

Company No. 3560828

## THE COMPANIES ACTS 1985 AND 1989

## COMPANY LIMITED BY SHARES

## WRITTEN RESOLUTION

of

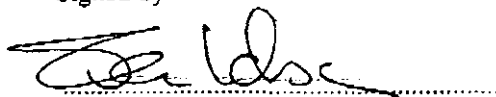
THE HOTEL AND CATERING TRAINING COMPANY LIMITED  
(the "Company")

PASSED on 28/02/2002

Resolution in writing of all the members of the Company for the time being entitled to attend and vote at a general meeting of the Company, passed pursuant to section 381A of the Companies Act 1985 (as amended)

**IT IS HEREBY RESOLVED THAT** the regulations contained in the printed document attached to this resolution be and they are hereby approved and adopted as the Articles of Association of the Company in substitution for and to the entire exclusion of the present Articles of Association which shall no longer apply.

Signed by

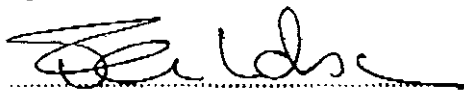


Ken Lindsay

duly authorised for and

on behalf of ECI 6 (in its capacity as a holder of Preference Shares and "B" Ordinary Shares)

Signed by



Ken Lindsay

duly authorised for and

on behalf of ECI 6 "B" (in its capacity as a holder of Preference Shares and "B" Ordinary Shares)

Signed by

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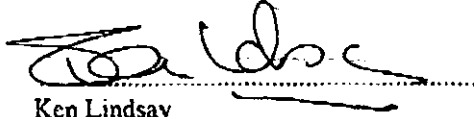
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14/03/02



Ken Lindsay  
duly authorised for and  
on behalf of ECI 6 "C" (in its capacity as a holder of Preference Shares and "B" Ordinary  
Shares)

Signed by



Ken Lindsay  
duly authorised for and  
on behalf of ECI Ventures Nominees Limited (in its capacity as a holder of Preference Shares  
and "B" Ordinary Shares)

Signed by

.....  
[Name]  
duly authorised for and  
on behalf of A.M. Davies Family Settlement

Signed by

.....  
[Name]  
duly authorised for and  
on behalf of Hawerby Limited

.....  
[Name]

duly authorised for and  
on behalf of ECI 6 "C" (in its capacity as a holder of Preference Shares and "B" Ordinary  
Shares)

Signed by

.....  
[Name]

duly authorised for and  
on behalf of ECI Ventures Nominees Limited (in its capacity as a holder of Preference Shares  
and "B" Ordinary Shares)

Signed by

  
.....  
[Name]

duly authorised for and  
on behalf of A.M. Davies Family Settlement

Signed by

  
.....  
[Name]

duly authorised for and  
on behalf of Hawerby Limited

**THE COMPANIES ACT 1985**

**COMPANY LIMITED BY SHARES**

**NEW ARTICLES OF ASSOCIATION**

of

**THE HOTEL AND CATERING TRAINING COMPANY LIMITED**

**(adopted by Written Resolution on 28 February 2002)**

**PRELIMINARY**

1 In these articles:-

- 1.1 "Asset Sale" means the disposal (whether by way of a single transaction or a series of transactions) by the Group of assets (whether together with associated liabilities or otherwise and as part of an undertaking or otherwise) which represent 50 per cent. or more (by book value) of the consolidated gross tangible assets of the Group at that time.
- 1.2 "the Act" means the Companies Act 1985 and every statutory modification or re-enactment thereof for the time being in force.
- 1.3 "Change of Control" means the acquisition (whether by purchase, transfer, renunciation or otherwise but excluding a transfer of shares made in accordance with Articles 7 and 8) by any person not an original party to the Investment Agreement, ("a Third Party Purchaser") of any interest in any shares if, upon completion of that acquisition the Third Party Purchaser, together with persons acting in concert or connected with him, would hold more than 50 per cent. of any class of the Equity Shares.

1.4 "Exit Event" means the earlier to occur of:

- (a) the date and time at which an agreement referred to in the definition of "Sale" is completed;
- (b) the date and time at which a Listing takes place; and
- (c) the appointment of a receiver, manager or administrative receiver over all or any part of the assets of the Company or the appointment of a liquidator or administrator over the Company.

1.5 "Further Redemption Sum" means an amount in cash, payable out of the proceeds of an Exit Event (or in the case of an Exit Event falling within Article 1.4 (c) payable out of the resources which are then available to the Company), which is calculated on a monthly basis at 8 pence per annum on each Preference Share during the Prescribed Period and after deducting an amount equal to any dividend previously paid on the Preference Shares pursuant to Article 3.1.2 Provided that if an Exit Event occurs on or following any date fixed in Article 3.3.1.1 for any redemption of Preference Shares:

- (a) the number of Preference Shares held by ECI6 on the occurrence of an Exit Event shall be deemed to be 2, 211, 966;
- (b) the number of Preference Shares held by ECI6B on the occurrence of an Exit Event shall be deemed to be 333,282;
- (c) the number of Preference Shares held by ECI6C on the occurrence of an Exit Event shall be deemed to be 535,632;
- (d) the number of Preference Shares held by ECIVN on the occurrence of an Exit Event shall be deemed to be 31,120;
- (e) the number of Preference Shares held by Hawerby Limited on the occurrence of an Exit Event shall be deemed to be 48,000;

and the proportionate entitlement of each holder of Preference Shares shall be calculated on the assumption that 3,160,000 Preference Shares are in issue.

- 1.6 "Group" means the Company and all its subsidiaries and subsidiary undertakings for the time being and "member of the Group" shall be construed accordingly.
- 1.7 "Listing" means either:
- (a) the admission of all or any of the issued equity share capital of the Company to the Official List of the United Kingdom Listing Authority and to trading on the London Stock Exchange, and such admission becoming effective; or
  - (b) the granting of permission by the London Stock Exchange for the introduction of all or any of the issued equity share capital of the Company to dealings on the Alternative Investment Market, and such permission becoming effective; or
  - (c) any equivalent admission to, or permission to deal on, any other recognised investment exchange (as defined in section 285 Financial Services and Markets Act 2000) becoming unconditionally effective in relation to all or any of the issued equity share capital of the Company.
- 1.8 "London Stock Exchange" means London Stock Exchange plc.
- 1.9 "Prescribed Period" means the period commencing on 1 July 1999 and ending on the occurrence of an Exit Event provided that the Prescribed Period in respect of each Preference Share shall end on the date on which such Preference Share is redeemed .
- 1.10 "Sale" means the making of one or more agreements (whether conditional or not) either for the disposal, transfer, purchase, subscription or renunciation of any part of the share capital of the Company giving rise to a Change in Control or to effect on Asset Sale and for the purposes of this definition "disposal" shall mean a sale, transfer, assignment or other disposition whereby a person ceases to be the absolute beneficial owner of the share in question or voting rights attached thereto or an agreement to enter into such disposal or the grant of a right to compel entry into such an agreement.
- 1.11 "Table A" means Table A in the Companies (Tables A – F) Regulations 1985 as amended by the Companies (Tables A – F) (Amendment) Regulations 1985.

- 2.1 The regulations contained in or incorporated in Table A shall apply to the Company save insofar as they are excluded or varied hereby or are inconsistent herewith and such regulations (save as so excluded varied or inconsistent) and the articles hereinafter contained shall be the regulations of the Company.
- 2.2 Regulations 54, 94-98 (inclusive) and 118 of Table A shall not apply to the Company.
- 2.3 The expression "Equity Shares" has the meaning given to it in the Act and includes, without limitation, the "A" Ordinary Shares, "B" Ordinary Shares and "C" Ordinary Shares.
- 2.4 The expression "Employee Trust" means a trust approved by the holders of 75% of the "B" Ordinary Shares and whose beneficiaries are the bona fide employees of the Company or any of its subsidiaries.
- 2.5 The expression "Employee Member" means Nicholas Rowe or any other individual from time to time engaged, employed or recruited by the Company or any of its subsidiaries at the same level of management in such circumstances where those named in this definition cease to be employees and/or directors of the Company or any of its subsidiaries (whichever is the later) or such other circumstances as shall give rise to a Compulsory Transfer.
- 2.6 ECI 6 ("ECI6"), ECI 6 'B' ("ECI6B") and ECI 6 'C' ("ECI6C") are three limited partnerships established under the Limited Partnerships Act 1907 of the United Kingdom and each of them has their place of business at Brettenham House, Lancaster Place, London WC2E 7EN and act by their general partner, ECI GP2 Limited Partnership, whose principal place of business is at Oxnam Manse, Jedburgh, Roxburghshire TD8 6RD. ECI Ventures Nominees Limited ("ECIVN") has its registered office at Brettenham House, Lancaster Place, London WC2E 7EN and acts as nominee for The ECI6 Executive Plan.

## **SHARE CAPITAL**

- 3 The share capital of the Company at the date of the adoption of these articles is £3,315,000 divided into 3,205,000 Redeemable Preference Shares of £1 each ("Preference Shares") 10,000 "A" Ordinary Shares of £1 each ("A" Ordinary Shares")

88,000 "B" Ordinary Shares of £1 each ("B" Ordinary Shares") and 12,000 "C" Ordinary Shares of £1 each ("C" Ordinary Shares").

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

### 3.1 **Income**

The profits of the Company available for distribution shall be applied as follows:-

3.1.1 First with effect from 1<sup>st</sup> July 2003 in paying to the holders of the "B" Ordinary Shares as a class in respect of each financial year of the Company a cumulative preferential net cash dividend (hereinafter in these articles referred to as "the Participating Dividend") of an aggregate sum which is 10% of Net Profit (calculated as hereinafter provided) of the Company and its subsidiaries for the relevant financial year. The Participating Dividend (if any) shall be paid not later than 4 months after the end of each successive accounting reference period of the Company or not later than 14 days after the audit report on the accounts of the Company for such period is signed by the Company's auditors, whichever is earlier.

For the purpose of calculating the Participating Dividend, the expression "Net Profit" shall mean the net profit 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 (to the nearest £1):-

3.1.1.1 before any payment or provision is made for any dividend on any share in the capital of the Company or any of its subsidiaries or for any other distribution or for the transfer of any sum to reserve and before making any provision for writing off goodwill or charging or crediting extraordinary items;

3.1.1.2 before deducting any corporation tax (or any other tax levied upon or measured by reference to profits or gains) on the profits earned and gains realised by the Company and its subsidiaries.



- 3.1.2 Second in paying to the holders of the Preference Shares a dividend on each Preference Share of an amount determined by the directors.
- 3.1.3 Thereafter, the profits which the Company may determine to distribute in respect of any financial year shall be applied with the prior written consent of the "B" Ordinary Shareholders amongst the holders of the "A" Ordinary Shares, the "B" Ordinary Shares and the "C" Ordinary Shares (pari passu) as if the same constituted one class of share.
- 3.1.4 Every dividend shall be distributed to the appropriate shareholders pro-rata according to the amounts paid up or credited as paid up on the shares held by them respectively and shall accrue on a daily basis.
- 3.1.5 Unless the Company has insufficient profits available for distribution and the Company is thereby prohibited from paying dividends by the Act the Participating Dividend shall (notwithstanding regulations 102 to 108 inclusive contained in Table A or any other provision of these Articles and in particular notwithstanding that there has not been a recommendation of the directors or resolution of the Company in general meeting) be paid immediately on the due date and if not then paid shall be a debt due by the Company and be payable in priority to any other dividend.
- 3.1.6 The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of the Participating Dividend.

## 3.2 **Capital**

On a return of assets on liquidation or capital reduction or otherwise (other than a redemption of Preference Shares in accordance with Article 3.3) the surplus assets of the Company remaining after the payment of its liabilities shall be applied as follows:-

- 3.2.1 first in paying to each holder of Preference Shares:
- 3.2.1.1 a sum equal to his pro-rata entitlement to the Further Redemption Sum; then

3.2.1.2 £1 per Preference Share held by him.

3.2.2 the balance of such assets shall be distributed amongst the holders of the "A" Ordinary Shares, the "B" Ordinary Shares and the "C" Ordinary Shares (pari passu as if the same constituted one class of share) in proportion to the amounts paid up or credited as paid up on the "A" Ordinary Shares, the "B" Ordinary Shares and the "C" Ordinary Shares held by them respectively.

### 3.3 Redemption

3.3.1 Subject to the provisions of the Act and the other provisions of these Articles:

3.3.1.1 the Preference Shares shall be redeemed on the Preference Shareholders giving five working days notice in writing to the Company provided that the Company shall not be required by any such notice to redeem any Preference Shares in advance of the dates for redemption set out below and further provided that the number of Preference Shares to be redeemed on each redemption date shall not exceed the number of Preference Shares due for redemption on or prior to that date as set out below opposite the relevant date:-

<b>Date</b>	<b>Number of Preference</b>
<b>To be redeemed</b>	<b>Shares to be redeemed</b>
30 <sup>th</sup> June 2004	1,000,000
30 <sup>th</sup> June 2005	1,000,000
30 <sup>th</sup> June 2006	<u>1,205,000</u>
	<u>3,205,000</u>

The members of the Company undertake to use their reasonable endeavours to procure that the Preference Shares are redeemed after the Company has been so notified (including the obtaining of external finance, if appropriate) and any shares not redeemed upon the due date shall be redeemed forthwith upon redemption becoming permissible under the Act.

3.3.1.2 the Company shall and shall be bound to redeem all the Preference Shares then in issue immediately prior to the occurrence of an Exit Event.

3.3.1.3 If an Exit Event occurs the Company shall pay the sum of £1 on each of the Preference Shares so redeemed and shall pay to each holder of Preference Shares his pro-rata entitlement to the Further Redemption Sum.

3.3.1.4 If on an Exit Event the Company is permitted by the Act to redeem only some of the Preference Shares which would otherwise fall to be redeemed:

3.3.1.4.1 the Company shall only redeem the number of Preference Shares which it can so redeem at that time; and

3.3.1.4.2 the balance of the Preference Shares shall be converted into such number and class of shares in the capital of the Company as are of equivalent value to the balance of the Preference Shares and the unpaid part of the relevant Further Redemption Sum as may be agreed by the Company and the Preference Shareholders or, if they are unable to agree, as determined by the auditors of the Company.

The auditors of the Company shall act as experts and not as arbitrators and their determination of any matter falling within their jurisdiction shall be final and binding on the Company and the Preference Shareholders save in the case of manifest error (when the relevant part of their determination shall be void and the matter shall be remitted to the auditors for correction).

- 3.3.1.5 On each date fixed for any redemption of Preference Shares pursuant to Article 3.3.1.1 the Company shall pay on each of the Preference Shares so redeemed the sum of £1.
- 3.3.1.6 If on or before each of the dates shown in the table set out in Articles 3.3.1.1 no Exit Event has occurred the Preference Shares shall be redeemed in accordance with the provisions of Article 3.3.1.1 provided that unless and until an Exit Event occurs five Preference Shares shall remain in issue and each of ECI6, ECI6B, ECI6C, ECIVN and Hawerby Limited shall continue to hold one such Preference Share.
- 3.3.1.7 On the dates fixed for any redemption the Company shall pay to each registered holder of Preference Shares the amount payable in respect of such redemption and upon receipt of that amount each such holder shall surrender to the Company the certificate for his shares which are to be redeemed in order that they may be cancelled provided that if any certificate so surrendered includes any shares not redeemable at that time the Company shall issue a fresh certificate for the balance of the shares not redeemable to the holder.
- 3.3.1.8 The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time declare and pay to the Company such dividends as are necessary to permit lawful and prompt redemption by the Company of the Preference Shares.
- 3.3.1.9 Subject to the provisions of the Act the Company may with the prior written consent of the holders of 75% of the Preference Shares in multiples of 50,000 shares redeem any or all of the Preference Shares in advance of the due date for redemption and in the absence of any contrary agreement between such holders and the Company any partial early redemption shall be deemed to take effect pro rata in respect of the outstanding Preference Shares at such date.

4      **Further Issue of Shares**

Notwithstanding any other provisions of these Articles the directors shall be bound to offer to EC16, EC16B, EC16C and ECIVN such a proportion of any shares forming part of the equity share capital of the Company which the directors determine to issue as the aggregate nominal value of shares in the equity share capital of the Company for the time being held by such investor bears to the total issued equity share capital of the Company immediately before the issue of the shares. Any shares issued to such investor pursuant to such offer shall be issued upon no less favourable terms and conditions than those issued to any other person.

5      **Lien**

The lien conferred by regulation 8 of Table A shall apply to all shares of the Company whether fully paid or not and to all shares registered in the name of any person indebted or under liability to the Company whether he be the sole registered holder thereof or one of several joint holders.

6      **Calls**

The liability of any member in default in respect of a call shall be increased by the addition at the end of the first sentence of regulation 18 in Table A of the words "and all reasonable expenses that may have been incurred by the Company by reason of such non-payment".

7      **Transfer of Shares**

The directors shall refuse to register any transfer of shares made in contravention of the provisions of these Articles but shall not otherwise be entitled to refuse to register any transfer of shares. The directors shall not refuse to register any transfer of shares to which the consent in writing of all the members for the time being is given.

- 7.1      Save as otherwise provided in these Articles every member who desires to transfer any shares (hereinafter called "the Vendor") shall give to the Company notice in writing of such desire (hereinafter called a "Transfer Notice"). Subject as hereinafter mentioned a Transfer Notice shall constitute the Company the Vendor's agent for the sale of the shares specified therein (hereinafter called "the Sale Shares") in one or more lots at the

discretion of the directors to all the holders of "A" Ordinary Shares, "B" Ordinary Shares and "C" Ordinary Shares in the Company (such shares being hereinafter in this Article referred to as "Equity Shares") other than the Vendor at the Sale Price. The Sale Price shall be a price agreed by the Vendor and the directors or if the Vendor and the directors are unable to agree a price within 28 days of the Transfer Notice being given or if the Transfer Notice is a deemed Transfer Notice the price which a chartered accountant (acting as an expert and not as an arbitrator) nominated by agreement between the Vendor and the Company or in default of such agreement by the President for the time being of the Institute of Chartered Accountants in England and Wales shall by writing under his hand certify to be in his opinion a fair value thereof on a going concern basis as between a willing seller and a willing buyer ignoring any reduction in value which may be ascribed to the Sale Shares by virtue of the fact that they represent a minority interest and on the assumption that the Sale Shares are capable of transfer without restriction and after having regard to written representations of the Shareholders. The decision of the chartered accountant as to the Sale Price shall be final and binding. The Sale Price of Sale Shares sold pursuant to a Compulsory Transfer shall be the fair value determined by a chartered accountant in accordance with the provisions of this Article 7. Save for shares sold pursuant to a Compulsory Transfer the Transfer Notice may contain a provision that unless all the shares comprised therein are sold by the Company pursuant to this Article none shall be sold and any such provision shall be binding on the Company.

- 7.2 If a chartered accountant is asked to certify the fair value as aforesaid his certificate shall be delivered to the Company and as soon as the Company receives the certificate it shall furnish a certified copy thereof to the Vendor and save for shares sold pursuant to a Compulsory Transfer the Vendor shall be entitled by notice in writing given to the Company within ten days of the service upon him of the certified copy to cancel the Company's authority to sell the Sale Shares. The cost of obtaining the certificate shall be borne by the Company unless the Vendor shall give notice of cancellation as aforesaid in which case the Vendor shall bear the costs.
- 7.3 Upon the price being fixed as aforesaid and provided the Vendor shall not give valid notice of cancellation the Company shall offer the Sale Shares to be sold as set out below. All offers made by the Company shall give details of the number and Sale Price of the Sale Shares

7.3.1 so long as the holders of 75% of the "B" Ordinary Shares have given their prior written consent, any shares being sold by reason of a Compulsory Transfer shall first be offered to the Company ("the Warehouse"). Shares acquired by the Company under this sub-Article may be offered in whole or in part to any new director(s) or employee(s) appointed or recruited by the Company to replace the departing Employee Member or to an existing director or employee of the Company or any of its subsidiaries promoted to replace the departing Employee Member as the case may be. If consent is refused or the offer of shares made available as a consequence of the departing of an Employee Member is rejected (in whole or in part) by the new Employee Member, then the shares in question (other than any shares for which the New Employee Member agrees to subscribe) shall be offered for sale to an Employee Trust. For the purposes of this arrangement, the class rights of the holders of "A" Ordinary Shares, "B" Ordinary Shares and "C" Ordinary Shares and all other classes of shares shall be deemed not to have been varied. In exercising their authority under this sub-Article, the directors shall not be required to have regard to section 89(1) and 90(1) to (6) inclusive of the Act which sub-sections shall be excluded from applying to the Company in this regard. Any shares not sold in accordance with this sub-Article within twenty-one days of the Sale Price being agreed will be offered to the holders of the Equity Shares as set out below;

7.3.2 in the event that the provisions of sub-Article 7.3.1 are not fully invoked to the extent that there are Sale Shares which are not purchased pursuant thereto as soon as Sale Shares become available they shall forthwith be offered to all holders of Equity Shares (other than the Vendor) in the following proportions giving details of the number and the Sale Price of such Sale Shares:-

7.3.2.1 in the case of the holders of "A" Ordinary Shares, pro rata as nearly as may be in proportion to the existing numbers of "A" Ordinary Shares held by such members of all "A" Ordinary Shares in issue;

7.3.2.2 in the case of the holders of "B" Ordinary Shares, pro rata as nearly as may be in proportion to the existing numbers of "B" Ordinary Shares held by such members of all "B" Ordinary Shares in issue;

7.3.2.3 in the case of the holders of "C" Ordinary Shares, pro rata as nearly as may be in proportion to the existing numbers of "C" Ordinary Shares held by such members of all "C" Ordinary Shares in issue;

and otherwise pro rata as nearly as may be in proportion to the existing numbers of Equity Shares held by such members. The Company shall invite each such member as aforesaid to state in writing within twenty-one days from the date of the notice whether he is willing to purchase any of the Sale Shares so offered to him and if so the maximum thereof which he is willing to purchase. If at the expiration of the said period of twenty-one days there are any Sale Shares offered which any of the members hereinbefore mentioned have not so stated their willingness to purchase the Company shall offer such shares to such members as have stated in writing their willingness to purchase all the shares previously offered to them. Such remaining shares shall be offered in the proportions set out above which offer shall remain open for a further period of twenty-one days. Offers shall continue to be made on the same terms while any member continues to state in writing his willingness to purchase all the Shares offered to him.

7.4 If the Company shall pursuant to the above provision of this Article find a member or members of the Company willing to purchase all or any of the Sale Shares the Vendor shall be bound upon receipt of the Sale Price to transfer the Sale Shares (or such of the same for which the Company shall have found a purchaser or purchasers) to such persons. If the Vendor shall make default in so doing the Company shall if so required by the person or persons willing to purchase such Sale Shares receive and give a good discharge for the purchase money on behalf of the Vendor and shall authorise some person to execute transfers of the Sale Shares in favour of the purchasers and shall enter the names of the purchasers in the Register of Members as the holder of such of the Sale Shares as shall have been transferred to them as aforesaid.

7.5 If the directors shall not have found a member or members of the Company willing to purchase all of the Sale Shares pursuant to the foregoing provisions of this Article the Vendor shall at any time within six months after the final offer by the Company to its members be at liberty to sell and transfer such of the Sale Shares as have not been so sold to any person at a price being no less than the Sale Price.

7.6 For the purposes of these Articles:-



7.6.1 the expression "Termination Date" means:-

7.6.1.1 where the employment of an Employee Member ceases by virtue of notice given by the employer to the Employee Member, the date on which such notice expires;

7.6.1.2 where the contract of employment of an Employee Member is terminated by the employer and a payment is made in lieu of notice, the date on which the notice of termination was served;

7.6.1.3 where the Employee Member concerned is a director but not an employee, the date on which his contract for services with the Company is terminated; and

7.6.1.4 in any other case, the date on which the contract of employment of an Employee Member is terminated.

7.7 If an Employee Member ceases for whatever reason to be a director or employee of the Company or any of its subsidiaries Transfer Notices shall be deemed to have been served on the relevant Termination Date in respect of:-

7.7.1 all Shares then held by the relevant Employee Member; and

7.7.2 all Shares then held by the relevant Employee Member's Privileged Relations and or Family Trusts (other than shares which the directors are satisfied were not acquired by such holders (i) directly or indirectly from the Employee Member or (ii) by reason of their connection with the Employee Member, and the decision of the board of directors in this respect will be final.

7.8 Transfers under sub-Article 7.7 are in these Articles referred to as "Compulsory Transfers".

8.1 Notwithstanding any other provisions of these Articles, a transfer of any shares in the Company held by financial institutions may be made to any other financial institution without restriction as to price or otherwise and any such transfer shall be registered by the directors.

8.2 For the purposes of these Articles:-

- 8.2.1 **"Privileged Relation"** in relation to a member means the spouse, or widow or widower of the member and the member's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the member's children and brother or sister of the member.
- 8.2.2 **"Family Trust"** in relation to any member means a trust which does not permit any of the settled property or the income therefrom to be applied otherwise than for the benefit of that member and/or a Privileged Relation of that member and under which no power of control is capable of being exercised over the votes of any shares which are the subject of the trust by any person other than the trustees of such member or his Privileged Relations;
- 8.2.3 **"Settlor"** includes a testator or an intestate in relation to a Family Trust arising respectively under a testamentary disposition or an intestacy of a deceased member.

8.3

- 8.3.1 Notwithstanding any other provision in these Articles any member may at any time transfer (or by will bequeath or otherwise dispose of on death) all or any shares held by him to a Privileged Relation or to trustees to be held upon a Family Trust provided that any transfer of Shares to a Privileged Relation or to trustees to be held upon a Family Trust made during the lifetime of such member may only be made with the prior written consent of the holders of 75% of the "B" Ordinary Shares.
- 8.3.2 Where the consent of a holder of "B" Ordinary Shares is requested to a transfer to a Privileged Relation or to the trustees of a Family Trust such consent shall be given when the holder is satisfied:-
- 8.3.2.1 that the proposed transfer will not result in 50% or more in the aggregate of the proposed transferor's shareholding in the Company at the date hereof (taking into account shares already held by a Privileged Relation or held by trustees of a Family Trust) being

held by that and any other Privileged Relation or by trustees of that and any other trusts;

8.3.2.2 with the terms of the trust instrument and in particular with the powers of the trustees;

8.3.2.3 with the identity of the proposed trustees;

8.3.2.4 that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.

8.4 Where any shares are held by trustees upon a Family Trust:-

8.4.1 on any change of trustees such shares may be transferred to the new trustees of that Family Trust;

8.4.2 such shares may be transferred at any time to the Settlor or to another Family Trust of the Settlor or to any Privileged Relation of the Settlor;

8.5

8.5.1 If and whenever any such shares cease to be held by a Privileged Relation or upon a Family Trust (otherwise than in consequence of a transfer to the Settlor or to another Family Trust of the Settlor or to any Privileged Relation of the Settlor) a Transfer Notice (as herein defined) shall be deemed to have been given in respect of relevant shares (as hereinafter defined) by the holders thereof and such shares may not otherwise be transferred.

8.5.2 For the purposes of this Article the expression "relevant shares" means and includes the shares originally transferred to the Privileged Relation or the trustees and any additional shares issued or transferred to the Privileged Relation or to the trustees by virtue of the holding of the relevant shares or any of them.

8.6 ECI6, ECI6B, ECI6C and ECIVN and their custodians or nominees shall each have the right to transfer, or otherwise dispose of, interests in all or any of the shares held or owned by them directly or through any custodian or other nominees to:

8.6.1 each other; or

8.6.2 the beneficial owner or owners in respect of which the transferor is a nominee or custodian or any other nominee or custodian for such beneficial owner or owners; or

8.6.3 any fund, trust, company or partnership managed or advised by ECI Venture Managers Ltd, ECI Ventures Limited, ECI Management (Jersey) Limited or ECI International Management Limited (or any partnership or company carrying on business in succession to any of them); or

8.6.4 any unitholder, partner, shareholder, participant, manager or adviser (or any employee of an adviser) in any such fund, trust, company or partnership or of any investment fund or co-investment plan in respect of which ECIVN or the transferee is a nominee or custodian; or

8.6.5 any person, trust, company or fund whose business consists of holding securities for "investment purposes"; or

8.6.6 a nominee or member of the same "group" of any of the person referred to in paragraph 8.5.1 to 8.5.5 above.

## 9 **Limitation on transfer of control**

9.1 Without prejudice to the provisions of Articles 7.6 and 7.7 no sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered without the previous written consent of a 75% majority of the holders of the "B" Ordinary Shares if as a result of such sale or transfer and registration thereof a Controlling Interest (as hereinafter defined) is obtained in the Company:-

9.1.1 by a company (other than a company to which paragraph 9.1.2 applies) or a person or persons (other than a company) who was or were not a member or members of the Company on the date of adoption of these articles of

association unless the proposed transferee or transferees or his or their nominees are independent third parties acting in good faith and has or have offered to purchase all the "B" Ordinary Shares at the Specified Price (as hereinafter defined); or

- 9.1.2 by a company in which one or more of the members of the Company or persons acting in concert (which expression shall have the meaning ascribed to it in the latest edition of the City Code on Takeovers and Mergers) with any member of the Company has or as a result of such sale or transfer will have a Controlling Interest.

9.2 For the purpose of this Article:-

- 9.2.1 the expression "a Controlling Interest" shall mean an interest (within the meaning of Schedule 13 Part I and Section 324 of the Act) in shares in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that company;

- 9.2.2 the expressions "transfer" and "transferee" shall include respectively the renunciation of a renounceable letter of allotment and the renouncee under any such letter of allotment; and

- 9.2.3 the expression "the Specified Price" shall mean the higher of:-

- 9.2.3.1 in the case of the "B" Ordinary Shares a price per share of £1 plus a sum equal to any arrears, deficiency or accruals of the dividends on such share grossed up at the rate of corporation tax then in force calculated down to the date of sale or transfer; and

- 9.2.3.2 a price per share (plus a sum equal to any arrears, deficiency or accruals of the dividends on such share grossed up at the rate of corporation tax then in force calculated down to the date of sale or transfer) at least equal to that offered or paid or payable by the proposed transferee or transferees or his or their nominees for any other shares in the Company plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of such other 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 other shares provided that if any part of the price per share is payable otherwise than by cash the holders of the "B" Ordinary Shares may at their option elect to take a price per share of such cash sum as may be agreed by them having regard to the substance of the transaction as a whole;

and in the event of disagreement the calculation of the Specified 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;

- 9.3 All other regulations of the Company relating to the transfer of shares and the right to registration of transfers shall be read subject to the provisions of this Article.

10 **Voting**

- 10.1 Subject to the provisions of Article 10.2, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a representative not being himself a member, shall have one vote, and on a poll every member (except as set out below) who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall (except as hereinafter provided) have one vote for every £1 in nominal amount of shares in the capital of the Company of which he is the holder.

- 10.2 The holders of the Preference Shares shall be entitled to receive notice of all general meetings but shall not be entitled to attend or vote thereat unless the redemptions of the Preference Shares have not taken place on their due dates.

11 **Appointment of Directors**

The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director.

12 **Proceedings of Directors**

Notice of every meeting of the directors shall be given to each director at any address supplied by him to the Company for that purpose whether or not he be present in the United Kingdom provided that any director may waive notice of any meeting either prospectively or retrospectively and if he shall do so it shall be no objection to the validity of such meeting that notice was not given to him.

12.1 Subject to the provisions of the Act and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:-

12.1.1 may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;

12.1.2 may be a director or other officer of or employed or a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested;

12.1.3 may or any firm or Company of which he is a member or director may act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;

12.1.4 shall not by reason of his office be accountable to the Company for any benefit which he derives from such office service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and

12.1.5 shall be entitled to vote and be counted in the quorum on any matter concerning paragraphs 12.1.1 and 12.1.4 above

12.2 For the purposes of this Article:-

12.2.1 a general notice to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall

be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;

12.2.2 an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and

12.2.3 an interest of a person who is for any purpose of the Act (excluding any statutory modification not in force when these Articles were adopted) connected with a director shall be treated as an interest of the director and in relation to an alternate director an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.

### 13 **Directors' Borrowing Powers**

Subject as hereinafter provided the directors may exercise all the powers of the Company (whether express or implied):-

13.1 of borrowing or securing the payment of money;

13.2 of guaranteeing the payment of money and the fulfilment of obligations and the performance of contracts; and

13.3 of mortgaging or charging the property assets and uncalled capital of the Company and (subject to section 80 of the Act) of issuing debentures

but so that:-

13.4 no such sanction shall be required to the borrowing of any sum of money intended to be applied in the repayment (with or without premium) of any moneys then already borrowed and outstanding, notwithstanding that the same may result in such limit being exceeded;

13.5 no lender or other person dealing with the Company shall be concerned to see or enquire whether the limit imposed by this Article is observed and no debt or liability incurred in excess of such limit shall be invalid and no security given for the same shall



be invalid or ineffectual except in the case of express notice to the lender or recipient of the security or person to whom the liability is incurred at the time when the debt or liability was incurred or the security given that the limit hereby imposed has been or was thereby exceeded;

- 13.6 except with the previous sanction of the holders of the "B" Ordinary shares no mortgage or charge shall be created on any part of the undertaking property or assets of the Company or any subsidiary of the Company except for the purpose of securing moneys borrowed from bankers with interest thereon and bank charges.

#### 14 Indemnity

Subject to the provisions of the Act but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.