

ashurst

Execution version

Subscription and Transfer Agreement

Investec plc

and

Investec Finance (Jersey) Limited

and

Merrill Lynch International

Certified as a true and complete copy of the
original document on 28 July 2009



David Miller
Company Secretary

Investec Plc
Company Number: 3633621
Registered Office: 2 Gresham Street
London, EC2V 7QP
Incorporated in England and Wales

28 July

2009

SATURDAY



RXFIFC1D
RM 01/08/2009 166
COMPANIES HOUSE

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	3
2. SUBSCRIPTION FOR PREFERENCE SHARES	5
3. TRANSFER OF PREFERENCE SHARES.....	5
4. WARRANTIES AND UNDERTAKINGS	6
5. INDEMNITY.....	7
6. TAX	7
7. TERMINATION	8
8. RIGHTS AND OBLIGATIONS OF MERRILL LYNCH.....	8
9. TIME OF THE ESSENCE	8
10. COSTS AND EXPENSES	8
11. NOTICES	9
12. GENERAL.....	9
SCHEDULE 1	12
Part 1: Issuer Warranties	12
Part 2: JerseyCo Warranties.....	13
SCHEDULE 2	15

THIS AGREEMENT is made on 28 July 2009

BETWEEN:

- (1) **INVESTEC PLC**, a company limited by shares incorporated under the laws of England and Wales whose registered office is at 2 Gresham Street, London EC2V 7QP (the "**Issuer**");
- (2) **INVESTEC FINANCE (JERSEY) LIMITED**, a company incorporated in Jersey and whose registered office is at PO Box 344, 5 Castle Street, St. Helier, Jersey, JE4 8UW ("**JerseyCo**"); and
- (3) **MERRILL LYNCH INTERNATIONAL**, a company incorporated and registered under the laws of England and Wales whose registered office is at Merrill Lynch Financial Centre, 2 King Edward Street, London EC1A 1HQ ("**Merrill Lynch**").

WHEREAS

- (A) As at the date of this Agreement JerseyCo has an authorised share capital divided into 100 ordinary shares of no par value (one of which has been issued and is held by the Issuer) and an unlimited number of shares designated as redeemable preference shares of no par value (none of which have been issued).
- (B) Merrill Lynch and the Issuer propose to enter into an agreement on the date hereof (the "**Placing Agreement**"), pursuant to which, and subject to the conditions stated therein, Merrill Lynch has agreed to use reasonable endeavours to procure persons to take up the Placing Shares.
- (C) Merrill Lynch has agreed, on the terms and subject to the conditions of this Agreement, to subscribe for the Preference Shares and to transfer to the Issuer the Preference Shares.

IT IS AGREED as follows:

1. **INTERPRETATION**

- 1.1 In this Agreement the following expressions shall have the following meanings.

"**Admission**" has the meaning set out in the Placing Agreement;

"**Articles**" means the Articles of Association of JerseyCo in effect from time to time;

"**Business Day**" has the meaning set out in the Placing Agreement;

"**Encumbrance**" means any mortgage, charge (whether legal or equitable and whether fixed or floating), security, lien, pledge, option, right to acquire, right of pre-emption, interest, equity, assignment, hypothecation, title retention, claim, restriction or power of sale or any agreement to create any of the foregoing;

"**FSA**" has the meaning set out in the Placing Agreement;

"**Group**" means the Issuer and Investec Limited, two companies that operate under a dual listed companies ("**DLC**") structure, together with their respective subsidiary undertakings;

"**London Stock Exchange**" means The London Stock Exchange plc;

"**Payment Undertaking**" has the meaning set out in clause 2.2;

"**Placing**" has the meaning set out in the Placing Agreement;

"Placing Announcement" has the meaning set out in the Placing Agreement;

"Placing Costs" means:

- (a) the fees and commission payable by the Issuer to Merrill Lynch under the Placing Agreement; and
- (b) those other costs and expenses payable by the Issuer to Merrill Lynch under the Placing Agreement or this Agreement, which are notified by Merrill Lynch to the Issuer prior to Admission;

"Placing Price" has the meaning set out in the Placing Agreement;

"Placing Shares" has the meaning set out in the Placing Agreement;

"Placees" has the meaning set out in the Placing Agreement;

"Preference Shares" means up to 22,000,000 redeemable preference shares of no par value in the capital of JerseyCo having the rights and subject to the restrictions set out in the Articles, such number to mirror the number of Placing Shares;

"Stamp Taxes" means any capital duty, stamp duty and stamp duty reserve tax and any other stamp, issuance, transfer, registration, execution, documentary or similar duties and taxes (including any interest, fines or penalties relating thereto);

"Subscription Amount" means the number of Placing Shares multiplied by the Placing Price (as defined in the Placing Agreement);

"tax" or **"taxes"** has the meaning given to the term **"Tax"** in the Placing Agreement;

"VAT" means value added tax and any similar sales or turnover tax or levy imposed in any jurisdiction; and

"Warranties" means the warranties given by JerseyCo and the Issuer set out in the Schedule 1.

1.2 The words **"company"**, **"subsidiary"**, **"subsidiary undertaking"** and **"holding company"** have the same meanings in this Agreement as defined in the Companies Act 2006.

1.3 In this Agreement, unless the context otherwise requires:

- (a) references to **"persons"** shall include individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (b) the headings are inserted for convenience only and shall not affect the construction of this Agreement;
- (c) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;
- (d) references to clauses, sub-clauses and the schedules are to clauses and sub-clauses of, and the schedules to, this Agreement;
- (e) references to **"pounds"** and **"£"** are references to the currency of the United Kingdom; and

- (f) the schedules shall take effect as if set out in this Agreement and references to this Agreement shall be deemed to include the schedules.

2. **SUBSCRIPTION FOR PREFERENCE SHARES**

- 2.1 Upon the terms and subject to the conditions of this Agreement and in reliance on the Warranties, Merrill Lynch agrees to subscribe for, and JerseyCo agrees to allot and issue to Merrill Lynch, the Preference Shares.
- 2.2 In consideration of the agreement to allot the Preference Shares, and subject to clause 2.3, Merrill Lynch hereby undertakes to pay or procure the payment of the Subscription Amount (less the Placing Costs) to JerseyCo by no later than 5.00 p.m. on the date of Admission (the "**Payment Undertaking**"). The Preference Shares so allotted shall be credited as fully paid against the Payment Undertaking.
- 2.3 The obligations under this Agreement of Merrill Lynch to subscribe and pay for, and JerseyCo to allot to Merrill Lynch the Preference Shares are conditional upon:
- (a) the Placing Agreement having become unconditional in all respects and not having been terminated in accordance with its terms;
 - (b) the Term Sheet (as defined in the Placing Agreement) having been executed; and
 - (c) Admission,
- at which time (i) the allotment of the Preference Shares to Merrill Lynch shall occur and (ii) the Payment Undertaking shall vest.
- 2.4 Following allotment as aforesaid, JerseyCo shall procure that the name of Merrill Lynch shall be entered in the register of members of JerseyCo (itself held in Jersey) in respect of the Preference Shares and that:
- (a) a copy of a duly executed share certificate evidencing the number of Preference Shares allotted and issued to Merrill Lynch is delivered to Merrill Lynch (or as Merrill Lynch directs); and
 - (b) a copy of the minutes of the JerseyCo board meeting approving such allotment and the updated register of members, certified as a true copy by the secretary or a director of JerseyCo, shall be delivered to Merrill Lynch (or as Merrill Lynch directs).

3. **TRANSFER OF PREFERENCE SHARES**

- 3.1 Subject to, and conditional on, the Placing Agreement having become unconditional and not having been terminated in accordance with its terms, Merrill Lynch shall, on the date of Admission and following payment of the Subscription Amount (less the Placing Costs), transfer to the Issuer the Preference Shares allotted and issued to it pursuant to clause 2.1 in consideration for the allotment and issue by the Issuer of the Placing Shares (each of which Placing Shares shall be considered to have a value equal to the Placing Price) as set out in the Placing Agreement. All such Preference Shares shall be transferred to the Issuer free from all Encumbrances and together with all rights attaching thereto (including without limitation the right to all dividends and distributions (if any) declared, made or paid on or after the date of Admission).
- 3.2 Notwithstanding anything in clause 11 (Notices), Merrill Lynch shall procure the execution and delivery in Jersey to JerseyCo on behalf of the Issuer, or as the Issuer may direct, of stock transfer forms together with the share certificates (if issued to Merrill Lynch) in respect of the Preference Shares and shall deliver copies thereof to the Issuer or as it may direct (with, in each case, the original stock transfer forms being kept in Jersey at all

times between execution by or on behalf of Merrill Lynch and delivery to, or to the order of, the Issuer).

- 3.3 The Issuer and Merrill Lynch hereby waive or agree (so far as within their respective power or control) to procure the waiver of any rights or restrictions (whether rights of pre-emption or otherwise) which may be contained in or conferred by the Articles or otherwise and the enforcement of or compliance with which may or might prevent the transfer, subscription, allotment and issue of the Preference Shares to be subscribed and transferred pursuant to clauses 2 and 3 and each of them hereby consent to such subscription, allotment and issue (where appropriate).
- 3.4 Subject to performance by Merrill Lynch of its obligations under clauses 3.1 and 3.2, JerseyCo shall hold a board meeting in the UK at which it shall be resolved that the transfers relating to the Preference Shares shall be approved for registration and that the Issuer be registered as the holder of such shares in JerseyCo's register of members.
- 3.5 Unless already executed prior to the date of this Agreement, Merrill Lynch agrees to execute prior to the date of Admission a power of attorney in the form set out in Schedule 2 in order to grant authority to appropriate persons within Carey Olsen, solicitors and advocates in Jersey, to do and perform (in Jersey) all acts or things and to execute, complete and deliver all such documents (including execution of stock transfer forms) as are necessary to transfer all or any of the Preference Shares in accordance with the terms of this Agreement.

4. **WARRANTIES AND UNDERTAKINGS**

- 4.1 The Issuer represents and warrants to you as at the date hereof in the terms of the warranties set out in part 1 of Schedule 1 hereto (the "**Issuer Warranties**") and further represents and warrants that the Issuer Warranties shall be true, correct and accurate and not misleading at Admission (as defined in the Placing Agreement) as if they had been made or given at Admission by reference to the facts and circumstances then existing (and on the basis that references in the Issuer Warranties to any fact, matter or thing existing, occurring or having occurred at or before the date of this Agreement shall be construed as references to it existing, occurring or having occurred at or before Admission).
- 4.2 JerseyCo represents and warrants to you as at the date hereof in the terms of the warranties set out in part 2 of Schedule 1 hereto (the "**JerseyCo Warranties**") and further represents and warrants that the JerseyCo Warranties shall be true, correct and accurate and not misleading at Admission (as defined in the Placing Agreement) as if they had been made or given at Admission by reference to the facts and circumstances then existing (and on the basis that references in the JerseyCo Warranties to any fact, matter or thing existing, occurring or having occurred at or before the date of this Agreement shall be construed as references to it existing, occurring or having occurred at or before Admission).
- 4.3 Until the date upon which Merrill Lynch no longer holds any interest in JerseyCo's share capital, the Issuer undertakes to Merrill Lynch that JerseyCo will not, without the prior consent of Merrill Lynch, undertake any activities other than:
- (a) those contemplated under this Agreement; or
 - (b) those which are strictly necessary to comply with the requirements of applicable law or regulations, subject to reasonable notice of the requirement to undertake such activities being provided to Merrill Lynch by either JerseyCo or the Issuer (on behalf of JerseyCo).

4.4 Merrill Lynch hereby represents (which representation shall be deemed to be repeated until termination of this Agreement) that in relation to the transactions contemplated by this Agreement, it is not acting as an agent or nominee for any other person or persons and that it is either resident in the United Kingdom for tax purposes and that it is a party to this Agreement and will carry out any transactions contemplated thereby for the purposes of a trade carried on by it, or that it is a party to this Agreement and will carry out any transactions contemplated thereby for the purposes of a trade or part of a trade carried on by it in the United Kingdom through a permanent establishment.

4.5 If at any time up to Admission any event occurs or circumstances exist as a result of which the Issuer or JerseyCo become aware that any of the Issuer Warranties or the JerseyCo Warranties (as the case may be) would be untrue or incorrect if such warranty had been given or made at such time by reference to the facts and circumstances then existing, the Issuer and/or JerseyCo (as the case may be) shall immediately notify Merrill Lynch, and Merrill Lynch acting in good faith shall have the right to request that the Issuer and/or JerseyCo make a public announcement in respect of such matter to the extent material in the context of the Placing.

5. **INDEMNITY**

5.1 The Issuer hereby undertakes with Merrill Lynch and each of its Indemnified Persons (as defined in the Placing Agreement) to indemnify and hold Merrill Lynch and each of its Indemnified Persons harmless on equivalent terms to clause 11 of the Placing Agreement provided that such terms shall be extended to include any losses, claims, costs, penalties, charges, damages or expenses (including legal fees) or liabilities, including in any such case those arising from defending or investigating any claim (each a "**Liability**") (including, but not limited to, all Liabilities suffered or incurred in investigating, preparing for or disputing, defending or providing evidence in connection with, any claim and/or in establishing any claim or right to be indemnified pursuant to this clause 5 and/or in mitigating any claim and/or in seeking advice regarding any claim) which Merrill Lynch may suffer or incur and which in any such case arise directly or indirectly in connection with this Agreement (including, without limitation, any breach or alleged breach by JerseyCo or the Issuer of the Warranties or any obligation of JerseyCo or the Issuer pursuant to this Agreement), **provided that**, the indemnity contained in this clause 5 shall not extend to any Liability or Liabilities suffered by Merrill Lynch or any of its Indemnified Persons for, or in respect of:

- (a) any Tax in respect of the commission payable to Merrill Lynch pursuant to clause 5.1.1 of the Placing Agreement;
- (b) any inability to recover input tax in respect of supplies not directly connected with the Placing;
- (c) any Stamp Taxes, these being dealt with pursuant to Clause 6; or
- (d) any recoverable VAT, that being dealt with under Clause 10.

5.2 The provisions of this Clause 5 shall not affect or be affected by any other agreement to which the Company is a party with respect to indemnification, save only that no Indemnified Person shall be entitled to recover for the same Liability twice.

6. **TAX**

6.1 The Issuer undertakes to pay all Stamp Taxes in connection with the execution, performance or enforcement of this Agreement, provided that the Issuer will not be obliged to pay any amounts for or in respect of Stamp Taxes under this Clause 6 or any other provision of this Agreement to the extent that the Stamp Taxes:

- (a) are payable in respect of the Placing Shares, these being dealt with under Clause 3.4 of the Placing Agreement; or
- (b) consist of interest, fines or penalties that are attributable to any unreasonable delay by Merrill Lynch or any of its affiliates.

6.2 The Issuer shall, after receiving a written request evidencing Merrill Lynch's payment of the same, pay or reimburse Merrill Lynch without undue delay the amount of any such duties and taxes which are to be borne by the Issuer pursuant to this Clause 6.

7. TERMINATION

In the event of termination of the Placing Agreement in accordance with its terms, this Agreement shall terminate and have no further force or effect and, except as contemplated under the terms of the Placing Agreement, no party shall have any claim against any other under this Agreement (except under clauses 5, 10 and 12.6 and in respect of its accrued rights arising from any prior breach of this Agreement). For the avoidance of doubt, termination of this Agreement shall be without prejudice to the accrued rights and obligations of Merrill Lynch or the Issuer pursuant to the Placing Engagement Letter and/or the Placing Agreement.

8. RIGHTS AND OBLIGATIONS OF MERRILL LYNCH

The obligations of the Issuer and JerseyCo to Merrill Lynch (in its capacity as subscriber for the Preference Shares) and by Merrill Lynch to the Issuer and JerseyCo are owed to them as separate and independent obligations, and each of Merrill Lynch, the Issuer and JerseyCo shall have the right to protect and enforce its rights hereunder without joining any other party in any proceedings.

9. TIME OF THE ESSENCE

Time shall be of the essence of this Agreement but any time, date or period mentioned in this Agreement may be extended by agreement in writing between the parties hereto or otherwise as provided herein.

10. COSTS AND EXPENSES

10.1 The Issuer undertakes to pay all costs, fees and expenses of JerseyCo in connection with its incorporation, administration and the Placing.

10.2 Whether or not the Preference Shares are issued, and save as provided otherwise in this Agreement, the Issuer shall bear its own and JerseyCo's costs and expenses and (to the extent not reimbursed under any other provision of this Agreement or the Placing Agreement) Merrill Lynch's costs and expenses (other than any costs and expenses in respect of Stamp Taxes, these being dealt with under Clause 6) properly incurred in connection with the preparation, negotiation, entry into and implementation of this Agreement. This shall include, but is not limited to, Merrill Lynch's properly incurred legal expenses and other out of pocket expenses properly incurred (including, where applicable, any amounts in respect of value added tax chargeable on such costs and expenses which are not recoverable, provided that, except in any case where section 47(3) of the Value Added Tax Act 1994 applies, where the payment is in respect of costs or expenses incurred by the payee as agent for the Issuer Merrill Lynch agrees to use its reasonable endeavours to procure that the actual supplier of the goods or services issues its own VAT invoice directly to the Issuer).

10.3 The Issuer shall promptly on request by Merrill Lynch, pay or reimburse Merrill Lynch the amount of any costs or expenses (including, where applicable, any amounts in respect of value added tax that is payable by the Issuer in accordance with Clause 10.2) which are to be borne by the Issuer or JerseyCo in accordance with this Agreement and which Merrill

Lynch has paid, save to the extent that (i) such costs or expenses have been taken into account in determining the Payment Undertaking, or (ii) such costs or expenses have been paid by the Issuer or JerseyCo or otherwise reimbursed to Merrill Lynch pursuant to any other provisions of this Agreement, the Placing Agreement or the Placing Engagement Letter.

11. NOTICES

11.1 Subject always to clause 3.2 any notice or other document to be served under this Agreement shall be in writing and may be delivered by hand or sent by facsimile or by first class post to the party to be served at its address or facsimile number shown below and marked for the attention of the person indicated. Either party may change any such details by notice given under this clause 11.1.

11.2 Any notice or document delivered or sent in accordance with clause 11.1 shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery; or
- (b) if sent by facsimile, when received; or
- (c) if sent by pre-paid first class post, 48 hours from the time of posting in the case of inland mail in the United Kingdom, or 72 hours from the time of posting in the case of international mail or to Jersey.

11.3 The persons to whom notices or documents should be addressed for the purposes of this clause 11 are:

- (a) if to be served on the Issuer or JerseyCo:

For the attention of: David Miller
Investec PLC
2 Gresham Street
London
EC2V 7QP

Fax no.: +44 207 597 4497

(with a copy to Les Penfold: Fax no: +27 11 291 1413)

- (b) if to be served on Merrill Lynch:

For the attention of: Paul Frankfurt, Michael Larbie and Dave Lysandrou

Merrill Lynch International
Merrill Lynch Financial Centre
2 King Edward Street
London EC1A 1HQ

Tel no: 020 7995 3700

Fax no: 020 7995 2516/4778

12. GENERAL

12.1 No party may assign, or purport to assign: (i) this Agreement; (ii) all or any of their respective rights or obligations arising under or out of this Agreement; or (iii) the benefit of all or any of the other party's obligations under this Agreement.

- 12.2 Each party is entering into this Agreement for its own respective benefit and not for the benefit of another person.
- 12.3 This Agreement and the Placing Agreement constitute the whole agreement and understanding between the parties in relation to the Placing. Save as provided herein or therein, this Agreement and the Placing Agreement set forth the entire agreement between the parties with respect to the matters addressed herein and therein and supersede all prior agreements and communications, written or oral, to the extent that such agreement or communications relate to the subject matter therein, and may only be amended or modified in writing.
- 12.4 Nothing in this Agreement shall be read or construed as excluding any liability or remedy in respect of fraud.
- 12.5 The provisions contained in each clause and sub-clause of this Agreement shall be enforceable independently of the others and the invalidity of any one provision shall not affect the validity of the others. The rights of each of the parties under this Agreement are independent, cumulative and without prejudice to all other rights available to it and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other rights of such party whether under this Agreement or otherwise.
- 12.6 Without prejudice to any duty of confidence imposed by law or by any other agreement or any professional duty of confidence, each party agrees that this Agreement is for its confidential use only and that, subject to any requirement for disclosure arising under law or applicable regulation or as required by any securities exchange or governmental or regulatory body, neither its existence nor the terms thereof will be disclosed by it to any person other than its officers, directors, employees, accountants, attorneys and other advisers (the "**Representatives**") and its affiliates and their Representatives, and then only on a "need to know" basis in connection with the transactions contemplated herein and on a confidential basis. For the avoidance of doubt (subject as set out in the preceding sentence) the Issuer shall not, between the date of this Agreement and the date thirty (30) calendar days following Admission save as may be required by law or the rules and regulations of the FSA or the London Stock Exchange or any governmental or quasi-governmental authority or other regulatory body having jurisdiction over the Issuer, make any public statement, public announcement or public communication (other than the Placing Announcement) concerning the Placing, the securities of the Issuer or any member of the Group.
- 12.7 Subject to clause 12.8, a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of terms of this Agreement.
- 12.8 Each of the non-contracting third parties referred to in clause 5 of this Agreement and clause 11 of the Placing Agreement shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce their respective rights under those clauses as amended from time to time, provided that Merrill Lynch shall have sole conduct of any action on behalf of a third party referred to in those clauses that is an Affiliate (as defined in the Placing Agreement).
- 12.9 Notwithstanding the provisions of clause 12.8, any rights arising by virtue of the Contracts (Rights of Third Parties) Act 1999 may be rescinded or varied in any way and at any time by the parties to this Agreement without the consent of any of the non-contracting parties referred to in clause 5.
- 12.10 At any time after the date hereof each party agrees that it shall, promptly upon being required to do so by any other party hereto, do or procure that there shall be done all such acts and things and execute or procure the execution of all such documents and instruments as such party may from time to time reasonably require in order to give full

effect to this Agreement (including, without limitation, procuring that the Preference Shares are allotted and issued as freely transferable shares in accordance with this Agreement, but subject to the Articles), subject to the provisions of this Agreement.

- 12.11 Merrill Lynch and any of its Indemnified Persons shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnification more than once in respect of any one liability, loss, cost, shortfall, damage, deficiency, breach or other set of circumstances, regardless of whether more than one claim arises in respect of it under this Agreement, the Placing Agreement or the Placing Engagement Letter.
- 12.12 This Agreement may be executed in counterparts (including facsimile copies) and by the parties on different counterparts. Each counterpart shall constitute an original of this Agreement but the counterparts shall together constitute one and the same Agreement.
- 12.13 This Agreement and any non-contractual obligations arising out of or in relation to it shall be governed by, and construed in accordance with, English law.
- 12.14 The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement whether contractual or non-contractual and accordingly any legal action or proceedings arising out of or in connection with this Agreement ("**Proceedings**") may be brought in such courts. The Issuer irrevocably submits to the non-exclusive jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of Merrill Lynch only and shall not limit the right of Merrill Lynch (but not the Issuer) to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).
- 12.15 JerseyCo hereby irrevocably appoints the Issuer at its registered office from time to time to receive, for it and on its behalf, service of process in any Proceedings and the Issuer hereby accepts such appointment. Such service shall be deemed completed on delivery to the Issuer (whether or not it is forwarded to or received by JerseyCo).

SCHEDULE 1

Part 1: Issuer Warranties

1. THE ISSUER

- 1.1 The Issuer is a public limited company incorporated under the laws of England and Wales and since incorporation has been in continuous existence.
- 1.2 This Agreement has been duly authorised, executed and delivered by, and constitutes a valid and legal binding agreement of the Issuer and is enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.
- 1.3 The execution and delivery by the Issuer of, and the performance by the Issuer of its obligations under, this Agreement:
- (a) has been duly authorised by all corporate or other action required under English law;
 - (b) do not and will not require any consent, approval, concession, authorisation or order of, or filing with, any governmental, corporate or other agency or body or any court; and
 - (c) do not and will not contravene, conflict with, violate or result in a breach of any of the terms and provisions of, or constitute a default under:
 - (i) any statute or law, or any rule or regulation or any order, judgment or decree of any government, governmental agency or body or any court applicable in respect of the Issuer or any of its property;
 - (ii) any agreement or instrument or other obligation to which the Issuer is a party or by which the Issuer or any part of its property, undertakings, assets or revenues is bound; or
 - (iii) any of the constitutional documents of the Issuer.

Part 2: JerseyCo Warranties

1. JERSEYCO

1.1 JerseyCo is a private limited company incorporated in Jersey under Jersey law and since incorporation:

- (a) it has been in continuous existence;
- (b) it has not traded or carried on any business or activity of any nature, save for: (i) any activities required in connection with its incorporation; (ii) activities in order to give effect the terms of a subscription and transfer agreement between JerseyCo, the Company and the trustee of the Investec Limited Security Purchase and Option Scheme 2002 Trust dated 31 March 2009 (the "**First STA**") and the transactions contemplated thereby; (iii) in order to give effect to the terms of this Agreement and the transactions contemplated thereby; (iv) activities in order to give effect the terms of a loan facility between JerseyCo and the Company dated 31 March 2009; or (v) activities relating to the redemption of the preference shares the subject of the First STA; and
- (c) it has not incurred any liabilities other than those incurred: (A) in connection with its incorporation; (B) under the First STA; (C) under this Agreement, and the transactions contemplated by such agreements and general corporate administration costs.

1.2 This Agreement has been duly authorised, executed and delivered by, and constitutes a valid and legally binding agreement of JerseyCo and is enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

1.3 The execution and delivery by JerseyCo of, and the performance by JerseyCo of its obligations under, this Agreement (including, without limitation, the creation, issue and allotment of the Preference Shares):

- (a) has been duly authorised by all corporate or other action required under Jersey law;
- (b) do not and will not require any consent (other than the consent of the Jersey Financial Services Commission under the Control of Borrowing (Jersey) Order 1958, as amended, which has already been obtained), approval, concession, authorisation or order of, or filing with, any governmental, corporate or other agency or body or any court; and
- (c) do not and will not contravene, conflict with, violate or result in a breach of any of the terms and provisions of, or constitute a default under:
 - (i) any statute or law, or any rule or regulation or any order, judgment or decree of any government, governmental agency or body or any court applicable in respect of JerseyCo or any of its property;
 - (ii) any agreement or instrument or other obligation to which JerseyCo is a party or by which JerseyCo or any part of its property, undertakings, assets or revenues is bound; or
 - (iii) any of the constitutional documents of JerseyCo.

- 1.4 JerseyCo has not given any power of attorney, other than in connection with the First STA (which former power of attorney is no longer in force).
- 1.5 No share register of JerseyCo is or has at any time been located or kept in the United Kingdom.
- 1.6 JerseyCo has not done or been a party to the doing of any act which is unlawful for the purposes of section 765 of the Income and Corporation and Taxes Act 1988.

2. **THE PREFERENCE SHARES**

- 2.1 Save for any Encumbrance created by this Agreement or the Articles, there will be no pre-emption rights or Encumbrance over or in relation to the Preference Shares as at the date of allotment and issue of such shares.
- 2.2 The Preference Shares shall, in consideration of the Payment Undertaking, be issued fully paid, shall be freely transferable shares with the rights, and subject to the restrictions, set out in the Articles and shall rank pari passu among themselves.
- 2.3 At Admission, the directors of JerseyCo shall have due authority to allot the Preference Shares and such shares, when allotted and issued, will have been duly and validly allotted and issued.
- 2.4 No amendments will have been made to the Articles between the date of this Agreement and Admission.

SCHEDULE 2

POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY Merrill Lynch International, a private unlimited company incorporated in Great Britain under the Companies Act 1985 registered in England and Wales with registered number 02312079, whose registered office and principal place of business is at Merrill Lynch Financial Centre, 2 King Edward Street, London, EC1A 1HQ (the "**Principal**"), hereby appoints each of Alan Stevens, Guy Coltman, Nicholas Crocker, William Grace, Michael Jeffrey, Nicolas Journeaux, John Kelleher, Eve Kosofsky, Robert MacRae, Simon Marks, Paul Matthams, Alexander Ohlsson, Marcus Pallot, Christopher Philpott, Edward Quinn, Siobhan Riley, Robin Smith and Paul Sugden (the "**Attorneys**"), all of 47 Esplanade, St Helier, Jersey, to be its attorneys (which expression shall be deemed to include any one of the Attorneys individually), to whom it grants full power and authority for it and in its name and on its behalf to:

- sign, execute and deliver any number of share transfer forms substantially in the same form as that attached hereto (with authority to complete all blanks) to give effect to the transfer to Investec plc of redeemable preference shares in the capital of Investec Finance (Jersey) Limited as instructed by the Principal or its legal advisers, Ashurst LLP, of Broadwalk House, 5 Appold Street, London, EC2A 2HA ("**Ashurst**"); and
- execute, sign, seal and deliver as may be appropriate any or all other documents, whether expressed to be executed as deeds or otherwise, respectively incidental thereto as instructed by the Principal or its legal advisers, Ashurst; and
- do any or all other acts and things necessary or expedient in connection therewith with such documents as instructed by the Principal or its legal advisers, Ashurst with such documents to be in such form as the said Attorney may approve,

and such approval to be conclusively evidenced by the due execution thereof.

The Principal hereby agrees to ratify and confirm and to hold as valid and irrevocable all that the Attorneys shall do or cause to be done pursuant to and in accordance with this Power of Attorney. The Principal further declares that any person dealing with its Attorneys shall not be concerned to see or enquire as to the propriety or expediency of any act, deed, matter or thing which its Attorneys may do or cause to be done in its name hereunder.

The Principal may revoke this Power of Attorney at any time by instrument in writing delivered to the Attorneys.

This Power of Attorney and the authority conferred on the Attorneys hereby shall terminate upon the expiration of one month from the date hereof. This Power of Attorney shall be governed and construed in accordance with the laws of England and Wales and the parties hereto hereby submit to the non-exclusive jurisdiction of the Courts of England and Wales.

IN WITNESS WHEREOF this Power of Attorney was executed at _____ this _____ day of July, 2009.

Executed and delivered as a deed by)

Merrill Lynch International)

_____ Signature of authorised signatory

_____ Name of authorised signatory

_____ Signature of authorised signatory

_____ Name of authorised signatory

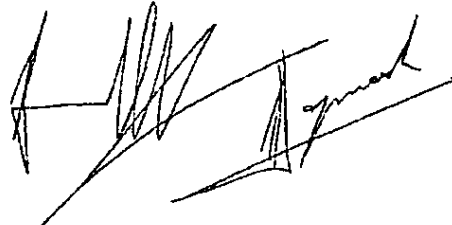
IN WITNESS whereof the parties have executed this Agreement on the date and year first above written.

Signed by)
)
for and on behalf of **INVESTEC PLC:**)




Signed by)
)
for and on behalf of **MERRILL LYNCH**)
INTERNATIONAL:)

Signed by)
)
for and on behalf of **INVESTEC**)
FINANCE (JERSEY) LTD:)



IN WITNESS whereof the parties have executed this Agreement on the date and year first above written.

Signed by)
)
for and on behalf of **INVESTEC PLC:**)

Signed by) PAUL FRANKFURT
)
for and on behalf of **MERRILL LYNCH**)
INTERNATIONAL:) 

Signed by)
)
for and on behalf of **INVESTEC**)
FINANCE (JERSEY) LTD:)