

COMPANIES ACTS 1985 – 1989

WRITTEN RESOLUTION OF MEMBERS OF

MEDICAL DEVICE INNOVATIONS LIMITED

(the "Company")

We, the undersigned, being all the members for the time being of the Company entitled to receive notice and to attend and vote at the general meetings of the Company, hereby pass the following Resolution as a Written Resolution pursuant to Regulation 53 of Table A of the Companies (Tables A to F) Regulations 1985.

1. THAT:

- (a) the authorised share capital of the Company be amended from £5,000 divided into 48,500 A Ordinary Shares of 10p each and 1,500 Ordinary Shares of 10p each by converting and redesignating 24,500 unissued A Ordinary Shares of 10p each as to 8,500 into the same number of Ordinary Shares of 10p each and as to 16,000 into the same number of B Ordinary Shares of 10p each such authorised capital accordingly to consist of 24,000 A Ordinary Shares of 10p each 16,000 B Ordinary Shares of 10p each and 10,000 Ordinary Shares of 10p each and so that the A Ordinary B Ordinary and Ordinary Shares shall have the rights ascribed thereto by the New Articles of Association adopted pursuant to paragraph (d) below;



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- (b) the Directors be granted general and unconditional authority to exercise all powers of the Company to allot relevant securities (within the meaning of Section 80 of the Companies Act 1985) up to an amount (measured by reference to nominal value of the shares to be so allotted) of £3,285.60 provided that the said authority shall expire five years after the date hereof save that the Company may at any time before such expiry make an offer or agreement in accordance with the relevant authority contained in this resolution which would or might require relevant securities to be allotted after such expiry and the Directors may allot relevant securities in pursuance of such offer or agreement as if the authority so conferred had not expired provided further that the said authority is in substitution for and supersedes and revokes any such earlier authority conferred on the Directors to allot relevant securities;
- (c) the Directors of the Company be and are hereby empowered to allot equity securities (as defined in subsection (2) of Section 94 of the Companies Act 1985) of the Company pursuant to the authority conferred by paragraph (a) above as if sub-section (1) of Section 89 of the Companies Act 1985 did not apply to any such allotment; and
- (d) New Articles of Association of the Company be adopted in the form of the draft annexed hereto in substitution for and to the exclusion of all previous Articles of Association of the Company.

Date of signatures: 23 December 2004

DANIEL ROACH AND A H JONES



AVLAR BIOVENTURES FUND II LIMITED PARTNERSHIP

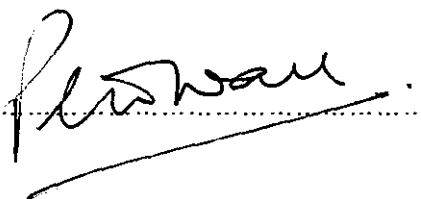
D COTTIER



DAVID COTTIER

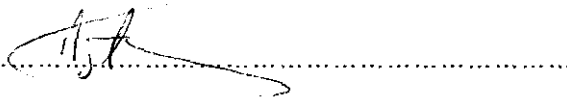
PETER WALL.....

PETER WALL

A handwritten signature in black ink, appearing to read 'Peter Wall', written over a dotted line.

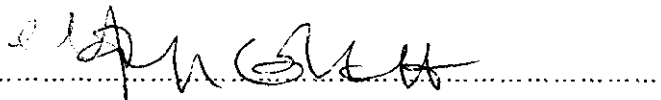
A ALLARS.....

FOR ANAUUEL LLP

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MARTYN COLLETT.....

MARTYN COLLETT

A handwritten signature in black ink, appearing to read 'Martyn Collett', written over a dotted line.

I hereby certify this to be a true copy of the new Articles of Association adopted by resolution in writing on 23 December 2004

Signature.....

Director

Company No. 4344782

THE COMPANIES ACTS 1985 AND 1989

PRIVATE COMPANY LIMITED BY SHARES

NEW ARTICLES OF ASSOCIATION

of

MEDICAL DEVICE INNOVATIONS LIMITED

Adopted by written resolution on: 23 December 2004

WEIL, GOTSHAL & MANGES

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Company No. 4344782

THE COMPANIES ACTS 1985 AND 1989

PRIVATE COMPANY LIMITED BY SHARES

NEW ARTICLES OF ASSOCIATION

of

MEDICAL DEVICE INNOVATIONS LIMITED

Adopted by written resolution on: 23December 2004

PRELIMINARY

1 DEFINITIONS

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

"A Ordinary Share"	an A ordinary share of nominal value 10 pence in the capital of the Company as consolidated or sub-divided from time to time, and "A Ordinary Shares" shall be construed accordingly;
"ABFIIP"	Avlar BioVentures Fund II Limited Partnership (registered number LP007708);
"the Act"	the Companies Act 1985 and every statutory modification or re-enactment thereof for the time being in force;
"Avlar"	means Avlar BioVentures Limited acting on behalf of ABFIIP (or such other person as ABFIIP may designate to act on its behalf from time to time);

"B Ordinary Share"	a B Ordinary Share of nominal value 10 pence in the capital of the Company as consolidated or sub-divided from time to time and "B Ordinary Shares" shall be construed accordingly;
"Board"	the board of Directors of the Company for the time being, to include any Special Directors appointed from time to time;
"Business Sale"	the sale of the whole or substantially the whole of the business and assets of the Company and its subsidiaries;
"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;
"Deemed Transfer Notice"	a Transfer Notice deemed to be served in accordance with these articles;
"Directors"	the directors for the time being of the Company, to include any Special Directors appointed from time to time;
"Employee Member"	a member who is or has been a Director and/or an employee of and/or a consultant to any member of the Group;
"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"> • the settlor and/or a Privileged Relation of that settlor; or • 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); <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 the purposes of this definition "settlor" includes a testator or an intestate in relation to a Family Trust arising respectively under a settlement, testamentary disposition or an intestacy of a deceased member;</p>

“Completion”	completion of the subscription for B Ordinary Shares in accordance with clause 3.1 of the Investment Agreement;
“Good Leaver”	<p>an Employee Member or Original Employee Member who ceases to be an Employee Member of the Company or any Group Company and does not continue as an Employee Member where such cessation occurs for one of the following reasons:-</p> <ul style="list-style-type: none"> • death • illness or disability (whether physical or mental) • retirement at normal age (60 years old) • unfair or wrongful dismissal (which, for the avoidance of doubt, may include unfair or wrongful constructive dismissal) • any other reason where the Board resolves with the prior written consent of an Investor Majority that such Employee Member should be treated as a Good Leaver;
“Group”	the Company, any holding company of the Company and any subsidiary of the Company or of any such holding company and “member of the Group” shall be construed accordingly;
“Holding Company”	shall have the meaning attached to such term in the Act;
“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;
“Investment Agreement”	an investment agreement dated on or about the date of adoption of these articles between the (1) Company, (2) the Managers (as defined therein), (3) ABFIIP, (4) NWBIS, (5) Anauel LLP, (6) Martyn Collett and (7) Andrew Allars;
“Investor”	each of ABFIIP, NWBIS and any person who is or becomes an Investor for the purposes of the Investment Agreement;
“Investor’s Group”	means in respect of each Investor, such Investor, any intermediate or ultimate holding company and subsidiary of such Investor or any such holding company and “member of the Investor’s Group” shall be construed accordingly;

“Investor Majority”	Investors holding Shares carrying not less than 60 per cent. of the votes exercisable in general meeting in respect of all Shares held by all Investors from time to time;
“Listing”	the admission of any of the Company’s shares to or the granting of permission for any of the Company’s Shares to be dealt on a Recognised Investment Exchange;
“Member of an Investor’s Group”	means an Investor, any subsidiary of that Investor and any intermediate or ultimate holding company of that Investor and any subsidiary of such holding company and any nominee of any of the foregoing and “Investor’s Group” shall be construed accordingly;
“NWBIS”	means North West Business Investment Scheme (registered number LP008604);
“Ordinary Share”	an ordinary share of nominal value 10 pence in the capital of the Company as consolidated or sub-divided from time to time, and “Ordinary Shares” shall be construed accordingly;
“Original Employee Member”	means each of Dr. Peter Wall and David Cottier;
“Permitted Transfer”	means a transfer of a Share made in accordance with any of articles 10.1 to 10.7 (inclusive) or 10.11; and a “Permitted Transferee” means a person to whom a Share could be transferred free of pre-emption rights pursuant to any of such articles;
“Privileged Relations”	the spouse or common law husband or wife 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;
“Recognised Investment Exchange”	a recognised investment exchange as defined by Section 285 of the Financial Services and Markets Act 2000 (and including NASDAQ Europe, the Alternative Investment Market of the London Stock Exchange plc and NASDAQ);
“Sale”	(1) a Business Sale; or (2) a sale of the entire issued share capital of the Company;
“Sale Price”	the sale price of shares which are the subject of a Transfer Notice determined in accordance with these articles;
“Shares”	the A Ordinary Shares, the B Ordinary Shares and the Ordinary Shares;

“Special Director”	a director appointed and nominated in accordance with article 16 by Avlar (or such other party which ABFIIP shall nominate from time to time in writing to the Company);
“Special Director Majority”	the consent of the Special Director, unless no Special Director holds office in which case Special Director Majority shall mean an Investor Majority;
“Subsidiary”	shall have the meaning attached to such term in the Act;
“Table A”	Table A in the Companies (Tables A-F) Regulations 1985 as amended by the Companies (Tables A-F) (Amendment) Regulations 1985;
“Termination Date”	<ul style="list-style-type: none"> • where employment ceases by virtue of notice given by the employer to the employee, the date on which such notice expires; • 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; • 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 • in any other case, the date on which the contract of employment is terminated; and
“YFM”	means YFM Private Equity Limited, acting on behalf of NWBIS.

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) and 118 of Table A shall not apply to the Company.

3 SHARE CAPITAL

The authorised share capital of the Company is £5,000 divided into:-

24,000 A Ordinary Shares;

16,000 B Ordinary Shares; and

10,000 Ordinary Shares.

SHARE RIGHTS

4 DIVIDENDS

- 4.1 The profits of the Company available for distribution shall, if all required consents are obtained in accordance with the Investment Agreement, be used to pay dividends of such amounts as the Directors may determine and recommend to the members of the Company and such dividends shall be paid to the holders of the Shares pro rata to the number of Shares held by them.
- 4.2 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 dividend which the Directors of the Company have resolved to distribute.

5 RETURN OF CAPITAL

- 5.1 On a return of assets on a liquidation, dissolution, winding up, capital reduction or otherwise, the assets of the Company remaining after the payment of its liabilities shall be applied amongst the holders of Shares in the following order of priority:-
- 5.1.1 first, in paying to the holders of the B Ordinary Shares pari passu pro rata an amount equal to the original subscription price per B Ordinary Share (including any premium paid thereon) plus any dividends accrued or declared but unpaid on the B Ordinary Shares;
 - 5.1.2 second, in paying to the holders of the A Ordinary Shares pari passu pro rata an amount equal to the original subscription price per A Ordinary Share (including any premium paid thereon) plus any dividends accrued or declared but unpaid on the A Ordinary Shares;
 - 5.1.3 third in paying to the holders of the Ordinary Shares pari passu pro rata an amount equal to the original subscription price per Ordinary Share (including any premium paid thereon) plus any dividends accrued or declared but unpaid on the Ordinary Shares; and
 - 5.1.4 the balance of such assets, if any, shall be distributed amongst the holders of the Shares pro rata to the number of Shares held by each such holder.
- 5.2 In the event of a Listing, if the Realisation Value of B Ordinary Shares (excluding any bonus shares issued pursuant to this article 5.2) held by any member of the Company ("**Current B Ordinary Shares**") is less than the relevant Price Paid in respect of such B Ordinary Shares then the Company shall, by way of bonus issue (paid up as to nominal value by way of capitalisation of reserves of the Company or such other lawful means as the directors may determine) issue to such member such number of new B Ordinary Shares ("**Bonus Shares**") as results in the Realisation Value in respect of the Current B Ordinary Shares and Bonus Shares (taken together) held by such member being (as near as is reasonably practicable) equal to the Price Paid in respect of the Current B Ordinary Shares held by such member. For the avoidance of doubt, the right of any holder of B Ordinary Shares to receive Bonus Shares pursuant to this article 5.2 shall be conditional on completion of the Listing.

In this article 5.2:

"Realisation Value" means, in respect of any B Ordinary Shares: (a) the number of Listing Shares which, as at the time of admission to trading of Listing Shares in connection with the relevant Listing, would represent such B Ordinary Shares (taking into account any conversion of B Ordinary Shares, whether pursuant to article 6 or otherwise, or other reorganisation of Shares as a consequence of completion of the Listing), multiplied by (b) the Offer Price;

"Price Paid" means the subscription price paid for (or otherwise deemed paid up on) (including as to any premium) relevant B Ordinary Shares on issue;

"Offer Price" means the price at which Listing Shares are actually offered by the Company for subscription to potential investors in connection with such Listing as set out in the admission document issued by the Company in connection with the Listing;

"Listing Shares" means the class of shares admitted to trading on the relevant Recognised Investment Exchange as part of the relevant Listing.

6 CONVERSION

- 6.1** Each holder of B Ordinary Shares may at any time convert all of its holding of B Ordinary Shares into a like number of Ordinary Shares. Such right of conversion may be effected by notice in writing given to the Company signed by the holder of the relevant B Ordinary Shares.
- 6.2** Each holder of A Ordinary Shares may at any time convert all of its holding of A Ordinary Shares into a like number of Ordinary Shares. Such right of conversion may be effected by notice in writing given to the Company signed by the holder of the relevant A Ordinary Shares.
- 6.3** All of the B Ordinary Shares in issue (or in respect of which the Company has granted a right to subscribe) shall automatically be converted into a like number of Ordinary Shares (or a right to subscribe for Ordinary Shares in respect of the conversion of a right to subscribe for B Ordinary Shares) immediately prior to a Business Sale or Listing.
- 6.4** All of the A Ordinary Shares in issue (or in respect of which the Company has granted a right to subscribe) shall automatically be converted into a like number of Ordinary Shares (or a right to subscribe for Ordinary Shares in respect of the conversion of a right to subscribe for A Ordinary Shares) immediately prior to a Business Sale or Listing.
- 6.5** A conversion under article 6.1 or 6.2 shall take effect immediately upon the date of delivery of a notice to the Company in accordance therewith (unless such notice states that the conversion is to be effective when any condition specified in the notice have been fulfilled in which case conversion shall take effect when such conditions have been fulfilled). A conversion under article 6.3 or 6.4 shall take effect immediately prior to a Business Sale or Listing.
- 6.6** Forthwith upon conversion taking effect the holders of the resulting Ordinary Shares shall send to the Company the certificates in respect of their respective holdings of B Ordinary Shares or A Ordinary Shares, as the case may be. Following receipt of the certificate for the B Ordinary Shares or the A Ordinary Shares, as the case may be, or an indemnity in favour of the Company in respect of a lost certificate, the Company shall issue to such

holders certificates for the Ordinary Shares resulting from the conversion.

- 6.7** The Ordinary Shares resulting from the conversion shall rank from the date of conversion pari passu in all respects with the other Ordinary Shares in the Company.

7 CLASS RIGHTS

- 7.1** 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 not less than 75% of the issued shares of that class.

Without prejudice to the generality of this article 7.1:

- 7.1.1** the special rights attached to the A Ordinary Shares and the B Ordinary Shares shall be deemed to be varied by:-

- (a)** the amending of the Company' memorandum of association or articles of association; or
- (b)** the capitalising any reserves of the Company or the applying of any amount for the time being standing to the credit of the share premium account or capital redemption reserve of Company for any purpose; or
- (c)** the altering, increasing, reducing, sub-dividing, cancelling, purchasing or consolidating of the whole or part of the authorised or issued share capital of the Company or any of its subsidiaries; or
- (d)** the acquisition or disposal by the Company of any interest in the share capital or instruments convertible into share capital of any other company or body corporate; or
- (e)** the granting of any option by the Company other than as expressly provided for in the Investment Agreement or as approved by an Investor Majority; or
- (f)** the making of any material change in the nature of the business of the Company and its subsidiaries taken as a whole; or
- (g)** the Company ceasing to trade or the taking of steps for the voluntary winding up of the Company or the placing of the Company in administration or the taking of similar proceedings in respect of the Company, save where the Company or the Board has been advised that the Company is insolvent or in the reasonable opinion of the Board there is no reasonable prospect for the Company avoiding insolvency.

- 7.2** Sections 89 and 90 of the Act shall apply to the Company as though the Shares constitute one class of share but the special rights attached to each of the A Ordinary Shares, B Ordinary Shares, and Ordinary Shares shall be deemed to be varied by any disapplication, exclusion, limitation or variation of the provisions of Section 89.

8 VOTING

8.1 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with these articles each Share shall carry one vote per Share.

8.2 Votes on Shares may be exercised:

8.2.1 on a show of hands 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 proxy, not being himself a member (in which case each member holding Shares shall have one vote); and

8.2.2 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 shall have such number of votes attributable to the Share so held calculated by reference to article 8.1).

TRANSFERS

9 TRANSFER OF SHARES

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 PERMITTED AND MANDATORY TRANSFERS

10.1 *Permitted transfers to relations*

10.1.1 Subject to articles 10.8 and 10.9, notwithstanding any other provision in these articles any member (being an individual) may at any time transfer (or by will bequeath or otherwise dispose of on death) all or any shares held by him to a Privileged Relation.

10.1.2 If a Privileged Relation whilst he or she is a holder of shares in the Company so transferred to him/her shall cease to be a Privileged Relation in relation to the member first holding the relevant shares following their allotment or following a transfer made in accordance with this article 10 (otherwise than pursuant to this article 10.1) he or she shall, within 21 days of so ceasing, transfer the shares held by him/her to such member or any other Privileged Relation of such member for such consideration as may be specified by the original member or, in the absence of any such specification, nil consideration and failing such transfer, the Company shall authorise some person to execute transfers of the relevant shares in favour of the original member [and shall enter the name of the original member in the Register of Members as the holder of such shares].

10.2 Permitted transfers to family trusts

Subject to articles 10.8 and 10.9, notwithstanding any other provision in these articles any member (being an individual) may at any time transfer (or by will bequeath or otherwise dispose of on death) all or any shares held by him to trustees to be held upon a Family Trust of which he is the settlor, provided that any transfer of shares to trustees to be held upon a Family Trust made during the lifetime of such member may only be made with the consent of an Investor Majority. If 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 in which event the provisions of article 10.1.2 shall apply) or there cease to be any beneficiaries of the Family Trust other than a charity or charities the trustees of the trust shall, within 21 days of the relevant cessation, transfer the relevant trust shares (as hereinafter defined) to the settlor of the trust or to any Privileged Relation of such settlor for such consideration as may be specified by the settlor or, in the absence of any such specification, nil consideration and failing such transfer, the Company shall authorise some person to execute transfers of the relevant shares in favour of the settlor and shall enter the name of the settlor in the Register of Members as the holder of such shares. For the purposes of this article 10.2 the expression “**relevant trust 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 trust shares or any of them.

10.3 Permitted transfers to personal representatives

Subject to articles 10.8 and 10.9, notwithstanding any other provision in these articles, any share may at any time be transferred or transmitted to the personal representatives of a deceased member where under the provisions of his will or on his intestacy all the persons beneficially entitled to any such shares are Privileged Relations or trustees of a Family Trust. Where shares have been transferred in accordance with this article 10.3 and the persons beneficially entitled to such shares cease to all be Privileged Relations or trustees of a Family Trust of the deceased member, the personal representatives shall be deemed to have given a Transfer Notice (as hereinafter defined) in respect of the relevant shares.

10.4 Permitted transfers by family trusts

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

- 10.4.1** on any change of trustees such shares may be transferred to the new trustees of that Family Trust;
- 10.4.2** 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.

10.5 *Permitted transfers by Investors*

Notwithstanding any other provision in these articles the following transfers may be made without restriction as to price or otherwise and any such transfers shall be registered by the directors, provided that if the transferee ceases to hold the status allowing such transfer under this article it shall, within 21 days of so ceasing, transfer the shares held by it to the member first holding the relevant shares following their allotment or following a transfer made in accordance with this article 10 (otherwise than pursuant to this article 10.5) for such consideration as may be specified by the original member or, in the absence of any such specification, nil consideration and failing such transfer, the Company shall authorise some person to execute transfers of the relevant shares in favour of the original member and shall enter the name of the original member in the Register of Members as the holder of such shares:-

10.5.1 any transfer by any member of an Investor's Group to any other member in the same Investor's Group (but if such transferee ceases to be a member of the Investor's Group it shall forthwith transfer the relevant shares to a member of the relevant Investor's Group);

10.5.2 a transfer of any shares in the Company held by an Investor (or a nominee of an Investor) who is:-

- (1) a person whose principal business is to make, manage or advise upon investments (an "**Investment Manager**"); or
- (2) a fund, partnership, company, syndicate or other entity whose principal business is to make investments and whose business is managed by an Investment Manager (an "**Investment Fund**"); or
- (3) a nominee of an Investment Manager or an Investment Fund

may be made between the Investor (or its nominee) and:-

(A) where the Investor is an Investment Manager or a nominee of an Investment Manager:-

- (i)** any participant or partner in or member of any Investment Fund in respect of which the shares are held (but only in connection with the dissolution of such Investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course);
- (ii)** any Investment Fund whose business is managed by the Investment Manager who is or whose nominee is the transferor;
- (iii)** any other Investment Manager who manages the business of the Investment Fund in respect of which the shares are held;

(B) where that Investor is an Investment Fund or a nominee of an Investment Fund:-

- (i)** any participant (directly or indirectly) or partner in or member of the Investment Fund which is or whose nominee is the

transferor (but only in connection with the dissolution of such Investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund);

- (ii) any other Investment Fund whose business is managed by the same Investment Manager as manages the Investment Fund which is or whose nominee is the transferor;
- (iii) the Investment Manager who manages the business of the Investment Fund which is or whose nominee is the transferor

(or, in any such case, a nominee thereof).

10.6 Transfers intra-group

Notwithstanding any other provision in these articles any member (being a body corporate) may at any time transfer all or any of its shares to any other body corporate which is for the time being its subsidiary or holding company or another subsidiary of its holding company (each such body corporate being a "**Group Company**") but if a Group Company whilst it is a holder of shares in the Company shall cease to be a Group Company in relation to the body corporate first holding the relevant shares following their allotment or following a transfer made in accordance with this article 10 (otherwise than pursuant to this article 10.6) 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 relevant holder(s) shall be deemed to have given a Transfer Notice (as hereinafter defined) in respect of the relevant shares].

10.7 Transfers with shareholder approval

Notwithstanding any other provisions of these articles (but for the avoidance of doubt, subject to article 12) a transfer of any shares approved by the holders of Shares carrying not less than 75 per cent. of all votes exercisable at a general meeting of the Company may be made without restriction as to price or otherwise and any such transfer shall be registered by the Directors.

10.8 Mandatory transfer on cessation of employment

Subject always to, and without prejudice to, article 10.10, if any Original Employee Member shall cease to be an Employee Member, within two years of the date of adoption of these articles (the "**Adoption Date**") and the Original Employee Member is not a Good Leaver he, together with his Privileged Relations and/or Family Trusts and any personal representatives (other than where the Directors (excluding the Original Employee Member if such a person is also a Director) are satisfied that the shares held by such Privileged Relations and/or Family Trusts and any personal representatives were not acquired by such holders either (i) directly or indirectly from the Original Employee Member or (ii) by reason of their connection with the Original Employee Member) shall be deemed to have served Transfer Notices for the purpose of article 11.1 on the date of such cessation in respect of all shares held by them on, or acquired within, thirty days after the date of such cessation, to include all shares acquired by the Original Employee Member or his personal representatives holding shares under article 10.3 or his Privileged Relations after the Termination Date under any option scheme or other arrangement which was made prior to the date of such cessation and in this case the Transfer Notice will be deemed served on the date the shares are acquired, the provisions of article 11

shall apply in relation to the sale of such shares except that the Sale Price for the purposes of article 11 shall be the total subscription price originally paid for the Sale Shares (as hereinafter defined).

- 10.9** If any Employee Member (other than an Original Employee Member) shall cease to be an Employee Member prior to the second anniversary of the date on which such Employee Member first became an Employee Member and the Employee Member is not a Good Leaver, he, together with his Privileged Relations and/or Family Trusts and any personal representatives (other than where the Directors (excluding the Employee Member if such a person is also a Director) are satisfied that the shares held by such Privileged Relations and/or Family Trusts and any personal representatives 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) shall be deemed to have served Transfer Notices for the purpose of article 11.1 below, on the date of such cessation in respect of all shares held by them on, or acquired within, thirty days after the date of such cessation, to include all shares acquired by the Employee Member or his personal representatives holding shares under article 10.3 or his Privileged Relations after the Termination Date under any option scheme or other arrangement which was made prior to the date of such cessation and in this case the Transfer Notice will be deemed served on the date the shares are acquired, the provisions of article 11 shall apply in relation to the sale of such shares except that the Sale Price for the purposes of article 11 shall be the total subscription price originally paid for the Sale Shares (as hereinafter defined).

- 10.10** The provisions of article 10.8 shall not apply to:

10.10.1 the 667 A Ordinary Shares held by Anauel LLP; or

10.10.2 the 444 A Ordinary Shares and 500 Ordinary Shares held by David Cottier; or

10.10.3 the 222 A Ordinary Shares held by Martyn Collett; or

10.10.4 the 250 Ordinary Shares held by Peter Wall; or

10.10.5 the option granted to David Cottier on 30 January 2003 to acquire 333 Ordinary Shares; or

10.10.6 the option granted to Peter Wall on 30 January 2003 to acquire 167 Ordinary Shares

as at the Adoption Date.

10.11 *Transfers by Anauel LLP*

Notwithstanding any other provision in these articles, Anauel LLP may at any time transfer all or any of its shares to any person who is for the time being a partner in Anauel LLP (a "**Partner**") but if a person whilst it is a holder of shares in the Company shall cease to be such a Partner it shall, within 21 days of so ceasing, transfer the shares held by him to Anauel LLP or another continuing Partner in Anauel LLP for such consideration as may be specified by Anauel LLP or, in the absence of any such specification, nil consideration and, failing such transfer, the Company shall authorise some person to execute transfers of the relevant shares in favour of Anauel LLP (or a continuing partner in Anauel LLP) and shall enter the name of Anauel LLP (or such continuing partner) in the Register of Members as the holder of such shares. Any partner in Anauel LLP who

receives a transfer of shares pursuant to this article 10.11 and who is an individual shall, for the avoidance of doubt, be entitled to make transfers pursuant to articles 10.1 to 10.4 (inclusive), subject always to the terms of such articles.

11 PRE-EMPTION RIGHTS

11.1 *Transfer notices*

Save as otherwise provided in these articles every member who desires to transfer any shares (hereinafter called "**the Vendor**") shall give to the Company notice in writing of such desire (in these articles called a "**Transfer Notice**"). Where the Transfer Notice is deemed to have been given it is referred to as a "**Deemed Transfer Notice**". Transfer Notices and Deemed Transfer Notices shall constitute the Company as the Vendor's agent for the sale of the shares specified therein (hereinafter called the "**Sale Shares**") in one or more lots (subject to article 11.3) at the discretion of the Directors at the Sale Price.

11.2 *Calculation of the Sale Price*

The Sale Price shall be the price agreed by the Vendor and the Board (excluding the Vendor if the Vendor is also a Director and approved by an Investor Majority). If the Vendor and such Directors are unable to agree a price within 28 days of the Transfer Notice being given or being deemed to have been given the Sale Price will instead be the price which the Independent Expert shall certify to be in his opinion a fair value thereof. In arriving at his opinion the Independent Expert will value the shares on a going concern basis as between a willing seller and a willing buyer ignoring any reduction or enhancement in value which may be ascribed to the Sale Shares by virtue of the fact that they represent a minority or majority interest or Controlling Interest and on the assumption that the Sale Shares are capable of transfer without restriction and, if relevant, that they do not have restrictions on voting. The decision of the Independent Expert as to the Sale Price shall (in the absence of fraud or manifest error) be final and binding.

11.3 *Right of Vendor to reject partial sales*

A Transfer Notice (but not a Deemed Transfer Notice) may contain a condition (a "**Total Transfer Condition**") that unless all the shares comprised therein are sold by the Company pursuant to these articles none shall be sold. Any such provision shall be binding on the Company.

11.4 *Certification of the Sale Price and right of Vendor to cancel*

If the Independent Expert is asked to certify the fair value in accordance with these articles his certificate shall be delivered to the Company. As soon as the Company receives the certificate it shall deliver a copy of it to the Vendor. The Vendor shall be entitled by notice in writing given to the Company within 10 days of the service upon him of the copy certificate to cancel the Transfer Notice unless the shares are to be sold pursuant to a Deemed Transfer Notice. The Independent Expert shall determine which party shall be responsible for the cost of obtaining the certificate.

11.5 *Pre-emptive offers - general*

Once the Sale Price has been determined then unless the Vendor validly cancels the Transfer Notice under article 11.4 above the Sale Shares shall be offered for sale as set out below. All offers made by the Company shall give details of the number and Sale

Price of the Sale Shares.

11.6 *First offer*

As soon as Sale Shares become available (being the date of the Transfer Notice or Deemed Transfer Notice or, if later, the date upon which the Sale Price is agreed or certified by the Independent Expert (and in the case of a certification after the expiry of the 10 day period referred to in article 11.4)), they shall be forthwith offered for sale by the Company to all holders of shares of the same class as the Sale Shares (in each case other than the Vendor) pro rata with respect to each class of Sale Share as nearly as may be to the respective numbers of shares of the same class as such Sale Shares held by such members.

Any offer made by the Company under this sub-article will invite the relevant members to state in writing the maximum number of the shares offered to them they wish to purchase and will remain open for 21 days (the "**First Offer Period**").

11.7 *Second and subsequent offers to holders of the same class*

If at the end of the First Offer Period there are any Sale Shares offered which have not been allocated the Company shall offer such shares to such members as have stated in writing their willingness to purchase all the shares previously offered to them.

This offer will invite the relevant members to state in writing the maximum number of shares they wish to purchase. If there are insufficient Sale Shares to meet the demand then the directors will allocate the Sale Shares pro rata as nearly as may be in proportion to the number of shares of the same class as such Sale Shares held by the relevant members. This offer will remain open for a further period of 21 days.

Thereafter the Company shall continue to make offers on the same terms while any member continues to state in writing his willingness to purchase all shares offered to him.

11.8 *Offers to all holders of shares*

Provided that no member to whom an offer has been made in accordance with articles 11.6 and 11.7 continues to state in writing his willingness to purchase all the shares so offered to him, to the extent that any Sale Shares have not been allocated (the "**Outstanding Sale Shares**") such shares shall be forthwith offered for sale by the Company to all holders of Shares (other than the Vendor) pro rata as nearly as may be to the respective numbers of Shares held by such members.

Any offer made by the Company under this sub-article will invite the relevant members to state in writing the maximum number of the shares offered to them they wish to purchase and will remain open for 21 days (the "**First General Offer Period**").

If at the end of the First General Offer Period there are any Outstanding Sale Shares offered which have not been allocated the Company shall offer such shares to such members as have stated in writing their willingness to purchase all the shares previously offered to them.

This offer will invite the relevant members to state in writing the maximum number of shares they wish to purchase. If there are insufficient Outstanding Sale Shares to meet the demand then the Directors will allocate the Outstanding Sale Shares pro rata as nearly as

may be in proportion to the number of Shares held by the relevant members. This offer will remain open for a further period of 21 days.

Thereafter the Company shall continue to make offers on the same terms while any member continues to state in writing his willingness to purchase all shares offered to him.

11.9 *Transfer procedure for pre-emptive offers*

If the Company finds a purchaser(s) for all or (subject to article 11.3) any of the Sale Shares under the terms of this article 11 the Vendor shall be bound upon receipt of the Sale Price to transfer the Sale Shares (or such of the same for which the Company shall have found a purchaser or purchasers) to such persons. If the Vendor defaults in transferring Sale Shares the Company shall if so required by the person or persons willing to purchase such Sale Shares receive and give a good discharge for the purchase money on behalf of the Vendor and shall authorise some person to execute transfers of the Sale Shares in favour of the purchaser(s) and shall enter the names of the purchasers in the Register of Members as the holder of such of the Sale Shares as shall have been transferred to them. The Company shall continue to hold the purchase monies for the Vendor in a separate bank account pending delivery to the Company of the share certificates for the Sale Shares or an indemnity in respect of lost certificates in a form reasonably acceptable to the Company whereupon the Company shall pay the purchase monies to the Vendor without interest.

11.10 *Transfers free of pre-emption*

If the Company does not find purchasers for all of the Sale Shares under the terms of this article 11 the Vendor shall at any time within six months after the final offer by the Company to its members be free to sell and transfer such of the Sale Shares as have not been so sold to any person at a price which is no less than the Sale Price. However if the Sale Shares were the subject of a Total Transfer Condition such a sale may only be made of all the shares and not part only.

11.11 *Effect of non-compliance*

Any purported transfer of shares otherwise than in accordance with the provisions of these articles shall be void and have no effect.

12 *TRANSFER OF CONTROL*

12.1 *Tag Along Right*

No sale or transfer of the legal or beneficial interest in any Shares in the Company which would result in any person or persons obtaining a Controlling Interest in the Company, may be made or validly registered without the consent in writing of an Investor Majority and 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 of the Shares in issue.

12.2 *Distribution of proceeds*

On completion of a Sale or transfer of the legal or beneficial interest of Shares resulting in a Controlling Interest in the Company, (a "**Relevant Sale**") the total consideration payable in respect of such Relevant Sale shall be apportioned by distribution amongst the

holders of Shares transferred as part of the Relevant Sale (or all holders of Shares in respect of a Business Sale) in the following order of priority:-

- 12.2.1 first in paying to the holders of the B Ordinary Shares transferred as part of the Relevant Sale (or in the case of a Business Sale, held at the time of such distribution) pari passu pro rata to the subscription price paid thereon, the subscription price paid in respect of such B Ordinary Shares;
- 12.2.2 second in paying to the holders of the A Ordinary Shares transferred as part of the Relevant Sale (or in the case of a Business Sale, held at the time of such distribution) pari passu pro rata to the subscription price paid thereon, the subscription price paid in respect of such A Ordinary Shares;
- 12.2.3 third in paying to the holders of the Ordinary Shares transferred as part of the Sale (or in the case of a Business Sale, held at the time of such distribution) pari passu pro rata to the subscription price paid thereon, the subscription price paid in respect of such Ordinary Shares;
- 12.2.4 the balance of such consideration, if any, shall be distributed amongst the holders of Shares transferred (or in the case of a Business Sale, held at the time of such distribution) pro-rata as to the number of Shares so transferred by such holders as part of the Relevant Sale (or in the case of a Business Sale, held at the time of such distribution).

12.3 Drag Along Right

If an offeror (together with any persons acting in concert with him) for shares in the Company, having made offers to all the members of the Company (each member having, for the avoidance of doubt, been offered a price per Share calculated in accordance with article 12.2) receives valid acceptances which would, on completion, result in such offeror becoming the holder of those Shares held by an Investor Majority, then:-

- 12.3.1 any holder of Shares who has accepted such offer may give notice to any non-accepting holder of Shares requiring him to accept the offer within 14 days and stating that, failing such acceptance, he shall be deemed to have accepted such offer in respect of all Shares held by him and irrevocably to have waived any pre-emption rights he may have in relation to any shares the subject of such offer;
- 12.3.2 upon the expiry of such notice each recipient thereof shall be obliged to deliver to the offeror (or as he may direct) an executed share transfer form and share certificate(s) in respect of the shares which were the subject of the notice together with an executed waiver of pre-emption rights, if appropriate;
- 12.3.3 if any such member fails to deliver executed share transfer form(s), share certificate(s) and pre-emption waiver(s) (if appropriate) as set out above he shall be deemed to have appointed any Director of the Company to be his agent and attorney to execute such documents on his behalf and, against receipt by the Company (on trust for such member) of the appropriate purchase moneys, to deliver such executed transfer(s) and pre-emption waiver(s) (if appropriate) to the offeror and it shall be no impediment to completion of the transfer that such member's share certificate(s) has/have not been produced. The Company shall continue to hold the purchase monies for such member in a separate bank

account pending delivery to the Company of the share certificates for such members shares or an indemnity in respect of lost certificates in a form reasonably acceptable to the Company whereupon the Company shall pay the purchase monies to such member without interest;

- 12.3.4 after such offeror or his nominee has been registered as the holder of shares transferred in accordance with this article the validity of such transaction shall not be questioned by any person.

12.4 Interpretation

In this article:-

- 12.4.1 the expressions “**transfer**” and “**transferee**” shall include respectively the renunciation of a renounceable letter of allotment and the renouncee under any such letter of allotment;
- 12.4.2 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;
- 12.4.3 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.

12.5 Primacy of article

Save for transfers of shares in the capital of the Company made pursuant to articles 10.1 to 10.6 inclusive or 10.11, 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 12.

DIRECTORS

13 APPOINTMENT AND REMOVAL 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. The maximum number of Directors shall be 6, and all appointments of Directors are subject to the approval of an Investor Majority.
- 13.2 Without prejudice to the provisions for retirement (by rotation or otherwise) contained in these articles, the office of a Director is vacated if:-
- 13.2.1 he resigns by notice delivered to the secretary at the registered office or tendered at a board meeting;
- 13.2.2 he ceases to be a Director by virtue of a provision of the Acts, is removed from office pursuant to these articles or becomes prohibited by law from being a Director;
- 13.2.3 he becomes bankrupt, has an interim receiving order made against him, makes an arrangement or compounds with his creditors generally or applies to the court for an interim order under section 253 of the Insolvency Act 1986 in connection with a voluntary arrangement under that Act;

- 13.2.4** an order is made by a court of competent jurisdiction on the ground (however formulated) of mental disorder for his detention or for the appointment of a guardian, receiver, curator bonis or other person to exercise powers with respect to his affairs or he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, under the Mental Health (Scotland) Act 1984 and the board resolves that his office shall be vacated;
- 13.2.5** both he and his alternate director appointed pursuant to the provisions of these articles (if any) are absent, without the permission of the board, from board meetings for six consecutive months and the board resolves that his office be vacated; or
- 13.2.6** in the case of Directors, other than a Special Director, he is removed from office by notice addressed to him at his last known address and signed by all his co-Directors (without prejudice to any claim for damages for breach of contract).

14 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 and speak to each other. Such meetings shall be as effective as if the Directors had met in person.

15 DIRECTORS' CONFLICTS OF INTEREST

- 15.1** 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:-
- 15.1.1** may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;
- 15.1.2** 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;
- 15.1.3** 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;
- 15.1.4** shall not by reason of his office be accountable to the Company for any benefit which he derives from such office service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
- 15.1.5** shall be entitled to vote and be counted in the quorum on any matter referred to in the foregoing paragraphs of this article.

15.2 For the purposes of this article:-

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

16 SPECIAL DIRECTORS

- 16.1** Notwithstanding any other provision of these articles Avlar (or such other party which ABFIIP shall nominate from time to time in writing to the Company) shall for so long as ABFIIP (in the case of Avlar) is the holder of not less than 5 per cent. of the issued share capital of the Company be entitled to appoint any person as a *Special Director* of the Company and to remove from office any person so appointed and to appoint another person in his place. Upon request by Avlar, the Company shall also procure that any *Special Director* nominated by such person be appointed a director to any subsidiary of the Company.
- 16.2** No nominator may, pursuant to article 16.1, have appointed more than one person to hold office as a *Special Director* of the Company nor more than one person to hold office as a director of any subsidiary of the Company at any given time.

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 CALLS

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

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 INDEMNITY

- 20.1** 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.*
- 20.2** 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.

21 NOTICES

Regulation 112 of Table A shall be modified by the deletion of the final sentence.