23 July 2015

**EPE SPECIAL OPPORTUNITIES PLC**

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# LOAN NOTE INSTRUMENT

constituting

# £10,000,000 UNSECURED LOAN NOTES DUE 2022

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CONTENTS

**THIS INSTRUMENT** is made on 23 July 2015

**BY**

**EPE SPECIAL OPPORTUNITIES PLC**, a company incorporated in the Isle of Man with registered number 008597V and having its registered office at IOMA House, Hope Street, Douglas, Isle of Man IM1 1AP (the "**Company**").

**WHEREAS**

By a resolution of its board of directors the Company has authorised the creation and issue of up to £10,000,000 unsecured loan notes due 2022 to be constituted by this Instrument.

**IT IS AGREED THAT**

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Instrument and the schedules hereto unless the contrary intention appears:

"**AIM**" means the market of that name operated by the London Stock Exchange;

"**Articles**" means the articles of association of the Company as altered from time to time;

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks in the City of London and the Isle of Man are open for ordinary banking business;

"**Certificate**" has the meaning given to such term in clause 3.1;

"**Certificated Form**" means any Note which is for the time being evidenced by a Certificate;

"**Financial Covenant Default**" has the meaning given to such term in clause 5.3(b);

"**Financial Covenant Test Date**" means 31 January of each year, commencing on 31 January 2016;

"**CREST**" means the dematerialised securities trading system operated by Euroclear UK and Ireland Limited;

"**Extraordinary Resolution**" means a resolution passed at a meeting of the Noteholders duly convened and held by a majority consisting of not less than 75 per cent. of the persons voting at the meeting upon a show of hands and if a poll is demanded then by a majority consisting of not less than 75 per cent. of the votes given on such poll;

"**Final Repayment Date**" means the seventh anniversary of the date of this Instrument (or if such day is not a Business Day, the succeeding Business Day), as the same may be extended in accordance with clause 5.1(b);

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed;

(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

(f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

(h) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;

"**Gross Asset Value**" means the aggregate of: (a) the Net Asset Value of the Company; and (b) all Financial Indebtedness and other financial liabilities of the Company determined in accordance with IFRS, in each case as at 31 January of the relevant year;

"**IFRS**" means the International Financial Reporting Standards and International Accounting Standards;

"**Interest Period**" means the period from and including the first date of issue of the Notes to (but excluding) the first Interest Payment Date or any subsequent Interest Payment Date to (but excluding) the next following Interest Payment Date;

"**Interest Payment Date**" has the meaning given to such term in clause 4.3;

"**Interest Rate**" means 7.50 per cent. per annum;

"**Laws**" means all applicable legislation, statutes, directives, regulations, judgments, decisions, decrees, orders, instruments, by-laws, and other legislative measures or decisions having the force of law, treaties, conventions and other agreements between states, or between states and the European Union or other supranational bodies, rules of common law, customary law and equity and all civil or other codes and all other laws of, or having effect in, any jurisdiction from time to time;

"**Majority of Noteholders**" means Noteholder(s) holding in aggregate more than 50 per cent. in principal amount of the Notes in issue and outstanding;

"**Net Asset Value**" means the amount designated as the "Net Asset Value" or "NAV" of the Company in the audited report and accounts of the Company for the relevant year ending on 31 January;

"**Noteholder**" means a person whose name is entered and appears in the Register as a holder of any Notes;

"**Notes**" means the loan notes constituted by this Instrument or, as the case may be, those loan notes for the time being outstanding;

"**Operator**" has the meaning given to such term in the Regulations;

"**Redemption**" includes repayment and vice versa and the words "**redeem**", "**redeemable**" and "**redeemed**" and "**repay**", "**repayable**" and "**repaid**" shall be construed accordingly;

"**Register**" means the register of holders of Notes kept by or on behalf of the Company;

"**Regulations**" means the Isle of Man Uncertificated Securities Regulations 2005;

"**Shares**" means the ordinary shares of 5 pence each in the capital of the Company, which have the rights set out in the Articles;

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"**Tax**" means all forms of taxation, levy or duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) whether of the United Kingdom or elsewhere; and

"**Uncertificated Form**" means any Note which is for the time being recorded in the relevant register of Noteholders as being held in uncertificated form in CREST, and title to which may, by virtue of the Regulations, be transferred by means of CREST.

1.2 Words importing the singular number include the plural and vice versa.

1.3 Words importing one gender include all genders.

1.4 Words importing persons include corporations and vice versa.

1.5 References to any provision of any Law or of any subordinate legislation made pursuant to any Law shall be deemed to be references to such Law or subordinate legislation as amended, modified or re-enacted (whether before or after the date hereof) and any references to any provision of any such act or legislation also include where appropriate any provision of which there are re-enactments (whether with or without modification) and any provision in repealed enactments.

1.6 Words defined in the Articles shall, save where the context otherwise requires, have the same meaning when used in this Instrument.

1.7 References to (or to any specified provision of) any agreement or document are to be construed as a reference to that agreement or document (or that provision) as it may be amended, varied, novated or supplemented from time to time in accordance with the terms thereof.

## 2. CONSTITUTION OF THE NOTES

2.1 Subject to clause 2.5, the aggregate principal amount of Notes shall not exceed £10,000,000.

2.2 The Notes will rank *pari passu* between each other and as unsecured obligations of the Company and be issued in accordance with the terms of this Instrument.

2.3 The Notes will be issued in registered form in integral multiples of £1.00 principal amount.

2.4 The Company may issue the Notes in Certificated Form or Uncertificated Form provided that, pursuant to the Regulations, if issued in Uncertificated Form, the Company shall make arrangements for the holding of title to such Notes in Uncertificated Form and transfer of title thereto otherwise than by a written instrument.

2.5 The Company shall be at liberty from time to time to create and issue further Notes ranking *pari passu* in all respects and so that the same shall be consolidated with the existing Notes constituted by this Instrument.

## 3. CERTIFICATES

3.1 Each Noteholder holding Notes in Certificated Form shall be entitled, unless waived by the Noteholder, to a certificate stating the principal amount of the Notes held by it (a "**Certificate**") and a certified copy of this Instrument. Joint holders of Notes in Certificated Form will be entitled to only one Certificate and a certified copy of this Instrument in respect of their joint holding and the Certificate shall be delivered to that one of the joint holders who is first named in the Register in respect of the joint holding.

3.2 The Certificates shall be substantially in the form set out in Schedule 1 and shall be executed as a deed by the Company.

3.3 The Notes and the Certificates shall be held subject to the terms of this Instrument which shall be binding on the Company and the Noteholders.

## 4. INTEREST

4.1 Until all of the Notes shall have been redeemed, interest on the principal amount of each outstanding Note in issue (and on any accrued and outstanding interest that is compounded in accordance with clause 4.4) shall accrue on a daily basis from the date of issue of such Note to the date of redemption of such Note (both days inclusive) at the Interest Rate. If the Company redeems any Notes in respect of which interest has accrued pursuant to this clause 4, then the interest accrued pursuant to this clause 4 on those Notes will be paid to the Noteholders on redemption of those Notes.

4.2 Any interest which falls for calculation will be calculated on the basis of a 365 day year and actual days elapsed.

4.3 Any interest accrued pursuant to clause 4.1 shall be payable semi-annually in arrears in equal instalments on 31 January and 31 July (each an "**Interest Payment Date**"), provided that the first Interest Payment Date after the constitution of this Instrument shall be 31 January 2016, and shall be *pro rated* in respect of any period that is less than six months.

4.4 If any amount becomes payable in accordance with the terms hereof but is not paid, such amount shall accrue interest at a rate of 2 per cent. above the Interest Rate (compounding on a semi-annual basis on each Interest Payment Date) between the date upon which such amount became payable and the date of actual payment (both days inclusive).

## 5. REDEMPTION

5.1 Redemption on Final Repayment Date

(a) The Notes will be redeemed in full on the Final Repayment Date (together with all interest accrued thereon but unpaid up to the date of such redemption), subject to the remaining provisions of this clause 5 and clause 6.

(b) The Company may (in its sole discretion) extend the Final Repayment Date to the eighth anniversary of the date of this Instrument, provided that the following conditions are met:

(i) the Company gives written notice of such extension to the Noteholders on or prior to 31 January 2022; and

(ii) the Company is in compliance with the terms of this Instrument on the seventh anniversary of the date of this Instrument.

5.2 Early voluntary redemption

The Company may elect, on any one or more occasions, to redeem:

(a) on or after 31 July 2018, at par up to 50 per cent. of the aggregate principal amount of Notes issued under this Instrument (together with unpaid accrued interest thereon up to (and including) the relevant date fixed for redemption); and

(b) on or after 31 July 2020, at par up to 75 per cent. of the aggregate principal amount of Notes issued under this Instrument (together with unpaid accrued interest thereon up to (and including) the relevant date fixed for redemption),

provided that:

(i) if the Company elects to exercise its early redemption right under this clause 5.2, such redemption shall be effected on a *pro rata* basis (as at the date of redemption) in respect of all Noteholders; and

(ii) the Company shall give the Noteholders not less than 30 days' written notice prior to the redemption of the Notes under this clause 5.2.

5.3 Mandatory redemption

If any of the events set out in this clause 5.3 shall occur, the Company shall, within 90 Business Days of written demand by any Noteholder, repay all of the Notes held by such Noteholder (together with all interest accrued thereon but unpaid up to the date of redemption):

(a) the Company commits any material breach of this Instrument (including, without limitation, any breach of clause 10) which is not remedied within 90 Business Days of service of written notice by the Majority of Noteholders requiring such remedy;

(b) the Interest Coverage Test (as set out in clause 9.4) or the Gross Asset Test (as set out in clause 9.5) is not satisfied on a Financial Covenant Test Date in accordance with clauses 9.1 and 9.2, respectively (a "**Financial Covenant Default**") and such Financial Covenant Default is not remedied within 90 Business Days following the Financial Covenant Test Date on which the Financial Covenant Default occurred;

(c) an order is made or an effective resolution is passed for the winding up of the Company other than:

(i) a solvent winding up for the purposes of amalgamation or reconstruction under which a successor or successors undertake(s) the obligations of the Company under the Notes; or

(ii) a members' voluntary winding up on terms previously approved by an Extraordinary Resolution;

(d) the Company stops or threatens to stop payment of its debts, or the Company ceases or threatens to cease to carry on its business;

(e) an administrator of the Company is appointed, or documents are filed with the Court for the appointment of an administrator, or notice is given of an intention to appoint an administrator by the Company or the directors;

(f) a receiver, administrative receiver or similar official is appointed in respect of the whole or a substantial part of the undertaking and assets of the Company;

(g) any distress or execution (or other similar process) is levied on or enforced against all or a substantial part of the assets or property of the Company and is not fully paid out or discharged within 90 days; or

(h) any process or event with an effect analogous to any of those referred to in sub-clauses (d) to (g) above happens to the Company in a jurisdiction outside the Isle of Man.

5.4 Mechanics of redemption

(a) Every Noteholder whose Notes are in Certificated Form and are due to be repaid or redeemed shall, not later than the due date for such redemption or repayment, deliver the Certificate representing such Notes to the Company or a form of indemnity in respect of any lost certificate satisfactory to the Company (acting reasonably) as the Company shall direct. In respect of any part repayment of such Notes comprised in a Certificate, the Company shall issue a fresh certificate in respect of the Notes not repaid.

(b) Subject to sub-clause (c) below, on or before the date upon which any Note in Uncertificated Form is to be redeemed, the Company shall send, or procure that a sponsoring system-participant sends on its behalf, an issuer-instruction to the Operator of the relevant system requesting or requiring the cancellation and deletion of any computer-based entries that relate to the relevant Note (being or including entries that caused or could cause CREST to generate an Operator-instruction to the Company or to a sponsoring system-participant acting on its behalf to register such cancellation or deletion). If necessary to obtain the same, the Company, or a sponsoring system-participant on its behalf, shall seek, by means of the relevant system (or by such other means as the Company shall see fit subject always to such other means being possible having regard to the facilities and requirements of the relevant system) confirmation of such cancellation or deletion and, on receipt of such confirmation in a form satisfactory to it, the Company shall repay the Notes.

(c) In relation to any Notes that are to be redeemed, the Company shall be entitled to determine and/or alter the procedure for effecting the repayment in such reasonable manner as it shall, in its reasonable discretion, see fit, subject always to the facilities and requirements of the relevant system concerned. In particular, but without limiting the generality of the foregoing:

(i) the issuer-instruction referred to in sub-clause (b) above may be given in such form as the Company may from time to time determine and may have such effect, and/or cause the Operator to take such action, in relation to the relevant system and the Notes concerned as the Company may from time to time determine (consistent always with the facilities and requirements of the relevant system concerned and with the repayment, on the relevant date, of the Notes concerned);

(ii) if, at any relevant time prior to the relevant date for redemption, the Company or any sponsoring system-participant acting on behalf of the Company is unable, for any reason, to send or receive properly authenticated dematerialised instructions, or alternatively if the Company so determines for any other reason, the Company may, so far as it is able having regard to the facilities and requirements of the relevant system concerned, require or request the Operator of the relevant system concerned to take the action referred to in sub-clause (b) (subject always as provided in sub-clause (c)(i) above) by some means other than by means of an issuer-instruction.

## 6. PURCHASE OF NOTES BY THE COMPANY

The Company may at any time by agreement with the relevant Noteholder(s) purchase Notes at any price by tender, private treaty or otherwise.

## 7. CANCELLATION

All Notes purchased or redeemed or otherwise repaid by the Company shall be cancelled and the Company shall not be at liberty to reissue the same.

## 8. FORM AND TRANSFER

8.1 In relation to the Notes (or as the case may be) each part of the Notes which is, for the time being, a participating security, and for so long as it or that part remains a participating security, no provision of this Instrument shall (notwithstanding anything contained therein) apply or have effect to the extent that it is in any respect inconsistent with:

(a) the holding of title to the Notes in Uncertificated Form;

(b) the transfer of title to the Notes by means of a relevant systems; or

(c) the Regulations.

8.2 Each Note shall be freely transferable in accordance with the provisions of this clause 8.

8.3 The Notes are only transferable in whole units of £1.00 and multiples thereof.

8.4 Subject to clause 8.3, any Notes in Certificated Form are transferable by an instrument in writing in the usual form. Every instrument of transfer must be signed by the transferor or where the transferor is a corporation given under its common seal or signed on its behalf by a duly authorised officer or agent and the transferor shall remain the owner of the Notes to be transferred until the name of the transferee is entered in the Register in respect thereof. Every instrument of transfer must be lodged for registration at the place where the Register shall for the time being be kept accompanied by the Certificate for the Notes all or part of which are to be transferred and such other evidence as the Company may require to prove the title of the transferor or his right to transfer the Notes or the authority of the person signing the same.

8.5 Subject to clause 8.3, the transfer of any Notes in Uncertificated Form shall be effected by means of a relevant system in the manner provided for, and subject as provided, in the Regulations.

8.6 The Company shall not be entitled to assign or transfer all or any of its rights, benefits or obligations hereunder.

## 9. FINANCIAL COVENANTS

9.1 The Company shall ensure that, on each Financial Covenant Test Date, the Interest Coverage Test is satisfied.

9.2 For so long as at least 50 per cent. of the principal amount of Notes issued on or around the date hereof remains outstanding, the Company shall ensure that, on each Financial Covenant Test Date, the Gross Asset Test is satisfied.

9.3 The Company shall calculate each of the Interest Coverage Test and the Gross Asset Test as at each Financial Covenant Test Date as soon as reasonably practicable after the relevant Financial Covenant Test Date and if either the Interest Coverage Test or the Gross Asset Test is not satisfied, the Company shall promptly:

(a) notify the Noteholders of the same; and

(b) provide the Noteholders reasonable details of its calculations.

9.4 Interest Coverage Test

(a) The Interest Coverage Test shall be satisfied on any date if the Interest Coverage Ratio is equal to or greater than 6:1.

(b) For the purposes of the above:

*Interest Coverage Ratio=*

$$\frac{\textit{Interest Coverage Amount}}{\textit{Interest payable on any Financial Indebtedness of the Company in respect of the period commencing on the Financial Covenant Test Date and ending on the immediately succeeding Interest Payment Date}}$$

Where:

(i) **"Interest Coverage Amount"** means the aggregate of cash and cash equivalents held by or on behalf of the Company or any limited partnership or other entity in which the Company holds a majority of the economic interests (except any portfolio company); and

(ii) for the purposes of calculating the Interest Coverage Ratio:

(A) the Company may convert all amounts into GBP, if any such amount is not already in GBP, at the rate of exchange at which the Company would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of GBP;

(B) any interest on any debt securities purchased (or otherwise held) by the Company shall be excluded in its entirety; and

(C) any interest payable on any Financial Indebtedness of the Company shall be calculated using then current interest rates applicable thereto.

9.5 Gross Asset Test

(a) The Gross Asset Test shall be satisfied on any date if the Gross Asset Ratio is equal to or greater than 2:1.

(b) For the purposes of the above:

*Gross Asset Ratio=*

$$\frac{\textit{Gross Asset Value}}{\textit{Principal amount of all Financial Indebtedness of the Company (together with any interest accrued but unpaid thereon)}}$$

Where, for the purposes of calculating the Gross Asset Ratio, the principal amount of any debt securities purchased (or otherwise held) by the Company (together with any interest thereon) shall be excluded in its entirety.

## 10. CONCENTRATION COVENANT

10.1 Without the prior approval of a Majority of Noteholders, the Company will not, after the date hereof, make any investment in any single portfolio company (whether in one transaction or a series of transactions), together with any related guarantees or other types of credit support, comprising more than 25 per cent. of the Gross Asset Value of the Company (calculated as of the Financial Covenant Test Date immediately preceding the date on which the Company makes its initial investment in such portfolio company) ("**GAV**"), except that the Company may invest up to an additional 10 per cent. of GAV in such portfolio company in the form of bridge financing which is repayable within a period of 12 months from the date of such investment.

## 11. NEGATIVE PLEDGE

11.1 The Company shall not create or permit to subsist any Security over any of its assets.

11.2 Clause 11.1 above does not apply to any Security listed below or in Schedule 3:

(a) any netting or set-off arrangement entered into by the Company in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

(b) any lien arising by operation of law and in the ordinary course of trading, including (without limitation) statutory liens;

(c) any Security over or affecting any asset acquired by the Company after the date of this Agreement if:

(i) the Security was not created in contemplation of the acquisition of that asset by the Company; and

(ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by the Company;

(d) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to the Company and on the supplier's standard or usual terms and not arising as a result of any default or omission by the Company; and

(e) any Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security given by Company other than any permitted under sub-clauses (a) to (d) above) does not exceed £5,000,000 (or its equivalent in another currency or currencies).

## 12. REGISTER

12.1 The Company shall cause the Register to be maintained showing the principal amount of Notes for the time being issued, the date of issue and all subsequent transfers or changes of ownership of the Notes, the names and addresses of the Noteholders and the persons deriving title under them. A Noteholder and any person authorised in writing by it may at all reasonable times during office hours inspect the Register and take copies of or extracts from the Register or any part of it. The Register may be closed at such times and for such periods as the Company may think fit provided that it shall not be closed for more than ten Business Days in any one calendar year.

12.2 The Company will recognise the registered holder of any Notes as the absolute owner thereof and (except as required by Law) shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Notes may be subject and the Company may accept the receipt of the registered holder for the time being of any Notes for the interest from time to time accruing due in respect thereof or for any other moneys payable in respect thereof as a good discharge to the Company notwithstanding any notice it may have whether express or otherwise of the right, title, interest or claim of any other person to or in any such Notes, interest or moneys.

12.3 No notice of any trust, express, implied or constructive, shall (except as provided by Law or as required by order of a court of competent jurisdiction) be entered in the Register in respect of any Notes.

12.4 The Company will recognise every registered holder of any Notes as entitled to those Notes free from any equity, right of set-off (whether arising by operation of Law or otherwise) or counter-claim on the part of the Company against the original or any intermediate holder of those Notes or against any amounts payable to such holders of those Notes (including interest accrued thereon).

12.5 Any change of name or address on the part of any holder of Notes shall forthwith be notified by the Noteholder to the Company and the Company shall alter the Register accordingly.

12.6 If several persons are entered in the Register as joint registered holders of any Notes then the receipt of any one of such persons for any interest or principal or other monies payable in respect of such Notes shall be as effective a discharge to the Company as if the person signing such receipt were the sole registered holder of such Notes.

12.7 The Company shall only recognise the personal representatives of a deceased Noteholder (not being one of several joint holders) as having any title to or interest in a Note held by that Noteholder. In the case of the death of any of the joint holders of a Note the Company shall only recognise the survivors or survivor as having any title to or interest in such Note.

## 13. NO WITHHOLDING ETC.

13.1 All payments to be made by the Company under or in respect of the Notes shall be made free and clear of and without deduction or withholding for or on account of Tax, save as required by Law.

13.2 If at any time the Company is required by Law to make any deduction or withholding for or on account of Tax from any payment to a Noteholder it shall promptly notify each of the Noteholders of the amount which it is required to deduct or withhold.

13.3 If, as a result of a payment being made by or on behalf of the Company under the Notes, the Company is required to deduct or withhold any amount for or on account of Tax, the Company shall pay such amount in full to the relevant authority within the time allowed for such payment under applicable law.

## 14. PAYMENT BY COMPANY

14.1 Whenever any payment in respect of the Notes becomes due on a day which is not a Business Day, it shall be postponed to the next day which is a Business Day.

14.2 Subject to clause 14.3, any payment to be made by the Company in respect of any interest or principal or other monies payable in respect of any Notes may be made by cheque, or if any Noteholder shall so request in writing to the Company, by banker's draft or bank transfer to a specified account, made payable to the Noteholder and sent (at the risk of the Noteholder) to its registered address or in the case of joint holders made payable to and sent to that one of the joint holders who is first named on the Register at its registered address or made payable to such person or persons and sent to such address as the holder or all the joint holders may in writing direct. Due payment of such cheque or banker's draft or by bank transfer shall be a satisfaction of the principal amount and interest represented thereby.

14.3 The Company may or may procure the payment of the principal amount, all accrued interest on the Notes and/or any other amount payable by the Company to the Noteholders by means of a relevant system concerned (subject always to the facilities and requirements of that relevant system). Such payment may include the sending by the Company or by any person on its behalf an instruction to the Operator of the relevant system concerned to credit the account of the relevant Noteholder or of such person as the Noteholder in writing directs, in either case being an account designated by the Operator of such relevant system as the cash memorandum account of the Noteholder or, as the case may be, of such person. The making of such payment in accordance with the facilities and requirements of the relevant system concerned shall constitute good discharge to the Company.

14.4 If any Noteholder (or the personal representatives of a deceased Noteholder or the trustee in bankruptcy of a bankrupt Noteholder) to whom any payment in respect of any interest or principal or other monies payable in respect of Notes is made or to be made, shall fail or refuse to accept payment of the moneys payable or to give a receipt for the same, such moneys shall be set aside by the Company and paid into a separate bank account and held by the Company in trust for such Noteholder, and such setting aside shall be deemed for all the purposes to be a payment to such Noteholder and the Company shall then be discharged from all obligations in connection therewith. If the Company shall place the said moneys into a separate bank account as aforesaid, the Company shall not be responsible for the safe custody of such moneys or for interest thereon (which shall be for the credit of the Noteholder), and if unclaimed, such moneys shall revert to the Company as set out in clause 14.5.

14.5 Amounts in respect of interest on any Notes which remain unclaimed by the Noteholder for a period of five years and amounts due in respect of principal which remain unclaimed for a period of ten years, in each case from the date on which the relevant payment first becomes due, shall revert to the Company and the Noteholder shall cease to be entitled to such amounts notwithstanding that in the intervening period the obligation to pay the same may have been provided for in the books, accounts and other records of the Company.

## 15. MEETINGS OF NOTEHOLDERS

The provisions for meetings of holders of the Notes set out in Schedule 2 shall be deemed to be incorporated in this Instrument and shall be binding on the Company and the Noteholders and on all persons claiming through or under them respectively.

## 16. DEALINGS

The Notes shall be capable of being listed and/or dealt in on any relevant stock exchange, whether in the United Kingdom or elsewhere.

## 17. NOTICES

17.1 Any notice required to be given for any purpose of this Instrument shall unless otherwise provided be given by sending the notice by prepaid post addressed, in the case of a notice to the Noteholders, to each Noteholder at his registered address or, in the case of joint registered Noteholders, addressed to the Noteholder whose name stands first in the Register at his registered address and, in the case of a notice to the Company, at its registered office.

17.2 Any notice served by post shall be deemed to have been served on the day following that on which it is posted and in proving such service it shall be sufficient to prove that the notice was properly addressed stamped and posted (by first class post if available) subject to proof of delivery having been obtained.

## 18. INVALIDITY OF ANY PROVISIONS

If any of the provisions of this Instrument shall become illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be impaired.

## 19. GOVERNING LAW & JURISDICTION

19.1 This Instrument (including any non-contractual disputes in relation thereto) shall be construed in accordance with and be subject to the law of England and Wales.

19.2 The Company irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any Disputes, and waives any objection to proceedings before such courts on the grounds of venue or on the grounds that such proceedings have been brought in an inappropriate forum. For the purposes of this clause 19.2, "Dispute" means any dispute, controversy, claim or difference of whatever nature arising out of, relating to, or having any connection with this Instrument, including a dispute regarding the existence, formation, validity, interpretation, performance or termination of this Instrument or the consequences of its nullity and also including any dispute relating to any non-contractual rights or obligations arising out of, relating to, or having any connection with this Instrument.

## SCHEDULE 1

## FORM OF CERTIFICATE

**Certificate No. [ ]** **Principal Amount £[ ]**

**EPE SPECIAL OPPORTUNITIES PLC** (the "**Company**")

Incorporated in the Isle of Man with company number 008597V

£10,000,000 unsecured loan notes due 2022

THIS IS TO CERTIFY THAT

[*Noteholder name*]

is the registered holder of the above principal amount of the £______________ unsecured loan notes due 2022 (the "**Notes**") constituted by an Instrument entered into by the Company on ________________ 2015 (the "**Instrument**") and issued with the benefit of, and subject to, the provisions contained in the Instrument.

The Notes and the Instrument are governed by and shall be construed in accordance with the law of England and Wales.

**IN WITNESS** whereof **EPE SPECIAL OPPORTUNITIES PLC** has executed this Certificate on

____________________.

**EXECUTED** and **DELIVERED**
as a **DEED** by
**EPE SPECIAL OPPORTUNITIES PLC:**

______________________________
Director

______________________________
Director/Secretary

Note: The Notes are only transferable in whole units of £1.00 and multiples thereof. No transfer of the Notes represented by this Certificate will be registered unless it is conducted in accordance with the terms of the Instrument and accompanied by this Certificate and lodged with the Company at its registered office.

## SCHEDULE 2

## MEETINGS OF NOTEHOLDERS

1. Subject to the remaining provisions of this Schedule 2, the Company may at any time, and within 7 days of receipt of a request signed by a Majority of Noteholders shall, convene a meeting of the Noteholders by giving not less than fourteen days' notice to the Noteholders and such meeting shall have power by:

   (a) a resolution passed by the Majority of Noteholders present and voting upon a show of hands or if a poll is demanded by the Chairman of the meeting on such poll:

      (i) to sanction any scheme for the reconstruction of the Company or for the amalgamation of the Company with any other company;

      (ii) to give any written approval hereunder required to be given by the Majority of the Noteholders;

      (iii) to appoint any persons (whether Noteholders or not) as a committee to represent the interests of the Noteholders and to confer upon such committee any powers or discretions which the Noteholders could themselves exercise;

      (iv) to sanction any modification, compromise, waiver or release in respect of any obligation of the Company arising under or in connection with clauses 9, 10 or 11; and

   (b) subject to paragraph 1(a) of this Schedule 2, an Extraordinary Resolution:

      (i) to sanction any modification or compromise or any arrangement proposed by the Company in respect of the rights of the Noteholders against the Company or against its property whether such rights shall arise under this Instrument or the Certificates or otherwise;

      (ii) to assent to any modification of the provisions contained in this Instrument proposed or agreed to by the Company and to agree to any supplemental instrument proposed by the Company embodying any such modification;

      (iii) to sanction any agreement proposed by the Company for postponing or advancing the time for the payment of principal moneys or interest payable in respect of the Notes;

      (iv) to release the Company from all or part of its obligations in respect of the Notes or for the exchange of the Notes for, or conversion of Notes into, other securities of the Company or any other company formed or hereafter to be formed; and

      (v) to give any approval otherwise requiring approval by a unanimous decision of the Noteholders hereunder.

2. A resolution whether in one or more documents signed by or on behalf of the Majority of Noteholders shall be as valid and effectual as if it had been passed at a meeting of the Noteholders duly convened and held and a resolution whether in one or more documents signed by or on behalf of seventy five per cent. of the principal amount of the outstanding Notes shall, for all purposes, be as valid and effectual as an Extraordinary Resolution passed at a meeting duly convened and held.

3. Any meeting for the above purposes shall be convened, conducted and held in all respects as near as possible in the same way as shall be provided by the Articles with regard to general meetings of the Company, provided that:

(a) no member of the Company not being a director shall be entitled to notice thereof or to attend unless he is a Noteholder;

(b) the quorum at any such meeting shall be Noteholders holding or representing by proxy at least 20 per cent. of the principal amount of the Notes for the time being outstanding; and

(c) if a poll is demanded each Noteholder shall have one vote for each £1.00 in nominal amount of Notes held.

4. If within thirty minutes (or such longer time not exceeding one hour as the chairman of the meeting may determine to wait) from the time appointed for holding any meeting a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place or at such time and place as the chairman of the meeting may determine and at the adjourned meeting the Noteholder(s) present shall form a quorum. Notice of an adjourned meeting shall be given in like manner as for the original meeting and such notice shall state that the Noteholder(s) present at such meeting whatever the number of Notes held or represented by them will constitute a quorum for all purposes.

## SCHEDULE 3 PERMITTED SECURITY

1. Any Security granted by the Company in relation to any overdraft facility of the Company or any limited partnership or other entity in which the Company holds a majority of the economic interests (except any portfolio company).

2. Any Security granted to DES Holdings IV(A) LLC (and/or any of its affiliates) in connection with the Company's purchase of any interests of DES Holdings IV (A) LLC in ESO Investments 1 LP.

**IN WITNESS WHEREOF** this Instrument has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED** and **DELIVERED**
as a **DEED** by
**EPE SPECIAL OPPORTUNITIES PLC:**

Director

~~Director~~/Secretary