

4037250

Company No. 4037250

THE COMPANIES ACTS 1985 TO 1989
COMPANY LIMITED BY SHARES

RESOLUTIONS
- of -
BIS LIMITED

Passed on 13th June 2003

At an extraordinary general meeting of the above-named Company duly convened and held at 38 St Mary Axe, London EC3A 8BH on the above date the following resolutions were duly passed.

ORDINARY RESOLUTIONS

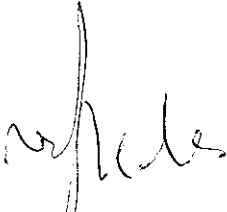
1. The authorised share capital of the Company be varied as follows:-
 - a) 400,000 Preferred A1 shares in issue be reclassified as Ordinary A shares in issue
 - b) 200,000 Preferred A2 unissued shares be reclassified as Ordinary A shares
 - c) 200,000 Preferred A3 unissued shares be reclassified as Ordinary A shares
 - d) 1,455 Preferred B shares in issue be reclassified as Ordinary X shares in issue
2. That the Directors of the Company be generally and unconditionally authorised in accordance with section 80 of the Companies Act 1985 to exercise all the powers of the Company to allot Ordinary A shares up to their aggregate nominal amount of £847,380. The authority conferred by this resolution shall be for a period of five years from the date of the passing of this resolution except that the Company may before the end of such period make any offer or agreement which would or might require equity securities to be allotted after such period, and the directors of the Company may allot equity securities in pursuance of any offer or agreement as if the power conferred by this resolution had not expired.
3. That the Directors of the Company be generally and unconditionally authorised in accordance with section 80 of the Companies Act 1985 to exercise all the powers of the Company to allot Ordinary X shares up to their aggregate nominal amount of £10,262. The authority conferred by this resolution shall be for a period of five years from the date of the passing of this resolution except that the Company may before the end of such period make any offer or agreement which would or might require equity securities to be allotted after such period, and the directors of the Company may allot equity securities in pursuance of any offer or agreement as if the power conferred by this resolution had not expired.



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COMPANIES HOUSE 16/07/03
COMPANIES HOUSE 04/07/03

SPECIAL RESOLUTION

4. That the Articles of Association in the form attached to this resolution called the New Articles of Association and initialled for the purposes of identification be adopted as the articles of association of the Company in place of its existing articles of association, such adoption to take place immediately.

A handwritten signature in dark ink, appearing to be 'M. H. Lee' or similar, written in a cursive style.

Dated: 13th June, 2003

Registered Office:

38 St Mary Axe, London, EC3A 8BH

4037250

NEW ARTICLES

THE COMPANIES ACTS 1985 to 1989

PRIVATE COMPANY HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

- of -

BIS LIMITED

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(No. 7037250)

THE COMPANIES ACTS 1985 to 1989

PRIVATE COMPANY HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

- of -

BIS LIMITED



(adopted by special resolution passed on December 2002)

PRELIMINARY

1 DEFINITIONS AND INTERPRETATION

- 1.1 In the interpretation of these articles, the headings shall not affect the construction and, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"the Acts" means the Companies Act 1985 and the Companies Act 1989, and (in either case) any statutory modification, amendment, variation or re-enactment thereof for the time being in force;

"Admission" means (i) the admission of any share capital of the Company or its ultimate holding company on the London Stock Exchange or to any other Recognised Investment Exchange or NASDAQ, EASDAQ or the New York Stock Exchange in accordance with the rules of the relevant Recognised Investment Exchange or NASDAQ, EASDAQ or the New York Stock Exchange; or (ii) the granting of an application by the Company for the dealing of any Shares of the Company or shares in its ultimate holding company on any other public securities market in the United Kingdom (including the Alternative Investment Market at the London Stock Exchange) or in the United States of America whereby such Shares can be freely traded and the approval for such dealing becoming effective, whether such listing is effected by way of an offer for sale, a new issue of Shares, on introduction, a placing or otherwise;

"Auditors" means the Company's auditors appointed by the Board from time to time;

"Board" means the Board of Directors of the Company from time to time;

"Business" means the business of the Group in providing communications and internet services to customers in the shipping and insurance communities and other industries;

"Company" means BIS Limited;

"Director" means a director for the time being of the Company;

"Drag Along Shareholders" means holders of more than 50% of the Ordinary Shares in issue only;

"EMI Scheme" means the BIS Limited Enterprise Management Scheme adopted by the Company on the date hereof

"Family Member" means a wife or husband, or minor child or step-child or wife or husband of the same;

"Financial Year" means an accounting period of 12 months in respect of which the Company prepares its accounts in accordance with the relevant provisions of the Acts;

"Founder Directors " means Mr. David Pyemont, Mr. Nick Teagle and Ms Samantha Pyemont or any other person who is appointed as a Founder Director in accordance with article 22;

"Founders" means Mr Pyemont, Mr Teagle and Ms Keating Pyemont;

"Group" means the Company and any company which is a subsidiary of the Company, a holding company of the Company or a subsidiary of such holding company from time to time;

"holder" means, in respect of any share in the capital of the Company, the person or persons for the time being registered by the Company as the holder(s) of that share;

"in competition with" means being interested in, or offering substantially the same business as the Business;

"Listing Rules" means the rules of the United Kingdom Listing Authority from time to time made for the purposes of Part IV of the Financial Services and Markets Act 2000;

"Mandatory Redemption Event" means a Sale or an Admission;

"Mr Pyemont" means Peter David Pyemont of Primrose Cottage, High Street, Cranleigh, Surrey GU6 8AS;

"Mr Teagle" means Nicholas Peter Teagle of Flat 5, 2B Heneage Street, London E1 5LT;

"Ms Keating Pyemont" means Samantha Keating Pyemont of Primrose Cottage, High Street, Cranleigh, Surrey GU6 8AS;

"Investor Directors" means both of the Protocol Directors and all the Founder Directors;

"Nomura" means Nomura International plc (No.1550505) whose registered office is at Nomura House, 1 St Martin's-Le-Grand, London, EC1A 4NP;

"Ordinary Shares" includes Ordinary A Shares and Ordinary X Shares;

"Ordinary A Shares" means Ordinary A Shares of £1.00 each having the rights and being subject to the obligations set down in these articles;

"Ordinary Shareholder" means a holder of the Ordinary Shares;

"Ordinary Shareholder Majority" means Ordinary Shareholders holding more than 75 per cent. of the Ordinary Shares in issue;

"Ordinary X Shares" means the Ordinary X shares of £0.01 each having the rights and being subject to the obligations set down in these articles;

"Permitted Transferee" means:

- (i) in the case of a body corporate, any other body corporate which is for the time being its subsidiary or holding company or another subsidiary of its holding company or to any of its associates (as such term is defined in section 52 of the Companies Act 1989) (each such body corporate being a **"Group Company"**) to which it is proposed that Shares will be transferred, provided that if such Group Company, whilst it is a holder of any Shares in the Company, ceases to be a Group Company in relation to the body first holding the relevant Shares following their allotment or following a transfer made in accordance with article 11 (otherwise than pursuant to article 11.4) it shall, within 21 days of so ceasing, transfer the Shares held by it to such body or any Group Company of such body and failing such transfer the holder shall be deemed to have given a Transfer Notice pursuant to article 12; or,
- (ii) in the case of an individual, any other Founder or any Family Member of any Founder or to any Shareholder who has lent funds to the Founder to subscribe for Shares, to which it is proposed that Shares will be transferred, provided that if such Permitted Transferee ceases to be a Founder or a Family Member of the Founder it shall, within 21 days of so ceasing, transfer the Shares held by it to a Founder or to a person who is a Family Member of a Founder and failing such transfer the holder shall be deemed to have given a Transfer Notice pursuant to article 12;

"Protocol" means Dimension Data Protocol Netherlands B.V. (Company no. 24319935) of Schouwburgplein 30-34, 3012 CL, Rotterdam, The Netherlands;

"Protocol Director" means Angus MacRobert, and Leor Atie, or any other persons who are appointed by Protocol from time to time as Directors in accordance with article 24.2;

"Recognised Investment Exchange" has the meaning provided in Section 285 of the Financial Services and Markets Act 2000;

"Relevant Agreement" means any agreement relating (in whole or in part) to the management and/or affairs of the Company which is binding from time to time on the Company and some or

all of the members and which (expressly or by implication) supplements and/or prevails over any provisions of these articles;

"Sale" means the sale of either (i) the whole or substantially the whole of the Business carried on by the Group as a whole at the relevant time; or (ii) 75% or more of the issued share capital of the Company;

"Security Interest" means any encumbrance whatsoever over the whole or any part of the Company's undertaking property or assets (including, without prejudice to the generality of the foregoing, any right to acquire, any option over, or any right of pre-emption) or any mortgage, charge, pledge, lien (other than liens arising in the ordinary course of the business) or assignment, or any other encumbrance, priority or security interest or arrangement of whatsoever nature;

"Shareholders" means the holders of any Shares;

"Share" or **"Shares"** means a share or shares in the capital of the Company of whatever class; and

"Table A" means Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 805) as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1985 No. 1052).

- 1.2 Words and expressions defined in or having a meaning provided by either of the Acts (but excluding any statutory modification not in force on the date of adoption of these articles) shall, unless the context otherwise requires, have the same meanings when used in these articles.
- 1.3 Words and expressions defined in or having a meaning provided by the Relevant Agreement shall, unless the context otherwise requires, have the same meanings when used in these articles.
- 1.4 In the event of any inconsistency between the Acts (other than Table A) and these articles, the provisions of the Acts shall prevail, to the extent of such inconsistency.
- 1.5 Subject to any determination which is required to be made in accordance with these articles by an "Ordinary Shareholder Majority", any reference in these articles to the determination or decision of, or action to be taken by, the holders of any class of Shares shall require such decision or action, as the case may be, to be approved or determined by the majority of the holders of Shares of that class, such approval or determination to be resolved in writing by the holders of a majority of Shares of that class or with the sanction of an ordinary resolution passed at a meeting of the holders of that class but not otherwise. Members (not being members of the class of Shares so resolving) and the Company shall not be required to enquire as to the validity of any such resolution save in the case of manifest error.
- 1.6 In these articles, a person shall include any partnership, corporation and unincorporated association.

2 TABLE A

- 2.1 The regulations contained in Table A, save in so far as they are expressly excluded or varied by

these articles, and the regulations contained in these articles shall together constitute the regulations of the Company.

- 2.2 The regulations of Table A numbered 24, 26, 40, 73 to 77 (inclusive), 80, 96, 101 and 118 shall not apply to the Company.
- 2.3 Regulation 115 of Table A shall be modified by the deletion of the words "48 hours" and the substitution for them of the words "24 hours".
- 2.4 Regulation 12 of Table A Shall be modified by the deletion of the words "at least fourteen clear days' notice" and the substitution for them of the words "at least three clear day's notice".
- 2.5 Regulation 18 of Table A shall be modified by the deletion of the words "to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued" and the substitution for them of the words "request immediate payment from the person from whom it is due of the amount unpaid together with any interest which may have accrued. If the shareholder does not pay the amount unpaid on the Shares the Company may forfeit and cancel the Shares, whereupon the holders of the Shares shall have no further liability to the Company in respect of those Shares".

SHARE RIGHTS

3 AUTHORISED SHARE CAPITAL

The authorised share capital of the Company at the date of adoption of these articles is £857,642.17 divided into:-

- (a) 847,380 Ordinary A Shares of £1.00 each;
- (b) 1,026,217 Ordinary X Shares of £0.01 each;

4 SPECIAL RIGHTS AND RESTRICTIONS

The special rights and restrictions attached to and imposed on each class of share capital of the Company are as set out in articles 5 to 6 (inclusive).

5 CAPITAL

Having regard to any Relevant Agreement in the event of a liquidation the assets of the Company available for distribution to holders remaining after payment of all other debts and liabilities of the Company (and of the costs, charges and expenses of any such winding up) shall be applied in distributing any amounts to all Shareholders pro rata to their respective holdings of Ordinary Shares, irrespective of the amount capital paid up on any share, for this purpose all such Shares being treated as a single class of Shares.

6 SHARE RIGHTS

6.1 The rights attached to and imposed on the Ordinary Shares are as follows:-

(a) **Income**

The Ordinary Shares confer on the holders the right to participate in the profits of the Company by way of dividends in accordance with these articles and any Relevant Agreement, and each Ordinary Share ranks equally with all other Ordinary Shares in respect of such entitlements.

(b) **Voting**

The Ordinary Shares confer on the holder thereof an entitlement to attend and vote at general meetings of the Company and each Ordinary Share entitles the holder to one vote at general meetings of the Company.

7 SALE

In the event of a Sale then, notwithstanding anything to the contrary in the terms and conditions governing such Sale (unless all the selling holders (including those selling pursuant to article 14) immediately prior to such Sale have agreed to the contrary for the purposes of this article 7) the selling holders (immediately prior to such Sale) shall procure that the consideration (whenever received) shall be paid into a designated trustee account and shall be distributed amongst such selling holders as if the date of such Sale were the date of the return of capital for the purposes of article 5.

8 VARIATION OF RIGHTS

8.1 Whenever the share capital of the Company is divided into different classes of share, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding-up) either :

(a) with the consent in writing of the holders of more than three-fourths of the issued Shares of that class; or,

(b) with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of that class.

8.2 To every such separate general meeting referred to in 8.1 all the provisions of these articles relating to general meetings of the Company (and to the proceedings at such general meetings) shall, mutatis mutandis, apply, except that:

(a) the necessary quorum shall be two holders, present in person or by proxy or by duly authorised representative (if a corporation), who together hold or represent at least one-third in nominal value of the issued Shares of the relevant class (unless all the Shares of that class are registered in the name of a single holder, in which case the quorum shall be that holder, his proxy or duly authorised representative (if a corporation)), but so that if, at any adjourned meeting of such holders, such a quorum is not present, then those holders who are present (in person or by proxy or by duly authorised representative (if a corporation)) shall be a quorum; and

(b) any holder of Shares of the relevant class present in person or by proxy or by duly authorised representative (if a corporation) may demand a poll; and

(c) the holders of Shares of the relevant class shall, on a poll, have one vote in respect of every share of that class held by each of them.

9 SUBSCRIPTION RIGHTS

9.1 Subject to the provisions of article 13, but notwithstanding any other provision of these articles, and subject to any direction or authority contained in any resolution of the Company, the Board is authorised (for the purposes of section 80 of the Companies Act 1985) to allot relevant securities PROVIDED THAT the authority hereby granted to the Board:-

(a) shall not permit the Board to allot relevant securities in an amount which is in excess of the unissued share capital of the Company immediately following the date of adoption of these articles;

(b) shall expire on the fifth anniversary of the date of adoption of these articles, save that the Board may, after the expiry of the authority hereby granted, allot relevant securities in pursuance of an offer or agreement made by the Company before such authority expired; and

(c) shall be subject to any restrictions set out in any Relevant Agreement.

9.2 Sections 89(1) of the Companies Act 1985 shall not apply to any allotment of Shares in the Company pursuant to any Relevant Agreement and these articles.

10 VOTING RIGHTS

10.1 Regulation 54 of Table A shall be modified in accordance with the following provisions of this article 10 and article 8.

10.2 A proxy shall be entitled to vote on a show of hands.

10.3 Without prejudice to article 24.1, on a poll every holder shall have one vote for every Ordinary Share and/or Preferred A and/or Preferred B Share which he is the registered holder and which is fully paid up or credited as fully paid.

TRANSFER OF SHARES

11 GENERAL

11.1 No transfer of any Share shall be made or registered, including to any Permitted Transferee, unless such transfer complies with the provisions of these articles and the transferee has first entered into an appropriate deed of adherence pursuant to any Relevant Agreement.

11.2 No Shareholder may dispose of any interest in or otherwise create any Security Interest over the Shares registered in his name other than in accordance with the provisions of these articles and the Relevant Agreement.

11.3 For the purposes of these articles a transfer by a holder of Shares in the Company shall include the following:-

- (a) any direction (by way of renunciation or otherwise) by a holder entitled to an allotment or transfer of Shares that a share be allotted or issued or transferred to some person other than himself; and
- (b) any sale or any other disposition of any legal or equitable interest in a share (including any voting right attached to it), (i) whether or not by the relevant holder, (ii) whether or not for consideration, and (iii) whether or not effected by an instrument in writing.

11.4 (i) Subject to articles 12.9 to 12.12, a holder of Ordinary Shares may transfer all or any of its Shares to a Permitted Transferee at any time without being subject to the pre-emption provisions in article 12; and

- (ii) if such Permitted Transferee ceases to be a Permitted Transferee it shall, within 21 days of so ceasing, transfer the Shares held by it to a person who is a Permitted Transferee and failing such transfer, the holder shall be deemed to have given a Transfer Notice pursuant to article 12.

12 PRE-EMPTION - TRANSFERS

12.1 Any holder who wishes to transfer Shares (in this article 12, the "**Vendor**") other than in the case of permitted transfers pursuant to article 11.4, shall give notice in writing (the "**Transfer Notice**") to the Company of his wish specifying:-

- (a) the number and class(es) of Shares which the Proposed Transferee (as defined below) has offered to purchase from the Vendor (the "**Sale Shares**");
- (b) the name of the third party or third parties to whom the Vendor proposes to sell the Sale Shares (together the "**Proposed Transferee**");
- (c) the price which the Proposed Transferee has offered for the Sale Shares (which shall be deemed to be fair value as determined by the Auditors pursuant to article 15 if no price is specified) (the "**Transfer Price**"); and
- (d) whether or not the Transfer Notice is conditional upon all, and not part only, of the Sale Shares being sold pursuant to the offer hereinafter mentioned and, in the absence of either such stipulation, it shall be deemed not to be so conditional.

12.2 Where any Transfer Notice is deemed to have been given in accordance with these articles, the deemed Transfer Notice shall be treated as having specified:-

- (a) that all of the Shares registered in the name of the Vendor shall be included for transfer;
- (b) that no condition as referred to in article 12.1(d) shall apply.

12.3 No Transfer Notice once given or deemed to be given in accordance with these articles shall be withdrawn unless the Vendor is obliged to in order to comply with the Acts or unless with the

prior written consent of the Company and, the Ordinary Shareholder Majority. In such event the Vendor shall be required to withdraw such Transfer Notice, without liability to any person, prior to completion of any transfer.

12.4 The Transfer Notice shall appoint the Company as agent of the Vendor for the sale of the Sale Shares at the Transfer Price.

- 12.5 (a) The Company shall as soon as practicable (and in any event, within ten business days) following receipt of a Transfer Notice or, where later, upon the determination of the Transfer Price, give notice in writing, to each of the Ordinary Shareholders, informing them that the Sale Shares are available, the name of the Proposed Transferee and of the Transfer Price. Such notice shall invite each such Shareholder to state, in writing within ten business days from the date of such notice (which date shall be specified therein), whether he is willing to purchase any and, if so, how many of the Sale Shares at the Transfer Price.
- (b) All Sale Shares of whatever class shall be offered, to each of the Ordinary Shareholders pro rata according to the number of Ordinary Shares held by each such Ordinary Shareholder.
- (c) The Sale Shares shall be offered to each offeree on terms that, in the event of competition, the Sale Shares offered shall be sold to, the Ordinary Shareholders accepting the offer in proportion (as nearly as may be) to their existing holdings of Shares of the class or classes to which the offer is made (the "**Proportionate Entitlement**"). It shall be open to each such Ordinary Shareholder to specify if he is willing to purchase Shares in excess of his Proportionate Entitlement ("**Excess Shares**") and, if the holder does so specify, he shall state the number of Excess Shares.
- (d) After the expiry of the offers to be made pursuant to article 12.5(a) (or sooner if all the Sale Shares offered shall have been accepted in the manner provided in article 12.5(a), the Board shall allocate the Sale Shares in the following manner:-
- (i) subject to articles 12.1(d) and 12.7, if the total number of Shares applied for is equal to or less than the available number of Sale Shares the Company shall allocate the number applied for in accordance with the applications; or
- (ii) if the total number of Shares applied for is more than the available number of Sale Shares, each holder shall be allocated his Proportionate Entitlement (or such lesser number of Sale Shares for which he may have applied); applications for Excess Shares shall be allocated in accordance with such applications or, in the event of competition, (as nearly as may be) Ordinary Shareholder applying for Excess Shares in the proportion which the Ordinary Shares held by such Ordinary Shareholder bears to the total number of Ordinary Shares then in issue PROVIDED THAT such Ordinary Shareholder shall not be allocated more Excess Shares than he shall have stated himself willing to take;

and in case the Company shall forthwith give notice of each such allocation (an "**Allocation Notice**") to the Vendor and each of the persons to whom Sale Shares have been allocated (a "**Member Applicant**") and shall specify in the Allocation Notice the place and time (being not

later than ten (10) business days after the date of the Allocation Notice) at which the sale of the Sale Shares shall be completed.

- 12.6 Subject to article 12.7, upon such allocations being made as aforesaid, the Vendor shall be bound, on payment of the Transfer Price, to transfer the Sale Shares comprised in the Allocation Notice to the Member Applicants named therein at the time and place therein specified. If he makes default in so doing the Chairman for the time being of the Company or, failing him, one of the Directors, or some other person duly nominated by a resolution of the Board for that purpose, shall forthwith be deemed to be the duly appointed attorney of the Vendor with full power to execute, complete and deliver in the name and on behalf of the Vendor a transfer of the relevant Sale Shares to the Member Applicant and any Director may receive and give a good discharge for the purchase money on behalf of the Vendor and (subject to the transfer being duly stamped) enter the name of the Member Applicant in the register of members as the holder or holders by transfer of the Shares so purchased by him or them. The Board shall forthwith pay the purchase money into a separate bank account in the Company's name and shall hold such money on trust (but without interest) for the Vendor until he shall deliver up his certificate or certificates for the relevant Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate) to the Company when he shall thereupon be paid the purchase money.
- 12.7 If the Vendor shall have included in the Transfer Notice a provision that unless all the Sale Shares are sold none shall be sold and if the total number of Shares applied for by Member Applicants is less than the number of Sale Shares then the Allocation Notice shall refer to such provision and completion of the sales in accordance with the preceding paragraphs of this article 12 shall be conditional upon such provision as aforesaid being complied with in full.
- 12.8 Subject to article 12.12, in the event of all the Sale Shares not being sold under the preceding paragraphs of this article 12 the Vendor may, at any time within one calendar month after receiving confirmation from the Company that the pre-emption provisions herein contained have been exhausted, transfer any Sale Shares (which have not been sold) to the Proposed Transferee at any price not less than the Transfer Price PROVIDED THAT:-
- (a) the Board shall be entitled to refuse registration of the Proposed Transferee if the Proposed Transferee is or is believed to be a nominee for a person or entity reasonably considered by the Board to be in competition with the Group;
 - (b) if the Vendor stipulated in the Transfer Notice that unless all the Sale Shares were sold none should be sold, the Vendor shall not be entitled, save with the written consent of the Ordinary Shareholder Majority, to sell hereunder only some of the Sale Shares comprised in the Transfer Notice to the Proposed Transferee; and
 - (c) any such sale shall be a bona fide sale and the Board may require to be satisfied in such manner as it may reasonably require that the Sale Shares are being sold in pursuance of a bona fide sale for not less than the Transfer Price without any deduction, rebate or allowance whatsoever to the Proposed Transferee and, if not so satisfied, may refuse to register the instrument of transfer.
- 12.9 Articles 12.10, 12.11 and 12.12 shall apply unless and until there is a change of control or flotation of the Company and for the purposes of this article 12.9:

- (a) "control" has the meaning given by section 840 of the Income and Corporation Taxes Act 1988;
- (b) "change of control" means:
 - (i) a person obtaining control of the Company whether acting alone or in concert with others;
 - (ii) a person becoming bound or entitled to acquire shares in the Company under sections 428 to 430F of the Companies Act 1985;
 - (iii) a Court sanctioning a compromise or arrangement under section 425 of the Companies Act 1985 for the purposes of, or in connection with, a scheme for the reconstruction of the Company or its amalgamation with any other company or companies; or
 - (iv) a company obtaining all the shares in the Company as a result of a qualifying exchange of shares within the meaning of paragraph 60 of Schedule 14 to the Finance Act 2000;
- (c) "EMI Shares" means any shares subject to the EMI Scheme.
- (d) "flotation" means the admission of any shares, to the Official List of the London Stock Exchange or the granting of permission for such EMI Shares to be dealt in on the Alternative Investment Market of the London Stock Exchange or any other market supervised by any regulatory authority.

12.10 Subject to article 12.13, no officer or employee or former officer or employee of the Company or any group company, or personal representative of any such officer or employee, acquiring EMI Shares under the EMI Scheme, may transfer or otherwise dispose of all or any of such EMI Shares or of any interests in such EMI Shares except pursuant to a deemed Transfer Notice under article 12.11 below.

- 12.11 (a) If any holder of EMI Shares ceases to hold any office or employment ("Office or Employment" and "Officer or Employee" shall be construed accordingly) with the Company, any one or more group companies or any group company (as "group company" is defined by section 140C(6) of the Income and Corporation Taxes Act 1988) for any reason, then he (or his personal representatives) shall automatically be deemed to have offered to give a Transfer Notice under article 12.2 in respect of all EMI Shares held by him immediately on such cessation; and
- (b) if any person acquires EMI Shares pursuant to a right obtained as an Officer or Employee, or as the personal representative of such a person, and that person is not, or has ceased to be, an Officer or Employee, he shall be deemed, immediately following his acquisition of the EMI Shares to have offered to give a Transfer Notice under article 12.2 in respect of all EMI Shares held by him.
 - (c) Where the holder of any EMI Shares has offered to give a Transfer Notice in accordance with articles 12.11(a) or 12.11(b) the Board may determine to decline that offer so that the holder of those EMI Shares may retain them but subject always to the remaining provisions of this article 12.

12.12 Where a Transfer Notice is offered and accepted in accordance with article 12.11, the Transfer

Price shall be determined as follows:

- (a) if the cessation of the relevant Office or Employment is, or was, is by reason of:
 - (i) death;
 - (ii) injury, ill-health or disability (evidenced to the satisfaction of the Directors);
 - (iii) redundancy (within the meaning of the Employment Rights Act 1996);
 - (iv) retirement at normal retirement age (including late retirement) or early retirement with the consent of the group company with which the Officer or Employee held office or by which he was employed;
 - (v) the transfer of the undertaking or part undertaking with which the Officer or Employee held office or by which he was employed to a person other than a group company;
 - (vi) the company with which the Officer or Employee held such office or by which he was employed ceasing to be a group company; or
 - (vii) any other reason which the Directors reasonably consider justifies the treatment of the member as a "good leaver" for the purposes of this sub-article;the Transfer Price per EMI Share shall be the fair value of the EMI Shares at the date of such cessation as shall be determined by the Auditors pursuant to article 15 within 30 days thereafter; and
- (b) if such cessation occurs for any other reason, the Transfer Price per EMI Share shall be the lower of:
 - (i) the option exercise price per EMI Share paid by the Officer or Employee on its acquisition under the EMI Scheme; and
 - (ii) the price determined by the Auditors pursuant to article 15 within 30 days thereafter.

12.13 In the event of any EMI Shares not being sold under the provisions of articles 12.11 and 12.12 they shall continue to be held subject to the remaining provisions of this article 12 and article 12.10 shall not apply.

13 PRE-EMPTION - ISSUE OF NEW SHARES

13.1 Subject to and in accordance with the terms of any Relevant Agreement or any employee share option scheme operated and approved by the Company in accordance with the terms of any Relevant Agreement and unless otherwise determined by special resolution of the Company in general meeting and subject as provided in articles 13.3 and 13.4 any unissued Shares in the capital of the Company from time to time shall before they are issued be offered to the Ordinary Shareholders pro rata in the proportion which the Ordinary Shares held by each such Ordinary Shareholder bear to the total number of Ordinary Shares then in issue.

13.1.(a) Such offer shall be at the same price and on the same terms to each Ordinary Shareholder, irrespective of the class of Ordinary Shares held. Such offer shall be made by notice specifying the number and class of Shares offered, the proportionate entitlement of the relevant member, the price per share and limiting a period (not being more than ten business days) within which the offer, if not accepted, will be deemed to be declined.

13.1.(b) After the expiration of such period the Board shall, (if agreed) have the discretion to (and shall not be obliged to) offer the Shares so declined to the persons who have, within the said period, accepted all the Shares offered to them in the same manner as the original offer irrespective of

whether or not this further offer shall be in excess of such Ordinary Shareholders pro rata entitlement and such further offer shall also be limited by a period of not less than ten business days. If any Shares comprised in such further offer are declined such further offer shall be withdrawn in respect of such Shares.

13.1.(c) At the expiration of the time limited by the notice(s) the Directors shall allot the Shares so offered to or amongst the members who have notified their willingness to take all or any of such Shares in accordance with the terms of the offer.

13.1.(d) No member shall be obliged to take more than the maximum number of Shares he has indicated his willingness to take. Section 89(1) of the Act shall not apply to the Company.

13.2 Any Shares not accepted pursuant to article 13.1 (whether the Board has exercised its discretion or not) or where such Shares are not capable of being so offered except by way of fractions and any Shares released from the provisions of this article by special resolution as therein specified shall, subject to the provisions of Section 80 of the Act and these articles, be at the disposal of the Board who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper, provided that no Shares shall be issued at a discount and provided further that, in the case of Shares not accepted as aforesaid, such Shares shall not be disposed of on terms which are more favourable to the subscribers thereof than the terms on which they were offered to the members.

13.3 The discretion of the Directors contained in articles 13.1 and 13.2 as to the allotment and disposal of and the granting of any option over the Company's Shares shall in any event be subject to the provisions of any Relevant Agreement relating thereto binding on the Company for the time being.

13.4 Save with the prior written consent of the holders for the time being of Ordinary Shares no Shares shall be allotted on terms that the right to take up the Shares allotted may be renounced in favour of, or assigned to another person, and no person entitled to the allotment of a share may direct that such share be allotted or issued to any other person.

13.5 Notwithstanding articles 13.1 to 13.4 in the event that the Company proposes to issue any new Ordinary Shares other than pursuant to a Relevant Agreement entered into in December 2002 or the EMI Scheme ("New Issue Shares") in respect of which the Pre-money Valuation of the Company is less than £600,000, then Nomura will be issued New Issue Shares so that the total value of their holding using the price of the New Issue Shares is not less than £45,000. For the purposes of this clause the price of the New Issue Shares multiplied by the number of shares in issue prior to the New Issue Shares being issued will be the "Pre-money Valuation". In the event that Nomura disposes of any part of its Ordinary Shares, the number of New Issue Shares issued hereunder to it will be reduced in proportion to the number disposed of.

14 DRAG ALONG AND TAG ALONG RIGHTS

Drag Along

14.1 In circumstances where the Drag Along Shareholders wish to transfer all of their Shares in the Company pursuant to a bona fide arms' length offer to any bona fide third party with the result that such person is or would (assuming all of the Shares of the Company are sold to such person) become the holder of all of the issued Shares of the Company following completion of such an

offer (treating the same for this purpose as one class of share), then the Drag Along Shareholders shall be entitled to issue a Drag Along Notice in accordance with article 14.3.(a) to all other Shareholders in the Company who shall be bound to accept such offer and the terms of such Drag Along Notice as set out in article 14.3.(a).

- 14.2 In accordance with the Drag Along mechanism contained in article 14.3, every Shareholder, on receipt of a Drag Along Notice, shall be bound within 30 days of the date of such offer (which date shall be specified therein) to accept such offer (and in default of so doing shall be deemed to have accepted the offer) and to otherwise comply with the terms of such Drag Along Notice. Until such Drag Along Notice has been issued and the sale of the Shares is completed in accordance with the offer contained in the Drag Along Notice, the Board shall not sanction the making and registration of the relevant transfer or transfers.

14.3 Drag Along Mechanism

- 14.3.(a) If, in the circumstances set out in articles 14.1, the Drag Along Shareholders (in this article 14.3, the "**Vendors**") wish to transfer all of their Ordinary Shares pursuant to a bona fide arms' length offer (in this article 14.3.(a) the "**Drag Along Offer**") by any bona fide third party (the "**Purchaser**"), with the result that the Purchaser is or would (assuming all of the Shares of the Company are sold to the Purchaser pursuant to this article 14.3 become the holder of all of the issued Ordinary Shares after completion of the Drag Along Offer (the "**Offered Shares**"), then the Vendors shall also have the option (subject to this article 14) to require all of the holders of the Ordinary Shares to transfer all of their Ordinary Shares to the Purchaser, or as the Purchaser directs, by giving or procuring the giving of a Drag Along Notice to that effect to all such other holders (the "**Called Shareholders**") specifying that the Called Shareholders are, or will, in accordance with this article 14.3(a), be required to transfer their Shares pursuant to this article 14.3 to the Purchaser on or about the date specified in the Drag Along Notice, or (if no date is specified), on or about such date as the Vendors may by notice in writing specify (which shall not be less than seven days after the date of the Drag Along Notice) and the price (the "**Proposed Price**") at which such Shares are proposed to be transferred which such price shall be the total sale price divided by the issued Ordinary Shares (after exercise in full of any options or warrants) provided that) in circumstances where the provisions of this article 14.3.(a) apply, the terms and conditions pursuant to which the Called Shareholders are required to transfer their Shares shall be no more onerous than the terms and conditions pursuant to which the Vendors transfer their Shares to the Purchaser.

- 14.3.(b) If the Called Shareholders (or any of them) make default in transferring their Shares pursuant to article 14.3.(a), the provisions of article 12 (references therein to the Vendor, Sale Shares, Allocation Notice and Member Applicant being read as references to the holder making such default, the Shares in respect of which such default is made, the Drag Along Notice and the Purchaser respectively) shall apply to the transfer of such Shares mutatis mutandis but the Transfer Price shall be the price offered for such Shares as set out in this article 14.3 and the provisions of article 12.1(c) shall not apply.

- 14.4 In relation to offers to be procured in accordance with this article 14, each of the holders of Shares must co-operate with any and all lawful and unanimous directions of the Board so as to assist in the transfer of Shares as contemplated by article 14.3.

- 14.5 For the avoidance of doubt, a Drag Along Notice shall be given or shall be deemed to have been given by the Drag Along Shareholders to the holder(s) of any Shares issued after the issue of a

Drag Along Notice by the Company where such Shares have been issued pursuant to the exercise by those holder(s) of options or warrants held by them and the term "Called Shareholders" referred to in article 14.3 shall be read as including such holder(s).

Tag Along

- 14.6 This article 14.6 shall apply if one or more Shareholder(s) ("Proposed Transferor(s)") wishes to transfer all or part of its or their shares or any interest therein to any person other than a transfer of all its or their shares to another Founder, and if, as a result of the transfer, the transferee and its associates would collectively hold more than 50% of the Ordinary Shares in issue. Where this article 14.6 applies the Proposed Transferor(s) may not transfer any of its or their or any interest therein in the Shares unless, at least 28 days prior to the date of the agreement to transfer, the transferee shall have made a written offer ("Offer") to the other Shareholder(s) ("Offeree(s)") to purchase all of its or their Shares at the same prices per Share as are payable in accordance with article 14.3.(a) (and otherwise on the same terms) as is applicable to the proposed sale of that class of Shares by the Proposed Transferor(s). The Offer shall be on terms that it shall be open for acceptance by the Offeree(s) for not less than 14 days and, if accepted, the sale of all of the Offeree's Shares shall be completed simultaneously with the completion of the sale of the Proposed Transferor's Shares.
- 14.7 For the avoidance of doubt, it is acknowledged by the parties that if any Shareholder is obliged to sell its Shares pursuant to the drag along procedure in this article 14, that Shareholder shall not be required to give any warranties (other than as to legal title of Shares held by them) or indemnities in connection with the sale of the Shares owned by the Shareholder. For the avoidance of doubt, it is acknowledged by the parties that in the event of an Admission or Sale, none of Nomura, or Protocol will give any warranties (other than as to legal title to the Shares held by them) or indemnities in connection therewith to any person.

15 VALUATION OF SHARES

- 15.1 In the event that the Auditors are required to determine the price at which Shares are to be transferred pursuant to these articles, such price shall be the amount the Auditors shall, on the application of the Board (which application shall be made as soon as practicable following the time it becomes apparent that a valuation pursuant to this article 15 is required), certify in writing to be the price which, in their opinion, represents a fair value for such Shares as between a willing vendor and a willing purchaser as at the date the Transfer Notice or deemed Transfer Notice is given. In making such determination, the Auditors shall not take any account of whether the Sale Shares comprise a majority or a minority interest in the Company nor the fact that transferability is restricted by these articles (and shall assume that the entire issued share capital of the Company is being sold).
- 15.2 In so certifying, the Auditors shall act as experts and not as arbitrators and their decision shall be conclusive and binding on the Company and upon all of its holders for the purposes of these articles.
- 15.3 The costs of the Auditors shall be borne by the Company.

16 COMPLIANCE AND DISENFRANCHISEMENT

- 16.1 For the purpose of ensuring (i) that a transfer of Shares is duly authorised under these articles or

that (ii) no circumstances have arisen whereby a Transfer Notice is required to be or ought to have been given under these articles or (iii) whether a new issue of Shares may be made to a person or entity other than a member of the Company, the Board may from time to time require any member or the legal personal representatives of any deceased member or any person named as transferee in any transfer lodged for registration or such other person as the Board or any such holder may reasonably believe to have information relevant to such purpose, to furnish to the Company such information and evidence as the Board may think fit regarding any matter which they deem relevant to such purpose; including (but not limited to) the names, addresses and interests of all persons respectively having interests in the Shares from time to time registered in the holder's name.

- 16.2 Failing such information or evidence being furnished to enable the Board to determine to its reasonable satisfaction that no such Transfer Notice is required to be or ought to have been given, or that as a result of such information and evidence the Board is reasonably satisfied that such Transfer Notice is required to be or ought to have been given, where the purpose of the enquiry by the Board was to establish whether a Transfer Notice is required to be or ought to have been given, then a Transfer Notice shall be deemed to have been given by the holder of the relevant Shares in respect of such Shares.

GENERAL

17 GENERAL MEETINGS

- 17.1 No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business and for its duration. A quorum will constitute Protocol by proxy or by duly authorised representative and at least two Founders present in person or by proxy at any general meeting. If no quorum is present within one hour of the time that the Shareholders' meeting is scheduled (and of which at least 2 weeks' written notice has been given), the meeting shall be automatically adjourned until the same day, at the same time and at the same place in the following week. If, within 30 minutes of the time that the adjourned meeting is to commence, a quorum is not present the meeting may be validly held with a quorum consisting of any two Shareholders or proxies thereof.
- 17.2 A poll may be demanded at a general meeting either by the Chairman of the meeting or by any holder who is present in person, by proxy or by duly authorised representative (if a corporation) and who, in any such case, has the right to vote at the meeting, and regulation 46 of Table A shall be modified accordingly.

18 BOARD MEETINGS

- 18.1 No business shall be transacted at a board meeting unless a quorum of two directors, including one Protocol Director and one Founder Director, are present at the time when the meeting proceeds to business and for its duration. If no quorum is present within one hour of the time the meeting is scheduled, and of which at least one weeks' prior written notice has been given, the meeting shall be automatically adjourned until the same day, at the same time and at the same place in the following week. If within 30 minutes of the time that meeting is to commence a quorum is not present, the meeting may be validly held with a quorum consisting of any two Directors.

18.2 In addition to any provisions required by law any one Director may call a meeting of the Board.

18.3 There shall be no less than six Board meetings per year.

19 WRITTEN RESOLUTIONS

In the case of a corporation which holds a share or Shares in the capital of the Company, the signature of any Director or the secretary of such corporation shall be sufficient for the purposes of any resolution in writing as is referred to in regulation 53 of Table A, and regulation 53 of Table A shall be modified accordingly.

20 ACCOUNTS AND ANNUAL GENERAL MEETINGS

20.1 Unless otherwise determined by the Board, every Financial Year of the Company shall commence on 1 January and end on 31 December (the "**Accounts Date**"). The Board shall cause to be prepared, in accordance with the provisions of the Acts, a consolidated balance sheet of the Company and its subsidiary undertakings as at the end of each Financial Year and a consolidated profit and loss account of the Company and its subsidiary undertakings for each Financial Year (the "**Accounts**").

20.2 An annual general meeting of the Company shall be held not later than the last business day of the month of June in each calendar year (in respect of the Financial Year ended on the immediately preceding 31 December), and/or at such time and place as the Board shall determine. The Board shall cause to be laid before each such annual general meeting the Accounts for the relevant Financial Year, together with the respective reports (complying with the provisions of the Acts) of the Board and of the auditors for the time being of the Company (the "**Auditors**") on such Accounts.

21 CHAIRMAN

21.1 The Board of Directors shall nominate and appoint a Chairman by simple voting majority of the Directors. The Chairman shall be an existing Director of the Company and shall be appointed for a term not exceeding one year and shall thereafter be nominated and appointed at the annual general meeting of the Company. A person may be re-appointed as Chairman in any year immediately following a year in which such person has served as Chairman and the Company undertakes to give effect to such appointment.

21.2 The Chairman shall not have a casting vote and Article 88 of Table A shall be amended accordingly.

22 APPOINTMENT OF DIRECTORS

22.1 The Board shall comprise up to 7 Directors.

- (a) Protocol shall; (i) for so long as they hold more than 10% of the Ordinary Shares have the exclusive right to appoint 2 Protocol Directors, and (ii) for so long as they hold more than 5% of the Ordinary Shares they shall have the exclusive right to appoint 1 Protocol Director;
- (b) Mr. Pyemont (for so long as he holds more than 5% of the Ordinary Shares) shall have the exclusive right to appoint 1 Founder Director;

- (c) Mr. Teagle (for so long as he holds more than 5% of the Ordinary Shares) shall have the exclusive right to appoint 1 Founder Director;
- (d) Ms Keating Pyemont (for so long as she holds a more than 5% of the Ordinary Shares) shall have the exclusive right to appoint 1 Founder Director;
- (e) Should a Founder cease to hold 5% of the Ordinary Shares as a result of the sale of those shares to the other Founder(s) then such seller Founder's right to appoint a Founder Director shall pass to the purchaser Founder(s) (whilst he or they together hold 15% or more of the Ordinary Shares).
- (f) The Founders shall have the right to appoint 1 further Director. On the adoption of these Articles the Founders will appoint Steven Schnell or failing him, someone of Protocol's choice (subject to reasonable agreement of Founders). Such appointee will be subject to replacement by someone of the Founder's choice on 3 months notice in writing. No such notice may be served within 3 months of the date of the first adoption of these Articles.
- (g) The Chief Executive Officer shall be a Director.

22.2 If a Director appointed under article 22 ceases to be eligible to be a Director, the Shareholder entitled to appoint the Director shall procure that the Director shall resign from the Board (and any executive position he holds with the Company). Such Shareholder shall procure that the Director, in his resignation, shall deliver to the Company a letter executed as a deed acknowledging that he has no claim outstanding for director's fees or compensation for wrongful dismissal or unfair dismissal or entitlement to any payment for redundancy or in respect of any other moneys or benefits due to him from the Company arising out of such resignation.

23 RETIREMENT OF DIRECTORS

The Directors shall not be liable to retire by rotation and, accordingly, the second and third sentences of regulation 79 of Table A shall not apply to the Company; in regulation 78 of Table A, the words "Subject as aforesaid" and the words "and may also determine the rotation in which any additional Directors are to retire" shall be deleted; and the last sentence of regulation 78 shall be deleted.

24 INVESTOR DIRECTORS

- 24.1 On any resolution to remove a Investor Director appointed pursuant to article 22 , or to amend or alter this article 24 (or to alter its effect), Shares held by the relevant appointor(s) shall together carry at least one vote in excess of 75 per cent. of the votes exercisable at the general meeting at which such resolution is to be proposed (and such votes shall be apportioned amongst the appointors in the proportion in which they hold Shares conferring the right to appoint a such a Director).
- 24.2 Any removal of a Director pursuant to articles 24.1 shall be in writing served on the Company and signed by the relevant holder(s). Such removal (which may consist of several documents) may be signed by or on behalf of any such holder by any director or the secretary of such holder (if a corporation), by its duly appointed attorney or by its duly authorised representative (if a corporation).
- 24.3 Any Investor Director may appoint an alternate (including an observer or another Director of the Company) to attend and vote at any meeting in his place or give a proxy to any other Director of the Company.

25 ALTERNATE DIRECTORS

- 25.1 The appointment by the Director of an alternate Director shall not be subject to approval by a resolution of the Board and regulation 65 of Table A shall be modified accordingly. In regulation 67 of Table A the words "but, if" and the words following them (to the end of that regulation) shall be deleted.
- 25.2 An alternate Director shall not be entitled (as such) to receive any remuneration from the Company, save that he may only be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may, by notice in writing to the Company from time to time, direct, and the first sentence of regulation 66 of Table A shall be modified accordingly.
- 25.3 A Director, or any such other person as is mentioned in regulation 65 of Table A, may act as an alternate Director to represent more than one Director, and an alternate Director shall be entitled at any meeting of the Board (or of any committee of the Board) to one vote for every Director whom he represents (in addition to his own vote (if any) as a Director), but he shall count as only one for the purpose of determining whether a quorum is present at (and during) any such meeting.

26 PROCEEDINGS OF DIRECTORS

- 26.1 Any Director or member of a committee of the Board may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear and speak to each other, and any Director or member of a committee participating in a meeting in this manner shall be deemed to be present in person at such meeting.
- 26.2 Regulation 88 of Table A shall be modified by the deletion of the third sentence and the substitution for it of the following sentence: "A Director may waive the requirement that notice be given to him of a Board meeting, either prospectively or retrospectively."

27 DIRECTORS REMUNERATION

No Directors shall be entitled to receive a salary or fee or any other form of remuneration in relation to the office they hold as Directors.

28 LIEN

The lien conferred by regulation 8 of Table A shall attach also to fully paid up Shares and to all Shares registered in the name of any person indebted or under liability to the Company (whether he shall be the sole registered holder of such share(s) or shall be one of two or more joint holders).

29 THE SEAL

- 29.1 If the Company has a seal it shall only be used with the authority of the Board or of a committee of the Board which shall comprise of at least two Directors, being one Protocol Director and one Founder Director. The Board may determine who shall sign any instrument to which the seal is

affixed and, unless otherwise so determined, it shall be signed by any Founder Director and by the secretary or any second Director. The obligation under regulation 6 of Table A relating to the sealing of share certificates shall apply only if the Company has a seal.

- 29.2 The Company may exercise the powers conferred by section 39 of the Companies Act 1985 with regard to having an official seal for use abroad, and such powers shall be vested in the Board.

30 INDEMNITY

Subject to the provisions of the Acts, every Director or alternate Director of the Company shall be indemnified out of the assets of the Company against all costs, charges, expenses, losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by any court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company. No Director or alternate Director shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the proper execution of the duties of his office or in relation thereto. This article 34 shall only have effect in so far as its provisions are not avoided by section 310 of the Companies Act 1985. The Board shall have power to purchase and maintain for any insurance against any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.

31 BORROWING POWERS

Subject as hereinafter provided and any Relevant Agreement, the Board may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and, subject to the provisions of the Acts, to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.