

The Companies Act 1985

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**COMPANY LIMITED BY SHARES**

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**NEW ARTICLES OF ASSOCIATION  
OF  
IMPARTA LIMITED**

(adopted by Special Resolution of the  
Company dated 17 April 2012)

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Incorporated 14 May 1997  
Company Number 3370400

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The Companies Acts 1985

## **COMPANY LIMITED BY SHARES**

### **ARTICLES OF ASSOCIATION OF IMPARTA LIMITED**

(adopted by Special Resolution of the Company dated 17 April 2012)

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#### **PRELIMINARY**

- 1(a) The Company is a private company. The regulations contained in Table A, save insofar as they are excluded or varied hereby, or are inconsistent herewith, and the regulations hereinafter contained shall constitute the regulations of the Company.
- (b) Regulations 46, 48-52 inclusive, 54, 59, 73-80 inclusive, 83, 91, 94-96 inclusive and 109 of Table A shall not apply to the Company.

#### **INTERPRETATION**

- 2 The words “and in any Articles adopting in whole or in part the same” shall be inserted after the word “regulations” in the first, seventeenth and nineteenth lines of regulation 1 of Table A.
- 3 In this Article and in the regulations contained in Table A as adopted and modified by these Articles -
- (a) Unless the context otherwise requires the following expressions have the following meanings -

**“A” Ordinary Shares** means a “A” Ordinary Shares of 2 5p each in the capital of the Company having the rights and being subject to the restrictions set out in these Articles,

**“Act”** means the Companies Act 1985 as amended by the Companies Act 1989,

**“acting in concert”** means acting in concert as that term is defined in the City Code on Takeovers and Mergers in its latest edition from time to time but excluding paragraph (6) of such definition,

**“Arrears”** means, in relation to any share, all accruals, deficiencies and arrears of any dividend (if any) payable in respect of such share whether or not earned

or declared and irrespective of whether or not the Company has had at any time sufficient distributable profits to pay such dividend,

**“Associate”** means any person firm or company.

- (a) which is a subsidiary of or controlled by the person concerned, or
- (b) of which or by whom the person concerned is a subsidiary or is controlled, or
- (c) who or which is a subsidiary of or controlled by a person, firm or company who or which controls or is the holding company of the person concerned; or
- (d) of which one is the spouse, parent, issue, brother or sister of the other, or
- (e) of which one is trustee or nominee for the other or for any Associate of the other (whether sole or joint trustee or nominee and whether the other or the Associate is sole or one of several beneficiaries), or
- (f) who or which is acting on behalf of that other,

**“Auditors”** means the auditors of the Company from time to time,

**“B” Ordinary Shares** means “B” Ordinary Shares of 2 5p each in the capital of the Company having the rights and being subject to the restrictions set out in these Articles

**“business day”** means a day on which banks generally are open in the City of London for the transaction of routine banking business,

**“Cash Equivalent”** means in relation to an asset, or an asset or cash transferable or payable at a future time, the net present value of such asset or cash as agreed within 7 days by the Company and GE or, failing such agreement, as determined by the Auditors, or if the Directors so elect, an internationally recognised merchant bank, in each case, acting as experts and not arbitrators,

**“Cashflows”** means the following aggregated on a daily basis from (and including) the date of the inflow or outflow of such cashflow to (and including) the date of occurrence of the Exit

- (a) all monies used to subscribe for the GE Investment,
- (b) those sums received from any Group Company or in the case of (iii) below, third parties (which shall be treated as received on the date of payment thereof by any such Group Company or the third party as appropriate) on or prior to the Exit in respect of and pursuant to the rights attaching to the GE Investment including (but without limitation)
  - (i) the gross amount of any dividends (including interest and principal repayments by way of redemption or other distributions received (including any tax credit thereon), or which (on or prior to the Exit) will be received, from any Group Company in respect of the GE Investment,
  - (ii) the value of Revenue Warrants in respect of which Cashless Exercise (as defined in the Revenue Warrants) has been elected

(but not Revenue Warrants otherwise exercised), each Revenue Warrant being valued at the Exit Value per Share less the Warrant Price (as so defined) Provided that the value of Revenue Warrants exercised as part of a Sale in respect of which the provisions of Article 15.1 are operated shall be excluded, and

- (iii) any sums received, or which will be received (on or prior to the Exit), on the redemption or sale or other realisation of the GE Investment (including, without limitation, the Exit Value of the GE Investment whether or not so realised), whether in cash, shares, loan stock or a combination thereof or otherwise together with the Cash Equivalent of any element of the consideration to be received after the Exit; and
- (c) the value of that part of the GE Investment comprising equity share capital which is not sold at the time of the Flotation which shall be valued by reference to the price (including the Cash Equivalent of any non-cash or deferred element of the price) per share at which the Ordinary Shares (or shares derived from Ordinary Shares) are sold or issued in connection with the Flotation (in the case of an offer for sale other than by tender, being the underwritten price (or if applicable the minimum tender price), and in the case of a placing, being the placing price),  
and, for the avoidance of doubt, amounts referred to in paragraph (a) above are to be regarded as outflows for the purposes of the definition of IRR, and amounts referred to in paragraphs (b) and (c) above are to be regarded as inflows for the purposes of the definition of IRR. For the purposes of this definition all such Cashflows shall be calculated prior to and taking no account of the effect of any tax and no account shall be taken of the payment by any GE Entity to any Group Company for the supply of any products or services by any Group Company,

**“Completion”** means the date of completion of the subscription of Series A-1 Shares pursuant to the Subscription and Shareholders’ Agreement,

**“Controlling Interest”** means an interest (within the meaning of Schedule 13 Part 1 and Section 324 of the Act) in Shares conferring in the aggregate more than fifty percent of the total voting rights conferred by all the shares in the equity share capital of the Company excluding for the purposes of Articles 15.1 the “B” Ordinary Shares for the time being in issue and conferring the right to vote at all general meetings,

**“Conversion Date”** means (a) the date immediately prior to the completion of a Sale, or the date on which an offer constituting a Sale becomes or is declared unconditional in all respects, or the date immediately prior to a Flotation becoming effective or (b) the expiry of the date referred to in Article 5(C)(x)(b);

**“Conversion Rate”** has the meaning set out in Article 5(C)(x),

**“Directors”** means directors of the Company from time to time,

**“dividend”** includes any distribution whether in cash or in kind out of revenue or capital,

**“Dividend Date”** means the date when the Preference Dividend is due for payment in accordance with the terms of these Articles;

**“Exit”** means the first to occur of a Sale or Flotation or Liquidation and so that an Exit shall be deemed to occur

- (a) where the Exit is by way of Sale, on the date on which under the agreement or arrangement relating to the Sale (or to the last transaction in the series which results in a Sale) as between the parties thereto, the right of the transferee to have Ordinary Shares transferred to it becomes unconditional,
- (b) where the Exit is by way of Flotation, on the date on which dealings commence in respect of shares the subject of the Flotation;
- (c) where the Exit is by way of Liquidation, on the date of the final return of capital to shareholders in the liquidation of the Company,

**“Exit Value”** shall mean:

- (a) in the case of a Flotation, the market value of the Company upon Flotation by reference to the price (including the Cash Equivalent of any non cash or deferred element of the price) at which Ordinary Shares are proposed to be sold or offered in connection with the Flotation (in the case of an offer for sale other than by tender, being the underwritten price or, in the case of an offer for sale by tender, the striking price under such offer for sale by tender or, in the case of a placing, the placing price,) but excluding therefrom any new shares which are to be or have been newly subscribed in order to raise additional capital as part of that Flotation (the **“Flotation Value”**),
- (b) in the case of a Sale, the price (including the Cash Equivalent of any non cash or deferred element of the price) being paid for all of the Ordinary Shares of the Company being sold divided by that number of Ordinary Shares and multiplied by the number of Ordinary Shares in issue at the time of the Exit (the **“Sale Value”**);
- (c) in the case of a Liquidation the amount (including the Cash Equivalent of any non cash or deferred element of the distribution) to be distributed in respect of all of the Ordinary Shares of the Company,

**“Flotation”** means the effective admission of any part of the equity share capital of the Company to the Official List of the London Stock Exchange or the grant of effective permission by the London Stock Exchange for dealings to take place in the same on the Alternative Investment Market or on commencement of dealings in the same on NASDAQ, NASDAQ Europe, EASDAQ, any exchanges specified in schedule 2 of the Financial Services Act 1986 (Investment Advertisements) (Exceptions) Order 1996, or any other recognised investment exchange (as defined in Section 207 of the Financial Services Act 1986) (whichever is the earlier),

**“GE”** GE Capital Equity Holdings BV whose registered office is at Strawinskylaan 3105, 7<sup>th</sup> Floor, 1077 2X Amsterdam, Netherlands

**“GE Entity”** means GE or any entity which is a holding company of GE or any subsidiary of GE or of such holding company;

**“GE Investment”** means the investment in the Company or any Group Company subscribed by GE or any GE Entity pursuant to the Subscription and Shareholders Agreement and (subject to the provisions contained in the definition of Cashflows) any investment made by GE or any GE Entity in the Company pursuant to the Revenue Warrants,

**“Group Company”** means the Company and any holding company or subsidiary from time to time of the Company and any other subsidiary from time to time of any such holding company,

**“Investment Period”** means the period commencing on Completion and continuing (a) for so long as a GE Entity on its own or together with one or more other GE Entities holds unconverted Series A-1 Shares and/or Revenue Warrants and such Shares and the Shares to be issued on the exercise of such Revenue Warrants (if any) in each case represent Shares (or the right to subscribe for Shares) comprising two per cent or more (by number of votes) of the Company’s issued share capital from time to time or (b) if sooner until the date of an Exit;

**“IRR”** means that annual percentage discount rate which when applied over the period from the date on which each Cashflow occurs or is deemed to have occurred back to the date of Completion (calculated on a monthly basis with each Cashflow treated as received on the last day of the month in which it was received and, for the avoidance of doubt, the discounted time period shall be expressed in months in order to produce a monthly discount rate) gives a net present value of zero for those Cashflows, having adopted the convention of designating outflows as negative and inflows as positive, calculated pursuant to Article 26;

**“Issue or Reorganisation”** means any of

- (i) an issue of Ordinary Shares (or securities convertible into Ordinary Shares) by way of capitalisation of profits or reserves
- (ii) a capital distribution on or in respect of the Ordinary share capital of the Company (or any Ordinary Shares derived therefrom),
- (iii) a sub-division, consolidation, conversion or reduction of the Ordinary share capital of the Company (or any Ordinary Shares derived therefrom), and
- (iv) a reconstruction or amalgamation of the Company;

**“Liquidation”** means the making of a winding up order by the court in relation to the Company or the passing of a resolution of the members of the Company that the Company be wound up,

**“Majority Holder”** means the shareholder or shareholders who has (or together have) (together with the interests in Ordinary Shares in the Company of any Permitted Shareholder to whom such Ordinary Shares have been transferred or options granted over such shares) a Controlling Interest,

**“Ordinary Shares”** means ordinary shares of 2.5p each in the capital of the Company having the rights and being subject to the restrictions set out in these Articles,

**“paid up”** means in relation to a share that such share is paid up or credited as paid up,

**“Permitted Transferee”** means a person to whom shares may be transferred pursuant to Article 11(B),

**“Preference Dividend”** shall have the meaning given to it in Article 5(C)(i);

**“Preference Dividend Date”** means the date which is 6 months prior to the Redemption Date or if not a business day, the next following business day or such later date as the Company and GE shall agree;

**“Preference Dividend Payment Date”** has the meaning set out in Article 5(C)(iii);

**“Redemption Date”** means the date falling on the sixth anniversary after Completion (or if that day is not a business day, the next following business day) (or such later date as the Company and GE shall agree);

**“Redemption Notice”** means not less than six months written notice prior to the Redemption Date served by the holders of the Series A-1 Shares requiring redemption pursuant to Article 5(C)(xxi),

**“relevant securities”** has the meaning ascribed to it by Section 80(2) of the Act,

**“Revenue Warrants”** means warrants issued pursuant to a warrant instrument creating up to 7,500 warrants in registered form to subscribe for Ordinary Shares which may be issued in favour of GE or any other GE Entity or (where the context so requires) Warrants issued under that instrument,

**“Sale”** means:-

- (i) the sale to a single purchaser (or to one or more purchasers as part of a single transaction) of Shares constituting a Controlling Interest; or
- (ii) the acquisition (whether or not as part of a single transaction) of Shares constituting a Controlling Interest by any person or by any group of

persons acting in concert and who did not previously hold a Controlling Interest,

and for the avoidance of doubt a sale does not comprise nor shall it be deemed to be a return of capital to the holders of shares

**“Series A-1 Shares”** means the series A-1 convertible preference shares of 2 5p each in the capital of the Company having the rights and being subject to the restrictions set out in these Articles,

**“Series A-1 Issue or Reorganisation”** means any of:

- (i) an issue of Ordinary Shares (or securities convertible into Ordinary Shares) by way of capitalisation of profits or reserves or by way of rights but excluding any such issue at a value per Ordinary Share which is more than £66 67 per Ordinary Share (or per security which is capable of being converted into an Ordinary Share),
- (ii) a capital distribution on or in respect of the Ordinary share capital of the Company (or any Ordinary Shares derived therefrom),
- (iii) a sub-division, consolidation, conversion or reduction of the Ordinary share capital of the Company (or any Ordinary Shares derived therefrom); and
- (iv) a reconstruction or amalgamation of the Company;

**“Share”** means a share in the capital of the Company of whatever class,

**“Statutes”** means the Act and every other act, order, regulation or other subordinate legislation made pursuant thereto for the time being in force concerning or affecting companies and affecting the Company;

**“Subscription and Shareholders’ Agreement”** means the agreement entered into between (1) the Company and (2) GE Capital Equity Holdings B.V on 4 April 2000,

**“Subscription Agreement”** means the agreement entered into by the Company, the holders of the “A” Ordinary Shares, the holders of the Series A-1 Shares and the holders of the Ordinary Shares on or within fourteen days after the date of adoption of these Articles;

**“Table A”** means Table A as prescribed by the Companies (Tables A to F) Regulations 1985 (S I 1985 No. 805) amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (S.I. 1985 No 1052),

**“the Act”** means the Companies Act 1985 as may be supplemented and/or amended by the Companies Act 1989 and as may be further supplemented and/or amended,

**“Transfer Notice”** means a transfer notice given under any provision of these Articles

**“Warrants”** means the warrants to subscribe for a maximum of 3,307 Ordinary Shares held by certain holders of Ordinary Shares and “A” Ordinary Shares,

- (b) words importing the singular number shall include the plural and vice versa words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall include bodies corporate, unincorporated associations and partnerships.
  - (c) references to Articles are references to these Articles and references to paragraphs and sub-paragraphs are, unless otherwise stated, references to paragraphs of the Articles or references to sub-paragraphs of the paragraph in which the reference appears.
- 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 the regulations of Table A or these Articles

#### **SHARE CAPITAL AND RIGHTS**

##### **5(A) Authorised Capital and Power to Issue Redeemable Shares**

- (a) The authorised share capital of the Company at the date of adoption of these Articles is £6,650 divided into -
  - (i) 175,000 Ordinary Shares of 2.5p each,
  - (ii) 45,000 “A” Ordinary Shares of 2.5p,
  - (iii) 21,000 Series A-1 Convertible Preference Shares of 2.5p, and
  - (iv) 25,000 “B” Ordinary Shares of 2.5p each
- (b) Without prejudice to any special rights previously conferred on the holders of any Shares or class of Shares for the time being in issue and subject to the provisions of the Statutes, any Share in the Company may be allotted or issued with such preferred, deferred or other special rights, or subject to such restrictions whether in regard to dividend, return of capital, voting or otherwise, as the Company may from time to time by ordinary resolution determine, and, subject to the provisions of the Statutes, the Company may issue shares which are to be redeemed or are liable to be redeemed at the option of the Company, or the holder, on such terms and in such manner as may be set out in these Articles or (as to the date on or by which or the dates between which the shares are to be or may be redeemed) as may be determined by the Directors prior to the date of issue

##### **5(B) Special Rights attached to “A” Ordinary Shares and Series A-1 Shares**

The special rights attaching to the "A" Ordinary Shares and the Series A-1 Shares are as follows -

5(B)(a) Class Consents of "A" Ordinary Shares and Series A-1 Shares

Without prejudice to the restrictions contained in these presents as to the modification of the rights attached to classes of Shares, the consent or sanction of the holders of (A) the "A" Ordinary Shares and (B) (in respect only of paragraphs (iv), (v) and (viii) below) the Series A-1 Shares (acting reasonably and in good faith) given as specified in sub-paragraph 5(B)(b) below shall be required to each of the following, each of which without such consent shall constitute a variation of the rights attached to that class of such Shares respectively from which such consent or sanction shall not have been obtained,

- (i) the creation, allotment or issue of any shares or securities by the Company or any subsidiary or to the grant of any right to require the allotment or issue of any such shares or securities (other than the creation, allotment or issue of any shares or securities on the date of adoption of these Articles),
- (ii) increasing, reducing, repaying, repurchasing, sub-dividing, consolidating or otherwise varying the share capital of the Company or reducing the amount, if any, standing to the credit of the share premium account or capital redemption reserve fund,
- (iii) the amending of any provision of the Memorandum or Articles of Association of the Company where such alteration will have (in the reasonable opinion of the holder or holders of the majority of "A" Ordinary Shares given in accordance with Article 5(B)(b)) a material adverse effect on the "A" Ordinary Shareholders' in the Company,
- (iv) any member's petition or member's resolution to wind up the Company or any subsidiary of the Company
- (v) the giving of any guarantee of any obligation by any other person other than in the ordinary course of the Company's business,
- (vi) the borrowing or lending of any sum or accepting or extending any financial facility or repaying or discharging any sum advanced or liability owed other than in accordance with the borrowing powers set out in Article 24,
- (vii) the making of a material alteration in the nature of the business of the Company (as set out in the business plan of the Company from time to time) or the disposal of any assets or activities which are fundamental to the business of the Company,
- (viii) the incorporating of any subsidiary company or acquiring of any shares or other securities in any other body corporate or enter any obligation to

do so (other than as a result of any transaction which would constitute a Class 3 transaction in accordance with Chapter 10 of The Listing Rules of the London Stock Exchange if those Rules applied to the Company);

Or to enter into any contract or arrangement to do any of the above

5(B)(b) The consents required pursuant to sub-paragraph 5(B)(a) shall be (i) the consent of the holder or holders of the majority of "A" Ordinary Shares and (ii) the consent of the holder of the majority of the Series A-1 Shares and may be given either in writing by or on behalf of such members or (in the case of the "A" Ordinary Shares) by the "A" Director or (in the case of the Series A-1 Shares) by the GE Director or the GE Observer (appointed under clause 4.1.3 of the Subscription Agreement) in writing or given and minuted at a duly convened meeting of the board of Directors of the Company and shall be deemed given with respect to any matter or thing required pursuant to clauses 10.4, 10.5, 10.6 and 10.7 of the Subscription Agreement.

5(B)(c) Class Consent of Series A-1 Shares

Without prejudice to the restrictions contained in these presents as to the modification of the rights attached to classes of Shares, the consent of the holders of the majority of the Series A-1 Shares (acting reasonably and in good faith) is required to each of the following, (save that in respect of those matters contained in Articles 5(B)(c)(i), (ii), (iii), (iv) and (viii), such consent shall only be required to be obtained during the Investment Period) Such consents shall cease to be required with effect from the Preference Dividend Date if no Redemption Notice has been validly served. Such consents may be given either in writing by or on behalf of such members as agreed in writing between the Company and GE from time to time or by the GE Director in writing or given and minuted at a duly convened meeting of the board of Directors of the Company

- (i) borrowing (as determined under Article 24) if as a result the aggregate amount of all such borrowings of the Company then outstanding would exceed the greater of (a) £2,000,000 and (b) 15 per cent of the aggregate market value imputed to the entire issued share capital of the Company (on a fully diluted basis) by reference to the price at which such Shares are offered in the financing round of the Company which raised in aggregate more than £500,000 (before expenses) most recently preceding the proposed borrowing in question,
- (ii) the issue of any Shares or the issue of any securities convertible into Shares or the grant of any right to require the allotment of any issue of any Shares or securities:
  - (a) which would rank senior or pari passu to the Series A-1 Shares save in respect of an issue of Shares or securities pursuant to (i) the Warrants (ii) the Revenue Warrants, or (iii) an employee share scheme or share-based employee incentivisation arrangement previously approved by GE including the Imparta Limited Share Option Plan 2000 ("Approved Employee Share Scheme") provided that no Shares will be issued under the

- Warrants or under the Approved Employee Share Scheme which would rank senior or pari passu on liquidation to the Series A-1 Shares, or
- (b) which would rank behind the Series A-1 Shares (which for this purpose shall be deemed to include the Ordinary Shares and "A" Ordinary Shares) save in respect of an issue of Shares or securities pursuant to (i) the Warrants or the warrants to subscribe for Ordinary Shares created by an instrument dated 27 July 2001 (ii) the Revenue Warrants; (iii) an Approved Employee Share Scheme or (iv) an issue at a price that is at a discount of no greater than 10% to the subscription price obtained for similar shares in the financing round of the Company most recently preceding the proposed issue (A) that is made available to shareholders of the Company (including holders of Series A-1 Shares) or (B) to a third party in connection with a bona fide contract for the supply of goods or services by the Company to that party, the terms of which are approved by a majority of the board of Directors of the Company
  - (iii) the material sale or acquisition of assets (other than in the ordinary course of business) and for these purposes a sale or acquisition of assets will be considered material if it would have been treated as a Class 1 transaction within Chapter 10 of the Listing Rules of the London Stock Exchange if those Rules applied to the Company or if the consideration represents 25 per cent or more of the Company's issued share capital at the relevant time;
  - (iv) any material deviation from the Company's existing business strategy as set out in the business plan of the Company from time to time
  - (v) the cessation or proposal to cease to carry on the business of the Company or the taking of any steps to wind up the Company save where the Company is insolvent or an application to petition to the Court for an administration order to be made in respect of the Company;
  - (vi) the making of any alteration to the memorandum and articles of association of the Company where such alteration will have (in the reasonable opinion of GE) a material adverse effect on GE's investment in the Company (and for the purposes of this Article 5 (B)(c), any such amendment pursuant to sub-Articles (ii), (iii), (v) and (viii) will not be deemed to have a material adverse effect on GE's investment in the Company);
  - (vii) the entry into any transaction with an Associate of the Company,
  - (viii) any decision to participate in an Exit in the event that GE and the GE Entities would achieve a pre-tax IRR of less than 35 per cent; and
  - (ix) the identity of the person or persons acquiring a Controlling Interest in the case of a Sale of Shares conferring less than one hundred per cent of the total voting rights conferred by all the shares in the equity share capital of the Company for the time being in issue and conferring the right to vote at all general meetings (such consent not to be unreasonably withheld or delayed)

5(C)

Rights attached to Series A-1 Shares

The rights and restrictions applicable to the Series A-1 Shares are set out in this article 5(C)

Dividends and income

(i)

With effect from the Preference Dividend Date, if a Redemption Notice has been validly served but the Series A-1 Shares shall not all have been redeemed on the Redemption Date, the Company shall, in priority to any payment of dividend to the holders of all other shares in the capital of the Company, pay to the holders of the outstanding Series A-1 Shares out of the profits available for distribution in respect of each financial year of the Company a cumulative preferential dividend ("**Preference Dividend**") at a rate of 8 per cent per annum on the nominal amount of each Series A-1 Share (together with any premium paid in respect of each such Share) from time to time paid up thereon, such cumulative preference dividend increasing by one percentage point in each subsequent period of six months (subject to a maximum rate per annum of 14 per cent).

No Preference Dividend shall be payable if (a) a Redemption Notice has been validly served and all of the Series A-1 Shares have been redeemed on the Redemption Date or if (b) no Redemption Notice has been validly served

(ii)

The holders of Series A-1 Shares shall not (save as provided in Article 5(C)(i) and 5(C)(vi)) be entitled to any dividend.

(iii)

The Preference Dividend shall accrue on a daily basis from the Preference Dividend Date and shall be payable half-yearly in arrears in two equal instalments, the first payment to be made on the Redemption Date (in respect of the six months ended on the Redemption Date), the second payment on the date six months after the Redemption Date and payments shall be made in arrears at six monthly intervals thereafter (each such date a "**Preference Dividend Payment Date**"). If the Preference Dividend Payment Date is not a business day, then payment shall be made on the next following business day

(iv)

Unless the Company is prohibited, whether by reason of any principle of law or otherwise, the Preference Dividend shall (notwithstanding any provision of these articles and, notwithstanding that there has not been any resolution of the directors or of the company in general meeting) be paid immediately on the relevant Preference Dividend Payment Date

(v)

Payments of the Preference Dividend shall be made to holders on the register at any date selected by the Company up to 28 days prior to the relevant Preference Dividend Payment Date.

(vi)

Any dividends and other distributions becoming payable out of the profits of the Company available for distribution and declared, paid or made prior to the Preference Dividend Date (other than the Preference Dividend) shall be distributed amongst the holders of Ordinary Shares. "A" Ordinary Shares and

the Series A-1 Shares as if the same constituted one and the same class of Shares.

Any dividends and other distributions becoming payable out of the profits of the Company available for distribution and declared, paid or made on or after the Preference Dividend Date (other than the Preference Dividend) shall be distributed solely amongst the holders of the following classes of Shares as if the same constituted one and the same class of Shares

- (a) the Ordinary Shares and the "A" Ordinary Shares if a Redemption Notice has been validly served (that is, the dividend participation right in sub-Article (vi) above ceases on Series A-1 Shares whether or not those Shares shall have been redeemed on the Redemption Date with effect from the Preference Dividend Date),
- (b) the Ordinary Shares, the "A" Ordinary Shares and the Series A-1 Shares if no Redemption Notice has been validly served

- (vii) Subject to Article 5(C)(viii), the holders of the Series A-1 Shares shall not be entitled to any further right of participation in the profits or income of the Company

5(C)(viii) Capital

On a return of capital on a winding up, reduction of capital or otherwise (other than on conversion, or redemption of the Series A-1 Shares pursuant to these Articles) the assets of the Company available for distribution to its members shall be applied in paying to the holders of Series A-1 Shares, in priority to any payment to the holders of all other shares in the capital of the Company - first, a sum equal to all Arrears of the Preference Dividend calculated down to and including the date of the commencement of the winding up (in the case of winding up) or of the return of capital (in any other case), and secondly, a sum equal to the nominal amount together with any premium paid up on the Series A-1 Shares (together the **"Priority Series A-1 Capital Payments"**)

Subject to the payments to the holders of the "A" Ordinary Shares and Ordinary Shares referred to in Article 5(D)(ii) and the payments above, any surplus assets of the Company shall be distributed rateably amongst the holders of the "A" Ordinary Shares, Ordinary Shares and the Series A-1 Shares as if the same constituted one and the same class of Shares

5(C)(ix) Voting

The holders of the Series A-1 Shares shall for all purposes in respect of all general meetings of the Company be deemed to hold such number of Ordinary Shares to which they would have been entitled had the Series A-1 Shares been converted into Ordinary Shares in accordance with Articles 5(C)(x) to (xx)

5(C)(x) Conversion

Subject to the following provisions of these Articles, the Series A-1 Shares shall convert into fully paid Ordinary Shares on the basis of 1 Ordinary Share

for every fully paid 1 Series A-1 Share in issue (such rate as adjusted from time to time as provided in Article 5(C)(xx) being the **"Conversion Rate"**)

- (a) immediately prior to and conditional upon the occurrence of an Exit, or
  - (b) at the expiry of not less than 14 days written notice from the Company to the holders of the Series A-1 Shares served only with the prior written consent of the holders of those shares (to be given or withheld at their absolute discretion) not less than 3 months prior to the Redemption Date if no Redemption Notice has been validly served
- (xi) Conversion of the Series A-1 Shares shall be effected in accordance with the following provisions of this article 5(C) or in such other manner as the Directors may determine and as may be permitted from time to time by the Statutes
- (xii) Subject to the Statutes and the provisions of these Articles, the Directors may determine to effect the conversion by redeeming the Series A-1 Shares (or any of them) on the Conversion Date at par out of the profits of the Company which would otherwise be available for distribution to the holders of any class of Shares. The Series A-1 Shares shall confer on the holders thereof the right and obligation (if the Series A-1 Shares held by them convert pursuant to these Articles and the Directors determine to redeem the same at par out of such profits) to subscribe for the appropriate number of Ordinary Shares at the applicable Conversion Rate and at such premium (if any) as shall represent the amount by which the redemption monies exceed the nominal amount of the Ordinary Shares to which the holder is so entitled. On the Conversion Date a holder of Series A-1 Shares shall be deemed irrevocably to authorise and instruct the Directors to apply the redemption monies payable to him in subscribing for such Ordinary Shares at such premium (if any)
- (xiii) Subject to the Statutes and the provisions of these Articles, the Directors may determine to effect the conversion by redeeming the Series A-1 Shares (or any of them) on the Conversion Date at par out of the proceeds of a fresh issue of Ordinary Shares. The Series A-1 Shares shall confer on the holders thereof the right and obligation (if the Series A-1 Shares held by them convert pursuant to these Articles and the Directors redeem the same at par out of the proceeds of a fresh issue of Ordinary Shares) to subscribe (taking into account all Arrears of the Preference Dividend (if any)), and the holders shall be deemed irrevocably to authorise and instruct the secretary (or any other person appointed for the purpose by the Directors) to subscribe as agent for the appropriate number of Ordinary Shares. On the Conversion Date a holder of Series A-1 Shares shall be deemed irrevocably to authorise and instruct the Directors to apply the redemption monies in payment to the holder or his agent as the case may be
- (xiv) The Directors may determine to effect conversion by means of consolidation and sub-division. In such case the requisite consolidation and sub-division shall be effected by consolidating into one share all the Series A-1 Shares upon

the Conversion Date held by the holder or joint holders and sub-dividing such consolidated share into the appropriate number of Ordinary Shares of 2 5p each (or such other nominal amounts as may be appropriate as a result of any other consolidation or sub-division, repayment or reduction of capital or other event giving rise to an adjustment to the nominal amount of the Ordinary Shares) in order to give effect to the conversion rights of Series A-1 Shares, and the balance of any remaining shares (including any fraction) shall be non-voting deferred shares of such nominal value as the Directors may determine ("**deferred shares**") having the rights set out in Article 5(C)(xv) or such other rights as the Directors may determine

- (xv) The deferred shares arising as a result of a conversion effected by means of consolidation and sub-division as provided in Article 5(C)(xiv) shall:-  
on a return of capital on winding up or otherwise entitle the holder only to the repayment of the amounts paid up on such shares after repayment of the capital paid up on the "A" Ordinary Shares, Ordinary Shares, the Series A-1 Shares and any other Shares in the capital of the Company and the payment of a further amount of £500,000,000 on each Ordinary Share,  
not entitle the holder to the payment of any dividend or other distribution,  
not entitle the holder to receive notice of or attend or vote at any general meeting of the company

Such conversion shall be deemed to confer irrevocable authority on the Company at any time thereafter to appoint any person to execute on behalf of the holders of deferred shares a transfer thereof (and/or an agreement to transfer the same) to such person as the Company may determine as custodian thereof and/or to purchase the same (in accordance with the provisions of the Statutes) in any such case for not more than 0.01p for all the deferred shares without obtaining the sanction of the holder or holders thereof and pending such transfer and/or purchase to retain the certificate for such deferred shares. 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 0.01p for all the deferred shares redeemed, at any 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 and at the time and place so fixed such registered holders shall be bound to surrender to the company the certificates for the deferred shares in order that the same may be cancelled and the company shall pay the redemption monies to one of such registered holders to be selected by lot

- (xvi) On conversion the Preference Dividend and entitlement to participate in any dividends referred to in Article 5(C)(vi) save to the extent of any Arrears of any such dividends shall cease to accrue with effect from the Conversion Date. The Ordinary Shares resulting from the conversion shall carry the right to receive all dividends and other distributions declared, made or paid on the Ordinary Share capital of the Company by reference to a record date falling only on or after the Conversion Date provided that the holders of such Shares hereby waive their entitlement to any such dividend or other distribution to the extent that the distributable profits out of which it shall be paid were generated

from any period prior to the Conversion date and shall otherwise rank pari passu in all respects with the Ordinary Shares then in issue and fully paid

(xvii) Allotments of Ordinary Shares arising from conversion shall be effected on the Conversion Date (or if not practicable within 7 days thereafter) Within 28 days after the Conversion Date, the Company shall send to each holder of the Relevant Shares, by post at his own risk, free of charge, a definitive certificate for the appropriate number of fully paid Ordinary Shares. In the meantime transfers shall be certified against the register

(xviii) With effect from conversion all Arrears of Preference Dividend shall to the extent lawful be applied by the Company in paying up in full new Ordinary Shares to be allotted to the former holders of the Series A-1 Shares pro rata to their holdings of such Series A-1 Shares. The subscription price for each such new Ordinary Share shall be equal to the Market Value

For the purposes of this Article **"Market Value"** means the market value of an Ordinary Share at the first Preference Dividend Payment Date for the Preference Dividend in Arrears determined by reference to the aggregate market value imputed to the entire issued share capital of the entire Company (on a fully diluted basis) (a) by reference to the price at which Shares were offered in the financing round of the Company which raised in aggregate more than £500,000 (before expenses) within the six months preceding the first Preference Dividend Payment Date for the Preference Dividend in Arrears or (b) where no such financing round has taken place within such six month period, such market value shall be as agreed between the holders of the Series A-1 Shares and the Board of Directors, or (failing agreement within 14 days) as determined by the Auditors, who shall act as experts and not arbitrators, whose decision should be final and binding on the parties and whose costs shall be shared equally by the Company and the holders of the Series A-1 Shares

(ixx) Fractions of Ordinary Shares arising on conversion shall not be issued to the holders of Series A-1 Shares otherwise entitled thereto

(xx) In the event of a Series A-1 Issue or Reorganisation such adjustments shall be made to the Conversion Rate, the number or class or nominal value or nature of the shares into which the Series A-1 Shares convert, or the body corporate bound by the rights attaching to the Series A-1 Shares (in the case of a reconstruction or amalgamation of the Company) as the Auditors (acting as experts and not as arbitrators) shall (taking such other professional advice as they deem necessary) consider appropriate in all the circumstances in order that after such adjustment the total number of Ordinary Shares to be, or capable of being, subscribed on any subsequent conversion of the Series A-1 Shares.-

(1) will carry as nearly as possible (and in any event not less than) the same proportion (expressed as a percentage of the total number of votes exercisable in respect of all the Ordinary Shares) of the votes, and

- (11) will carry the same entitlement (expressed as a percentage of the total entitlement conferred by all the Ordinary Shares) to participate in the profits and assets of the Company,

as would the total number of Ordinary Shares into which the Series A-1 Shares could have converted pursuant to these Articles had there been no such adjustment and no such event giving rise to such adjustment

The determination of the Auditors shall (save in the event of manifest error) be final binding and conclusive on the members and the Company Any fees payable to the Auditors pursuant to this Article 5(C)(xx) shall be paid by the Company

In making their determination the Auditors shall take into account the extent to which (if any) the holders of Series A-1 Shares shall (in that capacity) have participated in a Series A-1 Issue or Reorganisation

5(C) Redemption and purchase

- (xx1) The holders of the Series A-1 Shares may, on giving to the Company not less than 6 months written notice prior to the Redemption Date require the Company to redeem all (but not some only) of the Series A-1 Shares then held by them provided that no Listing has become effective nor any Sale has been completed nor any offer constituting a Sale has become or been declared unconditional in all respects prior to the Redemption Date (“Redemption Notice”). Any notice given to the Company in accordance with this Article 5(C)(xx1) shall cease to have effect and shall automatically be deemed to have been withdrawn if a Flotation has become effective or any Sale has been completed or any offer constituting a Sale has become or been declared unconditional in all respects at any time during such six month period
- (xx11) The Company may if no Redemption Notice has been served and only with the written consent of the holders of the Series A-1 Shares, subject to the Statutes, at any time after the Redemption Date on giving to the holders of the Series A-1 Shares then outstanding not less than 28 days' prior written notice redeem all of the Series A-1 Shares from time to time issued and outstanding
- (xx111) If there shall occur a GE Deadlock as set out in Article 27 1 and the procedure set out in Article 27 is invoked, then the Company shall be entitled, subject to the Statutes, to redeem all of the Series A-1 Shares from time to time issued and outstanding at the date for completion specified by the Expert under Article 27 9 and for the price determined in accordance with Article 27 and references to the “Redemption Date” for these purposes in this Article 5 shall be construed as being references to the date of actual redemption of the Series A-1 Shares in accordance with this Article 5(C)(xx111) and Article 27 although the provisions of Article 5(C)(xxvi) shall not apply in respect of any such redemption

- (xxiv) Series A-1 Shares redeemed in accordance with these Articles shall be treated as having been redeemed, whether or not the certificates therefor shall have been delivered
- (xxv) If the Company shall be unable in compliance with the Statutes to redeem all or any of the Series A-1 Shares on the Redemption Date (a Redemption Notice having been validly served) then the Company shall redeem such number of the Series A-1 Shares as may lawfully be redeemed at such time pro rata (disregarding any fractional entitlements) to the proportionate number of such Series A-1 Shares held by each holder of Series A-1 Shares or as determined by the Company. The Company shall redeem, as soon after such date or dates as it shall be lawfully permitted so to do, the remaining number of Series A-1 Shares which would otherwise have fallen to be redeemed on such date in accordance with the provisions of this Article save that the Preference Dividend thereon shall continue to accrue on a day to day basis until actual redemption. In the event that the Company has insufficient distributable reserves to effect redemption of all of the Series A-1 Shares then the Company shall use reasonable endeavours to raise sufficient distributable reserves to enable redemption of the Series A-1 Shares not redeemed on or by the Redemption Date. If the Company does not have sufficient distributable reserves to redeem all or any of the Series A-1 Shares on the Redemption Date then the holders of Series A-1 Shares shall not carry the right to force the sale or liquidation of the Company (without prejudice to their general rights as creditors of the Company)
- (xxvi) There shall be paid on each Series A-1 Share so redeemed a redemption price equal to
- (a) 1.85 x the aggregate subscription price in respect of such Series A-1 Shares, together with
  - (b) a sum equal to all Arrears in respect of such Series A-1 Share to be calculated down to and including the actual date of redemption of that share
- (xxvii) Any notice of redemption from the Company under Article 5(C)(xxii) shall specify the place at which the certificates for such Shares are to be presented for redemption and upon the Redemption Date each of the holders of the Series A-1 Shares concerned shall be bound to deliver to the Company at such place the certificates for the Shares concerned in order that the same may be redeemed. Upon such delivery the Company shall pay to such holder (or to his order) the amount due to him in respect of such redemption
- (xxviii) If any holder of any of the Series A-1 Shares to be redeemed shall fail or refuse to deliver up the certificate or certificates held by him at the time and place fixed for the redemption of such shares or shall fail or refuse to accept payment of the redemption monies payable in respect thereof, the redemption monies payable to such holder shall be set aside and paid into a separate interest-bearing account with the Company's bankers (designated for the benefit of such holder). Such setting aside shall be deemed for all purposes

hereof to be a payment to such holder. All such holder's rights as a holder of the relevant Series A-1 Shares shall cease and determine as from the Redemption Date and the Company shall thereby be discharged from all obligations in respect thereof. The Company shall not be responsible for the safe custody of the monies so placed on deposit or for interest thereon except such interest as the said monies may earn while on deposit less any expenses incurred by the Company in connection therewith.

(ixxx) The receipt of the registered holder from time to time of any Series A-1 Shares or, in the case of joint registered holders, the receipt of any of them for the monies payable on redemption shall constitute an absolute discharge of the Company in respect thereof.

(xxx) Subject to the Statutes, upon the redemption of any Series A-1 Shares the Directors may, pursuant to the authority given by the adoption of this article, consolidate and/or sub-divide and/or convert the authorised Series A-1 Share capital created as a consequence of such redemption into Shares of any other class of share capital into which the authorised share capital of the Company is or may at that time be divided of a like nominal amount (as nearly as may be) as the shares of such class then in issue or into unclassified shares of the same nominal amount as the Series A-1 Shares.

5(D) Rights attached to "A" Ordinary Shares and Ordinary Shares

The "A" Ordinary Shares and Ordinary Shares shall entitle the holders thereof to the following rights

(i) Dividends and Income

After making all proper provision for redemption of the Series A-1 Shares and the Preference Dividend the Company shall (subject to the dividend participation entitlement of the Series A-1 Shares referred to in Article 5(C)(vi)) distribute any dividends and other distributions becoming payable out of the profits of the Company available for distribution and declared, paid or made, amongst the holders of the "A" Ordinary Shares and the Ordinary Shares as if the same constituted one and the same class of Shares,

(ii) Capital:

On a return of capital on a winding up, reduction of capital or otherwise, the assets of the Company available for distribution to its members shall (subject to the rights of the holders of the Series A-1 Shares set out in Article 5(C)(viii) to the Priority Series A-1 Capital Payments) be applied in paying to the holders of the "A" Ordinary Shares and Ordinary Shares, in priority to any payment to the holders of all other shares in the capital of the Company

First, a sum equal to all Arrears of dividends declared but not paid as at the date of the commencement of the winding up (in the case of winding up) or of the return of capital (in any other case); and

Secondly, a sum equal to the nominal amount together with any premium paid up on the "A" Ordinary Shares and Ordinary Shares

Subject to the payment to the holders of the Series A-1 Shares referred to in Article 5(C)(viii) of the Priority Series A-1 Capital Payments and the payments above, any surplus assets of the Company shall be distributed rateably amongst the holders of the "A" Ordinary Shares, Ordinary Shares and the Series A-1 Shares as if the same constituted one and the same class of Shares

(iii) Voting

Each holder of "A" Ordinary Shares and Ordinary Shares shall be entitled to receive notice of, and to attend and vote at, general meetings of the Company. On a show of hands, every holder of "A" Ordinary Shares and Ordinary Shares who (being an individual) is present in person by proxy or (being a corporation) is present by a duly authorised representative by proxy, shall have one vote and on a poll every holder of "A" Ordinary Shares and Ordinary Shares so present shall have one vote for each such share held by him

(iv) Conversion

Each of the "A" Ordinary Shares shall convert automatically into one Ordinary Share immediately prior to a Sale or Listing (but conditionally upon such Listing being obtained or such Sale taking place) In the event of an Issue or Reorganisation such adjustments shall be made to such conversion rate as the Auditors of the Company from time to time (acting as experts and not as arbitrators) shall consider appropriate in all the circumstances in order that after such adjustment the total number of Ordinary Shares into which the "A" Ordinary Shares shall convert

- (i) will carry as nearly as possible (and in any event not less than) the same proportion (expressed as a percentage of the total number of votes exercisable in respect of all the Ordinary Shares) of the votes, and
- (ii) will carry the same entitlement (expressed as a percentage of the total entitlement conferred by all the Ordinary Shares) to participate in the profits and assets of the Company,

as would the total number of Ordinary Shares into which the "A" Ordinary Shares could have converted pursuant to these Articles had there been no such adjustment and no such event giving rise to such adjustment

In making their determination the Auditors shall take into account the extent to which (if any) the holders of "A" Ordinary Shares shall (in that capacity) have participated in an Issue or Reorganisation

The determination of the Auditors shall (save in the event of manifest error) be final binding and conclusive on holders of Shares and the Company. Any fees payable to the Auditors pursuant to this Article 5(D)(iv) shall be paid to the Company.

5(E) Rights attached to "B" Ordinary Shares

The "B" Ordinary Shares shall entitle the holders thereof to the following rights and be subject to the following restrictions

- (i) Except as provided otherwise in these Articles, the Ordinary Shares, "A" Ordinary Shares and "B" Ordinary Shares shall rank *pari passu* but they constitute separate classes of shares.

(ii) Dividend, Income and Capital

The "B" Ordinary Shares shall not confer any rights to

- (a) participate in any return of capital whether on a winding up, reduction of capital or other return of assets of the Company to its members; or
- (b) participate in the profits of the Company or to receive any dividends

(iii) Transfer of Shares

The "B" Ordinary Shares shall not be capable of transfer except as is permitted pursuant to Article 11(B) and Article 15

(iv) Voting

The holder of "B" Ordinary Shares shall be entitled to receive notice of, and attend and vote at, general meetings of the Company. On a show of hands, every holder of "B" Ordinary Shares who (being an individual) is present in person by proxy or (being a corporation) is present by a duly authorised representative by proxy, shall have one vote and on a poll every holder of "B" Ordinary Shares so present shall have one vote for each such share held by him

**CLASS RIGHTS**

- 6 Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class may be varied or abrogated, either whilst the Company is a going concern or during or in contemplation of a winding up, with the consent in writing of the holders of a majority in number of the issued shares of that class or with the sanction of an ordinary resolution passed at a separate meeting of the holders of the shares of that class but not otherwise. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or the proceedings thereat shall, *mutatis*

mutandis, apply except that the necessary quorum shall be two persons holding or representing by proxy at least one third in nominal value of the issued shares of the class, but so that if at any adjourned meeting of such holders a quorum as above defined is not present those members who are present shall be a quorum and that the holders of shares of the class shall on a poll have one vote in respect of every share of the class held by them respectively.

## **LIEN**

- 7 The Company shall have a first and paramount lien on all Shares standing registered in the name of any person (whether he is the sole registered holder thereof or one of two or more joint holders) for all monies payable by him or his estate to the Company.

## **ALLOTMENT**

- 8(a) Subject to Section 80 of the Act, all unissued Shares at the date of adoption of these Articles shall be at the disposal of the Directors who are authorised to 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 (insofar as the Company in general meeting shall not have varied, renewed or revoked the said authority)

- (i) the Directors shall not be authorised to allot, grant options over or otherwise dispose of such Shares if such allotment, option or disposal would or might result in the aggregate of the Shares in issue exceeding, in nominal value, the amount of the authorised share capital of the Company for the time being, and such limitation shall determine the maximum amount of the relevant securities which at any time remain to be allotted hereunder;
- (ii) the period within which such authority may be exercised shall be limited to five years, commencing on the date of adoption of the Articles,
- (iii) provided that the Company shall be entitled to make, prior to the expiry of such authority, any offer or agreement which would or might require relevant securities to be allotted after the expiry of such authority and the Directors may allot any relevant securities pursuant to such offer or agreement as if such authority had not expired.

- (b) The authority conferred upon the Directors to allot relevant securities may at any time by ordinary resolution of the Company in general meeting, be revoked, varied or renewed (whether or not it has been previously renewed hereunder) for a further period not exceeding five years

- 9 Section 89(1) and sub-sections (1) to (6) of Section 90 of the Act shall not apply to the Company Any relevant securities shall, before they are allotted on any terms to any person be first offered on the same or more favourable terms

to each person who holds Shares in the Company in the proportion which is, as nearly as practicable, equal to the proportion in number of votes held by him of the aggregate of such Shares in issue save in respect of any allotment of (a) Series A-1 Shares or (b) any allotment of Shares pursuant to (i) the Warrants, (ii) the Revenue Warrants, or (iii) an Approved Employee Share Scheme (as defined in Article 5(B)(c)) (up to a maximum of ten per cent of the Company's issued share capital from time to time such percentage to be calculated on a cumulative basis)

Such offer shall be made by notice in writing specifying the number of Shares offered and the period being not less than twenty-one days, within which the offer, if not accepted, will be deemed to have been declined. After the expiration of such period or on receipt of notice of the acceptance or refusal of every offer so made, the Directors may, subject to these Articles dispose of such securities as have not been taken up in such manner as they think proper. The Directors may, in like manner, dispose of any such securities as aforesaid, which by reason of the proportion borne by them to the number of persons entitled to such offer as aforesaid or by reason of any other difficulty in apportioning the same, cannot in the opinion of the Directors be conveniently offered in the manner hereinbefore provided.

### **TRANSFER OF SHARES**

- 10(A) Other than pursuant to Articles 15 and 11(B) any Share (other than "B" Ordinary Shares) may only be transferred to any person with the consent in writing of members of the Company holding in excess of 50% of each of (i) the Ordinary Shares and (ii) the "A" Ordinary Shares and (iii) the Series A-1 Shares (such consent not to be unreasonably withheld or delayed) then in issue without the prior compliance with Article 12. Any such consent may be unconditional or subject to any terms or conditions and in the latter case any share so transferred shall be held subject to such terms and conditions. No transfer of any Share shall be made or registered unless such transfer complies with the provisions of these Articles and the transferee has first entered into an appropriate Deed of Adherence pursuant to the Subscription Agreement and Subscription and Shareholders Agreement.
- 10(B) The Directors may not refuse to register the transfer of a Share where the provisions of Article 10(A), 11(B), 12 or 15 have been complied with and Regulation 24 shall be modified accordingly.
- 11(A) Notwithstanding any other provisions of these presents, the Directors shall decline to register any transfer of any Share (including the renunciation of any letter of allotment)
- (i) on which the Company has a lien or which has been transferred contrary to the requirements of these Articles,

- (ii) which would have the effect of conferring a Controlling Interest to any person or persons acting in concert unless pursuant to a bona fide arms length Sale and where the Intending Sellers (as defined in Article 15) have procured the making of all offer to the Remaining Members (as defined in Article 15) under the terms of Article 15
- 11(B) Notwithstanding Article 10(A) subject to the other provisions of these presents, Shares may be transferred without prior compliance with Article 12 in any of the following circumstances provided that the transferee enters into an appropriate Deed of Adherence pursuant to the Subscription Agreement and the Subscription and Shareholders Agreement:
  - (1) the grant of options over or a transfer of Ordinary Shares to any of the Company's bona fide employees, directors, sub-contractors or consultants
  - (2) where made pursuant to a Sale under Article 15.1 to 15.3.
  - (3) Any Member may transfer any Shares to any of the following persons
    - (a) his parents, spouse, son, daughter or siblings
    - (b) the trustees of a trust "family trust" the only beneficiaries of which are all or any of any present or future spouse or issue of himself ("**family beneficiaries**") together with any other person or persons included as a beneficiary or beneficiaries but who can benefit only in the event of the death of all family beneficiaries under the trust PROVIDED THAT if all such family beneficiaries should die the trustees of the trust shall either within 6 months of death transfer the Shares held by them to some person to whom the person who transferred the Shares to them would be (or if he were alive would be) entitled to transfer the same under this paragraph or (if not so transferred) shall be obliged to issue a Mandatory Transfer Notice in respect of the same within the terms of Article 12(1),
  - (4) The Shares held by the trustees of any family trust may be transferred to the new trustees of that trust upon a change of trustees,
  - (5) Any Shares held by the trustees of a family trust may be transferred to a person who is or becomes entitled thereto under the terms of the trust,
  - (6) Any member, being a body corporate, may transfer any Shares to any other body corporate which is the holding company or subsidiary (each as defined in the Act) of the member or any other subsidiary of the holding company of the member provided that if the transferee ceases to be such a subsidiary then the transferee will transfer such Shares to a company which is a subsidiary and if not so transferred within 30 days of such cessation the transferee shall be obliged to serve a Mandatory Transfer Notice within the terms of Article 12(1),

- (7) Any holder of "A" Ordinary Shares may transfer any Shares to any other holder of "A" Ordinary Shares,

PROVIDED THAT in the case of transferees within paragraphs (3) and (4) above upon the transferee ceasing to be in the same relationship to the transferor as that which caused the transfer to be permitted within this Article the transferee shall within 28 days of notice to do so by the Company either transfer the Shares to the original holder or to another person to whom the original holder would be permitted to transfer the Shares failing which the transferee shall be obliged to serve a Mandatory Transfer Notice within the terms of Article 12(1)

- 12 Except as provided in Articles 10 or 11 or 15 no Shares shall be transferred unless and until the rights of pre-emption hereinafter conferred shall have been exhausted or the holder or holders of all the issued Shares of each class have consented in writing to the transfer.

- (1) Every person who desires or intends to transfer any Share or Shares (other than in the circumstances referred to in Article 11) (the "**Intending Transferor**") shall give to the Company notice in writing of such intention ("a **Transfer Notice**") and if any member is expressly obliged under these Articles to give a Transfer Notice (a "**Mandatory Transfer Notice**") and fails to do so the Company may at any time issue such a notice on behalf of that member

- (2) Any Transfer Notice shall specify

- (i) The name of the intended transferee (if any);
- (ii) The number and class of Shares intended or required to be transferred ("**the Sale Shares**");
- (iii) In the case of a sale, the price payable and the time for payment thereof, any other material terms relevant to the sale (including any warranties and indemnities to be given) and any assistance to be given to the intended transferee for payment of the price and satisfaction of his other obligations in relation to his acquisition of the Sale Shares by the Intending Transferor and his associates

provided that a Mandatory Transfer Notice served by, or on behalf of a Member need only specify the number and class of Shares to be transferred.

- (3) No Transfer Notice shall relate to more than one class of shares
- (4) Except for a Mandatory Transfer Notice, the Transfer Notice may contain a provision that unless all the Sale Shares and any

other securities in the Company held by the Intending Transferee are sold by the Company pursuant to this Article, none shall be so sold and any such provision shall be binding on the Company and the members

- (5) Subject as hereinafter mentioned, service of a Transfer Notice shall be irrevocable and shall irrevocably (subject to paragraph (10) of this Article) constitute the Company the agent of the Intending Transferor for the sale of the Sale Shares in one or more lots at the discretion of the Directors and in the case of a Mandatory Transfer Notice only at a price to be agreed between the Intending Transferor and the Directors, or, in default of agreement, at the price certified by the valuers ("the Valuers") appointed by agreement between the Intending Transferor and the Directors or in the absence of agreement by the President for the time being of the Institute of Chartered Accountants in England and Wales
- (6) If in the case of a Mandatory Transfer Notice the Valuers are required to certify the price of the Sale Shares, the price shall be that sum which the Valuers certify in writing to be in their opinion the fair value as at the date of the Mandatory Transfer Notice of the Sale Shares and for this purpose "fair value" shall be that sum which represents the fair value of the Sale Shares on the basis of a willing seller and a willing buyer. In so certifying, the Valuers shall act as experts and not arbitrators and their decision shall be final and binding upon the parties
- (7) Upon the price being agreed, certified or notified as provided above the Company shall forthwith by notice in writing inform each member (other than the Intending Transferor and holders of "B" Ordinary Shares) of the number and price of the Sale Shares together with the identity of any person not being a member with whom the Directors propose to place any of the Sale Shares and invite each such member to apply in writing to the Company within twenty-eight days of the date of despatch of the Company's notice (which date shall be specified therein) for such maximum number of Sale Shares (being all or any of them) as he shall state in such application. Any application made by any member not entitled to receive such invitation shall be disregarded
- (8) At the expiry of the said period of twenty-eight days the Company by written notice to each of the members that returns an application pursuant to paragraph (7) of this Article and the Intending Transferor ("the Allocation Notice") shall allocate the Sale Shares (or so many of them as shall be applied for as aforesaid) to applicants in accordance with their applications and in the case of competition for the Sale Shares to the

applicants in the same proportion that the number of Shares held by them bears to the aggregate number of Shares then in issue (other than the Sale Shares)

PROVIDED THAT no applicant shall be obliged to take more than the maximum number of Shares specified by him as aforesaid

If and to the extent that the Directors do not receive applications from members in respect in aggregate of all the Sale Shares the Directors may within a period of 3 months allocate any such shares not so subscribed for to such bona fide person or persons as they see fit

- (9)
    - (i) Subject to paragraph (4) of this Article the Intending Transferor shall be bound to transfer the Sale Shares comprised in an Allocation Notice to the purchasers named therein against payment of the price at the time and place therein reasonably specified (or if none be so specified then fifty-six days from the date of the allocation notice, at the office);
    - (ii) if he shall fail to do so, each of the Directors severally shall be deemed to have been appointed attorney of the Intending Transferor with full power to execute, complete and deliver, in the name and on behalf of the Intending Transferor, transfers of the Sale Shares to the purchasers thereof against payment of the price to the Company On payment of the price to the Company the purchaser shall be deemed to have obtained a good receipt for such payment and on execution and delivery of the transfer the purchaser shall be entitled to insist upon his name being entered in the register of members as the holder by transfer of the Shares so transferred to him The Company shall forthwith pay the price into a separate bank account in the Company's name and shall hold such price in trust for the Intending Transferor and give notice to the Intending Transferor of such payment.
  - (10) Subject to the provisions of Article 15 4 to 15 7 during the three months following the expiry of the said period of twenty-eight days referred to in paragraph (8) of this Article the Intending Transferor may transfer any Sale Share not allocated in an Allocation Notice to the person or persons named in that behalf in the Transfer Notice upon the terms therein specified (but not otherwise save in accordance with the provisions of this Article)
- PROVIDED THAT

- (a) the Directors shall previously have approved of such person (such approval not to be withheld or delayed without reasonable cause), and
  - (b) if the Intending Transferor stipulated in his Transfer Notice that unless all the Sale Shares comprised therein were sold pursuant to this Article, none should be so sold, the Intending Transferor shall not be entitled to transfer only some of the Shares comprised in his Transfer Notice
- 13. No Share or interest within the terms of Schedule 13 of the Act in any Share shall be held by any member on behalf of any other person other than a member unless a transfer of such Share or interest in such Share to such person would be permitted under Articles 10 to 12. If the foregoing provision shall be infringed, the holder of such Share shall be bound to give a Mandatory Transfer Notice in respect thereof

#### **MANDATORY TRANSFERS**

- 14.1 If any member dies then his personal representatives shall within 60 days of notice served by the Company (not being served sooner than the grant of probate or the issue of letters of administration (as the case may be)) transfer the Shares of that member to a person to whom that member was permitted to transfer Shares under Article 11(B) failing which the personal representatives shall be subject to a Mandatory Transfer Notice and the provisions of Article 12 shall have effect accordingly. Regulations 29, 30 and 31 of Table A shall be modified accordingly
- 14.2 In the case of a corporate member upon the commencement of any winding-up of the corporate member or upon the appointment of an administrator or administrative receiver, such member shall be deemed to have given immediately prior to such commencement or appointment (as the case may be) a Mandatory Transfer Notice in respect of all Shares legally or beneficially owned by it and any associated company of it and the provisions of Article 12 shall have effect accordingly.
- 14.2.1 If any associated company of a corporate member which becomes a member of the Company at any time ceases to be an associated company of the original corporate member then, unless such member shall have transferred its Shares to such original corporate member or to another associated company of such original corporate member within 30 days of such cessation, that member shall be deemed with effect from the expiry of such 30 day period to have given to the Company a Mandatory Transfer Notice in respect of all Shares legally or beneficially owned by such member and the provisions of article 12 shall have effect accordingly
- 14.2.2 If (1) any corporate member or (2) any principal corporate member (where an associated company of that principal corporate member is a member of the

Company) ceases to be controlled by the person or persons who were in control of the corporate member (or principal corporate member) at the time when the corporate member (or principal corporate member) became a member of the Company, it shall within seven days of such cessation of control give notice in writing to the Company of that fact and there shall be deemed with effect from the expiry of such seven day period to have been given to the Company a Mandatory Transfer Notice in respect of all Shares legally or beneficially owned by it and any associated company of it and the provisions of article 12 shall have effect accordingly

- 14.3.1 If any person who is an employee, sub-contractor director (other than an "A" Director) or consultant of the Company ("**Executive**") ceases to be an Executive he shall be required within a period of 30 days of such cessation to transfer to the Majority Holder or such other person as the Majority Holder may stipulate all Shares (other than "B" Ordinary Shares) legally and beneficially owned by him and his family for a price per Share (where relevant) set out in that Executive's service contract or contract for services with the Company or otherwise agreed between the Majority Holder and the Executive PROVIDED THAT if a price per Share cannot be agreed upon within the above period of 30 days then the price shall be certified by the Valuers in accordance with Article 12(6)
- 14.3.2 On the price being agreed or certified as provided in article 14.3.1 above the sale and purchase of Shares under the provisions of this article 14.3 shall be completed at the Company's registered office or such other place as the Executive and the Majority Holder may agree at 12 noon on the date
- (a) agreed between the Executive and the Majority Holder (failing which the date 30 days from such cessation), or
  - (b) 14 days after the date on which the price per Share has been finally certified in accordance with Article 12(6) above provided that if such day is not a business day, then completion shall take place at 12 noon on the first business day after such day
- 14.3.3 On Completion the Executive shall deliver to the purchaser a duly executed stock transfer transferring to the purchaser (or as it may direct) the Shares to be sold together with the relative certificate(s) therefor and all such Shares shall be sold free from any right of pre-emption, option, lien, charge, equity or other encumbrances and together with all rights attaching thereto (including dividends declared but not paid) at the date on which the sale is to take place and do such other things and execute such other documents as shall be necessary or as the purchaser may reasonably request to give effect to the sale of Shares
- 14.3.4 If the Executive makes default in transferring any of its Shares, then the provisions of Article 12(9)(ii) shall apply (with any necessary changes being made and save that the consideration for the Shares shall be held on behalf of the Executive who defaulted in transferring the Shares)

## **SALE OF ENTIRE ISSUED SHARE CAPITAL**

### **"Drag Along" Rights**

15 1 The Majority Holder (having a Controlling Interest in Shares as may be enlarged by any Shares which may fall to be issued under any option and/or warrant granted or issued by the Company which is exercisable or would become exercisable upon a Sale on the terms contained in the Sale Notice) in the capital of the Company ("**the Intending Sellers**") may (subject to compliance with Articles 5(B)(c)(viii) and (ix)) at any time give notice ("**a Sale Notice**") to all the other members of the Company (including the holders of the Series A-1 Shares and the "B" Ordinary Shares, the holders of the Warrants and the Revenue Warrants who shall be deemed for the purposes of this Article 15 to hold such a number of Ordinary Shares to which they would respectively be entitled upon conversion in full into Ordinary Shares in accordance with the provisions of the instruments respectively creating the Warrants and the Revenue Warrants (together "**the Remaining Members**")) setting out the principal terms and conditions of such Sale stating that the Intending Sellers intend to sell all their Shares pursuant to a Sale complying with the next following sub-clause of this Article

15 2 This Article shall have effect only if the Sale the subject of the Sale Notice is a bona fide arm's length sale to one or more persons who are not connected with the Intending Sellers or any of them within the meaning of Section 286 Taxation of Chargeable Gains Act 1992

15 3 If a Sale Notice is served pursuant to sub-clause 15.1 of this Article and the Sale is bona fide within the meaning of sub-clause 15 2 of this Article then each of the Remaining Members shall sell all their Shares in the capital of the Company to the buyer or buyers specified in the Sale Notice ("**Buyer**") at the same price or other consideration per share and otherwise upon terms and conditions no more onerous than those upon which the Intending Sellers intend to sell their Shares as are applicable to the Sale specified in the Sale Notice at the time specified for completion of the Sale in the Sale Notice

### **"Tag Along" Rights**

15 4 If the holder or holders of Shares (other than the "B" Ordinary Shares) representing at the relevant time in excess of 15 per cent. or more of the total voting rights conferred by all the Shares (excluding for the purpose of this calculation only the "B" Ordinary Shares) in the share capital of the Company for the time being in issue and conferring the right to vote at all general meetings (as may be enlarged by any Shares which may fall to be issued under any option and/or warrant granted or issued by the Company assuming the same to be exercisable and exercised in full) ("**the Transferring Shareholder**") shall, having complied with the provisions of Article 12, intend to dispose of Shares owned by them representing not less than such percentage ("**Proposed TS Sale Shares**") they shall give notice ("**a TS Sale Notice**") to the Company and all the other members of the Company (including the holders of the Series A-1 Shares and the holders of the "B" Ordinary Shares) (together "**the Other Members**") setting out the principal terms and conditions of the

proposed transfer and the identity of the prospective transferee(s) **("contemplated transfer")**. This Article 15 4 shall not apply if Article 15 1 applies

15 5 The Other Members shall be entitled (but not obliged) to participate in the contemplated transfer by delivering written notice to the Transferring Shareholder and the Company within twenty days after delivery of the TS Sale Notice

(a) If no Other Member shall within such period have elected to participate in such transfer, the Transferring Shareholder shall be entitled to include in the contemplated transfer the whole of the Proposed TS Sale Shares;

(b) If any Other Member shall within such period have elected to participate in such transfer:

(i) each of the Other Members shall be entitled to include in the contemplated transfer, at the same price per share and on the same terms, a number of Shares which is equal in voting power to the percentage (P) of the Proposed TS Sale Shares where

$$P = \frac{\text{OMV} \times 100}{\text{All Votes}}$$

**"OMV"** means the total voting rights conferred by all the Shares conferring the right to vote at all general meetings held by the Other Member in question;

**"All Votes"** means the total voting rights conferred by all the Shares in the share capital of the Company for the time being in issue and conferring the right to vote at all general meetings (as may be enlarged by any Shares which may fall to be issued under any option and/or warrant granted or issued by the Company assuming the same to be exercisable and exercised in full),

(ii) the number of Shares (by reference to their voting power) which Other Members shall be entitled to include in the contemplated transfer shall reduce the number of Shares which the Transferring Shareholder shall be entitled to include in the contemplated transfer,

(iii) the entitlements of Other Members who shall not within such period have elected to participate in such transfer shall not be allocated to any Other Member and accordingly shall not be deducted from the number of Proposed TS Sale Shares

“Drag Along” and “Tag Along” Rights - General

15 6 Upon the date specified for completion of the Sale in the Sale Notice or the TS Sale Notice (as the case may be)

- (i) each of the Intending Sellers and Remaining Members (pursuant to Articles 15.1 to 15.3) or each of the Transferring Shareholder and Other Members participating in the transfer (pursuant to Articles 15.4 and 15.5) (as the case may be) shall deliver to the Buyer or prospective transferee
- (a) a transfer of his Shares (which shall pursuant Articles 15.1 to 15.3 include any Shares issued or to be issued under options and/or warrants which have become exercisable or would become exercisable upon a Sale on the terms contained in the Sale Notice and have been exercised in full) duly executed by him in favour of the Buyer or prospective transferee or as it may direct;
- (b) a certificate for the Shares sold by him,
- (c) such other evidence of his title to the Shares as may reasonably be required to establish such title,
- (d) such other deeds, documents and things as may be required to be given or executed by him pursuant to the terms of the Sale
- (ii) The Buyer or prospective transferee shall pay to or settle in favour of each Remaining Member and the Intending Sellers (pursuant to Articles 15.1 to 15.3) or each of the Transferring Shareholder and Other Members participating in the transfer (pursuant to Articles 15.4 and 15.5) (as the case may be) the sale price (including non cash consideration) for the Shares sold by him which is due for payment or settlement upon completion and shall give due assurance for payment or settlement of any part of the consideration which is deferred and shall execute such documents as are required to be executed by the buyer in favour of the Intending Sellers and Remaining Members or Transferring Shareholder and Other Members (as the case may be)

15 7 In the event of default by any of the Remaining Members in performing their obligations under this Article, the Intending Sellers shall be deemed to have been appointed attorney of the Remaining Member with full power to execute, complete and deliver in the name and on behalf of the Remaining Member transfers of the Shares to the Buyer against payment or settlement of the consideration to the Intending Seller and to execute such other documents and do such other things as the Remaining Member may be required to do under the preceding provisions of this Article Provided that it is acknowledged that no GE Entity shall be required to give any Warranties in connection with any such Sale other than as to title

In the event of such default by the Remaining Members, the Buyer shall pay or settle the sale consideration for the Shares sold by the defaulting Relevant

Member to the Intending Sellers and the Buyer shall be deemed to have obtained a good receipt for such payment or settlement and on execution and delivery of the transfer and such other documents referred to above the Buyer shall be entered in the Register of Members in respect of the Shares so transferred. The Intending Sellers shall forthwith pay such part of the consideration as is in cash into a separate bank account in the Intending Sellers' names (reference "Remaining Members") and shall hold such price and any other non-cash consideration (and any dividend or other sum accruing from such other consideration) in trust for the Remaining Members in default and give notice to such Remaining Members of such payment or settlement and such monies and other consideration shall be held in trust until the Remaining Members in default shall deliver up their certificate or certificates for such Shares or an indemnity in a form reasonably acceptable to the Buyer to the Intending Sellers (who shall pass the same to the Buyer) when the Intending Sellers shall pay/transfer to such Remaining Members the purchase consideration.

#### **GENERAL MEETINGS**

16. A majority in number of the members present in person or by proxy shall be a quorum. Provided that the aggregate number of Shares held by such members is a majority of the Shares then in issue. Regulation 40 of Table A shall be modified accordingly.
17. The chairman of a general meeting shall not be entitled to a second or casting vote.
- 18(a) Subject to the provisions of this paragraph and to any other special rights or restrictions as to voting attached to any Shares by or in accordance with these Articles, every member who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative not being himself a member entitled to vote, shall have one vote for every Share of which he is the holder.
- (b) Regulations 47, 56, 62 and 63 of Table A shall be modified accordingly.

#### **DIRECTORS**

- 19 Unless otherwise determined by special resolution, the number of Directors shall not be subject to any maximum but shall be not less than two in number.
- 20(a) The holders of the "A" Ordinary Shares shall be entitled at any time and from time to time to appoint any two persons as directors of the Company ("the **"A" Directors**") and shall be entitled to determine the period for which such person or persons is to hold office and to remove from office any person or persons so appointed.
- (b) The holders of a majority of the Ordinary Shares from time to time shall be entitled at any time and from time to time to appoint any number of persons as

directors of the Company and shall be entitled to determine the period for which such person or persons is to hold office and to remove from office any person or persons so appointed.

- (c) The holders of a majority of the Series A-1 Shares shall be entitled at any time and from time to time during the Investment Period to appoint any one person as a director of the Company ("**GE Director**") and shall be entitled to determine the period for which such person is to hold office and to remove from office any person so appointed, subject always to the provisions of the Subscription and Shareholders Agreement. Such right shall cease (and the GE Director will forthwith resign if required by the board of Directors) with effect from the Preference Dividend Date if no Redemption Notice has been validly served.
- (d) On any resolution for the appointment or removal of any person or persons as a director pursuant to paragraphs (a) and (b) above (as the case may be), each Share held by the person or persons entitled to appoint such director shall carry one thousand votes and no other Shares shall carry any vote. Every appointment, determination or removal made pursuant to those paragraphs shall be made by notice in writing, signed by or on behalf of the person or persons entitled to make the same and shall be deposited at the office or delivered to a meeting of the Board.
- (e) The Company may by ordinary resolution appoint any person who is willing to act to be a Director either to fill a vacancy or as an additional Director.
- (f) The Company may by ordinary resolution the notice of which expressly specifies such resolution, remove any Director other than any Director appointed pursuant to Articles 20(a), (b) or (c).
- (g) The Directors may appoint any person who is willing to act to be a Director either to fill a vacancy or as an additional Director. A Director so appointed shall hold office only until the next following annual general meeting. If not re-appointed at such annual general meeting, he shall vacate office at the conclusion thereof.
- (h) Subject as aforesaid, a Director who retires at an annual general meeting may, if willing to act, be re-appointed. If he is not re-appointed, he shall retain office until the meeting appoints another person in his place or, if he does not do so, until the end of the meeting.
- (i) The Directors shall not be subject to retirement by rotation and all references in Table A to retirement by rotation shall be disregarded.
- (j) No director shall be appointed otherwise than as provided in these Articles.
- (k) A quorum throughout any meeting of the board of Directors shall consist of two Directors including (unless the "A" Director(s) otherwise consent) an "A" Director whether present in person or participating by means of a conference.

telephone or similar communications equipment whereby all persons participating in the meeting can hear each other.

- (l) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Director or Directors present shall be a quorum. The first sentence of Regulation 89 of Table A shall not apply.
- (m)
  - (i) (Save as aforesaid) unless all the Directors or the holders of the majority of the Ordinary Shares and a majority of the "A" Ordinary Shares and a majority of the Series A-1 Shares otherwise consent no resolution of the Directors shall be valid unless passed at a meeting of the Board of Directors convened at least 4 days after the service of notice (or the deemed service of notice pursuant to Article (m)(ii) below) of the same within the United Kingdom, such notice to be served either orally or in writing (and any written notice may be served by posting, physical delivery or by email or facsimile transmission of the notice), upon all Directors. A Director including an alternate director, who has notified the Company that he is or will be absent from the United Kingdom and who has notified the Company of an email address or facsimile number by which he may be contacted shall be served with notices either by email or by facsimile transmission or otherwise he shall not be entitled to receive any such notice. A written agenda for any meeting convened must (save as aforesaid) be served on each Director at the time of and in like manner to service of the notice of the meeting. Any Director entitled to receive notice may waive the requirement to receive any or all the said period of notice and/or to be served with a written agenda. Regulations 66 and 88 of Table A shall be modified accordingly.
  - (ii) Any notice or agenda handed personally to a Director is deemed to have been served on the day it is handed to him and if given by email or facsimile transmission is deemed served on the first business day following successful transmission. Any notice or agenda posted to any Director is deemed served on the third day after the day of posting thereof. Any oral communication is deemed to have been given on the day such oral communication is made.
- (n) A Director may vote in respect of any contract or arrangement notwithstanding that he may be interested therein (subject to that Director first disclosing the nature and extent of any such interest) and if he does so he may be counted in the quorum at any meeting of the Directors at which any such contract or proposed contract or arrangement shall come before the meeting for consideration.

- (o) The chairman of the Company shall not have or be entitled to exercise a second or casting vote Regulation 88 of Table A shall be modified accordingly
  - (p) Subject to the prior approval of all of the Directors, a Director may (in addition to those expenses that are incurred in connection with his attendance at meetings of Directors or committees of Directors or general meetings or separate meetings of the holders of any class of Shares or of debentures of the Company for which no prior approval shall be required) be paid all travelling hotel and other expenses properly incurred by him in connection with the business of the Company
  - (q) A meeting of the Directors shall, subject to notice thereof having been given in accordance with these Articles, for all purposes, be deemed to be held when a Director is or Directors are in communication by telephone or television (or any other form of audio-visual linking) with another Director or Directors and all of the Directors in communication agree to treat the meeting as so held, if the number of the Directors in communication constitutes a quorum of the board in accordance with these articles. A resolution passed by the Directors at such a meeting as specified in this Article 20(q) shall be as valid as it would have been if passed at an actual meeting duly convened and held
  - (r) A resolution in writing executed by all the Directors entitled to receive notice of a meeting of Directors or of a committee of Directors shall be as valid and effectual as if it had been passed at a meeting of Directors or (as the case may be) a committee of Directors duly convened and held and may be contained in one document or in several documents in the same terms each executed by one or more Directors, but a resolution executed by an alternate Director need not also be executed by his appointor and, if it is executed by a Director who has appointed an alternate Director, it need not be executed by the alternate Director in that capacity.
- 21 Without prejudice to the provisions of regulation 70 of Table A the Directors shall have power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time Directors, officers, employees of the company

## **CAPITALISATION OF PROFITS AND RESERVES**

- 22 After making all proper provision for redemption of the Series A-1 Shares and the Preference Dividend, the Company, upon the recommendation of the Directors, may from time to time by ordinary resolution resolve that it is desirable to capitalise or agree (either conditionally or unconditionally) to capitalise any present or future sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any present or future sum standing to the credit of profit and loss account or otherwise available for distribution and accordingly that the Directors be authorised and directed to appropriate the sum resolved to be capitalised (unless directed and authorised by a prior special resolution to appropriate the sum to the members or a member in some other proportions) to the members or any class of members who would be entitled thereto if distributed by way of dividend and in the same proportions and to apply such sum on their behalf, either in or towards paying up the amounts, if any, for the time being unpaid on any Shares held by such members respectively, or in paying up in full unissued Shares or debentures of the Company of a nominal amount equal to such sum, such Shares or debentures to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid (or as otherwise directed and authorised by special resolution) or partly in one way and partly in the other PROVIDED THAT the share premium account and capital redemption reserve may be applied hereunder only in the paying up of unissued Shares to be issued to members as fully paid and such capitalisation, appropriation, application, allotment and distribution be approved notwithstanding that it is not in favour of all members who would have been entitled to the sum so capitalised, appropriated and applied if it were distributed by way of dividend.
- 23 Where the Directors are pursuant to Article 22 directed and authorised by special resolution to appropriate any sum in some other proportion than that provided in Article 20 then such direction and authority may only be revoked with the consent of the members or member in whose favour such direction and authority has been made whose shares shall for such purposes constitute a separate class of Shares whose consent constitutes a class right

## **BORROWING POWERS**

- 24 1 The Directors shall restrict the borrowings of the Company and exercise all voting and other rights or powers of control exercisable by the Company in relation to its subsidiary undertakings (if any) so as to secure (but as regards its subsidiary undertakings only in so far as by the exercise of such rights or powers of control the Directors can secure) that the aggregate of the amounts at any time remaining undischarged of borrowings by the Group (which expression in this Article means and includes the Company and its subsidiaries at the relevant time) and then owing to persons outside the Group less the cash deposits of the Group shall not without the previous sanction of an ordinary resolution of the Company exceed an amount equal to the greater of the amounts referred to in Article 5(B)(c)(i).

- 24.2 For the purposes of this Article the expression "borrowings" shall be deemed to include without limitation the following except in so far as otherwise taken into account:
- (a) any fixed or minimum premium payable on final repayment of any borrowing or deemed borrowing, and
  - (b) the raising of debt monies and the obtaining of any advance or credit (other than normal trade credit and hire purchase and leasing commitments)
- 24.3 A certificate or report by the Auditors as to the amount of any borrowings or to the effect that the limit imposed by this Article has not been or will not be exceeded at any particular time or times shall be conclusive evidence of such amount or fact for the purposes of this Article
- 24.4 No person dealing with the Company or any of its subsidiary undertakings shall by reason of the foregoing provision or of Article 5(B)(c)(i) be concerned to see or enquire whether the limit in this Article or in Article 5(B)(c)(i) is observed and no debt incurred or security given in excess of such limit shall be invalid or ineffectual unless the lender or the recipient of the security had (at the time when the debt was incurred or the security given) express notice that the limit imposed in this Article or in Article 5(B)(c)(i) had been or would thereby be exceeded.

#### **GENERAL**

- 25 Where the approval, agreement or consent of any member or Director is required under any provision of these Articles to any particular matter, such approval, agreement or consent may be given subject to such terms and conditions as that member or Director may reasonably require and any breach of such terms and conditions shall, ipso facto, be deemed to be a breach of these Articles

#### **INTERNAL RATE OF RETURN**

- 26.1 If the IRR is not agreed between GE and the Company within 10 days of commencing discussing, either GE or the Company shall be entitled to refer the determination of the IRR to a firm of Independent Accountants **"Independent Accountants"** means such firm of chartered accountants as GE and the Company may appoint or (if they fail to agree within 7 days after either such party shall have nominated a particular firm), such firm as may be appointed (at the request of either party) by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Independent Accountants, if appointed, shall act as experts and not as arbitrators and their decisions on the matters which shall be referred to them shall be final and binding on GE, the Company and its members (save in the case of manifest error). The costs of the Independent Accountants shall be borne as the

Independent Accountants shall direct or in default of such direction as to one half by GE and as to the other half by the Company

- 26.2 If the holders of the Series A-1 Shares voluntarily dispose of their Shares (other than to another GE Entity) in compliance with Article 12 or Articles 15.4 and 15.5 and such disposal is for a consideration representing (or which would, had such holders disposed of their entire holding of Series A-1 Shares, have represented) an IRR of less than 35%, then such disposal shall be deemed to have been at an IRR of 35%

### **GE DEADLOCK PROVISIONS**

- 27.1 For the purposes of this Article 27 a “**GE Deadlock**” shall be considered to have occurred where GE exercises its right of veto under Articles 5(B)(a) or 5(B)(c) (other than under sub-Article 5(B)(c)(vi)) and such exercise causes a significant and apparently irreconcilable disagreement between (i) (a) GE and (b) other members holding in aggregate more than seventy five per cent of the voting rights of the Shares in issue at the time or (ii) such number of Directors as comprises not less than three quarters of the board. The persons referred to in paragraph (i) (b) above and (ii) above shall be referred to below as “**Other Parties**” and “**Party**” shall mean GE and the Other Parties
- 27.2 In any case of GE Deadlock any of the Other Parties or GE shall notify in writing the members, the board and the Company of the GE Deadlock whereupon the matter in dispute shall immediately be referred to the President and General Manager of GE and the chairman of the Company who shall enter into discussions in good faith to resolve the matter in dispute
- 27.3 If the matter has not been resolved within 30 days of the referral of the matter as provided for in Article 27.2 then the Parties in dispute may require the matter to which the deadlock relates to be referred to an independent expert (“**Expert**”) for final determination (the Expert shall be an investment banker of not less than 10 years experience) by notice in writing to the Other Parties. The Expert shall be such person as shall be nominated by agreement by the Parties in question within 5 days of the referral notice referred to above or, in default of such nomination, appointed at the request of any Party by the London Investment Banking Association. The Expert shall act as an expert and not an arbitrator. The Expert shall issue his recommendation as to the solution of the matter in dispute and shall determine what course of action is reasonably likely to result in the highest present value of the equity of the Company as a whole, calculated on the basis of a discount rate set having regard to the risk of the Company’s cash flows. If the GE Deadlock relates to a decision regarding an Exit, the Expert shall take into account the interests of all Parties involved (including the Company, GE and the Other Parties) and their investment criteria as evidenced by them to the Expert in these Articles, the Subscription Agreement, the Subscription and Shareholders Agreement or otherwise. In reaching his determination the Expert shall, so far as possible, balance the interests of each member fairly but he shall not put the interests of any member before those of the Company

- 27.4 The members and the Company shall supply the Expert with any information which he may request in connection with his determination.
- 27.5 The Expert shall give due weight to any written representation put forward by any member received by him within such time limit as he may determine
- 27.6 In giving his decision the Expert shall be entitled to specify any matters which he considers, in his absolute discretion, should be implemented or otherwise transacted in order to give commercial efficacy to his determination
- 27.7 Absent of manifest error, forthwith upon receiving the Expert's determination the members shall exercise their powers in relation to the Company to procure that the Company complies with the Expert's determination and with any directions given by the Expert.
- 27.8 The fees and expenses of the Expert shall be paid by the Company and GE in such proportion as the Expert shall direct
- 27.9 If the Expert upholds GE's right of veto then the Company shall be entitled but not obliged (subject to law) to purchase or redeem (or procure a purchaser for) all the Shares and/or outstanding Revenue Warrants then held by GE at a price agreed between GE and the Company being:
- 27.9.1 for the Shares the higher of fair market value (as determined by the Expert assuming a fair selling price for such Shares between a willing purchaser and willing seller, and in making such determination the Expert shall not take account whether Shares to be sold comprise a majority or minority interest nor the fact that the transfer ability of such Shares are restricted and shall assume that all issued shared capital has been sold) and an amount that would provide GE with a pre-tax IRR of not less than 35 per cent on its equity participation in the Company, and
- 27.9.2 for the outstanding Revenue Warrants the fair market value (as determined by the Expert)
- 27.9.3 Any sale or redemption of Shares and/or outstanding Revenue Warrants under this Article
- 27.9.4 shall be completed at the Company's registered office at 12 noon on the date (being a business day) the Expert (having regard to Article 27.12) shall determine.
- 27.10 On completion of the sale referred to in Article 27.9 GE shall (if required by the Company) deliver to the Company a duly executed stock transfer form (and/or form of transfer of the outstanding Revenue Warrants in a form specified by the board of Directors) transferring to the Company (or as it may direct) the Shares (and/or outstanding Revenue Warrants) to be sold together with the relative certificate(s) or indemnity for lost certificate therefor in a

form specified by the board of Directors and all such Shares (and/or outstanding Revenue Warrants) shall be sold or redeemed free from all right of pre-emption, option, lien, charge, equity or other encumbrances and together with all rights attaching thereto (including dividends declared but not paid) at the date on which the sale is to take place and to do such other things and execute such other documents as shall be necessary or as the Company may reasonably request to give effect to the sale or redemption of the Shares (and/or outstanding Revenue Warrants) GE shall forthwith upon execution of the relevant transfer or redemption of Shares (and/or outstanding Revenue Warrants) procure the resignation at no cost to the Company of any director appointed by it from its directorships held in the Company

- 27 11 If GE makes default in transferring or redeeming any Shares and/or outstanding Revenue Warrants pursuant to Article 27.10 the chairman for the time being of the Company, or failing him, one of the Directors (other than the GE Director) shall forthwith be deemed to be the duly appointed attorney of GE with full power to execute and complete in the name and on behalf of GE a transfer or redemption of such Shares and/or outstanding Revenue Warrants to the Company or a purchaser (as appropriate) and in such circumstances the Company:
- 27.11 1 may receive and give a good discharge for the purchase or redemption money on behalf of GE,
- 27 11 2 shall if appropriate and (subject to the transfer (if any) being duly stamped) enter the name of the purchaser in the register of members as the holder by transfer of the Shares and/or outstanding Revenue Warrants so purchased by him or her, and
- 27 11 3 shall forthwith pay the purchase and/or redemption money into a separate bank account in the Company's name and shall hold such money in trust for GE until it shall deliver up its certificate (or indemnity) for the Shares and/or outstanding Revenue Warrants to the Company when the Company shall pay to GE the purchase and/or redemption money.
- 27 12 If the Company does not have sufficient distributable reserves lawfully to effect the purchase and/or redemption by it of GE's Series A-1 Shares and/or outstanding Revenue Warrants as referred to in Article 27.9 then the Company shall use its reasonable endeavours to effect the purchase and/or redemption (but such endeavours shall be without prejudice to the Company's ongoing viability and ability to operate its business as operated immediately prior to such date) within twelve months of the date upon which the purchase should have completed in accordance with Article 27 9 Provided that the Company shall not act contrary to the decision of the Expert until such as the Series A-1 Shares have been redeemed.
- 27 13 For the avoidance of doubt GE shall not have the right in such circumstances to force the sale or liquidation of the Company (without prejudice to any rights that GE may have as a creditor of the Company)