proposal or initiate discussions with any third party with a view to obtaining any expression of interest, offer or proposal from any person in relation to a Competing Proposal. For the avoidance of doubt, this clause 12.1(a) does not restrict the Issuer's ability to respond to any third party that has initiated a discussion during the Exclusivity Period.

- (b) **(Other prohibited conduct):** During the Exclusivity Period, the Issuer must not, and must ensure that its Representatives do not, except with the prior written consent of Apollo:
- (i) encourage or participate in any negotiations in relation to a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal;
 - (ii) enter into any deed, arrangement or understanding in relation to a Competing Proposal which would have the effect of requiring the Issuer to abandon, or otherwise fail to proceed with, the Transaction; or
 - (iii) provide any information to a third party for the purposes of enabling that party to make a Competing Proposal,

unless the Issuer's Board, acting in good faith and in order to satisfy its fiduciary or statutory duties (as determined after receiving written legal advice from the Issuer's external legal advisers), determines that the Competing Proposal is a Superior Proposal or may reasonably be expected to lead to a Superior Proposal.

12.2 Notification of Superior Proposal

During the Exclusivity Period, the Issuer must promptly notify Apollo if it or any of its Representatives receive any proposal from any person which is or may reasonably be expected to lead to a Superior Proposal, unless the Issuer's Board, acting in good faith and in order to satisfy its fiduciary or statutory duties (as determined after receiving written legal advice from the Issuer's external legal advisers), determines that it must not do so.

12.3 Right to match

- (a) **(Receipt of Superior Proposal):** If the Issuer receives a Competing Proposal which the Issuer's Board determines to be a Superior Proposal (**Other Proposal**), and as a result proposes to terminate this Agreement under clause 11.4, the Issuer must give Apollo 4 clear Business Days written notice of such proposed termination, and provide to Apollo all material terms of the Other Proposal (including the identity of the relevant person or persons and the key terms and conditions, including the proposed price or implied value, details of any non-cash consideration, timing and break fee (if any)), unless the Issuer's Board, acting in good faith and in order to satisfy its fiduciary or statutory duties (as determined after receiving written legal advice from the Issuer's external legal advisers), determines that it must not do so. Any information provided pursuant to this clause 12.3(a) will be provided subject to clause 17.13.
- (b) **(Right to propose Counterproposal):** During the period of 4 clear Business Days referred to in clause 12.3(a), Apollo will have the right, but not the obligation, to propose a revised or alternative transaction between the parties that provides a benefit to Issuer Shareholders that is at least equal to that of the Other Proposal (**Counterproposal**).
- (c) **(Amendments to reflect Counterproposal):** The Issuer's Board must consider any such Counterproposal and if the Issuer's Board, acting in good faith, determines that:
- (i) the Counterproposal would, or in the opinion of the Issuer's Board may reasonably be expected to, provide a benefit to Issuer Shareholders at least equal to that of the Other Proposal; and

- (ii) the other terms and conditions of the Counterproposal taken as a whole are not less favourable than those in the Other Proposal,

then the Issuer and Apollo must use their best endeavours to agree the amendments to this Agreement which are reasonably necessary to reflect the Counterproposal and to enter into one or more appropriate amended agreements to give effect to those amendments and to implement the Counterproposal, in each case as soon as reasonably practicable.

13. Break Fee

13.1 Issuer acknowledgements

The Issuer acknowledges and agrees that Apollo has incurred, or will incur:

- (a) **(Advisory costs):** significant external advisory costs and fees in planning and implementing the Transaction;
- (b) **(Out of pocket expenses):** out of pocket expenses incurred by employees, advisers and agents of Apollo in planning and implementing the Transaction;
- (c) **(Opportunity costs):** reasonable opportunity costs in pursuing the Transaction or in not pursuing alternative acquisitions or strategic initiatives; and
- (d) **(Reputation costs):** costs associated with damage to the reputation of Apollo associated with a failed transaction and the implications of that damage if Apollo seeks to execute alternative acquisitions in the future,

in each case, incurred by Apollo directly or indirectly as a result of pursuing the Transaction, and will incur further costs if the Transaction is not successful (**Costs**).

13.2 Apollo requirement

Having regard to the matters set out in clause 13.1, Apollo required that provision be made for the payment referred to in clause 13.4, without which Apollo would not have entered into this Agreement.

13.3 Agreement on Costs

The Issuer and Apollo agree that the amount of the Costs is inherently unascertainable and that, even after termination of this Agreement, the Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the costs and losses that Apollo will suffer if the Transaction does not proceed, the parties agree that the Break Fee has been calculated to reimburse Apollo for some such Costs (it being acknowledged by the parties that the Costs may be in excess of this amount) in the circumstances in which the Break Fee is payable under this Agreement.

13.4 Reimbursement of Costs

The Issuer agrees to pay Apollo the Break Fee only if both:

- (a) **(Change of recommendation):** the Issuer's Board changes or withdraws its recommendation pursuant to clause 11.3(b); and
- (b) **(Termination):** any party terminates this Agreement pursuant to clause 11.4.

The Issuer will pay the Break Fee to Apollo within 5 Business Days of such termination; provided that Apollo has the right to direct payment of the Break Fee to any entity related to Apollo, and the Issuer shall pay the Break Fee, to any such entity.

13.5 No further liability

Subject to clause 13.6, despite anything else contained in this Agreement:

- (a) **(No break fee):** no Break Fee is payable if the Transaction proceeds to completion; and
- (b) **(No further liability):** if the Issuer becomes liable to pay the Break Fee under clause 13.4 and pays the Break Fee to Apollo, the Issuer will have no further liability or obligations under this Agreement whatsoever, and any claims or liabilities which had arisen prior to such payment will immediately lapse in respect of the matters as a result of which the Issuer is liable to pay the Break Fee.

13.6 Limit on liability

- (a) **(Limit on liability):** Subject to clause 13.6(b), to the maximum extent permitted by law, no party shall in any event be liable under this Agreement for any loss or damage which is too remote, including:

- (i) loss of revenue (other than revenue constituting part of the consideration under this Agreement);
- (ii) loss or denial of opportunity;
- (iii) loss of access to markets;
- (iv) loss of goodwill;
- (v) loss of business reputation,
- (vi) increased overhead costs; and
- (vii) all loss which is unforeseeable,

regardless of whether the claim for loss or damage is made for breach of contract or otherwise.

- (b) **(Excluded Loss):** Clause 13.6(a) shall not apply in respect of:

- (i) a failure of the Issuer to issue Notes to a Subscriber, or to register an issue of Notes to a Subscriber;
- (ii) a failure of the Issuer to issue Ordinary Shares which a Convertible Noteholder is entitled to receive on the conversion of any of its Convertible Notes in accordance with the relevant Conversion Notice;
- (iii) a failure of the Issuer to pay interest in respect of Convertible Notes; or
- (iv) the fraud, wilful misconduct or wilful default of the Issuer.

- (c) **(Adequacy of damages):** The parties acknowledge and agree that damages may not be an adequate remedy for any breach of this Agreement, and that a person may seek any remedy, including an order of specific performance, in respect of such breach. For the avoidance of doubt, this provision does not prohibit or preclude a party to a suit for specific performance submitting that damages would be an adequate remedy.

14. Assignment

14.1 Assignment by Issuer

The Issuer may assign or transfer its rights and obligations under this Agreement only with the written consent of each of the Subscribers and Apollo.

14.2 Assignment by Subscriber or Apollo

- (a) **(Assignment or transfer):** Without prejudice to each Subscriber's rights to assign or transfer any or all of the Convertible Notes in accordance with the Note Conditions, any Subscriber may assign or transfer all of its rights and obligations under this Agreement (other than any rights under clause 5), upon written notice to the Issuer, to a Related Body Corporate of that Subscriber, any person appointed as a custodian for that Subscriber and any other Subscriber and provided for the avoidance of doubt that, the Subscriber remains liable for the actions and performance of the Related Body Corporate or custodian, unless the Related Body Corporate:
- (i) is a fund or entity that is Controlled, owned or managed by the Subscriber or an Affiliate of such fund or entity or is the beneficial owner of the investment in any such fund or entity; and
 - (ii) receives the assignment or transfer with the prior written approval of the Issuer for the purposes of this clause 14.2(a) (such approval may be given or withheld at the absolute discretion of the Issuer) and has executed such additional documentation as the Issuer may require to satisfy itself that the assignee or transferee is bound by this Agreement.
- (b) **(Prior consent):** A Subscriber or Apollo may assign or transfer its rights and obligations under this Agreement to any other person only with the prior written consent of the Issuer (such consent may be given or withheld at the absolute discretion of the Issuer).

15. Limitation on Obligations

- (a) **(No Obligation to comply):** Nothing in this Agreement or any other Transaction Document shall require a Director or an officer, trustee, responsible entity, custodian of, or investor in the Issuer or a fund or trust managed by the Issuer to breach any fiduciary duty applicable to the Issuer or any such Director, officer, trustee, responsible entity, custodian or investor, as the case may be. Accordingly, Apollo and each Subscriber acknowledges and agrees that:
- (i) the Issuer may be prevented from performing or complying with any of its duties or obligations under this Agreement or any other Transaction Document (including its obligations under clauses 5.2 and 5.3) as a result of such restriction; and
 - (ii) the Issuer shall not be required to perform or comply with any such duties or obligations so long as any such restriction applies.
- (b) **(Notice):** To the maximum extent practicable without breaching, or causing a breach of, the fiduciary duties referred to in clause 15(a), the Issuer agrees that it will:
- (i) use its reasonable endeavours to procure that the Issuer complies with (A) its obligations under this Agreement (including its obligations under clauses 5.2 and 5.3) and (B) its obligations to Apollo under any other

Transaction Document, in each case, in a manner that would not require a person referred to in clause 15(a) to breach any fiduciary duty applicable to that person; and

- (ii) notify Apollo of any fact, matter or circumstance which prevents the Issuer from complying with its obligations under this Agreement (including its obligations under clauses 5.2 and 5.3) or its obligations to Apollo under any other Transaction Document as a result of the operation of clause 15(a).

16. Tax Provisions

16.1 CFC Provisions

No later than two (2) months following the end of the Issuer's taxable year, the Issuer shall provide such information as is reasonably available to the Issuer regarding the stockholders of Issuer as of the last day of such prior taxable year, their status as United States Persons as defined in section 7701(a)(3) of the Code on such date and their direct and indirect owners, taking into account the relationships and attribution rules described in section 958 of the Code. The Issuer and the Subscribers will reasonably cooperate to make a determination whether the Issuer constitutes a CFC on the last day of such prior taxable year; provided that no Subscriber shall be required to provide any information that it reasonably determines is confidential. Upon a determination by the Issuer, Apollo, or any taxing authority that the Issuer is a CFC for any taxable year, the Issuer shall furnish to each Subscriber upon its reasonable request, on a timely basis, (i) all information necessary to satisfy the U.S. income tax return filing requirements of such Subscriber (or its owners) arising from its investment in the Issuer and relating to the Issuer or any of its subsidiaries' classification as a CFC, and (ii) the amount, if any, of any Subpart F income of the Issuer and its subsidiaries. The Issuer will provide prompt written notice to each Subscriber if at any time the Issuer becomes aware that it has become or ceased to be a CFC. Notwithstanding the foregoing, the Issuer shall not be liable to a Subscriber for any failure to provide the appropriate CFC information described above to the extent the Issuer has not received from such Subscriber requesting the CFC information the facts required for the Issuer to properly calculate the requested CFC information.

16.2 Passive Foreign Investment Company

The Issuer shall make due inquiry with its tax advisors on at least an annual basis regarding its status as a PFIC, and if the Issuer is informed by its tax advisors that any such entity has become a PFIC, or that there is a likelihood of any such entity being classified as a PFIC for any taxable year, the Issuer shall promptly notify each Subscriber of such status or risk, as the case may be. The Issuer agrees to make available to each Subscriber upon request, the books and records of the Issuer and any of its subsidiaries, and to provide information to each Subscriber pertinent to the Issuer's status or potential status as a PFIC. Upon a determination by the Issuer, any Subscriber or any taxing authority that the Issuer has been or is likely to become a PFIC, the Issuer will provide each Subscriber with all information reasonably available to the Issuer to permit such Subscriber (and its owners) to (a) accurately prepare all tax returns and comply with any reporting requirements as a result of such determination and (b) make any election (including, without limitation, a "qualified electing fund" election under Section 1295 of the Code), with respect to the Issuer, and comply with any reporting or other requirements incident to such election. If a determination is made by the Issuer, any Subscriber or any taxing authority that the Issuer or any of its subsidiaries is a PFIC for a particular year, then for such year and for each year thereafter, the Issuer will also provide each Subscriber with a completed "PFIC Annual Information Statement" as required by Treasury Regulation Section 1.1295-1(g) and otherwise comply with applicable Treasury Regulation requirements.

16.3 Recordkeeping

The Issuer will comply and will cause each of its subsidiaries to comply with all record-keeping, reporting, and other requests necessary for the Issuer and its subsidiaries to allow the Subscribers to comply with any applicable U.S. federal income tax law.

16.4 Equity Classification

It is the intention of the parties hereto that the Convertible Notes and the Ordinary Shares are treated as equity for all tax purposes, and none of the parties shall take a position inconsistent with such classification for any tax purposes, except as otherwise required pursuant to a final determination by a court of competent jurisdiction.

16.5 Survival

The provisions of this clause 16 shall survive after the Issue Date and after conversion of the Convertible Notes.

17. Miscellaneous

17.1 Amendment

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

17.2 No Waiver

A single or partial exercise of a right, power or remedy will not preclude any further or other exercise of that or any other right, power or remedy.

17.3 Remedies Cumulative

The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law independently of this Agreement.

17.4 Continuing Indemnities

Each indemnity in this Agreement is a continuing obligation separate and independent from the other obligations obtained in this Agreement and will survive the termination of this Agreement and will not be read down by any other indemnity contained in this Agreement.

17.5 Waiver and Variation

A provision of or a right created under this Agreement may not be waived or varied except if the waiver or variation is in writing signed by the party or parties to be bound.

17.6 Illegality

If at any time it is unlawful for any party to perform any of its obligations under this Agreement in the jurisdiction in which the obligations are to be performed, that party will not be obliged to perform those obligations.

17.7 Governing Law

This Agreement will be governed by, and construed in accordance with, the laws applying in the State of New South Wales.

17.8 Jurisdiction

The Issuer, Apollo and each Subscriber irrevocably:

- (a) **(Non-exclusive jurisdiction):** submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Agreement and the Convertible Notes; and
- (b) **(Waiver of objection):** waives any objection it may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.8(a).

17.9 Severability of Provisions

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor the validity or enforceability of that provision in any other jurisdiction.

17.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which counterparts taken together shall constitute one and the same instrument.

17.11 Contra proferentem

Each provision of this Agreement will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

17.12 Entire Agreement

To the extent permitted by law, in relation to their subject matter, the Transaction Documents:

- (a) **(Embody entire understanding):** embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(Supersede prior agreement):** supersede any prior written or other agreement of the parties or their related bodies.

17.13 Confidentiality

The Issuer must not without the consent of Apollo, and no Subscriber may without the consent of the Issuer, disclose, publish or communicate or permit the disclosure, publication or communication of any provision of this Agreement or any information provided or furnished in accordance with this Agreement except to such of their respective officers, employees or advisers for whom it is necessary to have access to it (and with such access provided on a confidential basis) or as required by law or as required to enforce its rights under this Agreement.

Schedule 1 – Option Terms

1. Interpretation

1.1 Definitions

In these terms:

Applicable Law means the Corporations Act and the Listing Rules.

Blackout Date means a date that falls within any of the following periods:

- (a) the period from the date which is 10 Business Days before the last date of the Issuer's financial year until the date preceding lodgement of the Issuer's annual financial reports with ASIC;
- (b) the period from the date which is 10 Business Days before the last date of the Issuer's financial half-year until the date preceding lodgement of the Issuer's half-year financial report with ASIC; or
- (c) any period during which the Board determines (acting reasonably) that there is "excluded information" as defined in section 708A(7) of the Corporations Act that would be required to be included in a notice by the Issuer under section 708A(6) of the Corporations Act, provided that:
 - (i) the Issuer notifies the Holder of such determination within 2 Business Days after the Issuer's receipt of the Exercise Notice from that Holder;
 - (ii) no more than 3 months has elapsed since the Issuer first provided the Holder with notification under sub-paragraph (c)(i) of its determination in relation to the circumstance constituting "excluded information"; and
 - (iii) the Board may only make a new determination under sub-paragraph (c) if a new circumstance arises which is materially unrelated to the circumstance the subject of the Board's previous determination.

Bonus Issue means a bonus issue of Ordinary Shares or other securities convertible into Ordinary Shares pro rata to holders of Ordinary Shares (other than an issue in lieu of dividends or by way of dividend reinvestment pursuant to any election by a holder of Ordinary Shares).

Exercise Period means the period commencing on the date of issue of the Option and ending on the Expiry Date.

Exercise Price means A\$8.00 per Option (as adjusted under clause 6).

Expiry Date means the date falling on the 8th anniversary of the Issue Date.

Expiry Time means 5:00 pm (Sydney time) on the Expiry Date.

Holder means, in respect of an Option, the person recorded as the holder of that Option in the Register.

Issuer means HFA Holdings Limited (ABN 47 101 585 737).

Market Price has the meaning given to that term in the Listing Rules.

Note Subscription Agreement means the agreement entitled "Note Subscription Agreement" dated on or about 3 December 2010 between each Subscriber named therein, Apollo and the Issuer.

Option means an option issued pursuant to these terms.

Pro Rata Issue has the meaning given in the Listing Rules.

Quarter means a period from (and inclusive of):

- (a) 1 January to 31 March;
- (b) 1 April to 30 June;
- (c) 1 July to 30 September;
- (d) 1 October to 31 December.

Register means the Issuer's register of optionholders maintained under the Corporations Act.

Regulation S means Regulation S under the Securities Act.

Securities Act means the U.S. Securities Act of 1933, as amended.

U.S. Person means U.S. person as defined in Regulation S.

1.2 Interpretation

Unless the context indicates a contrary intention, in these terms:

- (a) a reference to any statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (b) a reference to the Listing Rules includes any amendment or replacement of those rules from time to time;
- (c) a reference to the Applicable Law is to the Applicable Law in force in relation to the Issuer after taking into account any modification, waiver or exemption which is in force either generally or in relation to the Issuer; and
- (d) a word or phrase given a meaning in the Applicable Law has the same meaning in these terms where it relates to the same matters as the matters for which it is defined in the Applicable Law, unless that word or phrase is otherwise defined in these terms.

1.3 Note Subscription Agreement Definitions

Unless defined in this Agreement, words and phrases defined in the Note Subscription Agreement (including definitions incorporated by reference therein) have the same meaning in these terms. Where there is any inconsistency in a definition between these terms and the Note Subscription Agreement, these terms prevails.

2. Options

2.1 Entitlement

Each Option entitles the Holder to acquire by way of issue 1 fully paid Ordinary Share at the Exercise Price in accordance with these terms.

2.2 No Quotation

The Options will not be quoted on ASX.

2.3 Certificates

The Issuer must send to the Holder a certificate for the Options within 10 Business Days, which will bear the following legend, unless otherwise agreed by the Issuer:

"THE OPTIONS REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE THEREOF HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED BY THIS LEGEND. THE HOLDER HEREOF, BY ITS ACCEPTANCE OF THIS CERTIFICATE, REPRESENTS, ACKNOWLEDGES AND AGREES THAT IT WILL NOT OFFER, SELL, PLEDGE, TRANSFER OR OTHERWISE DISPOSE OF THESE OPTIONS, EXCEPT (I) TO THE ISSUER OR A SUBSIDIARY OF THE ISSUER; (II) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (III) TO A PERSON LOCATED OUTSIDE THE UNITED STATES THAT IS NEITHER A U.S. PERSON NOR A PERSON ACTING FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON, THAT IS ACQUIRING THE OPTIONS IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S) MEETING THE REQUIREMENTS OF REGULATION S; (IV) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (V) IN A TRANSACTION OTHERWISE EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND, IN EACH CASE, SUCH OFFER, SALE, PLEDGE OR TRANSFER MUST BE MADE IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. OFFERS, SALES, PLEDGES OR TRANSFERS PURSUANT TO (V) ABOVE MUST BE MADE ONLY AFTER THE PURCHASER OF THE OPTIONS HAS DELIVERED TO THE ISSUER SUCH INFORMATION, CERTIFICATES AND OPINIONS AS THE ISSUER MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS, WHICH MAY INCLUDE AN OPINION OF COUNSEL AS TO THE AVAILABILITY OF THE RELEVANT EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN A FORM REASONABLY SATISFACTORY TO THE ISSUER. THE HOLDER HEREOF ACKNOWLEDGES THAT THE OPTIONS ARE NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED HEREIN. THE HOLDER HEREOF AGREES TO PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS SET OUT HEREIN TO THE TRANSFEREE. THE HOLDER HEREOF ACKNOWLEDGES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ISSUER RESERVES THE RIGHT TO REFUSE TO RECORD ANY TRANSFER OF OPTIONS THAT ARE SOLD OR OTHERWISE TRANSFERRED IN A MANNER OTHER THAN THAT SPECIFIED IN THIS LEGEND"

2.4 Transfer

- (a) **(Consent):** Subject to the Applicable Law and clause 2.4(b), the Holder may transfer some or all of the Options at any time before the Expiry Time by a written instrument of transfer in compliance with clause 2.4(c) and only with the prior written consent of the Issuer.
- (b) **(US transfer restrictions):** The offer and sale of the Options have not been, and will not be, registered under the Securities Act, and the Options can only be offered, sold, pledged, transferred or otherwise disposed of if such Options are offered, sold,

pledged, transferred or otherwise disposed of by the Holder (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii) to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Options in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. Offers, sales, pledges or transfers pursuant to (v) above must be made only after the purchaser of the Options has delivered to the Issuer such information, certificates and opinions as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions, which may include an opinion of counsel as to the availability of the relevant exemption from the registration requirements of the Securities Act in a form reasonably satisfactory to the Issuer. Each transferor of the Options shall provide notice of the transfer restrictions set out herein to the transferee.

- (c) **(Particulars):** An instrument of transfer of a Option must be:
- (i) in any usual form or in any other form approved by the Board that is otherwise permitted by law, provided that in each case the form includes the representations, warranties and covenants set forth in Annexure A;
 - (ii) executed by or on behalf of the transferor and the transferee unless the Corporations Act provides otherwise or the Board has resolved that the execution of the transferee is not required;
 - (iii) duly stamped, if required by law; and
 - (iv) delivered to the Issuer, at the place where the Register is kept, together with the certificate of the Option to be transferred and any other evidence as the Board requires to prove the title of the transferor to that Option, the right of the transferor to transfer that Option and the proper execution of the instrument of transfer.
- (d) **(Non-refusal):** The Issuer must not refuse or fail to register a transfer of Options that complies with clauses 2.4(b) and (c), except as set forth in clauses 2.4(e) and (f).
- (e) **(Board resolution):** The Issuer may refuse to register a transfer of Options where the Applicable Law permits the Issuer to do so and the Board so resolves.
- (f) **(Applicable Law):** The Issuer must refuse to register a transfer of Options where the Applicable Law requires the Issuer to do so or the transfer does not comply with clause 2.4(b) or (c).

2.5 Expiry

An Option expires at the Expiry Time.

2.6 Notices of meeting

The Issuer must give notices of meetings of members of the Issuer (and any financial reports required to be laid before those meetings) to the Holder at the same time those documents are given to members of the Issuer.

3. Exercise

3.1 Time of exercise

- (a) **(Expiry Time):** Subject to clauses 3.1(b), 3.2, 3.3 and 3.4, a Holder may exercise some or all of the Options at any time until the Expiry Time.
- (b) **(Multiples):** A Holder must exercise Options in multiples of 3,125,000 Options, unless the holding is less than 3,125,000, in which case all Options must be exercised.

3.2 Exercise of Options

- (a) **(Exercise of Options):** Each Option is only exercisable during the Exercise Period by the Holder giving an Exercise Notice to the Issuer in respect of that Option to the extent that the Exercise Notice is effective in accordance with clauses 3.1(b), 3.2, 3.3 and 3.4.
- (b) **(Exercise on a Blackout Date):** An Exercise Notice in respect of any Option that is duly completed, executed and given to the Issuer by the Holder and received by the Issuer on a Blackout Date during an Exercise Period, will be taken to have been given on the next day that is not a Blackout Date unless that Exercise Notice has been revoked in accordance with clause 3.3.

3.3 Restrictions on Exercise Notice

- (a) **(Non-revocable):** Subject to clauses 3.3(c), (d), (f) and (g), an Exercise Notice, once given, may not be revoked.
- (b) **(Effectiveness):** An Exercise Notice in relation to one or more Options is only effective:
 - (i) if it is given to the Issuer during the Exercise Period; and
 - (ii) complies with clauses 3.1(b) and 3.4, to the extent of the number of Options held by the Holder on the relevant Exercise Date.
- (c) **(Conflict):** If more than one Exercise Notice is properly given in respect of an Option, the Issuer, in its sole discretion, will determine which Exercise Notice is to be effective in respect of that Option for the purpose of these terms.
- (d) **(Blackout Dates):** If an Exercise Notice is given by a Holder on a Blackout Date during the Exercise Period, the Issuer must:
 - (i) within 2 Business Days after receipt of the Exercise Notice from that Holder, notify the Holder that the Exercise Notice was given on a Blackout Date (and the applicable paragraph of the definition of "Blackout Date") (**Blackout Date Notice**); and
 - (ii) notify the Holder of the next day that is not a Blackout Date by no later than 5.00pm (Sydney time) on the last day that is a Blackout Date for

that relevant period (for which the Blackout Date Notice was provided)
(End of Blackout Date Notice).

The relevant Holder may, following receipt of a Blackout Date Notice, revoke the relevant Exercise Notice at any time prior to receipt by the Holder of an End of Blackout Date Notice in which case the revoked Exercise Notice will be taken not to have been given.

- (e) **(Notice of Ineffective Exercise Notice):** If an Exercise Notice given in relation to an Option does not comply with paragraph (b) above, or if the Option has expired under clause 2.5, then the Issuer may give a notice to this effect to the relevant Holder within 2 Business Days of receipt of the ineffective Exercise Notice **(Ineffective Exercise Notice)**, accompanied by such Ineffective Exercise Notice and all documents which accompanied it to the person who gave that notice. The Ineffective Exercise Notice must set out the steps required to be taken by that Holder (if any) to cause the exercise of the Option to be effective. For the avoidance of doubt, if a Holder has issued an Ineffective Exercise Notice, that Holder may issue a further Exercise Notice in respect of the Options the subject of the Ineffective Exercise Notice.
- (f) **(One exercise per Quarter for Apollo Holders):** If during an Exercise Period a valid Exercise Notice is given (taking into account the operation of clause 3.2(b)) to the Issuer on a day during a particular Quarter by a Holder that is Apollo or an associate (as defined in section 12 of the Corporations Act) of Apollo (**Apollo Holder**):
- (i) any further and subsequent valid Exercise Notice given (taking into account the operation of clause 3.2(b)) to the Issuer on any subsequent day of that Quarter by an Apollo Holder (**Subsequent Apollo Exercise Notice**) will be taken to have been given on the first day of the following Quarter that is not a Blackout Date unless that Subsequent Apollo Exercise Notice has been revoked in accordance with this paragraph (f); and
 - (ii) the Issuer must, within 2 Business Days after receipt of the Subsequent Apollo Exercise Notice, notify the Apollo Holder (and Apollo, if the Apollo Holder is not Apollo) who gave it that the Exercise Notice is a Subsequent Apollo Exercise Notice; and
 - (iii) the Apollo Holder who gave the Subsequent Apollo Exercise Notice may revoke it at any time prior to the first day of that following Quarter that is not a Blackout Date. If the first day of the following Quarter is a Blackout Date, the Issuer must notify the Apollo Holder of the next day that is not a Blackout Date by no later than 5.00pm (Sydney time) on that day in accordance with clause 3.3(d)(ii).
- (g) **(One exercise per Quarter for Non-Apollo Holders):** If during an Exercise Period a valid Exercise Notice is given (taking into account the operation of clause 3.2(b)) to the Issuer on a day during a particular Quarter by a Holder that is not Apollo or an associate (as defined in section 12 of the Corporations Act) of Apollo (**Non-Apollo Holder**) (**Initial Non-Apollo Exercise Notice**):
- (i) the Issuer must, within 2 Business Days after receipt of that Exercise Notice, notify all Non-Apollo Holders that an Initial Non-Apollo Exercise Notice has been received during that Quarter;
 - (ii) any further and subsequent valid Exercise Notice given (taking into account the operation of clause 3.2(b)) to the Issuer by a Non-Apollo

Holder on a subsequent day of that Quarter that is more than 4 Business Days after receipt of the Initial Non-Apollo Exercise Notice (Subsequent Non-Apollo Exercise Notice) will be taken to have been given on the first day of the following Quarter that is not a Blackout Date unless that Subsequent Non-Apollo Exercise Notice has been revoked in accordance with this paragraph (g);

- (iii) the Issuer must, within 2 Business Days after receipt of any Subsequent Non-Apollo Exercise Notice, notify the Non-Apollo Holder who gave it that the Exercise Notice is a Subsequent Non-Apollo Exercise Notice; and
- (iv) the Non-Apollo Holder who gave the Subsequent Non-Apollo Exercise Notice may revoke it at any time prior to the first day of that following Quarter that is not a Blackout Date. If the first day of the following Quarter is a Blackout Date, the Issuer must notify the Non-Apollo Holder of the next day that is not a Blackout Date by no later than 5.00pm (Sydney time) on that day in accordance with clause 3.3(d)(ii).

3.4 Manner of exercise

The Holder may only exercise Options at a time when the Options can be exercised in the following circumstances:

- (a) **(Exercise Notice):** by delivery to the Issuer of a notice addressed to the Issuer and signed by the Holder stating the Holder exercises the Options and specifying the number of Options exercised and which notice includes the representations, warranties and covenants set forth in Annexure B (an Exercise Notice);
- (b) **(Payment):** by payment to the Issuer of the Exercise Price for each Option exercised; and
- (c) **(Certificate):** the certificate for the Options or, if the certificate for the Options has been lost, mutilated or destroyed, by a declaration to the Issuer to that effect, accompanied by an indemnity in favour of the Issuer against any loss, costs or expenses which might be incurred by the Issuer as a consequence of its relying on the declaration, that the certificate has been lost, mutilated or destroyed.

3.5 Effective date

An exercise of an Option which complies with clauses 3.2, 3.3 and 3.4 takes effect in accordance with those clauses, provided that if payment was not made in immediately available cleared funds, the Issuer receives immediately available cleared funds from that payment within 5 Business Days of the Exercise Notice becoming effective pursuant to this clause 3, where the Issuer has promptly presented the payment for clearance.

4. Issue of Shares

4.1 Issue

- (a) **(Ordinary Shares):** If the Issuer receives an Exercise Notice in respect of the Options which complies with clause 3, and it does not issue an Ineffective Exercise Notice in relation to such Exercise Notice in accordance with clause 3.3(e), and the Exercise Notice has not been revoked by the Holder in accordance with clause 3.3, the Issuer must issue to the Holder the Ordinary Shares to be issued on exercise of an Option within 15 Business Days of the date on which the Exercise Notice took effect, or within 5 Business Days of that date if it occurs after announcement but before the record date or withdrawal of a Pro Rata Issue by the Issuer.

- (b) **(Holding statement):** Subject to the Applicable Law, the Issuer must deliver to the Holder a holding statement or certificate (as the case maybe) for the Ordinary Shares issued on exercise of an Option within 5 Business Days of their issue.

4.2 Ranking

- (a) **(Equal ranking):** Subject to clause 4.2(b), all Ordinary Shares issued pursuant to the exercise of Options will, subject to the constitution of the Issuer, rank in all respects (including rights to dividends) equally with the existing Ordinary Shares at the date of issue.
- (b) **(Dividends):** An Ordinary Share issued pursuant to the exercise of an Option is only entitled to receive a dividend where that Option is exercised and the Ordinary Share is issued on or before the record date for that dividend.

4.3 Quotation

Following the issue of Ordinary Shares pursuant to the exercise of an Option the Issuer must immediately:

- (a) **(ASX quotation):** apply to ASX for quotation of those Ordinary Shares; and
- (b) **(ASX notice):** give to ASX a notice in accordance with the requirements of sections 708A(5) and 708A(6) of the Corporations Act.

4.4 US Selling Restrictions

As a condition of exercising an Option, the Holder agrees that, in the future, if the Holder or any other person for whose account or benefit the Holder is acquiring the Ordinary Shares, decides to sell or otherwise transfer any Ordinary Shares it will only do so and the Holder will inform such other person that it may only do so, in accordance with the restrictions in this clause 4.4.

The offer and sale of the Ordinary Shares issuable upon exercise of the Options have not been, and will not be, registered under the Securities Act, and such Ordinary Shares can only be offered, sold, pledged, transferred or otherwise disposed of if such Ordinary Shares are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii) (A) in standard (regular way) transactions on the ASX where neither the seller nor any person acting on its behalf knows, or has reason to know, that the sale has been prearranged with, or that the purchaser is, a person in the United States or is a U.S. Person or is acting for the account or benefit of, a person in the United States or a U.S. Person or (B) otherwise to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Ordinary Shares in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. Offers, sales, pledges or transfers pursuant to (v) above must be made only after the purchaser of the Ordinary Shares has delivered to the Issuer such information, certificates and opinions as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions, which may include an opinion of counsel as to the availability of the relevant exemption from the registration requirements of the Securities Act in a form reasonably satisfactory to the Issuer.

Notwithstanding anything to the contrary in the foregoing, the Ordinary Shares may not be deposited into any unrestricted American Depositary Receipt facility. Each transferor of the Ordinary Shares shall provide notice of the transfer restrictions set out herein to the transferee.

To the maximum extent permitted by law, the Issuer reserves the right to refuse to record any transfer of Ordinary Shares that are sold or otherwise transferred in a manner other than that specified in this clause 4.4.

5. Participation rights

The Holder may only participate in new issues of Ordinary Shares by reason of an Option if the Holder exercises that Option and becomes the holder of Ordinary Shares on or prior to the record date for the new issue of Ordinary Shares.

6. Adjustments

- (a) **(Pro Rata Issue):** If the Issuer makes a Pro Rata Issue, the Exercise Price of each Option will be reduced with the new exercise price of each Option to be calculated in accordance with the following formula:

$$NP = OP - \frac{E[P - (S + D)]}{N + 1}$$

where:

NP = the new exercise price of the Option

OP = the old exercise price of the Option

E = the number of underlying securities into which one Option is exercisable

P = the average Market Price per share (weighted by volume) of the underlying securities during the 5 trading days ending on the day before the ex rights date or ex entitlements date

S = the subscription price for a security to be issued under the Pro Rata Issue

D = the amount of any dividend due but not yet paid on the existing underlying securities (except those securities to be issued under the Pro Rata Issue)

N = the number of existing securities with rights or entitlements that must be held to receive a right to one new security under the Pro Rata Issue

- (b) **(No change to number):** No change will be made to the number of Ordinary Shares to which the Holder is entitled.
- (c) **(Bonus Issue):** If the Issuer makes a Bonus Issue, the number of Ordinary Shares issued on exercise of each Option will be increased by the number of bonus Ordinary Shares that the Holder would have received if the Option had been exercised prior to the record date for the Bonus Issue. No change will be made to the Exercise Price.

7. Reorganisation

If there is a reorganisation (including consolidation, sub-division, reduction or return) of the share capital of the Issuer, the rights of Holders in respect of any unexercised Options will be changed to the extent necessary to comply with the Listing Rules applying to a reorganisation of capital at the time of the reorganisation.

8. Notices

8.1 Method of delivery

Any notice, Exercise Notice, request, certificate, approval, demand, consent or other communication (a **Notice**) to be given under these Option Terms must:

- (a) **(Authorised Officer):** be in writing and, except in the case of communication by email, signed by an Authorised Officer of the party giving the same; and
- (b) **(Delivery):** be:
 - (i) left at the address of the addressee;
 - (ii) sent by prepaid ordinary post to the address of the addressee;
 - (iii) sent by facsimile to the facsimile number of the addressee; or
 - (iv) sent by email by an Authorised Officer of the party giving the same to the addressee's specified email address,

notified by that addressee from time to time to the other parties to these Option Terms as its address for service pursuant to these Option Terms.

8.2 Deemed receipt

A Notice under these Option Terms is deemed to have been received:

- (a) **(Delivery):** where delivered in person, upon receipt;
- (b) **(Post):** where sent by post, on the 3rd (or 7th if posted internationally) day after posting;
- (c) **(Fax):** where sent by facsimile, on production by the dispatching facsimile machine of a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) **(Email):** where sent by email, on the date that the email is received.

However, if the time of deemed receipt of any Notice is not before 5.00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day.

8.3 Email

A Notice under these Option Terms may only be given by email where the recipient has separately agreed that that communication, or communications of that type, may be given by email. For the avoidance of doubt, any such agreement must be in writing and refer specifically to these Option Terms, and no such agreement may be implied, inferred or deemed to arise as a result of any other conduct or dealing, including the use by employees or representatives of email as a means of communication with other parties for the purposes of the administration of these Option Terms.

9. Governing law

These terms will be governed by, and construed in accordance with, the laws applying in the State of New South Wales.

10. Duties and taxes

The Issuer is not responsible for any duties or taxes which may become payable in connection with the issue of Ordinary Shares pursuant to an exercise of the Options or any other dealing with the Options or Ordinary Shares.

Annexure A

List of Representations to be included in each instrument transferring Options pursuant to clause 2.4(c)

Reference is made to the Option Terms which are set out in Schedule 1 to the Note Subscription Agreement dated 3 December 2010 (the **Option Terms**). Capitalised terms used but not defined in this Certificate shall have the meaning given to them in the Option Terms.

The undersigned, [] (the **Transferee**) makes the following certifications, representations and warranties with respect to [insert number of Options] Options of HFA Holdings Limited (the **Issuer**), which are being purchased by the Transferee:

- (a) the Transferee acknowledges that the Options and any Ordinary Shares issued pursuant to the exercise of an Option have not been, and will not be, registered under the Securities Act;
- (b) the Transferee is either:
 - (i) a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A, or
 - (ii) a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is purchasing the Options and any Ordinary Shares issued pursuant to the exercise of an Option in an offshore transaction meeting the requirements of Regulation S;
- (c) the Transferee acknowledges that the offer and sale of the Options have not been, and will not be, registered under the Securities Act, and the Options can only be offered, sold, pledged, transferred or otherwise disposed of if such Options are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii) to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Options in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. Offers, sales, pledges or transfers pursuant to (v) above must be made only after the purchaser of the Options has delivered to the Issuer such information, certificates and opinions as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions, which may include an opinion of counsel as to the availability of the relevant exemption from the registration requirements of the Securities Act in a form reasonably satisfactory to the Issuer. Each transferor of the Options shall provide notice of the transfer restrictions set out herein to the transferee. The Transferee understands and

acknowledges that the Issuer has the right to instruct the transfer agent for Options not to record a transfer by any person without first being notified by the Issuer that it is satisfied that such transfer is exempt from or not subject to registration under the Securities Act and any applicable state securities laws;

(d) the Transferee acknowledges that the offer and sale of the Ordinary Shares issuable upon exercise of the Options have not been, and will not be, registered under the Securities Act, and such Ordinary Shares can only be offered, sold, pledged, transferred or otherwise disposed of if such Ordinary Shares are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii)(A) in standard (regular way) transactions on the ASX where neither the seller nor any person acting on its behalf knows, or has reason to know, that the sale has been prearranged with, or that the purchaser is, a person in the United States or is a U.S. Person or is acting for the account or benefit of, a person in the United States or a U.S. Person or (B) otherwise to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Ordinary Shares in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. Offers, sales, pledges or transfers pursuant to (v) above must be made only after the purchaser of the Ordinary Shares has delivered to the Issuer such information, certificates and opinions as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions, which may include an opinion of counsel as to the availability of the relevant exemption from the registration requirements of the Securities Act in a form reasonably satisfactory to the Issuer. The Transferee acknowledges that, notwithstanding anything to the contrary in the foregoing, the Ordinary Shares may not be deposited into any unrestricted American Depositary Receipt facility. Each transferor of the Ordinary Shares shall provide notice of the transfer restrictions set out herein to the transferee. The Transferee acknowledges that, to the maximum extent permitted by law, the Issuer reserves the right to refuse to record any transfer of Ordinary Shares that are sold or otherwise transferred in a manner other than that specified in this paragraph; and

(e) the Transferee understands that the Options will bear a legend to the following effect unless otherwise agreed by the Issuer:

THE OPTIONS REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE THEREOF HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED BY THIS LEGEND. THE HOLDER HEREOF, BY ITS ACCEPTANCE OF THIS CERTIFICATE, REPRESENTS, ACKNOWLEDGES AND AGREES THAT IT WILL NOT OFFER, SELL, PLEDGE, TRANSFER OR OTHERWISE DISPOSE OF THESE OPTIONS, EXCEPT (I) TO THE ISSUER OR A SUBSIDIARY OF THE ISSUER; (II) PURSUANT TO A REGISTRATION STATEMENT THAT

HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (III) TO A PERSON LOCATED OUTSIDE THE UNITED STATES THAT IS NEITHER A U.S. PERSON NOR A PERSON ACTING FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON, THAT IS ACQUIRING THE OPTIONS IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S) MEETING THE REQUIREMENTS OF REGULATION S; (IV) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (V) IN A TRANSACTION OTHERWISE EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND, IN EACH CASE, SUCH OFFER, SALE, PLEDGE OR TRANSFER MUST BE MADE IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. OFFERS, SALES, PLEDGES OR TRANSFERS PURSUANT TO (V) ABOVE MUST BE MADE ONLY AFTER THE PURCHASER OF THE OPTIONS HAS DELIVERED TO THE ISSUER SUCH INFORMATION, CERTIFICATES AND OPINIONS AS THE ISSUER MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS, WHICH MAY INCLUDE AN OPINION OF COUNSEL AS TO THE AVAILABILITY OF THE RELEVANT EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN A FORM REASONABLY SATISFACTORY TO THE ISSUER. THE HOLDER HEREOF ACKNOWLEDGES THAT THE OPTIONS ARE NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED HEREIN. THE HOLDER HEREOF AGREES TO PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS SET OUT HEREIN TO THE TRANSFEREE. THE HOLDER HEREOF ACKNOWLEDGES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ISSUER RESERVES THE RIGHT TO REFUSE TO RECORD ANY TRANSFER OF OPTIONS THAT ARE SOLD OR OTHERWISE TRANSFERRED IN A MANNER OTHER THAN THAT SPECIFIED IN THIS LEGEND.

The representation, warranties and statements contained in this Certificate are made for the benefit of the Transferor and Transferee, as applicable, and for the benefit of the Issuer.

TRANSFeree

By: _____
Name: _____
Title: _____

TRANSFEROR

By: _____
Name: _____
Title: _____

Annexure B

Option Exercise Notice

To: **HFA Holdings Limited**
[]

General

Any term used in this Option Notice which is defined in the Option Terms set out in Schedule 1 to the Note Subscription Agreement dated 3 December 2010 has the same meaning as in those Option Terms.

Exercise by Holder

Under clause 3 of the Option Terms, the Holder gives notice that it exercises [insert number of Options] Options and encloses:

- (a) a cheque for, or details of a wire transfer of immediately available funds in the amount of, \$[] as payment of the Exercise Price for each Option exercised; and
- (b) the certificate for the Options.

Representations and Warranties by Holder

The undersigned, [] (the **Holder**) makes the following certifications, representations and warranties with respect to [insert number of Options] Options of HFA Holdings Limited (the **Issuer**), which are being exercised by the Holder:

- (a) the Holder is either:
 - (i) an institutional "accredited investor" (an **Institutional Accredited Investor**), that satisfies one of the criteria of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the U.S. Securities Act of 1933 (the **Securities Act**), that is acquiring the Ordinary Shares for its own account or for the account or benefit of one or more persons each of whom is an Institutional Accredited Investor over which the Holder exercises sole investment direction, for investment purposes and not with a view to the resale or distribution thereof, in each case in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, or
 - (ii) a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is

acquiring the Ordinary Shares in an offshore transaction meeting the requirements of Regulation S;

- (b) the Holder is aware and acknowledges that, in connection with the Ordinary Shares issued to it on exercise of the Options, the Issuer is relying on an exemption from registration under the Securities Act. The Holder understands that the Issuer has no obligation to register the Ordinary Shares under the Securities Act or to comply with the requirements for any exemption from the registration requirements of the Securities Act;
- (c) the Holder acknowledges that the Ordinary Shares may not be offered, sold, pledged, transferred or otherwise disposed of, except pursuant to an exemption from, or in transactions not subject to, the registration requirements of the Securities Act and any other applicable securities laws. The Holder agrees that, in the future, if it or any other person for whose account or benefit it is acquiring the Ordinary Shares, decides to offer, sell, pledge transfer or otherwise dispose of the Ordinary Shares it will only do so and it will inform such other person that it may only do so, if the Ordinary Shares are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii) (A) in standard (regular way) transactions on the ASX where neither the seller nor any person acting on its behalf knows, or has reason to know, that the sale has been prearranged with, or that the purchaser is, a person in the United States or is a U.S. Person or is acting for the account or benefit of, a person in the United States or a U.S. Person or (B) otherwise to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Ordinary Shares in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. The Holder agrees that offers, sales, pledges or transfers pursuant to (v) above must be made only after the purchaser of the Ordinary Shares has delivered to the Issuer such information, certificates and opinions as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions, which may include an opinion of counsel as to the availability of the relevant exemption from the registration requirements of the Securities Act in a form reasonably satisfactory to the Issuer. The Holder acknowledges that, notwithstanding anything to the contrary in the foregoing, the Ordinary Shares may not be deposited into any unrestricted American Depositary Receipt facility. The Holder acknowledges that the Ordinary Shares are not transferable except in accordance with the restrictions described herein. The Holder agrees to provide notice of the transfer restrictions set out herein to the transferee. The Holder acknowledges that, to the maximum extent permitted by law, the Issuer reserves the right to refuse to record any transfer of Ordinary Shares that are sold or otherwise transferred in a manner other than that specified in this paragraph (c); and
- (d) the Holder acknowledges that in the event the Ordinary Shares issued upon exercise of the Options are held in certificated form, such certificated Ordinary Shares will bear a legend substantially to the following effect, for so long as they are "restricted securities" as defined in Rule 144(a)(3) under the Securities Act:

THE ORDINARY SHARES EVIDENCED HEREBY (THE "ORDINARY SHARES") HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED BY THIS LEGEND. THE HOLDER HEREOF, BY ITS ACCEPTANCE OF THIS CERTIFICATE, REPRESENTS, ACKNOWLEDGES AND AGREES THAT IT WILL ONLY OFFER, SELL, PLEDGE, TRANSFER OR OTHERWISE DISPOSE OF THE ORDINARY SHARES IF THE ORDINARY SHARES ARE OFFERED, SOLD, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF (I) TO THE ISSUER OR A SUBSIDIARY OF THE ISSUER; (II) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (III)(A) IN STANDARD (REGULAR WAY) TRANSACTIONS ON THE AUSTRALIAN SECURITIES EXCHANGE WHERE NEITHER THE SELLER NOR ANY PERSON ACTING ON ITS BEHALF KNOWS, OR HAS REASON TO KNOW, THAT THE SALE HAS BEEN PREARRANGED WITH, OR THAT THE PURCHASER IS, A PERSON IN THE UNITED STATES OR IS A U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT ("REGULATION S")) (A "U.S. PERSON") OR IS ACTING FOR THE ACCOUNT OR BENEFIT OF, A PERSON IN THE UNITED STATES OR A U.S. PERSON OR (B) OTHERWISE TO A PERSON LOCATED OUTSIDE THE UNITED STATES THAT IS NEITHER A U.S. PERSON NOR A PERSON ACTING FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON, THAT IS ACQUIRING THE ORDINARY SHARES IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S) MEETING THE REQUIREMENTS OF REGULATION S; (IV) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (V) IN A TRANSACTION OTHERWISE EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND, IN EACH CASE, SUCH OFFER, SALE, PLEDGE OR TRANSFER MUST BE MADE IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. OFFERS, SALES, PLEDGES OR TRANSFERS PURSUANT TO (V) ABOVE MUST BE MADE ONLY AFTER THE PURCHASER OF THE ORDINARY SHARES HAS DELIVERED TO THE ISSUER SUCH INFORMATION, CERTIFICATES AND OPINIONS AS THE ISSUER MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS, WHICH MAY INCLUDE AN OPINION OF COUNSEL AS TO THE AVAILABILITY OF THE RELEVANT EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN A FORM REASONABLY SATISFACTORY TO THE ISSUER. THE HOLDER HEREOF ACKNOWLEDGES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE ORDINARY SHARES MAY NOT BE DEPOSITED INTO ANY UNRESTRICTED AMERICAN DEPOSITARY RECEIPT FACILITY. THE HOLDER HEREOF ACKNOWLEDGES THAT THE ORDINARY SHARES ARE NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED HEREIN. THE HOLDER HEREOF AGREES TO PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS SET OUT HEREIN TO THE TRANSFEREE. THE HOLDER

HEREOF ACKNOWLEDGES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ISSUER RESERVES THE RIGHT TO REFUSE TO RECORD ANY TRANSFER OF ORDINARY SHARES THAT ARE SOLD OR OTHERWISE TRANSFERRED IN A MANNER OTHER THAN THAT SPECIFIED IN THIS LEGEND.

The representation, warranties and statements contained in this Certificate are made for the benefit of the Issuer.

date _____

sign here ► _____

print name _____

Schedule 2 – Key Employees

Sean G. McGould

J. Scott Perkins

Kelly R. Perkins

Robert P. Swan

Jack W. Swan

Schedule 3 – Announcement

Schedule 4 - ROFR

AGREED FORM

RIGHT OF FIRST REFUSAL AGREEMENT, dated as of December [], 2010 (this "Agreement"), by and among the Rightholder (as defined below) and the Specified Shareholders (as defined below).

WHEREAS, each Specified Shareholder is the beneficial owner of certain Ordinary Shares (as defined below), and of options or other rights to purchase or otherwise acquire Ordinary Shares;

WHEREAS, the Company (as defined below) and the Rightholder are parties to that certain Subscription Agreement, dated as of the date hereof (the "Subscription Agreement"), pursuant to which the Rightholder has agreed, subject to the terms and conditions set forth therein, to purchase Notes (as defined below);

WHEREAS, as an inducement to the Rightholder to purchase the Notes, the Specified Shareholders have agreed to grant the rights set forth herein; and

WHEREAS, this Agreement constitutes the "ROFR" as contemplated by the Deed Poll.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Rightholder and the Specified Shareholders each hereby agree as follows:

1. Definitions.

"Affiliate" means, as to any Person, any Person which directly or indirectly controls, is controlled by, or is under common control with such Person. For purposes of this definition, "control" of a Person shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by ownership of voting stock, by contract or otherwise.

"Agreement" has the meaning provided in the caption hereto.

"Applicable Law" has the meaning provided in the Deed Poll.

"ASIC Act" means the Australian Securities and Investments Commission Act 2001 (Commonwealth).

"ASX" means ASX Limited or where the context requires, the financial market operated by it.

"ASX Listing Rules" means the listing rules of ASX, as in effect from time to time.

"ASX Market Participant" means a Market Participant as defined in the ASX Operating Rules.

"ASX Operating Rules" means the rules of ASX Operations Pty Ltd (ACN 004 523 782).

"ASX Settlement Operating Rules" means the operating rules of ASX Settlement Pty Ltd (ACN 008 504 532).

"Business Day" means a day on which banks and stock exchanges are open for business in New York (excluding Saturdays, Sundays and public holidays).

"CHESS Subregister" has the meaning provided in the ASX Settlement Operating Rules.

"CHESS Tripartite Agreement" means an agreement under which the Rightholder or a nominee thereof controls the sending of all electronic communications which may result in a Transfer of Transfer Shares, in a form that satisfies the requirements of the ASX Listing Rules and the ASX Settlement Operating Rules.

"Company" means HFA Holdings Limited ACN 101 585 737, a corporation organized under the laws of Australia.

"Consent of Spouse" has the meaning provided in Section 5.15 below.

"Corporations Act" means the *Corporations Act 2001* (Commonwealth).

"Deed Poll" means the unsecured convertible note deed poll, dated as of the date hereof, by and among the Company and the Noteholders (as defined therein).

"Exchange" means initially the ASX or the financial market operated by it, as applicable, and any successor to such financial market or quotation system or any substitute financial market or quotation system on which trading in the Ordinary Shares occurs (provided that there is comparable liquidity relative to such Ordinary Shares on such temporary substitute financial market or quotation system as on the original Exchange).

"Holding Lock" means, in relation to a securityholding on either a CHESS Subregister or an Issuer Operated Subregister, a facility that prevents securities being deducted from, or entered into, a securityholding pursuant to a Transfer.

"Immediate Family Member" means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, of a natural person referred to herein.

"Issuer Operated Subregister" has the meaning given to it in the ASX Settlement Operating Rules.

"Lighthouse" means Lighthouse Investment Partners, LLC, a Delaware limited liability company and, as of the date of this Agreement, a wholly-owned subsidiary of the Company.

"Noncompliant Transfer" has the meaning provided in Section 2.2(b).

"Notes" means the unsecured convertible notes of the Company to be issued pursuant to the Subscription Agreement.

“Ordinary Shares” means fully paid ordinary shares in the capital of the Company.

“Per Share Market Value” means the last traded (closing) price per Ordinary Share trading on the ASX at the close of business on the Proposed Transfer Date (excluding any transactions defined in the ASX Operating Rules as “special” crossings, any crossings during any Session State of the ASX Trading Platform for Cash Market Transactions (each as defined in the ASX Operating Rules) other than an Open Session State (as defined in the ASX Operating Rules), overnight crossings, or any overseas trades or trades pursuant to the exercise of options or warrants over Ordinary Shares); provided, however, if there is no closing price on the Proposed Transfer Date, the Per Share Market Value shall mean the last traded price on the ASX prior to such date with respect to an Ordinary Share. Notwithstanding the foregoing, if the Transfer under consideration is not an on-market Transfer on the Exchange (i.e., is instead a direct Transfer to a Proposed Transferee), the Per Share Market Value shall mean the price per Ordinary Share offered by the Proposed Transferee (such direct Transfers to a Proposed Transferee shall be referred to hereinafter as **“Direct Transfers”**).

“Person” shall be construed in the broadest sense and means and includes a natural person, a partnership, a corporation, an association, a joint share company, a limited liability company, a trust, a joint venture, an unincorporated organization and any other entity and any federal, state, municipal, foreign or other government, governmental department, commission, board, bureau, agency or instrumentality, or any private or public court or tribunal.

“Private Foundation” means a private foundation organized as a nongovernmental, nonprofit organization having a principal fund managed by its own trustees or directors.

“Proposed Transfer Notice” means written notice from a Specified Shareholder setting forth (i) such Specified Shareholder’s desire to effect a Transfer, (ii) the number of Ordinary Shares proposed to be Transferred, (iii) the date of such Proposed Transfer (which may not be earlier than ten (10) Business Days from delivery of such Proposed Transfer Notice) (the date of the proposed Transfer shall be referred to as the **“Proposed Transfer Date”**), (iv) if such proposed Transfer is a Direct Transfer, the (x) price per Ordinary Share offered by the Proposed Transferee, and (y) identity of the Proposed Transferee.

“Proposed Transferee” means the Person to which the Proposed Transferor wishes to Transfer their Transfer Shares in a Direct Transfer.

“Proposed Transferor” has the meaning provided in Section 2.1(c) below.

“Purchase Price” means an amount equal to the (i) the Per Share Market Value multiplied by (ii) the number of Ordinary Shares the Rightholder elects to purchase pursuant to the terms of this Agreement.

“Rightholder” means the Person named on Schedule A hereto, each person to whom the rights and obligations of the Rightholder are assigned pursuant to Section 5.11, each person who hereafter becomes a signatory to this Agreement as a Rightholder pursuant to Section 5.11 and any one of them, as the context may require.

"Rightholder Notice" means irrevocable written notice from any Rightholder notifying the Proposed Transferor that the Rightholder desires to exercise its Right of First Refusal as to some or all of the Transfer Shares on the terms and conditions specified herein.

"Right of First Refusal" means the right, but not the obligation, to purchase some or all of the Transfer Shares with respect to a proposed Transfer by such Specified Shareholder in a Proposed Transfer Notice for the Purchase Price and in accordance with the terms and conditions specified herein; provided, however, that in the context of a Direct Transfer, if the Proposed Transferee's offer is contingent upon its ability to purchase all of the Ordinary Shares proposed to be Transferred, then the Rightholder must purchase all Ordinary Shares proposed to be Transferred in order to be able to exercise its Right of First Refusal with respect to such Ordinary Shares that are the subject of such Proposed Transfer Notice.

"Right of First Refusal Period" means, with respect to any Specified Shareholder, the period beginning on the date hereof and ending on the 2nd anniversary of the date on which such Specified Shareholder's employment (or consulting relationship or other provision of services for remuneration, if applicable) with any of the Company, Lighthouse or any of its or their direct or indirect subsidiaries or Affiliates is terminated or ceased, whether with or without cause, and regardless of the reason therefor.

"Specified Shareholders" means the persons named on Schedule B hereto, each person to whom the rights and obligations of a Specified Shareholder are validly assigned pursuant to Section 3.1, each person who hereafter becomes a signatory to this Agreement as a Specified Shareholder pursuant to Section 5.11, each person who hereafter becomes a signatory to this Agreement as a Specified Shareholder pursuant to a written joinder hereto and with the Rightholder's concurrence thereto, and any one of them, as the context may require.

"Subscription Agreement" has the meaning provided in the recitals hereto.

"Trading Day" means Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and any other day that ASX declares is not a business day.

"Transfer" means any direct or indirect (i) sale, offer to sell, assignment, conveyance, pledge, encumbrance, hypothecation, grant of an option, short sale, transfer or other disposition of Transfer Shares or any interest in Transfer Shares, (ii) agreement or commitment contemplating any of the foregoing, or (iii) reduction in such Specified Shareholder's beneficial ownership of, or interest in, Transfer Shares.

"Transfer Shares" means, with respect to each Specified Shareholder, all Ordinary Shares owned directly or indirectly by such Specified Shareholder: (i) as of the date of this Agreement and (ii) as of any later date (including, without limitation, in connection with any option exercise, lapsing of restrictions on or other vesting of restricted shares or any similar occurrence, share split, share dividend, recapitalization, reorganization, or the like), where the approval of the Company's shareholders has been obtained to permit such Ordinary Shares to be subject to this Agreement.

2. Right of First Refusal.

2.1 Grant and Exercise of Right.

(a) Condition. This Section 2 and Sections 3 and 4 below are conditional upon and have no effect until a resolution or resolutions of the Company's shareholders substantially in the form set out in Exhibit A is/are passed in accordance with item 7 in the table set out in section 611 of the Corporations Act. For the avoidance of doubt, valid approval by the Company's shareholders of this Agreement and the Right of First Refusal set forth herein is a condition precedent to the Rightholder's obligation to purchase the Notes (as set forth in the Subscription Agreement and/or the Deed Poll).

(b) Grant. Subject to Section 3 below, each Specified Shareholder hereby unconditionally and irrevocably grants to each Rightholder a Right of First Refusal during the Right of First Refusal Period.

(c) Notices: Certain Restrictions. Each Specified Shareholder proposing to effect a Transfer (including by communicating an order to an ASX Market Participant) (each, a "Proposed Transferor") must deliver a Proposed Transfer Notice to the Rightholder not later than ten (10) Business Days prior to the proposed date of consummation of such proposed Transfer. The Rightholder may exercise its Right of First Refusal by delivering a Rightholder Notice to the Proposed Transferor within ten (10) Business Days after delivery of the Proposed Transfer Notice by the Proposed Transferor, setting out the amount of Transfer Shares with respect to which the Rightholder desires to exercise such right. If the Rightholder fails to deliver the Rightholder Notice within ten (10) Business Days after delivery of the Proposed Transfer Notice by the Proposed Transferor, then the Rightholder's Right of First Refusal shall thereafter terminate with respect to all Transfer Shares listed in the Proposed Transfer Notice; provided, however, that (x) in the event of a proposed Direct Transfer with respect to which the Rightholder did not elect to exercise its Right of First Refusal, the Proposed Transferor may not Transfer such Transfer Shares for a purchase price that is below the Purchase Price set forth in the Proposed Transfer Notice and (y) if any proposed Transfer with respect to which the Rightholder did not elect to exercise its Right of First Refusal is not consummated within one hundred and twenty (120) days following expiration of such ten (10) Business Day period, any subsequent proposed Transfer of the Transfer Shares subject to such original Proposed Transfer Notice (but not subsequently Transferred within such period) shall again be subject to the Right of First Refusal set forth herein. The Specified Shareholder may withdraw its Proposed Transfer Notice at any time and retain its Transfer Shares upon written notice to the Rightholder, in which case any subsequent proposed Transfer of such Transfer Shares shall again be subject to the Right of First Refusal as set forth herein.

(d) Closing: Compliance with Laws. The closing of the purchase of Transfer Shares by the Rightholder shall take place, and all payments from the Rightholder shall have been delivered to the selling Specified Shareholder, within thirty (30) days after the delivery of the Rightholder Notice. Nothing to the contrary herein withstanding, no purchase or sale of Transfer Shares shall be effected to the extent such purchase or sale would be prohibited by Applicable Law (and, in the event of any such prohibition, the purchasing Rightholder and the

selling Specified Shareholder shall reasonably cooperate to remove any such prohibition and/or to otherwise effect such purchase and sale in compliance with Applicable Law).

(e) Deliveries. Each selling Specified Shareholder shall deliver []¹

2.2 Transfer Restriction; Effect of Failure to Comply.

(a) Restriction. From the date hereof until the expiration of the respective Right of First Refusal Period, no Specified Shareholder shall, directly or indirectly, cause or permit to be effected any Transfer, except in compliance with this Agreement. The foregoing restriction is expressly agreed to preclude engaging in any hedging or other transaction that is designed to or that reasonably could be expected to lead to or result in a sale or disposition of Transfer Shares even if such Transfer Shares would be disposed of by someone other than the respective Specified Shareholder. Such prohibited hedging or other transactions would include any short sale or any purchase, sale or grant of any right (including any put or call option) with respect to any of such Specified Shareholder's Transfer Shares or with respect to any security that includes, relates to, or derives any significant part of its value from such Transfer Shares.

(b) Equitable Relief. Each Specified Shareholder acknowledges and agrees that a Transfer of Transfer Shares other than in compliance with the terms of this Agreement (a "Noncompliant Transfer") would result in substantial harm to the Rightholder for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocably agree that the Rightholder shall be entitled to seek protective orders, injunctive relief and any and all other remedies available at law or in equity to prevent a Noncompliant Transfer as set forth in Section 5.5(b)(i) below.

3. Exempt Transfers.

3.1 Exempted Transfers. The provisions of Section 2.1 shall not apply: (a) to a pledge of Transfer Shares that creates a mere security interest in the pledged Transfer Shares, *provided that* the pledgee thereof agrees in writing in advance to be bound by and comply with all applicable provisions of this Agreement to the same extent as if it were the Specified Shareholder making such pledge; (b) in the case of a Specified Shareholder that is a natural person, upon a transfer of Transfer Shares by such Specified Shareholder to an Immediate Family Member, or any other person approved by the prior written consent of the Rightholder, or any custodian or trustee of any trust, partnership or limited liability company for the benefit of, or the ownership interests of which are owned wholly by, such Specified Shareholder or any such family members; (c) to a transfer of Transfer Shares by a Specified Shareholder to a Private Foundation organized, related to or affiliated with such Specified Shareholder; or (d) Transfers required by law, a court order or as required by a declaration, or an undertaking under section 201A of the ASIC Act to avoid a declaration of unacceptable circumstances by the Takeovers Panel; *provided that* in the case of clauses (a), (b), (c) or (d), the Specified Shareholder shall deliver prior written notice to the Rightholder of such pledge, gift or transfer and such Transfer Shares shall at all times remain subject to the terms and restrictions set forth in this Agreement

¹ Settlement mechanism to be confirmed: if shares are held on a CHESS Subregister then settlement to require demand transfer to the Rightholders' Settlement Participant.

and such transferee shall, as a condition to such issuance, deliver a counterpart signature page to this Agreement as confirmation that such transferee shall be bound by all the terms and conditions of this Agreement as a Specified Shareholder (but only with respect to the securities so transferred to the transferee and any securities received as a distribution thereto or in exchange or substitution therefor), including the obligations of a Specified Shareholder with respect to Transfers of such Transfer Shares pursuant to Section 2; and *provided, further*, in the case of any transfer pursuant to clause (b) above, that such transfer is made pursuant to a transaction in which there is no consideration actually paid for such transfer.

4. Holding Lock. Each Specified Shareholder undertakes to hold its Transfer Shares on the CHESSE Subregister and, immediately upon request by the Rightholder, to enter into a CHESSE Tripartite Agreement in the form reasonably required by the Rightholder, and irrevocably consents to the application of a Holding Lock to its Transfer Shares in the manner contemplated by the ASX Settlement Operating Rules. Each Specified Shareholder agrees that the Company may instruct its share registry to impose transfer restrictions on its Transfer Shares to enforce the provisions of this Agreement.

5. Miscellaneous.

5.1 Term. This Agreement shall automatically terminate with respect to any Specified Shareholder on the date that is twenty (20) Business Days after the expiration of the Right of First Refusal Period with respect to such Specified Shareholder (or on such later date of the consummation of any purchase and sale of Transfer Shares pursuant to notice properly given within such period).

5.2 Representations and Warranties of the Specified Shareholders. Each Specified Shareholder represents and warrants to the Rightholder that (a) such Specified Shareholder is the sole legal and beneficial owner of the shares of Transfer Shares subject to this Agreement as of the date hereof and that no other person or entity has any interest in such shares (other than a community property interest as to which the holder thereof has acknowledged and agreed in writing to the restrictions and obligations hereunder); and (b) such Specified Shareholder is duly authorized and is capable of executing and entering into this Agreement and undertaking the obligations set out in it; and (c) its entry into this Agreement will not violate applicable law, subject to Section 2.1(a), or any other agreement applicable to the Transfer of any such Specified Shareholder's Transfer Shares.

5.3 Representations and Warranties of the Rightholder. The Rightholder represents and warrants to each Specified Shareholder that (a) it is duly authorized and is capable of executing and entering into this Agreement and undertaking the obligations set out in it; and (b) its entry into this Agreement will not violate applicable law, subject to Section 2.1(a).

5.4 No Voting Rights or Control. Nothing in this Agreement confers on the Rightholder the right to vote or to control the exercise of voting rights attaching to any Ordinary Shares to which this Agreement applies.

5.5 Governing Law; Jurisdiction.

(a) Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York, without giving effect to principles of conflicts of laws thereof. Any party hereto may make service on the other parties by sending or delivering a copy of the process to the party or parties to be served at the address and in the manner provided for the giving of notices in Section 5.7.

(b) Subject to Section 5.6 below, the parties (i) hereby irrevocably and unconditionally submit to the jurisdiction of the state and federal courts located in the Southern District of New York for the purpose of any suit, action or other proceeding that seeks to prevent a Noncompliant Transfer, (ii) agree not to commence any such suit (as described in Section 5.5(b)(i) above) except in such courts, and (iii) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

5.6 Arbitration. Except with respect to any suit, action or other proceeding brought in accordance with Section 5.5(b)(i), all other disputes arising out of or based upon this Agreement shall be submitted to resolution by arbitration to be conducted in New York, New York, in accordance with the American Arbitration Association Rules then in force and the terms and conditions set forth in this Sections 5.6. The arbitration decision shall be binding upon the parties and shall be enforceable in any court of competent jurisdiction. Such decision and award may allocate the costs of such arbitration to one of the parties, equally or disproportionately between the parties.

5.7 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party hereto to be notified, (b) when sent by facsimile, if sent during normal business hours of the recipient, and if not so sent, then on the next business day, (c) three days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one business day after deposit with an internationally recognized overnight courier, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties hereto at their address as set forth on the signature pages or Schedule A or Schedule B attached hereto, or to such facsimile number or address as subsequently modified by written notice given in accordance with this Section 5.7. If notice is given to the Specified Shareholders, a copy shall also be sent to [], Attention: [], Facsimile: []. If notice is given to the Rightholder, a copy shall also be given to O'Melveny & Myers LLP, Times Square Tower, 7 Times Square, New York, New York 10036, USA, Attention: Harvey M. Eisenberg, Facsimile: +1-212-326-2061.

5.8 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) [and the CHESSTripartite Agreement] constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between any of the parties is expressly canceled.

5.9 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under 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-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of 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, shall be cumulative and not alternative.

5.10 Amendment; Waiver and Termination. This Agreement may be amended, modified or terminated (other than pursuant to Section 5.1 above) and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by (a) the Specified Shareholders holding 50% of the Ordinary Shares then held by all of the Specified Shareholders and (b) the Rightholder, except, for the avoidance of doubt, as otherwise provided in the definition of Specified Shareholder. Any amendment, modification, termination or waiver so effected shall be binding upon the Specified Shareholders, the Rightholders and all of their respective successors and permitted assigns whether or not such party, assignee or other shareholder entered into or approved such amendment, modification, termination or waiver. Notwithstanding the foregoing, (i) this Agreement may not be amended, modified or terminated and the observance of any term hereunder may not be waived with respect to any Specified Shareholder without the written consent of such Specified Shareholder unless such amendment, modification, termination or waiver applies to all Specified Shareholders, in all material respects in the same fashion. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

5.11 Assignment of Rights.

(a) The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties; *provided*, however, that, except as provided in Section 3.1, no Specified Shareholder may assign this Agreement without the prior written consent of the Rightholder. Nothing in this Agreement, express 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 Agreement, except as expressly provided in this Agreement.

(b) Any successor or permitted assignee of any Specified Shareholder shall deliver to the Rightholder and the other Specified Shareholders, as a condition to any transfer or assignment and in consideration of the Rightholder consenting to that assignment under this Agreement, a counterpart signature page hereto pursuant to which such successor or permitted assignee shall confirm their agreement to be subject to and bound by all of the

provisions set forth in this Agreement that were applicable to the predecessor or assignor of such successor or permitted assignee.

5.12 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

5.13 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

5.14 Counterparts; Facsimile. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.15 Consent of Spouse. If any individual Specified Shareholder is married on the date of this Agreement, such Specified Shareholder's spouse shall execute and deliver to the Rightholder a consent of spouse in the form of Exhibit B hereto ("Consent of Spouse"), effective on the date hereof. Notwithstanding the execution and delivery thereof, such consent shall not be deemed to confer or convey to the spouse any rights in such Specified Shareholder's shares of Transfer Shares that do not otherwise exist by operation of law or the agreement of the parties. If any Specified Shareholder should marry or remarry subsequent to the date of this Agreement, such Specified Shareholder shall within 30 days thereafter obtain his/her new spouse's acknowledgement of and consent to the existence and binding effect of all restrictions contained in this Agreement by causing such spouse to execute and deliver a Consent of Spouse acknowledging the restrictions and obligations contained in this Agreement and agreeing and consenting to the same.

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SCHEDULE A
RIGHTHOLDER

Name and Address

APH HFA Holdings, L.P.
9 West 57th Street
New York, New York 10019
USA
Attention: Joseph Glatt, Esq.
Fax No.: +1-646-417-6605

EXHIBIT A
FORM OF RESOLUTION(S)

[To be inserted]

EXHIBIT B
CONSENT OF SPOUSE

I, [_____], spouse of [_____], acknowledge that I have read the Right of First Refusal Agreement, dated as of [December 3], 2010, to which this Consent is attached as Exhibit B (the "Agreement"), and that I know the contents of the Agreement. I am aware that the Agreement contains provisions regarding certain rights to certain other holders of Ordinary Shares of the Company upon a proposed Transfer of Transfer Shares of the Company which my spouse may own including any interest I might have therein.

I hereby agree that my interest, if any, in any Transfer Shares of the Company subject to the Agreement shall be irrevocably bound by the Agreement and further understand and agree that any community property interest I may have in such Transfer Shares of the Company shall be similarly bound by the Agreement.

I am aware that the legal, financial and related matters contained in the Agreement are complex and that I am free to seek independent professional guidance or counsel with respect to this Consent. I have either sought such guidance or counsel or determined after reviewing the Agreement carefully that I will waive such right.

Dated as of the [] day of [_____, _____].

Signature

Print Name

Schedule 5 – Form of Shareholder Consolidation Approval resolution

1. Share Consolidation

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

"That, for the purposes of Section 254H of the Corporations Act[, ASX Listing Rule 7.22.1] and for all other purposes, the issued capital of the Company be consolidated on the basis that every four (4) Shares [or Options] on issue as at the record date, being 7pm on the date of the general meeting or such other time and date as approved by ASX be consolidated into one (1) Share[or Option], and where this consolidation results in a fraction of a Share[or Option] being held by a Shareholder[or Optionholder (as the case may be)], the Directors be authorised to round that fraction up to the nearest whole Share[or Option]."

Schedule 6 - Form of Shareholder General Approval resolutions

1. Issue of Apollo Convertible Notes and Apollo Options

To consider and, if thought fit, pass the following resolutions as an ordinary resolution:

"That, for the purposes of Chapter 2E and Item 7 of Section 611 of the Corporations Act and for all other purposes, approval be given for:

- (a) *the Company to issue to [the Subscribers] up to [insert] Apollo Convertible Notes, enter into such other agreements as are required under the Apollo Convertible Notes and the performance of the Company's obligations under the Apollo Convertible Notes, including the issue of fully paid ordinary shares in the capital of the Company to the Subscribers on the conversion of the Apollo Convertible Notes (including fully paid ordinary shares attributable to the 'in kind' payment of interest under the terms of the Apollo Convertible Notes), on the terms and conditions of the Convertible Note Deed Poll, the Convertible Note Conditions and the Note Subscription Agreement as set out or summarised in the Explanatory Memorandum accompanying this Notice of Meeting; and*
- (b) *the Company to grant to [the Subscribers] up to [insert] Apollo Options, each convertible into one fully paid ordinary share in the capital of the Company at an exercise price of [insert] and exercisable at any time during the [insert] years they vest, and the performance of the Company's obligations under the Options including the issue of fully paid ordinary shares in the capital of the Company pursuant to the exercise of the Apollo Options, in accordance with the terms and conditions of the Option Terms and Note Subscription Agreement as set out or summarised in the Explanatory Memorandum accompanying this Notice of Meeting.; and*
- (c) *the Company to grant to [AP CM, LLC] up to [1 million (on a post-consolidation basis if Resolution [] is approved) or 4 million (if Resolution [] is not approved)] Apollo Employee Performance Rights, and the performance of the Company's obligations in respect of the Apollo Employee Performance Rights, including the issue of fully paid ordinary shares in the capital of the Company pursuant to the exercise of the Apollo Employee Performance Rights, on the terms and conditions set out or summarised in the Explanatory Memorandum accompanying this Notice of Meeting."*

2. Approval of Right of First Refusal Agreement

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

"That, subject to the passing of Resolution[1], for the purpose of Item 7 of Section 611 of the Corporations Act and for all other purposes, approval be given for [Apollo HFA Holdings, LP]'s contractual rights in respect of Shares under the Right of First Refusal Agreement which it enters into with the Specified Shareholders and any resulting acquisition of Shares under the First Right of Refusal Agreement in accordance with the terms and conditions of that agreement as set out or summarised in the Explanatory Memorandum accompanying this Notice of Meeting."

3. Election of Directors

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

"That, subject to the passing of Resolutions [1 and 2]:

- (a) *[insert], in accordance with Rule 8.1(k)(2) of the Constitution and, being eligible, offers [himself/ herself] for election, be elected as a Director;*
- (b) *[insert], in accordance with Rule 8.1(k)(2) of the Constitution and, being eligible, offers [himself/ herself] for election, be elected as a Director; and*
- (c) *[insert], in accordance with Rule 8.1(k)(2) of the Constitution and, being eligible, offers [himself/ herself] for election, be elected as a Director."*

4. Approval of Employee Performance Rights Plan and Lighthouse Senior Management Escrow

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

"That, subject to the passing of Resolutions 1 and 2, for the purpose of Item 7 of Section 611 of the Corporations Act and for all other purposes, approval be given for the Company to acquire a relevant interest in the Escrow Shares of Lighthouse Senior Management as a result of the Company's power to control the exercise of the power to dispose of the Escrow Shares by virtue of the escrow provisions of the Lighthouse Senior Management employment agreements, as set out in the Explanatory Memorandum accompanying this Notice of Meeting."