

COMPANY LIMITED BY SHARES  
INTERMEDIATION GROUP LIMITED  
RESOLUTION IN WRITING

Pursuant to Section 381A of the Companies Act 1985

We, the undersigned, being all the members of the Company entitled to receive notice and to attend and vote at general meetings of the Company hereby resolve by way of special resolution in writing pursuant to Section 381A of the Companies Act 1985.

SPECIAL RESOLUTIONS

1. Adopt the Memorandum and Articles of Association in the form of the attached draft (a new Memorandum and Articles of Association).
2. Sub-divide the existing share capital into 100,000 ordinary A shares of 1p each.
3. Increase the existing share capital from £1,000 to £297,000 by creating 96000 B ordinary shares of £1 and 200,000 preference shares of £1 each.
4. The A ordinary shares, the B ordinary shares and the Preference Shares shall all have the rights set out in the new Articles of Association.
5. The Directors are hereby authorised for the purpose of Section 80 of the Act to allot the relevant securities for the purposes of the Placing up to a nominal amount of £296,000 such authority to expire on the next annual general meeting.
6. The Directors are hereby empowered to allot relevant securities as if the statutory right of pre-emption in Section 89(1) of the Act did not apply in respect for shares allotted under the Placing up to a nominal amount of £296,000.

Dated 22<sup>nd</sup> November 1999

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David Mills



**THE COMPANIES ACTS 1985 AND 1989**

**PRIVATE LIMITED COMPANY**

**MEMORANDUM of ASSOCIATION  
of  
INTERMEDIATION GROUP LIMITED**

1. The Name of the Company is InterMediation Group Limited.
2. The Company is to be a private limited company.
3. The Registered Office of the Company will be situate in England.
4. The Objects for which the Company is established are: -
  - 4.1 the business of alternative dispute resolution in all its forms including mediation, arbitration and expert opinions and awards arising from or relating to disputes of all types whatsoever whether involving individuals, corporation, entities, organisations, governments, non governmental organisations wherever situated and of whatever type or description anywhere in the world and irrespective of the law and jurisdiction applicable to the dispute, the matter, litigation or transaction out of which the dispute arises or has arisen and to carry on business as a general commercial company and all other things as may be necessary required or expedient or pragmatic to carry out the objects contained in this clause including but without limiting the foregoing apply to protect all intellectual property rights in the materials and systems developed or acquired by the Company by whatever means including patents, licences, trademarks, copyright, registered designs and acquire concessions and inventions to use and turn them to account, sell assign grant licences or franchises or otherwise turn them to the advantage of the Company
  - 4.2 To carry on the business of a financial and investment company in all its branches, and to acquire by purchase, lease, concession, grant, licence or otherwise such businesses, options, rights, privileges, lands, buildings, leases, underleases, stocks, shares, debenture stock, bonds, obligations securities, reversionary interests, annuities, policies of assurance and other property and rights and interest in property as the Company shall deem fit and generally to hold, manage, develop, lease, sell or dispose of the same and to vary any of the investments of the Company, to act as trustees of any deeds constituting or securing any debenture or debenture stock or other securities or obligations; to

construct, reconstruct, alter, improve, decorate, furnish and maintain offices, houses, flats, apartments, service suites, hotels, shops, factories, warehouses, buildings, garages, works and conveniences of all kinds, to consolidate or connect or subdivide properties and to lease or otherwise dispose of the same, and to advance money to enter into contracts with builders, tenants and generally to finance building operations of every description; and to manage any land, buildings or other property as aforesaid, whether belonging to the Company or not, and to collect rents and income, to undertake and provide management, administration and consultancy services of all kinds and to enter into, assist or participate in financial, commercial, mercantile, industrial and other transactions, undertakings and businesses of every description, and to establish, carry on, develop and extend the same or sell, dispose of or otherwise turn the same to account and to co-ordinate the policy and administration of any companies of which the Company is a Member or which are in any manner controlled by, or connection with this Company.

- 4.3 To carry on business as a holding and as an investment company in all its branches and to control and co-ordinate the administration and operation of any companies for the time being directly or indirectly controlled by the Company and (without prejudice to the generality of the foregoing) to acquire and hold for investment securities issued or guaranteed of any company government public body or authority municipal local or otherwise whether at home or abroad and land buildings houses or other real or personal property wheresoever situate of any tenure or any estate or interest or any right therein including freehold or leasehold ground rents reversions mortgages or annuities and to sell or otherwise deal with any such investments.
- 4.4 To carry on any other trade or business which may seem to the Company capable of being conveniently carried on in connection with the objects specified in paragraph 4.1 or calculated directly or indirectly to enhance the value of or render profitable any of the property or rights of the Company.
- 4.5 To purchase, take on lease or in exchange, hire or otherwise acquire and hold for any estate or interest any lands, buildings, easements, rights, privileges, concessions, patents, patent rights, licences, secret processes, machinery, plant, stock-in-trade, and any real or personal property of any kind necessary or convenient for the purposes of or in connection with the Company's business or any branch or department thereof.
- 4.6 To borrow or raise or secure the payment of money in such manner as the Company shall think fit for the purposes of or in connection with the Company's business, and for the purposes of or in connection with the borrowing or raising of money by the Company to become a member of any building society.
- 4.7 For the purposes of or in connection with the business of the Company to mortgage and charge the undertaking and all or any of the real and personal property and assets, present and future, and all or any of the uncalled capital for the time being of the Company, and to issue at par or at a premium or discount, and for such consideration and with and subject to such rights, powers, privileges and conditions as may be thought fit, debentures or debenture stock, either permanent or redeemable or repayable, and collaterally or further to secure any securities of the Company by a trust deed or other insurances. To

issue and deposit, any securities which the Company has power to issue by way of mortgage to secure any sum less than the nominal amount of such securities, and also by way of security for the performance of any contracts or obligations of the Company or of its customers or other persons or corporations having dealings with the Company, or in whose businesses or undertakings the Company is interested, whether directly or indirectly.

- 4.8 To receive money on deposit or loan upon such terms as the Company may approve.
- 4.9 To lend money to any company, firm or person and to give all kinds of indemnities and either with or without the Company receiving any consideration or advantage, direct or indirect, for giving any such guarantee, and whether or not such guarantee is given in connection with or pursuant to the attainment of the objects herein stated to guarantee either by personal covenant or by mortgaging or charging all or any part of the undertaking, property and assets present and future and uncalled capital of the Company or by both such methods, the performance of the obligations and the payment of the capital or principal (together with any premium) of and dividends or interest on any debenture, stocks, shares or other securities of any company, firm or person and in particular (but without limiting the generality of the foregoing) any company which is for the time being the Company's Holding or Subsidiary company as defined by Section 736 of the Companies Act, 1985, or otherwise associated with the Company in business.
- 4.10 To establish and maintain or procure the establishment and maintenance of any non contributory or contributory pension or superannuation funds for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances, or emoluments to any persons who are or were at any time in the employment or service of the Company, or of any company which is for the time being the Company's Holding or Subsidiary company as defined by Section 736 of the Companies Act, 1985, or otherwise associated with the Company in business or who are or were at any time Directors or officers of the Company or of any such other company as aforesaid, and the wives, widows, families and dependants of any such persons, and also to establish and subsidise or subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well-being of the Company or of any such other Company as aforesaid, or of any such persons as aforesaid, and to make payments for or towards the insurance of any such persons as aforesaid, and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition or for any public, general or useful object, and to do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid.
- 4.11 To draw, make, accept, endorse, negotiate, discount and execute promissory notes, bills of exchange and other negotiable instruments.
- 4.12 To invest and deal with the moneys of the Company not immediately required for the purposes of its business in or upon such investments or securities and in such manner as may from time to time be determined.
- 4.13 To pay for any property or rights acquired by the Company, either in cash or fully or partly paid up shares, with or without preferred or deferred or special

rights or restrictions in respect of dividend, repayment of capital, voting or otherwise, or by any securities which the Company has power to issue, or partly in one mode and partly in another, and generally on such terms as the Company may determine.

To accept payment for any property or rights sold or otherwise disposed of or dealt with by the Company, either in cash, by instalments or otherwise, or in fully or partly paid-up shares of any company or corporation, with or without deferred or preferred or special rights or restrictions in respect of dividend, repayment of capital, voting or otherwise, or in debentures or mortgage debentures or debenture stock, mortgages or other securities of any company or corporation, or partly in one mode and partly in another, and generally on such terms as the Company may determine, and to hold, dispose of or otherwise deal with any shares, stock or securities so acquired.

- 4.14 To enter into any partnership or joint purse arrangement or arrangement for sharing profits, union of interests or co-operation with any company, firm or person carrying on or proposing to carry on any business within the objects of this Company, and to acquire and hold, sell, deal with or dispose of shares, stock or securities of any such company, and to guarantee the contracts or liabilities of, or the payment of the dividends, interest or capital of any shares, stock or securities of and to subsidise or otherwise assist any such company.
- 4.15 To establish or promote or concur in establishing or promoting any other company whose objects shall include the acquisition and taking over of all or any of the assets and liabilities of this Company or the promotion of which shall be in any manner calculated to advance directly or indirectly the objects or interests of this Company, and to acquire and hold or dispose of shares, stock or Securities and guarantee the payment of dividends, interest or capital of any shares, stock or securities issued by or any other obligations of any such company.
- 4.16 To purchase or otherwise acquire and undertake all or any part of the business, property, assets, liabilities and transactions of any person, firm or company carrying on any business which this Company is authorised to carry on or possessed of property suitable for the purposes of the Company, or which can be carried on in conjunction therewith or which is capable of being conducted so as directly or indirectly to benefit the Company.
- 4.17 To sell, improve, manage, develop, turn to account, exchange, let on rent, share of profits or otherwise, grant licences, easements and other rights in or over, and in any other manner deal with or dispose of the undertaking and all or any of the property and assets for the time being of the Company for such consideration as the Company may think fit.
- 4.18 To amalgamate with any other company whose objects are or include objects similar to those of this Company, whether by sale or purchase (for fully or partly paid up shares or otherwise) of the undertaking, subject to the liabilities of this or any such other company as aforesaid, with or without winding up, or by sale or purchase (for fully or partly paid up shares or otherwise) of all or a controlling interest in the shares or stock of this or any such other company as aforesaid, or by partnership, or any arrangement of the nature of partnership, or in any other manner .

- 4.19 To subscribe for, purchase or otherwise acquire, and hold shares, stock, debentures or other securities of any other company.
- 4.20 To distribute among the members in specie any property of the Company, or any proceeds of sale or disposal of any property of the company, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law.
- 4.21 To do all or any of the above things in any part of the world, and either as principals, agents, trustees, contractors or otherwise, and either alone or in conjunction with others, and either by or through agent, trustees, subcontractors or otherwise.
- 4.22 To do all such things as are incidental or conducive to the above objects or any of them.

AND IT IS HEREBY DECLARED that, save as otherwise expressly provided, each of the paragraphs of this Clause shall be regarded as specifying separate and independent objects and accordingly shall not be in any way limited by reference to or inference from any other paragraph or the name of the Company and the provisions of each such paragraph shall, save as aforesaid, be carried out in as full and ample a manner and construed in as wide a sense as if each of the paragraphs defined the objects of a separate and distinct company.

- 5. The liability of the Members is limited.
- 6. The share capital of the Company is £297,000 divided into 100,000 A Ordinary Shares of 1p each, 96,000 B Ordinary Shares of £1 each and 200,000 Convertible Redeemable Preference Shares of £1 each.

No. 3245756

**THE COMPANIES ACTS 1985 AND 1989**

**COMPANY LIMITED BY SHARES**

**NEW**

**ARTICLES OF ASSOCIATION**

**of**

**INTERMEDIATION GROUP LIMITED**

(Adopted by a resolution of the Company passed on 22nd November 1999)

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**THE COMPANIES ACTS 1985 AND 1989**

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**1. Introduction**

- 1.1 The Regulations contained or incorporated in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended by The Companies (Tables A to F) Amendment Regulations 1985 ("Table A") shall apply to the Company, save insofar as they are varied or excluded by, or are inconsistent with, the following Articles.
- 1.2 In Regulation 1 of Table A, the words "and in Articles of Association adopting the same" shall be inserted after the word "Regulations" in the last paragraph of that Regulation and the sentence "Any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force" shall be inserted at the end of that Regulation.
- 1.3 In these Articles:
  - (a) Article headings are used for convenience only and shall not affect the construction or interpretation of these Articles; and
  - (b) words denoting the singular include the plural and vice versa and reference to one gender includes the other gender and neuter and vice versa.
  - (c) Regulations 8, 24, 50, 62, 73 to 77 (inclusive), 80, 82, 84, 94 to 98 (inclusive) and 118 of Table A shall not apply to the Company and Regulation 54 of Table A shall apply to the Company as if the words "Ordinary Shareholder" were substituted for the word "Member" where it appears in Article 54.

**2. Definitions**

- 2.1 In these Articles the following words and expressions shall have the following meanings:

"Accounts" means the audited profit and loss account of the Company or, if the Company has any subsidiary or subsidiaries, a consolidation of the audited profit and loss accounts of the Company and its subsidiary or subsidiaries, for the relevant financial period, being prepared:

- (a) under the historical cost convention; and
- (b) in accordance with generally accepted accounting principles in the United Kingdom and all applicable Statements of Standard Accounting Practice and Financial Reporting Standards.



**"Act"** means the Companies Act 1985 (as amended from time to time);

**"acting in concert"** bears the meaning given to it in The City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisitions of Shares published by the Panel on Takeovers and Mergers (as amended from time to time);

**"Adoption Date"** means the date on which a resolution of the Company was passed to adopt these Articles;

**"A Ordinary Shares"** means A ordinary shares of 1p each in the capital of the Company;

**"Associate"** means:

- (a) the husband, wife, child (including adopted child and step-child) or other lineal descendant of the relevant person;
- (b) the trustees of any settlement (whether or not set up by the relevant person) under which only the relevant person and/or any other Associate of the relevant person is or is capable of being a beneficiary;
- (c) any nominee or bare trustee for the relevant person or any other Associate of the relevant person; or
- (d) 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 (as amended from time to time);

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

**"Available Profits"** means profits available for distribution within the meaning of Part VIII of the Act;

**"Board"** means the board of directors of the Company (or any duly authorised committee thereof) from time to time;

**"B Ordinary Shares"** means B ordinary shares of £1.00 each in the capital of the Company;

**"Cash Equivalent"** means the sum in pounds sterling certified by the Auditors (acting as experts and not arbitrators and whose certificate shall be binding on all members save in the case of manifest error) as being in their opinion the then current value of the right to receive the consideration in question (where the consideration is payable on deferred terms) or (in the case of consideration payable otherwise than in cash) their opinion of the monetary value of such consideration at that time;

**"Consolidated Profits"** means the audited consolidated profits of the Company after interest and tax for the relevant financial period from the date of adoption of these Articles;

**"Controlling Interest"** means an interest in Ordinary Shares giving to the holder or holders control of the Company within the meaning of section 840 Income and Corporation Taxes Act 1988;

**"Deferred Shares"** means deferred shares of 1p each in the capital of the Company;

**"Director"** means a director of the Company from time to time;

**"financial year"** and **"financial period"** means an accounting reference period (as defined by the Act) of the Company;

**"Group Company"** means the Company and any other company which is a subsidiary of the Company;

**"Interest Rate"** means the interest rate of 4 per cent over the base rate of Barclays Bank plc;

**"Investor Director"** a director of the Company appointed pursuant to Article 4.8;

**"IRR Percentage"** means the percentage compound annual rate of return which, if applied to the total cash amounts subscribed for B Ordinary Shares and the Preference Shares from the date of subscription therefor down

to and including the date of occurrence of the Realisation Event, would, on a compound basis with annual rests, produce an amount equal to the aggregate of:-

- (a) the aggregate value of the Ordinary Shares, determined by reference to the Market Capitalisation, (arising upon conversion of the B Ordinary Shares which occurs as a consequence of the Realisation Event); and
- (b) all Relevant Receipts;

but, for the avoidance of doubt, excluding any redemption monies payable in respect of any shares in the Company to be redeemed as a consequence of the Realisation Event. (An illustration of the application of definition of "IRR Percentage" is annexed to these Articles);

**"Liquidation"** means the making of a winding-up order by a court of competent jurisdiction or the passing of a resolution by the members of the Company that the Company be wound-up;

**"Listing"** means the admission of all or any of the Ordinary Shares to the Official List of the London Stock Exchange Limited or to trading on the Alternative Investment Market of such stock exchange or the admission of the same to, or the grant of permission by any like authority for the same to be traded on, any other recognised investment exchange (as defined in section 207 of the Financial Services Act 1986);

**"Market Capitalisation"** means:

- (a) if the Realisation Event occurs by virtue of a Listing, the aggregate value of all the Shares the subject of the Listing including any new shares to be paid up by way of capitalisation of reserves but excluding any new shares (being of the same class as the shares the subject of the Listing) to be issued by the Company as part of the arrangements relating to the Listing ("Offer Shares") such value to be determined by reference to the price per share at which the Offer Shares are to be offered for sale, placed or otherwise marketed pursuant to the arrangements relating to the Listing after deduction of the commission expenses of the Listing to the extent that the same are payable by the Company;
- (b) if the Realisation Event occurs by virtue of a Take-over, the purchase price per Ordinary Share payable on completion of such Take-over multiplied by the number of Ordinary Shares in issue provided that if any part of the purchase price is payable otherwise than in cash or is cash payable on deferred terms the amount of the purchase price shall be the aggregate of the amount of the purchase price payable in cash (payable on completion of the Take-over) and the Cash Equivalent per Share or, in the case of a sale of assets of the Company, the aggregate Cash Equivalent that will become distributable to the members of the Company;  
  
together in each case with the Cash Equivalent of any amounts payable on deferred terms upon the earlier redemption or purchase by the Company of any Shares
- (c) if the Realisation Event occurs by virtue of a Liquidation, the aggregate cash distributable to members of the Company on the Liquidation provided that if any part of the purchase price is payable otherwise than in cash or is cash payable on deferred terms the amount of the return of capital shall be the aggregate of the amount of the return of capital payable in cash and the Cash Equivalent per Share;
- (d) if the Realisation Event occurs by virtue of a Refinancing, the sum in pounds sterling certified by the Auditors or, in the event of the Auditors being unable so to certify, such other person or body as the Board may determine (acting as experts and not arbitrators and whose certificate shall be binding on all members save in the case of manifest error) as being in their opinion the then current market capitalisation of the Company;

**"Ordinary Shares"** means the A Ordinary Shares, the B Ordinary Shares and ordinary shares of 1p each in the capital of the Company (whether such shares are designated as such upon issue, or upon conversion of A Ordinary Shares or B Ordinary Shares);

**"Ordinary Shareholders"** means the holders for the time being of Ordinary Shares;

**"paid up amount"** means in respect of any share, the amount paid or credited as paid up on that share, including sums paid, or credited as paid, by way of premium;

**"Permitted Transfer"** means a transfer of shares in the Company in accordance with Article 9;

**"Preference Conversion Event"** means any one or more of the events specified in Article 4.5(b);

**"Preference Shares"** means convertible redeemable preference shares of £1 each in the capital of the Company;

**"Preference Shareholder"** means any holder for the time being of Preference Shares;

**"Realisation Event"** means a Listing, Take-over, Liquidation or Refinancing;

**"Refinancing"** means the replacement by the Company of existing financing with alternative financing (whether debt or equity but not including borrowings made by the Company in the ordinary course of its business) in the sum of more than £3,500,000;

**"Relevant Receipts"** means the total of amounts received from the Company in cash up to and including the date of occurrence of the Realisation Event which is paid or payable to the holders of B Ordinary Shares and the Preference Shares by way of dividends or other distributions paid or made in respect of such shares and including gross interest on any dividends paid after the due date for payment;

**"Shareholder"** means any holder of Shares;

**"Shares"** means the Ordinary Shares, the Preference Shares and (as applicable) the Deferred Shares from time to time;

**"subsidiary"** and **"holding company"** shall have the meanings set out in section 736 of the Act;

**"Take-over"** means the acquisition of a Controlling Interest (save through a Permitted Transfer) or the sale or other disposal of the whole or substantially the whole of the undertaking of the Company (whether or not including the sale or other disposal of shares in any other Group Company); and

**"Target IRR"** means the percentage specified in Article 4.6(e);

### 3. Share Capital

3.1 The authorised share capital of the Company at the date of the adoption of these Articles is £297,000 divided into 200,000 Preference Shares, 100,000 A Ordinary Shares and 96,000 B Ordinary Shares.

3.2 In these Articles, unless the context requires otherwise, references to shares of a particular class shall include shares created and/or issued after the date of adoption of these Articles and ranking *pari passu* in all respects (or in all respects save only as to the date from which such shares rank for dividend) with the shares of the relevant class then in issue.

### 4. Rights Attaching to Shares

Save as otherwise provided in these Articles, the A Ordinary Shares and the B Ordinary Shares shall rank *pari passu* in all respects but shall constitute separate classes of shares. The Preference Shares and Ordinary Shares shall have, and be subject to, the following rights and restrictions:

#### 4.1 Income

Subject as provided by Articles 4.3 and 13, any profits of the Company available for distribution shall only be distributed amongst the holders of Ordinary Shares (*pari passu* as if the same constituted one class of share) *pro rata* according to the paid up amounts of the Ordinary Shares.

#### 4.2 Capital

On a return of capital on Liquidation or otherwise the surplus assets of the Company remaining after payment of its liabilities shall be applied:

- (a) if any Preference Shares shall remain in issue first in repaying to Preference Shareholders an amount equal to the paid up amount on each Preference Share;
- (b) the balance (if any) shall be distributed amongst the Ordinary Shareholders pro rata to the number of Ordinary Shares held and according to the paid up amount on each Ordinary Share.

#### 4.3 *Redemption of Preference Shares*

- (a) Forthwith upon the Company having Available Profits sufficient to redeem 40,000 or more of the Preference Shares in cash at par, it shall redeem in cash at par such number of Preference Shares (pro rata as between the holders thereof) for which there are then sufficient Available Profits.
- (b) Each holder of the Preference Shares shall be entitled, by not less than 14 days' notice in writing to the Company:
  - (i) to require the Company to redeem on the second anniversary of the Adoption Date one-half in number (or such lower number specified in such notice) of the Preference Shares then held by him or her and, upon the giving of such notice, the Preference Shares to which such notice relates shall become due for redemption on the second anniversary of the Adoption Date; and
  - (ii) to require the Company to redeem on or at any time following the third anniversary of the Adoption Date all or any part of the Preference Shares held by him or her and upon the giving of such notice, all (or such lower number specified in such notice) of the Preference Shares held by him or her shall become due for redemption on the third anniversary of the Adoption Date or (if later) the date (if any) specified in such notice. The right to require redemption in accordance with this sub-paragraph 4.3(b)(ii) may be exercised by a member any number of times for so long as he or she holds Preference Shares.
- (c) All of the Preference Shares in issue at the time of a Realisation Event shall be redeemed at par in full upon the occurrence of a Realisation Event save only where the Preference Shares (or any of them) are due to be converted by reason of occurrence of a Preference Conversion Event.
- (d) Subject to the provisions of the Act, upon each date on which all or any of the Preference Shares become due for redemption pursuant to the foregoing provisions of this Article, the Company shall redeem the Preference Shares to be redeemed on the date and the relevant holder of Preference Shares shall deliver to the Company at the place nominated by the Company the certificate for his Preference Shares and upon such delivery and against the receipt of the Preference Shareholder for the redemption monies payable in respect of his Preference Shares the Company shall pay to the Preference Shareholder (or, in the case of joint holders, to the Preference Shareholder whose name stands first in the register of members in respect of such Preference Shares) an amount equal to the paid up amount on each Preference Share together with a sum equal to any interest payable thereon (whether or not the Company has sufficient profits available for distribution to pay the arrears and accruals of any interest payable thereon) calculated up to (and including) the actual date of redemption.
- (e) The Company shall in the case of a redemption in full cancel the share certificate of the Preference Shareholder concerned and in the case of a redemption of part of the Preference Shares included in a certificate either (i) note the amount and date of redemption on such certificate or (ii) cancel the same and without charge issue to the Preference Shareholder(s) delivering such certificate to the Company a fresh certificate for the balance of the Preference Shares not redeemed on that occasion.
- (f) If on any due date for redemption of Preference Shares the Company is prohibited by law from redeeming all of the Preference Shares then falling to be redeemed it shall on such date redeem such number of the same as it may then lawfully redeem and shall redeem the balance so soon thereafter as it is not so prohibited and, for so long as such prohibition remains and any such Preference Shares as aforesaid have not been redeemed (and notwithstanding any other provisions of these Articles) the Company shall not pay any dividend or otherwise make any distribution of or otherwise decrease its profits available for distribution. If the Company fails to make any partial redemption of Preference Shares on any due date for redemption, then subsequent redemptions of Preference Shares shall be deemed to be of those Preference Shares which first became due for redemption.
- (g) If the Company fails to redeem any Preference Shares upon the due date for redemption thereof (for whatever reason) then (unless the Preference Shareholders shall agree otherwise):

- (i) until such time as any holder of the Preference Shares elects to convert some or all of its Preference Shares or (if earlier) the date on which such unredeemed Preference Shares are actually redeemed interest shall be payable on the nominal value of such unredeemed Preference Shares at a rate equal to the Interest Rate; and
  - (ii) at any time the holder or holders of a majority of the Preference Shares then in issue may by notice require the Company to convert the Preference Shares in accordance with the provisions of Article 4.5.
- (h) The Company shall, so far as it is within its power to do so, procure that the profits of any other Group Company for the time being available for distribution shall be paid by way of dividend if and to the extent that, but for such payment, the Company would not itself otherwise have sufficient Available Profits to make any redemption of Preference Shares required to be made pursuant to this Article.

#### 4.4 *Voting*

- (a) Ordinary Shares shall confer on each holder thereof the right to receive notice of and to attend, speak and vote at all general meetings of the Company.
- (b) Preference Shares shall confer on each holder thereof (in that capacity) the right to receive notice of and to attend and speak at all general meetings of the Company but shall not confer any right (in that capacity) to vote thereat unless:
  - (i) at the date of the meeting, any Preference Shareholder has required that redemption occur and it has not occurred as provided in Article 4.3(a); or
  - (ii) the business of the meeting concerns the winding up the Company or reducing its share capital, or the sale of the undertaking of the Company, or altering the objects of the Company, or varying or abrogating any of the special rights or privileges attached to the Preference Shares;

and in either such event each Preference Shareholder shall be entitled (in that capacity) to vote at such meeting (and, on a poll, to exercise one vote for every Preference Share of which it is the holder), such entitlement in the case of paragraph (i) above to continue for such period as the redemption has not occurred.

#### 4.5 *Conversion of Preference Shares*

- (a) Upon the occurrence (prior to the occurrence of a Realisation Event) of a Preference Conversion Event, all of the Preference Shares then in issue shall automatically convert into A Ordinary Shares and Deferred Shares in accordance with Article 4.5(c).
- (b) The following shall constitute Preference Conversion Events:-
  - (i) the failure at any time to redeem any Preference Share pursuant to these Articles and pay the redemption monies in respect thereof; and
  - (ii) any breach by the Company of any provision of Article 13.
- (c) The number of A Ordinary Shares into which the Preference Shares shall convert shall be calculated by the Auditors who shall by reference to Article 4.6(d) confirm the number of Ordinary Shares arising on conversion, the balance being converted into Deferred Shares. If any fraction of an Ordinary Share or a Deferred Share would otherwise arise as a result of the conversion of any Preference Share in accordance with this Article 4.5(c), the total number of Ordinary Shares attributable to the holder of the relevant Preference Shares pursuant to such conversion shall be rounded up to the nearest whole number of Ordinary Shares and the balance shall be converted into Deferred Shares.
- (d) The total number of Preference Shares to be converted into Ordinary Shares shall be such number so that, following the conversion, the A Ordinary Shares in issue immediately prior to such conversion shall represent 23 per cent of the total number of Ordinary Shares in issue (which shall exclude any

Ordinary Shares which would be in issue after exercise of all options then granted or which might thereafter be granted pursuant to a share option scheme then in existence).

- (e) Upon the occurrence of a Preference Conversion Event, the Company shall effect conversion of the Preference Shares into such number of A Ordinary Shares and Deferred Shares as the Auditors shall determine in accordance with Article 4.5(d).
- (f) Forthwith upon the occurrence of a Preference Conversion Event, the holders of the Preference Shares shall send to the Company the certificates in respect of their respective holdings of Preference Shares held prior to the occurrence of the Preference Conversion Event and thereupon, but subject to receipt of such certificates, the Company shall issue to such holders respectively certificates for the A Ordinary Shares and the Deferred Shares resulting from the conversion.
- (g) The A Ordinary Shares resulting from the conversion shall for the purposes of dividend, voting and return of capital be identical in all respects, form one class and will have the same rights and (for all purposes) rank *pari passu* with the other A Ordinary Shares in the capital of the Company then in issue.
- (h) Conversion of the Preference Shares shall be effected by the [sub-division and] redesignation of the relevant shares or, if the Board shall determine and as the law may allow, by redemption out of Available Profits or the proceeds of a fresh issue of shares and/or subdivision of the relevant shares, provided that the Board shall have first obtained all requisite authorities to effect any such issue and Shareholders shall take such action and execute such documents as may be required to effect such conversions.
- (i) As soon as practicable (and in any event at least 30 days) before the occurrence of a Preference Conversion Event, the Company shall give written notice to each holder of Preference Shares of the details of the Conversion Event and the date on which the Preference Conversion Event is expected to occur and the place at which the certificates in respect of such Preference Shares are, in the event of conversion, to be presented.

#### 4.6 *Reclassification of A Ordinary Shares and conversion of B Ordinary Shares*

- (a) All the A Ordinary Shares in issue at the time of a Realisation Event shall be automatically reclassified as Ordinary Shares, and all the B Ordinary Shares in issue at the time of a Realisation Event shall automatically convert into Ordinary Shares and Deferred Shares (as appropriate and in accordance with the provisions of this Article 4.6) upon the occurrence of a Realisation Event.
- (b) The A Ordinary Shares shall be reclassified as Ordinary Shares at the rate of one new Ordinary Share for every one A Ordinary Share held.
- (c) The number of Ordinary Shares into which the B Ordinary Shares shall convert shall be calculated by the Auditors who shall by reference to Article 4.6(d) confirm the number of B Ordinary Shares arising on conversion, the balance being converted into Deferred Shares. If any fraction of an Ordinary Share or a Deferred Share would otherwise arise as a result of the conversion of any B Ordinary Share in accordance with this Article 4.6(c), the total number of Ordinary Shares attributable to the holder of the relevant Ordinary Shares pursuant to such conversion shall be rounded up to the nearest whole number of Ordinary Shares and the balance shall be converted into Deferred Shares.
- (d)
  - (i) if the Preference Shares shall have been converted into A Ordinary Shares in accordance with Article 4.5 or if the IRR Percentage shall be equal to or greater than the Target IRR for the period in which the Realisation Event occurs, the B Ordinary Shares shall convert into Ordinary Shares at the rate of one new Ordinary Share for every one B Ordinary Share held; and
  - (ii) if paragraph (d) (i) of this Article does not apply, the total number of B Ordinary Shares to be converted into Ordinary Shares shall be such number (rounded up to the nearest whole number of Ordinary Shares) so that, following the conversion, such new Ordinary Shares shall represent X per cent of the total number of Ordinary Shares in issue (which shall include any Ordinary Shares which would be in issue after conversion of the A Ordinary Shares and exercise of all options then granted or which might thereafter be granted pursuant to a share option scheme then in existence) following such conversion, where X is the lower

of: (aa) 77 per cent; and (bb) the percentage of the ordinary share capital represented by the issued B Ordinary Shares immediately prior to the Realisation Event plus a percentage calculated according to the following formula:

(77-a) multiplied by (b-c) divided by (b-20)

where:

a = the percentage of the ordinary share capital represented by the issued B Ordinary Shares immediately prior to the Realisation Event  
b = the target IRR for the period in which the Realisation Event occurs  
c = the percentage IRR

(c) The Target IRR shall be as follows:-

<u>Period during which the Realisation Event occurs:</u>	<u>Target IRR</u>
Period up to and including the 3 <sup>rd</sup> anniversary of the Adoption Date:	50 per cent
12 months up to and including the 4 <sup>th</sup> anniversary of the Adoption Date:	60 per cent
12 months up to and including the 5 <sup>th</sup> anniversary of the Adoption Date:	70 per cent
12 months up to and including the 6 <sup>th</sup> anniversary of the Adoption Date:	80 per cent
12 months up to and including the 7 <sup>th</sup> anniversary of the Adoption Date:	90 per cent
Period following the 7 <sup>th</sup> anniversary of the Adoption Date:	100 per cent

- (f) Upon the occurrence of a Realisation Event, the Company shall effect simultaneous reclassification of the A Ordinary Shares as, and sub-division and reclassification of the B Ordinary Shares into, the numbers of Ordinary Shares and (in the case of the B Ordinary Shares only) Deferred Shares in accordance with this Article 4.6.
- (g) Forthwith upon the occurrence of a Realisation Event, the holders of the A Ordinary Shares and B Ordinary Shares shall send to the Company the certificates in respect of their respective holdings of A Ordinary Shares and B Ordinary Shares held prior to the occurrence of the Realisation Event and thereupon, but subject to receipt of such certificates, the Company shall issue to such holders respectively certificates for the Ordinary Shares (in the case of the B Ordinary Shares only) the Deferred Shares resulting from the reclassification and sub-division.
- (h) All Ordinary Shares resulting from the reclassification of A Ordinary Shares and the reclassification and sub-division of B Ordinary Shares shall for the purposes of dividend, voting and return of capital be identical in all respects, form one class and will have the same rights and (for all purposes) rank *pari passu*.
- (i) Reclassification of the A Ordinary Shares and the reclassification and sub-division of the B Ordinary Shares shall be effected by the redesignation and (in the case of the B Ordinary Shares only) sub-division of the relevant shares or, if the Board shall determine and as the law may allow, by redemption out of Available Profits or the proceeds of a fresh issue of shares and/or subdivision of the relevant shares, provided that the Board shall have first obtained all requisite authorities to effect any such issue and Shareholders shall take such action and execute such documents as may be required to effect such conversions.
- (j) As soon as practicable (and in any event at least 30 days) before the occurrence of a Realisation Event, the Company shall give written notice to each holder of A Ordinary Shares and the B Ordinary Shares which would fall to be converted of the details of the Realisation Event and the date on which the Realisation Event is expected to occur and the place at which the certificates in respect of such A Ordinary Shares and the B Ordinary Shares are, in the event of conversion, to be presented. The notice shall be expressed to be conditional upon the occurrence of the Realisation Event within a specified period of not more than three months from the date of the notice.

#### 4.7 *Deferred Shares*

- (a) The rights attaching to the Deferred Shares arising as a result of any conversion as provided in Articles 4.5 and 4.6 shall be as follows:

- (i) the holders of Deferred Shares shall have no right to receive notice of or to attend or vote at any general meeting of the Company;
  - (ii) the holders of Deferred Shares shall have no right to receive any dividend or other distribution;
  - (iii) the holders of Deferred Shares shall, on a return of capital in a liquidation but not otherwise, be entitled to receive only the amount paid up on each such share but only after the holder of each Ordinary Share shall have received £1,000,000 per share and the holders of Deferred Shares shall not be entitled to any further participation in the assets or profits of the Company;
  - (iv) the creation or issue of Deferred Shares shall be deemed to confer irrevocable authority on the Company at any time thereafter to appoint any person to execute on behalf of the holder of such shares a transfer thereof and/or an agreement to transfer the same to such person or persons as the Company may determine as custodian thereof and/or purchase the same in accordance with the Act in any such case for not more than 1 penny for all the Deferred Shares registered in the name of any such holder without obtaining the sanction of such holder or holders and pending such transfer and/or purchase to retain the certificates (if any) in respect thereof.
- (b) The Company may at its option at any time after the creation of any Deferred Shares redeem all of the Deferred Shares then in issue, at a price not exceeding 1 penny for all the Deferred Shares redeemed at any one time, upon giving the registered holders of such shares not less than 28 days' previous notice in writing of its intention so to do, fixing a time and place for the redemption.

#### 4.8 *Investor Directors*

A holder or holders of 50 per cent or more of the B Ordinary Shares from time to time in issue shall have the right by notice in writing to the Company to nominate up to three directors to the Board and the A Ordinary Shareholders shall not vote their A Ordinary Shares so as to remove any director so appointed from office. A holder or holders of 50 percent or more of the B Ordinary Shares from time to time in issue may remove any director so nominated at any time by notice in writing to the Company served at its registered office.

#### 4.9 *Quorum*

- (a) Save with the approval of a holder or holders of 50 percent or more of the B Ordinary Shares from time to time in issue, a meeting of the Directors held in the absence of more than one Investor Director (or duly appointed alternate Director of such person) shall not be quorate; and
- (b) no meeting of members of the Company shall be quorate unless those members present (whether in person or by a duly authorised representative or proxy) include a holder or holders of at least 10 percent of the B Ordinary Shares from time to time in issue.

### 5. **Issue of New Shares**

- 5.1 Save as provided by Article 13, no shares may be allotted or issued at any time after the Adoption Date to any person.
- 5.2 Subject to Article 5.1 and to the provisions of Section 80 of the Act all unissued Shares shall be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper, provided that no Shares shall be issued at a discount.
- 5.3 The provisions of sub-sections 89(1) and 90(1) to (6) of the Act shall not apply to the Company.

### 6. **Lien**

The Company shall have a first and paramount lien on every Share (whether or not fully paid) for all and any indebtedness of any holder of it to the Company (whether a sole holder or one of two or more joint holders),



whether or not such indebtedness or liability is in respect of the Shares concerned and whether or not it is presently payable.

## 7. Definitions

In this Article and in Articles 8 to 14 (inclusive) the following words shall bear the following meanings:

**"Acceptance Period"** means a period during which an offer made under Article 10.5 is open for acceptance;

**"Excluded Person"** means:

- (a) any A Ordinary Shareholder or other person who has given or is required to give a Transfer Notice under these Articles; and
- (b) an employee of any Group Company who has given, or been given, notice to terminate his contract of employment with the Company or any subsidiary of the Company;

**"Prescribed Price"** means:

- (a) subject to (b) below, the price per Sale Share specified in the Transfer Notice or (if no price is specified) the price per Sale Share agreed or determined pursuant to Article 10.3 and 10.4; or
- (b) where the provisions of Article 10.13 apply, the price stipulated in that Article;

**"Priority Rights"** means the rights of Ordinary Shareholders to purchase Ordinary Shares comprised in a Transfer Notice in the priority stipulated in Article 10.6;

**"Proposing Transferor"** means an Ordinary Shareholder proposing to transfer or dispose of Ordinary Shares or any interest therein;

**"Purchaser"** means an Ordinary Shareholder willing to purchase Ordinary Shares comprised in a Transfer Notice;

**"Sale Shares"** means all Ordinary Shares comprised in a Transfer Notice;

**"Transfer Notice"** means a written notice served or deemed to be served by an Ordinary Shareholder on the Company in accordance with Article 10.

## 8. Transfers of Shares - General

8.1 The Directors shall be required (subject only to Article 8.2) to register promptly any duly stamped transfer of shares made in accordance with the provisions of Articles 8 to 12, but shall not register any transfer of shares not complying with the above requirement.

8.2 The Directors may refuse to register a transfer if:

- (a) it is not lodged at the office or such other place as the Directors may appoint and is not accompanied by the certificate for the shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer; or
- (b) it is in respect of more than one class of shares; or
- (c) it is in favour of more than four transferees; or
- (d) it is a transfer to a person whose business is competitive, in the absolute discretion of the Board, with that being carried on by the Company or any Group Company provided that this Article 8.2(d) shall not prohibit any transfer of any Share between the holders of B Ordinary Shares or Preference Shares; or
- (e) it is a transfer of a share on which the Company has a lien; or

(f) it is a transfer of a share to a bankrupt, a minor or a person of unsound mind.

8.3 No transfer of shares shall be registered by the Directors if as a result of such transfer the Company comes under the control of another company within the meaning of paragraph 9 of Schedule 28B to the Income and Corporation Taxes Act 1988.

## 9. Permitted Transfers

9.1 A shareholder shall be permitted to transfer the legal title to and/or beneficial ownership of an Ordinary Share:

- (a) if the shareholder is a company, to any holding company or subsidiary company or to any other subsidiary company of any such shareholder's holding company; or
- (b) to a person who is the beneficial owner of an Ordinary Share or (in the case of the legal title only) to a different or additional nominee or trustee on behalf of such beneficial owner; or
- (c) if the shareholder is an individual, to an Associate (provided that the provisions of this Article shall apply to any share so transferred as if it were still held by such transferring shareholder); or

Provided that if any transferee of an Ordinary Share as permitted by this Article 9 ceases to have the relationship with the original shareholder described in paragraphs (a) to (d) of this Article 9.1, the transferee shall thereupon re-transfer the shares to the original shareholder (or a permitted transferee thereof pursuant to this Article 9); or

- (d) if the Proposing Transferor is a holder of B Ordinary Shares or Preference Shares, to any other holder of B Ordinary Shares or Preference Shares.

9.2 Whilst any Ordinary Shares are being transferred or are the subject of a Transfer Notice in accordance with Article 12, no transfers of Ordinary Shares pursuant to this Article 9.1 shall be permitted.

9.3 Subject to Article 8, the Preference Shares shall be freely transferable.

## 10. Transfers of Ordinary Shares Subject to Pre-emption Rights

### 10.1 Transfer Notice

Prior to any transfer of Ordinary Shares (save for a Permitted Transfer of Ordinary Shares), the Proposing Transferor shall serve a Transfer Notice on the Company specifying the number of Ordinary Shares in question, and the Transfer Notice shall constitute the Company his agent for the sale of those Ordinary Shares at the Prescribed Price to any Ordinary Shareholder or Ordinary Shareholders. Except as provided in this Article, a Transfer Notice once given or deemed to be given shall be irrevocable except with the consent of the Directors.

### 10.2 Contents of Transfer Notice

A Transfer Notice:

- (a) may specify the Prescribed Price per Ordinary Share;
- (b) shall, if the Proposing Transferor has received any offer to purchase Shares (being an offer capable of becoming legally binding upon acceptance), within the period of three months prior to service of the Transfer Notice, give the name of the offeror, the number of Shares concerned and the price per Share offered; and
- (c) may not be given by an Excluded Person unless required by the Directors under Articles 10.12 or 10.15.

### 10.3 *The Price*

Forthwith following receipt of a Transfer Notice which does not specify a Prescribed Price for the Sale Shares, the Directors (other than the Proposing Transferor, if a Director, and other than any Director connected with the Proposing Transferor within the meaning of section 839 Income and Corporation Taxes Act 1988) shall seek to agree the Prescribed Price with the Proposing Transferor. In the event that the Prescribed Price is not agreed within 14 days of receipt of the Transfer Notice by the Company, the Directors shall request the Auditors (acting as experts and not as arbitrators) to certify the Prescribed Price.

### 10.4 *Terms of Reference for Valuing Shares*

The Auditors shall within 14 days of such a request certify to the Company the Prescribed Price, being the value of each Ordinary Share calculated on the following basis:

- (a) by determining the sum which a willing purchaser would offer to a willing vendor for the whole of the issued ordinary share capital;
- (b) by dividing the resultant figure equally between the Ordinary Shares;
- (c) by making such adjustment (if any) as the Auditors certify to be necessary to allow for any rights which may be outstanding under which any person may call for, or be entitled to, the issue of further Ordinary Shares;
- (d) by making no adjustment to reflect any premium or discount arising in relation to the size of the holding the subject of the Transfer Notice or in relation to any restrictions on the transferability of the Ordinary Shares.

### 10.5 *Offer of Sale Shares to Shareholders*

The Sale Shares shall, within 14 days following receipt of the Transfer Notice (or in a case falling within Article 10.3 or 10.4, agreement or certification of the Prescribed Price), be offered by the Company to each Ordinary Shareholder (other than the Proposing Transferor and any Excluded Person) in accordance with the Priority Rights for purchase at the Prescribed Price. All offers shall be made by notice in writing and limit a time (being not less than fifteen and not more than twenty-one days) within which the offer must be accepted or, in default, will be deemed to have been declined. A copy of such offers shall at the same time be sent by the Company to the Proposing Transferor.

### 10.6 *Priority For Offer of Sale Shares*

The Company shall offer the Sale Shares in the following priority:

- (a) first, to an employee of any Group Company (who is not a member of the Company) if the Directors (with the prior approval of the holders of the B Ordinary Shares in accordance with Article 13) so determine; and, subject thereto
- (b) to the other Ordinary Shareholders on the basis set out in Article 10.7.

### 10.7 *Sale Shares Offered Pro Rata*

If there is more than one holder of Ordinary Shares to whom an offer is to be made pursuant to the Priority Rights the Ordinary Shares on offer shall be offered to such holders in proportion as nearly as may be to their existing holdings of A Ordinary Shares and B Ordinary Shares *pari passu* as if the same constituted one class of share, and the Directors' decision as to the number of shares which shall be "in proportion as nearly as may be to their existing holdings of Ordinary Shares" shall be conclusive.

### 10.8 *Acceptance*

- (a) Any Ordinary Shareholder to whom Sale Shares are offered may accept all or some only of the Sale Shares offered to him.
- (b) Each Ordinary Shareholder to whom the offer is made (if more than one) shall be invited to indicate whether, if he accepts the number of Sale Shares offered to him pursuant to Article 10.5, he wishes to

purchase any Sale Shares offered to other Ordinary Shareholders in the same offer which they decline to accept (such Sale Shares being referred to as "excess shares") and if so the maximum number of excess shares which he wishes to purchase.

#### 10.9 *Further Offer Where Excess Shares*

If there are any excess shares, they shall be allocated between the Ordinary Shareholders who have indicated that they wish to purchase excess shares. If the number of excess shares available is insufficient, the excess shares shall be allocated between the Ordinary Shareholders seeking to purchase them as follows:

- (a) any Ordinary Shareholder who has sought to purchase no more than his proportionate entitlement of excess shares (calculated by reference to the proportion of the total holdings of Ordinary Shares of the Ordinary Shareholders seeking to purchase excess shares represented by that Ordinary Shareholder's holding) shall be allocated all the excess shares he sought to purchase;
- (b) any Ordinary Shareholder or Ordinary Shareholders who sought to purchase more than their proportionate entitlement shall have the number of excess shares applied for scaled down and (if more than one) in proportion to their respective holdings of Ordinary Shares.

#### 10.10 *Completion Timetable and Obligations*

- (a) Not later than 7 days following the expiration of the Acceptance Period the Company shall give written notice to the Proposing Transferor stating:
  - (i) if it is the case, that no Ordinary Shareholder has sought to purchase any of the Sale Shares; or, otherwise
  - (ii) the number of Sale Shares which Ordinary Shareholders have sought to purchase, giving the name and address of each Purchaser and the number of Sale Shares to be purchased by him;

and so that in the event that Purchasers have been found in the Acceptance Period for some only of the Sale Shares the Proposing Transferor may within 7 days of service on him of notice under this Article 10.10(a) revoke his Transfer Notice by written notice to the Company.

- (b) Subject to the provisions of this Article, the Purchasers shall be bound to purchase the Sale Shares allocated to them under the provisions of this Article 10.10 at the Prescribed Price.
- (c) In the event that the Proposing Transferor is given notice under Article 10.10(a) (and subject to the Proposing Transferor not revoking his Transfer Notice in accordance with Article 10.10(a)) the Proposing Transferor shall be bound on payment of the Prescribed Price to transfer the Sale Shares in question to the respective Purchasers. The sale and purchase shall be completed at the registered office of the Company during normal business hours on the first business day after the expiry of 14 days from the date of service of the notice under this Article 10.10.
- (d) If a Proposing Transferor, after having become bound to transfer any Ordinary Shares to a Purchaser, shall fail to do so, the Directors may authorise any person to execute on behalf of and as attorney for the Proposing Transferor any necessary instruments of transfer and shall register the Purchaser as the holder of the Ordinary Shares. The Company's receipt of the purchase money shall be a good discharge to the Purchaser, and the Company shall thereafter hold the same on trust for the Proposing Transferor. After the name of the Purchaser has been entered in the Register of Members of the Company in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.

#### 10.11 *Share Transfers to Third Parties*

The Proposing Transferor may transfer Sale Shares to any person or persons in the following circumstances:

- (a) if the Company shall fail within the Acceptance Period to find a Purchaser or Purchasers for any of the Sale Shares, the Proposing Transferor may sell all or any of the Sale Shares;
- (b) if the Company shall within the Acceptance Period find a Purchaser or Purchasers for some (but not all) of the Sale Shares and shall serve notice accordingly under Article 10.10(a) the Proposing

Transferor may sell all or any of the Sale Shares for which no Purchaser has been found, but so that if the Proposing Transferor revokes his Transfer Notice under Article 10.10(a) he may sell all (but not some only) of the Sale Shares.

Paragraphs (a) and (b) above are subject to the following restrictions:

- (i) the Sale Shares may not be sold after the expiry of three months after the date on which notice is given under Article 10.10(a);
- (ii) the Sale Shares must be sold in a bona fide sale at a price not being less than the Prescribed Price; the Directors may require to be satisfied that the Sale Shares are being transferred in a bona fide sale for the consideration stated in the instrument of transfer without any deduction, rebate or allowance whatsoever to the Purchaser;
- (iii) if the provisions of Articles 11 or 12 are applicable, the transfer or disposal may only be made if those provisions are complied with;
- (iv) no Ordinary Shares may be transferred, or disposed of, pursuant to this Article 10.11 by any person who is an Excluded Person, unless the Directors (including the Investors' Director) resolve to approve such transfer or disposal.

#### 10.12 *Transfer on Death or Bankruptcy*

A person entitled to an Ordinary Share or Ordinary Shares in consequence of the death, bankruptcy, receivership or liquidation of an Ordinary Shareholder shall be bound at any time, if called upon in writing to do so by the Directors not later than 90 days after the Directors receive notice from the person concerned that he has become so entitled, to give a Transfer Notice (without specifying a Prescribed Price) in respect of all the Ordinary Shares then registered in the name of the deceased or insolvent Ordinary Shareholder. Such a Transfer Notice shall not be capable of revocation under the provisions of Article 10.10(a). Regulations 29 to 31 of Table A shall take effect accordingly.

#### 10.13 *Deemed Transfer Notice*

If any Employee ceases for any cause to be an Employee, such Employee, shall be deemed to have given a Transfer Notice in respect of all the Ordinary Shares then registered in his name. Such a Transfer Notice shall not specify a Prescribed Price and shall not be capable of revocation under the provisions of Article 10.10(a). In such circumstances the Prescribed Price shall be the paid up amount per Sale Share.

#### 10.14 *Excluded Persons - Prior Transfer Notices Withdrawn*

If any Employee becomes an Excluded Person the Directors may at any time thereafter (but only for so long as he remains an Excluded Person) by notice in writing to such Employee revoke any outstanding Transfer Notice given by such Employee or other person prior to that event. These Articles shall thereafter operate as if no such notice had been given, provided that such revocation shall be without prejudice to any sale of the Ordinary Shares the subject of the Transfer Notice completed prior to such revocation.

#### 10.15 *Requests for Information*

For the purpose of ensuring that a transfer of shares is duly authorised under these Articles or that no circumstances have arisen by reason of which a Transfer Notice may be required to be given, the Directors may from time to time require any member or past member or the personal representatives or trustee in bankruptcy, receiver or liquidator of any member or any person named as transferee in any instrument of transfer lodged for registration, to provide to the Company such information as the Directors reasonably think fit regarding any matter which they consider relevant. If such information is not provided to the reasonable satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled 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 in respect of the shares concerned or where a Transfer Notice ought to have been given in respect of any shares the Directors may by notice in writing require that the Transfer Notice be given in respect of the shares concerned. Any Transfer Notice required to be given under this Article shall not specify a price per share and shall not be capable of revocation under the provisions of Article 10.10(a).

#### 10.16 *Inaction and Deemed Transfers*

In any case where the Directors may require a Transfer Notice to be given in respect of any Ordinary Shares, if a Transfer Notice is not duly given within a period of two weeks of demand being made, a Transfer Notice shall be deemed to have been given at the expiration of that period. Such a deemed Transfer Notice shall not be capable of revocation under Article 10.10(a).

**10.17 Service of Transfer Notices**

Any notice required to be given under this Article by the Company to an Ordinary Shareholder or by an Ordinary Shareholder to the Company or otherwise shall be given or served either personally or by sending it by first class post to the registered office of the Company or to the registered address of the Ordinary Shareholder (as the case may be) or, if he has no registered address within the United Kingdom and has supplied to the Company an address within the United Kingdom for the giving of notice to him, to the address so supplied. When a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected 48 hours after posting.

**10.18 Waiver of Pre-Emption Provisions**

The restrictions imposed by this Article may be waived in relation to any proposed transfer of Ordinary Shares with the consent of all Ordinary Shareholders who, but for such waiver, would or might have been entitled to have such shares offered to them in accordance with Article 10.5.

**11. Mandatory Acceptance of Offer**

- 11.1 In the event that any holder or holders of Ordinary Shares proposes to sell the legal or beneficial interest in Ordinary Shares representing either: (i) more than 50 per cent of the issued B Ordinary Shares; or (ii) all of the issued A Ordinary Shares, to a person who is a bona fide purchaser at arms length and (whether or not the provisions of Article 12.1 apply) if such proposing vendors procure an offer is made by the proposed transferee (or any person or persons acting in concert with it) (the "Offeror") to all of the Ordinary Shareholders to acquire the entire issued Ordinary Share capital and that offer complies with the requirements of Article 12.4 (as if such proposed sale were the relevant transaction), the proposed vendors shall have the right (the "Come Along Right") to require all of the Ordinary Shareholders (the "Called Shareholders") to accept in full the offer procured to be made to them. The pre-emption provisions set out in Article 10 shall not apply to any transfer required to be made hereunder.
- 11.2 The Come Along Right may be exercised by the proposed vendors of B Ordinary Shares serving notice to that effect (the "Come Along Notice") to the Called Shareholders at the same time as, or within 7 days following, the making of the offer.
- 11.3 A Come Along Notice once given shall be irrevocable but shall lapse (and the obligations thereunder shall lapse) in the event that for any reason the proposing vendors do not transfer their Ordinary Shares to the Offeror (or the Offeror's nominee) not later than the date specified as the date for completion of the sale and purchase of the Ordinary Shares pursuant to acceptances of the offer.
- 11.4 Upon the exercise of the Come Along Right in accordance with this Article 11, each of the Called Shareholders shall be bound to accept the offer made to it in respect of its entire holding of Ordinary Shares and to comply with the obligations assumed by virtue of such acceptance.
- 11.5 In the event that any Called Shareholder fails to accept the offer made to him or, having accepted such offer fails to complete the sale of any of its Ordinary Shares pursuant to the offer or otherwise fails to take any action required of it under the terms of the offer, the Directors (or any of them) may authorise some person to accept the offer on behalf of the Called Shareholders in question or undertake any action required under the terms of the offer on the part of a Called Shareholder who has accepted the offer. The Directors may in particular authorise some person to execute a transfer of any Ordinary Shares in favour of the Offeror (or its nominee) and the Company may give a good receipt for the purchase price of such Ordinary Shares and may register the Offeror (or its nominee) as holder thereof and issue to it (or as it may direct) certificates for the same whereupon the Offeror (or its nominee) shall be indefeasibly entitled thereto. The Called Shareholder shall in such case be bound to deliver up its certificate for its Ordinary Shares to the Company whereupon the Called Shareholder shall be entitled to receive the purchase price for such Ordinary Shares which shall in the meantime be held by the Company on trust for the Called Shareholder but without interest. After the name of the Offeror (or its nominee)

has been entered in the Register of Members of the Company in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.

## **12. Mandatory Offer of Shareholding**

- 12.1 No sale or transfer (other than a Permitted Transfer) of the legal or beneficial interest in any A Ordinary Shares (the "relevant transaction") may be made or validly registered if as a result of such sale or transfer a Controlling Interest is obtained by a person (or persons acting in concert) where such person(s) did not have a Controlling Interest immediately prior to the relevant transaction, unless the Proposing Transferor shall have procured a written offer complying with the provisions of Article 12.4 to have been made by the proposed transferee (or any person or persons acting in concert with it) to the holders of all the other issued Shares to acquire their entire holdings of Shares at the Specified Price.
- 12.2 For the purpose of this Article 12:
- (a) the expression "transfer" and "transferee" shall include respectively the renunciation of a renounceable letter of allotment and the renounee under any such letter of allotment respectively; and
  - (b) the expression "Specified Price" shall mean a sum in cash per Ordinary Share or Preference Share (as applicable) equal to the highest price per Ordinary Share or Preference Share (as applicable) offered or paid by the proposed purchaser in the relevant transaction or any related or previous transaction by the same purchaser or any person acting in concert with the proposed purchaser in the twelve months preceding the date of the offer plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) paid or payable by such purchaser or person acting in concert which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Ordinary Shares representing the Controlling Interest plus an amount equal to any arrears of dividends owing on any Ordinary Shares.
- 12.3 The relevant transaction is subject to the pre-emption provisions of Article 10, but the offer to purchase the balance of the issued shares of the Company shall not be subject to Article 10.
- 12.4 The offer referred to in Article 12.1 above shall:
- (a) be open for acceptance in England for a period of at least 21 days following the making of the offer;
  - (b) be at the Specified Price;
  - (c) be on terms that the purchase of any shares in respect of which such offer is accepted shall be completed at the same time as the relevant transaction.

## **13. Investor Protections**

Without prejudice to any other provision of these Articles, any of the following shall be deemed to be a variation or abrogation of the rights attaching to the B Ordinary Shares if undertaken without the approval of a majority of the B Ordinary Shares then in issue:

- (i) the creation or issue of any shares ranking in any respect either in priority to or pari passu with the Ordinary Shares and any reduction of the capital paid up on any of the ordinary shares;
- (ii) the winding-up of any Group Company, unless the same shall constitute a Realisation Event occurring on or after the third anniversary of the Adoption Date;
- (iii) any alteration in any limitation on borrowings of any Group Company contained in the articles of association of the company in question;
- (iv) any substantial alteration in the nature of the business of the Group Companies;
- (v) any transaction entered into by any Group Company, if the ordinary share capital of the Company were for the time being admitted to the Official List of the London Stock Exchange

would constitute a class 2 transaction or a related party transaction for the purposes of "The Listing Rules" published by London Stock Exchange, unless the same shall constitute a Realisation Event occurring on or after the third anniversary of the Adoption Date;

- (vi) any alteration of the objects clause of the memorandum of association of the Company;
- (vii) any distribution of capital profits or capital reserves, unless the same shall constitute a Realisation Event occurring on or after the third anniversary of the Adoption Date;
- (viii) any capitalisation issue;
- (ix) any modification of any of the rights attaching to the Ordinary Shares;
- (x) any issue of shares carrying more favourable rights than those attaching to the Ordinary Shares;
- (xi) any application for a Listing, unless the same shall constitute a Realisation Event occurring on or after the third anniversary of the Adoption Date;
- (xii) any alteration of the financial year end of the Company from 31 December;
- (xiii) any issue of shares in the capital of the Company otherwise than pro rata to holders of B Ordinary Shares and/or Preference Shares;
- (xiv) any determination by the Board pursuant to Article 10.6 that Sale Shares should first be offered to an employee of a Group Company;
- (xv) the capital expenditure of all Group Companies exceeding £10,000 in respect of any single item or project, or £50,000 in aggregate in any twelve month period;
- (xvi) the acquisition by any Group Company of any business, shares in any other company freehold, leasehold or intellectual property, unless the same shall constitute a Realisation Event occurring on or after the third anniversary of the Adoption Date;
- (xvii) the entry into by any Group Company of any hire purchase or leased asset agreement involving the aggregate expenditure of more than £5,000 per calendar month;
- (xviii) the entry into by any Group Company of debt factoring or similar arrangement;
- (xix) any change to the terms of employment, or remuneration payable by any employment of, or remuneration payable by any Group Company, to any of the executive director of the Company;
- (xx) the grant by any Group Company of any option to acquire shares in any Group Company;
- (xxi) whilst any of the Preference Shares remain in issue, the declaration or payment of any dividend; and
- (xxii) the appointment of any director to the Board, otherwise than in accordance with Article 4.8.

#### 14. General Meetings

- 14.1 In Regulation 37 of Table A there shall be substituted for the words "eight weeks" the words "twenty-eight days".
- 14.2 In its application to the Company, Regulation 50 of Table A shall be modified by the insertion after the word "shall" and before the words "be entitled" of the word "not".



**15. Proxies**

The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notari ally or in some other way approved by the Directors may:

- (a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting at any time before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (b) be delivered at the meeting or adjourned meeting at which the person named in the instrument proposes to vote to the Chairman or to the Secretary or to any Director; or
- (c) in the case of a poll, be delivered at the meeting at which the poll was demanded to the Chairman or to the Secretary or to any Director, or at the time and place at which the poll is held to the Chairman or to the Secretary or to any Director or scrutineer;

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

**16. Directors' Borrowing Powers**

The Directors may exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures, debenture stock and other securities as security for any debt, liability of obligation of the Company or of any third party.

**17. Alternate Directors**

Notwithstanding any provision of these Articles to the contrary, any person appointed as the Investors' Director may appoint such person as he thinks fit to be his alternate Director and the appointment of such alternate Director shall not require approval by a resolution of the Directors, and in its application to the Company Regulation 65 of Table A shall be modified accordingly.

**18. Number of Directors**

Unless and until the Company in general meeting shall otherwise determine the number of Directors shall be not less than two.

**19. Appointment of Directors**

- 19.1 In its application to the Company, Regulation 78 of Table A shall be modified by the deletion of the words "... and may also determine the rotation in which any additional Directors are to retire".
- 19.2 In its application to the Company, Regulation 79 of Table A shall be modified by the deletion of the second and third sentences.
- 19.3 In its application to the Company, Regulation 84 of Table A shall be modified by the deletion of the third and final sentences.

**20. Disqualification of Directors**

In addition to that provided in Regulation 81 of Table A, the office of a Director shall also be vacated if:

- (a) he is convicted of a criminal offence (other than a minor motoring offence) and the Directors resolve that his office be vacated; or
- (b) in the case of a person who is also an employee of the Company or another Group Company<sup>2</sup>, he ceases to be such an employee; or

- (c) in the case of a person whose services are made available to the Company or another Group Company under the terms of an agreement between the Company or another Group Company, such person's services cease to be provided to the Company or other Group Company.

## 21. **Proceedings of Directors**

- 21.1 In its application to the Company Regulation 88 of Table A shall be modified by the insertion of the word "not" after the words "the Chairman shall" in the fifth sentence.
- 21.2 Meetings of the board of Directors shall take place no less frequently than ten times every year with a period of not more than eight weeks between any two meetings and reasonable advance notice (being not fewer than seven days) shall be given to each Director (save with the consent of the Investors' Director when board meetings may take place less frequently and on less notice).
- 21.3 In its application to the Company Regulation 89 of Table A shall be modified:
  - (a) by the deletion of the words "may be fixed by the Directors and unless so fixed at any other number" in the first sentence; and
  - (b) by the addition of the following as the final sentence:

"In the event that a meeting of the Directors is attended by a Director who is acting as alternate for one or more other Directors, the Director or Directors for whom he is the alternate shall be counted in the quorum notwithstanding their absence, and if on that basis there is a quorum the meeting may be held notwithstanding the fact (if it is the case) that only one Director is physically present".
- 21.4 Notices of meetings of the Directors shall be given in writing and in its application to the Company Regulation 111 of Table A shall be modified accordingly.
- 21.5 Any Director who participates in the proceedings of a meeting by means of a communication device (including a telephone) which allows all the other Directors present at such meeting (whether in person or by alternate or by means of such type of communication device) to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (whether in person or by alternate or by means of such type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum. A meeting held by such means shall be deemed to take place where the largest group of participators in number is assembled. In the absence of such a majority the location of the chairman shall be deemed to be the place of the meeting.
- 21.6 A Director may vote at a meeting of the Directors, and form part of a quorum present at that meeting, in relation to any matter in which he has, directly or indirectly, an interest or duty which conflicts or which may conflict with the interests of the Company, provided that he has previously disclosed the nature of such duty or interest to the Directors. The provisions of Regulation 86 of Table A shall be taken to apply equally to any disclosure to be made under the provisions of this Article.
- 21.7 The Directors shall establish a remuneration committee comprising the Director appointed by the Investors and such committee shall set the level of remuneration of the executive Directors of the Company and senior management of the Company and shall be responsible for the review of such remuneration. No resolution of such committee shall be effective unless it has been passed by the Director appointed by the Investors. The powers and authorities of such committee may be varied or revoked by the majority of the full board of Directors including the vote of the Director appointed by the Investors.

## 22. **Execution of Documents**

In its application to the Company Regulation 101 of Table A shall be modified by the addition of the following sentence:

"Any instrument expressed to be executed by the Company and signed by two Directors, or by one Director and the Secretary, by the authority of the Directors or of a committee authorised by the Directors shall (to the extent permitted by the Act) have effect as if executed under seal".

## 23. Dividends

Regulations 102 to 105 (inclusive) of Table A shall be subject to Article 4.1 and in Regulation 103 of Table A the words from "If the share capital is divided" to the end of the third sentence of the Regulation shall be deleted.

## 24. Indemnities

Subject to section 310 of the Act:

- (a) every Director or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation to his office, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 144 or 727 of the Act in which relief is granted to him by the court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or otherwise in relation to his office;
- (b) the Directors may exercise all the powers of the Company to purchase and maintain insurance for any such Director or other officer against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.

## 25. Illustrative Example of Returns on Realisation

The following example illustrates the application of the provisions of the Articles of Association in the event of a Realisation on the third anniversary of the Adoption Date given the assumptions below:

### Assumptions

An initial investment of £500,000 by way of subscription for 200,000 Preference Shares and 96,000 "B" Ordinary Shares.

A market capitalisation of the Company on a Realisation Event of £7,413,846. (see note below)

Redemption of the Preference Shares in two equal instalments on the second and third anniversaries of the Adoption Date.

One non executive Director entitled to options over 5% of the Ordinary Shares on achievement of the Target IRR

Note: although the relevant provisions of the Articles take no account of the profitability of the Company, the assumed market capitalisation figure of £7,413,846 was calculated on the basis of a multiple of 11 times profits after tax of £673,986, a 50% discount to the price earnings multiple of the FTSE Smaller Companies (excluding investment companies) Index as at October 1999.

### Calculation of the IRR Percentage

Initial Investment	Relevant Receipts		
	Period One	Period Two	Period Three
Period 0			
-£500,000			
Redemption of Preference Shares	0	£100,000	£100,000
Dividends (if paid)	0	0	0
Valuation to B Ordinary Shareholders	0	0	£3,262,092
Total cash flows	0	£100,000	£3,362,092

IRR

92%

### **Resulting Share Capital Structure**

Applying the terms of the Articles to the above illustrative returns, because the resulting IRR of 92% is in excess of the Target IRR for the relevant period, conversion of the A Ordinary Shares and the B Ordinary Shares will be effected so that the new Ordinary Shares would be held as to 51% by Peter Ashdown-Barr and 44% by the former B Ordinary Shareholders and 5% by the non executive Director.

*There are many possible outcomes, the principal variables being:*

The timing of the redemption of the Preference Shares

The timing of the Realisation Event

The value of the Company on a Realisation

The amount, if any, of dividends paid to Ordinary Shareholders

The number of options granted by the Company

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