

THE COMPANIES ACTS 1985 AND 1989

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PRIVATE COMPANY LIMITED BY SHARES

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RESOLUTIONS IN WRITING

of

SMASHEDATOM LIMITED

AtomicTangerine, Inc., being the sole member of the Company who at the date of this resolution is entitled to attend and vote at a general meeting of the Company, RESOLVE, in accordance with section 381A of the Companies Act 1985, to pass the following as written resolutions:

1. THAT the Company's memorandum of association be altered by the deletion of clause 3(A) and the substitution for it of the following clause 3(A):

"To develop, market and supply interactive services globally through the media of digital television (whether satellite, cable, terrestrial or other), WAP devices, the Internet, EPOC hand-held devices and any other such media as the Company shall in its absolute discretion determine."

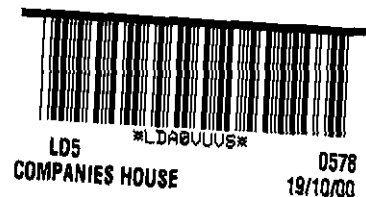
2. THAT new articles of association in the form of the annexed draft, initialled by the chairman for the purpose of identification, be adopted in substitution for the Company's existing articles of association.

SIGNATURE: \_\_\_\_\_

  
Tom Nelson for and on behalf of AtomicTangerine, Inc.

DATE: \_\_\_\_\_

5 OCTOBER 2000



THE COMPANIES ACTS 1985 AND 1989

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PRIVATE COMPANY LIMITED BY SHARES

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MEMORANDUM OF ASSOCIATION

of

SMASHEDATOM LIMITED

1. The Company's name is "ASHERGREEN LIMITED".<sup>1</sup>
2. The Company's registered office is to be situated in England and Wales.
3. The Company's objects are:
  - (A) To develop, market and supply interactive services globally through the media of digital television (whether satellite, cable, terrestrial or other), WAP devices, the Internet, EPOC hand-held devices and any other such media as the Company shall in its absolute discretion determine.
  - (B) To carry on the following businesses, namely, contractors, garage proprietors, filling station proprietors, owners and charterers of road vehicles, aircraft and ships and boats of every description, lightermen and carriers of goods and passengers by road, rail, water or air, forwarding, transport and commission agents, customs agents, stevedores, wharfingers, cargo superintendents, packers, warehouse storekeepers, cold store keepers, hotel proprietors, caterers, publicans, consultants, advisers, financiers, bankers, advertising agents, insurance brokers, travel agents, ticket agents and agency business of all kinds and generally to provide entertainment for and render services of all kinds to others and to carry on any other trade or business which can in the opinion of the directors be advantageously carried on by the Company in connection with or ancillary to any of the businesses of the Company.
  - (C) To buy, sell, manufacture, repair, alter, improve, manipulate, prepare for market, let on hire, and generally deal in all kinds of plant, machinery, apparatus, tools, utensils, materials, produce, substances, articles and things for the purpose of any of the businesses specified in clause 3, or which may be required by persons having, or about to have, dealings with the Company.

<sup>1</sup> The name of the Company was changed to "SmashedAtom Limited" pursuant to a special resolution passed on 27 September 2000.

- (D) To build, construct, maintain, alter, enlarge, pull down, remove and replace any buildings, shops, factories, offices, works, machinery and engines, and to work, manage and control these things.
- (E) To enter into contracts, agreements and arrangements with any person for the carrying out by that person on behalf of the Company of any object for which the Company is formed.
- (F) To acquire, undertake and carry on the whole or any part of the business, property and liabilities of any person carrying on any business which may in the opinion of the directors be capable of being conveniently carried on, or calculated directly or indirectly to enhance the value of or make profitable any of the Company's property or rights, or any property suitable for the purposes of the Company.
- (G) To enter into any arrangement with a government or authority, whether national, international, supreme, municipal, local or otherwise, that may in the opinion of the directors be conducive to any object of the Company, and to obtain from that government or authority any right, privilege or concession which in the opinion of the directors is desirable, and to carry out, exercise and comply with that arrangement, right, privilege or concession.
- (H) To apply for, purchase and by other means acquire, protect, prolong and renew any patent, patent right, brevet d'invention, licence, secret process, invention, trade mark, service mark, copyright, registered design, protection, concession and right of the same or similar effect or nature, and to use, turn to account, manufacture under and grant licences and privileges in respect of those things, and to spend money in experimenting with, testing, researching, improving and seeking to improve any of those things.
- (I) To acquire an interest in, amalgamate with and enter into partnership or any arrangement for the sharing of profits, union of interests, co-operation, joint venture, reciprocal concession or otherwise with any person, or with any employees of the Company. To lend money to, guarantee the contracts of, and otherwise assist that person or those employees, and to take and otherwise acquire an interest in that person's shares or other securities and to sell, hold, re-issue, with or without guarantee, and otherwise deal with those shares or other securities.
- (J) To lend money to, subsidise and assist any person, to act as agents for the collection, receipt and payment of money and generally to act as agents and brokers for and perform services for any person, and to undertake and perform sub-contracts.
- (K) To enter into any guarantee or contract of indemnity or suretyship, and to provide security, including, without limitation, the guarantee and provision of security for the performance of the obligations of and the payment of any money (including, without limitation, capital, principal, premiums, dividends, interest, commissions, charges, discount and any related costs or expenses whether on shares or other securities) by any person including, without limitation, any body corporate which is for the time being the Company's holding company, the Company's subsidiary, a subsidiary of the

Company's holding company or any person which is for the time being a member or otherwise has an interest in the Company or is associated with the Company in any business or venture, with or without the Company receiving any consideration or advantage (whether direct or indirect), and whether by personal covenant or mortgage, charge or lien over all or part of the Company's undertaking, property, assets or uncalled capital (present and future) or by other means. For the purposes of paragraph (K) "guarantee" includes any obligation, however described, to pay, satisfy, provide funds for the payment or satisfaction of (including, without limitation, by advance of money, purchase of or subscription for shares or other securities and purchase of assets or services), indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other person.

- (L) To promote, finance and assist any person for the purpose of acquiring all or any of the property, rights and undertaking or assuming the liabilities of the Company, and for any other purpose which may in the opinion of the directors directly or indirectly benefit the Company, and in that connection to place, guarantee the placing of, underwrite, subscribe for, and otherwise acquire all or any part of the shares or other securities of a body corporate.
- (M) To pay out of the funds of the Company all or any expenses which the Company may lawfully pay of or incidental to the formation, registration, promotion and advertising of and raising money for the Company and the issue of its shares or other securities, including, without limitation, those incurred in connection with the advertising and offering of its shares or other securities for sale or subscription, brokerage and commissions for obtaining applications for and taking, placing, underwriting or procuring the underwriting of its shares or other securities.
- (N) To remunerate any person for services rendered or to be rendered to the Company, including, without limitation, by cash payment or by the allotment of shares or other securities of the Company, credited as paid up in full or in part.
- (O) To purchase, take on lease, exchange, hire and otherwise acquire any real or personal property and any right or privilege over or in respect of it.
- (P) To receive money on deposit on any terms the directors think fit.
- (Q) To invest and deal with the Company's money and funds in any way the directors think fit.
- (R) To lend money and give credit with or without security.
- (S) To borrow, raise and secure the payment of money in any way the directors think fit, including, without limitation, by the issue of debentures and other securities, perpetual or otherwise, charged on all or any of the Company's property (present and future) or its uncalled capital, and to purchase, redeem and pay off those securities.
- (T) To remunerate any person for services rendered or to be rendered in placing, assisting and guaranteeing the placing and procuring the underwriting of any share or other

security of the Company or of any person in which the Company may be interested or proposes to be interested, or in connection with the conduct of the business of the Company, including, without limitation, by cash payment or by the allotment of shares or other securities of the Company, credited as paid up in full or in part.

- (U) To acquire, hold, dispose of, subscribe for, issue, underwrite, place, manage assets belonging to others which include, advise on, enter into contracts or transactions in relation to or involving and in any other way deal with or arrange dealings with or perform any service or function in relation to (as applicable): shares, stocks, debentures, loans, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, government, public or other securities, warrants, certificates representing securities or other obligations, units in collective investment schemes, options, futures, spot or forward contracts, contracts for differences or other investments or obligations, currencies, interest rates, precious metals or other commodities, any index (whether related in any way to any of the foregoing or otherwise), any right to, any right conferred by or any interest or any obligation in relation to any of the foregoing and any financial instrument or product deriving from or in any other way relating to any of the foregoing or of any nature whatsoever, and any transaction which may seem to be convenient for hedging the risks associated with any of the foregoing.
- (V) To co-ordinate, finance and manage the business and operation of any person in which the Company has an interest.
- (W) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments.
- (X) To sell, lease, exchange, let on hire and dispose of any real or personal property and the whole or part of the undertaking of the Company, for such consideration as the directors think fit, including, without limitation, for shares, debentures or other securities, whether fully or partly paid up, of any person, whether or not having objects (altogether or in part) similar to those of the Company. To hold any shares, debentures and other securities so acquired, and to improve, manage, develop, sell, exchange, lease, mortgage, dispose of, grant options over, turn to account and otherwise deal with all or any part of the property and rights of the Company.
- (Y) To adopt any means of publicising and making known the businesses, services and products of the Company as the directors think fit, including, without limitation, advertisement, publication and distribution of notices, circulars, books and periodicals, purchase and exhibition of works of art and interest and granting and making of prizes, rewards and donations.
- (Z) To support, subscribe to and contribute to any charitable or public object and any institution, society and club which may be for the benefit of the Company or persons who are or were directors, officers or employees of the Company, its predecessor in business, any subsidiary of the Company or any person allied to or associated with the

Company, or which may be connected with any town or place where the Company carries on business. To subsidise and assist any association of employers or employees and any trade association. To grant pensions, gratuities, annuities and charitable aid and to provide advantages, facilities and services to any person (including any director or former director) who may have been employed by or provided services to the Company, its predecessor in business, any subsidiary of the Company or any person allied to or associated with the Company and to the spouses, children, dependants and relatives of those persons and to make advance provision for the payment of those pensions, gratuities and annuities by establishing or acceding to any trust, scheme or arrangement (whether or not capable of approval by the Commissioners of Inland Revenue under any relevant legislation) the directors think fit, to appoint trustees and to act as trustee of any trust, scheme or arrangement, and to make payments towards insurance for the benefit of those persons and their spouses, children, dependants and relatives.

- (AA) To establish and contribute to any scheme for the purchase or subscription by trustees of shares or other securities of the Company to be held for the benefit of the employees of the Company, any subsidiary of the Company or any person allied to or associated with the Company, to lend money to those employees or to trustees on their behalf to enable them to purchase or subscribe for shares or other securities of the Company and to formulate and carry into effect any scheme for sharing the profits of the Company with employees.
- (BB) To apply for, promote and obtain any Act of Parliament and any order or licence of any government department or authority (including, without limitation, the Department of Trade and Industry) to enable the Company to carry any of its objects into effect, to effect any modification of the Company's constitution and for any other purpose which the directors think fit, and to oppose any proceeding or application which may in the opinion of the directors directly or indirectly prejudice the Company's interests.
- (CC) To establish, grant and take up agencies, and to do all other things the directors may deem conducive to the carrying on of the Company's business as principal or agent, and to remunerate any person in connection with the establishment or granting of an agency on the terms and conditions the directors think fit.
- (DD) To distribute among the shareholders in specie any of the Company's property and any proceeds of sale or disposal of any of the Company's property and for that purpose to distinguish and separate capital from profits, but no distribution amounting to a reduction of capital may be made without any sanction required by law.
- (EE) To purchase and maintain insurance for the benefit of any person who is or was an officer or employee of the Company, a subsidiary of the Company or a company in which the Company has or had an interest (whether direct or indirect) or who is or was trustee of any retirement benefits scheme or any other trust in which any officer or employee or former officer or employee is or has been interested, indemnifying that person against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against.

- (FF) To amalgamate with any other person and to procure the Company to be registered or recognised in any part of the world.
- (GG) Subject to the Act, to give (whether directly or indirectly) any kind of financial assistance (as defined in section 152(1)(a) of the Act) for any purpose specified in section 151(1) or section 151(2) of the Act.
- (HH) To do all or any of the things provided in any paragraph of clause 3:
- (i) in any part of the world;
  - (ii) as principal, agent, contractor, trustee or otherwise;
  - (iii) by or through trustees, agents, subcontractors or otherwise; and
  - (iv) alone or with another person or persons.
- (II) To do all things that are in the opinion of the directors incidental or conducive to the attainment of all or any of the Company's objects, or the exercise of all or any of its powers.
- (JJ) The objects specified in each paragraph of clause 3 shall, except where otherwise provided in that paragraph, be regarded as independent objects, and are not limited or restricted by reference to or inference from the terms of any other paragraph or the name of the Company. None of the paragraphs of clause 3 or the objects or powers specified or conferred in or by them is deemed subsidiary or ancillary to the objects or powers mentioned in any other paragraph. The Company has as full a power to exercise all or any of the objects and powers provided in each paragraph as if each paragraph contained the objects of a separate company.
- (KK) In clause 3, a reference to:
- (i) a "person" includes a reference to a body corporate, association or partnership whether domiciled in the United Kingdom or elsewhere and whether incorporated or unincorporated;
  - (ii) the "Act" is, unless the context otherwise requires, a reference to the Companies Act 1985, as modified or re-enacted or both from time to time; and
  - (iii) a "subsidiary" or "holding company" is to be construed in accordance with section 736 of the Act.
4. The liability of the members is limited.
5. The Company's share capital is £100 divided into 100 ordinary shares of £1 each.<sup>2</sup>

<sup>2</sup> By ordinary resolution passed on 5 October 2000, the Company's share capital was increased to £800,000 divided into 6,000,000 "A" Preference Shares of £0.10 each and 2,000,000 Non-Voting Ordinary Shares of £0.10 each.

WE, the subscribers to this memorandum of association, wish to be formed into a company pursuant to this memorandum; and we agree to take the number of shares in the capital of the company shown opposite our respective names.

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NAMES AND ADDRESSES OF SUBSCRIBERS

Number of  
shares taken by  
each Subscriber

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CHANTAL ELIZABETH BRACKENBURY

ONE

For and on behalf of  
Clifford Chance Nominees Limited  
200 Aldersgate Street  
London EC1A 4JJ

JANET ELVIDGE

ONE

For and on behalf of  
Clifford Chance Secretaries Limited  
200 Aldersgate Street  
London EC1A 4JJ

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DATED the            day of            , 2000.

WITNESS to the above Signature:

DENISE WEST  
200 Aldersgate Street  
London EC1A 4JJ



Company No. 3985597



THE COMPANIES ACTS 1985 and 1989

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PRIVATE COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

of

SMASHEDATOM LIMITED

Incorporated 4 May 2000

adopted by special resolution passed on

THE COMPANIES ACTS 1985 and 1989

---

PRIVATE COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

of

SMASHEDATOM LIMITED

1. **PRELIMINARY**

1.1 In these Articles:

"Act" means the Companies Act 1985, including any modification or re-enactment from time to time whether before or after the date of adoption of these articles and regulation 1 of Table A shall be modified accordingly;

"A Preference Share" means an "A" preference Share of £0.10 in the capital of the Company;

"Associate" means, in relation to a member, an associated company of the member as defined in section 416 of the Income and Corporation Taxes Act 1988;

"AT" means AtomicTangerine, Inc., a company incorporated in Delaware whose principal place of business is at 333 Ravenswood Avenue, Menlo Park, California 94025;

"Board" means the board of directors of the Company from time to time;

"Joint Venture Agreement" means the agreement dated 5 October 2000 made by (1) Telewest; (2) Telewest Communications plc; (3) AT; and (4) the Company, as amended from time to time;

"Listing" means the listing of shares on a recognised investment exchange (as that term is defined in section 207(1) of the Financial Services Act 1986) or any equivalent international exchange at any time;

**"Non-Voting Ordinary Share"** means a non-voting ordinary Share of £0.10 in the capital of the Company;

**"Ordinary Share"** means an ordinary Share of £0.10 in the capital of the Company;

**"Purchasing Group"** means a person and any other person:

- (i) who in relation to him is a connected person, as defined in section 839 of the Income and Corporation Taxes Act 1988; or
- (i) with whom he is acting in concert, as defined in The City Code on Takeovers and Mergers,

(each being **"a member of the Purchasing Group"**), excluding a person who is an original party to the Joint Venture Agreement.

**"Sale"** means an unconditional agreement giving rise to either (1) a change (whether by Share transfer, new issue of Shares or otherwise) in the ownership of the issued Share capital of the Company whereby any person other than either of Telewest or AT (whether alone or together with any Associate), becomes the beneficial owner of Shares in the issued Share capital of the Company carrying the right to exercise more than 50 per cent of the votes exercisable at a general meeting of the Company or (2) the sale by the Company of the whole or substantially the whole of the Company's undertaking, business and assets;

**"Shares"** means any Shares in the capital of the Company, comprising equity share capital as defined in the Act, of whatever class;

**"Shareholders"** means holders of Shares in the capital of the Company of whatever class;

**"Telewest"** means Telewest Communications Holdco Limited, a company incorporated in England and Wales (registered no. 3761983), whose registered office is at Genesis Business Park, Albert Drive, Woking, Surrey GU21 5RW;

**"Threshold Date"** has the meaning given to it in Article 8.1; and

**"Transfer Notice"** has the meaning set out in Article 10.1.

- 1.2 Words and expressions contained in these articles which are not defined in paragraph 1.1 have, unless the contrary is indicated, the same meaning as in the Act, but excluding any modification to or re-enactment of the Act not in force at the date of adoption of these articles and regulation 1 of Table A shall be modified accordingly.
- 1.3 A **"subsidiary"** or **"holding company"** shall be construed in accordance with section 736 of the Act.

2. **TABLE A**

2.1 The regulations contained in Table A in the Schedule to the Companies (Table A to F) Regulations 1985 (as amended) ("Table A") shall apply to the Company save insofar as they are excluded or modified hereby. No other regulations contained in any statute, statutory instrument or other subordinate legislation shall apply as the regulations or the articles of the Company.

2.2 The regulations of Table A numbered 2, 3, 38, 39, 40, 41, 50, 54, 60, 61, 64, 65, 73 to 81, 84, 89, 90, 94, 95, 96, 97, 98, 109, 115 and 118 shall not apply. The regulations of Table A numbered 1, 24, 35, 37, 45, 46, 53, 57, 59, 62, 66, 67, 68, 88, 110, 112 and 116 shall be modified. Subject to such exclusions and modifications, and in addition to the remaining regulations of Table A, the following shall be the articles of association of the Company.

3. **PRIVATE COMPANY**

The Company is a private company limited by shares and accordingly any invitation to the public to subscribe for any Shares or debentures of the Company is prohibited.

4. **SHARE CAPITAL**

4.1 At the date of adoption of these articles the authorised share capital of the Company is £800,000 divided into:

6,000,000 "A" Preference Shares of £0.10p each;

Zero Ordinary Shares of £0.10p each; and

2,000,000 Non-Voting Ordinary Shares of £0.10p each.

4.2 The pre-emption provisions of sub-section 89(1) of the Act and the provisions of sub-sections 90(1) to (6) inclusive of the Act shall not apply to any allotment of the Company's equity securities.

5. **"A" PREFERENCE SHARES**

The rights attaching to the "A" Preference Shares are set out below.

5.1 **Return of capital or sale**

5.1.1 On a Sale, or a return of capital on liquidation, winding up, reduction of capital or otherwise, the holders of the "A" Preference Shares shall be entitled in respect of their "A" Preference Shares (in proportion to the number of such Shares held by them) to be paid out of the proceeds of sale (in the case of a Sale) or the assets of the Company available for distribution among Shareholders (in the case of a return of capital) a sum equal to the subscription price paid for such Shares together with a sum equal to any accrued and/or unpaid Preference Dividend calculated to the date of the Sale, or the return of capital as the case may be and payable whether or not the Company has enough profits available for distribution to pay the accrued and/or unpaid

Preference Dividend in preference to any amount paid to the holders of any other class of Shares.

5.1.2 Thereafter to share pro rata to their Shareholdings in any balance of such proceeds of Sale or such surplus assets available for distribution with the holders of any other class of Shares.

5.1.3 On a Sale, the Shareholders shall use their reasonable endeavours to procure that the proposed purchaser of the Shares adjusts any payments to be made to the Shareholders to take account of the provisions of Article 5.1.1.

## 5.2 Dividend

5.2.1 The "A" Preference Shares shall be entitled to a fixed cumulative preferential net cash dividend ("**Preference Dividend**") of 8% per annum of the subscription price paid for each "A" Preference Share. Payment of the Preference Dividend shall be deferred and shall be payable together with any capital sums due to such holders on a return of capital or Sale in accordance with Article 5.1 or upon conversion of such "A" Preference Shares in accordance with Article 5.4.

5.2.2 The holders of the Ordinary Shares and Non-Voting Ordinary Shares shall not be entitled to receive any Preference Dividend.

5.2.3 The holders of the "A" Preference Shares have a further right to receive any dividend declared in respect of any other Shares in the capital of the Company on an as if converted basis.

## 5.3 Votes

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

## 5.4 Conversion

5.4.1 as regards conversion:

- (a) any holder of "A" Preference Shares at any time after the date of adoption of these Articles, may give the Company written notice that such holder requires his "A" Preference Shares to be converted into Ordinary Shares or Non-Voting Ordinary Shares (at the election of the Shareholder) at the rate of one Ordinary Share or one Non-Voting Ordinary Share for every "A" Preference Share (for the purposes of this Article 5, the "**conversion rate**"); or

- (b) each "A" Preference Share shall be converted into Ordinary Shares conditionally upon the completion of a Sale or Listing at the conversion rate, notice of which shall be given to the holders of the "A" Preference Shares by the Company at least 10 but not more than 60 days prior to the expected completion of the Sale or Listing, and such notice may specify the expected date of completion of the Sale or Listing as the date for conversion provided that, for the avoidance of doubt, if the Sale or Listing shall not have completed within 30 days after the expected completion date, such conversion of "A" Preference Shares into Ordinary Shares or Non-Voting Ordinary Shares shall be null and void.
- 5.4.2 The Ordinary Shares or Non-Voting Ordinary Shares (as the case may be) to which a holder of "A" Preference Shares is entitled on conversion of his "A" Preference Shares ("**new Ordinary or Non-Voting Ordinary Shares**") shall be credited as fully paid and shall rank *pari passu* in all respects and form one class with the Ordinary Shares or Non-Voting Ordinary Shares then in issue.
- 5.4.3 The allotment of new Ordinary or Non-Voting Ordinary Shares shall be made, in the case of conversion upon the event specified in Article 5.4.1(a), within five days of the receipt by the Company of the written notice and in the case of conversion upon the event specified in Article 5.4.1(b) immediately prior to and conditional upon such event. A certificate for new Ordinary or Non-Voting Ordinary Shares shall be sent within two days of such allotment to each holder without charge, with, if relevant, a new certificate for any balance of any unconverted "A" Preference Shares comprised in the surrendered certificate and, if appropriate, a cheque in respect of a fractional entitlement.
- 5.4.4 The Board may in its absolute discretion from time to time determine the manner in which relevant Shares are to be converted and in the case of conversion pursuant to Article 5.4.1(a) whether such conversion is to be into Ordinary Shares or Non-Voting Shares, subject to the provisions of the Articles and the Act, which the Board considers, in its reasonable discretion, is appropriate to effect a conversion without causing an unlawful reduction of capital or issue of Shares at below nominal value.
- 5.4.5 If "A" Preference Shares remain capable of being converted into Ordinary Shares or Non-Voting Ordinary Shares and there is a consolidation or sub-division (or both) of Ordinary Shares or Non-Voting Ordinary Shares, the conversion rate referred to in Article 5.4.1 shall be adjusted by an amount which in the Board's opinion is fair and reasonable to maintain the right to convert provided that if the holders of a majority of the "A" Preference Shares so require, the auditors of the Company shall determine the adjustment. In doing so they shall act as experts and not as arbitrators and their certificate as to the adjustment shall be conclusive and binding on all concerned. The costs of the auditors shall be borne by the Company.

- 5.4.6 If "A" Preference Shares remain capable of being converted into Ordinary Shares or Non-Voting Ordinary Shares, on an allotment of fully-paid Ordinary Shares or Non-Voting Ordinary Shares pursuant to a capitalisation of profits or reserves, the conversion rate referred to in Article 5.4.1 shall be adjusted (by resolution of the Board) to reflect the percentage increase in the Ordinary Shares and the Non-Voting Ordinary Shares in issue. No adjustment in the conversion rate is to be made when Ordinary Shares or Non-Voting Ordinary Shares are allotted by way of capitalisation of profits or reserves at the election of a holder instead of cash in respect of all or part of a dividend or dividends.
- 5.5 Subject to the provisions of these Articles and the Act, the directors shall have authority to allot, grant options over, offer or otherwise deal with or dispose of any unissued Shares (whether forming part of the original or any increased share capital) on such terms and conditions as the Company may by ordinary resolution determine.
- 5.6 Subject to the provisions of the Act, Shares may be issued which are to be redeemed or are liable to be redeemed at the option of the Company or the holder on such terms and in such manner as the Company before the issue of the Shares may by special resolution determine.
6. **"A" PREFERENCE SHARES, ORDINARY SHARES AND NON-VOTING ORDINARY SHARES**
- 6.1 The "A" Preference Shares, Ordinary Shares and Non-Voting Ordinary Shares shall entitle the holders of those Shares to the respective rights and privileges and subject them to the respective restrictions and provisions contained in these Articles.
- 6.2 The "A" Preference Shares, Ordinary Shares and Non-Voting Ordinary Shares for the time being in issue shall constitute separate classes of Shares respectively for the purposes of these Articles and the Act, but, except as otherwise provided in these Articles, the "A" Preference Shares, Ordinary Shares and Non-Voting Ordinary Shares shall rank *pari passu* in all respects.
- 6.3 The rights conferred upon the holders of the "A" Preference Shares shall be deemed to be varied by:
- 6.3.1 the reduction of the capital paid up on any of those Shares;
  - 6.3.2 by the creation or issue of further Shares ranking in priority to them for the payment of a dividend or of capital; or
  - 6.3.3 any amendment to the memorandum of association or these Articles,
- but shall not be deemed to be varied by the creation or issue of further Shares ranking subsequent to them.

7. **NON-VOTING ORDINARY SHARES**

7.1 Non-Voting Ordinary Shares do not entitle the Non-Voting Ordinary Shareholders to vote at general meetings of the Company.

7.2 A holder of Non-Voting Ordinary Shares may convert any or all of his Non-Voting Ordinary Shares into Ordinary Shares conditionally upon a Listing at the rate of one Ordinary Share for every Non-Voting Ordinary Share (for the purposes of this Article 7 the "conversion rate").

7.3 For the purposes of Article 7.2, the following provisions shall apply:

7.3.1 the Company shall give notice to each holder of Non-Voting Ordinary Shares of the proposed Sale or Listing at least 10 but not more than 60 days prior to the expected completion of the Sale or Listing, and such notice may specify the expected date of completion of the Sale or Listing as the date for conversion provided that, for the avoidance of doubt, if the Sale or Listing shall not have completed within 30 days after the expected completion date, such conversion of Non-Voting Ordinary Shares into Ordinary Shares shall be null and void.

7.3.2 The Ordinary Shares to which a holder of Non-Voting Ordinary Shares is entitled on conversion of his Non-Voting Ordinary Shares ("**new Ordinary Shares**") shall be credited as fully paid and shall rank *pari passu* in all respects and form one class with the Ordinary Shares then in issue.

7.3.3 The allotment of new Ordinary Shares shall be made immediately prior to and conditional upon the completion of the Sale or Listing. A certificate for new Ordinary Shares shall be sent within two days of such allotment to each holder without charge and, if appropriate, with a cheque in respect of a fractional entitlement.

7.3.4 The Board may in its absolute discretion from time to time determine the manner in which Non-Voting Ordinary Shares are to be converted, subject to the provisions of the Articles and the Act, which the Board considers, in its reasonable discretion, is appropriate to effect a conversion without causing an unlawful reduction of capital or issue of Shares at below nominal value.

7.3.5 If Non-Voting Ordinary Shares remain capable of being converted into Ordinary Shares and there is a consolidation or sub-division (or both) of Ordinary Shares, the conversion rate referred to in Article 7.2 shall be adjusted by an amount which in the Board's opinion is fair and reasonable to maintain the right to convert provided that if the holders of a majority of the Non-Voting Ordinary Shares so require, the auditors of the Company shall determine the adjustment. In doing so they shall act as experts and not as arbitrators and their certificate as to the adjustment shall be conclusive and binding on all concerned. The costs of the auditors shall be borne by the Company.



- 7.3.6 If Non-Voting Ordinary Shares remain capable of being converted into Ordinary Shares, on an allotment of fully-paid Ordinary Shares pursuant to a capitalisation of profits or reserves, the conversion rate referred to in Article 7.2 shall be adjusted (by resolution of the Board) to reflect the percentage increase in the Ordinary Shares in issue. No adjustment in the conversion rate is to be made when Ordinary Shares are allotted by way of capitalisation of profits or reserves at the election of a holder instead of cash in respect of all or part of a dividend or dividends.

**8. PROVISIONS APPLYING ON EVERY TRANSFER OF "A" PREFERENCE SHARES, ORDINARY SHARES AND NON-VOTING ORDINARY SHARES**

- 8.1 Shareholders are not entitled to transfer or dispose of any Share or any interest in any Share for a period of two years after the date of adoption of these Articles ("Threshold Date") other than in accordance with Article 9.
- 8.2 The directors may not register a transfer of Shares unless it is permitted by or otherwise made in accordance with the provisions of these Articles and the first sentence of regulation 24 of Table A shall not apply.
- 8.3 An obligation to transfer a Share pursuant to these Articles shall be deemed to be an obligation to transfer the entire legal and beneficial interest in the Share free from all liens, mortgages, charges, encumbrances and other third party rights of whatever nature.
- 8.4 Shareholders are not entitled to transfer Shares unless the transfer is permitted by or has been made in accordance with these Articles.

**9. PERMITTED TRANSFERS FOR HOLDERS OF "A" PREFERENCE SHARES, ORDINARY SHARES AND NON-VOTING ORDINARY SHARES**

- 9.1 Subject to Article 8.1, each holder of Ordinary Shares or Non-Voting Ordinary Shares who is an employee of or consultant to the Company or one of its subsidiaries or its Shareholders may only transfer or offer to transfer Ordinary Shares or Non-Voting Ordinary Shares:
- 9.1.1 with the written consent of the holders of Shares conferring 90% or more of the voting rights in respect of the Company; or
- 9.1.2 to any other employee of or consultant to the Company who holds or who has an option entitling him to hold Shares, or, if no such employee or consultant wishes to purchase such Shares, they may be offered to the "A" Preference Shareholders, pro-rata to their voting rights in the Company; or
- 9.1.3 on or after a Listing; or
- 9.1.4 when required by Article 12 (Bring-Along Rights).

9.2 Each holder of "A" Preference Shares may only transfer "A" Preference Shares (the **"Relevant Shares"**) as follows:

9.2.1 to an Associate (**"Transferee"**) of that holder of "A" Preference Shares (**"Transferor"**) provided that:

- (a) if the Transferee ceases to be an Associate of the Transferor then the Relevant Shares will, before the cessation, be transferred to the Transferor or at the Transferor's option to another Associate. If the Transferee fails to transfer the Relevant Shares within 28 days of the Transferee ceasing to be an Associate of the Transferor then the directors may transfer the Relevant Shares on the Transferee's behalf in accordance with the provisions of Article 10.6.
- (b) if a Transferor wishes to transfer Relevant Shares to a member of its group (meaning a subsidiary or holding company of the Transferor) which was not an Associate at the date of adoption of these Articles (**"Proposed Associate"**), the Transferor may only do so with the written consent of the other holders of the "A" Preference Shares, such consent not be unreasonably delayed, and may only be withheld by any holder of "A" Preference Shares (**"Non-Consenting Shareholder"**) on reasonable grounds of reputation or credit status or on the grounds that the Proposed Associate is a competitor of the Company.
- (c) The directors may require the holder of the Relevant Shares or the person named as transferee in any transfer lodged for registration to furnish the directors with such information as the directors may reasonably consider necessary for the purpose of ensuring that a transfer of Shares is permitted under Article 9.2.1. If the information is not provided within 28 days of the request the directors may refuse to register the transfer of the Relevant Shares;

9.2.2 in accordance with Article 10 (Pre-Emption Rights);

9.2.3 when required by Article 12 (Bring-Along Rights).

9.3 For the avoidance of doubt, each holder of "A" Preference Shares, Ordinary Shares and Non-Voting Ordinary Shares may not transfer Shares prior to the Threshold Date in circumstances other than those referred to in clauses 8.1, 9.1 or 9.2 above.

## 10. **PRE-EMPTION RIGHTS**

10.1 After the Threshold Date (as defined in Article 8.1) a holder of "A" Preference Shares (the **"Selling Shareholder"**) who wishes to transfer "A" Preference Shares to a person to whom Articles 9.2.1 to 9.2.3 do not apply shall serve notice in writing on the Company (the **"Transfer Notice"**) stating the number of Shares it wishes to transfer (**"Offered Shares"**) and its asking price for each Share (**"Purchase Price"**). The Selling Shareholder may only give a Transfer Notice in respect of all of its "A"

Preference Shares held by it after any transfer pursuant to the provisions of Article 10.2.

10.2 Before the Selling Shareholder gives the Transfer Notice it shall procure that any "A" Preference Share held by an Associate is transferred to it.

10.3 The Transfer Notice shall make the Company the agent of the Selling Shareholder for the sale of the Offered Shares on the following terms, which the Company shall notify to the "A" Preference Shareholders (the "**Continuing Party**") within seven days of receiving the Transfer Notice:

10.3.1 the price for each Offered Share is the Purchase Price; and

10.3.2 28 days after the Company's despatch of the terms for the sale of the Offered Shares (the "**Closing Date**"):

(a) the Transfer Notice shall become irrevocable except as provided in Article 10.7.2;

(b) the Continuing Party shall notify the Company in writing whether it accepts the Selling Shareholder's offer to sell the Offered Shares ("**Offer Notice**"); and

(c) the Continuing Party shall become bound to purchase the Offered Shares on giving the Offer Notice to the Company pursuant to Article 10.3.2(b) above.

10.4 Within seven days after the Closing Date, the Company shall notify the Selling Shareholder and the Continuing Party of the result of the offer and, if the Offered Shares are to be sold pursuant to the offer the Company's notice shall state:

10.4.1 the number of Offered Shares the Continuing Party is to buy and the Purchase Price of the Offered Shares; and

10.4.2 a place and time (being not earlier than 14 days and not later than 28 days after the date of the Company's notice) on which the sale and purchase of the Offered Shares is to be completed.

10.5 By the Closing Date the Selling Shareholder shall deliver stock transfer forms for the Offered Shares, with the relevant share certificates, to the Company. On the Closing Date the Company shall pay the Selling Shareholder, on behalf of the Continuing Party, the Purchase Price for the Offered Shares to the extent the Continuing Party has put the Company in the requisite funds. The Company's receipt for the price shall be a good discharge to the Continuing Party. The Company shall hold the price on trust for the Selling Shareholder without any obligation to pay interest.

10.6 If the Selling Shareholder fails to deliver stock transfer forms for the Offered Shares to the Company by the Closing Date, then the following provisions shall apply:

- 10.6.1 the directors may authorise any director to transfer the Offered Shares on the Selling Shareholder's behalf to the Continuing Party against receipt by the Company of the Purchase Price per Share. The Company shall hold the Purchase Price on trust for the Selling Shareholder without any obligation to pay interest;
- 10.6.2 the Company's receipt of the Purchase Price shall be a good discharge to the Continuing Party. The directors shall then authorise registration of the transfer once appropriate stamp duty has been paid and after the name of the Continuing Party has been entered in the register of members in purported exercise of the power the validity of the proceedings shall not be questioned by any person; and
- 10.6.3 the defaulting Selling Shareholder shall be bound to deliver up his share certificate for the Offered Shares to the Company and on its delivery he shall be entitled to receive the Purchase Price for the Offered Shares without interest.

10.7 If, by the Closing Date:

- 10.7.1 the Continuing Party does not accept the offer to purchase the Offered Shares under Article 10.3; or
- 10.7.2 the Offer Notice given by the Continuing Party lapses due to the Continuing Party failing to complete the purchase of the Offered Shares within the time period referred to in Article 10.4.2, then the following provisions shall apply:

the Selling Shareholder may before the expiration of six months after (1) the Closing Date, or (2) if the Offer Notice given by the Continuing Party lapses, the date on which such notice lapses, elect by notice in writing to the Company to transfer the Offered Shares to any person at no less than the Purchase Price per Share with any other terms being no more favourable to the proposed purchaser of the Offered Shares than those in the Transfer Notice and subject to the condition that any proposed purchaser of the Offered Shares must execute a deed confirming to the other "A" Preference Shareholders that it shall be bound by the Joint Venture Agreement as an "A" Preference Shareholder.

**11. DEALING IN SHARES**

- 11.1 No holder of Shares shall, except with the prior written consent of the other holders of Shares:
  - 11.1.1 pledge, mortgage, charge or otherwise encumber any Share or any interest in any Share;
  - 11.1.2 grant an option over any Share or any interest in any Share; or
  - 11.1.3 enter into any agreement in respect of the votes attached to any Share.

- 11.2 The Company shall procure that each share certificate issued by it will carry the following statement:

"Any disposition, transfer, charge of or dealing in any other manner in the Shares represented by this certificate is restricted by a Joint Venture Agreement dated [ ] and made between Telewest Communications Holdco Limited, Telewest Communications plc, Atomic Tangerine, Inc. and SmashedAtom Limited".

**12. BRING-ALONG RIGHTS**

- 12.1 If transfers of Shares (whether through a single transaction or a series of transactions) would, if registered, result in members of a Purchasing Group holding or increasing their holding to shares conferring 90% or more of the voting rights in respect of the Company at that time ("**Bring-Along Transfers**"), the members of the Purchasing Group may, by serving a "**Compulsory Purchase Notice**" on each other Shareholder (together the "**Minority Shareholders**"), require all the Minority Shareholders to sell all their Shares to one or more persons identified by the members of the purchasing group at the same price and other applicable terms offered to the holders of the Shares pursuant to the Bring-Along Transfers.
- 12.2 The shares subject to the Compulsory Purchase Notices shall be sold and purchased in accordance with the provisions of Articles to 10.5 to 10.6 mutatis mutandis:
- (i) the "Closing Date" being the date which is 14 days after the service of the Compulsory Purchase Notice;
  - (ii) "Offered Shares" being the Minority Shareholder's Shares;
  - (iii) "Selling Shareholders" being the Minority Shareholders; and
  - (iv) "Continuing Party" being the persons identified as purchasers in the Compulsory Purchase Notice.
- 12.3 While Article 12 applies to a Minority Shareholder's Shares, those Shares may not be transferred otherwise than under Article 12.

**13. GENERAL PROVISIONS**

**13.1 Lien**

- 13.1.1 The Company shall have a first and paramount lien on every Share registered in the name of a member (whether solely or jointly with others) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of the Share or payable by the member or the member's estate to the Company.
- 13.1.2 The directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article if the declaration applies in respect of each "A" Preference Share.

13.1.3 The Company's lien on a Share shall extend to any amount payable in respect of it.

13.2 Purchase of own Shares

Regulation 35 of Table A shall be modified by the deletion of the words "otherwise than out of distributable profits of the company or the proceeds of a fresh issue of shares" and the substitution for them of the words ", whether out of its distributable profits or out of the proceeds of a fresh issue of Shares or otherwise".

13.3 Notice of general meetings

13.3.1 Regulation 37 of Table A shall be modified by the deletion of the words "eight weeks" and the substitution for them of the words "28 days".

13.3.2 An annual general meeting and an extraordinary general meeting called for the passing of a special resolution or an elective resolution shall be called by at least 21 clear days' notice. All other extraordinary general meetings shall be called by at least 14 clear days' notice but a general meeting, other than a meeting called for the passing of an elective resolution, may be called by shorter notice if it is so agreed:

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote, being (i) a majority together holding not less than such percentage in nominal value of the Shares giving that right as has been determined by elective resolution of the members in accordance with the Act, or (ii) if no such elective resolution is in force, a majority together holding not less than ninety-five per cent. in nominal value of the Shares giving that right.

13.4 Proceedings at general meetings

13.4.1 No business shall be transacted at any general meeting unless a quorum is present.

13.4.2 A quorum shall be two members present in person or by proxy or a representative duly authorised.

13.4.3 A corporation which is a member of the Company may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or at any meeting of any class of members of the Company. The person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member. Unless the directors otherwise decide, a copy of such authority certified notarially or in some other way approved by the directors shall be left at or sent by post or

facsimile transmission to the office or such other place within the United Kingdom as the directors may determine before such representative is entitled to exercise any power on behalf of the corporation which he represents.

- 13.4.4 If within half an hour of the time appointed for a meeting a quorum is not present the meeting shall stand adjourned to the same day 14 days later at the same time and place and if at an adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting the meeting shall be dissolved.
- 13.4.5 Notice of a meeting adjourned for absence of a quorum shall be given to all members. If a general meeting at which a quorum is present is adjourned it shall not be necessary to give any notice of the adjourned meeting and regulation 45 of Table A shall be modified accordingly.
- 13.4.6 A poll may be demanded by the chairman or by any member present in person or by proxy or a representative and entitled to vote and regulation 46 of Table A shall be modified accordingly.
- 13.4.7 Where an ordinary resolution of the Company is expressed to be required for any purpose, a special or extraordinary resolution shall also be effective, and where an extraordinary resolution is expressed to be required for any purpose, a special resolution shall also be effective.
- 13.4.8 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not have a second or casting vote.
- 13.4.9 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."

### 13.5 Votes of members

- 13.5.1 Subject to Articles 13.5.2 and 13.5.3 and to any rights or restrictions attached to any Share, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a duly authorised representative, not being himself a member entitled to vote, shall have one vote and on a poll every member shall have one vote for each Share held by the member.
- 13.5.2 No Share of any class shall confer any right to vote upon a resolution for the removal from office of a director appointed by holders of Shares of the other class.
- 13.5.3 Regulation 57 of Table A shall be modified by the inclusion after the word "shall" of the phrase "unless the directors otherwise determine".

13.5.4 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 of the meeting."

13.5.5 An instrument appointing a proxy shall be in writing in any form which is usual or in which the directors may approve and shall be executed by or on behalf of the appointor.

13.5.6 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", by the substitution in paragraph (a) of the words "one hour" in place of "48 hours" and by the substitution in paragraph (b) of the words "one hour" in place of "24 hours".

### 13.6 Number of Directors

The number of directors (other than alternate directors) shall be subject to a maximum of seven and a minimum of two.

### 13.7 Alternate directors

13.7.1 Any director (other than an alternate director) may appoint any person willing to act to be an alternate director and may remove from office any alternate director so appointed by him and the alternate need not be approved by resolution of the directors.

13.7.2 An alternate director who is absent from the United Kingdom shall be entitled to receive notice of all meetings of directors and meetings of committees of directors and regulation 66 of Table A shall be modified accordingly.

13.7.3 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."

### 13.8 Directors' appointments and interests

13.8.1 Telewest is entitled to appoint and remove three directors and AT is entitled to appoint and remove two directors. The initial appointments shall be made pursuant to the Joint Venture Agreement. Subsequent appointments and removals of directors appointed by Telewest or AT, as the case may be, shall be made in accordance with the Joint Venture Agreement by notice served on the Company.

13.8.2 Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the Company.



- 13.8.3 Without prejudice to the obligation of any director to disclose his interest in accordance with section 317 of the Act, a director may vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty and if he does so vote his vote shall be counted and he shall be counted in the quorum present at a meeting in relation to any such resolution.

### 13.9 Proceedings of directors

- 13.9.1 Regulation 88 of Table A shall be modified by the exclusion of the third sentence and the substitution of the following sentence: "Every director shall receive notice of a meeting, whether or not he is absent from the United Kingdom." and by the exclusion of the fifth sentence and the substitution of the following sentence: "In the case of an equality of votes the chairman shall not have a second or casting vote."
- 13.9.2 At any meeting (and in respect of any written resolution), each Telewest appointee as a Director and each AT appointee as a Director shall be entitled to two votes and each other Director shall be entitled to one vote, save in respect of matters relating to the adoption of the budget for the Company, upon which such other appointees shall not be entitled to vote.
- 13.9.3 If at any meeting one or more directors appointed by Telewest or AT, as the case may be, is not present at the meeting in person or by his or her alternate the votes exercisable by the other directors appointed that Shareholder, or their alternates, who are present at the meeting shall be pro tanto increased so that the votes of those directors and alternates shall together entitle them to the same aggregate number of votes as would be exercisable had all the directors appointed by that Shareholder been present.
- 13.9.4 The quorum for the transaction of business of the directors shall be two Directors of whom at least one of whom shall be a Telewest appointee and one of whom shall be an AT appointee.
- 13.9.5 Unless otherwise agreed by all the directors not less than 28 days notice in writing shall be given of all meetings of the directors.
- 13.9.6 Each notice convening a meeting of the directors shall:
- (a) be sent to the address notified from time to time by each director to the secretary (or if none has been supplied, to his last known address); and
  - (b) contain an agenda specifying in reasonable detail the matters to be discussed at the meeting and shall be accompanied by any relevant paper for discussion at the meeting.
- 13.9.7 If within half an hour of the time appointed for a meeting of the directors a quorum is not present the meeting shall stand adjourned to the same day 7

days later at the same time and place unless agreed by all the directors. If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting the directors present shall constitute a quorum but only for the purposes of considering matters on the agenda for the original meeting. Notice of a meeting adjourned for absence of a quorum shall be given to all directors.

13.9.8 Any director or his alternate may validly participate in a meeting of the directors or a committee of directors through the medium of conference telephone or similar form of communication equipment provided that all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Subject to the Act, all business transacted in such manner by the directors or a committee of the directors shall for the purposes of the articles be deemed to be validly and effectively transacted at a meeting of the directors or of a committee of the directors notwithstanding that fewer than two directors or alternate directors are physically present at the same place. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is.

13.9.9 If and for so long as there is a sole director, he may exercise all the powers conferred on the directors by the articles by resolution in writing signed by him, and regulations 88, 89, 91, 92 and 93 of Table A and article 34 shall not apply.

#### 13.10 Appointment, retirement and removal of directors

13.10.1 The directors are not subject to retirement by rotation. Regulations 73, 74 and 75 of Table A do not apply, and reference in regulations 67 and 84 to retirement by rotation must be disregarded.

13.10.2 The Company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.

13.10.3 A person appointed by the directors to fill a vacancy or as an additional director is not required to retire from office at the annual general meeting next following his appointment and the last two sentences of regulation 79 of Table A are deleted.

13.10.4 The holder or holders of more than half in nominal value of the Shares giving the right to attend and vote at general meetings of the Company may remove a director from office and appoint a person to be a director, but only if the appointment does not cause the number of directors to exceed a number fixed by or in accordance with the articles as the maximum number of directors. The removal or appointment is effected by notice to the Company signed by or

on behalf of the holder or holders. The notice may consist of several documents in similar form each signed by or on behalf of one or more holders and shall be left at or sent by post or facsimile transmission to the office or such other place designated by the directors for the purpose. The removal or appointment takes effect immediately on deposit of the notice in accordance with the articles or on such later date (if any) specified in the notice.

#### 13.11 Disqualification and removal of directors

The office of a director shall be vacated if:

- 13.11.1 he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director;
- 13.11.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally;
- 13.11.3 he becomes, in the opinion of all his co-directors, incapable by reason of mental disorder of discharging his duties as director;
- 13.11.4 he resigns his office by notice in writing to the Company; or
- 13.11.5 he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and his alternate director (if any) shall not during this period have attended any meetings instead of him, and the directors resolve that his office be vacated.

#### 13.12 Borrowing powers of directors

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

#### 13.13 Dividends

The directors may deduct from any dividend or other moneys payable to any member on or in respect of a Share any moneys presently payable by him to the Company in respect of that Share.

#### 13.14 Capitalisation of profits

The directors may, with the authority of an ordinary resolution of the Company, resolve that any Shares allotted under regulation 110 of Table A to any member in respect of a holding by the member of any partly paid Shares shall, so long as those

Shares remain partly paid, rank for dividends only to the extent that the partly paid Shares rank for dividend.

#### 13.15 Notices

- 13.15.1 Regulation 112 of Table A shall be modified by the deletion of the last sentence and the substitution of the following sentence: "Any member whose registered address is not within the United Kingdom shall be entitled to have notices given to him at that address."
- 13.15.2 Any notice sent to any member (or any other person entitled to receive notices under the articles) by the Company by post to an address within the United Kingdom shall be deemed to have been given within twenty-four hours, if prepaid as first class, and within forty-eight hours, if prepaid as second class, after the same shall have been posted. Any such notice sent by post to an address outside the United Kingdom shall be deemed to have been given within seventy-two hours, if prepaid as airmail. In proving the giving of notice it shall be sufficient to prove that the envelope containing the same was properly addressed, prepaid and posted. Any notice not sent by post but left at a member's registered address shall be deemed to have been given on the day it was so left.
- 13.15.3 Regulation 116 of Table A shall be modified by the deletion of the words "within the United Kingdom".

#### 13.16 Indemnity

- 13.16.1 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, auditor or other officer or employee of the Company shall be indemnified out of the assets of the Company against all costs, charges, expenses, losses, damages and liabilities which he may sustain or incur in or about the execution of his duties or the exercise of his powers or otherwise in relation thereto including, without prejudice to the generality of the foregoing, any liability incurred defending any proceedings, whether civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as an officer or employee of the Company in which judgment is given in his favour or in which he is acquitted, or which are otherwise disposed of without any finding or admission of 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.
- 13.16.2 The directors may exercise all the powers of the Company to purchase and maintain for any director, auditor or other officer (including former directors and other officers) or any other person insurance against any liability for

negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against.

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NAMES AND ADDRESSES OF SUBSCRIBERS

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DATED 2000

WITNESS to the above signatures: