

**THE COMPANIES ACT 1985, AS AMENDED  
COMPANY LIMITED BY SHARES**

**RESOLUTIONS**

- of -



**ACTIVE HOTELS LIMITED  
(passed on 10 October 2001)**

At an Extraordinary General Meeting of the above named Company duly convened and held on Wednesday 10 October 2001 at 2:00 p.m., the following Resolutions were duly passed as Ordinary and Special Resolutions of the Company:

**ORDINARY RESOLUTIONS**

1. Each of the existing authorised Ordinary, "A" Ordinary and Deferred Shares of 1 pence each be converted into 10 shares of 0.1 pence each having the rights attached to them in the New Articles of Association to be adopted pursuant to resolution 2.
2. That pursuant to s121 of the Companies Act 1985 and following the conversion set out in resolution 1, 800,000 "A" Ordinary Shares be converted and redesignated as "B" Ordinary Shares of 0.1 pence each having the rights attached to them in the new Articles of Association to be adopted pursuant to resolution 4.
3. That pursuant to s121 of the Companies Act 1985 and following the conversion set out in resolution 1, 200,000 Ordinary Shares be converted and redesignated as "C" ordinary Shares of 0.1 pence each having the rights attached to them in the new Articles of Association to be adopted pursuant to resolution 4.

**SPECIAL RESOLUTIONS**

4. That the new Articles of Association contained in the document submitted to this meeting and for the purposes of identification signed by the Chairman thereof be and they are hereby adopted as the Articles of Association of the Company in substitution for and to the exclusion of the existing Articles of Association of the Company.
5. That rights of pre-emption be waived in respect to the proposed transfers set out below and that the transfers be approved:

Transferor	Transferee	No. of Deferred Shares
David Begg	Adrian Critchlow	15,375
David Begg	Andrew Phillipps	15,375

6. That, notwithstanding the terms of the existing articles and following his resignation David Begg may retain 6,000 Deferred Shares.

Signed .....  
Chairman of the meeting



DATED 10 OCTOBER 2001

THE COMPANIES ACT 1985

A Private Company Limited by Shares

ARTICLES OF ASSOCIATION

of

ACTIVE HOTELS LIMITED

Company No. 3512889

(Adopted by Special Resolution passed 10 October 2001)

The Companies Act 1985  
A PRIVATE COMPANY LIMITED BY SHARES

NEW  
ARTICLES OF ASSOCIATION  
(amended by Special Resolution  
passed on 10 October 2001)

OF

ACTIVE HOTELS LIMITED

1. REGULATIONS OF THE COMPANY

- 1.1 The Articles comprise these Articles and, save in so far as it is modified by these Articles, Table A (which expression means that Table as prescribed by regulations made pursuant to the Companies Act 1985 (the "Act") and in force on the date of incorporation of the Company).
- 1.2 Regulations 8, 24, 53, 54, 60-62 (inclusive), 65-69 (inclusive), 73-80 (inclusive), 87, 90, 93, 100 and 118 in Table A do not apply to the Company.

2. DEFINITIONS

- 2.1 In these Articles unless the context otherwise requires the words standing in the first column bear the meanings set opposite them respectively in the second column:

"70% Holding" as defined in Article 13;

""A" Ordinary Shares" means "A" Ordinary Shares of 0.1 pence each having the rights set out in these Articles and ""A" Ordinary Share" means any one of them;

"Allocation Notice" as defined in Article 16.9;

"Appropriate Offer" as defined in Articles 15.4 and 15.5;

"Associate Company" as defined in Article 11.2;

"Auditors" means the auditors of the Company for the time being;

""B" Ordinary Shares" means "B" Ordinary Shares of 0.1 pence each having the rights set out in these Articles and ""B" Ordinary Share" means any one of them;

"Bad Leaver" means an Employee other than a Founder who ceases to be an Employee of a Group Company for any reason other than:

- injury ill-health or disability (evidenced to the satisfaction of the directors); or

- dismissal by reason of redundancy (within the meaning of the Employment Rights Act 1996); or
- wrongful dismissal; or
- unfair dismissal (within the meaning of the Employment Rights Act 1996) (other than where such unfairness arises solely out of a failure to follow procedure); or
- retirement on reaching sixty years or any other earlier age at which he is bound to retire in accordance with the terms of his contract of employment; or
- the company by which he is Employed ceasing to be a Group Company; or
- the fact that the Employment relates to a business or part of a business which is transferred to a company which is not a Group Company; or
- death; or
- any other reason approved by the Board in writing;

**"Bamboo"** means Bamboo Investments Plc;

**"Board"** means the Board of Directors of the Company for the time being;

**"Bracken"** means Bracken Partners Group Limited;

**"Bracken Associate"** means each and any person procured by Bracken as an investor in the Company;

**"Business Days"** means a day (other than a Saturday or Sunday or public holiday in England and Wales) on which banks are open for all normal classes of banking business in London;

**"C" Ordinary Share** means "C" Ordinary Shares of 0.1 pence each having the rights set out in these Articles and **"C" Ordinary Share** means any one of them;

**"Called Shares"** as defined in Article 13.4;

**"Close Brothers"** means Close Brothers Investment Limited;

**"Close Tech Fund"** means the investors in the First Close Technology Fund;

**"Close VCT"** means Close Technology & General VCT Plc;

**"Close VCT Management"** means a division of Close Brothers, acting as manager of Close VCT;

**"Company"** means Active Hotels Limited, company number 3512889;

**"Control"** as defined in Article 15.3;

**"Deferred Shares"** means Deferred Shares of 0.1 pence each in the capital of the Company having the rights set out in these Articles and **"Deferred Share"** means any one of them;

**"Disposal"** as defined in Article 5.1;

**"Employee"** means an employee who is employed by a Group Company or an individual whose services are made available to the Company under the terms of an agreement between a Group Company and such individual or any other person, but not including any person whose services are made available to the Company as a non-executive director;

**"Excess Shares"** as defined in Article 16.8;

**"Exit"** the meaning given in Article 5.1;

**"Fair Value"** as defined in Article 17.1;

**"Former Employee"** as defined in Article 12.3;

**"Former Founder Employee"** as defined in Article 12.7;

**"Founders"** each of Andrew Phillips and Adrian Critchlow and **"Founder"** shall refer to either of them;

**"FRS"** means Financial Reporting Standards issued by the Accounting Standards Board

**"Group"** as defined in Article 5.1;

**"Group Company"** as defined in Article 5.1;

**"Investors"** means Bracken, Close Tech Fund, Bamboo and Close VCT;

**"Leaving Shareholder"** as defined in Article 12.2;

**"Leaving Founder Shareholder"** as defined in Article 12.7(a);

**"Listing"** as defined in Article 5.1;

**"Member Applicant"** as defined in Article 16.9;

**"Net Profits"** means the profits before tax of the Company and its subsidiaries calculated on the historical cost accounting basis and shown in the audited consolidated profit and loss account of the Company and its subsidiaries for the relevant financial year but adjusted by:

- (a) adding back any provision for any amortisation of goodwill or exceptional or extraordinary costs (as set out in FRS 3); and

- (b) deducting exceptional and extraordinary gains (as set out in FRS 3) and any profit on any disposal of any asset not in the ordinary course of business of the Company or any subsidiary undertaking;

"NewCo" as defined in Article 14.1;

"NewCo Deferred Shares" as defined in Article 14.1;

"NewCo Ordinary Shares" as defined in Article 14.1;

"Observer" as defined in Article 25.6;

"Ordinary Shares" means Ordinary Shares of 0.1 pence each having the rights set out in these Articles and "Ordinary Share" means any one of them;

"Original Member" as defined in Article 11.4;

"Other Shareholders" as defined in Article 13.1;

"Proceeds" as defined in Article 5.1;

"Proportionate Entitlement" as defined in Article 16.8;

"Related Persons" as defined in Article 11.4;

"Relevant Investor" as defined in Article 4.1(b);

"Remaining Shares" as defined in Article 6.3(d);

"Reorganisation Called Shares" as defined in Article 14.3;

"Reorganisation Come Along Option" as defined in Article 14.1;

"Reorganisation Come Along Option Period" as defined in Article 14.2;

"Reorganisation Come Along Notice" as defined in Article 14.3;

"Sale Price" as defined in Article 12.8;

"Sale Shares" as defined in Article 16.4;

"Share Offer" as defined in Article 13.1;

"Share Offer Notice" as defined in Article 13.4;

"Share Offer Period" as defined in Article 13.3;

"Share Option Plan" means any employee share option scheme adopted by the Company;

"Shares" means "A" Ordinary Shares and/or "B" Ordinary Shares and/or "C" Ordinary Shares and/or Ordinary Shares and/or Deferred Shares as the context requires;

"Special Director" as defined in Article 25.1;

"Take-over" as defined in Article 5.1;

"Take Up Shareholder" as defined in Article 6.3(d);

"Third Party" as defined in Article 13.1;

"Transfer Notice" as defined in Article 16.1;

"Transfer Price" as defined in Article 16.1(c); and

"Vendor" as defined in Article 16.1.

### 3. SHARE CAPITAL

3.1 The share capital of the Company is £7,500 divided into:

- (a) 5,057,500 Ordinary Shares of 0.1 pence each;
- (b) 700,000 "A" Ordinary Shares of 0.1 pence each;
- (c) 800,000 "B" Ordinary Shares of 0.1 pence each;
- (d) 200,000 "C" Ordinary Shares of 0.1 pence each; and
- (e) 742,500 Deferred Shares of 0.1 pence each.

3.2 Each of the Ordinary Shares, the "A" Ordinary Shares, the "B" Ordinary Shares, the "C" Ordinary Shares and the Deferred Shares shall constitute separate classes of Shares.

3.3 Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class of shares 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 75% of the issued shares of that class, or with the sanction of a resolution passed at a separate meeting of the holders of the shares of that class subject, in each case, to a 75% majority being required in the circumstances set out in the Act, but not otherwise. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, mutatis mutandis, apply, save that the necessary quorum shall be two persons at least holding or representing by proxy one third in nominal amount 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 where there is only one person holding shares of that class that sole shareholder 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.

- 3.4 The Company shall not take any of the actions set out in Article 3.5, without having first obtained the prior written consent of Close Brothers, Close VCT Management, Bracken and Bamboo respectively, on behalf of the following sub-groups of Investors:

- (a) Close Tech Fund;
- (b) Close VCT;
- (c) Bracken, together with Bracken Associates; and
- (d) Bamboo;

provided that, and for so long as, the relevant sub-group of Investors holds more than 3% of the total issued shares.

- 3.5
- (a) The issue, allotment or grant of any right to require the allotment or issue of any shares or securities in the Company at an offer price per Share of less than the highest price paid on issue of any Shares prior to the date of adoption of these Articles, being £2.50, or such lower amount as this figure may subsequently be adjusted to in accordance with the provisions of Article 6.4 (other than the creation, allotment or issue of any shares or securities on the date of adoption of these Articles or Shares allotted pursuant to the Share Option Plan or issued pursuant to Article 6.4); or
  - (b) the registration of any compulsory transfer of "A" Ordinary Shares and "B" Ordinary Shares pursuant to Article 13 except where the price per share is equal to or more than £16; or
  - (c) the registration of any compulsory transfer of "A" Ordinary Shares and "B" Ordinary Shares pursuant to the provisions of Article 14; or
  - (d) the appointment or removal of a director (other than an Investor Director or a Special Director appointed pursuant to Article 25).

#### 4. AS REGARDS INCOME AND CAPITAL

- 4.1 On 14 January 2004 and annually thereafter the Company shall distribute all of the Net Profits shown in its latest published audited accounts by way of dividend. Such dividend shall be satisfied as follows:

- (a) by a payment in cash to the holders of the "A" Ordinary Shares and "B" Ordinary Shares (pari passu as if they constituted one class) of an amount equal to that proportion of the Net Profits that such shares represent of the total issued share capital of the Company (but on the basis that the Deferred Shares shall only be

included as part of the issued share capital of the Company if an Exit has occurred); and

- (b) as to the balance of the Net Profits by capitalising the amount of such balance and applying that amount in issuing and paying up in full such number of Ordinary Shares and "C" Ordinary Shares to holders of Ordinary Shares and "C" Ordinary Shares respectively and pro rata to the numbers of Ordinary Shares and "C" Ordinary Shares as shall be determined by dividing the amount of the balance by the higher of the price at which Ordinary Shares were last issued by the Company and the price at which "C" Ordinary Shares were last issued by the Company (and disregarding any fractional entitlements), provided that if any consolidation or sub-division of the Ordinary Shares and or "C" Ordinary Shares has taken place the respective prices of those Shares used to determine the denominator in this Article 4.1(b) shall be adjusted accordingly,

provided always that:

- (i) in the event that the Company has insufficient distributable reserves to make the payments referred to above in full, the amount of the dividends shall be reduced on a pro rata basis;
- (ii) in the event that a Relevant Investor ceases to be a shareholder in the Company, the provisions referred to above shall lapse in respect of the shares previously held by that Relevant Investor, and for the purposes of this sub-paragraph "**Relevant Investor**" shall mean either:-
- (A) Bracken, Bracken Associates and/or their nominees; or
  - (B) the Close Tech Fund and/or its nominee;
  - (C) Bamboo and/or its nominee; or
  - (D) Close VCT and/or its nominee.
- (iii) the right to receive a dividend in cash or shares may be waived in whole or in part by any shareholder; and
- (iv) in the event that any of the holders of "A" Ordinary Shares or "B" Ordinary Shares waive their entitlement to receive a dividend in cash or opt to take only part of their dividend entitlement in cash in any given year (a "Waiver"), the "A" Ordinary Shareholders and "B" Ordinary Shareholders who have waived all or part of this entitlement shall have the right to receive such number of "A" Ordinary Shares or "B" Ordinary Shares as the case may be issued to them and credited as fully paid as shall be determined by dividing the amount of the Waiver by the higher of the price

at which Ordinary Shares were last issued by the Company and the price at which "C" Ordinary Shares were last issued by the Company (disregarding any fractional entitlements, and provided that if any consolidation or sub-division of the Ordinary Shares and or "C" Ordinary Shares has taken place the respective prices of those Shares used to determine the denominator in this Article 4.1(b) shall be adjusted accordingly.) in place of their dividend entitlement in cash.

- 4.2 The Deferred Shares will be entitled to a dividend of 0.001p per share if a dividend is declared on the "A" Ordinary Shares or "B" Ordinary Shares Provided that in the event of an Exit the provisions of Article 5 shall apply.
- 4.3 Subject to the provisions of the Act any return of assets to members on a liquidation, reduction of capital or otherwise shall be applied amongst the holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares in respect of the amount paid up or credited as paid up (including the premium if any) on each "A" Ordinary Share, "B" Ordinary Share and "C" Ordinary Share and Ordinary Share held and the Deferred Shares shall confer no rights on the holder(s) thereof to receive any part of any such return of assets of the Company Provided that in the event of an Exit the provisions of Article 5 shall apply.

## 5. RIGHTS ON AN EXIT

- 5.1 The rights attaching to the respective classes of Shares shall be as follows:

For the purpose of these Articles:

**"Disposal"** means the sale or other disposal whether by one transaction or a series of related transactions of the whole or a substantial part of the undertaking of any Group Company (other than to a Group Company which is the Company or a wholly owned subsidiary of the Company) where the disposal by the Group Company itself comprises the whole or a substantial part of the undertaking of the Group and the proceeds of such sale or disposal are returned to members (in whole or in part);

**"Exit"** means a Take-over, a Listing or a Disposal whichever shall first occur;

**"Group Company"** means the Company and any other company in its Group ("Group" as defined in section 53 of the Companies Act 1989);

**"Listing"** means the admission of all or any of the ordinary share capital of the Company to the Official List of the UK Listing Authority or the admission of the same to trading on the London Stock Exchange or on the Alternative Investment Market of such Stock Exchange or the admission of the same to, or the grant of permission by any like authority for the same to be traded on, any other equivalent or similar share market (including, without limitation, NASDAQ);

**"Proceeds"** means

- (a) in the case of a Listing the higher of:-
  - (i) the price per Share (expressed in pounds sterling) at which the Shares in the Company are proposed to be placed or to be sold in connection with the Listing (in the case of an offer for sale, being (as appropriate) the price at which the holders of relevant Shares sell such Shares or the underwritten price (or if applicable, the minimum tender price) in each case multiplied by the number of Shares in the Company as will be in issue immediately following the Listing (but excluding any Shares issued by the Company at the time of the Listing to raise new money (for whatever purpose));
  - (ii) after a Listing has occurred, the market capitalisation from time to time of the Shares in the Company the subject of a Listing (but excluding any Shares issued by the Company at the time of a Listing or thereafter to raise new money (for whatever purpose));
- (b) in the case of a Take-over, the consideration per "A" Ordinary Share, "B" Ordinary Share, "C" Ordinary Share, Ordinary Share and Deferred Share (respectively) expressed as a cash price (whether that consideration is to be satisfied in cash, shares, loan stock, or a combination thereof or otherwise, any non-cash consideration being valued by the Auditors) paid or payable pursuant to an agreement or an offer in connection with that Take-over multiplied by the number of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, Ordinary Shares and Deferred Shares (respectively) in the Company in issue at the time of the Take-over. If the proportion of the consideration paid or payable for each "A" Ordinary Share, "B" Ordinary Share, "C" Ordinary Share and Ordinary Share pursuant to the agreement or offer in connection with that Take-over, to which each Deferred Share would be entitled pursuant to this Article 5, is higher than the consideration paid or payable for each Deferred Share pursuant to the agreement or offer in connection with that Take-over, or if no offer is made for any Deferred Share pursuant to that Take-over, then that (higher) figure shall be substituted as the consideration payable for each Deferred Share for the purposes of calculating the Proceeds. If such calculation leads to a choice of Proceeds then the higher of the two figures for Proceeds shall be taken;
- (c) in the case of a Disposal, an amount equal to the total amount available for payment to holders of the Shares as a result of the Disposal by way of dividend or other distribution in respect of Shares (inclusive of any tax credit); and

**"Take-over"** means the acquisition by any person (or by persons who in relation to each other are acting in concert (such expression to have the same definition and meaning as

that ascribed thereto in the City Code on Take-overs and Mergers current at the relevant time)) of Shares conferring 100% of the voting rights of the entire issued Shares.

- 5.2 If, but only if, an Exit shall occur in circumstances whereby the Proceeds are £75,000,000 or more, the Deferred Shares, the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, and the Ordinary Shares shall rank *pari passu* in all respects as if they constituted one class of Shares as regards the Proceeds of any Exit to be received by the holders of Shares and as regards any profits that the Company may thereafter determine to distribute amongst the holders of Shares and as regards the return of assets on liquidation, reduction of capital or otherwise and as regards the right to vote on a show of hands or a poll at any general meeting of the Company held thereafter.
- 5.3 If, but only if, an Exit shall occur in circumstances whereby the Proceeds are £50,000,000 or more but less than £75,000,000 the entitlement of the holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, Ordinary Shares and Deferred Shares in respect of Proceeds to be received by the holders of Shares or as regards any profits that the Company may thereafter determine to distribute amongst the holders of Shares and as regards the return of assets on liquidation, reduction of capital or otherwise shall be such that the holders of Deferred Shares shall receive in respect of each Deferred Share held three-quarters of the amount per share received by holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares in respect of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares held and as regards the right to vote on a show of hands or a poll at any general meeting of the Company the holders of Deferred Shares shall be entitled in respect of each Deferred Share held to three-quarters of one vote on a show of hands or a poll at any general meeting of the Company held thereafter.
- 5.4 If, but only if, an Exit shall occur in circumstances whereby the Proceeds are £25,000,000 or more but less than £50,000,000 the entitlement of the holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, Ordinary Shares and Deferred Shares in respect of Proceeds to be received by the holders of Shares or as regards profits that the Company may thereafter determine to distribute amongst the holders of Shares and as regards the return of assets on liquidation, reduction of capital or otherwise shall be such that the holders of Deferred Shares shall receive in respect of each Deferred Share held one-quarter the amount per Share received by holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares in respect of the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares held and as regards the right to vote on a show of hands or a poll at any general meeting of the Company the holders of Deferred Shares shall be entitled in respect of each Deferred Share held to one-quarter of a vote on a show of hands or a poll at any general meeting of the Company held thereafter.

5.5 In the event that the Proceeds as defined exceed any threshold referred to in Article 5 above then the Proceeds shall thereafter be deemed to have exceeded that threshold for all future purposes in these Articles and the entitlements of the Deferred Shares shall not thereafter be reduced notwithstanding any subsequent reduction in the Proceeds below a threshold.

5.6 (a) If an Exit occurs prior to 31 December 2002 where the Proceeds are less than £15,738,560 the holders of "B" Ordinary Shares and "C" Ordinary Shares shall be entitled to subscribe in cash at par for such number of additional "B" Ordinary Shares or "C" Ordinary Shares (as the case may be) which would result in the "B" Ordinary Shares or "C" Ordinary Shares held by them being held at the average price per share determined by reference to the table set out below:

PROCEEDS	AVERAGE PRICE PER "B" ORDINARY SHARE/"C" ORDINARY SHARE
£15,738,560 or above	£2.50
£10,072,678 or less	£1.60

- (b) If the relevant Proceeds fall between the figures set out in the above table the average price per share shall be determined by reference to a straight line extrapolation between the figures set out.
- (c) Within ten business days following determination of what the Proceeds of an Exit to which this Article applies will (or are likely to) be, the Company shall notify each of the holders of "B" Ordinary Shares and "C" Ordinary Shares of the number of shares for which he is entitled to subscribe, and the subscription price thereof. Each of the holders of "B" Ordinary Shares and "C" Ordinary Shares shall subscribe, and pay the subscription price for, the shares for which he is entitled to subscribe, no later than the 15th business day following notification by the Company of his entitlement, failing which his entitlement shall lapse. On receipt of the subscription price the Company shall issue "B" Ordinary Shares or "C" Ordinary Shares (as the case may be) to the relevant holder in accordance with the provisions of Article 5.6(a).
- (d) The provisions of this Article 5.6 with respect to the rights attaching to the "B" Ordinary Shares and "C" Ordinary Shares respectively may be suspended by separate resolutions passed in the case of "B" Ordinary Shares by the holders of more than 67% of the "B" Ordinary Shares and in the case of the "C" Ordinary Shares by the holders of more than 50% of the "C" Ordinary Shares in aggregate.

- (e) Upon any consolidation or sub-division of the "B" Ordinary Shares and "C" Ordinary Shares the average subscription price referred to in Article 5.6 shall be adjusted accordingly.
- (f) Neither the Company nor the members shall permit any Exit to occur prior to 31 December 2002 until the shares required to be issued pursuant to Article 5.6(c) (if any) have been issued, and the directors shall not approve any purported transfer of Shares pursuant to an Exit which occurs in breach of this Article 5.6(f).

## 6. ISSUE OF NEW SHARES

- 6.1 Subject to section 80 of the Act, all unissued Shares shall be at the disposal of the directors and they may allot, grant options over or otherwise dispose of them to such persons, at such times, and on such terms as they think proper.
- 6.2 Sections 89(1) and 90 of the Act shall not apply to the allotment by the Company of equity securities.
- 6.3
  - (a) If any additional "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, or, Ordinary Shares are to be issued (other than Ordinary Shares equal to 10% of the issued share capital of the Company (as enlarged by the issue of such shares or options in respect of such shares) and issued pursuant to the Share Option Plan or shares to be issued pursuant to Article 6.4), the Company shall (subject to Article 6.3(b)) offer to all holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, and Ordinary Shares such shares pro rata (as if they constituted one class) to their existing holdings by notice in writing to them of the Company's intention to issue the additional "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares or Ordinary Shares specifying the number of shares to be issued and the price per share.
  - (b) Any unissued "A" Ordinary Shares and "B" Ordinary Shares shall only be offered to existing holders of "A" Ordinary Shares and "B" Ordinary Shares.
  - (c) Each shareholder shall have 15 Business Days from the date such notice is received by it in which to notify the Company in writing that it will take up and pay for all or any of the shares so offered.
  - (d) The Company shall notify each shareholder who agrees to take up all or part of its entitlement pursuant to Article 6.3(a) (each a **"Take-up Shareholder"**) of the number of shares not taken up by shareholders pursuant to Article 6.3(a) and such shares (the **"Remaining Shares"**) shall subject to Article 6.3(b) be offered to the Take-up Shareholders pro rata to their existing holdings immediately prior to the issue of such additional shares (ignoring the holdings of shareholders who do not take up the offer pursuant to Article 6.3(a)) and the notice and acceptance provisions above shall apply mutatis mutandis.

- (e) The Remaining Shares not taken up by the Take-up Shareholders may be issued to such persons as the directors in their discretion shall determine provided that such shares are issued for no less than the price per share as set out in the notice given to shareholders pursuant to Article 6.3(a).

- 6.4 (a) If the Net Profits for the financial year ended 31 December 2002 are less than £1,000,000, the holders of "B" Ordinary Shares and "C" Ordinary Shares shall be entitled to subscribe in cash at par for such number of additional "B" Ordinary Shares or "C" Ordinary Shares (as the case may be) which would result in the "B" Ordinary Shares or "C" Ordinary Shares held by them being held at the average price per share determined by reference to the table set out below:

Net Profit	Average price per "B" Ordinary Share/"C" Ordinary Share
£1,000,000 or above	£2.50
£500,000 or less	£1.60

- (b) If the relevant Net Profits fall between the figures set out in the above table the average price per share shall be determined by reference to a straight line extrapolation between the figures set out.
- (c) No later than 10 business days following the signing by the auditors of the audited accounts for the year ended 31 December 2002 (which the Company shall procure takes place within 4 months of such date) the Company shall notify each of the holders of "B" Ordinary Shares and "C" Ordinary Shares of the number of shares for which he is entitled to subscribe, and the subscription price thereof. No later than 15 business days following such notification by the Company, each of the holders of "B" Ordinary Shares and "C" Ordinary Shares shall subscribe for, and pay the subscription price in respect of, the shares to which he is entitled, failing which his entitlement shall lapse. On receipt of the subscription price the Company shall issue "B" Ordinary Shares or "C" Ordinary Shares (as the case may be) to the relevant holder in accordance with the provisions of Article 6.4(a).
- (d) The provisions of this Article 6.4 may be suspended by separate resolutions passed by the holders of more than 67% of the "B" Ordinary Shares and more than 50% of the "C" Ordinary Shares respectively.
- (e) Upon any consolidation or sub-division of the "B" Ordinary Shares and "C" Ordinary Shares the average subscription price referred to in Article 6.4(a) shall be adjusted accordingly.



- (f) The provisions of this Article 6.4 shall cease to have effect upon an Exit occurring on or prior to 31 December 2002 (in which case the provisions of Article 5.6(a) shall apply).

7. **VARIATION OF RIGHTS**

The rights attached to any existing Shares shall not (unless otherwise expressly provided by the terms of issue of such Shares) be deemed to be varied by the creation or issue of further Shares ranking *pari passu* with the existing Shares or in priority to them.

8. **SHARE CERTIFICATES**

In Regulation 6 in Table A there shall be inserted after the word "seal" the following words, namely: "or the official seal of the company if the company has a seal, or otherwise executed in such manner as may be permitted by the Act".

9. **LIEN**

The Company shall have a first and paramount lien on all the Shares registered in the name of any member (whether solely or jointly with others) for all moneys due to the Company from him or his estate, whether solely or jointly with any other person (whether a member or not) and whether such moneys are presently payable or not. The Company's lien on a Share shall extend to all dividends or other moneys payable thereon or in respect thereof. The directors may at any time resolve that any Share shall be exempt, wholly or partly, from the provisions of this Article.

10. **CALLS ON SHARES**

The directors may accept from any member the whole or any part of the amount remaining unpaid on any Share held by him notwithstanding that no part of that amount has been called up.

11. **TRANSFER OF SHARES**

- 11.1 No transfer of any Share may be registered without the approval of the directors. The directors may withhold such approval if (but only if) either the Share is not fully paid up or the Company has a lien thereon or the transfer has not been effected in accordance with these Articles but the directors shall approve a transfer permitted by these Articles.
- 11.2 Any member being a body corporate shall be entitled to transfer all or any of its Shares to any other body corporate which is for the time being its subsidiary or holding company or another subsidiary of its holding company (each such body corporate being hereinafter referred to as an "**Associate Company**") but if an Associate Company whilst it is a member of the Company shall cease to be an Associate Company in relation to the body corporate first holding the relevant Shares after the date of adoption of these Articles it shall within 21 days of so ceasing transfer the Shares held by it to such body or any

Associate Company of such body failing which the member shall be deemed to have given a Transfer Notice pursuant to Article 16.

11.3 A transfer of any shares may be made by:

- (a) any member (or a nominee of a member) who is
  - (i) a person whose principal business is to make, manage or advise upon investments (an "Investment Manager"); or
  - (ii) a fund, partnership, company, investment trust, syndicate or other entity whose principal business is to make investments and whose business is managed by an Investment Manager (an "Investment Fund"); or
  - (iii) a nominee of an Investment Manager of an Investment Fund; and
- (b) to
  - (i) where that member is an Investment Manager or a nominee of an Investment Manager under Article 11.3(a):
    - (aa) any participant or partner in or member of any Investment Fund in respect of which the shares to be transferred are held (but only in connection with the dissolution of such Investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course); or
    - (bb) any Investment Fund whose business is managed by the Investment Manager who is or whose nominee is the transferor; or
    - (cc) any other Investment Manager who manages the business of the Investment Fund in respect of which the shares are held; or
  - (ii) where that member is an Investment Fund or nominee of an Investment Fund under Article 11.3(a):
    - (aa) any participant or partner in or member of the Investment Fund which is or whose nominee is the transferor (but only in connection with the dissolution of such Investment Fund or any distribution of the assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course); or
    - (bb) any other Investment Fund whose business is managed by the same Investment Manager as manages the Investment Fund which is or whose nominee is the transferor; or

(cc) the Investment Manager who manages the business of the Investment Fund which is or whose nominee is the transferor (or, in any such case, a nominee thereof).

- 11.4 Subject as herein provided any member who is an individual (the "**Original Member**") may transfer all or any of his Shares to his or her spouse or adult children or adult stepchildren, parents or adult siblings or to the trustee or trustees of a family trust set up wholly for the benefit of one or more of the transferor his or her spouse children or stepchildren, brothers, sisters, nephews, nieces or parents and of which the said member is the settlor ("**Related Persons**") PROVIDED THAT a member acquiring Shares pursuant to this Article 11.4 shall not have the like right unless the transfer is to a person to whom the Original Member could have made a transfer pursuant to this Article 11.4.
- 11.5 Where Shares are held by or on behalf of an Investor as a nominee or on trust for one or more beneficial owners any transfer between that Investor and any other nominee or trustee or the beneficial owner for the time being who becomes an Investor.
- 11.6 Any Shares may be transferred:
- (a) pursuant to the acceptance of an Appropriate Offer;
  - (b) pursuant to Article 12;
  - (c) pursuant to Article 13;
  - (d) pursuant to Article 14;

## 12. **COMPULSORY TRANSFER OF SHARES**

- 12.1 A member or a person entitled by transmission or otherwise, who intends to transfer Shares shall give to the Company a Transfer Notice in writing of his intention specifying the Shares which he intends to transfer and the Transfer Price at which he is prepared to sell, or where appropriate, that he is prepared to sell at market value.
- 12.2 If on or before 31 July 2001 an Employee or director of any Group Company (other than the Founders) ceases for whatever reason to be such an Employee or director without remaining or becoming an Employee of any Group Company (as the case may be) (the "**Leaving Shareholder**"), such Employee or director (and any Related Person) shall be deemed to have given a Transfer Notice at the date of such cessation in respect of all the Shares then registered in his or their names.
- 12.3 If on or before 31 July 2001 any person (whether or not a member) ceases for whatever reason to be a director or Employee of the Company or any of its subsidiaries ("**Former Employee**") (other than the Founders) and at any time thereafter he or a Related Person becomes the holder of any shares in the Company by virtue of any rights or interests

acquired by him whilst he was such director or Employee, he shall thereupon be bound to give a Transfer Notice in respect of all such Shares in accordance with Article 16.

- 12.4 The Transfer Price for the shares of a Leaving Shareholder or Former Employee and any Related Person of either in accordance with Article 12.3 shall be the nominal value of the Shares.
- 12.5 If after 31 July 2001 but before the occurrence of an Exit an Employee or director of any Group Company (other than a Founder) ceases to be an Employee or director without remaining or becoming an Employee or director of a Group Company (as the case may be) and is a Bad Leaver, such Employee or director (and any Related Person) shall be deemed to have given a Transfer Notice at the date of such cessation in respect of all of the Deferred Shares registered in his or their names on the following basis:
- (a) if the cessation occurs after 31 July 2001 but on or before 31 July 2002, in respect of 50% of such Deferred Shares;
  - (b) if the cessation occurs after 31 July 2002 but on or before 31 July 2003, in respect of 25% of such Deferred Shares; and
  - (c) if the cessation occurs after 31 July 2003 in respect of none of such Deferred Shares.
- 12.6 The Transfer Price for the Deferred Shares of a Bad Leaver and any Related Person in accordance with Article 12.5 shall be the nominal value of the Deferred Shares.
- 12.7 (a) If a Founder ceases for whatever reason to be an employee or director of the Company without remaining or becoming an employee of the Company or any other subsidiary (as the case may be) (the **"Leaving Founder Shareholder"**) prior to 30 June 2002 and is a Bad Leaver, then such Founder (and any Related Person) shall be deemed to have given a Transfer Notice at the date of such cessation in respect of 50% of the Shares then registered in his or their names. In any such case as aforesaid the provisions of Article 16 shall take effect save that the Sale Price shall be as set out in Article 12.8.
- (b) If at any time a Founder ceases for whatever reason to be a director or employee of the Company or any of its subsidiaries (**"Former Founder Employee"**) prior to 30 June 2002 and is a Bad Leaver, and at any time thereafter he or a Related Person becomes the holder of any shares in the Company by virtue of any rights or interests acquired by him whilst he was such a Founder, he shall thereupon be bound to give a Transfer Notice in respect of 50% of the Shares in accordance with Article 12.7(a).

- 12.8 The Sale Price for the Shares to be transferred by a Leaving Founder Shareholder and Former Founder Employee and any Related Person of the same shall be the Fair Value of the Shares of the Leaving Founder Shareholder or Former Founder Employee.
- 12.9 In determining the Fair Value of the Ordinary Shares and/or "C" Ordinary Shares to be offered pursuant to Article 12.7 the Company may propose to the Leaving Founder Shareholder or Former Founder Employee a price which if accepted by the Leaving Founder Shareholder or Former Founder Employee shall be deemed to be the Fair Value. In the absence of agreement Fair Value shall be determined in accordance with Article 17.
- 12.10 The remaining Shares held by a Leaving Founder Shareholder or a Former Founder Employee (and a Related Person of either) shall be held subject to Article 20.3.
- 12.11 The provisions of this Article 12 shall not apply to a director of the Company, unless he is also an Employee.
- 12.12 The provisions of this Article 12 may be waived in whole or part by the Special Directors to permit a shareholder to retain all or part of his or her Shares on leaving the Company and to provide for the transfer of any Shares which become available by virtue of this Article 12 to be transferred to such person(s) as the Board (including the Special Directors) shall consider appropriate at the time.
13. **COME ALONG OPTION**
- 13.1 If at any time any Vendor or Vendors ("**Vendors**") holding in aggregate 70% of the "A" Ordinary, "B" Ordinary Shares, "C" Ordinary Shares, and Ordinary Shares of the Company wish to transfer Shares in the Company representing in aggregate not less than 70% of the issued "A" Ordinary, "B" Ordinary Shares, "C" Ordinary Shares, and Ordinary Shares of the Company (the "**70% Holding**") to any independent third party, (other than any person or persons connected with the Vendors) (the "**Third Party**"), then (subject to any consent required by Article 3.4) the Vendors shall procure (so far as they are able) that the Third Party makes the same offer to all the other shareholders (the "**Other Shareholders**") on the same terms as the offer made by it to the 70% Holding ("**Share Offer**") and the Third Party shall only be entitled to complete the purchase of the 70% Holding if they have made this Share Offer to the Other Shareholders.
- 13.2 The provisions of Articles 11 and 16 shall not apply to any acquisition of Shares pursuant to this Article 13.
- 13.3 The Vendors shall give notice to the Company and all the other Shareholders of the intention to transfer the 70% Holding and the price at which the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, and Ordinary Shares (respectively) comprising the 70% Holding are to be sold and may only complete the Share Offer and/or transfer such

Shares within seven days after giving such notice (that seven day period being called the "Share Offer Period").

- 13.4 The Vendors may only complete the Share Offer by giving notice to that effect (the "Share Offer Notice") to the Other Shareholders specifying that the Other Shareholders are required to transfer their Shares pursuant to Article 13 and the price at which the called Shares are to be transferred (the "Called Shares").
- 13.5 A Share Offer Notice, once given, is irrevocable but both the notice and all obligations under the notice will lapse if for any reason the Vendors do not transfer all of the Shares to the Third Party.
- 13.6 The Other Shareholders shall be obliged to sell the Called Shares which are "A" Ordinary, "B" Ordinary Shares, "C" Ordinary Shares, and Ordinary Shares for the same consideration per Share as is to be provided by the Third Party to the Vendors in respect of the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, and Ordinary Shares in the 70% Holding PROVIDED ALWAYS that in the event that the Vendors and the Third Party are acting in concert then the price per "A" Ordinary Share, "B" Ordinary Shares, "C" Ordinary Shares, and Ordinary Share shall not be less than fair value as determined by the Auditors (after taking into account that the whole of the share capital of the Company is to be sold (and for the avoidance of doubt without making a discount for a minority holding) and on the basis that the business of the Company is a going concern).
- 13.7 The Other Shareholders shall be obliged to sell the Called Shares which are Deferred Shares for the consideration per Deferred Share which is greater of:-
- (a) the same consideration per Deferred Share as is to be provided by the Third Party to the Vendors in respect of the Deferred Shares in the 70% Holding; and
  - (b) either the amount per Deferred Share to which having due regard to Article 5 they would be entitled in respect of an Exit constituted by the purchase of the 70% Holding or if the purchase of the 70% Holding does not constitute an Exit or if the Vendors or the Third Party are acting in concert then the price per Share shall not be less than the fair value as determined by the Auditors (after taking into account that the whole of the Share capital of the Company is to be sold (and for the avoidance of doubt without making a discount for a minority holding) and on the basis that the business of the Company is a going concern).
- 13.8 Upon completion of the Share Offer in accordance with this Article 13, each of the Other Shareholders shall be bound to sell their Called Shares for the price determined in accordance with this Article 13.
- 13.9 Completion of the sale of the Called Shares shall take place on the date specified for that purpose by the Vendors to the Other Shareholders except that:

- (a) the Vendors may not specify a date which is less than 28 days after the date of the Share Offer Notice; and
- (b) the date so specified by the Vendors shall be the same date as the date proposed for completion of the sale of the 70% Holding, unless all of the Other Shareholders and the Vendors agree otherwise.

14. REORGANISATION COME ALONG OPTION

14.1 If at any time the Vendors agree to transfer not less than 70% of the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares of the Company to a newly formed non-trading company created expressly for that purpose ("**NewCo**") in exchange for ordinary shares in NewCo ("**NewCo Ordinary Shares**") either as part of a reorganisation of the Company's Group or as a condition precedent to a Listing then subject to any consent required by Article 3.4:

- (a) provided that such Vendors are transferring all their Shares to NewCo the Vendors shall also have the option (the "**Reorganisation Come Along Option**") to require the holders of the balance of the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, Ordinary Shares and the Deferred Shares to exchange their "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, Ordinary Shares or Deferred Shares (as appropriate) for deferred shares in NewCo ("**NewCo Deferred Shares**") or NewCo Ordinary Shares on the terms of this Article 14; and
- (b) the provision of Articles 11 and 16 shall not apply to the acquisition of Shares pursuant to Article 14.

14.2 The Vendors shall give notice to the Company and all the Other Shareholders of the intention to transfer the 70% Holding and the number of NewCo Ordinary Shares in exchange for which the Shares comprising the 70% Holding are to be transferred and may only exercise the Reorganisation Come Along Option and/or transfer such shares within seven days after giving such notice (that seven day period being called the "**Reorganisation Come Along Option Period**").

14.3 The Vendors may only exercise the Reorganisation Come Along Option by giving notice to that effect (the "**Reorganisation Come Along Notice**") to the Other Shareholders specifying that the Shareholders are required to transfer their Shares (the "**Reorganisation Called Shares**") pursuant to Article 14 and the number of NewCo Ordinary Shares or NewCo Deferred Shares to be issued to the Other Shareholders in exchange for the Reorganisation Called Shares.

14.4 A Reorganisation Come Along Notice is, once given, irrevocable but both the notice and all obligations under the Notice will lapse if for any reason the Vendors do not transfer all of their Shares to NewCo.

- 14.5 The Other Shareholders shall be obliged to exchange their "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares for the same number of NewCo Ordinary Shares as are to be issued to the Vendors in respect of each "A" Ordinary Share, "B" Ordinary Share, "C" Ordinary Share and Ordinary Share comprised in the 70% Holding.
- 14.6 The Other Shareholders shall be obliged to exchange the Reorganisation Called Shares which are Deferred Shares for the number of NewCo Shares per Share which is either:
- (a) if the transfer of shares by the Vendors is in connection with a reorganisation of the Company's Group, and if the Vendors receive one NewCo ordinary share for each of the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares in the 70% Holding, one NewCo Deferred Share (having identical rights to the Deferred Shares) for each Deferred Share;
  - (b) if the transfer of Shares by the Vendors is a condition precedent to Listing, the number of NewCo Ordinary Shares which bears the same proportion to the number of NewCo Ordinary Shares for which each of the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares in the 70% Holding is transferred, as the Deferred Shares' rights to dividend will bear to the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares' rights to dividend immediately following the Listing having due regard to Article 5; or
  - (c) if such Listing does not constitute an Exit where the Proceeds are £25,000,000 or more but less than £50,000,000, the number of NewCo Ordinary Shares which is determined by the Auditors to be fair (after taking into account that the whole of the share capital of the Company is to be exchanged for NewCo Ordinary Shares and for the avoidance of doubt without making a discount for minority holding).
- 14.7 Upon the exercise of the Reorganisation Come Along Option in accordance with this Article 14 each of the Other Shareholders shall be bound to exchange their Reorganisation Called Shares upon the issue to them of the NewCo Ordinary Shares or NewCo Deferred Share determined in accordance with this Article 14.
- 14.8 Completion of the exchange of the Reorganisation Called Shares will take place on the day specified for that purpose by the Vendors to the Reorganisation Called Shareholders except that:-
- (a) the Vendors may not specify a date which is less than 28 days after the date of the Reorganisation Come Along Notice; and
  - (b) the date so specified by the Vendors shall be the same date as the date proposed for the completion of the exchange of the 70% Holding, unless all of the Other Shareholders and the Vendors agree otherwise.



15. TAG ALONG

- 15.1 If the effect of any transfer of shares by a Vendor (other than a permitted transfer pursuant to Article 11) would, if completed, be to enable any person or persons connected with each other or persons acting in concert with each other to obtain Control over or increase Control beyond that number of Shares in the Company which in aggregate confer 30% or more of the voting rights normally exercisable at general meetings of the Company, the Vendor shall procure the making by the proposed transferee of the Vendor's Shares of an Appropriate Offer to all of the other members of the Company (other than any person or persons connected with each other or acting in concert with each other who shall as a consequence of the proposed transfer obtain or, where relevant, increase such Control). Every shareholder on receipt of an Appropriate Offer shall be bound within 21 days of the date of such offer (which date shall be specified therein) either to accept or reject such offer in writing (and in default of so doing shall be deemed to have rejected the offer). Until such Appropriate Offer has been made and completed the Board shall not sanction the making and registration of the relevant transfer.
- 15.2 The provisions of Articles 11 and 16 shall not apply to any transfer of Shares pursuant to this Article.
- 15.3 For the purposes of these Articles "**Control**" means the right by virtue of holding Shares in, or the possession of voting power in or in relation to, the Company or any other body corporate to exercise or procure the exercise of the voting rights attached to the relevant Shares.
- 15.4 "**Appropriate Offer**" in relation to "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares means an unconditional offer, open for acceptance for not less than 21 days, to purchase the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares held by the recipient of an Appropriate Offer for a consideration in cash or with a cash alternative equal to the higher of:
- (a) fair value for the "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares taken as one class determined by the Auditors pursuant to Article 15 below apportioned between each class in accordance with the percentage of the equity share capital attributable to each class; or
  - (b) par; or
  - (c) the highest price per Share (exclusive of stamp duty, stamp duty reserve tax and commission) paid or to be paid by any person or persons referred to in Article 15.1 for the Shares in the Company (inclusive of the Shares giving rise to the obligation to make the Appropriate Offer) within the period of one year prior to and on the proposed date of completion of such transfer of Shares plus such further amount

equal to any other consideration (in cash or otherwise) received or receivable by the holders of such Shares which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for such shares.

15.5 **"Appropriate Offer"** in relation to Deferred Shares means an unconditional offer, open for acceptance for not less than 21 days, to purchase the Deferred Shares held by the recipient of an Appropriate Offer for a consideration in cash or with a cash alternative equal to the higher of:

- (a) either the amount per Deferred Share which having due regard to Article 5 they would be entitled to in respect of an Exit constituted by the purchase of the 30% Holding or if the purchase of the 30% Holding does not constitute an Exit the fair value of the Deferred Shares determined by the Auditors pursuant to Article 17;
- (b) par; or
- (c) the highest price per share (exclusive of stamp duty, stamp duty reserve tax and commission) paid or to be paid by any person or persons referred to in Article 15.1 for the Deferred Shares in the Company (inclusive of the shares giving rise to the obligation to make the Appropriate Offer) within the period of one year prior to and on the proposed date of completion of such transfer of Shares plus such further amount equal to any other consideration (in cash or otherwise) received or receivable by the holders of such Shares which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for such Shares.

15.6 In the event of disagreement the calculation of the relevant Appropriate Offer price shall be referred to an umpire (acting as expert and not as arbitrator) nominated by the parties concerned (or in the event of disagreement as to nomination appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales) whose decision shall be final and binding in the absence of manifest error.

## 16. OTHER TRANSFER

16.1 Any holder of Shares wishing to transfer shares (a **"Vendor"**) otherwise than in accordance with Article 11 shall give a transfer notice to the Company (a **"Transfer Notice"**) stating:

- (a) the number of Shares which he wishes to transfer;
- (b) the name of any third party to whom he proposes to sell or transfer the Shares;
- (c) the price at which he wishes to transfer the Shares (which shall be deemed to be fair value as determined by the Auditors pursuant to Article 17 if no price is specified) (the **"Transfer Price"**); and

- (d) whether or not the Transfer Notice is conditional upon all and not part only of the Shares so specified being sold pursuant to the offer hereinafter mentioned and in the absence of such stipulation it shall be deemed not to be so conditional.
- 16.2 Subject to any other provision contained in these Articles where any Transfer Notice is deemed to have been given in accordance with these Articles the deemed Transfer Notice shall be treated as having specified:
- (a) that all the Shares registered in the name of the Vendor shall be included for transfer;
  - (b) that the price for the Shares shall be as agreed between the Board and the Vendor or failing agreement shall be fair value as determined by the Auditors pursuant to Article 17 and such price as agreed or determined shall be the Transfer Price for the purposes of these Articles; and
  - (c) that no condition referred to in Article 16.1(d) shall apply.
- 16.3 Where any Transfer Notice including Deferred Shares is or is deemed to be given in accordance with these Articles and such Transfer Notice is or is deemed to be given before an Exit has occurred the Transfer Notice shall be treated as having specified that the Transfer Price shall be the nominal value of the Deferred Shares.
- 16.4 A Transfer Notice shall constitute the Company the agent of the Vendor for the sale of the Shares specified therein (the "**Sale Shares**") at the Transfer Price.
- 16.5 No Transfer Notice once given or deemed to be given in accordance with this Article 16 shall be withdrawn unless the Transfer Notice (being other than a deemed Transfer Notice) is withdrawn within seven days of the date of the Auditor's certificate referred to in Article 17.
- 16.6 The Company shall, subject to Article 12.12, as soon as practicable following receipt of a Transfer Notice or, where later, upon the determination of the Transfer Price or, where later, but only in the case of a deemed transfer pursuant to Articles 12 or Article 12.8, upon the reason for the director or Employee becoming a Leaving Shareholder, Leaving Founder Shareholder, Former Employee or Former Founder Employee or Bad Leaver as appropriate having been agreed or finally determined, give notice in writing to each of the members of the Company informing them that the Sale Shares are available and of the Transfer Price and shall invite each member to state in writing within 42 days from the date of the said notice (which date shall be specified therein) whether he is willing to purchase any and, if so, how many of the Sale Shares. Sale Shares of any class shall be offered in the following priorities:
- (a) before an Exit:

- (i) where the Sale Shares are Deferred Shares, first to the holders of Deferred Shares and secondly to the holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares, as if the four classes of Shares constituted one class;
  - (ii) where the Sale Shares are "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares or Ordinary Shares first to the holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares as if the four classes of Shares constituted one class and secondly to the holders of Deferred Shares;
- (b) if an Exit shall occur whereby the proceeds are £25,000,000 or more but less than £50,000,000 to holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares, Ordinary Shares and Deferred Shares treated together as one class but so that the entitlement of the holders of Deferred Shares in respect of each Deferred Share held is one-quarter that of the holders of "A" Ordinary, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares in respect of each "A" Ordinary Share, "B" Ordinary Share, "C" Ordinary Share and Ordinary Share held and secondly to the holders of Deferred Shares;
  - (c) if an Exit shall occur whereby the proceeds are £50,000,000 or more but less than £75,000,000 to holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares and Deferred Shares treated together as one class but so that the entitlement of the holders of Deferred Shares in respect of each Deferred Share held is three-quarters that of the holders of "A" Ordinary, "B" Ordinary, "C" Ordinary and Ordinary Shares in respect of each "A" Ordinary Share and Ordinary Share held and secondly to the holders of Deferred Shares;
  - (d) if an Exit shall occur whereby the proceeds are £75,000,000 or more, to the holders of "A" Ordinary Shares, "B" Ordinary Shares, "C" Ordinary Shares and Ordinary Shares and Deferred Shares together as one class.

16.7 Where a Transfer Notice is deemed to have been given in accordance with Article 12 the Company shall (subject to complying with the Act) be entitled to purchase all or part of the Deferred Shares included in that Transfer Notice at the Sale Price in priority to any member.

16.8 Subject to the provision of Article 12.12, the Sale Shares shall be offered to each class of shareholder on terms that in the event of competition the Sale Shares offered shall be sold to the members accepting the offer in proportion (as nearly as may be) to their existing holdings of shares of the class to which the offer is made (the "**Proportionate Entitlement**"). It shall be open to each such member to specify if he is willing to purchase shares in excess of his proportionate entitlement ("**Excess Shares**") and if the member does so specify he shall state the number of Excess Shares.

16.9 After the expiry of the offers to be made pursuant to Article 16.6 above or sooner if all the Sale Shares offered shall have been accepted in the manner provided in Article 16.6 above, the Board shall, within seven days thereafter, allocate the Sale Shares in the following manner:

- (a) if the total number of Shares applied for is equal to or less than the available number of Sales Shares the Company shall allocate the number applied for in accordance with the applications; or
- (b) if the total number of Shares applied for is more than the available number of Sale Shares, each member shall be allocated his Proportionate Entitlement or such lesser number of Sale Shares for which he may have applied and applications for Excess Shares shall be allocated in accordance with such applications or, in the event of competition, (as nearly as may be) to each member applying for Excess Shares in the proportion which Shares of the relevant class held by such member bears to the total number of Shares of that class held by all such members applying for Excess Shares on the basis set out in Article 16.6 PROVIDED THAT such member shall not be allocated more Excess Shares than he shall have stated himself willing to take,

and in either case the Company shall forthwith give notice of each such allocation (an "Allocation Notice") to the Vendor and each of the persons including the Company in the case of Article 16.7 to whom Sale Shares have been allocated (a "Member Applicant") and shall specify in the Allocation Notice the place and time (being not later than 14 days after the date of the Allocation Notice) at which the sale of the Sale Shares shall be completed.

16.10 Subject to Article 16.11 below, upon such allocations being made as aforesaid, the Vendor shall be bound, on payment of the Transfer Price, to transfer the Sale Shares comprised in the Allocation Notice to the Member Applicants named therein at the time and place therein specified. If he makes default in so doing the Chairman for the time being of the Company or failing him one of the directors or some other person duly nominated by a resolution of the Board for that purpose, shall forthwith be deemed to be the duly appointed attorney of the Vendor with full power to execute complete and deliver in the name and on behalf of the Vendor a transfer of the relevant Sale Shares to the Member Applicant and any Director may receive and give a good discharge for the purchase money on behalf of the Vendor and (subject to the transfer being duly stamped) enter the name of the Member Applicant in the register of members as the holder or holders by transfer of the Shares so purchased by him or them. The Board shall forthwith pay the purchase money into a separate bank account in the Company's name and shall hold such money on trust (but without interest) for the Vendor until he shall deliver up his certificate or certificates for the relevant Shares to the Company when he shall thereupon be paid the purchase money.

- 16.11 Subject to the provisions of Article 12.8, if the Vendor shall have included in the Transfer Notice a provision that unless all the Sale Shares are sold none shall be sold and if the total number of Shares applied for by Member Applicants is less than the number of Sale Shares then the Allocation Notice shall refer to such provision and shall contain a further invitation open for 28 days to those persons to whom Sale Shares have been allocated to apply for further Sale Shares and completion of the sales in accordance with the preceding paragraphs of this Article shall be conditional upon such provision as aforesaid being complied with in full.
- 16.12 In the event of all the Sale Shares not being sold under the preceding paragraphs of this Article the Vendor may at any time within three calendar months after receiving confirmation from the Company that the pre-emption provisions herein contained have been exhausted transfer any Sale Shares not sold to any person or persons at any price not less than the Transfer Price PROVIDED THAT:
- (a) the Board shall be entitled to refuse registration of the proposed transferee in their absolute discretion;
  - (b) if the Vendor stipulated in the Transfer Notice that unless all the Sale Shares were sold none should be sold, the Vendor shall not be entitled, save with the written consent of all the other members of the Company, to sell hereunder only some of the Sale Shares comprised in the Transfer Notice to such person or persons; and
  - (c) any such sale shall be a bona fide sale and the Board may require to be satisfied in such manner as it may reasonably require that the Sale Shares are being sold in pursuance of a bona fide sale for not less than the Transfer Price without any deduction, rebate or allowance whatsoever to the purchaser and if not so satisfied may refuse to register the instrument of transfer.

## **17. TRANSFER OF SHARES VALUATION**

- 17.1 If the Auditors are required to determine the price at which Shares are to be transferred pursuant to these Articles such price shall be the amount the Auditors shall on the application of the Board (which application shall be made as soon as practicable following the time it becomes apparent that a valuation pursuant to this Article 17 is required) certify in writing to be the price which in their opinion represents a fair value for such Shares ("Fair Value") as between a willing vendor and a willing purchaser as at the date the Transfer Notice or deemed Transfer Notice is given and, in making such determination the Auditors shall not take any account of whether the Sale Shares comprise a majority or a minority interest in the Company nor the fact that transferability is restricted by these Articles (and shall assume that the entire issued share capital of the Company is being sold).

17.2 In so certifying, the Auditors shall act as experts and not as arbitrators and their decision shall be final and binding on the parties.

17.3 The costs of the Auditors shall be borne by the Company unless in the case of a determination required pursuant to the provisions of Article 16.2(b) the amount determined by the Auditors is less than that suggested by the Board in which event the costs of the Auditors shall be borne by the Vendor.

18. TRANSMISSION OF SHARES

18.1 There shall be inserted at the end of Regulation 31 in Table A the following proviso, namely: "provided always that the directors may at any time give notice requiring any such person to elect either to become or to have another person registered as the holder of the share and if the requirements of the notice are not complied with within 90 days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

19. PROCEEDINGS AT GENERAL MEETINGS

19.1 In paragraph (b) of Regulation 38 in Table A there shall be inserted after the words giving that right", the following words, namely: "(or such lesser percentage as may be permitted by the Act and agreed by the members)".

19.2 In Regulation 41 in Table A there shall be inserted after the words "the directors may determine "the following words, namely: "and if at the adjourned meeting such a quorum is not present within half an hour from the time appointed for the meeting, one member present in person or by proxy or (being a corporation) by its duly authorised representative shall be a quorum".

19.3 A poll may be demanded by any member present in person or by proxy or (being a corporation) by its duly authorised representative. Regulation 46 in Table A shall be construed accordingly.

19.4 A resolution in writing of all the members who would have been entitled to vote upon it if it had been proposed at a general meeting at which they were present shall be as effectual as if it had been passed at a general meeting duly convened and held either:

19.5 if it consists of an instrument executed by or on behalf of each such member; or

19.6 if it consists of several instruments in the like form each either:

(a) executed by or on behalf of one or more of such members; or

(b) sent by or on behalf of one or more of such members by and deposited or received at the office or received by the secretary.

20. **VOTES OF MEMBERS**

- 20.1 Each "A" Ordinary Share, "B" Ordinary Share, "C" Ordinary Share and Ordinary Share shall confer on each holder thereof (in that capacity) the right to receive notice of and to attend speak and vote at all general meetings of the Company and on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by its duly authorised representative not being himself a member entitled to vote, shall have one vote, and on a poll every member who is present in person or by proxy or (being a corporation) is present by its duly authorised representative shall have one vote for every "A" Ordinary Share, "B" Ordinary Share, "C" Ordinary Share or Ordinary Share of which he is the holder.
- 20.2 Save as provided for in Article 5 no Deferred Share nor "C" Ordinary Share nor Ordinary Share of a member who has ceased to be an Employee or director of any Group Company (or a Related Person of such member) other than the Founders shall confer the right to vote at any general meetings of the Company, but where, pursuant to the operation of Article 5 any Deferred Share has any right to vote the holder of that Deferred Share shall (in that capacity) have the right to receive notice of and to attend and speak at all general meetings of the Company.
- 20.3 Where a Founder has been deemed to have served a Transfer Notice in accordance with the provisions of Article 12.7, then the remaining "C" Ordinary Shares and Ordinary Shares held by him shall not confer the right to vote at any general meetings of the Company but that Founder shall be entitled to receive notice of and to attend and speak at all general meetings of the Company.
- 20.4 The instrument appointing a proxy shall be in writing in any usual or common form and shall (except in the case of an appointment by fax of an appointment otherwise complying with the requirements of this Article) be executed by the appointor or his attorney duly authorised in writing or in such other form as the directors may approve. A proxy need not be a member of the company.
- 20.5 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is executed, or a notarially certified copy of such power or authority, shall be deposited or received at the office (or at such other place in the United Kingdom as is specified for that purpose in any instrument of proxy sent by the company in relation to the meeting) not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or handed to the chairman of the meeting or adjourned meeting, and, in default, the instrument of proxy shall be invalid.

21. **ALTERNATE DIRECTORS**

- 21.1 A director may by written notice signed by him (except in the case of an appointment by fax of an appointment otherwise complying with the requirements of this Article) and



deposited or received at the office or received by the secretary or in such other manner as the directors may approve appoint another director or any other person to be and act as his alternate director.

21.2 Every alternate director shall (subject to his giving to the company an address within the European Union at which notices may be given to him) be entitled to notice of meetings of the directors or of committees of directors, and to attend and vote as a director at any such meeting at which the director appointing him is entitled to attend and vote but is not personally present and generally at such meeting to exercise all the powers, rights, duties and authorities of the director appointing him. Every alternate director shall also be entitled to sign or, in the case of fax, send on behalf of the director appointing him a resolution in writing of the directors pursuant to Article 29.

21.3 An alternate director shall neither be an officer of the Company nor entitled to any remuneration from the Company for acting as an alternate director.

21.4 A director may by written notice signed by him or sent by him by fax and deposited or received at the office or received by the secretary or in such other manner as the directors may approve at any time revoke the appointment of an alternate director appointed by him.

21.5 If a director shall cease to hold the office of director for any reason, the appointment of his alternate director shall thereupon automatically cease.

## **22. DELEGATION OF DIRECTORS' POWERS**

22.1 The following words shall be added at the end of the first sentence of Regulation 72 in Table A, namely: "and may also appoint to any such committee persons who are not directors provided that the chairman and a majority of such committee shall be directors".

## **23. RETIREMENT, APPOINTMENT AND REMOVAL OF DIRECTORS**

23.1 Subject to Article 3.4, any appointment or removal of a director (other than an Investor Director) shall be effected by an instrument which shall be in writing and shall (except in the case of an appointment or removal by a fax copy of an appointment or removal otherwise complying with the requirements of this Article) be executed by the member or members making the same or by their duly authorised attorneys or in such other manner as the directors may approve, and shall take effect upon such appointment or removal being deposited or received at the office or otherwise communicated to the Company at the office or being handed or otherwise communicated to the chairman of a meeting of the directors at which a quorum is present.

23.2 Without prejudice to Article 23.1 the Company may by ordinary resolution (subject to Article 3.4) appoint any person to be a director either to fill a vacancy or as an additional director.

24. **DISQUALIFICATION AND REMOVAL OF DIRECTORS**

- 24.1 In Regulation 81 in Table A there shall be inserted after the word "company" in paragraph (d) the following words, namely: ", provided that such action shall be without prejudice to the terms of and to any rights of the company under any contract between the director and the company"; and paragraph (e) shall be deleted.

25. **SPECIAL DIRECTOR**

- 25.1 Each of Bracken, Close Brothers, Close VCT Management and Bamboo, for so long as it holds "A" Ordinary Shares or "B" Ordinary Shares shall be entitled by notice in writing addressed to the Company from time to time each appoint as a director of the Company any one person (the "**Special Director**") and may remove from office any person so appointed and to appoint another person in his place by such written notice.
- 25.2 Any Special Director appointed pursuant to Article 25.1 above, shall be entitled to all notice and voting rights and in all other respects be treated as the other directors of the Company, save that the remuneration of the Special Director shall be at a such fee as is agreed between the persons appointing him and the directors.
- 25.3 On any resolution pursuant to section 303 of the Act for the removal of a Special Director the "A" Ordinary Shareholders and "B" Ordinary Shareholders present at such meeting shall together have twice as many votes as all other Shareholders voting on such resolution.
- 25.4 If so required by his appointor, a Special Director shall be appointed a director of any or all of the subsidiaries of the Company and the provisions of these Articles relating to the conduct of the business of the Company and the holding of meetings of the board of directors of the Company shall be deemed to apply mutatis mutandis to such subsidiaries to which a Special Director is appointed and the Company shall procure such appointment and observance of this Article 25.4.
- 25.5 Any Special Director shall be entitled to report back to his appointors upon the affairs of the Company and its subsidiaries and to disclose such information as he shall reasonably consider appropriate to them.
- 25.6 Any holder of "A" Ordinary Shares and "B" Ordinary Shares who is entitled to appoint a Special Director but has not exercised such right shall be entitled from time to time to appoint any person (an "**Observer**") to attend meetings of the board of directors of the Company, including committees thereof and meetings of the board of directors of subsidiaries of the Company and committees of such boards. An Observer shall be given (at the same time as the directors) notice of all such meetings of the directors and all agendas, minutes and other papers relating to such meetings. Observers shall be entitled to speak at such meetings and to require that business be upon the agenda for any such meeting but shall not in any circumstances be entitled to vote. The Company shall

reimburse all expenses of the Observer properly incurred in performance of his functions whether such functions are performed in respect of the Company or one of its subsidiaries.

**26. DIRECTORS' APPOINTMENTS AND INTERESTS**

26.1 In Regulation 84 in Table A there shall be substituted for the words "shall not be subject to retirement by rotation" the following words, namely: "shall be subject to the same provisions as to resignation and removal as other directors of the company."

**27. DIRECTORS' AND EMPLOYEES' GRATUITIES AND PENSIONS**

27.1 The directors may:

- (a) establish and maintain, or procure the establishment and maintenance of, any share option or share incentive or profit sharing schemes or trusts or any non-contributory or contributory pension or superannuation schemes or funds for the benefit of, and may make or give or procure the making or giving of loans, donations, gratuities, pensions, allowances or emoluments (whether in money or money's-worth) to, or to trustees on behalf of, any persons who are or were at any time in the employment or service of the Company, or of any company which is a subsidiary of the Company, or is allied to or associated with the Company or with any such subsidiary, or who are or were at any time directors or officers of the Company or of any such other Company as aforesaid, and to the wives, husbands, widows, widowers, families and dependants of any such persons;
- (b) establish and subsidise or subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of, or to advance the interests and well-being of the Company, or of any such other Company as aforesaid, or of any such persons as aforesaid;
- (c) make payments for or towards policies of assurance on the lives of any such persons and policies of insurance for the benefit of or in respect of any such persons (including insurance against their negligence or breach of duty to the company) as aforesaid;
- (d) pay, subscribe or guarantee money to or for any charitable or benevolent objects, or for any exhibition, or for any political, public, general or useful object; and
- (e) do any of the above things either alone or in conjunction with any such other company as aforesaid.

Subject always, if the Act shall so require, to particulars with respect to the proposed payment being disclosed to the members of the company and to the payment being approved by the company, any director shall be entitled

to participate in and retain for his own benefit any such loan, donation, gratuity, pension, allowance or emolument.

**28. PROCEEDINGS OF DIRECTORS**

28.1 In Regulation 88 in Table A there shall be substituted for the third sentence the following sentences, namely: "Every director shall be given not less than 48 hours notice of every meeting of the directors, such notice to be sent to such address as is notified by him to the company for this purpose or otherwise communicated to him personally. Any director may by notice to the company either before or after the meeting waive his right to receive notice of the meeting and any director who either:

- (a) is present at the commencement of a meeting whether personally or by his alternate director; or
- (b) does not, within seven days following its coming to his attention that a meeting has taken place without prior notice of such meeting having been given to him pursuant to this Regulation, notify the Company that he desires the proceedings at such meeting to be regarded as a nullity,
- (c) shall be deemed hereafter to have waived his right to receive notice of such meeting pursuant to this Regulation.

28.2 The following sentence shall be substituted for the final sentence of Regulation 89 in Table A, namely: "For the purpose of determining whether a quorum exists for the transaction of the business of the board of directors in the case of a resolution of directors, who would (if attending a meeting) comprise a quorum, who are in telephonic communication with one another, any such resolution shall be as valid and effectual as if passed at a meeting of the board of directors duly convened and held;

28.3 in the case of a meeting of the board of directors, in addition to the directors present at the meeting, any director in telephonic communication with such meeting shall be counted in the quorum and entitled to vote; and

28.4 any person attending a meeting of the board, or in telephonic communication with such a meeting, who is acting as an alternate director for one or more directors shall be counted as one for each of the directors for whom he is so acting and, if he is a director, shall also be counted as a director, but not less than two individuals, whether both present at the meeting or in telephonic communication with each other, can be a quorum".

**29. WRITTEN RESOLUTION**

29.1 A resolution in writing of all the directors or all the members of a committee of directors shall be as 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 either:

(a) if it consists of an instrument executed by or on behalf of each such director or committee member: or if it consists of several instruments in the like form each either:

(i) executed by or on behalf of one or more of such directors or committee members; or

(ii) sent by or on behalf of one or more of such directors or committee members by fax and deposited or received at the office or received by the secretary.

### 30. DIRECTORS' INTERESTS

30.1 Subject to any requisite declaration of interest in accordance with the provisions of the Act and (if applicable) Regulation 85 in Table A having been made by him a director may vote as a director in regard to any transaction or arrangement in which he is interested, or upon any matter arising therefrom and Regulation 94 in Table A shall be construed subject to this provision.

### 31. TERMS OF APPOINTMENT

31.1 In Regulation 97 in Table A:

(a) there shall be inserted after the words "the appointment the following words, namely: "or the terms of appointment"; and

(b) the following words shall be deleted, namely: "and be counted in the quorum" and there shall be inserted after the words "his own appointment the following words, namely: "and shall be counted in the quorum in respect of each resolution including that concerning his own appointment, and Regulation 95 shall be construed subject to this provision".

### 32. BORROWING POWERS

32.1 The Directors may exercise all the powers of the Company to borrow and raise money and to mortgage and charge all or any part of the undertaking, property and uncalled capital of the Company and, subject to the provisions of the Act, to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

### 33. MINUTES

33.1 The directors shall cause minutes to be made in books kept for the purpose:

(a) of all appointments of officers and alternate directors made by the directors; and

(b) of all proceedings at meetings of the Company, of the holders of any class of shares in the Company, of the directors, and of committees of directors, including the names of the persons present at each such meeting.

**34. THE SEAL**

- 34.1 In Regulation 101 of Table A, there shall be substituted for the first sentence the following sentence, namely: "The Company need not have a seal but if the Company does have a seal, the seal shall only be used by the authority of the directors or of a committee of directors authorised by the directors".
- 34.2 The Company is authorised pursuant to section 39 of the Act for so long as its objects require or comprise the transaction of business in foreign countries to have an official seal for use in any territory, district, or place elsewhere than in the United Kingdom.

**35. NOTICES**

- 35.1 In Regulation 112 of Table A, the final sentence shall be deleted and the following words shall be inserted at the end of the first sentence, namely: "or by sending it by fax transmission to such fax number as the member shall have given to the company for the purpose".
- 35.2 In Regulation 115 of Table A, there shall be inserted:
- (a) after the words: "prepaid and posted, the following words, namely: "or that a notice was properly sent by fax transmission"; and
  - (b) after the words: "it was posted", the following words, namely: "or after the time at which it was sent by fax".

**36. INDEMNITY**

- 36.1 Subject to the provisions of the Act, every director, other officer or auditor of the Company or person acting as an alternate director shall be entitled to be indemnified out of the assets of the Company against all costs, charges, expenses, losses or liabilities which he may sustain or incur in or about the execution of his duties to the Company or otherwise in relation thereto.