
ARTICLES OF ASSOCIATION

of

MA POTTER'S LIMITED

Incorporated on: 17 August 1995

Registered number: 03092239

Amended 7 July 2003



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COMPANIES HOUSE

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11/07/03

COMPANY NUMBER: 03092239

ARTICLES OF ASSOCIATION

of

MA POTTER'S LIMITED (the "Company")

(adopted by Special Resolution on January 2003)

1. INTERPRETATION

1.1 Subject as provided in paragraph 1.2 below, the regulations contained in Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No 805) shall, together with the following regulations, constitute the Articles of Association of the Company.

1.2 Regulations numbered 73 to 80 (both inclusive) in Table A shall not apply to the Company.

1.3 In these Articles:

1.3.1 headings are used for convenience only and shall not affect the construction hereof;

1.3.2 words and expressions which are defined in Table A shall bear the same meaning where used herein and, unless the context otherwise requires or save as otherwise provided herein, words and expressions contained herein shall bear the same meaning as in the Act (but excluding any statutory modification thereof not in force when these Articles were first adopted by the Company);

1.3.3 in the event of there being any conflict or inconsistency between any provision in Table A which is applicable to the Company and any provision set forth herein the latter shall prevail;

1.3.4 the following words and expressions shall have the following meanings:

the "**Act**" means the Companies Act 1985 and every statutory modification or re-enactment thereof and statutory instrument relevant thereto or derived therefrom for the time being in force;

these "**Articles**" means these Articles of Association as amended from time to time;

"**Associate**" has means the meaning ascribed thereto in Article 7.1.3;

"**Auditors**" means the auditors of the Company from time to time;

"**Controlling Interest**" has the meaning ascribed thereto in Article 7.1.4;

"**DC VCT3**" means Downing Classic VCT3 plc;

the **"Directors"** means the directors for the time being of the Company as a body, or a quorum of the Directors present at a meeting of the Directors;

"Dividend" shall have the meaning given in Article 3.2.1;

"Financial Year" an accounting period of twelve months (save for the first) ending on 30 November in respect of which the Company prepares its accounts in accordance with the relevant provisions of the Act;

"Group" the Company, its subsidiary undertakings, any holding company of the Company and any subsidiary undertakings of the holding company from time to time, or any of them, as the context admits and **"member of the Group"** shall have a corresponding meaning;

"Group Company" means a company within the Group;

"Investors" means DC VCT3, ProVen VCT and ProVen Media VCT and anyone who becomes an Investor pursuant to the terms of the Subscription Agreement;

"Investor Consent" means the prior written consent of the Investors ;

"Investor's Director" means the ProVen Director and/or the DC VCT3 Director;

"Loan Stock" means the Series A Loan Stock and the Series B Loan Stock to be issued by the Company as the same are constituted by the Series A Loan Stock Instrument dated 16 January 2003 and by the Series B Loan Stock Instrument dated 16 January 2003 respectively;

"Member" means any holder for the time being of shares in the capital of the Company of whatever class;

"Ordinary Shares" means Ordinary Shares of £1 each in the capital of the Company having the rights as set out in these Articles;

"Ordinary Shareholders" means holders of Ordinary Shares from time to time;

"ProVen" means ProVen Private Equity Limited;

"ProVen VCT" means ProVen VCT plc;

"ProVen Media VCT" means ProVen Media VCT plc;

"Relevant Dividend" shall have the meaning given in Article 3.1.3;

"Service Contract" means the contract of employment of a full time employee or the consultancy agreement of a consultant referred to in Article 6.13.2;

"Shares" means (unless the context does not so admit) any issued shares in the capital of the Company (of whatever class);

"**Subscription Agreement**" means the Agreement dated 16 January 2003 between J Gater and Others (1); the Company (2); DC VCT3 (3); ProVen VCT; (4) ProVen Media VCT (5); and Classic Fund Management Limited (6) all as defined in such Agreement.

- 1.4 A Special or Extraordinary Resolution shall be effective for any purpose for which an Ordinary Resolution is expressed to be required under any provision of these Articles or the Act.

2. SHARE CAPITAL AND SHARE RIGHTS

- 2.1 The authorised share capital of the Company at the date of adoption of these Articles is £10,000 divided into 10,000 Ordinary Shares of £1 each.

3. THE RIGHTS AND RESTRICTIONS ATTACHING TO THE ORDINARY SHARES

3.1 Rights to Income on Ordinary Shares

- 3.1.1 Subject to and conditional upon Article 3.1.7 and to any payments being made from distributable profits arising in the financial year in respect of which the payment is declared, Ordinary Shareholders shall have the right to receive, in priority to the transfer of any sum to reserves or any payment by way of dividend to the holders of any other shares in the capital of the Company (but subject to the payment of all dividends accrued and in arrears on the Ordinary Shares in respect of any earlier Financial Year) a fixed cumulative net cash dividend (the "**Dividend**") on each Ordinary Share of an amount (exclusive of the imputed tax credit available to shareholders) equal to £10.41 on each Ordinary Share in respect of each financial year of the Company accruing from the date of these Articles and payable on the date 21 days after the annual general meeting at which the Audited Accounts in respect of that Financial Year are approved **PROVIDED THAT** the Directors may by majority decision resolve to pay a lesser amount from time to time and that if on the date four months after the end of the preceding Financial Year such Audited Accounts shall not have been so approved, the Company shall on such date (but subject to the Acts) pay by way of interim dividend on account of the Dividend such amount as may be determined by reference to the consolidated management accounts of the Company and its subsidiary undertakings for the relevant Financial Year and the balance of the Dividend (if any) shall be paid within 14 days of the relevant Annual General Meeting.
- 3.1.2 The Dividend shall and without any resolution of the Board or of the Company in general meeting (and notwithstanding anything contained in regulations 102 to 108 (inclusive) of Table A) become a debt due from and immediately payable by the Company to the Ordinary Shareholders pro rata according to the number of Ordinary Shares held by each Ordinary Shareholder.
- 3.1.3 In the event that the Company is unable by law to pay in full on the due dates for payment under Article 3.1.1, (each of which dates is in this paragraph referred to as a "**Dividend Date**") any instalment of the Dividend to the Ordinary Shareholders which would otherwise be required to be paid pursuant to Article 3.1.1 on that

Dividend Date (in this paragraph any such dividend being hereinafter called a "**Relevant Dividend**", which expression shall also include such further dividend payable in respect thereof and calculated in accordance with the provisions of Article 3.1.4) then the following provisions shall apply:

- (a) on the due Dividend Date the Company shall pay to the Ordinary Shareholders on account of the Relevant Dividend the maximum sum (if any) which can then by law properly be paid by the Company and such sum shall be divided among the Ordinary Shareholders pro rata to the number of Ordinary Shares held by them;
- (b) the Company shall pay the balance of the Relevant Dividend (whether in one or more instalments) as soon after the due Dividend Date as may by law be paid and such payment shall be made in priority to any dividend which shall have accrued on the same class of share in respect of a period subsequent to the relevant Dividend Date; and
- (c) subject only as aforesaid every sum which shall become payable by the Company on any date determined in accordance with the foregoing provisions of this Article 3.1 shall on that date and without any resolution of the Board or of the Company in general meeting (and notwithstanding anything contained in regulations 102 to 108 (inclusive of Table A) become a debt due from and immediately payable by the Company to the holders of the Ordinary Shares.

3.1.4 In the event that any part of the Dividend is not paid for any reason on the due Dividend Date, the amount of the overdue dividend shall be increased by way of a further cumulative dividend at the rate of 4% per annum above the base rate from time to time of National Westminster Bank plc (exclusive of the associated tax credit available to shareholders) of such overdue dividend calculated on a daily basis from the date of due payment to the date of actual payment and compounded in each year. Reference in these Articles to the Dividend shall include any further dividend calculated in accordance with this Article 3.1.4.

3.1.5 The Company shall procure that if any of its subsidiary undertakings have profits available for distribution for the purposes of the Act such profits will to the extent necessary be distributed to the Company so as to enable the payment of the Dividend on the due date.

3.1.6 The Ordinary Shares shall rank for dividend, return of capital and voting purposes pari passu in all respects.

3.1.7 For so long as there are any arrears of interest or principal outstanding on any Loan Stock no dividends shall be paid or declared on the Shares.

3.2 Rights on Return of Capital

3.2.1 In the event of a winding up of the Company or other return of capital any debts which have become due in accordance with Article 3.1 shall only be paid in accordance with the provisions of this Article 3.2 and the assets of the Company available for distribution to shareholders remaining after payment of all other debts

and liabilities of the Company (including without limitation redemption in full of the Loan Stock) and of the costs charges and expenses of such winding up, shall be applied:

- (a) first, in paying to the holders of the Ordinary Shares (in proportion to the numbers of Ordinary Shares held by them) all unpaid arrears and accruals of any ordinary dividend such arrears and accruals to be calculated down to and including the date of repayment to be payable irrespective of what profits (and of whether any profits) have been made or earned by the Company and irrespective of whether or not such unpaid arrears and accruals have become due and payable; and
- (b) secondly, in distributing the balance amongst the holders of the Ordinary Shares *pari passu* as if they were all shares of the same class.

4. CONSENTS

4.1 Except with Investor Consent:

- 4.1.1 the Company shall not modify or vary the rights attaching to any Shares in the Company;
- 4.1.2 the Company shall not pass any resolution for reducing its issued share capital or the amount (if any) for the time being standing to the credit of its share premium account or capital redemption reserve or for reducing any uncalled liability in respect of partly paid shares;
- 4.1.3 the Company shall not purchase or redeem any Shares;
- 4.1.4 the Company shall not make any distribution payment or return to Members of a capital nature including any distribution out of capital profits or capital reserves or out of profits or reserves or out of profits or reserves arising from a distribution of capital profits or capital reserves by a subsidiary of the Company;
- 4.1.5 the Company shall not capitalise any profits (whether or not the same are available for distribution and including profits standing to any reserve) or any sum standing to the credit of its share premium account or capital redemption reserve;
- 4.1.6 no Group Company shall vary or permit any variation in its authorised or issued share capital or the creation or grant of any option or other rights to subscribe for shares or securities convertible into shares in the capital of any Group Company or any such subsidiary or make any payment to any person (whether or not a Member) for giving up his right to any share capital on its cancellation or extinguishment;
- 4.1.7 no Group Company shall alter its memorandum or Articles of Association or, in the case of any overseas subsidiary, its equivalent documents; and
- 4.1.8 no steps shall be taken to have a Group Company wound up whether for the purposes of amalgamation or reconstruction or otherwise unless a licensed insolvency practitioner shall have advised that such company is required to be wound up by reason of having become insolvent.

5. SHARE TRANSFERS: GENERAL

- 5.1 The Directors may refuse to register the transfer of any Share to a person who is (or whom the Directors reasonably believe to be) under 18 years of age or who does not have (or whom the Directors reasonably believe does not have) the legal capacity freely to dispose of any Share without let, hindrance or court approval.
- 5.2 The Directors shall refuse to register the transfer of any Share, not being such a transfer as is permitted under these Articles (a "**Permitted Transfer**"), purported to be made other than in accordance with or as permitted under these Articles.
- 5.3 If, in relation to a transfer of a Share, the transferor thereof is a party to any agreement between the Company and some or all of its Members (being an agreement additional to these Articles) then the Directors may:
- (i) require the transferee of such Share to enter into a written undertaking or deed of adherence to be bound (to such extent as the Directors may reasonably stipulate) by the provisions of such agreement; and
 - (ii) decline to register the transfer of such Share unless and until the transferee has entered into such written undertaking.
- 5.4 Subject to Articles 5.1, 5.2 and 5.3 and to Article 7.8, a Member may at any time transfer any Share:
- (i) if the Member is a company to any holding or subsidiary company of that Member or to any other subsidiary company of any such Member's holding company; or
 - (ii) to a person who is the beneficial owner of such Share or to a different or additional nominee or trustee on behalf of such beneficial owner provided that such person has not become the beneficial owner thereof in circumstances where a Transfer Notice (as hereinafter defined) should have been but was not given; or
 - (iii) if the Member is an individual (subject as provided in Articles 5.1 and 5.6) to an Associate (as defined in Article 7.1.3(a) and (b)) **PROVIDED THAT** in the case of any transfer to a child of less than 18 years of age any such transfer must be to a nominee (being more than 18 years of age) on behalf of such child; or
 - (iv) as permitted pursuant to Article 5.5; or
 - (v) to a Buyer (as defined in Article 7.1.1) pursuant to the provisions of Article 7 **PROVIDED THAT** pursuant to or prior to or contemporaneously with such transfer the Buyer has duly acquired or will duly acquire a Controlling Interest; or
 - (vi) with the prior consent in writing of the holders of not less than 80 per cent of the issued Ordinary Shares for the relevant time being; or

- (vii) subject to the provisions of these Articles to the Company in accordance with the provisions of the Act.

5.5 Notwithstanding any other provision of these Articles, the Investors shall be entitled at any time without restriction as to price or otherwise to transfer all or any of their Shares in the Company or any beneficial interest therein or any rights attaching thereto, to any investment fund managed by the same managing company or their respective heirs, assignees, nominees, subsidiaries or holding companies.

5.6 Save with Investor Consent, no such transfer as is referred to in Article 5.4(iii) may extend to a number of Ordinary Shares such that the transferor (if such transfer were made) would have (after taking into account any previous transfer pursuant to that Article) transferred more than one half of the total number of Ordinary Shares held by such transferor on the date falling one month after the adoption of these Articles.

6. SHARE TRANSFERS: PRE-EMPTION PROVISIONS

6.1 Except in the case of a Permitted Transfer, the right to transfer or otherwise dispose of a Share or any interest in or arising from a Share in the Company (an option or other like right to acquire any Share (whether by subscription or otherwise) being deemed to be an interest in a Share for this purpose) shall be subject to the provisions contained in these Articles and any such transfer or other disposal made otherwise than in accordance with such provisions shall be void.

6.2 Before transferring or disposing of any Share or any interest in or arising from any Share or any rights attaching thereto the person proposing to transfer or dispose of the same (a **"Proposing Transferor"**) shall give a notice in writing (a **"Transfer Notice"**) to the Company specifying the Shares, interest and/or rights of which the Proposing Transferor wishes to dispose. Notwithstanding that a Transfer Notice specifies that the Proposing Transferor wishes to dispose only of an interest in or arising from, and/or any right(s) attaching to, the Shares referred to therein, the Transfer Notice shall (regardless of any provisions in the Transfer Notice to the contrary) unconditionally constitute the Company the agent of the Proposing Transferor for the sale of all the legal title to, beneficial ownership of and all interests and rights attaching to the Shares referred to therein (the **"Sale Shares"**) at the **"Sale Price"** during the **"Prescribed Period"** (as those terms are hereinafter defined and determined in accordance with Article 6.3) in accordance with the provisions of this Article. Except in the case of any Transfer Notice which a Member is bound to give or is deemed to have given pursuant to these Articles (a **"Mandatory Transfer Notice"**), a Transfer Notice may include a condition (a **"Total Transfer Condition"**) that if all the Sale Shares (of whatever class) are not sold to Members and/or such other persons as are referred to in Article 6.5 below, then none shall be so sold. If a Total Transfer Condition is included then any offer of Sale Shares shall be made subject to Article 6.7 below. Shares of different classes may not be included in the same Transfer Notice (other than a Mandatory Transfer Notice). A Mandatory Transfer Notice shall not be revocable. Any other Transfer Notice shall not be revocable except with the consent of the Directors.

6.3 In the case of a Transfer Notice (including a Mandatory Transfer Notice):

- 6.3.1 if not more than 30 days (or such longer period (if any) as the Directors shall allow for this purpose) after the date on which the Transfer Notice was given or was deemed or required to be given the Proposing Transferor and the Directors shall have agreed a price per Share with the Proposing Transferor as representing the notional fair value of the Sale Shares then such price shall be the **Sale Price** (subject to the deduction therefrom of any net dividend or other distribution declared or made after such agreement and prior to the said date) and the **Prescribed Period** shall commence on the date on which such agreement is reached and shall expire two months thereafter;
- 6.3.2 failing such agreement referred to in 6.3.1, upon the expiry of such 30 day period (or such longer period (if any) as aforesaid) (or the date on which the Company became aware that the same had been deemed or had become required to be given) the Directors shall instruct an independent expert valuer ("**the Independent Valuer**") agreed by the Proposing Transferor and the Board (and failing agreement nominated by the President of the Institute of Chartered Accountants of England and Wales) to determine and report within 21 days the price per Share considered by them to be the fair value of the Sale Shares and the price per Share so determined and reported shall be the **Sale Price** and the **Prescribed Period** shall commence on the date on which the Independent Valuer shall so determine and report and shall expire two months thereafter.
- 6.4 For the purposes of Article 6.3.2, the Independent Valuer shall act as experts and not as arbitrators and their determination shall be final and binding on the Company and all Members. For the purposes of these Articles, the fair value of Sale Shares shall be the market value thereof as at the date when the relevant Transfer Notice or Mandatory Transfer Notice was given or deemed to have been given as between a willing buyer and a willing seller at arms' length but with no discount being made by reason of such Shares (if such be the case) constituting a minority holding.
- 6.5 The Sale Shares shall be offered in writing by the Company first to the holders for the time being (other than the Proposing Transferor and any Associate of the Proposing Transferor) of Shares of the same class as the Sale Shares and next (if and in so far as not accepted following such offer) to the holders of any other class (other than the Proposing Transferor or any Associate of the Proposing Transferor) and then (if and in so far as still not accepted) to such person or persons (if any) as the Directors think fit **PROVIDED THAT** the Company shall not be required to, and shall not, offer any Sale Shares to any person who remains a Member but who has given or been deemed to have given a Transfer Notice on or prior to the date on which any such offer as is referred to above is made.
- 6.6 Any such offer as is required to be made by the Company pursuant to Article 6.5 shall limit a time (not being less than 21 days or more than 30 days) after such offer is made within which it must be accepted or in default will lapse. Following any such offer, if acceptances are received in respect of an aggregate number of Shares in excess of that offered, the number of Sale Shares shall be allocated amongst those who have accepted the same in proportion to the number of Shares of the relevant class held by each acceptor (or in the case of any such offer made to persons who are not already Members on such basis as the Directors shall determine) **PROVIDED**

THAT no acceptor shall be obliged to acquire more Sale Shares than the number for which he has applied and so that the provisions of this sub-paragraph shall continue to apply mutatis mutandis until all Shares which any such acceptor would but for this proviso have acquired on the proportionate basis specified above have been allocated accordingly.

- 6.7 If a Transfer Notice shall validly contain a Total Transfer Condition then any such offer as aforesaid shall be conditional upon such condition being satisfied and no acceptance of an offer of Sale Shares will become effective unless such condition is satisfied.
- 6.8 If, prior to the expiry of the Prescribed Period, the Company shall, pursuant to the foregoing provisions, find Members or other persons (hereinafter called "**Purchasers**") to purchase some or (if Article 6.7 shall apply) all the Sale Shares and shall give notice in writing thereof to the Proposing Transferor he shall be bound, upon payment of the Sale Price, to transfer such Shares to the respective Purchasers. Every such notice shall state the name and address of the Purchaser or Purchasers and the number of the Sale Shares agreed to be purchased by him or them and the purchase shall be completed at a place and time to be appointed by the Directors not being less than three days nor more than 10 days after the date of such notice.
- 6.9 If a Proposing Transferor shall fail or refuse to transfer any Sale Shares to a Purchaser hereunder, the Directors shall authorise some person to execute and deliver on his behalf the necessary transfer and the Company may receive the purchase money in trust for the Proposing Transferor and cause the Purchaser to be registered as the holder of such Shares. The receipt of the Company for the purchase money shall be a good discharge to the Purchaser (who shall not be bound to see to the application thereof) and after the Purchaser has been registered in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.
- 6.10 If by the foregoing procedure the Company shall not, prior to the expiry of the Prescribed Period, find Purchasers willing to purchase some or (if Article 6.7 shall apply) all the Sale Shares and shall give notice in writing thereof to the Proposing Transferor, the Proposing Transferor, at any time thereafter up to the expiration of two calendar months from the date of such notice, shall, subject as hereinafter provided, be at liberty to transfer those of the Sale Shares not purchased by Purchasers or all the Sale Shares (as the case may be) to any one person (providing such person is not a person who carries on, or in the opinion of the directors is likely to carry on, business in competition with any business carried on by the Company or any Group Member) on a bona fide sale at any price not being less than the Sale Price. The Directors may require the Proposing Transferor to evidence to them (to their reasonable satisfaction) that such Shares are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer without any deduction, rebate, allowance or indulgent terms whatsoever to the Purchaser thereof and if not so satisfied may refuse to register the instrument of transfer and/or serve a Disenfranchisement Notice with the effect set out in Article 6.14.1(ii) below in respect of such Shares as shall have been so sold.

- 6.11 No Share and no interest or right in or arising from any Share may be sold, transferred or otherwise disposed of to any person unless a transfer of such Share or interest or right to such person would rank as a Permitted Transfer or as a transfer permitted pursuant to the foregoing provisions of these Articles. If the foregoing provisions shall be infringed the holder of the Shares concerned shall, unless the Directors otherwise determine, be deemed to have given, on the date on which the Directors become aware of such infringement, a Mandatory Transfer Notice in respect of all Shares of which such person and any Associate(s) of such person is then the holder.
- 6.12 If any person becomes entitled to Shares in consequence of the bankruptcy or liquidation of a Member or (other than in circumstances where Article 6.13 applies) death of a Member then a Mandatory Transfer Notice or Notices shall be deemed to have been given on the date on which the Directors became aware that such entitlement has arisen in respect of all Shares held by the Member and any Associate(s) of such Member.
- 6.12.1 If at any time a full time employee (not being a person appointed as a director by the Investors) shall cease to be a full time employee of or consultant to any Group Companies (for whatever reason including death) and shall not continue in any such capacity and such person and/or any Associate(s) of such person shall be (a) Member(s) of the Company, then unless the Board in its absolute discretion otherwise resolves at a board meeting at which the Investors Director, if any, is present there shall be deemed to have been given on the date of such cessation of employment a Mandatory Transfer Notice in respect of 75 per cent of the Shares then held by such person and any Associate(s) of such person.
- 6.12.2 Where any person is deemed to have given a Mandatory Transfer Notice pursuant to Article 6.12.1 the Sale Price shall be calculated as follows depending on the circumstances in which the relevant full time employee ceased to be an employee of (or consultant to) any Group Company as the same are set out in Clause 18 of the relevant employee's Service Contract dated 6 July 1999 as in force at the date of adoption of these Articles:

Clause of Service Agreement:

Price:

- | | |
|---|---------|
| (a) where the Company justifiably terminates the employee's employment under Clause 18.2.1, 18.2.8 or 18.2.9 | Price A |
| where the employee or the Company gives notice under Clause 18.1 at any time after 1 September 2005 | Price A |
| (b) where the Company justifiably terminates the employee's employment under Clause 18.2.4 or 18.2.5 | Price B |
| where the employee gives notice under Clause 18.1 at any time between 1 January 2004 and 1 September 2005 (inclusive) | Price B |

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|--|---------|
| where the Company gives notice under Clause 18.1 at any time before 1 September 2005 | Price B |
| (c) where the Company justifiably terminates the employee's employment under Clause 18.2.6 (in circumstances where the employee has not given notice under Clause 18.1) or under Clause 18.2.2 or 18.2.7 (in circumstances where the relevant act does not involve or relate to the Company) | Price C |
| where the employee gives notice under Clause 18.1 at any time before 1 January 2004 | Price C |
| (d) where the Company justifiably terminates the employee's employment under Clause 18.2.2 or 18.2.7 (in circumstances where the relevant act involves or relates to the Company) | Price D |

Where, for the purposes of this Article 6.12.2:

"Price A" shall mean the fair value of such Sale Share as agreed or determined in accordance with Article 6.3;

"Price B" shall mean 66.6% of the fair value of such Sale Share as agreed or determined in accordance with Article 6.3;

"Price C" shall mean 33.3% of the fair value of such Sale Share as agreed or determined in accordance with Article 6.3; and

"Price D" shall mean par value.

For the avoidance of doubt if following the date of the Subscription Agreement a full time employee ceases to be employed by the Company or by a Group member in a circumstance (including death, retirement at 65 or with the Investors consent) not envisaged by Clause 18 of his Service Contract, then the relevant employee shall be deemed to have served a Mandatory Transfer Notice for 75% of the Shares then held by him and the Sale Price shall be 100% of the fair value of such Shares as agreed or determined in accordance with Article 6.3.

- 6.13 If a Director holding office at the date of adoption of these Articles holds shares, whether beneficially or legally in a company which holds shares in the Company which ceases to be controlled by such person or persons who were in control of the company at the time when such corporation became such holder and/or owner, it shall, within seven days of such cessation of control, give notice in writing to the Company of that fact and there shall unless the Board in its absolute discretion otherwise resolves be deemed to have been given as from the date on which the Directors became aware of such cessation a Mandatory Transfer Notice in respect of

all Ordinary Shares held and/or owned by such company and any Associate(s) of such company and shall notify the relevant Director. For the purposes of this paragraph "control" shall carry the same meaning as in section 840 Income and Corporation Taxes Act 1988.

- 6.14 If a person in whose favour a Permitted Transfer was made pursuant to Article 5.4 (iii) (being an Associate of the transferor at the time when the transfer was made) shall cease to be an Associate of the person by whom such transfer was made then he shall, within seven days of such cessation, give notice in writing to the Company of that fact and unless the Board with Investor Consent determine otherwise at the relevant time, there shall be deemed to have been given as from the date on which the Directors become aware of such cessation (however they become so aware) a Mandatory Transfer Notice in respect of all Shares held by such person (as is first-mentioned in this Article 6.15) and any Associate(s) of such person.
- 6.14.1 For the purpose of ensuring that a transfer of Shares is a Permitted Transfer or that no circumstances have arisen whereby a Transfer Notice or Mandatory Transfer Notice is required or deemed to be given hereunder, the Directors may from time to time require any Member or the personal representatives of any deceased Member or any person named as transferee in any transfer lodged for registration or any Associate of any of the foregoing to furnish to the Company such information and evidence as the Directors may think fit regarding any matter which they may deem relevant to such purpose. Failing such information or evidence being furnished to the reasonable satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled:
- (i) to refuse to register the transfer in question or, in case no transfer is in question, to require by notice in writing that a Transfer Notice be given by the holders of the relevant Shares in respect of all such Shares. If such information or evidence discloses that a Transfer Notice ought to have been given in respect of any Shares the Directors may by notice in writing require that a Transfer Notice be given or state that a Mandatory Transfer Notice shall be deemed to have been given by the holders of those Shares or their Associates in respect of all of such Shares; and/or
 - (ii) to serve upon the holder(s) of the Shares in question a notice (a "**Disenfranchisement Notice**") stating that such Shares shall as from the date of service of such Disenfranchisement Notice on such holder no longer confer any right to attend, speak or vote at any general meeting of the Company or at any class meeting or to receive or be entitled to receive any dividend or other distribution until such time as the Directors shall think fit and, as from such date, such Shares shall no longer confer any such rights accordingly.
- 6.14.2 In any case where the Directors have duly required a Transfer Notice to be given in respect of any Shares or any one or more Members have become bound to give a Transfer Notice and such Transfer Notice is not duly given within a period of one calendar month (or such longer period (if any) as the Directors may allow for the purpose) a Mandatory Transfer Notice shall (except and to the extent that a Permitted Transfer of any of such Shares shall have been lodged), be deemed to have

been given on such date or after the expiration of such period as the Directors may by resolution determine and the provisions of this Article relating to transfers shall apply accordingly.

7. TRANSFER OF A CONTROLLING INTEREST

7.1 For the purposes of this Article:

7.1.1 the expression "**Buyer**" means a person and any Associate of such person (in each case whether or not an existing Member of the Company);

7.1.2 the expression "**acquire**" means to be or become the legal or beneficial owner of Shares, whether directly or indirectly and whether by the issue, transfer, renunciation or conversion of shares or otherwise and whether all at one time or not;

7.1.3 the expression "**Associate**" means:

- (a) the spouse or child (including adopted child) of the relevant person;
- (b) the trustees of any settlement (a "**Family Trust**") (whether or not set up by the relevant person) under which the relevant person and/or his spouse or children is or is capable of being a beneficiary;
- (c) any nominee or bare trustee for the relevant person or for any other Associate of the relevant person;
- (d) if the relevant person is a company, any subsidiary or holding company of the relevant person and any other subsidiary of any such holding company;
- (e) any person with whom the relevant person or any Associate of the relevant person is connected, the question of whether any such person is so connected falling to be determined for this purpose in accordance with the provisions of section 839 Income and Corporation Taxes Act 1988; and
- (f) any person with whom any relevant person is acting in concert (such expression to have the same definition and meaning as that ascribed thereto in the City Code on Take-overs and Mergers as for the relevant time being current);

7.1.4 the expression a "**Controlling Interest**" means Shares (or the right to exercise the votes attaching to Shares) which confer in the aggregate more than 50 per cent of the total voting rights conferred by all the Shares in the capital of the Company for the relevant time being in issue and conferring the right to vote at all general meetings;

7.1.5 the expression the "**Prescribed Price**" shall, in relation to Shares and subject to the provisions in Article 7.1.6, mean a price per share which is the higher of:

- (i) the full cash equivalent of the highest price which, at the time of making the relevant Offer (as defined below), the Buyer has agreed to pay or is prepared to offer to pay to any holder(s) of Shares; and

- (ii) the full cash equivalent of the highest price at which the Buyer has acquired any Equity Shares of that class in the period of 12 months prior to the date on which the relevant Offer is made.

- 7.2 Notwithstanding anything to the contrary contained in these Articles, no Buyer shall be entitled or permitted to acquire and no person shall transfer any Shares (or any interest) if, as a result, a Buyer would acquire a Controlling Interest in the Company unless and until the Buyer has first made an offer (in accordance with Article 7.3) to all the holders of all Shares in the Company at the relevant time (of whatever class) (other than the Buyer if he is already such a holder) to purchase from them for cash payable in full on completion of any sale (or with a cash alternative payable in full on completion of any sale) at the Prescribed Price per Share their entire holdings of Shares in the capital of the Company.
- 7.3 Any such offer as is referred to in Article 7.2 (an "Offer") must be made in writing, must be open for acceptance and irrevocable for a period of not less than 30 and not more than 60 days, must not contain any requirement for any person to whom the same is made to give any representation, warranties or undertakings other than as to their capacity and capability to sell the relevant Shares and all rights thereto and interests therein free from any option, lien, charge or other encumbrance and must not be subject to any condition save only, if the Buyer so wishes, that acceptances must be received for a specified percentage of all the Shares in respect of which the Offer is made.
- 7.4 If within 60 days of the making of an Offer, the Buyer has not acquired a Controlling Interest then such Offer shall be deemed not to have been made to the extent that the Buyer shall not be entitled to acquire a Controlling Interest at any time thereafter unless and until he has made a further Offer.
- 7.5 If a Buyer receives (within the period of 60 days referred to in Article 7.4) acceptances of an Offer which will result in the Buyer owning not less than 60 per cent. of all the issued Shares of the Company then the Buyer may extend the Offer to the extent that, if within 30 days of the expiry of such period of 60 days, the Buyer gives written notice to those Members who have not accepted the Offer requiring them so to do, then each of such non-accepting Members shall upon the giving of such notice:
 - 7.5.1 be deemed to have accepted the same in respect of all Shares held by him in accordance with the terms of the Offer; and
 - 7.5.2 become obliged to deliver up to the Buyer an executed transfer of such Shares and the certificate(s) in respect of the same.
- 7.6 If any such non-accepting Member as is referred to in Article 7.5 shall not, within 14 days of becoming required to do so, execute transfers in respect of the Shares held by such Member, then the Directors shall be entitled to, and shall, authorise and instruct such person as they think fit to execute the necessary transfer(s) on his behalf and, against receipt by the Company (on trust for such Member) of the purchase moneys payable for the relevant Shares, deliver such transfer(s) to the Buyer (or its agents) and register the Buyer (or its nominees) as the holder thereof, and after the Buyer (or

its nominees) has been registered as the holder the validity of such proceedings shall not be questioned by any person.

7.7 In calculating the Prescribed Price for the purposes of Article 7.1.5 there shall be brought into account any other consideration (in cash or otherwise) received or receivable by any Member or former Member (or any Associate of such Member or former Member) which, having regard to the substance of the relevant transaction as a whole, can reasonably be regarded as part of the consideration paid (or provided) or payable (or to be provided) for the Shares in question.

7.8 For the purpose of ensuring:

7.8.1 that no Buyer has acquired or may acquire a Controlling Interest otherwise than as permitted by this Article (and to that end for the purpose of determining whether one person is an Associate of another); or

7.8.2 that a price offered or proposed to be offered for any Shares is the Prescribed Price;

the Directors may from time to time require any Member to furnish to the Company such information and evidence as the Directors may reasonably think fit regarding any matter which they may deem relevant for such purposes.

7.9 All Shares transferred pursuant to this Article 7 shall be transferred free from all liens, charges and encumbrances and shall carry all rights, benefits and advantages attached to them except the right to any dividend declared but not paid prior to the date of registration of such transfer.

8. APPOINTMENT OF DIRECTORS

8.1 Either the Company by Ordinary Resolution or the Directors may appoint a person who is willing to act to be a Director, provided that the appointment does not cause the number of Directors to exceed any maximum number fixed in accordance with these Articles.

8.2 Regulation 81 shall be amended by the addition of the following events, requiring the office of a director of the Company to be vacated:

8.2.1 he becomes incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs and the other directors resolve that his office is vacated;

8.2.2 being an Investor Director a notice is served by his appointer on the Company removing him from the office;

8.2.3 (in the case of an executive director only) he shall, for whatever reason, cease to be employed by the Company or any subsidiary of the Company; or

8.2.4 being a director of the Company, other than an Investor Director, he is removed by a notice in writing to the Company signed by or on behalf of holders accounting for more than 50 per cent. of the Ordinary Shares and such removal shall take effect

upon the notice being received at the registered office of the Company or such later date as may be specified in the notice.

- 8.3 For so long as the ProVen Investors hold in excess of 5 per cent. of the Ordinary Shares in issue from time to time, the ProVen Investors shall (acting through ProVen or such other person who may be authorised from time to time to act on its behalf), have the right from time to time to appoint one person or corporate entity to be a non-executive director of the Company ("**ProVen Director**") and to remove from office any person or corporate entity so appointed and to appoint another person or corporate entity in his place. Any ProVen Director shall have the right to be appointed as a non-executive director of each subsidiary of the Company and to be appointed to (i) any committee or sub-committee of or established by the Board (or any committee thereof) and (ii) any committee or sub-committee of or established by the board of directors of any subsidiary.
- 8.4 For so long as DC VCT3 holds in excess of 5 per cent. of the Ordinary Shares in issue, it shall have the right from time to time to appoint one person or corporate entity to be a non-executive director of the Company (a "**DC VCT3 Director**") and to remove from office any person so appointed and to appoint another person in his place. Any DC VCT3 Director shall have the right to be appointed as a non-executive director of each subsidiary of the Company and to be appointed to (i) any committee or sub-committee of or established by the Board (or any committee thereof) and (ii) any committee or sub-committee of or established by the board of directors of any subsidiary.
- 8.5 Without prejudice to the provisions of this Article 8, for so long as any Member holds in excess of 15% of the Shares then such Member shall have the right from time to time to appoint one person or corporate entity to be a director of the Company and to remove from office such director so appointed and to appoint another person in his place. Any such director shall have the right to be appointed as a director of each subsidiary of the Company and to be appointed to (i) any committee or sub-committee of or established by the Board (or any committee thereof) and (ii) any committee or sub-committee of or established by the board of directors of any subsidiary provided that only such Members who have an appointed director at the date of the adoption of these Articles shall be entitled to appoint a director as opposed to a non executive director and provided also that if such appointed directors resign they shall not be entitled to appoint another director in their stead.
- 8.6 Any appointment or removal pursuant to Articles 8.3, 8.4 or 8.5 (inclusive), shall be in writing served on the Company and signed by the relevant holder(s). Such appointment or removal (which may consist of several documents) may be signed by or on behalf of any such holder by any director of the secretary of such holder (if a corporation), by its duly appointed attorney or by its duly authorised representative (if a corporation).

9. MEETING OF DIRECTORS

- 9.1 Unless a majority of the Directors (such majority including at least one of the Investor Directors) agree otherwise:

- 9.1.1 a meeting of the Board shall be convened and held at least ten times per annum whilst the Company's cashflow remains negative (such determination being made by reference to the Company's monthly management accounts) and thereafter once the Investors are satisfied that the Company's cashflow is positive, six times per annum or otherwise as required by the Investors;
- 9.1.2 (save in the case of an emergency) not less than seven days' notice shall be given of Board meetings accompanied by a written agenda setting out the business to be conducted thereat. No business other than that effectively described on the agenda shall be conducted save with Investors' Consent;
- 9.1.3 not later than 21 days after all meetings of the Board (or any committee) the minutes of such meetings shall be delivered to the Investors' Directors or the Investors if there is no Investor Director in office;
- 9.1.4 all board meetings shall take place in the United Kingdom.
- 9.2 The quorum for board meetings shall be three Directors present throughout the Meeting of which at least one shall be either the non-executive chairman or one of the Investor Directors if an Investor Director has been (and remains) appointed and two shall be executive directors and regulation 89 of Table A is modified accordingly.
- 9.3 Any Director or member of a committee of the Board may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear and speak to each other and any Director or member of a committee participating in a meeting in this manner shall be deemed to be present in person at such meeting.
- 9.4 Except with the prior written consent of a majority of the other Directors (such majority including at least one of the Investor Directors) a Director shall not vote as a director on any resolution concerning a matter in which he has, directly or indirectly, any kind of interest or duty whatsoever and regulation 94 of Table A which shall be modified accordingly.

10. VOTING RIGHTS

- 10.1 Regulation 54 of Table A shall be modified in accordance with the following provisions of this Article 10.
- 10.2 A proxy shall be entitled to vote on a show of hands.
- 10.3 On a poll every member shall have one vote for every Ordinary Share of which he is the holder and which is fully paid up or credited as fully paid.
- 10.4 If and for so long as for whatever reason any interest or principal on the Loan Stock remains unpaid 28 days after the due date the holders of such Loan Stock shall be entitled on a poll to two extra votes per Ordinary Share for each £1 of Loan Stock of which he is the holder.

11. INDEMNITY AND INSURANCE

- 11.1 Subject to the provisions of the Act, every Director, auditor, secretary or other officer of the Company shall be entitled to be indemnified by the Company out of its own funds for all costs, charges, losses, expenses and liabilities incurred by him in the actual or purported execution and/or discharge of his duties and/or the exercise or purported exercise of his powers and/or otherwise in relation to or in connection with his duties, powers or office including (without prejudice to the generality of the foregoing) any liability incurred by him in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as officer or employee of the Company and in which judgment is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omission in which relief is granted to him by the Court.
- 11.2 Without prejudice to the provisions of Article 11.1 the Directors shall have the power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time Directors, officers, employees or auditors of the Company or of any subsidiary undertaking of the Company including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or otherwise in relation to or in connection with their duties, powers or offices in relation to the Company or any such subsidiary undertaking.
- 11.3 Subject to the provisions of the Act, a Director shall (in the absence of some other material interest as is indicated below) be entitled to vote (and be counted in the quorum) in respect of any resolution concerning any proposal concerning any insurance which the Company is empowered to purchase and/or maintain for or for the benefit of any Directors of the Company provided that for the purposes of this Article 10.3 insurance shall mean only insurance against the liability incurred by a Director in respect of any such act or omission by him as is referred to in Article 7.2 above or any other insurance which the Company is empowered to purchase and/or maintain for or for the benefit of any groups of persons consisting of or including Directors of the Company.

12. SUBSIDIARIES

The Company shall procure that no subsidiary undertaking of the Company shall do or permit to be done any act, matter or thing in relation to which the consent, approval or sanction of the holders of the Ordinary Shares is required to be obtained under these Articles, unless such consent, approval or sanction has first been obtained.