

3805230

# MEMORANDUM OF ASSOCIATION OF

## KCS GLOBAL PLC



1. The Name of the Company is "KCS GLOBAL PLC"
2. The Company is to be a public company
3. The registered office of the Company will be situated in England and Wales.
4.
  - (1) The object for which the Company is established is to carry on business as a general commercial company.
  - (2) Without prejudice to the generality of the object of the Company and the powers derived from Section 3A of the Companies Act 1985 the Company has power to do all or any of the following:
    - (a) to acquire and assume for any estate or interest and to take options over, construct, develop or exploit any property, real or personal, and rights of any kind and the whole or any part of the undertaking, assets and liabilities of any person and to act and carry on business as a holding company;
    - (b) to manufacture, process, import, export, deal in and store any goods and other things and to carry on the business of manufacturers, processors, importers, exporters and storers of and dealers in any goods and other things;
    - (c) to acquire and exploit lands, mines and mineral rights and to acquire, explore for and exploit any natural resources and to carry on any business involving the ownership or possession of land or other immovable property or buildings or structures thereon and to construct, erect, install, enlarge, alter and maintain buildings, plant and machinery and to carry on business as builders, contractors and engineers;
    - (d) to provide services of all descriptions and to carry on business as advisers, consultants, brokers and agents of any kind;
    - (e) to advertise, market and sell the products of the Company and of any other person and to carry on the business of advertisers or advertising agents or of a marketing and selling organisation or of a supplier, wholesaler, retailer, merchant or dealer of any kind;
    - (f) to provide technical, cultural, artistic, educational, entertainment or business material, facilities or services and to carry on any business involving any such provision;
    - (g) to lend money, and grant or provide credit and financial accommodation, to any person and to deposit money with any person and to carry on the business of a banking, finance or insurance company;
    - (h) to invest money of the Company in any investments and to hold, sell or otherwise deal with such investments, and to carry on the business of a property or investment company;

- (i) to acquire and carry on any business carried on by a subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company;
- (j) to enter into any arrangements with any government or authority or person and to obtain from any such government or authority or person any legislation, orders, rights, privileges, franchises and concessions and to carry out exercise and comply with the same;
- (k) to borrow and raise money and accept money on deposit and to secure or discharge any debt or obligation in any manner and in particular (without prejudice to the generality of the foregoing) by mortgages of or charges upon all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company or by the creation and issue of securities;
- (l) to enter into any guarantee, contract of indemnity or suretyship and in particular (without prejudice to the generality of the foregoing) to guarantee, support or secure, with or without consideration, whether by personal obligation or by mortgaging or charging all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company or by both such methods or in any other manner, the performance of any obligations or commitments of, and the repayment or payment of the principal amounts of and any premiums, interest, dividends and other moneys payable on or in respect of any securities or liabilities of, any person, including (without prejudice to the generality of the foregoing) any company which is for the time being a subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company or otherwise associated with the Company;
- (m) to amalgamate or enter into partnership or any profit-sharing arrangement with, and to co-operate or participate in any way with or to take over or assume any obligation of, or to assist or subsidise any person;
- (n) to accept, draw, make, create, issue, execute, discount, endorse, negotiate and deal in bills of exchange, promissory notes, and other instruments and securities, whether negotiable or otherwise;
- (o) to engage in currency exchange and interest rate transactions including, but not limited to, dealings in foreign currency, spot and forward rate exchange contracts, futures, options, forward rate agreements, swaps, caps, floors, collars and any other foreign exchange or interest rate hedging arrangements and such other instruments as are similar to or derived from any of the foregoing whether for the purpose of making a profit or avoiding a loss or managing a currency or interest rate exposure or any other exposure or for any other purpose;
- (p) to apply for and take out, purchase, sell or otherwise acquire, licence or dispose of any trade and service marks and names, designs, patents, patent rights, copyrights, topography rights, utility models, inventions and secret processes and to carry on the business of an inventor, designer or research organisation;
- (q) to sell, exchange, mortgage, charge, let, grant licences, easements, options, servitudes and other rights over, and in any other manner deal with or dispose of, all or any part of the undertaking, property and assets (present and future) of the Company for any consideration and in particular (without prejudice to the generality of the foregoing) for any securities or for a share of profit or a royalty or other periodical or deferred payment;

- (r) to issue and allot securities of the Company for cash or in payment or part payment for any real or personal property purchased or otherwise acquired by the Company or any services rendered to the Company or as security for any obligation or amount (even if less than the nominal amount of such securities) or for any other purpose;
- (s) to give any remuneration or other compensation or reward for services rendered or to be rendered in placing or procuring subscriptions of, or otherwise assisting in the issue of any securities of the Company or in or about the formation of the Company or the conduct or course of its business, and to establish or promote, or concur or participate in establishing or promoting, any company, fund or trust and to subscribe for, underwrite, purchase or otherwise acquire securities of any company, fund or trust and to carry on the business of company, fund, trust or business promoters or managers and of underwriters or dealers in securities, and to act as director of and as secretary, manager, registrar or transfer agent for any other company and to act as trustee of any kind and to undertake and execute any trust and any trust business (including the business of acting as trustee under wills and settlements and as executor and administrator);
- (t) to pay all the costs, charges and expenses preliminary or incidental to the promotion, formation, establishment and incorporation of the Company, and to procure the registration or incorporation of the Company in or under the laws of any place outside England and Wales;
- (u) to grant or procure the grant of donations, gratuities, pensions, annuities, allowances, or other benefits, including benefits on death to any directors, officers or employees or former directors, officers or employees of the Company or any company which at any time is or was a subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company or otherwise associated with the Company or of any predecessor in business of any of them, and to the relations, connections or dependants of any such persons, and to other persons whose service or services have directly or indirectly been of benefit to the Company or whom the directors of the Company consider have any moral claim on the Company or to their relations, connections or dependants, and to establish or support any funds, trusts, insurances or schemes or any associations, institutions, clubs, schools, building and housing schemes, funds and trusts, and to make payments towards insurances or other arrangements likely to benefit any such persons or otherwise advance the interests of the Company or of its members, and to subscribe, guarantee or pay money for any purpose likely, directly or indirectly, to further the interests of the Company or of its members or for any national, charitable, benevolent, educational, social, public, general or useful object;
- (v) to cease carrying on or wind up any business or activity of the Company, and to cancel any registration of and to wind up or procure the dissolution of the Company in any state or territory;
- (w) to distribute any of the property of the Company among its creditors and members in specie or kind;
- (x) to do all or any of the things or matters aforesaid in any part of the world and either as principals, agents, contractors, trustees or otherwise and by or through trustees, agents or otherwise and either alone or in conjunction with others;

- (y) to carry on any other business or activity and do anything of any nature which in the opinion of the directors of the Company is or may be capable of being conveniently carried on or done in connection with the above, or likely, directly or indirectly, to enhance the value of or render more profitable all or any part of the Company's undertaking property or assets or otherwise to advance the interests of the Company or of its members; and
- (z) to do all such other things as in the opinion of the directors of the Company are or may be incidental or conducive to the attainment of the above objects or any of them; and it is hereby declared that "company" in this clause, except where used in reference to this Company, shall include any partnership or other body of persons, whether incorporated or not incorporated, and whether formed, incorporated, domiciled or resident in the United Kingdom or elsewhere; "person" shall include any company as well as any other legal or natural person; "securities" shall include any fully, partly or nil paid or no par value share, stock, unit, debenture, debenture or loan stock, deposit receipt, bill, note, warrant, coupon, right to subscribe or convert, or similar right or obligation; "and" and "or" shall mean "and/or" where the context so permits; "other" and "otherwise" shall not be construed ejusdem generis where a wider construction is possible; and the objects specified in the different paragraphs of this clause shall not, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from the terms of any other paragraph or the name of the Company or the nature of any business carried on by the Company, but may be carried out in as full and ample a manner and shall be construed in as wide a sense as if each of the said paragraphs defined the objects of a separate, distinct and independent company.

5. The liability of the members is limited.

6. The share capital of the Company is £150,375 divided into 150,000 ordinary shares of £1 each and £37,500 preferred ordinary shares of 1 pence each, and the Company shall have the power to divide the original or any increased capital into several classes, and to attach thereto any preferential, deferred, qualified or other special rights, privileges, restrictions or conditions.

**CRESCENT HILL LIMITED**, a company registered in England and Wales under number 2118529 whose registered office is at Dumfries House, Dumfries Place, Cardiff, CF10 3ZF by subscribing to this memorandum wishes to be formed into a company and agrees to take one ordinary share of £1 in the capital of the Company.

Dated 29 June 1999

For and on behalf of **CRESCENT HILL LIMITED**

A Morris  
Authorised Signatory

WITNESS to the above signature

Claire Richardson  
Solicitor  
Dumfries House  
Dumfries Place  
Cardiff  
CF1 4YF

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Company No. 3805230

COMPANIES ACT 1985

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

KCS GLOBAL PLC

(adopted by Special Resolution of the Company

passed on 27 November 2003)

**1. PRELIMINARY**

These Articles together with the regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (as amended) ("**Table A**") shall apply to the Company save insofar as such regulations are excluded or varied hereby. The first sentence of Regulation 24 and Regulations 73 to 77 (inclusive) 80, 82, 87 and 118 of Table A shall not apply to the Company.

**2. DEFINITIONS AND INTERPRETATION**

In these Articles the following words and expressions shall (except where the context otherwise requires) have the following meanings:-

"**Act**" the Companies Act 1985 (as amended by the Companies Act 1989) and every other statutory modification or re-enactment thereof for the time being in force

"**Accounting Group**" the Company and its subsidiary undertakings from time to time (other than a subsidiary undertaking which under the provisions of the Act is not required to be included and which is not included in the consolidated group accounts prepared by the Company)

**"Accounting Period"** an accounting reference period of the Company being a period commencing 1 October and ending on the following 30 September or such other date as is notified to the Registrar of Companies from time to time

**"Accounts"** the audited accounts of the Company or if applicable, the audited consolidated accounts of the Accounting Group

**"Asset Sale"** the completion of any transactions or series of transactions whereby any person or group of persons purchases the whole or substantially the whole of the business and assets of the Group

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

**"Bank"** The Royal Bank of Scotland plc

**"Connected Person"** has the meaning ascribed to it in Section 839 of the Income and Corporation Taxes Act 1988

**"Directors"** the directors from time to time of the Company including the Subscriber's Director (if any)

**"Emoluments"** emoluments of every description including, without limitation, salaries, fees, bonuses, commissions, profit shares under any incentive scheme, pension contributions payable, benefits in kind as quantified for income tax purposes and any amounts referred to in Schedule 6 Part 1 paragraph 1 of the Act but excluding, for the avoidance of doubt, employers national insurance contributions

**"Equity Shares"** the Preferred Ordinary Shares and the Ordinary Shares and any shares derived therefrom whether by conversion, consolidation or sub-division or by way of rights or bonus issue or otherwise for the time being in issue

**"Facility Agreement"** the facility agreement dated 3rd November 1999 made between the Company (1) and the Bank (2)

**"Facility Documents"** the Facility Agreement and all other documents (including an inter-creditor agreement and security documents) associated with it

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**"FSA"** Financial Services Act 1986 and every statutory modification or re-enactment thereof for the time being in force

**"Group"** the Company and its subsidiary undertakings from time to time and references to a **"member of the group"** or a **"Group member"** shall be construed accordingly

**"Index-linked"** the monetary amount to which it applies shall be increased on each anniversary of the date of 3rd November 1999 by such percentage as is equal to the percentage increase in the Retail Prices Index (all items) published by the Department of Employment (or such other similar index as may be published in its place) between the figure published immediately prior to the preceding anniversary (or in the case of the first anniversary the figure published immediately prior to 3rd November 1999) and the figure published immediately prior to the date of such proposed increase

**"Listing"** the admission of all or any of the Equity Shares to the Official List of the Stock Exchange or the grant of permission by the Stock Exchange to deal in the same on any recognised investment exchange (as that term is defined in the FSA)

**"Listing Date"** the date of admission by the Council of the Stock Exchange of all or any of the Equity Shares to the Official List (subject only to the posting of a notice under paragraph 7.1 of the Stock Exchange Rules) or the date on which permission is granted to deal in the same on any recognised investment exchange (as that term is defined in the FSA)

**"Managers"** the persons referred to as such in the Subscription Agreement or any of them

**"Net Profits"** in relation to any Accounting Period of the Company a sum equal to the consolidated profit (if any) before taxation of the Accounting Group as shown in the Accounts for such period adjusted (to the extent not already provided for) as follows:

- (a) to disregard any provision for dividends or other distributions, transfers to reserves, charges to goodwill, extraordinary items and exceptional items except as provided for in the annual budget for such Accounting Period; and
- (b) to add back the amount of any Excess Remuneration (as referred to and ascertained in accordance with paragraph 4.1.1.2(a)(ii) below)

**"Ordinary Shareholder"** a registered holder of any Ordinary Shares

**"Ordinary Share"** an ordinary share of £1 in the capital of the Company

**"Preferred Ordinary Shareholder"** a registered holder of any Preferred Ordinary Shares

**"Preferred Ordinary Share"** a cumulative participating preferred ordinary share of 1 penny in the capital of the Company

**"Share Sale"** the completion of any transaction whereby any person or group of persons acting in concert (as defined by the City Code on Take-Overs and Mergers) purchases not less than 51 per cent in nominal value of the Equity Shares

**"Stock Exchange"** London Stock Exchange Limited

**"Subscriber"** West Register (Investments) Limited a company incorporated in Scotland whose registered company number is 20177066 and whose registered office is at 42 St. Andrew Square, Edinburgh EH2 2YE or its transferee or transferees in accordance with Article 7 of these Articles

**"Subscriber's Director"** a director appointed pursuant to Article 16 of these Articles

**"Subscription Agreement"** an agreement made on 3rd November 1999 between (1) the Company and (2) the Managers and (3) the Subscriber

Words incorporating the masculine gender only include the feminine and neuter genders and words incorporating the singular number only include the plural and vice versa.

Clause headings are for ease of reference only and do not affect the construction or interpretation of these Articles.

References to persons shall include bodies corporate unincorporated associations and partnerships.

Word and expressions defined in or for the purposes of the Act or Table A shall have the same meanings in these Articles unless the context otherwise requires.

Without prejudice to the provisions of Section 738 of the Act the expressions "paid up" or "paid up value" as used in relation to any part of the share capital of the Company shall

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mean the total amount paid up, or credited as paid up, on the relevant shares including any premium paid up or credited as paid up thereon.

### **3 SHARE CAPITAL**

The authorised share capital of the Company at the date of adoption of these articles is £150,375 divided into 37,500 Preferred Ordinary Shares of 1p each and 150,000 Ordinary Shares of £1 each.

### **4 SHARE RIGHTS**

The rights and restrictions attaching to the Preferred Ordinary Shares and the Ordinary Shares shall be as follows:-

#### **4.1 As regards income**

4.1.1 The Preferred Ordinary Shares shall confer on the holders thereof the right to receive in priority to the holders of any other class of share in the capital of the Company and the Company shall (subject to the Act) pay:-

4.1.1.1 in respect of each Preferred Ordinary Share in issue and with effect from 1 October 2000, accumulative participating dividend ("**Participating Dividend**") of an amount which shall be equal to ten per cent of the Net Profits for each Accounting Period of the Company (exclusive of any associated tax credit). The Participating Dividend shall accrue on a daily basis from 1 October 2000 and shall be paid on the expiry of 14 days after the audit report on the Accounts for the relevant Accounting Period has been signed by the Auditors;

4.1.1.2 in respect of each Preferred Ordinary Share in issue, a further dividend ("**Further Dividend**") in respect of each Accounting Period of an amount equal to:

(a) the aggregate of:

- (i) the total dividends paid, or proposed to be paid, in respect of the relevant Accounting Period on Ordinary Shares in issue; and
  - (ii) Emoluments in excess of an aggregate of £324,950 (or such other sum as may be agreed in writing from time to time between the holders of a majority of the Preferred Ordinary Shares and the holders of a majority of the Ordinary Shares) paid or payable in respect of the relevant Accounting Period to any person who was, or would be, at the time of such payment (a) interested in Ordinary Shares in the Company; (b) a director of the Company or any person connected with any such director ("Excess Remuneration");
- (b) divided by the number of Ordinary Shares in issue at the end of the relevant Accounting Period;
  - (c) minus an amount equal to the dividends paid or payable on each Preferred Ordinary Share in respect of the relevant Accounting Period pursuant to paragraph 4.1.1.1 above.
  - (d) The further Dividend (if any) shall be paid on the due date for payment of the Participating Dividend in respect of the relevant Accounting Period.

4.1.2 If the whole or any part of the Participating Dividend or the Further Dividend is not paid on the due date or dates for any reason other than the Company is prohibited from making such payments under the Act then the Company shall pay on the date or dates of actual payment thereof and in addition to such dividend (or the unpaid part thereof) a sum calculated at the rate of five per cent per annum over the base rate of the Bank on the amount of such dividends (or the unpaid part thereof) accruing on a daily basis from the due date or dates for payment until the date or dates of actual payment and such arrears together with any sums payable under this Article 4.1.2 shall be a debt owed by the Company to the Preferred Ordinary Shareholders.

- 4.1.3 Any arrears of the Participating Dividend or Further Dividend shall be carried forward until payment in full thereof has been made and any amount which the Company shall distribute by way of dividend to the Preferred Ordinary Shareholders in respect of any Accounting Period shall be applied first in reducing or extinguishing any arrears of the Participating Dividend and Further Dividend and any other sums payable under Article 4.1.2 in respect thereof (which arrears and other sums shall rank for payment in the order of priority applicable to such dividends in accordance with these Articles) in priority to the payment of any Participating Dividend or Further Dividend or arrears thereof or other sums payable under Article 4.1.2 in respect thereof accruing subsequently.
- 4.1.4 It shall not be necessary for the Company to declare any dividend which in accordance with these Articles is payable on the Preferred Ordinary Shares and such dividends shall, to the extent lawfully permissible, constitute a debt due from the Company to the Preferred Ordinary Shareholders on the due date or dates for payment without any requirement for a recommendation or declaration by the Company or the Directors and Regulation 102 of Table A shall be read and construed accordingly.
- 4.1.5 Any amount of the Participating Dividend the Further Dividend or the Ordinary Dividend payable under these Articles shall belong to and be paid to the holders of the Preferred Ordinary Shares or the Ordinary Shares as the case may be pro rata according to their holdings of such Shares.

## **4.2 As regards capital**

- 4.2.1 On a return of assets whether in a winding-up or reduction of capital or otherwise (except in the case of the redemption of shares of any class or the purchase by the Company of its own shares) any debts which shall have become due in accordance with Article 4.1 shall only be paid in accordance with this Article 4.2.1 and the assets and retained profits of the Company available for distribution among the members remaining after payment of all other debts and liabilities of the Company and of the costs charges and expenses of such winding-up, shall be applied as follows:

- 4.2.1.1 first, in paying to the holders of the Preferred Ordinary Shares the amounts paid up or credited as paid up thereon together with a

premium of 99 pence per Preferred Ordinary Share so held and together with all accruals and arrears of the Participating Dividend and the Further Dividend (whether earned or declared or not) and any sums payable under Article 4.1.2 in respect thereof calculated up to and including the date on which the return of capital is made;

4.2.1.2 secondly, in paying to the Ordinary Shareholders the amounts paid up thereon;

4.2.1.3 thereafter in distributing the balance of such assets and retained profits amongst the Ordinary Shareholders and the Preferred Ordinary Shareholders (pari passu as if the same constituted one class of share) in proportion to the numbers of Ordinary Shares and Preferred Ordinary Shares held by them respectively and without reference to the nominal value or the amounts paid up or credited as paid up thereon.

#### **4.3 As regards to voting**

The Preferred Ordinary Shareholders and the Ordinary Shareholders shall have the right to receive notice of all general meetings of the Company and to attend and to vote thereat either in person or by proxy. On a poll every member holding a Preferred Ordinary Share or an Ordinary Share shall have one vote in respect of every such Preferred Ordinary Share or Ordinary Share of which he is the holder.

#### **4.4. Proceeds of sale**

4.4.1 In the event of a sale of the whole of the issued share capital of the Company then, notwithstanding anything to the contrary in the terms and conditions governing such sale (unless all the selling members immediately prior to such sale have agreed to the contrary for the purposes of this Article 4.4), the proceeds of such sale shall be applied as follows:

4.4.1.1 first, in paying to the holders of the Preferred Ordinary Shares the amounts paid up or credited as paid up thereon together with all accruals and arrears of the Participating Dividend and the Further Dividend (whether earned or declared or not) and any sums payable

under Article 4.1.2 in respect thereof calculated up to and including the date on which the share sale is completed; and

4.4.1.2 secondly, as to the balance amongst the Preferred Ordinary Shareholders and the Ordinary Shareholders (pari passu as if the same constituted one class of share) in proportion to the numbers of Preferred Ordinary Shares and Ordinary Shares held by them respectively and without reference to the nominal value or the amounts paid up or credited as paid up thereon.

## **5. MODIFICATION OF RIGHTS**

Subject to the Act all or any of the special rights for the time being attached to any class of shares for the time being in issue may from time to time (whether or not the Company is being wound up) be altered or abrogated with the written consent of the holders of not less than three-quarters of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of such shares. To any such separate general meeting all the provisions of these Articles as to general meetings of the Company shall mutatis mutandis apply except that the necessary quorum shall be two or more persons holding or representing by proxy not less than one-third of the issued shares of the class (provided that where all the shares of a class are registered in the name of one holder that holder present in person or by proxy may constitute a meeting) and that every holder of shares of the class shall be entitled on a poll to one vote for every such share held by him and that any holder of shares of the class present in person or by proxy may demand a poll and that at any adjourned meeting of such holders one holder present in person or by proxy (whatever the number of shares held by him) shall be a quorum.

## **6 TRANSFER OF SHARES – GENERAL**

6.1 The Directors may in their absolute discretion decline to register the transfer of any shares in the Company (including the transfer of any shares otherwise permitted under Article 7) to any person who in the opinion of the Directors is carrying on business directly or indirectly in competition with the Company or any member of the Group.

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- 6.2 Without prejudice to the provisions of Regulation 24 of Table A (as modified hereby) the Directors shall not register any transfer of shares in the Company except a transfer permitted by the following provisions of these Articles.

## 7 PERMITTED TRANSFERS OF SHARES

### 7.1 Group Transfers

- 7.1.1 A member which is an undertaking ("**Original Undertaking**") may transfer any shares held by it to any other undertaking which in relation to that Original Undertaking is a group undertaking.
- 7.1.2 Where share have been transferred pursuant to Article 7.1.1 whether directly or by a series of transfers from an undertaking ("**Transferor Undertaking**") to an undertaking which in relation to the Transferor Undertaking is a group undertaking ("**Transferee Undertaking**") and subsequently the Transferee Undertaking ceases to be a group undertaking in relation to the Transferor Undertaking then the Transferee Undertaking shall forthwith transfer any shares in the Company held by it to the Transferor Undertaking or an undertaking which in relation to the Transferor Undertaking is a group undertaking and in default thereof the provisions of Article 8.6 shall apply in respect of all such shares.

### 7.2 Nominees

- 7.2.1 Any share may be transferred by a member who is the beneficial owner of such shares ("**Beneficial Owner**") to a person shown to the reasonable satisfaction of the Directors to be a nominee for the Beneficial Owner only.
- 7.2.2 Where any shares have been transferred to a nominee pursuant to Article 7.2.1 any such nominee may transfer any shares so transferred to the Beneficial Owner or to another person shown to the reasonable satisfaction of the Directors to be a nominee for the Beneficial Owner only.
- 7.2.3 Where a person to whom any shares have been transferred as a nominee pursuant to this Article 7.2 ceases to hold such shares as nominee for the Beneficial Owner only he shall forthwith transfer such shares to the Beneficial Owner or to another person shown to the reasonable satisfaction of the

Directors to be a nominee for the Beneficial Owner only and in default thereof the provisions of Article 8.6 shall apply in respect of all such shares.

### **7.3 To Privileged Relations and Trustees**

7.3.1 Any shares may be transferred by a Beneficial Owner who is an individual:-

7.3.1.1 to a privileged relation of such Beneficial Owner;

7.3.1.2 to trustees to be held upon family trusts.

7.3.2 Where any shares have been transferred to privileged relations or trustees pursuant to Article 7.3.1 the privileged relation or the trustees as the case may be may transfer any such shares to a person or persons shown to the reasonable satisfaction of the Directors to be:-

7.3.2.1 the trustees for the time being (on a change of trustee) of the family trusts in question and/or;

7.3.2.2 the Beneficial Owner or any privileged relation of the Beneficial Owner.

In any case where a member proposing to transfer shares under this Article 7.3 (the "Proposing Transferor") holds those shares as a result of an earlier transfer authorised under this Article 7.3 from another member (the "Original member") the Proposing Transferor may only transfer those shares to a person to whom the Original member could have transferred such shares under this Article 7.3.

7.4 Where shares are held by trustees on a family trust and any such shares cease to be held upon family trusts (otherwise than in consequence of a transfer authorised under Article 7.3.2) the trustees shall forthwith transfer such shares to a transferee permitted under Article 7.3.2 and in default thereof the provisions of Article 8.6 shall apply in respect of all such shares.

7.5 For the purposes of this article 7 the following expressions shall have the following meanings:-

7.5.1 **"privileged relation"** means the parent or spouse or brothers or sisters of the Beneficial Owner or any lineal descendant of that person or any person who is or has been married to any such lineal descendant or any stepchild or adopted child of the Beneficial Owner or of any such lineal descendant;

7.5.2 **"family trust"** means a trust (whether arising under a settlement inter vivos or a testamentary disposition by whomsoever made or an intestacy) under which the only persons being (or capable of being) beneficiaries are the individual Beneficial Owner and/or his privileged relations and no power of control over the voting powers conferred by such shares is for the time being exercisable by or subject to the consent of any person other than the trustees as trustees or the individual Beneficial Owner or his privileged relations.

7.6 Any Ordinary Shares or Preferred Ordinary Shares and/or any interest therein may be transferred at any time to any person with the written consent of the holders of not less than 90 per cent in nominal value of the issued Equity Shares for the time being.

## 8. PRE-EMPTION RIGHTS ON TRANSFER

8.1 Any member wishing to transfer (other than a transfer permitted by Article 7) all or any Shares specified in Column A of the table set out below (the "Table") held by him and/or any interest therein (a "Retiring Shareholder") shall first give a notice in writing (a "Sale Notice") to the Company specifying (i) the number and denoting numbers (if any) of the shares which the Retiring Shareholder wishes to sell ("**Sale Shares**") (ii) the price at which he proposes to transfer the sale Shares, which price shall be the Market Value as determined by the Auditors pursuant to Article 9.5.1 if no price is specified (the "Price") and (iii) the name of any third party to whom he proposes to sell or transfer the Sale Shares. The sale Notice shall constitute the Company as the agent of the Retiring Shareholder for the sale of the Sale Shares at the Price. A Sale Notice may require that unless all the shares comprised in it are sold none shall be sold.

| A                         | B<br>FIRST OFFER                                      | C<br>SECOND OFFER                               | D<br>THIRD OFFER                             | E<br>FINAL OFFER                                |
|---------------------------|-------------------------------------------------------|-------------------------------------------------|----------------------------------------------|-------------------------------------------------|
| Ordinary Shares           | All other Ordinary Shareholders<br><br>1 & 5          | Ordinary Shareholders<br><br>1, 2 & 5           | Preferred Ordinary Shareholders<br><br>3 & 5 | Preferred Ordinary Shareholders<br><br>3, 5 & 6 |
| Preferred Ordinary Shares | To all other Preferred Ordinary Shareholders<br><br>3 | Preferred Ordinary Shareholders<br><br>3, 4 & 5 | Ordinary Shareholders<br><br>1 & 5           | Ordinary Shareholders<br><br>1 & 7              |

- 1 *In proportion (as nearly as may be) to the nominal amount of their existing holdings of Ordinary Shares.*
- 2 *Other than any Ordinary Shareholders who have not accepted any Sale Shares already offered to them pursuant to the First Offer.*
- 3 *In proportion (as nearly as may be) to the nominal amount of their existing holdings of Preferred Ordinary Shares.*
- 4 *Being Preferred Ordinary Shareholders who have accepted Sale Shares pursuant to the First Offer.*
- 5 *In the case of a deemed service of a Sale Notice pursuant to Article 9.2, other than to other Ordinary Shareholders or (as the case may be) Preferred Ordinary Shareholders who pursuant to the said Article 9.2 are deemed to have served a Sale Notice in respect of their shares at the same time.*
- 6 *Other than any Preferred Ordinary Shareholders who have not accepted any Sale Shares already offered to them pursuant to the Third Offer.*
- 7 *Other than any Ordinary Shareholders who have not accepted any Sale Shares pursuant to the Third Offer.*

8.2 On receipt or deemed receipt of a Sale Notice the Company shall by notice in writing offer the Sale Shares at the Price to the persons specified in Column B of the Table entitled to first refusal thereof ("**First Offer**").

The First Offer shall be made by the Company within seven days of the date on which the Sale Notice is given ("**Sale Notice Date**") and shall specify that such offer must be accepted within 28 days or in default thereof will lapse. The Company shall by notice in writing offer any remaining Sale Shares which have not been accepted pursuant to the First Offer to the persons specified in Column C of the Table at the Price ("**Second Offer**"). Any such offer shall be made within seven days of the date on which the First Offer lapses or if earlier the date on which all persons entitled to accept the First Offer have indicated the maximum number of Sale Shares they wish to accept and shall specify that such offer must be accepted within 14 days or in default will lapse.

- 8.3 If the Company shall not have found purchasers for all of the Sale Shares pursuant to the procedure described in Article 8.2 the Company shall within seven days of the date on which the Second Offer lapses or if earlier the date on which all persons entitled to accept the Offer have indicated the maximum number of Shares they wish to accept by notice in writing offer the Sale Shares not so accepted pursuant to the Offer to the persons specified in Column D of the Table at the Price ("**Third Offer**"). Such offer shall specify that such offer must be accepted within 14 days or in default will lapse. The Company shall by notice in writing offer any remaining Sale Shares which have not been accepted pursuant to the Third Offer to the persons specified in Column E of the Table at the Price ("**Final Offer**"). Any such offer shall be made within seven days of the date on which the Third Offer lapses or if earlier the date on which all persons entitled to accept the Third Offer have indicated the maximum number of

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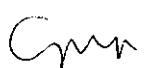
Sale Shares they wish to accept and shall specify that such offer must be accepted within 14 days or in default will lapse.

8.4 If the Company shall within the said time limits find members willing to purchase all or any of the Sale Shares it shall within 14 days of the expiry of such time limits or such earlier date as it may have found members willing to purchase all the Sale Shares give notice thereof to the Retiring Shareholder whereupon the Retiring Shareholder shall become bound to sell and transfer the Sale Shares to the respective purchasers free from all liens charges encumbrances and third party rights and (unless the notice given under this Article 8.4 provides otherwise) together with all rights attaching thereto at the date of sale. A notice under this Article 8.4 shall state the name and address of each of the purchasers and the number of shares to be purchased by him and shall designate a place and a time (being not less than three nor more than ten days following the date of the notice) for completion of the sale of the shares comprised in such notice. If a Sale Notice states that the Retiring Shareholder is not willing to sell part only of his shares the provisions of this Article 8.4 shall not take effect unless the Company shall have found purchasers for all such shares. Any offer made by the Company in respect of shares comprised in such a Sale Notice shall state as a condition of the offer that it is not capable of being accepted unless acceptances are received in respect of all the shares comprised in the relevant Sale Notice.

8.5 If the Company shall not within the said time limits find purchasers for all of the Sale Shares or if through no default of the Retiring Shareholder the purchase of any of the Sale Shares is not completed within the time period specified in Article 8.4 the Company shall promptly give notice in writing thereof to the Retiring Shareholder who shall be at liberty at any time within two months after the date of such notice to transfer such Sale Shares for which purchasers have not been found or in respect of which the sale was not completed as aforesaid to any person he may wish provided that:

8.5.1 such sale is completed at the Price or any higher or (subject as provided below) lower price and that otherwise the terms of payment of the purchase price are no more favourable to the purchaser than those offered to the shareholders or other persons hereunder;

8.5.2 no Sale Shares shall be sold at a lower price than the Price without the Retiring Shareholder first serving a further Sale Notice upon the Company specifying such lower price as the price at which such Sale Shares are offered and all the provisions of this Article 8 shall mutatis mutandis apply in respect of such further Sale Notice save that the Price shall be such lower price;



8.5.3 if the Sale Notice states that the Retiring Shareholder is not willing to transfer part only of the Sale Shares he shall not be entitled to sell part only of such shares hereunder;

8.5.4 the Directors may call for such evidence as they shall reasonably request in order to satisfy themselves that the consideration for any sale hereunder is as stated in the transfer without any rebate allowance or deduction to the purchaser and if not so satisfied they may refuse to register a transfer hereunder.

8.6 If any shareholder shall fail or refuse to transfer any shares which he shall have become bound to transfer in accordance with the provisions of these Articles the Directors may authorise some person to execute and deliver on his behalf a transfer or transfers of such shares to the purchaser or purchasers and the Company may give a good receipt for the purchase price of such shares and may register the purchaser or purchasers as holders thereof and issue to them certificates for the same whereupon the purchaser or purchasers shall become indefeasibly entitled thereto. The shareholder shall in such case be bound to deliver up his certificate for the shares to the Company whereupon the Shareholder shall be entitled to receive the purchase price which shall in the meantime be held by the Company on trust for the Shareholder but without interest. If such certificate shall comprise any shares which the Shareholder has not become bound to transfer as aforesaid the Company shall issue to the Retiring Shareholder a balance certificate for such shares.

## **9. TRANSFERS BY ORDINARY SHAREHOLDERS ON CEASING TO BE A DIRECTOR OR EMPLOYEE AND TRANSFERS ON DEATH OR BANKRUPTCY**

9.1 In the event that any shareholder in the Company or any of its subsidiary undertakings ceases for any reason (including death) to be an employee or director of the Company or any of its subsidiary undertakings and is not continuing as either a director or employee of the Company or any of its subsidiary undertakings or commits a material breach of the Subscription Agreement and:

9.1.1 the shareholder is a holder of Ordinary Shares (whether solely or jointly with any other person); and/or

9.1.2 the shareholder has established a family trust which holds Ordinary shares; and/or

9.1.3 any Ordinary Shareholder holds Ordinary Shares as the nominee of such employee or director (as the case may be); and/or

9.1.4 Ordinary Shares are held by a privileged relation or other permitted transferee of such shareholder; and/or

9.1.5 Ordinary Shares are held by a company the majority of the issued share capital of which is beneficially owned by such shareholder,

the date on which the shareholder concerned ceases to be a director or employee as aforesaid or the date on which the Board (subject to the consent of the Subscriber's Director) shall in writing reasonably determine there has been a material breach of the Subscription Agreement as the case may be (the "Cessation Date") there shall be deemed to have been served a Sale Notice by any of the holders of the Ordinary Shares referred to in this Article (or their personal representatives in the case of their death) (the "Compulsory Vendors") in respect of all their shares in the Company (howsoever acquired).

9.2 A Sale Notice deemed to have been given under this Article 9 shall be deemed to have been given on the date of notification by the Board (subject to the consent of the Subscriber's Director) to the Compulsory Vendors of its determination that a Sale Notice has been deemed to have been given or, if earlier, the date on which the Compulsory Vendor ceases to be a director or employee as aforesaid ("**Deemed Notice Date**").

9.3 The price for the Sale Shares shall be as follows:-

9.3.1 if the Cessation Date is less than five years after the issue of the Sale Shares, or if the shareholder is a "Bad Leaver", the price shall be the lesser of either the "Market Value" of the Sale Shares as at the Cessation Date or the issue price (including any premium) of the Sale Shares;

9.3.2 if the Cessation Date is at least five years after the issue of the Sale Shares and the shareholder is a "Good Leaver", the price shall be the "Market Value" of the Sale Shares.

9.4 For the purposes of Article 9.3:-

9.4.1 "**Market Value**" shall be the price agreed between the Compulsory Vendors and the Board, subject to the consent of the Subscriber or Subscriber's Director, as the case may be, such consent not to be unreasonably withheld or delayed or, if a price is not so agreed within 21 days of the Deemed Notice Date, the price certified by the Auditors acting as experts and not as arbitrators, to be the market value of the Sale Shares upon

the Cessation Date (calculated on the basis of a sale by a willing seller to a willing buyer by reference to the value of the whole of the issued share capital of the Company and taking no account of the percentage of the capital represented by the Sale Shares). The costs of the Auditors shall be borne as determined by the Auditors;

9.4.2 a **"Good Leaver"** is a person who ceases to be an employee and/or director because of death, retirement or permanent incapacity entitling the Company to dismiss him or dismissal (other than a dismissal in circumstances entitling the Company or one of its subsidiary undertakings summarily to dismiss that person) or who is otherwise categorised as a Good Leaver by the Subscriber's Director;

9.4.3 a **"Bad Leaver"** is a person who ceases to be an employee and/or director and who is not a Good Leaver.

9.5 Without prejudice to Article 9.1 if a majority of the Directors (including the Subscriber's Director) so resolve, they may at any time give notice to the legal personal representatives of a deceased member ("PRs") or the trustee in bankruptcy of a member ("trustee in bankruptcy") requiring such person to elect either to be registered himself or to give a Sale Notice (as defined in Article 8.1) in respect of the shares to which he/they become entitled in consequence of the death or bankruptcy of any member. If such notice is not complied with within 14 days from the date of such notice the Directors may authorise some person to execute and deliver a transfer of the shares concerned to some person appointed by the Directors as a nominee for the PRs or trustee in bankruptcy and the Company may give a good receipt for the purchase price of such shares and may register the purchaser or purchasers as the holders thereof and issue to them certificates for the same whereupon the purchaser or purchasers shall become indefeasibly entitled thereto. In any such case the PRs or trustee in bankruptcy shall be bound to deliver up the certificates for the shares concerned to the Company whereupon they shall become entitled to receive the purchase price which shall in the meantime be held by the Company on trust for such person or persons but without interest.

9.6 For the avoidance of doubt where an individual is employed by and/or serves as a director of a company which is a subsidiary undertaking of the Company Article 9 shall apply upon that company ceasing to be within the Group and the individual not continuing to be an employee or director of any member of the Group.

## 10. TRANSFER OF CONTROL

10.1 Notwithstanding any other provision of these Articles but subject as provided in Article 10.3 no transfer of any Ordinary Shares ("**Qualifying Shares**") which if made and registered would result in any person or group of persons acting in concert (as defined by the City Code on Take-Overs and Mergers) then holding in the aggregate more than 50 per cent of the aggregate voting rights attaching to the Qualifying Shares shall be made or registered without the previous written consent of the holders of not less than 50 per cent of the Preferred Ordinary Shares unless:-

10.1.1 before the transfer is lodged for approval by the Directors for registration the proposed transferee has made an offer in accordance with this Article 10 (a "Qualifying Offer") to purchase all the Preferred Ordinary Shares in cash at the Specified Price plus an amount equal to any arrears, deficiencies and accruals of the Participating Dividend and the Further Dividend (whether or not declared or earned) and any sums payable under Article 4.1.2 to be calculated down to the date of completion; and

10.1.2 before or at the same time as the transfer of the Qualifying Shares is approved by the Directors (subject to stamping) each such accepted offer is completed and the consideration thereunder paid except insofar as failure to complete is due to the fault of the offeree.

10.2 A Qualifying Offer shall be in writing and shall be stipulated to be open for acceptance in the United Kingdom for at least 21 days and in default of acceptance in writing within such time by an offeree shall be deemed to have been rejected by such offeree.

10.3 The provisions of Articles 10.1 shall not apply to the acquisition of shares by a party, at the date of 3<sup>rd</sup> November 1999, to the Subscription Agreement or pursuant to Articles 7.1 to 7.5 (inclusive).

10.4 For the purposes of this Article:-

10.4.1 "**Connected Person**" shall have the meaning as set out in section 839 Income and Corporation Taxes Act 1988 and persons will be regarded as "acting in concert" if they would be so regarded for the purposes of the City Code on Takeovers and Mergers;

10.4.2 **"Transfer"** and **"transferee"** shall include respectively the renunciation of a renounceable letter of allotment and the renounce under any such letter of allotment; and

10.4.3 **"Specified Price"** shall mean the greater of:-

10.4.3.1 a price per share of not less than that offered or paid or agreed to be paid by a proposed transferee or any Connected Person with or any person acting in concert with such person for each Qualifying Share; and

10.4.3.2 if the proposed transferee or any Connected Person with or any person acting in concert with such person has acquired any Ordinary Shares during the preceding 12 months, the "Specified Price" shall mean a price of not less than the average price per Ordinary Share paid or agreed to be paid in respect of all such shares so acquired during the preceding 12 months including the Qualifying Shares.

10.4.4 In determining the price paid or agreed to be paid for a share for the purposes of Article 10.4.3, there shall be included in each case an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the seller of the relevant shares (or any Connected Person or person acting in concert with him) which (having regard to the substance of the transaction as a whole) can reasonably be regarded as forming part of the consideration for the relevant shares.

10.5 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 and acting at the joint expense of 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 (or any successor body thereto) at the request of any of the parties concerned) whose decision shall be final and binding. In the absence of fraud such umpire shall be under no liability to any person by reason of his calculation or anything done or omitted to be done by him for the purposes thereof or in connection therewith. The proposing transferor and any other shareholder shall provide such umpire with whatever information the umpire reasonably requests for the purposes of the calculation.

## 11 COME ALONG OPTION

- 11.1 Notwithstanding any other provision of these Articles if any one or more members holding at least 50% of the Equity Shares (including all of the Preferred Ordinary Shares) (together the "Selling Shareholders") wish to transfer all their Equity Shares (the "Relevant Shares") to a person who was neither an original party to the Subscription Agreement nor a transferee pursuant to a permitted transfer under Article 7 (a "Third Party Purchaser") who has made a bona fide offer, the Selling Shareholders shall have the option (the "Come Along Option") to require all the other holders of Equity Shares and any persons holding an option to subscribe or otherwise acquire Equity Shares to transfer all their shares (including shares acquired on exercise of an option to subscribe or otherwise acquire Equity Shares) with full title guarantee to the Third Party Purchaser or as the Third Party Purchaser shall direct in accordance with this Article and subject to the following provisions of this Article.
- 11.2 The Selling Shareholders may exercise the Come Along Option by giving notice to that effect (a "Come Along Notice") to all other members and any persons holding an option to subscribe or otherwise acquire Equity Shares (the "Called Shareholders") at any time before the transfer of the Relevant Shares. A Come Along Notice shall specify that the Called Shareholders are required to transfer all their Equity Shares and any Equity Shares acquired as a result of the exercise of any option (the "Called Shares") pursuant to this Article 11 to the Third Party Purchaser, the price at which the Called Shares are to be transferred (determined in accordance with Article 11.4) and the proposed date of transfer not being more than 30 days after the date of service of the Come Along Notice.
- 11.3 A Come Along Notice is irrevocable but the Come Along Notice and all obligations thereunder will lapse if for any reason there is no transfer of the Relevant Shares by the Selling Shareholders to the Third Party Purchaser within 30 days after the date of the Come Along Notice.
- 11.4 The Called Shareholders shall be obliged to sell the Called Shares at the price specified in the Come Along Notice within the period of 30 days from the date of service of the Come Along Notice at the price specified in the Come Along Notice. Such price shall attribute an equal value to each Equity Share (including the Relevant Shares) on the basis of an offer for all issued Equity Shares on arm's length terms taking into account any consideration (in cash or otherwise) payable (or which has been paid) which, having regard to the substance of the transaction as a whole, can reasonably be regarded as part of the price payable in respect of such shares.

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11.5 Completion of the sale of the Called Shares shall take place on the same date as the date proposed for completion of the sale of the Selling Shareholders unless:

11.5.1 all of the Called Shareholders and the Selling Shareholders agree otherwise; or

11.5.2 that date is less than 10 days after the Come Along Notice, where it shall be deferred until the 10<sup>th</sup> day after the Come Along Notice; or

11.5.3 a counter offer is made in which case the Selling Shareholders shall be obliged to sell the Equity Shares held by them in accordance with the terms of the counter offer at the place and on the date referred to above.

11.6 Each of the Called Shareholders shall, on service of the Come Along Notice, be deemed to have irrevocably appointed each of the Selling Shareholders to be his attorney to execute any stock transfer and to do such other things as may be necessary or desirable to accept, transfer and complete the sale of the Called Shares pursuant to this Article.

## **12. MATTERS REQUIRING CONSENT OF THE SUBSCRIBER'S DIRECTOR**

12.1 In addition to any consent required by law the Company shall not do and (so far as it is able) it will not permit any member of the Group to do any of the following without prior written consent of the Subscriber's Director or if there is no Subscriber's Director the consent or sanction of the Preferred Ordinary Shareholders given in accordance with Article 5:-

12.1.1 acquire the whole or any part of any other business or undertaking (other than the purchase of raw materials and stock in the ordinary course of business) or acquire any shares or any option over shares in the capital of any company;

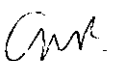
12.1.2 make any material change in the nature of its business as carried on at the date of adoption of these Articles or in the case of a subsidiary undertaking acquired hereafter as at the date of such acquisition;

12.1.3 declare or pay any dividend on any class of its shares other than as provided in these Articles or by a subsidiary undertaking to its parent undertaking;

12.1.4 create allot or issue any shares or securities or grant any right to require the allotment or issue of any such shares or securities;

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- 12.1.5 amend any provision of or add to or delete from any provision of its Memorandum or Articles of Association;
- 12.1.6 increase reduce subdivide consolidate redeem (other than in accordance with these Articles) or otherwise vary the share capital of the Company or reduce any amount standing to the credit of its share premium account or capital redemption reserve fund or any other reserve;
- 12.1.7 modify or vary the rights attaching to the Preferred Ordinary Shares or the Ordinary Shares;
- 12.1.8 admit any person whether by subscription or transfer as a member of the Company (other than in accordance with these Articles);
- 12.1.9 permit any subsidiary to issue (other than to the Company or a wholly owned subsidiary of the Company) any shares;
- 12.1.10 dispose of any shares or permit any subsidiary to dispose of any shares (other than to the Company or a wholly owned subsidiary of the Company);
- 12.1.11 apply for a Listing or enter into negotiations to effect a Share sale or an Asset Sale;
- 12.1.12 commence any action for a voluntary winding up;
- 12.1.13 change its accounting reference date or its auditors;
- 12.1.14 change the accounting policies or principles normally adopted by it save as may be required from time to time to comply with legal requirements or with Statements of Standard Accounting Practice or Financial Reporting Standards.
- 12.1.15 appoint or remove any director;
- 12.1.16 make any alteration to the terms of any service agreement or other terms of engagement (however recorded) of any Director;
- 12.1.17 incur any capital expenditure where the effect of such expenditure would be to cause the total capital expenditure of the Group in any Accounting Period (including total



payments under hire purchase or leasing arrangements) to exceed £50,000 or the total capital expenditure in one transaction to exceed £10,000 unless such capital expenditure is included in the annual budget for such Accounting Period;

- 12.1.18 except as provided for in the annual budget for the relevant Accounting Period, sell lease transfer or otherwise dispose of in any Accounting Period any capital assets where the effect of such disposal would be to cause the aggregate book or market value (whichever shall be greater) of all disposals of capital assets of the Company in such Accounting Period to exceed £50,000 or to cause the aggregate book or market value whichever shall be the greater of any one such disposal to exceed £10,000 or sell lease transfer or otherwise dispose of any assets or any part of the business or undertaking which is fundamental to its existing business;
- 12.1.19 acquire or dispose of any freehold or leasehold property;
- 12.1.20 except as provided for in the annual budget for the relevant Accounting Period, enter into any hire purchase agreement credit sale agreement equipment leasing agreement factoring agreement or agreement to discount invoices or borrow any amount raised by loan or overdraft so that the total amount of borrowings of the Group exceeds at any one time £50,000;
- 12.1.21 give any credit (other than trade credit in the ordinary course of business) or make any loan;
- 12.1.22 make any payment or give any guarantee or indemnity or commitment (except in the ordinary course of business or for the benefit of or in favour of a wholly-owned subsidiary and on an arm's length basis);
- 12.1.23 use the name of the Subscriber in any context whatsoever or hold itself out as being connected or associated with the Subscriber in any manner whatsoever other than a purpose for which it is required by law to use such name;
- 12.1.24 create any mortgage charge or other encumbrance over any of its assets;
- 12.1.25 adopt any budgets;
- 12.1.26 enter into any transaction that is not in the ordinary course of business or on an arm's length basis;



- 12.1.27 terminate or vary materially the terms of the Facility Documents as entered into by the Company on 3<sup>rd</sup> November 1999;
- 12.1.28 appoint any employee at a total remuneration in excess of £50,000 or increase the total remuneration of any employee to any amount in excess of such amount unless so provided in his Service Agreement. (In this Article "remuneration" includes (without prejudice to the generality of that expression) all payments by way of salary commission fees pension or other retirement benefits and benefits in kind but not the reimbursement of expenses properly incurred by such an employee in the performance of the employee's duties);
- 12.1.29 enter into any joint venture consortium partnership or profit sharing arrangement or agreement or carry out any expansion development or evolution of its business otherwise than through the Company or a wholly owned subsidiary of the Company;
- 12.1.30 conduct any litigation material to the Company, save for the collection of debts arising in the ordinary course of the business carried on by the Company or any application for an interim injunction or the taking of any action (including filing an interim defence) which is urgently required in the best interests of the Company in circumstances in which it is not reasonably practicable to obtain prior consent as aforesaid; or
- 12.1.31 pay Emoluments to all Directors (other than the Subscriber's Director) in excess of an aggregate amount of £324,950 Index-linked in respect of any consecutive 12 month period of employment or other engagement in office.
- 12.2 The Company shall procure that no subsidiary shall undertake any of the matters referred to in Article 12.1 (and so that reference in Article 12.1 to the "Company" shall be a reference to each subsidiary) without the prior consent of the Subscriber's Director or, if there is no Subscriber's Director, the consent or sanction of the Preferred Ordinary Shareholders (given in accordance with Article 5).
- 12.3 The consent of the Subscriber's Director or the Preferred Ordinary Shareholders required under Article 12.1 shall not be unreasonably withheld or delayed in relation to those matters referred to in sub-Articles 12.1.13, 12.1.14, 12.1.16, 12.1.17, 12.1.18, 12.1.20, 12.1.25.

### **13. PROCEEDINGS AT GENERAL MEETINGS**

- 13.1 If under regulation 41 of Table A a meeting is adjourned because a quorum is not present and at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the shareholders present shall form a quorum and Regulations 40 and 41 of Table A shall be modified accordingly.
- 13.2 A poll may be demanded by the Chairman or by any member present in person or by proxy and entitled to vote at the meeting and Regulation 46 of Table A shall be modified accordingly.
- 13.3 Regulation 53 of Table A shall be modified by the addition at the end of the following sentence: "If such a resolution in writing is described as a special resolution or as an extraordinary resolution or as an elective resolution, it shall have effect accordingly".
- 13.4 Regulation 59 of Table A shall be modified by the addition at the end of the following sentence: "Deposit of an instrument of proxy shall not preclude a member from attending and voting at the meeting or at any adjournment thereof".
- 13.5 Regulation 62 of Table A shall be modified by the deletion in paragraph (a) of the words "deposited at" and by the substitution for them of the words "left at or sent by post or by facsimile transmission to" and by the insertion at the end of the regulation after the word "invalid" of the words "unless a majority of the Directors resolve otherwise".

#### **14. DIRECTORS**

- 14.1 Unless and until otherwise determined by ordinary resolution of the Company the number of the Directors shall not be less than one nor more than seven.
- 14.2 No person shall be disqualified from being appointed a Director and no Director shall be required to vacate that office by reason only of the fact that he has attained the age of 70 years or any other age nor shall it be necessary to give special notice under the Act of any resolution appointing re-appointing or approving the appointment of a Director by reason of his age but where the Board convenes any general meeting of the Company at which (to the knowledge of the Board) a Director will be proposed for election or re-election who has at the date of such meeting attained the age of 70 years the Board shall give notice of his having attained such age in the notice convening the meeting or in any document sent therewith but the accidental omission to give such notice shall not invalidate any proceedings at that meeting or any election or re-election of such Director thereat.

14.3 Regulation 81(e) shall not apply to the Subscriber's Director.

14.4 Regulation 68 of Table A shall be modified by the addition at the end of the following sentence: "Any such notice may be left at or sent by post or facsimile transmission to the office or such other place as may be designated for the purpose by the Directors".

14.5 A Director shall not retire by rotation and a Director appointed to fill a vacancy or as an addition to the board shall not retire from office at the annual general meeting next following his appointment. Regulations 78 and 79 of Table A shall be modified accordingly.

14.6 The office of Director shall be vacated if the Director in the reasonable opinion of all his co-Directors becomes incapable by reason of mental disorder of discharging his duties as Director, and Regulation 81 of Table A shall be modified accordingly provided that the provisions of this Article 14.6 shall not apply to the Subscriber's Director.

14.7 The holders of not less than one half in nominal value of the shares giving the right to attend and vote at general meetings of the Company may, at any time and from time to time, remove any Director from office or appoint any person to be a Director. Such removal or appointment shall be effected by notice to the Company signed by or on behalf of such holder or holders (which notice may consist of several documents in the like form each signed by or on behalf of one or more holders) and left at or sent by post or facsimile transmission to the office or such other place designated by the Directors for the purpose. Such removal or appointment shall take effect immediately upon receipt of the notice or on such later date (if any) as may be specified in the notice. The provisions of this article 14.7 shall not apply to the appointment or removal of a Subscriber's Director. This Article 14.7 is not to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as Director or of any appointment terminating with that as Director.

## **15. PROCEEDINGS OF DIRECTORS**

15.1 The quorum necessary for the transaction of business at any meeting of the Directors shall be two (of which one shall be the Subscriber's Director if appointed) and regulation 89 of Table A shall be modified accordingly.

15.2 Any Director enabled to participate in the proceedings of a meeting by means of a communication device (including a telephone) which allows all the other Directors present at such meeting (whether in person or by his alternate or by means of such type of communication device) to hear at all times such Director and such Director to hear at all times

all other Directors present at such meeting (whether in person or by proxy or by means of such type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.

## **16. SUBSCRIBER'S DIRECTOR**

16.1 So long as the Subscriber shall hold any shares in the capital of the Company it shall have the right at any time and from time to time to appoint one person as a non-executive Director of the Company to serve as Chairman of the Company but so that not more than one person shall hold office under this Article at any one time and the following provisions shall have effect:-

16.1.1 any such appointment shall be effected by notice in writing to the Company by the Subscriber who may in like manner at any time and from time to time remove from office any Subscriber's Director appointed pursuant to this Article and appoint any person in place of any Subscriber's director so removed or dying or otherwise vacating office as Subscriber's Director;

16.1.2 subject to Section 303 of the Act on any resolution to remove a Subscriber's Director the Preferred Ordinary Shares held by the Subscriber shall together carry one vote in excess of 50 per cent of all the votes exercisable at the general meeting at which such resolution is to be proposed and if any such Subscriber's Director is removed pursuant to section 303 of the Act or otherwise the Subscriber may reappoint him or any other person as a Subscriber's Director.

16.2 So long as the Subscriber shall hold any shares in the capital of the Company the Subscriber shall have the right at any time and from time to time to appoint any one person to attend observe and speak at meetings of the Board and the provisions of Article 16.1.1 shall apply mutatis mutandis but any person so appointed shall not be a director of the Company.

## **17. INDEMNITIES**

Subject to the provisions of the Act but without prejudice to any indemnity to which he may otherwise be entitled every Director alternate director secretary and other officer or employee for the time being of the Company shall be indemnified out of the assets of the Company against any liability (other than any liability arising out of the Subscription Agreement) sustained or incurred by him in defending any proceedings whether civil or criminal relating to his conduct as an officer or employee of the Company in which judgment is given in his favour

or in which he is acquitted or in connection with any application under Section 144 or Section 727 of the Act in which relief is granted to him by the Court.

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