

THE COMPANIES ACT 1985 TO 1989  
PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION  
OF  
ERM HOLDINGS LIMITED

Passed 26 February 2001

I, the undersigned, being the sole member of ERM Holdings Limited (the "Company") who at the date of this resolution is entitled to attend and vote at a general meeting of the Company, HEREBY RESOLVE AS FOLLOWS AS A WRITTEN RESOLUTION in accordance with Section 381A of the Companies Act 1985 (as amended) THAT:

- 1 each of the 1,000 issued and unissued shares of £1 in the share capital of the Company be and is sub-divided into one hundred shares of one penny each, and then each of the resulting 100,000 shares of one penny be and is classified and designated as one B Deferred Share of one penny each in the share capital of the Company, having the rights, and being subject to the restrictions, set out in the articles of the association of the Company to be adopted pursuant to paragraph 5 of this Resolution;
- 2 the authorised share capital of the Company be increased by US\$115,123.79 (one hundred and fifteen thousand United States dollars and seventy nine cents) from £1,000 by the creation of 919,978 A Ordinary Shares of US\$0.10 each, 1,138,237 B Ordinary Shares of US\$0.01 each, 100,000 C Ordinary Shares of US\$0.01 each, 1,000,000 A Deferred Shares of US\$0.01 each and 74,650 Ordinary Shares of US\$0.01 each, all such shares having the rights, and being subject to the restrictions, set out in the articles of association of the Company to be adopted pursuant to paragraph 5 of this Resolution;
- 3 the Directors of the Company be and are generally and unconditionally authorised pursuant to Section 80 of the Companies Act 1985 to allot relevant securities up to an aggregate nominal amount of £891 and US\$115,123.79 for the period expiring on the fifth anniversary of the passing of this Resolution (provided that the Company may before such expiry make an offer or agreement which would or might require such shares to be allotted after such expiry and the Directors may allot relevant securities pursuant to such an offer or agreement as if the authority conferred hereby had not expired), and so that the authority hereby conferred shall be in substitution for any other authority vested in the directors to exercise the powers of the Company to allot relevant securities, but without prejudice to any allotment made pursuant to the terms of any other authority;
- 4 in substitution for any existing power given pursuant to Section 95 of the Act, the directors be and are empowered to allot equity securities (within the meaning of Section 94 of the Act) for cash, pursuant to the authority conferred on them to allot relevant securities (as defined in Section 80 of the Act) by paragraph 3 of this Resolution, as if Section 89 of the Act did not apply to any such allotment; and
- 5 the draft articles of association in the form attached to this Resolution be and are adopted as the Articles of Association of the Company in substitution for any existing articles of association of the Company.

Philip Keller



THE COMPANIES ACT 1985  
COMPANY LIMITED BY SHARES  
ARTICLES OF ASSOCIATION  
of  
ERM HOLDINGS LIMITED

Registered Company number: 4067993

Adopted by special resolution on:

27 February 2001

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## PRELIMINARY

### 1. DEFINITIONS

In these articles the following words and phrases have the meanings set out opposite them below:

'3i' 3i Group plc (registered number 1142830) and 'a member of the 3i Group' shall mean 3i, any subsidiary or holding company of 3i and any subsidiary of such holding company.

'3i Europartners III A' 3i Europartners III A LP (a limited partnership with registered number 6345).

'3i Europartners III B' 3i Europartners III B LP (a limited partnership with registered number 6346).

'3i PVLP' 3i Parallel Ventures LP (a limited partnership with registered number LP 5580).

'3i Fund Investor' 3i PVLP, 3i Europartners III A, 3i Europartners III B and any other 3i Investor which is a fund, partnership or other entity and which is managed by any member of the 3i Group.

'3i Investors' 3i, 3i PVLP, 3i Europartners III A, 3i Europartners III B and any other person which is a member of the 3i Group or a fund, partnership or other entity managed by any such person and who is or becomes an Investor for the purposes of the Investment Agreement but excluding, for the avoidance of doubt, PVCIP.

'3i Investors' Cash Flows' means the payments made to or by the Company in respect of the 3i Investors' Investments (excluding any fees received by the 3i Investors under the Investment Agreement less £1,000,000) gross of any effect of any tax and shall show the following payments as a negative:

- (A) the payments made by the 3i Investors in respect of the 3i Investors' Investments;

and the following receipts as a positive

- (B) dividends and interest paid in cash by the Company in respect of the 3i Investors' Investments;
- (C) repayments of 3i Investors' loan capital (including PIK Notes);

- (D) the 3i Investors' Share of the Total Capitalisation, after deduction of all reasonable expenses incurred and a reasonable estimate of any to be incurred (agreed between the 3i Investors and the Company) by the 3i Investors in respect of exiting the 3i Investors' Investments;
- (E) capital distributions or redemptions and share buybacks by the Company.

'3i Investors' Investments'	means the amount paid to the Company by the 3i Investors and PVCIP for their share and loan investments in the Company from time to time.
'3i Investors' IRR'	means the IRR achieved in respect of the 3i Investors' Cash Flows and for the purposes of all calculations in relation to this amount, all amounts attributable to PVCIP shall be included.
'3i Investors' Loan'	means the amount paid to the Company by the 3i Investors for their loan investments in the Company from time to time together with all accrued interest thereon (and the amount of any funding bonds).
'3i Investors' Share of Total Capitalisation'	means, in connection with the calculation being made, that amount of Total Capitalisation as is attributable to the Equity Share Capital comprised in the 3i Investors' Investments.
'A Loan Stock'	the A loan stock issued by the Company.
'A Deferred Shares'	the deferred shares of \$0.01 each in the capital of the Company having the rights set out in these Articles.
'A ordinary shares'	the A ordinary shares of US\$0.1 each in the capital of the Company having the rights, and being subject to the restrictions, set out in these Articles.
'the Act'	the Companies Act 1985 and every statutory modification or re-enactment thereof for the time in force.
'AIM'	means the alternative investment market of London Stock Exchange plc.
'Annual Valuation Per Share'	the amount credited as paid up on a share multiplied by the sum of the consolidated EBIT of the Company and its subsidiaries as shown on the most recent audited consolidated profit

	and loss account of the Company divided by US\$30.9m.
'B Deferred Shares'	the deferred shares of £0.01 each in the capital of the Company having the rights set out in these Articles.
'B ordinary shares'	the B ordinary shares of \$0.01 each in the capital of the Company having the rights, and being subject to the restrictions, set out in these Articles.
'Bonus Scheme Principles'	the bonus scheme principles for the Company and its subsidiaries and subsidiary undertakings as set out in Appendix 2 to the Investment Agreement (as amended from time to time in accordance with the provisions of the Investment Agreement).
'C ordinary shares'	the C ordinary shares of \$0.01 each in the capital of the Company having the rights, and being subject to the restrictions, set out in these Articles.
'C Loan Stock'	the C loan stock issued by the Company.
'Connected Persons'	as defined by section 839 Income and Corporation Taxes Act 1988.
'a Controlling Interest'	an interest in shares (as defined in Schedule 13 Part 1 and section 324 of the Act) in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that company.
'Deferred Shares'	the A Deferred Shares and the B Deferred Shares.
'Employee Member'	a person who is or has been a director and/or an employee of the Company or any of its subsidiaries.
'Employee Share Scheme Principles'	the employee share scheme principles for the Company and its subsidiaries and subsidiary undertakings as set out in Appendix 1 to the Investment Agreement (as amended from time to time in accordance with the provisions of the Investment Agreement)
'Employee Trust'	a trust approved by the Remuneration Committee and whose beneficiaries are the bona fide employees of the Company or any of its subsidiaries.

'Equity Shares'	A ordinary shares, B ordinary shares and ordinary shares in the capital of the Company from time to time.
'Equity Share Capital'	means all the A ordinary and B ordinary shares (and ordinary shares) in the capital of the Company from time to time.
'Family Trust'	<p>a trust which permits the settled property or the income therefrom to be applied only for the benefit of:</p> <ul style="list-style-type: none"><li>• the settlor and/or a Privileged Relation of that settlor; or</li><li>• any charity or charities as default beneficiaries (meaning that such charity or charities have no immediate beneficial interest in any of the settled property or the income therefrom when the trust is created but may become so interested if there are no other beneficiaries from time to time except another such charity or charities);</li></ul> <p>and under which no power of control is capable of being exercised over the votes of any shares which are the subject of the trust by any person other than the trustees or the settlor or the Privileged Relations of the settlor. For purposes of this definition 'settlor' includes a testator or an intestate in relation to a Family Trust arising respectively under a testamentary disposition or an intestacy of a deceased member.</p>
'Finance Documents'	means the Finance Documents as defined in the Intercreditor Agreement dated on or about 27 February 2001 made between (among others) (1) the Company (2) The Governor and Company of the Bank of Scotland as Facility Agent (3) ICG as Mezzanine Facility Agent and (4) the 3i Investors.
'Flotation'	means the becoming effective of a listing for any share capital of the Company on the Official List of the UK Listing Authority or on the share dealing market of any recognised investment exchange (as defined in section 207 of the Financial Services Act 1986), or the sale or issue of any share capital of the Company by way of flotation or public offering.

'ICG' Group'	means Intermediate Capital Group PLC, any subsidiary or holding company of Intermediate Group PLC and any subsidiary of such holding company;
'Independent Expert'	an umpire (acting as an expert and not as an arbitrator) nominated by the parties concerned or in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales.
'Intercreditor Agreement'	means the Intercreditor agreement dated on or about 27 February 2001 between (among others) (1) the Company (2) The Governor and Company of the Bank of Scotland as Senior Facility Agent (3) ICG as Mezzanine Facility Agent and (4) the 3i Investors.
'Investment Agreement'	means the agreement entered into or to be entered into between the Company (1) the Promoters (as defined therein) (2) 3i plc (3) 3i (4) 3i PVL P (5) 3i Europartners III A (6) and 3i Europartners III B (7).
'Investor'	means each of the 3i Investors and any person who is or becomes an Investor for the purposes of the Investment Agreement.
'IRR'	<p>means the annual internal rate of return (expressed as a percentage) which when applied as a discount to a particular set of cash flows gives the net present value of that set of cash flows as zero on the basis that:</p> <ul style="list-style-type: none"><li>(i) each of those cash flows is regarded as arising at the end of the calendar month in which the cash flow in question occurs or is deemed to occur;</li><li>(ii) the rate of return is treated as compounding annually at the end of each calendar year.</li></ul>
'member of an Investor's Group'	means an Investor, any subsidiary of that Investor and any holding company of that Investor and any subsidiary of such holding company and any nominee of any of the foregoing and 'Investor's Group' or 'Group' shall be construed accordingly.
'Mezzanine Loan Agreement'	means a mezzanine loan agreement dated on or about 27 February 2001 with the adoption of these articles and made between (1) the Company and (2) Intermediate Capital



Group plc and Intermediate Capital Limited  
(in their various capacities).

'Mezzanine Warrant'

means the warrant for the issue of ordinary shares in the Company issued pursuant to the Mezzanine Loan Agreement.

'Offer'

means either:

- (a) the making of an offer to purchase all the Equity Share Capital of the Company which is accepted in relation to such percentage of such share capital as, when aggregated with such share capital, if any, already held by the offeror and any persons acting in concert with the offeror, will result in the offeror together with such persons acquiring more than 50 per cent of the Equity Share Capital of the Company (including 75% of the B ordinary shares); or
- (b) the entering into of one or more agreements (whether for the transfer or the issue of new shares or otherwise) which will result in any person acquiring more than 50 per cent of the Equity Share Capital (including 75% of the B ordinary shares) of the Company, which agreements become unconditional.

'ordinary shares'

the ordinary shares of 1 cent each in the capital of the Company from time to time and the ordinary shares in the Company arising on the redesignation of the A ordinary shares and B ordinary shares.

'Original Members'

persons who were members of the Company on the date of the adoption of these articles and the Family Trusts and Privileged Relations of such members and any persons or entities to whom a transfer is made pursuant to article 11.3.

'PIK Notes'

the units of payment in kind notes of US\$1 each constituted by the PIK Note Instrument.

'PIK Note Instrument'

the instrument created by the Company constituting the PIK Notes and dealing with matters relating, inter alia, to the issue and redemption of the PIK Notes.

'PVCIP'

the co-investment plan established to acquire and hold up to 5% of 3i PVLP's B ordinary

	shares and Warrants and known as "Parallel Ventures (No 2) Co-investment Plan".
'PVLP'	Parallel Ventures L.P. (a limited partnership registered in Scotland with number 3153), being a limited partner in 3i PVLP.
'Privileged Relations'	the spouse or widow or widower of the member and the member's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the member's children.
'Realisation'	means a Flotation, a Refinancing or a Sale.
'Realisation Date'	means: <ul style="list-style-type: none"><li>(a) on a Flotation, the date on which dealing commence in respect of the shares the subject of the Flotation;</li><li>(b) on a Refinancing, completion of the Refinancing; and</li><li>(c) on a Sale, completion of the Sale.</li></ul>
'Refinancing'	means a recapitalisation of the Company which results in a repayment of the 3i Investors' Loan in full.
'Remuneration Committee'	the remuneration committee appointed by the board of directors of the Company (comprising the non-executive directors and the chairman of the board) from time to time.
'Rules'	the rules governing the transfer of ordinary shares by Employee Members set out in Appendix 1, as amended from time to time.
'Sale'	completion of the transaction envisaged by an Offer.
'Syndicatee'	has the meaning given in the Investment Agreement.
'Table A'	Table A in the Companies (Tables A - F) Regulations 1985 as amended by the Companies (Tables A - F) (Amendment) Regulations 1985 and the Companies Act 1985 (Electronic Communications) Order 2000.
'Termination Date'	means:

- (a) where employment ceases by virtue of notice given by the employer to the employee, the date on which such notice expires;
- (b) where a contract of employment is terminated by the employer and a payment is made in lieu of notice, the date on which notice of termination was served;
- (c) where an Employee Member dies, the date of his death;
- (d) where the Employee Member concerned is a director but not an employee, the date on which his contract for services with the Company is terminated; and
- (e) in any other case, the date on which the contract of employment is terminated.

**'Total Capitalisation'**

means, as the case may be:

- (a) the capital of the Company as shown in a prospectus or listing particulars published in connection with a Flotation less the gross amount of any new money raised by the Company from the subscription for new shares issued by the Company at the time of and in connection with such Flotation; or
- (b) on a Refinancing, the amount of the 3i Investors' Loan repaid together with any shares redeemed or purchased by the Company or a third party and the balance of the 3i Investments' shares multiplied by the relevant redemption price or purchase price, as the case may be; or
- (c) on a Sale, the aggregate price paid for the Equity Share Capital of the Company plus the cash value of any other sum (in cash or otherwise) received or receivable by the shareholders which can reasonably be regarded as an addition to the price paid (whether or not paid at the time of the Sale) at the value placed thereon in the relevant contract for the sale and, if no such value is placed thereon in the relevant contract for the sale, or to the extent that the Sale includes an element of deferred consideration, its value shall be the present value of such deferred consideration as agreed between the 3i Investors and the holders of a majority of the C ordinary shares or, in the absence of such agreement within 14 days of the

Realisation Date, as determined by an Independent Expert,

and in each case it shall be assumed that the Mezzanine Warrant has been exercised in full.

"Warrant Holder"

a person who is entered into the register pursuant to the terms of the Mezzanine Warrant.

"Warrants"

the Warrants to be issued by the Company on Completion pursuant to the Warrant Instrument to the 3i Investors and (if 3i PVLP so elects) to PVCIP;

## **2. APPLICATION OF TABLE A**

- 2.1 The regulations contained in or incorporated in Table A shall apply to the Company save insofar as they are excluded or varied hereby or are inconsistent herewith and such regulations (save as so excluded varied or inconsistent) and the articles hereinafter contained shall be the regulations of the Company.
- 2.2 Regulations 54, 73-80 (inclusive), 85, 86, 94-98 (inclusive) 104 and 118 of Table A shall not apply to the Company.

## **3. SHARE CAPITAL**

- 3.1 The authorised share capital of the Company is £1,000 and \$115,126.67 (one hundred and fifteen thousand one hundred and twenty six US Dollars and sixty-seven cents) divided into:
- 919,978 A ordinary shares of 10 cents each
  - 1,138,237 B ordinary shares of 1 cent each
  - 100,000 C ordinary shares of 1 cent each
  - 1,000,000 A Deferred shares of 1 cent each
  - 100,000 B Deferred Shares of 1 penny each
  - 74,650 ordinary shares of 1 cent each
- 3.2 For the purpose of determining the rights attaching to the B ordinary shares other than as expressly set out in these Articles, each B ordinary share shall be treated as having a nominal value equal to that of each ordinary share and any premium paid on the issue of any of the B ordinary shares shall be treated to the extent necessary as paying up the said B ordinary shares to their deemed nominal value. Notwithstanding the provisions of this article 3.2 the B ordinary shares shall constitute a separate class of shares.
- 3.3 The directors have the authority during the period ending on the fifth anniversary of the date of adoption of these Articles (provided that the Company may before such expiry make an offer or agreement which would or might require such shares to be allotted after such expiry and the Directors may allot such shares pursuant to such an offer or agreement as if the authority conferred hereby had not expired) to allot up to 323,531 A

ordinary shares and up to 100,000 C ordinary shares to employees of the Group in accordance with the Employee Share Scheme Principles without first having to offer such shares to the holders of A ordinary shares, B ordinary shares or C ordinary shares.

- 3.4 The C ordinary shares shall not be entitled to participate in any fresh issue of shares (including any bonus issue) unless and until the provisions of article 6.2 come into effect, and, to this extent, the provisions of section 89 of the Act do not apply.

## **SHARE RIGHTS**

### **4. DIVIDENDS**

- 4.1 No dividend shall be declared unless the directors so decide and no such dividend shall exceed the amount recommended by the directors.
- 4.2 Any dividend shall, if the holders of 50%+1 of the B ordinary shares agree in writing, be distributed amongst the holders of the A ordinary shares and the B ordinary shares and/or the ordinary shares, as the case may be in proportion to the number of shares held by them (pari passu as if the same were one class of share). The C ordinary shares and the Deferred Shares shall not be entitled to any dividend.
- 4.3 The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time and to the extent that it may lawfully do so declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of any other dividends which have been declared.
- 4.4 Notwithstanding any other provision of these Articles, no payment is permitted to be made or agreed to be made by the Company in respect of any shares or share capital (whether by way of dividend, distribution, purchase or redemption, or by way of reduction or return of share capital) if such payment is prohibited or restricted by the terms of the Finance Documents and any payment made in breach of the terms of the Finance Documents will be held by the recipient on trust for the Company.
- 4.5 No dividend, distribution or other amount payable in respect of shares in the capital of the Company (whether made pursuant to the provisions of these Articles or otherwise) will constitute a debt of the Company unless permitted to be paid and paid strictly in accordance with the provisions of the Finance Documents.
- 4.6 Any resolution of the shareholders, any class of shareholders, the board of directors or any committee of the board of directors which conflicts with the provisions of this Article will be null and void.

### **5. RETURN OF CAPITAL**

- 5.1 On a return of assets on liquidation or capital reduction or otherwise, the assets of the Company remaining after the payment of its liabilities shall subject to articles 4.4 and 5.2 be distributed amongst the holders of the A ordinary shares and B ordinary shares and/or the ordinary shares, as the case may be in proportion to the amounts paid up or credited as paid up on each share held by them (pari passu as if the same were one class of share) until each share has received an amount equal to the amount paid up or credited as paid up thereon, and thereafter any assets remaining shall be distributed pari passu to the holders of A ordinary shares and B ordinary shares and/or the ordinary shares, as the case may be in proportion to the number of shares held by them.

- 5.2 The Deferred Shares shall be entitled to a return of 0.1 penny per share when each holder of A ordinary shares, B ordinary shares and ordinary shares has received \$10,000 per share.

6. **RATCHET**

- 6.1 This article 6 shall not come into effect unless both of the following thresholds are met on a Realisation Date:

- (a) the 3i Investors' IRR is greater than 30%; and
- (b) the 3i Investors' share of Total Capitalisation is at least twice the 3i Investors' Investments

in each case having taken account of the deductions from the amount of money to be received by the 3i Investors following the operation of this article.

- 6.2 If the thresholds set out in article 6.1 are met on a Realisation Date, the holders of the C ordinary shares as a class will become entitled to have transferred to them for an aggregate sum of \$1 and pro rata to the number of C ordinary shares held by each of them, such number of B ordinary shares as represents X% of the Total Capitalisation (the "Ratchet Rights") with effect from the Realisation Date, and so that the holders of the C ordinary shares shall be entitled to participate in any Realisation to realise the value of the Ratchet Rights pari passu with the holders of the B ordinary shares. Each holder of B ordinary shares shall be obliged to effect a transfer of B ordinary shares in accordance with this article, such shares being selected as nearly as possible pro rata across the holdings of all B ordinary shares. If any holder of B ordinary shares shall fail or refuse to transfer any or all of his relevant B ordinary shares pursuant to this article 6, the directors of the Company may authorise any person to execute and deliver on his behalf the necessary transfer and cause the relevant holder or holders of the C ordinary shares to be registered as the holder of such B ordinary shares. Fractional entitlements to B ordinary shares shall be aggregated and transferred to the Employee Benefit Trust.
- 6.3 In this article 6, X% is calculated by dividing 30% of the Excess by the amount of the Total Capitalisation which would otherwise be distributed to the B ordinary shares (disregarding the operation of this article 6) and expressing the result as a percentage. The "Excess" means the amount of the Total Capitalisation otherwise payable to the B ordinary shareholders in excess of the higher of the amounts required to satisfy the thresholds set out in article 6.1.
- 6.4 At least 14 days prior to a Realisation Date (or, if later in the case of a potential Sale, as soon as practicable after it becomes aware of the real possibility thereof) the Company shall estimate the likely date of such event; procure that the calculation set out in this article is carried out both in aggregate for the C ordinary shares as a class and for each individual C ordinary share, and that the auditors certify that such calculations have, in their opinion, been performed in accordance with the provisions of this article; and notify all holders of B ordinary shares and C ordinary shares of the results of such calculations. The Company shall use all reasonable endeavours to reach agreement within seven days after giving such notifications as to the accuracy of such calculations and in such period to record that agreement in a certificate signed by or on behalf of the holders of 50% or more of the holders of each of the B ordinary shares and the C ordinary shares. Such agreement will be binding on all B and C ordinary shareholders of the Company. If agreement is not reached within such period the Company shall procure the determination thereof by the auditors who shall issue a certificate to such effect accordingly and shall for such purposes be deemed to be acting as experts and not as arbitrators and their certificate shall be final and binding on all B and C ordinary

shareholders in the absence of fraud or manifest error, each of whom shall be sent a copy as soon as practicable following its issue, together with a paper showing the auditors' calculations and assumptions in arriving at such determination. Any such certificate of the auditors shall be obtained at the expense of the Company. If the anticipated event does not occur by the date as at which or on the terms on which the said calculations were made, the procedures set out in this article 6.4 shall be repeated (if the event is still likely to occur) by reference to the next date on which the Company estimates the event is likely to occur and/or by reference to the actual terms concerned, as appropriate.

- 6.5 Each of the A ordinary shares will be redesignated as one ordinary share and nine A Deferred Shares immediately prior to a Realisation.
- 6.6 Each of the B ordinary shares will be redesignated as one ordinary share immediately prior to a Realisation.
- 6.7 Each of the C ordinary shares will be redesignated as one A Deferred Share immediately prior to a Realisation, but so as to take effect after the operation of article 6.2.

## 7. VOTING

- 7.1 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with these articles (including without limitation article 11.9) shares in the Company shall carry votes as follows:

**A ordinary shares** -----  
: one vote per share

**B ordinary shares** -----  
: one vote per share

**Ordinary shares** -----  
: one vote per share

The C ordinary shares and, subject to Article 7.2, Deferred Shares shall not carry the right to receive notice of nor attend or vote at any general meeting of the Company.

- 7.2 The B Deferred Shares shall carry the right to receive notice of, and to attend and vote at, any general meeting of the Company on the basis of one vote per share, for as long as the B Deferred Shares remain the only class of share in issue of the share capital of the Company.

- 7.3 Votes on shares may be exercised:

on a show of hands by every member who (being an individual) is present in person or (being a corporation) is present by a representative, not being himself a member, (in which case each member holding shares with votes shall have one vote); and

on a poll by every member who (being an individual) is present in person or by proxy or (being a corporation) is present by a representative or by a proxy (in which case each member holding shares with votes shall have one vote for each such share held).

8. CLASS RIGHTS

Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up, only with the consent in writing of the holders of 75% of the issued shares of that class. Without prejudice to the generality of this article, the special rights attached to each of the A ordinary shares and B ordinary shares shall be deemed to be varied:

8.1 by the Company:

- (a) altering its memorandum or articles of association; or
- (b) varying in any way (whether directly or indirectly) the rights attached to any of the shares for the time being in the capital of the Company; or
- (c) applying by way of capitalisation any sum in or towards paying up any share or loan capital of the Company; or
- (d) entering into a contract to purchase any of its shares; or
- (e) redeeming any of its shares (except as specifically provided for in these articles); or
- (f) passing a resolution that it be wound up; or

8.2 by the Company or any of its subsidiaries:

- (a) altering, increasing, reducing, sub-dividing or consolidating its authorised or issued share capital other than pursuant to an issue of shares in accordance with the Mezzanine Warrant, Warrants or article 3.3;
- (b) granting any option or other right to subscribe for shares other than in accordance with the Employee Share Scheme Principles, the Mezzanine Warrant and the Warrants;
- (c) making any material change to the economic effect of the Bonus Scheme Principles in which case the consent required from the holders of the A ordinary shares shall be in writing of more than 75% of the holders of the A ordinary shares who would be affected by any proposed change, and if any change affects persons employed by any subsidiaries or subsidiary undertakings of the Company the consent required shall be in writing of more than 75% of the holders of the A ordinary shares employed by each subsidiary or subsidiary undertaking affected;

provided that no consent (other than in relation to article 8.2(c) or in relation to article 8.1(a) insofar as it relates to any change or modification of article 8.2(c) or this proviso) shall be required from the holders of the A ordinary shares if, at the time such consent is required: (i) there is a subsisting Event of Default under the financial covenants contained in either of the Senior Loan Agreement or the Mezzanine Loan Agreement which has not been waived by the Facility Agent (as defined therein) (and if so waived, the consent of the holders of the A ordinary shares shall again be required), or (ii) circumstances exist such that, on the publication of any accounts within the next six months by reference to which the financial covenants contained in clause 20.14 of the Senior Loan Agreement are to be calculated there would or might reasonably be expected to be a breach of such covenants.



**9. PAYMENTS TO 3i PVLP, 3i EUROPARTNERS III A, 3i EUROPARTNERS III B AND PVCIP**

- 9.1 All payments of dividend and capital on shares registered in the name of 3i PVLP Nominees Limited (a/c 3i Parallel Ventures LP) shall, unless it notifies the Company otherwise, be paid to 3i Parallel Ventures LP.
- 9.2 All payments of dividend and capital on shares registered in the name of 3i EF3 Nominees A Limited (a/c 3i Europartners III A LP) shall, unless it notifies the Company otherwise, be paid to 3i Europartners III A LP.
- 9.3 All payments of dividend and capital on shares registered in the name of 3i EF3 Nominees B Limited (a/c 3i Europartners III B LP) shall, unless it notifies the Company otherwise, be paid to 3i Europartners III B LP.
- 9.4 All payments of dividend and capital on shares registered in the name of 3i PVLP Nominees Limited (a/c Parallel Ventures (No 2) Co-investment Plan) shall, unless it notifies the Company otherwise, be paid to Parallel Ventures (No 2) Co-investment Plan.

**TRANSFERS**

**10. TRANSFER OF SHARES**

- 10.1 The directors shall refuse to register any transfer of shares made in contravention of the provisions of these articles but (subject to Regulation 24 of Table A) shall not otherwise be entitled to refuse to register any transfer of shares. For the purpose of ensuring that a particular transfer of shares is permitted under the provisions of these articles, the directors may request the transferor, or the person named as transferee in any transfer lodged for registration, to furnish the Company with such information and evidence as the directors may reasonably think necessary or relevant. Failing such information or evidence being furnished to the satisfaction of the directors within a period of 28 days after such request the directors shall be entitled to refuse to register the transfer in question.
- 10.2 *Save as otherwise provided herein, no transfer of any A ordinary share may be made other than in accordance with the Rules.*
- 10.3 Any reference in these articles to a transfer of shares shall be deemed to include a transfer of any interest in shares (whether legal, beneficial or otherwise) and these articles shall take effect accordingly.
- 10.4 The directors may not register any transfer of A ordinary shares or B ordinary shares (except in accordance with article 6 or on the transfer of any B ordinary shares to PVLIP) by a member who also holds A Loan Stock or C Loan Stock respectively unless, at the same time and as part of the same transaction, such member also transfers to the transferee of the A ordinary shares or B ordinary shares (as the case may be) such proportionate amount of the A Loan Stock or C Loan Stock (as the case may be) he holds as represents the proportionate amount of the A ordinary shares or B ordinary shares (as the case may be) he transfers compared to his aggregate A ordinary share holding immediately prior to such transfer.
- 10.5 The C ordinary shares may not be transferred.
- 10.6 No transfer of any B ordinary shares is permitted other than in accordance with articles 6, 11.3, 11.6, 12 or 20.
- 10.7 Any purported transfer of shares otherwise than in accordance with the provisions of these articles shall be void and have no effect.

## 11. PERMITTED AND MANDATORY TRANSFERS

### 11.1 Permitted transfers to relations and family trusts

Subject to the provisions of article 11.9, any member may at any time during his lifetime transfer all or any shares held by him to a Privileged Relation or to trustees to be held upon a Family Trust of which he is the settlor provided that any such transfer of shares to trustees to be held upon a Family Trust may only be made if the directors are satisfied that the trust falls within the definition of a Family Trust.

### 11.2 Permitted transfers by family trusts

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

- (a) on any change of trustees such shares may be transferred to the new trustees of that Family Trust;
- (b) such shares may be transferred at any time to the settlor or to another Family Trust of which he is the settlor or to any Privileged Relation of the settlor.

### 11.3 Permitted transfers by 3i Investors and PVCIP

#### (a) 3i Group

Notwithstanding any other provision of these articles, a transfer of any shares in the Company held by any member of the 3i Group may be made between the member of the 3i Group holding such shares and any other member of the 3i Group without restriction as to price or otherwise and any such transfer shall be registered by the directors. If any such transferee ceases to be a member of the 3i Group it shall forthwith transfer the relevant shares to a member of the 3i Group.

#### (b) 3i PVLP, PVLP and PVCIP

Notwithstanding any other provisions of these articles, a transfer of any shares in the Company may be made between the persons or entities comprised in the categories set out below without restriction as to price or otherwise and any such transfer shall be registered by the directors.

- Category A to Categories A, B, C, D or F
- Category B to Category D
- Category C to Categories A or E
- Category E to Categories C or E

Category A comprises 3i PVLP or its nominee.

Category B comprises PVLP and any other partner in or member of 3i PVLP or the nominee of such person.

Category C comprises PVCIP or its nominee.

Category D comprises any partner in or member of PVLP or the nominee of such person.

Category E comprises the members of or participants in PVCIP.

Category F comprises any 3i Fund Investor or its nominee.

(c) 3i Europartners III A

Notwithstanding any other provisions of these articles, a transfer of any shares in the Company may be made between the persons or entities comprised in the categories set out below without restriction as to price or otherwise and any such transfer shall be registered by the directors:

- Category G to Categories F, G or H.

Category G comprises 3i Europartners III A or its nominee.

Category H comprises any partner in or member of 3i Europartners III A or the nominee of such person.

(d) 3i Europartners III B

Notwithstanding any other provisions of these articles, a transfer of any shares in the Company may be made between the persons or entities comprised in the categories set out below without restriction as to price or otherwise and any such transfer shall be registered by the directors:

- Category I to Categories F, I or K.

Category I comprises 3i Europartners III B or its nominee.

Category K comprises any partner in or member of 3i Europartners III B or the nominee of such person.

(e) Any transfer of shares in accordance with article 20.

11.4 Permitted Transfers to or by the Employee Trust

Any A ordinary shares may be transferred by the Employee Trust in accordance with the Employee Share Scheme Principles or to any holder of A ordinary shares in accordance with the Rules.

11.5 Permitted Transfers between holders of A ordinary shares

If a holder of A ordinary shares has been required to offer such shares for sale pursuant to article 11.9 and, within 30 days thereafter, the Remuneration Committee has determined that article 11.9 shall not apply in relation to such shares, the A ordinary shares of such holder may be transferred to any other holder of A ordinary shares or to the Employee Trust or at the discretion of the Remuneration Committee, at such time as the Remuneration Committee may decide whether before or after the Dealing Day next following the relevant Termination Date, subject to article 10.4.

11.6 Transfers with shareholder approval

Notwithstanding any other provisions of these articles a transfer of any shares approved by the holders of 50%+1 of the A ordinary shares and the holders of 50%+1 of the B ordinary shares may be made without restriction as to price or otherwise and any such transfer shall be registered by the directors.

#### 11.7 Transfers to Voting Trust nominee

Any A ordinary shares may be transferred to any nominee company established solely for the purpose and approved by the Remuneration Committee to hold legal title to A ordinary shares, subject to the class consent of holders of 75% in nominal value of A ordinary shares from time to time. Following any such transfer, the provisions of these articles relating to transfers of A ordinary shares shall apply, '*mutatis mutandis*', to any disposition of any interest in A ordinary shares.

#### 11.8 Mandatory transfer if trust ceases to be a 'Family Trust'

If and whenever any shares held by trustees upon a Family Trust cease to be so held upon a Family Trust (otherwise than in consequence of a transfer to the settlor or to any Privileged Relation of the settlor) or there cease to be any beneficiaries of the Family Trust other than a charity or charities a Transfer Notice (as hereinafter defined) shall be deemed to have been given in respect of the relevant shares (as hereinafter defined) by the holders thereof and such shares may not otherwise be transferred.

For the purposes of this article 11.8 the expression 'relevant shares' means and includes the shares originally transferred to the trustees and any additional shares issued or transferred to the trustees by virtue of the holding of the relevant shares or any of them.

#### 11.9 Mandatory transfer on cessation of employment

If an Employee Member dies or otherwise ceases to be either a director or employee of the Company or any of its subsidiaries for any reason whatsoever and does not continue in that capacity in relation to any such company, then, unless the Remuneration Committee determines otherwise in its absolute discretion in any particular case within 30 days of the relevant Termination Date:

- (a) Transfer Notices shall be deemed to have been served within the time limit specified in paragraph 4.3 of the Rules in relation to the Dealing Day (as defined in the Rules) next following the relevant Termination Date in respect of:
  - (i) all A ordinary shares and A Loan Stock held by the Employee Member immediately before his death or other such cessation; and
  - (ii) all A ordinary shares and A Loan Stock then held by the Employee Member's Privileged Relations and/or Family Trusts and/or in respect of which the legal title is held by a nominee company in accordance with article 11.7 (other than shares which the directors are satisfied were not acquired by such holders either (i) directly or indirectly from the Employee Member or (ii) by reason of their connection with the Employee Member, and the decision of the board of directors in this respect will be final); and
- (b) all C ordinary shares held by him shall automatically be converted into B Deferred Shares; and
- (c) Transfer Notices in respect of any A ordinary shares to which such Employee Member and/or his Privileged Relations and/or his Family Trusts subsequently becomes entitled by virtue of any option arrangement or otherwise shall be deemed to have been served within the time limit specified in paragraph 4.3 of the Rules, in relation to the Dealing Day next following the date on which such Employee Member and/or his Privileged Relations and/or his Family Trusts becomes so entitled.

Transfers under this article 11.9 are in these articles referred to as Compulsory Employee Transfers.

- 11.9 Compulsory Employee Transfers shall be treated in the same way as all other transfers under the Rules, save that, at any time when the legal title to such shares is not vested in a nominee company in accordance with article 11.7 from the date on which the Transfer Notice is deemed to have been served until the actual transfer of shares, the voting rights attached to the shares which are the subject of the Compulsory Employee Transfer may only be exercised by the secretary of the Company and the holder of such shares shall be deemed to have completed a proxy form to that effect in relation to each exercise of voting rights during such period and shall have no rights to attend general meetings.
- 11.10 The sale price for the shares and loan stock which are the subject of the Compulsory Employee Transfer shall be calculated as follows:
- (a) for the A Loan Stock, the nominal value thereof, together with all accrued but unpaid interest thereon; and
  - (b) for each A ordinary share, the most recently determined Annual Valuation Per Share.

11.11 Mandatory transfer on change of control of shareholder

If a corporate member ceases to be within the control (as such term is defined by section 840 Income and Corporation Taxes Act 1988) of the person(s) who controlled such company on the date on which it became a member of the Company or on the date of adoption of these articles (whichever shall be the later) it shall be deemed to have immediately given a Transfer Notice in respect of all the shares as shall then be registered in its name; provided that this article 11.2 shall have no application to an Investor or to any member of an Investor's Group.

- 11.12 Notwithstanding any other provision of these Articles, a transfer of any share in the Company held by a member of the ICG Group may be made between the member of the ICG Group holding such shares and any other member of the ICG Group without restriction and any transfer shall be registered by the directors. If any such transferee ceases to be a member of the ICG Group, it shall forthwith transfer the relevant shares to a member of the ICG Group.

12. **TRANSFER OF CONTROL**

12.1 Transfers prohibited absolutely

No sale or series of sales or transfer or series of transfers of the legal or beneficial interest in any shares in the Company may be made or validly registered if as a result of one or more of such sales or transfers and registration thereof a Controlling Interest would be obtained in the Company by a company in which one or more of the members of the Company (or persons acting in concert with them) has a Controlling Interest.

12.2 Transfers permitted where offer is made for B ordinary shares

No sale or series of sales or transfer or series of transfers of the legal or beneficial interest in any shares in the Company may be made or validly registered without the consent in writing of the holders of 50%+1 of the A ordinary shares and of the holders of 50%+1 of the B ordinary shares if as a result of one or more of such sales or transfers and registration thereof a Controlling Interest would be obtained in the

Company by a person or persons who are not Original Members unless the proposed transferee or transferees or his or their nominees are independent third parties acting in good faith and has or have offered to purchase all the Equity Shares and, if the thresholds set out in article 6.1 are met, the C ordinary shares, at the Specified Price (calculated as set out below).

### 12.3 Calculation of the Specified Price

In this article the 'Specified Price' means:

- the consideration (in cash or otherwise) per share equal to that offered or paid or payable by the proposed transferee or his or their nominees for the shares being acquired, plus
- the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of such other shares which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the price paid or payable, plus
- all arrears and accruals of the dividends (if any have been declared) on such share calculated down to the date of the sale or transfer.

In the event of disagreement the calculation of the Specified Price shall be referred to an Independent Expert whose decision shall be final and binding in the absence of fraud or manifest error, and the Independent Expert shall supply to the Company such evidence to show his calculations and assumptions on which he arrived at his calculation as the Company may request.

### 12.4 Drag along

- (a) If the holders of 50%+1 of the Equity Share Capital, including the holders of 75% of the B ordinary shares, in issue for the time being (the "Selling Shareholders") wish to transfer all their interest in Equity Shares (the "Sellers' Shares") to a bona fide arms length purchaser (the "Third Party Purchaser") they shall give notice thereof to the Company at least 28 days prior to effecting such a transfer (the "Sale Notice") and the Company shall give a copy thereof to each non-selling Shareholder within 10 days of receipt. The Selling Shareholders shall have the option (the "Drag Along Option") to require all the other holders of Equity Shares and C ordinary shares (the "Called Shareholders") to sell and transfer all their shares to the Third Party Purchaser or as the Third Party Purchaser shall direct on the same terms and conditions as those applicable to the Sellers' Shares in accordance with the provisions of this article.
- (b) The Selling Shareholders may exercise the Drag Along Option by giving written notice to that effect (a "Drag Along Notice") at least 28 days prior to the transfer of the Sellers' Shares to the Third Party Purchaser. A Drag Along Notice shall specify that the Called Shareholders are required to transfer all their Equity Shares and C ordinary shares (the "Called Shares") pursuant to this article, the person to whom they are to be transferred, the consideration for which the Called Shares are to be transferred (calculated in accordance with this article) and the proposed date of transfer.
- (c) Drag Along Notices shall be irrevocable but will lapse if for any reason there is not a sale of the Sellers' Shares by the Selling Shareholders to the Third Party Purchaser within 60 days after the date of service of the Drag Along Notice. The

Selling Shareholders shall be entitled to serve further Drag Along Notices no earlier than 28 days following the lapse of any particular Drag Along Notice.

- (d) The terms and conditions (which for the purposes of this article 12.4 shall include any agreement, arrangement or understanding which the Selling Shareholders, or any of them, enter into with the Third Party Purchaser in relation to the consideration paid or attributed to them, or any of them, by or on behalf of such Third Party Purchaser for their Sellers' Shares within six months of completion of the sale of such shares under this article 12, and if any such agreement, arrangement or understanding is entered into, the Selling Shareholders shall procure that the Third Party Purchaser offers to enter into the same agreement, arrangement or understanding with the Called Shareholders) on which the Called Shareholders shall be obliged to sell each of the Called Shares shall be the same as those on which the Third Party Purchaser is sold or transferred the Sellers' Shares save that all the Deferred Shares in issue shall be purchased for the aggregate amount of \$1.
- (e) Completion of the sale of the Called Shares shall take place on the same date as the date proposed for completion of the sale of the Sellers' Shares unless:
  - (i) all of the Called Shareholders and the Selling Shareholders agree otherwise; or
  - (ii) that date is less than 3 days after the expiry of 28 days from the date of Drag Along Notice where it shall be deferred until the third day after such expiry.
- (f) The rights of pre-emption set out in these articles shall not arise on any transfer of shares to a Third Party Purchaser (or as he may direct) pursuant to a sale in respect of which a Drag Along Notice has been duly served.
- (g) If any holder of Equity Shares does not on Completion of the sale of Called Shares execute transfer(s) in respect of all the Called Shares held by him the defaulting holder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Selling Shareholders to be his agent and attorney to execute all necessary transfer(s) on his behalf and against receipt by the Company (on trust for such holder) of the purchase monies or any other consideration payable for the Called Shares deliver such transfer(s) to the Third Party Purchaser (or as he may direct) and the directors shall forthwith register the Third Party Purchaser (or as he may direct) as the holder thereof and, after the Third Party Purchaser (or his nominee) has been registered as the holder, the validity of such proceedings shall not be questioned by any such person. It shall be no impediment to registration of shares under this article 12.4 that no share certificate has been produced.
- (h) Upon any person, following the issue of a Drag Along Notice, becoming a member of the Company pursuant to the exercise of a pre-existing option to acquire shares in the Company ("a New Member"), a Drag Along Notice shall be deemed to have been served upon the New Member on the same terms as the previous Drag Along Notice who shall thereupon be bound to sell and transfer all such shares acquired by him to the Third Party Purchaser or as the Third Party Purchaser may direct and the provisions of this article shall apply mutatis mutandis to the New Member save that completion of the sale of such shares shall take place forthwith upon the Drag Along Notice being deemed served on the New Member.

## 12.5 Tag along

- (a) If any holder of B ordinary shares proposes to transfer any shares to a Third Party Purchaser other than in accordance with article 6, 11, 12.4 or article 20, it shall give notice thereof to the Company at least 28 days prior to effecting such a transfer (a "Partial Sale Notice") and the Company shall give a copy thereof to each A ordinary shareholder within 10 days of receipt.
- (b) Within 14 days of receipt of a Partial Sale Notice, (the "Tag Period"), each A ordinary Shareholder and/or ordinary Shareholder may give notice to the selling B ordinary Shareholder that he desires to sell A ordinary shares and/or ordinary shares (as applicable) to the Third Party Purchaser on the same terms and conditions as set out in the Sale Notice (a "Tag Notice") unless the holders of 50% + 1 of the A ordinary Shares elect to waive the rights of all the A ordinary Shareholders pursuant to this article 12.5 prior to the expiry of the Tag Period (a "Tag Veto Event").
- (c) Upon service of a Tag Notice and subject to there being no Tag Veto Event, such A ordinary Shareholder and/or ordinary shareholder shall be entitled to sell to the Third Party Purchaser, on the same terms and conditions as set out in the Partial Sale Notice, such percentage of his holding of A ordinary shares (as applicable) (the "Tag Along Shares") as is equal to the percentage of the issued equity shares represented by the shares to be sold (as set out in the Partial Sale Notice).
- (d) On the expiry of the Tag Period, provided that a Tag Veto Event has not occurred, the number of Tag Along Shares to be sold by each A ordinary Shareholder and/or ordinary shares who has served a Tag Notice in accordance with article 12.5(b) ("Tag Shareholders") shall be aggregated and the B ordinary shares to be sold shall be reduced by such aggregate and the selling B ordinary shareholder shall procure that the Third Party Purchaser acquires the Tag Along Shares in addition to the Selling Shareholders' shares.
- (e) Such Tag Shareholders shall not be deemed to have entered into a legally binding agreement to sell his Tag Along Shares unless and until he enters into a definitive share purchase agreement in respect of his Tag Along Shares with the Third Party Purchaser, at the same time as and on terms identical to, the share purchase agreement entered into by the Selling Shareholders.

## 12.6 Interpretation

In this article:

- (a) the expressions 'transfer' and 'transferee' shall include respectively the renunciation of a renounceable letter of allotment and the renounee under any such letter of allotment;
- (b) the expression 'shares' includes bearer shares, depository receipts and any other security or instrument into which shares may be converted with a view to a sale;
- (c) whether or not persons are acting in concert will be determined by the then most recent edition of the City Code on Takeovers and Mergers.

## 12.7 Primacy of article

All other regulations of the Company relating to the transfer of shares and the rights to registration of transfers shall be read subject to the provisions of this article.



## **DIRECTORS**

### **13. APPOINTMENT OF DIRECTORS**

- 13.1 The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director. In addition, the holders of shares representing more than half of the shares which carry the right to attend and vote at general meetings of the Company may by notice to the Company together appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.
- 13.2 The A ordinary shareholders may by notice in writing to the Company from more than 50% by nominal value or by a class resolution appoint up to four people to act as directors of the Company and to remove any such person so appointed and appoint another person in his place. On any resolution to remove any person appointed as a director in accordance with this article 13.2, the holders of the A ordinary shares shall together have three times as many votes as all other shareholders put together.
- 13.3 The A ordinary shareholders may by notice in writing from more than 50% by nominal value or by a class resolution appoint any person to attend as an observer of each and any meeting of the board of directors of the Company and of each and any committee of the board of directors by the Company, at no cost to the Company.

### **14. SPECIAL DIRECTOR**

- 14.1 So long as 3i or its nominee is a member of the Company and the 3i Investors hold not less than 10% of the Equity Shares in issue, 3i, acting directly or through its nominee, shall be entitled from time to time to appoint as a director of the Company any person and to remove from office any person so appointed and to appoint another person in his place.
- 14.2 So long as 3i Europartners III A or its nominee is a member of the Company and holds not less than 2% of the Equity Shares in issue, 3i Europartners III A acting directly or through its nominee, shall be entitled from time to time to appoint as a director of the Company any person and to remove from office any person so appointed and to appoint another person in his place.

### **15. MEETINGS OF DIRECTORS**

Notice of every meeting of the directors shall be given to each director at any address supplied by him to the Company for that purpose whether or not he be present in the United Kingdom provided that any director may waive notice of any meeting either prospectively or retrospectively and if he shall do so it shall be no objection to the validity of such meeting that notice was not given to him. Meetings of the directors may be held by conference telephone or similar equipment, so long as all the participants can hear each other. Such meetings shall be as effective as if the directors had met in person.

### **16. DIRECTORS' CONFLICTS OF INTEREST**

- 16.1 Subject to the provisions of the Act and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:
- (a) may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;

- (b) may be a director or other officer of or employed by or be a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested;
- (c) may (and any firm or company of which he is a partner or member or director may) act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;
- (d) shall not by reason of his office be accountable to the Company for any benefit which he derives from such office service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
- (e) shall be entitled to vote and be counted in the quorum on any matter referred to in the foregoing paragraphs of this article.

**16.2 For the purposes of this article:**

- (a) a general notice to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
- (c) an interest of a person who is for any purpose of the Act (excluding any statutory modification not in force when these articles were adopted) connected with a director shall be treated as an interest of the director and in relation to an alternate director an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.

**MISCELLANEOUS**

**17. LIEN**

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

**18. PARTLY PAID SHARES**

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

**18.2** If the subscription price of any share (including any premium) is partly paid, the rights to dividend and on a return of capital of any such share shall be abated in the same proportion as the unpaid amount bears to the total subscription price in circumstances where a call has been made on any member of the Company in respect of any amounts payable to the Company in relation to any shares or loan notes held by him, and such

member has failed to pay all amounts so called within the period prescribed for such payment to be made.

**19. SEAL**

Regulation 6 of Table A shall be modified so as to remove the reference to the company seal and regulation 101 of Table A shall be modified by the insertion of the words ", if the Company has one," after the words "The seal" at the beginning of that regulation.

**20. SYNDICATION**

**20.1 Redemption of syndication shares**

Any of 3i, 3i PVLP, 3i Europartners III A and 3i Europartners III B (or their respective nominees) may at any time prior to the first anniversary of the adoption of these articles require redemption of such of their B ordinary shares as they may specify up to a maximum of one half of their original holding of such shares. The shares being redeemed are in this article called 'Redemption Shares'.

**20.2 Timing of redemption**

Redemption of Redemption Shares in accordance with this article shall be made forthwith upon and out of the proceeds of the issue by the Company to one or more Syndicatees of equivalent numbers of B ordinary shares.

**20.3 Allotment of shares to Syndicatees**

For the purposes of section 80 of the Act the directors are hereby unconditionally authorised to allot to Syndicatees B ordinary shares equal in number to the maximum amount which may be specified in accordance with article 20.1. By virtue of section 91 of the Act section 89(1) of the Act shall not apply to any such allotments. The authority contained in this article 20.3 shall terminate on the first anniversary of the adoption of these articles.

**20.4 Redemption Price**

The Company shall pay to each holder of Redemption Shares (or as it shall direct) upon redemption of such shares a sum equal to the subscription price paid for such shares. The redemption moneys shall be paid in accordance with the provisions of an Accession Agreement entered into pursuant to the Investment Agreement. Upon receipt of the redemption moneys each holder of Redemption Shares shall surrender to the Company the certificates for his Redemption Shares in order that they may be cancelled provided that if any certificate so surrendered includes any shares not redeemable at that time the Company shall issue to the holders a fresh certificate for the balance of the shares not redeemable.

**21. INDEMNITY**

**21.1** Subject to the provisions of the Act but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is

acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

- 21.2 The Company may purchase and maintain insurance against any liability falling upon its directors or other officers or auditors which arises out of their respective duties to the Company or in relation to its affairs.

## **MEMBERS**

### **22. MEMBERS' REQUISITION OF MEETINGS**

- 22.1 The directors shall, on a members' requisition, forthwith duly convene an extraordinary general meeting of the Company.
- 22.2 A members' requisition is a requisition of members of the Company holding at the date of the deposit of the requisition not less than one-tenth in number of the shares which carry the right to attend and vote at general meetings of the Company.
- 22.3 The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the Company and may consist of several documents in like form each signed by one or more requisitionists.
- 22.4 If the directors do not within 21 days from the date of the deposit of the requisition duly convene a meeting, the requisitionists or any one of them may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from that date.
- 22.5 A meeting convened under article 22.4 shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
- 22.6 Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the Company. Any sums so repaid shall be retained by the Company out of any sums due or to become due from the Company by way of fees or other remuneration in respect of their services to such of the directors as were in default.
- 22.7 In the case of a meeting at which a resolution is proposed as a special resolution, the directors will be deemed not to have duly convened the meeting if they do not give the notice required for special resolutions.
- 22.8 The directors are deemed not to have duly convened a meeting if they convene a meeting for a date more than 28 days after the date of the notice convening the meeting.

## Appendix 1

### Rules for the Transfer of A ordinary shares by Employees

1. The Rules contained herein are the Rules referred to in article 10.2 and 11.9 of the articles of association of the Company.

2. **DEFINITIONS**

- 2.1 In these Rules terms not otherwise defined below shall bear the meanings ascribed to them in the Articles and the following words and expressions shall have the following meanings:

"A Ordinary Shares"	the A ordinary shares from time to time in issue in the capital of the Company;
"Articles"	the articles of association of the Company as amended from time to time;
"Board"	the board of directors for the time being of the Company;
"Company"	ERM Holdings Limited;
"Dealing Day"	the date or dates (which cannot be less than one per year) as determined by the Board in respect of each year for the transfer of Units under Rule 4;
"Dealing Price"	<p>the aggregate amount of:</p> <ol style="list-style-type: none"><li>(a) for the A Loan Stock, the nominal value thereof, together with all accrued but unpaid interest thereon; and</li><li>(b) for each A ordinary share, the most recently determined Annual Valuation Per Share;</li></ol>
"Employee"	any employee (including a director) of the Group;
"Group"	the Company and its subsidiaries from time to time within the meaning of Section 736 of the Companies Act 1985;
"Management Board"	the persons who comprise the management board of the Group from time to time including the executive directors of the Company.
"Transfer Notice"	a transfer notice given by a Shareholder in accordance with Rule 4.3;
"Units"	the A Shares and related A Loan Stock to be transferred on any Dealing Day comprised in the Transfer Notices given in respect of that Dealing Day, (but, for the avoidance of doubt, not including any B Loan Stock).

2.2 In these Rules, except insofar as the context otherwise requires:

- (a) words denoting the singular shall include the plural and vice versa;
- (b) reference to any enactment shall be construed as a reference to that enactment as from time to time amended, modified, extended or re-enacted and shall include any orders, regulations, instruments or other subordinates legislation made under the relevant enactment.

2.3 The headings in these Rules are inserted for convenience only and shall not affect the construction of these Rules.

### 3. **ARTICLES AND REGULATORY APPROVAL**

All transactions and decisions made under these Rules shall be deemed to be subject to and in accordance with the Articles and shall be subject to obtaining such regulatory authorisations as may be required from time to time.

### 4. **DEALING DAY**

4.1 The Board shall subject to compliance with applicable securities laws in all relevant jurisdictions notify the Employees of the date of the Dealing Day or Dealing Days for the calendar year at least one of which shall be a specified working day approximately 45 days after the approval by the directors of the Company of the Annual Report and Accounts for the financial year ending in that calendar year.

4.2 30 days prior to the Dealing Day (the "Notification Date"); the Board shall notify each Employee requesting him to notify the Board within 21 days from the Notification Date whether he wishes to dispose of or acquire Units. The notification made by the Board under this Rule 4.2 shall be in writing and shall specify the Dealing Price at which any Units will be bought, sold or otherwise dealt with and may either be sent to each Shareholder and Employee or displayed in one or more prominent places on the main premises occupied by the Company or staff notice boards used by the Company and its employees from time to time.

4.3 A holder of any Units who wishes to sell any of such Units (a "Proposing Transferor") shall give notice in writing to the Board (a "Transfer Notice") of his intention to do so within 21 days of the Notification Date. Such notice shall be in writing on a form to be provided by the Board and shall specify the number of A shares and A Loan Stock the proposing Transferor wishes to transfer. The Transfer Notice shall constitute the Board as the Proposing Transferor's agent for the sale of such Units in one or more lots at the discretion of the Board in accordance with Rule 5.1 below. A Transfer Notice once given to the Board may not be withdrawn without the prior permission of the Board.

4.4 An Employee who wishes to purchase Units (a "Purchaser") shall give notice of his intention to the Board within 21 days of the Notification Date. Such notice shall be in writing on a form to be provided by the Board and shall specify the number of Units the Purchaser is willing to purchase.

4.5 Without the prior written consent of the holders of 75% in nominal value of the B ordinary shares, it shall not be possible for shares or Loan Stock to be transferred in proportion other than those comprising a Unit.

- 4.6 If any individual wishes to acquire Units which would bring his aggregate holding to 10% or more of the maximum number of Units (measured by reference to the A shares comprised in such units) which could be transferred on any one Dealing Day or to dispose of such number of Units, he shall require the prior written consent of the Remuneration Committee.
- 4.7 No member of the Management Board of the Company may transfer, by one or more transactions, Units which in aggregate exceed 25% of his initial total holding.

**5. MATCHING**

- 5.1 On each Dealing Day, the Board shall allocate the Units specified in any Transfer Notice on the following basis, in the following order of priority and only to the following persons:
- (a) the Remuneration Committee may nominate any one or more Employees or any other person who is about to become an Employee or the Employee Trust as a Purchaser or Purchasers;
  - (b) subject to Rule 5.1(a) and the Employee Trust being able to finance any such purchase, the Employee Trust may purchase up to such number of Units as have been allocated to it by the Remuneration Committee under Rule 5.1(a) and any unallocated units, in either case to be held on the terms of the Employee Trust;
  - (c) subject to Rules 5.1(a) and 5.1(b), any Units being offered by a Proposing Transferor shall be allocated to Purchasers who are already shareholders in the Company pro-rata according to the number of A Shares held by each of such Purchasers in relation to the aggregate issued number of A Shares;
  - (d) to the extent that there remain Units which have not been allocated under this Rule 5.1, the Board shall allocate those Units to any other Employees who wish to purchase Units; and
  - (e) in all cases, the Board shall first allocate any Units required to be sold under article 11.9 (mandatory transfer provisions) and thereafter shall allocate all remaining Units as nearly as may be pro rata to the number of Units being offered for sale.
- 5.2 The Board shall notify in writing those Purchasers to whom Units have been allocated within seven days of the Dealing Day of the number of Units allocated to them. Each Purchaser shall within 14 days of the Dealing Day pay the relevant Proposing Transferor the aggregate Dealing Price for the Units allocated to him.
- 5.3 Any Units which have not been allocated under Rule 5.1 and subsequently purchased by the relevant Purchaser shall remain unsold and shall belong to the Proposing Transferor subject to any direction from time to time issued by the Board.
- 5.4 Upon an allocation being made by the Board, the Proposing Transferor shall on payment of the Dealing Price transfer the shares and Loan Stock so sold to the allocated Purchaser and, if he makes default in so doing, the Board may receive and give a good discharge for the purchase money on behalf of the Proposing Transferor and may authorise any individual to execute a transfer of such shares and Loan Stock in favour of the Purchaser concerned and (subject to the payment of the appropriate stamp duty) direct the Company to enter the Purchaser's name in the Register of Members of the Company as the holder of the relevant shares and in the register of holders of loan stock as the holder of the relevant loan stock. The Purchaser shall not be bound to see to the

application of the purchase money and his title to the shares and loan stock shall not be affected by any irregularity or invalidity in the proceeds in reference to the sale.

- 5.5 No Purchaser shall be obliged to take more than the maximum number of Units he shall have expressed a willingness to purchase under Rule 4.4.

**6. AMENDMENT OF THESE RULES**

The Company may at any time and from time to time amend or supplement these Rules with the prior written approval of (a) the Remuneration Committee and (b) 75% of A Shareholders from time to time.