

CERTIFIED A TRUE COPY

For and on behalf of

MORTON FRASER LLP

Date: 3/3/08

RECONSTRUCTION
AGREEMENT

among

YORK PLACE (NO 474) LIMITED
and the LIQUIDATOR thereof

YORK PLACE (NO 473) LIMITED

YORK PLACE (NO 475) LIMITED
and

THE SHAREHOLDERS OF YORK
PLACE (NO 474) LIMITED

Relative to the reorganisation of
York Place (No 474) Limited
under s110 Insolvency Act 1986

2008
SAP/AEB

MORTON FRASER
SOLICITORS

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COMPANIES HOUSE

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RECONSTRUCTION AGREEMENT

among

YORK PLACE (NO 474) LIMITED (in members' voluntary liquidation) incorporated under the Companies Acts in Scotland (company number SC336541) and having its registered office at 89 Ravenscroft Street, Edinburgh EH17 8QS (hereinafter referred to as the "**Company**") acting through David Rutherford, its liquidator (hereinafter referred to as the "**Liquidator**")
Of the First Part

YORK PLACE (NO 475) LIMITED incorporated under the Companies Acts in Scotland (company number SC336550) and having its registered office at 30 31 Queen Street, Edinburgh (hereinafter referred to as the "**Octant Holding Company**")
Of the Second Part

YORK PLACE (NO 473) LIMITED incorporated under the Companies Acts in Scotland (company number SC336540) and having its registered office at 30-31 Queen Street, Edinburgh (hereinafter referred to as (the "**Sundial Holding Company**")
Of the Third Part

ARCHIBALD STIRLING residing at Drumerchin, Kippen Stirling FK8 3EZ as bare trustee for AMY SOPHIA MARJORY STIRLING, JAMES ANDREW STIRLING and KATRINA KYTHE STIRLING, residing together at 3 Dalmorglen Park, Stirling, THE ALEXANDRA MARY GRAY MUIR IV TRUST of 89 Ravenscroft Street, Edinburgh EH17 8QS, and ELIZABETH KYTHE STIRLING, 3 Dalmorglen Park, Stirling (hereinafter referred to as the "**A Shareholders**")
Of the Fourth Part

and

THE ANDREW GRAY MUIR IV TRUST of 89 Ravenscroft Street, Edinburgh EH17 8QS and WILLIAM JOHN GRAY MUIR, 81 Great King Street, Edinburgh EH3 6RN (hereinafter referred to as the "**B Shareholders**")
Of the Fifth Part

Recitals

- (A) The Company was incorporated on 22 January 2008 as a company limited by shares and has an authorised share capital of £100,000 divided into
- 105 issued and fully paid A Ordinary Shares of £1 00 each, held by the A Shareholders in the following amounts. Archibald Stirling as bare trustee for Amy Sophia Marjory Stirling, James Andrew Stirling, and Katrina Kythe Stirling, each to the extent of 16, Alexandra Mary Gray Muir IV Trust 7, Elizabeth Kythe Stirling 50,
 - 107 issued and fully paid B Ordinary Shares of £1 00 each, held by the B Shareholders in the following amounts Andrew Gray Muir IV Trust 9, and William John Gray Muir 98,
 - 49,895 authorised and unissued A Ordinary Shares of £1 each, and
 - 49,893 authorised and unissued B Ordinary Shares of £1 each
- (B) The Octant Holding Company and the Sundial Holding Company were both incorporated on 22 January 2008, both as companies limited by shares and both have an issued share capital of one fully paid ordinary share of £1 00 which is held, in the case of the Octant Holding Company by Archibald Stirling (as bare trustee for James Stirling), and in the case of the Sundial Holding Company by William Gray Muir,
- (C) By virtue of the Written Resolutions (as hereinafter defined) it was resolved (1) that it was desired to reconstruct the Company for bona fide commercial reasons and that accordingly the Company should be wound up voluntarily and that the Liquidator should be appointed liquidator for the purposes of such winding up, and (2) that the Liquidator should be authorised pursuant to the Insolvency Act 1986 Section 110 on behalf of the Company to enter into and carry out this Agreement a copy of the draft of which was annexed to and approved by the Written Resolutions,
- (D) Confirmation has been received from the Inland Revenue that, subject to various conditions, they consider that no notice under Section 703 (3) of the Income and Corporation Taxes Act 1988 may be made in respect of the reconstruction and that the provisions of Section 137(1) and Section 139(5) of the Taxation of Chargeable Gains Act 1992 should not have effect in respect of the transactions of which this Agreement forms part with the result that Sections 136 and 139 of the Taxation of Chargeable Gains Act 1992 will not thereby be prevented from applying to the said transactions, and
- (E) The A Shareholders have agreed to accept an allotment of shares by the Octant Holding Company; and the B Shareholders have agreed to accept an allotment of shares by the Sundial Holding Company all in full satisfaction and discharge of all their interests as members of the Company in the assets and share capital thereof

THEREFORE IT IS AGREED between the parties hereto as follows

1 Definitions and interpretation

1.1 In this Agreement

"Agreed Amount" means a number of shares equal to the number of shares held by a Shareholder in the Company (taking into account any subscriber share already held by him/her in the allotting company),

"Octant Shares" means the whole of the issued share capital of Octant Investments Limited, incorporated under the Companies Acts in Scotland (Company number SC336019 and having its registered office at 80 George Street, Edinburgh EH2 3BU, being 1,000 ordinary shares of £1 00 each;

"Octant Consideration Shares" means ordinary shares of £1 each in the Octant Holding Company, to be issued (or credited as fully paid in the case of the issued, unpaid subscriber share) in accordance with the terms of this Agreement,

"Sundial Shares" means the whole of the issued share capital of Sundial Holdings Limited, company number SC148685, having its registered office at 89 Ravenscroft Street, Edinburgh EH17 8QS, being 212 fully paid ordinary shares of £1 00,

"Sundial Consideration Shares" means ordinary shares of £1 each in the capital of the Sundial Holding Company, to be issued (or credited as fully paid in the case of the issued, unpaid subscriber share) in accordance with the terms of this Agreement, and

"Written Resolutions" means those resolutions in the agreed form passed by the Shareholders by way of written resolution on the date hereof

- 1.2 Words in this Agreement denoting the singular number only shall include the plural and vice versa
- 1.3 Reference in this Agreement to the masculine gender shall include the feminine and neuter genders and vice versa
- 1.4 Unless the context otherwise requires, reference in this Agreement to any clause, or schedule, is to a clause, or schedule, of or to this Agreement
- 1.5 The headings of this Agreement are inserted for convenience only and shall not affect the construction hereof

2 Transfer of the Sundial Shares

- 2.1 Forthwith upon the execution of this Agreement by all of the parties hereto the Company and the Liquidator shall transfer to the Sundial Holding Company the whole right title and interest of the Company in and to the Sundial Shares and in particular the Liquidator shall procure that a stock transfer form in respect of the Sundial Shares in favour of the Sundial Holding Company is duly executed by the Company with the consent of the Liquidator and shall take all such steps as may be necessary to ensure that the Sundial Holding Company is registered in the Register of Members of Sundial Holdings Limited as the sole holder of the Sundial Shares
- 2.2 The Sundial Holding Company shall accept without investigation such title to the Sundial Shares as the Company possesses

- 2 3 In consideration of the transfer by the Company and the Liquidator to the Sundial Holding Company of the Sundial Shares, the Sundial Holding Company shall issue to each B Shareholder, Sundial Consideration Shares in the Agreed Amount and shall credit the unpaid subscriber share in the Company held by a B Shareholder as fully paid

3 Transfer of the Octant Shares

- 3 1 Forthwith upon the execution of this Agreement by all of the parties hereto the Company and the Liquidator shall transfer to the Octant Holding Company the whole right title and interest of the Company in and to the Octant Shares and in particular the Liquidator shall procure that a stock transfer form in respect of the Octant Shares in favour of the Octant Holding Company is duly executed by the Company with the consent of the Liquidator and shall take all such steps as may be necessary to ensure that the Octant Holding Company is registered in the Register of Members of Octant Holdings Limited as the sole holder of the Octant Shares
- 3 2 The Octant Holding Company shall accept without investigation such title to the Octant Shares as the Company possesses.
- 3 3 In consideration of the transfer by the Company and the Liquidator to the Octant Holding Company of the Octant Shares, the Octant Holding Company shall issue to each A Shareholder, Octant Consideration Shares in the Agreed Amount and shall credit the unpaid subscriber share in the Company held by an A Shareholder as fully paid,

4 Liabilities of the Company

As part of the consideration for the transfers referred to in clauses 2 1 and 3 1, the Sundial Holding Company and the Octant Holding Company, for their respective interests in the assets and liabilities of the Company shall undertake, pay, satisfy and discharge all the debts, liabilities and obligations of the Company whatsoever, the Sundial Holding Company being responsible for the same in so far as the same arise in respect of the Sundial Shares (or otherwise in relation to the assets of Sundial Holdings Limited) and the Octant Company being responsible for the same in so far as the same arise in respect of the Octant Shares (or otherwise in relation to the business or assets of Octant Investments Limited), and the Octant Holding Company and the Sundial Holding Company shall adopt, perform and fulfil all contracts and engagements now binding on the Company

5 Indemnity

- 5 1 For the purposes of this Clause 5 "the Indemnifiers" means the Shareholders
- 5 2 The Indemnifiers undertake to pay in full the costs, expenses and disbursements (including VAT) of the liquidation (including the Liquidator's costs and the cost of the Liquidator's bond) and the claims (whether present or contingent) of all creditors admitted in the liquidation of the Company Provided always that the maximum amount payable by the Indemnifiers hereunder in respect of the claims of all creditors admitted in the liquidation shall be limited to the value of the transfers made by the Liquidator to the Shareholders by way of liquidating distributions plus interest at the judicial rate from the date of any payment or payments

- 5 3 The Indemnifiers will keep the Liquidator and his partners now or in the future and his and their personal representatives' estates and effects at all times fully indemnified against all actions, proceedings, claims and costs arising out of any act, matter or thing done by the Liquidator in the proper performance of his duties as Liquidator of the Company or any act specifically done in accordance with any direction, instruction or request of the Indemnifiers particularly any direction, instruction or request to distribute the assets of the Company prior to agreeing or settling creditors' claims. Provided always that this part of the indemnity hereby granted shall not apply if and to the extent that the action, proceeding claim and/or cost in question arises out of, or is attributable to, any negligence on the part of the Liquidator or any of his partners or agents
- 5 4 The Indemnifiers undertake to pay in cash within seven days of demand all amounts certified by the Liquidator in writing to be properly due and payable hereunder
- 5 5 The Indemnifiers irrevocably waive all rights to retain or set off an amount payable by them under sub-clause 5 4 above, against any claim or counterclaim they may have against the Liquidator howsoever arising
- 5 6 For the avoidance of doubt the undertaking as to costs and expenses set out above (in sub-clauses 5 2 and 5 3) shall include, without limitation, costs and expenses (legal, litigation, taxation or otherwise) properly incurred in defending or dealing with claims made in the liquidation
- 5 7 The benefit of each and every of the undertakings and indemnities contained herein may be assigned to the Liquidator's partners and their respective estates and may be directly enforced against the members by such partners and their respective estates and effects
- 5 8 If at any time any provision hereof is or becomes illegal, invalid or unenforceable in any respect then the legality, validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby
- 5 9 The liability of the Indemnifiers under this indemnity shall be joint and several, and the liability of the other or others of them to the Liquidator shall not be released or reduced by reason of this indemnity not being or ceasing to be binding upon or valid or enforceable against any one or more of them whether or not by agreement with the Liquidator

6 Allotment of Shares

The Octant Holding Company and the Sundial Holding Company to the A Shareholders and the B Shareholders of the Octant Consideration Shares and the Sundial Consideration Shares respectively, each in the amounts contemplated in clauses 2 3 and 3 3, and the credit of the subscriber shares in the above companies as fully paid, which allotments, transfers and credits the Shareholders have agreed to accept in terms of this Agreement

7 Satisfaction of Shareholders Interests

As the Shareholders (being the whole shareholders of the Company) have agreed to accept the allotments and credits of shares specified in clause 6 above in full

satisfaction and discharge of all their interests as members of the Company and in the assets thereof

8 Further Assurance

- 8.1 Each of the Octant Holding Company and the Property Holding Company shall from time to time, on being required to do so by the Liquidator now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the Liquidator as the Liquidator may reasonably consider necessary for giving full effect to this Agreement and securing to the Liquidator the full benefit of the rights, power and remedies conferred upon the Company and/or the Liquidator in this Agreement
- 8.2 The Company, acting by the Liquidator, will at all times prior to its dissolution, on being required to do so by any of the other parties hereto, insofar as it is able and in compliance with all duties, obligations and restrictions incumbent on it and/or the Liquidator by law or regulation, do or procure the doing (at the requesting party's cost) all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the Liquidator and requesting party as the requesting party may reasonably consider necessary for giving full effect to this Agreement and securing to the requesting party the full benefit of the rights and remedies conferred upon the requesting party in this Agreement

IN WITNESS WHEREOF THESE PRESENTS printed on this and the five preceding pages are executed as follows:

THEY are subscribed by David Rutherford, the Liquidator, for and on behalf of the Company and as Liquidator at EDINBURGH on the 25TH day of FEBRUARY 2008 before the witness hereto subscribing whose designation is appended

WITNESS

Signature

Scott Thomas Reid Kerr



David Rutherford
For and on behalf of York Place
(No 474) Limited in liquidation

Full Name

SCOTT THOMAS REID KERR


Address

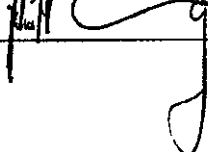
80 GEORGE STREET

EDINBURGH

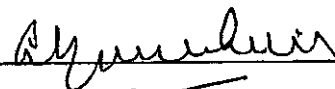
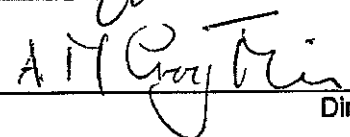

Liquidator

THEY are subscribed on behalf of the Octant Holding Company at EDINBURGH on the 25TH day of FEBRUARY 2008 by


Director

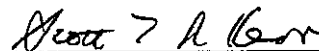

Director/Secretary

THEY are subscribed on behalf of the Sundial Holding Company at EDINBURGH on the 25TH day of FEBRUARY 2008 by

 Director
 Director/Secretary

THEY are subscribed by ARCHIBALD STIRLING as bare trustee for AMY SOPHIA MARJORY STIRLING, JAMES ANDREW STIRLING AND KATRINA KYTHE STIRLING at EDINBURGH on the 25TH day of FEBRUARY 2008 before the witness hereto subscribing

WITNESS

Signature 


 ARCHIBALD STIRLING

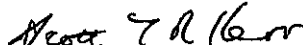
Full Name SCOTT THOMAS REID KERR

Address 80 GEORGE STREET

EDINBURGH

THEY are subscribed by ELIZABETH KYTHE STIRLING at EDINBURGH on the 25TH day of FEBRUARY 2008 before the witness hereto subscribing.

WITNESS

Signature 


 Elizabeth Kythe Stirling

Full Name. SCOTT THOMAS REID KERR

Address 80 GEORGE STREET

EDINBURGH

THEY are subscribed for and on behalf of THE ALEXANDRA MARY GRAY MUIR IV TRUST at EDINBURGH on the 25TH day of FEBRUARY 2008 before the witness hereto subscribing.

WITNESS

Signature [Signature] [Signature] Trustee

Full Name: SAMUEL ANDREW PRICE [Signature] Trustee

Address. 30-31 QUEEN STREET AM Gray Muir Trustee
EDINBURGH EH2 1JX

THEY are subscribed for and on behalf of THE ANDREW GRAY MUIR IV TRUST at EDINBURGH on the 25TH day of FEBRUARY 2008 before the witness hereto subscribing.

WITNESS

Signature [Signature] [Signature] Trustee

Full Name SAMUEL ANDREW PRICE AM Gray Muir Trustee

Address 30-31 QUEEN STREET [Signature] Trustee
EDINBURGH EH2 1JX

THEY are subscribed by WILLIAM JOHN GRAY MUIR at EDINBURGH on the 25TH day of FEBRUARY 2008 before the witness hereto subscribing

WITNESS

Signature [Signature] [Signature] William John Gray Muir

Full Name SAMUEL ANDREW PRICE

Address 30-31 QUEEN STREET
EDINBURGH EH2 1JX