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THE COMPANIES ACTS 1985 AND 1989

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

- of -

TRAGUS HOLDINGS LIMITED

(As adopted on 31 May 2002
and amended by written resolutions dated 15 April 2004 and 25 June 2004)

Burges Salmon
Bristol



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PRIVATE COMPANY
LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

TRAGUS HOLDINGS LIMITED

(As adopted on May 2002)

1 Definitions and interpretation

1.1 In these Articles, unless the context otherwise requires:

"**A Ordinary Shares**" means the A ordinary shares of £0.02 each of the Company having the rights set out in Article 4;

"**A Preference Shares**" means the cumulative redeemable A preference shares of £1.00 each of the Company having the rights set out in Article 3.

"**Act**" means the Companies Act 1985 as amended re-enacted or replaced from time to time whether before or after the adoption of these Articles;

"**acting in concert**" has the meaning ascribed to it by the City Code on Takeovers and Mergers as in force and construed at the Commencement Date;

"**Altium Warrant**" means the warrant agreement in agreed form to be entered into on the Commencement Date between (1) Altium Capital Limited and (2) the Company;

"**Acquisition Agreement**" means the agreement dated the date on which these Articles were adopted between Whitbread Guarantee Company Limited (1), Whitbread plc (2) and the Company (3) whereby the Company agreed to acquire the entire issued share capitals of The Pelican Group plc and Brightreasons Group Limited;

"**Asset Sale**" means the disposal (whether by way of a single transaction or a series of transactions) by the Group of assets (whether together with associated liabilities or otherwise and as part of an undertaking or otherwise) which represent 50 per cent or more (by book value) of the consolidated gross tangible assets of the Group at that time;

"**B Ordinary Shares**" means the B ordinary shares of £0.02 each of the Company having the rights set out in Article 4;

"**Banking Agreements**" means the Facility;

"**Board**" means the board of directors for the time being of the Company or a committee thereof or the directors present at a duly convened quorate meeting of the board or a committee thereof;

"business day" means any day (other than a Saturday) on which clearing banks are open for business in London;

"Change of Control" means the acquisition (whether by purchase, transfer, renunciation or otherwise but excluding a transfer of Shares made in accordance with Articles 11 or 13) by any person not an original party to the Investment Agreement (ECI7 (as defined in the Investment Agreement) being deemed to be such an original party for these purposes), (**"a Third Party Buyer"**) of any interest in any Shares if, upon completion of that acquisition the Third Party Buyer, together with persons acting in concert or connected with him, would hold more than 50 per cent of any class of the Equity Shares (for this purpose, the A Ordinary Shares, B Ordinary Shares and the Ordinary Shares shall be treated as one class of shares);

"Commencement Date" means the date of adoption of these Articles;

"connected with" has the meaning ascribed to that expression in section 839 Income and Corporation Taxes Act 1988 (save that there shall be deemed to be control for that purpose whenever either section 416 or section 840 of that act would so require);

"Costs" means those costs and expenses which are payable by the holders of the Investment and which are properly incurred in connection with the Exit Event by or for the benefit of the holders of the A Ordinary Shares and the Ordinary Shares (or any of them) and the nature of which costs and their allocation are approved in advanced by the Requisite Majority;

"Deferred Shares" means the deferred shares of £0.02 each of the Company having the rights set out in Article 5;

"Equity Shares" means A Ordinary Shares, B Ordinary Shares and Ordinary Shares;

"Exit Date" means the date on which an Exit Event occurs;

"Exit Event" means the earlier to occur of:

- (a) the date and time at which an agreement referred to in the definition of "Sale" is completed;
- (b) the date and time at which a Listing takes place; and
- (c) the appointment of a liquidator of the Company;

"Exit Value" means:

- (a) in the case of a Listing, the price per share at which ordinary shares in the Company are sold or offered in connection with the Listing (in the case of an offer for sale being the underwritten price or, in the case of an offer for sale by tender, the striking price under such offer, or in the case of a placing, the price at which shares are sold under the placing) multiplied by the number of such ordinary shares in issue at the time of such Listing, but excluding any shares issued for the purpose of raising money for the Company as part of the Listing arrangements (whether in order to finance the redemption of shares or the repayment of loans or for any other reason whatsoever);

- (b) in the case of a Sale, the total price payable by the purchaser in cash or Cash Equivalent (as defined in the Appendix) in respect of all the Equity Shares then in issue;
- (c) in the case of a liquidation the net dividend distributable in respect of each Equity Share multiplied respectively by the number of Equity Shares then in issue.

"Facility" means the overdraft and term loan facility dated on or about the Commencement Date from and the guarantee and debenture to be given by the Company and/or Group subsidiaries to Barclays Bank plc;

"Group" means the Company and all its subsidiaries and subsidiary undertakings for the time being and **"member of the Group"** shall be construed accordingly;

"Investors" means the Investors as defined in the Investment Agreement and **"Investor"** shall mean all or any of them as the context requires;

"Investment Agreement" means the Agreement relating to the Company dated the same date as the adoption of these Articles and made between the Company (1), the Managers (as therein defined) (2) and EC17 US (LP) Limited and ECI 7(UK) LP (3), as amended, waived, restated, modified or supplemented for the time being;

"Investor Director" has the meaning ascribed to it in the Investment Agreement;

"Investor Majority" means the holder(s) of 51% or more of the total number of A Ordinary Shares then in issue;

"Issue Price" means the amount paid up or credited as paid up (including any premium on issue) on the Shares concerned;

"Listing" means either:

- (a) the admission by the UK Listing Authority of all or any of the issued equity share capital of the Company to the Official List, and such admission becoming effective; or
- (b) the granting of permission by the London Stock Exchange for the introduction of all or any of the issued equity share capital of the Company to dealings on the Alternative Investment Market, and such permission becoming effective; or
- (c) any equivalent admission to, or permission to deal on, any other recognised investment exchange (as defined in Section 285 Financial Services and Markets Act 2000) becoming unconditionally effective in relation to all or any of the issued equity share capital of the Company;

"London Stock Exchange" means London Stock Exchange Limited;

"Member" means any registered holder of Shares for the time being;

"Ordinary Shares" means the ordinary shares of £0.02 each of the Company having the rights set out in Article 4;

"Preference Shares" means the redeemable preference shares of £1.00 each of the Company having the rights set out in Article 3;

"Relevant Person" means:

- (a) a holder of Ordinary Shares or B Ordinary Shares (whether solely or jointly with any other person); or
- (b) a person who has established a family trust (in accordance with Article 11.5) which holds Ordinary Shares or B Ordinary Shares; or
- (c) a person who holds Ordinary Shares or B Ordinary Shares as nominee or permitted transferee (whether directly or by means of a series of Permitted Transfers) of a person who is or was a holder of Ordinary Shares or B Ordinary Shares;

"Requisite Majority" means the aggregate of the Investor Majority and the holder(s) of 70% or more of the total number of Ordinary Shares then in issue;

"Sale" means the making of one or more agreements (whether conditional or not) for the disposal, transfer, purchase, subscription or renunciation of any part of the share capital of the Company giving rise to a Change of Control and for the purposes of this definition "disposal" shall mean a sale, transfer, assignment or other disposition whereby a person ceases to be the absolute beneficial owner of the share in question or voting rights attached thereto or an agreement to enter into such disposal or the grant of a right to compel entry into such an agreement;

"Shares" means the A Ordinary Shares, the Ordinary Shares, the B Ordinary Shares, the Deferred Shares, the A Preference Shares and the Preference Shares;

"Table A" means Table A in the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985;

"Third Party Buyer" has the meaning ascribed to it in the definition of **"Change of Control"** and where the relevant acquisition was effected by the renunciation of a renounceable letter of allotment, shall include the relevant renounee; and

"Valuers" means the Auditors unless:

- (a) a report on Market Value is to be made pursuant to a Deemed Transfer Notice and, within 21 days after the date of the Deemed Transfer Notice, the Seller (as defined in Article 12.1) notifies the Board in writing that it objects to the Auditors making that report;
- (b) the Auditors give notice to the Company that they decline an instruction to report on Market Value; or
- (c) the Investors require otherwise,

when the Valuers shall be a firm of chartered accountants agreed between the Seller and the Board or, in default of agreement within 20 business days after the relevant event, appointed by the President of the Institute of Chartered Accountants in England and Wales on the application of the Seller or the Board;

- 1.2 Save as expressly set out in these Articles, or unless the context otherwise requires words and expressions shall have the meaning given to them in the Investment Agreement.

- 1.3 These Articles and the regulations of Table A (subject to any modifications set out in these Articles) shall constitute the articles of association of the Company.
- 1.4 References in these Articles to regulations are to regulations in Table A and references to an Article by number are to the particular Article of these Articles.
- 1.5 In these Articles, words importing a gender include every gender and references to persons shall include bodies corporate, unincorporated associations and partnerships.
- 1.6 Words and expressions defined in or for the purposes of the Act or Table A shall, unless the context otherwise requires, have the same meaning in these Articles.
- 1.7 In these Articles a reference to the "Appendix" shall be to the Appendix to these Articles which shall form part of them.
- 1.8 The headings in these Articles shall not affect their construction or interpretation.

2 Authorised Share Capital

- 2.1 The authorised share capital of the Company at the date of the adoption of these Articles is £11,125,000 divided into 8,550,000 A Ordinary Shares, 200,000 B Ordinary Shares, 1,250,000 Ordinary Shares, 9,980,000 A Preference Shares and 145,000 Preference Shares. For the avoidance of doubt, the authorised share capital at such date does not include any Deferred Shares.

3 A Preference Shares and Preference Shares

A Preference Shares

The rights attached to the A Preference Shares are as follows:

3.1 Dividends

- (a) The Company shall pay to each of the Members holding A Preference Shares, in priority to the holders of any other class of Share, a cumulative preferential net cash dividend at the rate of 8% per annum of the Issue Price in respect of all A Preference Shares held by him (the "**A Preference Dividend**").
- (b) The A Preference Dividend on an A Preference Share shall accrue from day to day from the date on which it is issued (the "**Issue Date**") down to and including the date on which such A Preference Share is redeemed and shall be paid, subject to the Act, in arrears on 15 January and 15 July in each year and on an Exit Event and the first payment shall be made on 15 January or 15 July (whichever is first) first following the Issue Date in respect of the period commencing on the Issue Date and ending on such payment date.
- (c) Unless the Company is prohibited from paying dividends by the Act, the A Preference Dividend shall (notwithstanding regulations 102 to 108 inclusive, any other provision of these Articles or that there has not been a recommendation of the Board or resolution of the Company in general meeting) be paid immediately on the due date and if not then paid shall be a debt due by the Company and be payable in priority to any later Preference Dividend.

- (d) If the Company fails to pay an A Preference Dividend on a due date, interest on the amount unpaid shall accrue from the due date until payment at the rate of 4 per cent per annum above the base rate of Barclays Bank PLC for the time being, calculated on a daily basis and compounded quarterly.
- (e) Where the Company is precluded by the Act from paying in full any A Preference Dividend on any due date, then in respect of any A Preference Dividend which would otherwise require to be paid on that date:
 - (i) the Company shall pay, on that date, to the holders of the A Preference Shares on account of the A Preference Dividend the maximum sum (if any) which can then lawfully be paid by the Company; and
 - (ii) as soon as the Company is no longer precluded from doing so, the Company shall in respect of the A Preference Shares pay on account of the balance of the A Preference Dividend for the time being remaining outstanding the maximum amount which can lawfully be paid by it, until all arrears, accruals and deficiencies of the Preference Dividend have been paid in full.
- (f) The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of the A Preference Dividend and any amounts payable under these Articles on the redemption of the A Preference Shares.

3.2 Capital

The holders of A Preference Shares shall have the rights set out in Article 6.

3.3 Redemption

- (a) Subject to the provisions of the Act and to the remaining provisions of this Article:

- (i) the Company shall, on each of the dates shown in the table below, redeem the number of A Preference Shares shown opposite that date:

<u>Date to be redeemed</u>	<u>Number of A Preference Shares</u>
31 May 2009	100%
Exit Event	100%

- (ii) the Company shall and shall be bound to redeem all the A Preference Shares then in issue immediately prior to the occurrence of any of the following:

- (A) an Exit Event;
- (B) the appointment of a receiver, manager or administrative receiver over all or any part of the assets of any member of the Group or the appointment of a liquidator or administrator over any member of the Group.

- (iii) the Company shall and shall be bound to redeem all the A Preference Shares then in issue on the occurrence of any of the events set out in Article 3.4(a) (i), (ii), (iii) or (v).
- (b) The Company shall pay on each of the A Preference Shares so redeemed, as a debt of the Company, a sum equal to its Issue Price together with a sum equal to all arrears, deficiencies or accruals of the A Preference Dividend (whether earned or declared or not), calculated down to and including the date of redemption. The A Preference Dividend on the relevant A Preference Shares shall cease to accrue from the date of redemption.
- (c) On each date fixed for any redemption of A Preference Shares, the Company shall pay to each registered holder (or in the case of joint holders, to the holder whose name stands first in the register of members of the Company) of the A Preference Shares which are to be redeemed the amount payable in respect of such redemption. Prior to receipt of that amount, the holder shall deliver to the Company for cancellation the certificate(s) for those shares or an indemnity in a form reasonably satisfactory to the Company in respect of any missing share certificate. If any share certificate delivered to the Company includes any shares not redeemable at that time, the Company shall issue to the holder at the same time a fresh certificate for the balance of the shares not redeemed without charge. Any redemption of A Preference Shares shall take place at the registered office of the Company.
- (d) In the case of a redemption of less than all the A Preference Shares for the time being in issue, the Company shall redeem the same proportion (as nearly as practicable) of each Member's registered holdings of A Preference Shares unless an Investor Majority otherwise agrees.
- (e) The Company shall not redeem any A Preference Share in accordance with these Articles at a time when any A Preference Dividend has not been paid, except with the prior consent of an Investor Majority.
- (f) If the Company is permitted by the Act to redeem only some of the A Preference Shares which would otherwise fall to be redeemed at any time, the Company shall only redeem the number of such shares which it can so redeem at that time. The Company shall redeem, as soon thereafter as it may do so, all the remaining A Preference Shares so to be redeemed, and pending such redemption, shall not pay any dividend on any other class of Shares unless an Investor Majority otherwise requires or agrees.
- (g) If any Member whose A Preference Shares are liable to be redeemed fails to deliver the relevant share certificate(s) or indemnity to the Company, such A Preference Shares shall be redeemed by the Company and the Company may retain the redemption money on trust for that Member (but without any obligation to invest or earn or pay interest) until it receives those documents. The Company shall then pay the redemption money to the relevant Member upon receipt of those documents.
- (h) If the Company fails for any reason to redeem any A Preference Shares on the due date (*other than following a failure by the Member concerned to deliver the relevant share certificate(s) or indemnity*) the redemption price shall be increased at a rate of 4 per cent per annum above the base rate of Barclays Bank Plc for the time being calculated on a daily basis and compounded quarterly.

- (i) Subject to the Act and to the payment of all arrears and accruals of dividends on the A Preference Shares, the Company may, on not less than 6 months' written notice, redeem some or all of the A Preference Shares before the redemption dates set out in Article 3.3(a)(i), provided that any such redemption shall be in denominations of not less than £100,000. In the absence of any contrary agreement between the holders of A Preference Shares and the Company any partial early redemption shall be deemed to relate to later instalments first. Such right to redeem early shall be subject to there being, in the reasonable opinion of the Board, sufficient profits retained to meet the financial requirements of the Company as shown in the budget of the Company (as proposed in accordance with the Investment Agreement and approved by the Investor for these purposes for the relevant financial year) and to pay the A Preference Dividend for the next 12 month period and further taking into account the level of dividends paid in respect of Equity Shares during the 12 months immediately prior to any redemption pursuant to this Article 3.3.

3.4 Voting

- (a) The holders of the A Preference Shares shall be entitled to receive notice of, attend and speak at any general meetings of the Company. They shall not be entitled to vote on any resolution at any general meeting of the Company in respect of their holdings of A Preference Shares unless at the date of the relevant meeting or in the case of a meeting called as a consequence of any requisition by Members under section 368 of the Act at the date of deposit of such requisition:
 - (i) payment of the A Preference Dividend (or any part of it) has not been made within 21 days after the due date for payment of the same (whether or not such dividend is prohibited by the Act);
 - (ii) the Company has failed to redeem any of the A Preference Shares within 21 days after the due date for redemption has passed (whether or not such redemption is prohibited by the Act);
 - (iii) any amount payable by any member of the Group under any of the Banking Agreements or other agreement relating to any borrowings has become payable in advance of its stated payment date because of an event of default thereunder being called by the Bank (however caused);
 - (iv) the business of the meeting includes a resolution directly or adversely affecting altering or abrogating the rights, privileges or resolutions attached to the A Preference Shares;
 - (v) there has occurred any material breach by the Company or any of the Members or directors of the Company (excluding any Investor and Investor Director) of any of the provisions of these Articles or the Investment Agreement which has not been remedied to the reasonable satisfaction of an Investor Majority within 7 days of a notice from any Investor to the Company requesting such remedy.
- (b) The voting rights attached to the A Preference Shares shall be exercisable at any time after any of the events referred to in Article 3.4(a) have occurred and such rights shall continue only until the payment of all such amounts then

overdue or until such other breach is waived or otherwise remedied to the reasonable satisfaction, confirmed in writing, of an Investor Majority.

- (c) On each resolution on which the voting rights attaching to the A Preference Shares are exercisable those Members holding A Preference Shares who (being individuals) are present in person or by proxy or (being corporations) are present by duly authorised representative or by proxy shall, on a show of hands and on a poll, in aggregate have three times the number of votes held by persons holding Equity Shares.

Preference Shares

The rights attached to the Preference Shares are as follows: -

3.5 Dividends

The holders of the Preference Shares shall not be entitled to receive any dividend out of the profits of the Company available for distribution and resolved to be distributed in respect of any financial year or any other income or right to participate in any such profits.

3.6 Capital

The holders of the Preference Shares shall have the rights set out in Article 6.

3.7 Voting

The holders of the Preference Shares shall not be entitled to receive notice of or to attend (either personally or by proxy) any general meeting or meeting of holders of Preference Shares of the Company or to vote (either personally or by proxy) on any resolution proposed at any general meeting or meeting of holders of Preference Shares.

3.8 Redemption

- (a) the Company shall and shall be bound to redeem all the Preference Shares then in issue immediately prior to an Exit Event;
- (b) the Company shall pay on each of the Preference Shares so redeemed, as a debt of the Company, a sum equal to its Issue Price;

in each case subject to all unpaid arrears, accruals and interest on late payments of the A Preference Dividend calculated down to the date of such redemption as referred to in Article 6.1(a)(i), together with the Issue Price in respect of the same, having been paid in full in respect of the A Preference Shares in priority to the redemption referred to in this Article.

3.9 Variation

The rights attached to the Preference Shares shall not be deemed to be varied or abrogated by the creation or issue of any new shares ranking in priority to or *pari passu* with or subsequent to the Preference Shares.

4 Ordinary Shares, A Ordinary Shares and B Ordinary Shares

The rights attached to the Ordinary Shares, A Ordinary Shares and B Ordinary Shares are as follows:

4.1 Dividends

No dividend shall be declared or paid to the holders of the Equity Shares unless the A Preference Dividend and any amounts due in respect of redemption of A Preference Shares as at or in respect of periods prior to the date the dividend is declared or paid have been paid in full together with all arrears. Any dividend on the Equity Shares shall be paid pro rata the relevant holder's holding by reference to the nominal value of each share.

4.2 Capital

The holders of Equity Shares shall have the rights set out in Article 6.

4.3 Voting

The holders of the Equity Shares shall be entitled to receive notice of, attend and speak at any general meetings of the Company and the holders of such Equity Shares who (being individuals) are present in person or by proxy or (being corporations) are present by duly authorised representative or by proxy shall, on a show of hands, have one vote each, and, on a poll, have one vote for each Equity Share of which he is the holder.

5 Deferred Shares

The rights attached to the Deferred Shares are as follows:

5.1 Dividends

The holders of the Deferred Shares shall not be entitled to receive any dividend out of the profits of the Company available for distribution and resolved to be distributed in respect of any financial year or any other income or right to participate in any such profits.

5.2 Capital

The holders of Deferred Shares shall have the rights set out in Article 6.

5.3 Voting

The holders of Deferred Shares shall not be entitled to receive notice of or to attend (either personally or by proxy) any general meeting of the company or to vote (either personally or by proxy) on any resolution proposed at any general meeting.

5.4 Variation

The rights attached to the Deferred Shares shall not be deemed to be varied or abrogated by the creation or issue of any new shares ranking in priority to or pari passu with or subsequent to the Deferred Shares.

6 Return of capital

6.1 On a return of capital on liquidation or capital reduction or otherwise (other than a redemption of A Preference Shares in accordance with Article 3.3 or the Preference Shares in accordance with Article 3.8) the surplus assets of the Company remaining after the payment of its liabilities shall be applied in the following order:

- (a) first, in paying to each holder of A Preference Shares, in priority to the holders of any other class of Share:
 - (i) all unpaid arrears, accruals and interest on late payments of the A Preference Dividend on the A Preference Shares held by him, calculated down to and including the date the return of capital is made (such arrears, accruals and any interest on late payments payable irrespective of whether the A Preference Dividend has become due and payable in accordance with these Articles); then
 - (ii) an amount equal to the Issue Price of all the A Preference Shares held by him;
- (b) second, in paying to each holder of Preference Shares an amount equal to the Issue Price of all the Preference Shares held by him;
- (c) third, in paying to each holder of Equity Shares (pari passu as if they constituted one class of Share) any dividends thereon which have been declared but are unpaid;
- (d) fourth, in paying to each holder of Equity Shares an amount equal to the Issue Price of all such Shares held by him (pari passu as if they constituted one class of shares);
- (e) fifth, in distributing cash or assets with a value of up to £10,000,000 per share amongst the holders of the Equity Shares (pari passu as if they constituted one class of Share) in proportion to the numbers of such Shares held by them;
- (f) sixth, in paying to each holder of Deferred Shares an amount equal to the Issue Price of all Deferred Shares held by him; and
- (g) finally, in distributing the balance of such assets amongst the holders of Equity Shares (pari passu or if they constituted one class of Share) in proportion to the numbers of such Shares held by them.

6.2 Subject to Article 7 below, in the event of a Sale the proceeds of such Sale shall be applied in the same order as set out in Article 6.1 above.

7 Ratchet Adjustments

7.1 In this Article:

"Actual Investment Return" means the sum (less the Costs) of:-

- (a) the total cash or Cash Equivalent (as defined in the Appendix) paid in respect of the Investment (as defined in the Appendix) before the Exit Event to the holders of the Investment by the Company; and

- (b) the sum of the Exit Value attributable upon the Exit Event to the A Ordinary Shares which form part of the Investment and the total cash or Cash Equivalent paid to the holders of the Investment upon the Exit Event in respect of the A Preference Shares which form the other part of the Investment

in each case calculated in accordance with this Article 7 and the Appendix, including any repayments or purchases of share capital, any distributions paid to the holders of the Investment in respect of the A Preference Shares and the A Ordinary Shares but excluding:

- (a) any tax credits on such distributions;
- (b) any additional payments due or paid under Article 3 arising out of the Company's failure to pay when due any A Preference Dividend or redeem any A Preference Shares in accordance with these Articles;
- (c) any directors' or other fees payable at or after the Commencement Date to Investor Directors or to Investors; and
- (d) any amounts paid to the Investors pursuant to any breach of the Articles or the Investment Agreement;

and assuming, for the purposes of such calculation, that (i) the Altium Warrant had not been exercised in whole or in part and (ii) that no Shares and no options to subscribe for Shares had been issued to any other person after the Commencement Date whether under an employees' share scheme or otherwise (for the avoidance of doubt, other than to ECI7 US and ECI7 pursuant to clause 2 of the Investment Agreement).

"Excess Return" means the amount (if any) by which the Actual Investment Return exceeds the Target Investment Return;

"Relevant Investment Date" means, in respect of any monies subscribed by the Investors or any of them comprising all or part of the Investment, the date on which such investment was made;

"Maximum Percentage" means the percentage calculated as follows:

$$MP = \frac{285}{1000} \times \frac{A}{B} \times 100$$

Where:

MP = Maximum Percentage

A = the number of Ordinary Shares in issue immediately prior to the Exit Event (excluding, for the avoidance of doubt, any Ordinary Shares deemed to have been converted pursuant to Article 13.16);

B = the number of Ordinary Shares in issue immediately following the Commencement Date;

and $\frac{A}{B}$ is a fraction being deemed not to exceed 1;

"Relevant Investment" means, in respect of any part of the Investment made on any Relevant Investment Date, the amount of such investment made on such date;

"Target Investment Return" means:

- (a) in respect of the period from the Relevant Investment Date to the expiry of the period one year thereafter (the **"First Anniversary"**):
the Relevant Investment x 2.5
- (b) in respect of the period from the day after the First Anniversary to the expiry of the period ending two years after the Relevant Investment Date (the **"Second Anniversary"**):
the Relevant Investment x 2.75
- (c) in respect of the period from the day after the Second Anniversary and thereafter:
the Relevant Investment x 3

and for the purposes of this Article, the subscription by ECI 7 (as defined in the Investment Agreement) for A Ordinary Shares and A Preference Shares in accordance with clause 2.3 of the Investment Agreement shall be deemed to have taken place on the Commencement Date, or, in the event that the Conversion Shares are issued pursuant to clause 2.2 of the Investment Agreement, such Conversion Shares shall be deemed to have been issued on the Commencement Date. In the event that the Investment is reduced by monies being returned to the Investors during the period of 6 months from the Commencement Date, the Investors and holders of Ordinary Shares agree to review the operation of this Article 7 to consider whether any adjustment should be made.

- 7.2 On an Exit Event where there would otherwise be an Excess Return, provided that any Ordinary Shares remain in issue immediately prior to the Exit Event, such number of A Ordinary Shares shall automatically convert in accordance with Article 7.4 as would result in the Excess Return being reduced by one third provided that no such conversion shall take place to the extent that after such conversion the percentage by nominal value which the Ordinary Shares bear to the Equity Shares in issue on the day immediately following the Commencement Date (as reduced by such conversion) would exceed the Maximum Percentage; and such number of B Ordinary Shares shall automatically convert immediately on conversion of the A Ordinary Shares referred to above as would result in the B Ordinary Shares following such conversion comprising the same percentage of the Equity Shares by nominal value after such conversion as before.
- 7.3 In the event of any disagreement as to the amount of the Exit Value, Actual Investment Return, Excess Return, or Cash Equivalent, or the number of Deferred Shares arising on conversion, the amount shall be determined by the Valuers, acting as experts not as arbitrators, who shall be required to give their opinion as to the relevant amount and the decision of the Valuers notified in writing to the Board and all Members and shall be conclusive and binding on the Company and all Members and any person deriving any title or interest to any share (save in the case of manifest error). Each Member shall give to the Valuers such information as they may reasonably require for the purpose of determining the relevant matter. The Investors and the holder(s) of Ordinary Shares agree that, in the event that there occurs after the Commencement Date any issue of Equity Shares (whether by rights or capitalisation or otherwise) or any subdivision, reduction or consolidation of the equity share capital of the Company, the provisions of this Article 7 will be reviewed to consider whether any amendment may be necessary in order to achieve the intended operation of such provisions at the Commencement Date.

- 7.4 The A Ordinary Shares or B Ordinary Shares (as the case may be) held by each Member shall be, converted into Deferred Shares in proportion to the number of A Ordinary Shares or B Ordinary Shares (as the case may be) held by such Member prior to such conversion (ignoring fractions of A Ordinary Shares or B Ordinary Shares). Immediately after conversion of any A Ordinary and/or B Ordinary Shares into Deferred Shares, the holders of Shares which have so converted shall deliver the relevant share certificates to the Company and the Company shall, without making any charge, cancel such certificates and issue to such Members such certificates for the Deferred Shares and certificates for the balance of their Shares as shall be necessary to reflect the conversions made.
- 7.5 The Members hereby agree to pass such members' resolutions as are necessary in order to authorise the allotment and issue of such numbers of Deferred Shares as are necessary to give effect to the provisions of this Article 7. The provisions of this Article 7 shall not be varied without the consent of an Investor Majority and the holder(s) of 65% or more of the number of Ordinary Shares in issue.
- 7.6 If after the Commencement Date there shall be subscribed for cash further A Ordinary Shares and/or A Preference Share and/or Ordinary Shares then the Members agree that the provisions of this Article 7 shall be reviewed in their entirety with the intention that the same shall be amended to the extent that is fair and reasonable and reflecting the circumstances of the further subscriptions ("**Amendment Condition**"). Any amendment to this Article 7 may only be made with the agreement of the Requisite Majority and any amendment so made shall deem the Amendment Condition to have been satisfied.

8 Variation of Class Rights

- 8.1 Whenever the capital of the Company is divided into different classes of shares, the special rights attached to any class may (unless otherwise provided by the terms of issue of the shares of that class) be varied or abrogated, either while the Company is a going concern or during or in contemplation of a winding up, with the consent in writing of the holders of three quarters of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate meeting of the holders of the issued shares of that class, but not otherwise. To every such separate meeting, all the provisions of these Articles relating to general meetings of the Company shall, *mutatis mutandis*, apply, except that the necessary quorum shall be one person at least holding or representing by proxy one-third in nominal value of the issued shares of class unless all the shares of that class are registered in the name of a single shareholder in which case the quorum shall be that person or his proxy or duly authorised representative of such shareholder (but so that if, at any adjourned meeting of such holders, a quorum as above defined is not present those members who are present shall be a quorum).
- 8.2 Without prejudice to the generality of this Article, the special rights attached to the A Preference Shares and the A Ordinary Shares shall each be deemed to be varied at any time by any of the following:
- (a) an increase, reduction or other alteration in the issued share capital of the Company or any other member of the Group or a variation in the rights attaching to any class thereof, apart from an alteration arising out of a conversion or redemption of shares under these Articles;
 - (b) the grant of an option to subscribe for shares in the Company or any other member of the Group or the issue of any securities or instruments convertible into shares in any such company;

- (c) other than pursuant to the Facility, the creation by the Company or any other member of the Group of any mortgage, charge, pledge, lien, encumbrance or other security interest (excluding an interest arising by operation of law in the ordinary course of business);
- (d) the making of any material change (including cessation) in the nature of the business of the Group taken as a whole;
- (e) the alteration of the memorandum of association of the Company or these Articles or the passing of any special or extraordinary resolution of the Members (or any class of them);
- (f) the declaration or payment of any dividend or the making of any other distribution in respect of the profits, assets or reserves of the Company or any other member of the Group other than the A Preference Dividend and the redemption of the A Preference Shares and Preference Shares in accordance with these Articles;
- (g) the institution of any proceedings for, or the passing of any resolution for the winding up or administration of the Company or any other member of the Group;
- (h) the appointment or removal of any director (other than an Investor Director removed by the Investors in accordance with Article 21);
- (i) a Sale, Asset Sale or Listing;
- (j) the Company or any other member of the Group incurring an obligation to do any of the foregoing;
- (k) the registration or purported registration of any transfer of any Share or interest in any Share other than as expressly permitted by these Articles; or
- (l) the purchase or redemption of any of its own shares save for the redemption of any A Preference Shares or Preference Shares in accordance with these Articles.

9 Issue of Shares

- 9.1 Subject to the Act and to Article 8.4, all unissued Shares in the Company shall be under the control of the directors and they may offer, allot, grant rights or warrants to subscribe for, grant options over, or otherwise deal with or dispose of unissued shares in the Company to such persons and generally on such terms in such manner and at such times as they may determine. No Ordinary Shares or A Ordinary Shares shall be issued without the consent an Investor Majority and the holder(s) of 65% of the Ordinary Shares in issue.
- 9.2 Subject to the provisions of the Act, the Company shall have power to issue any shares which are to be redeemed or are liable to be redeemed at the option of the Company or the holder thereof or to purchase its own shares (including any redeemable shares).
- 9.3 Subject to the provisions of the Act, the Company shall have power to make a payment in respect of the redemption or purchase under section 160 or (as the case may be)

section 163 of the Act of any of its own shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares in the Company.

- 9.4 Subject to Article 9.1, the Directors of the Company are hereby authorised pursuant to section 80 of the Act generally to exercise each and every power of the Company to allot relevant securities (as defined in that section) up to a maximum amount of nominal value which when aggregated with the subscriber share(s) and the relevant securities already allotted on the adoption of these Articles is equal to the authorised share capital on such adoption, such authority to expire on the day immediately preceding the fifth anniversary of the Commencement Date.

10 Lien

- 10.1 All Shares to be sold in the enforcement of the Company's lien or rights of forfeiture shall be offered in accordance with Article 14 (Compulsory Transfers) as if a Deemed Transfer Notice were deemed given in respect of such Shares.
- 10.2 The lien conferred by Regulation 8 of Table A shall attach also to fully paid-up shares and the Company shall also have a first and paramount lien on all shares, whether fully paid or not, standing registered in the name of any person indebted to the Company, whether he shall be the sole registered holder thereof or shall be one or two or more joint holders, for all moneys presently payable by him or his estate to the Company.

11 Transfer of Shares - General

- 11.1 The Board shall not register the transfer of any Share or any interest in any Share unless the transfer:

- (a) is permitted by Article 12 (Permitted Transfers); or
- (b) is made in accordance with Article 13 (Voluntary Transfers), Article 14 (Compulsory Transfers), Article 15 (Come Along Option), or Article 16 (Change of Control);

and, in any such case, is not prohibited under Article 17 (Prohibited Transfers).

- 11.2 For the purpose of ensuring that a transfer of shares is in accordance with these Articles or that no circumstances have arisen whereby a Member may be bound to give or be deemed to have given a Transfer Notice, the Board may from time to time require any Member or any person named as transferee in any transfer lodged for registration to furnish to the Board such information and evidence as they deem relevant to such purpose.
- 11.3 If such information or evidence is not provided within a reasonable time after such a request the Board may (with the approval of the Investors) in their absolute discretion refuse to register the transfer in question or (where no transfer is in question) require by notice in writing to the Member(s) concerned that a Transfer Notice be given in respect of the Shares concerned.
- 11.4 If such information or evidence requested discloses to the satisfaction of the Board in their absolute discretion (with the approval of the Investors) that circumstances have arisen whereby a Member may be bound to give or be deemed to have given a Transfer Notice the Board may in their absolute discretion (with the approval of an Investor Majority) by notice in writing to the Member(s) concerned require that a Transfer Notice be given in respect of the Shares concerned.

- 11.5 An obligation to transfer a Share under these Articles shall be deemed to be an obligation to transfer the entire legal and beneficial interest in such Share free from any lien, charge or other encumbrance.
- 11.6 Regulations 30 and 31 shall be modified to reflect the provisions of this Article and the following Articles relating to the transfers of Shares.

12 Permitted Transfers

12.1 Definitions

For the purposes of these Articles relating to transfers of Shares:

- (a) **"investment fund"** means any arrangement constituting a collective investment scheme for the purpose of section 235 Financial Services and Markets Act 2000 (as amended or re-enacted for the time being) or which would constitute such a scheme if it did not fall within an exemption or exclusion to that section and, without limitation, shall include limited partnerships and variable capital companies;
- (b) **"a member of the same group"** means, in relation to a body corporate, any other body corporate which is for the time being a holding company of that body corporate or a subsidiary of that body corporate or a subsidiary of any holding company of which that body corporate is also a subsidiary; and
- (c) **"Permitted Transfer"** means any transfer of Shares permitted under this Article.

12.2 Transfers within groups of companies

- (a) Any Member which is a body corporate may at any time transfer any Shares held by it to a member of the same group.
- (b) Where Shares have been transferred to another member of the same group (whether directly or by a series of such transfers) from a Member (the **"Transferor"** which expression does not include a second or subsequent transferor in a series of transfers) to a member of the same group as the Transferor (the **"Transferee"**) and subsequently the Transferee ceases to be a member of the same group as the Transferor then the Transferee shall be deemed to have given a Transfer Notice in respect of all Shares held by the Transferee.

12.3 Transfers between or to funds

The Investors and their custodians or nominees shall each have the right to transfer, or otherwise dispose of, interests in all or any of the shares held or owned by them directly or through any custodian or other nominee (and to assign the benefit of the Investment Agreement) to:

- (a) each other; or

- (b) the beneficial owner or owners in respect of which the transferor is a nominee or custodian or any other nominee or custodian for such beneficial owner or owners; or
- (c) any fund, company or partnership managed by ECI Ventures Limited (or any partnership or company carrying on business in succession to it); or
- (d) a partner, shareholder, participant, manager or adviser (or an employee of an adviser) in any such fund, company or partnership or of any investment fund or co-investment plan in respect of which ECI Ventures Nominees Ltd or the transferee is a nominee or custodian; or
- (e) any person, company or fund whose business consists of holding securities for 'investment purposes'; or
- (f) a nominee or member of the same 'group' of any of the persons referred to in paragraphs (a) to (d) above;

12.4 Transfers with consent

- (a) A Member may transfer Shares to any person at any time with the prior written consent of the holders of at least 75% of the issued Equity Shares.
- (b) Any A Preference Share may, with the consent of an Investor Majority, be transferred to a Venture Capitalist or an investment fund managed by a Venture Capitalist which means any person or firm or partnership whose business comprises to a material extent the holding for investment purposes of unlisted securities in United Kingdom private companies and includes any nominee, custodian or manager used by any such person, firm or partnership to hold such investments.

12.5 Family Trusts and Family Members

A Member may transfer Shares to a member of his family or to a trust for the benefit of himself or his family with the prior written consent of an Investor Majority (without limitation, as to the numbers of Shares to be transferred, the constitution of the trust and the conditions of any such transfer).

12.6 Transfers of entire interest

A transfer of any Share pursuant to this Article shall only be treated as a Permitted Transfer if it is a transfer of the entire legal and beneficial interest in such share, free from any lien, charge or other encumbrance (save for any interest of beneficiaries under any relevant family trust).

- 12.7 A transfer of any Ordinary Share or B Ordinary Share pursuant to this Article shall only be a Permitted Transfer if, in addition to the terms of this Article 12 the transferor transfers to the transferee of the Ordinary Shares or B Ordinary Share such proportion (as nearly as possible so as to avoid fractions) of his holding of Preference Shares as equates to the proportion of his Ordinary Shares and/or B Ordinary Shares (as appropriate) so transferred.

13 Voluntary Transfers

- 13.1 Except as permitted under Article 12 (Permitted Transfers), any Member who wishes to transfer any Share ("**a Seller**") shall before transferring or agreeing to transfer such Share or any interest in it, serve notice in writing ("**a Transfer Notice**") on the Company of his wish to make that transfer.
- 13.2 In the Transfer Notice the Seller shall specify:
- (a) the number of Shares ("**Sale Shares**") which he wishes to transfer;
 - (b) the identity of the person (if any) to whom the Seller wishes to transfer the Sale Shares;
 - (c) the price per share at which the Seller wishes to transfer the Sale Shares ("**the Proposed Sale Price**");
 - (d) any other terms relating to the transfer of the Sale Shares; and
 - (e) whether the Transfer Notice is conditional upon all (and not part only) of the Sale Shares being sold pursuant to the following provisions of this Article ("**a Total Transfer Condition**").
- 13.3 Each Transfer Notice shall:
- (a) relate to one class of Shares only;
 - (b) constitute the Company as the agent of the Seller for the sale of the Sale Shares on the terms of this Article;
 - (c) save as provided in Article 13.5, be irrevocable; and
 - (d) not contain or be deemed to contain a Total Transfer Condition unless it states that a Total Transfer Condition applies and a Total Transfer Condition is permitted by these Articles.
- 13.4 Subject to Article 13.5 the Sale Shares shall be offered for purchase in accordance with this Article at a price per Sale Share ("**the Sale Price**") agreed between the Seller and the Board (with the approval of the Investor Director) or, in default of such agreement within 21 days after the date of service of the Transfer Notice, the lower of:
- (a) the Proposed Sale Price; and
 - (b) if the Board or the Investors so elect within 28 days after the date of service of the Transfer Notice, the price per share given by the Valuers in writing as being their opinion of the open market value of each Sale Share in accordance with Article 13.13 ("**the Market Value**") as at the date of service of the Transfer Notice.
- 13.5 If the Market Value is so reported on by the Valuers to be less than the Proposed Sale Price, the Seller may revoke the Transfer Notice by written notice given to the Board within the period ("**the Withdrawal Period**") of 14 days after the date the Board serves on the Seller the Valuers' written opinion of the Market Value.

13.6 The Board shall offer the Sale Shares for purchase at the Sale Price by a written offer notice ("**the Offer Notice**") served on those persons to whom the same are to be offered pursuant to Article 13.8 within 21 days after the Sale Price is agreed or determined or, if the Transfer Notice is capable of being revoked, within 21 days after the expiry of the Withdrawal Period.

13.7 An Offer Notice shall expire 42 days after its service and shall:

- (a) specify the Sale Price;
- (b) contain the other details included in the Transfer Notice; and
- (c) invite the relevant Members to apply in writing, before expiry of the Offer Notice, to purchase the numbers of Sale Shares specified by them in their application.

13.8 Sale Shares of a particular class specified in column (1) in the table below shall be treated as offered:

- (a) in the first instance to all persons in the category set out in the corresponding line in column (2) in the table below;
- (b) to the extent not accepted by persons in column (2), to all persons in the category set out in the corresponding line in column (3) in the table below; and
- (c) to the extent not accepted by persons in columns (2) and (3), to all persons set out in the corresponding line in column (4) in the table below:

but no Shares shall be treated as offered to the Seller or any other Member who is then bound to give or deemed to have given a Transfer Notice.

(1)	(2)	(3)	(4)	(5)
Class of Sale Shares	Offered First To	Offered Second To	Offered Third To	Offered Fourth To
Ordinary Shares	Board Invitees	Holders of Ordinary Shares	Holders of B Ordinary Shares	Holders of A Ordinary Shares
A Ordinary Shares	Holders of A Ordinary Shares	Board Invitees	Holders of Ordinary Shares	Holders of B Ordinary Shares

- (d) The expression "**Board Invitees**" in these Articles means a person or persons being employees or offices of the Group or the trustees of any trust for the benefit of employees, of, and any actual or proposed employees of, any member of the Group selected (in the 60 business days immediately following the date on which the Sale Price is agreed or determined) by the Board with the written approval of an Investor Majority. If no such selection occurs for whatever reason in this period then the Investor Majority may select the Board Invitees within a further period of 60 business days.

13.9 After the expiry date of the Offer Notice (or, if earlier, upon valid applications being received for all the Sale Shares), the Board shall, in the priorities and in respect of each

class of persons set out in the columns in the table above, allocate the Sale Shares in accordance with the applications received, subject to the other provisions of these Articles and Table A, so that:

- (a) if there are applications from any class of Members for more than the number of Sale Shares available for that class of Members, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Sale Shares than the maximum number applied for by him) to the number of Shares of the relevant class then held by them respectively;
- (b) if it is not possible to allocate any of the Sale Shares without involving fractions, they shall be allocated amongst the applicants of each class in such manner as the Board shall think fit; and
- (c) if the Transfer Notice contained a Total Transfer Condition, no allocation of Sale Shares shall be made unless all the Sale Shares are allocated.

13.10 The Board shall, within 7 days of the expiry date of the Offer Notice give notice in writing ("**a Sale Notice**") to the Seller and to each person to whom Sale Shares have been allocated (each a "**Buyer**") specifying the name and address of each Buyer, the number of Sale Shares agreed to be purchased by him and the aggregate price payable for them.

13.11 Completion of a sale and purchase of Sale Shares pursuant to a Sale Notice shall take place at the registered office of the Company at the time specified in the Sale Notice when the Seller shall, upon payment to him by a Buyer of the Sale Price in respect of the Sale Shares allocated to that Buyer, transfer those Sale Shares and deliver the relative share certificates to that Buyer. The Seller shall not be entitled to transfer any Sale Share in respect of which a Sale Notice has not been given to such Seller.

13.12 If a Seller fails for any reason (including death) to transfer any Sale Shares when required pursuant to this Article, the Board may authorise any person (who shall be deemed to be irrevocably appointed as the attorney of the Seller for the purpose) to execute the necessary transfer of such Sale Shares and deliver it on the Seller's behalf. The Company may receive the purchase money for such Sale Shares from the Buyer and shall upon receipt (subject to the transfer being duly stamped) register the Buyer as the holder of such Sale Shares. The Company shall hold such purchase money in a separate bank account on trust for the Seller but shall not be bound to earn or pay interest on any money so held. The Company's receipt for such purchase money shall be a good discharge to the Buyer who shall not be bound to see to the application of it, and after the name of the Buyer has been entered in the register of Members in purported exercise of the power conferred by this Article the validity of the proceedings shall not be questioned by any person.

13.13 If instructed to report on their opinion of Market Value the Valuers shall:

- (a) act as experts and not as arbitrators and their written determination shall be final and binding on the Members (save in the case of manifest error); and
- (b) proceed on the basis that:
 - (i) the open market value of each Sale Share shall be the sum as at the date of the Transfer Notice which a willing Buyer would agree with a willing Seller to be the purchase price for all the class of Shares of

which the Sale Shares form part, divided by the number of issued Shares then comprised in that class but so that for this purpose the Ordinary Shares, the A Ordinary Shares and the B Ordinary Shares shall be valued as if they were one and the same class;

- (ii) there shall be no addition of any premium or subtraction of any discount by reference to the size of the holding the subject of the Transfer Notice or in relation to any restrictions on the transferability of the Sale Shares or on whether the Buyer will increase his shareholding in the Company to or beyond any particular percentage;
- (iii) any difficulty in applying either of the foregoing bases shall be resolved by the Valuers as they think fit in their absolute discretion.

13.14 The Company will use its reasonable endeavours to procure that the Valuers deliver their written opinion of the Market Value to the Board and to the Seller within 28 days of being requested to do so. The Valuers need not give their reasons for reaching such opinion.

13.15 The Valuers' fees for reporting on their opinion of the Market Value shall be borne as to one half by the Seller and as to the other half by the Buyers pro rata to the number of Sale Shares purchased by them unless:

- (a) the Seller revokes the Transfer Notice; or
- (b) none of the Sale Shares are purchased pursuant to this Article,

when the Seller shall pay all the Valuers' fees.

13.16 Unless an Investor Majority shall give notice to the Company to the contrary, any Equity Share transferred to a Member holding Equity Shares of any class other than the same class as the Share transferred shall (without further authority than is contained in these Articles being necessary) forthwith on such transfer be deemed to have been converted into an Equity Share of the same class as the Equity Shares already held by that transferee member having all the rights, privileges and restrictions attaching to that class of Equity Shares, save that in the case of a transfer of any Equity Share to a holder of any Ordinary Share(s) or the transfer of any Ordinary Share(s) to any Investor(s), such transferred share(s) shall convert into B Ordinary Share(s).

13.17 Any Member who wishes to transfer Ordinary Shares or B Ordinary Shares pursuant to this Article shall also be required to transfer to the transferee of the Ordinary Shares or B Ordinary Shares (as appropriate) such proportion (as nearly as possible so as to avoid fractions) of his holding of Preference Shares as equates to the proportion of his Ordinary Shares or B ordinary Shares (as appropriate) so transferred.

13.18 Where a Transfer Notice is served pursuant to this Article 13 and Preference Shares are transferred pursuant to Article 13.17 above, subject always to Article 14.6 the sale price for such shares shall be their Issue Price. The remaining provisions of Article 13 (subject to Article 13.7 above) shall apply *mutatis mutandis*, references to Ordinary Shares and/or B Ordinary Shares being deemed to be references to Preference Shares.

13.19 A Buyer may only purchase Ordinary Shares or B Ordinary Shares offered to him pursuant to Article 13.8 provided he is also purchases such proportion (as nearly as possible so as to avoid fractions) of the Seller's Preference Shares as equates to the proportion of Ordinary Shares or B Ordinary Shares (as appropriate) so purchased.

14 Compulsory Transfers

14.1 In this Article, a "**Transfer Event**" occurs, in relation to any Relevant Person::

- (a) if that Relevant Person being an individual:
 - (i) shall become bankrupt; or
 - (ii) shall die; or
 - (iii) shall suffer from mental disorder or serious illness and be admitted to hospital or shall become subject to any court order referred to in regulation 81(c);
- (b) if that Relevant Person shall make or offer or purport to make any arrangement or composition with his creditors generally;
- (c) if that Relevant Person being a body corporate (which for the avoidance of doubt excludes any limited partnership, collective investment scheme or venture capital company):
 - (i) shall have a receiver, manager or administrative receiver appointed over all or any part of its undertaking or assets;
 - (ii) shall have an administrator appointed in relation to it; or
 - (iii) shall enter into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or reconstruction); or
 - (iv) shall have any equivalent action in respect of it taken in any jurisdiction;
- (d) if that Relevant Person who is at any time a director or employee of a member of the Group shall cease to hold such office or employment and is not an employee or director of any other member of the Group;
- (e) if that Relevant Person shall attempt to deal with or dispose of any Share or any interest in it otherwise than in accordance with Article 12 (Permitted Transfers), Article 13 (Voluntary Transfers) and this Article (Compulsory Transfers) or in contravention of Article 16 (Change of Control) or Article 17 (Prohibited Transfers);
- (f) if that Relevant Person shall for any reason not give a Transfer Notice in respect of any Shares or transfer any Shares (as the case may be) as required by any Article;
- (g) if that Relevant Person commits a material breach of the Investment Agreement or the Articles;

and in each case within the following six months either the Investor Majority shall notify the Company or the Board with consent of the Investor Majority shall resolve that such event is a Transfer Event in relation to that Relevant Person for the purposes of this Article.

- 14.2 Upon the notification or resolution referred to in Article 14.1 above, the Relevant Person in question shall be deemed immediately to have given a Transfer Notice in respect of all the Shares then held by such person(s) ("**Deemed Transfer Notice**"). A Deemed Transfer Notice shall supersede and cancel any then current Transfer Notice insofar as it relates to the same Shares except for Shares which have then been validly transferred pursuant to that Transfer Notice.
- 14.3 Notwithstanding any other provision of these Articles, if an Investor Majority or the Board (with the consent of an Investor Majority) so resolves in relation to any Shares, any persons holding Shares in respect of which a Deemed Transfer Notice is deemed given shall not be entitled to exercise any voting rights at general meetings of the Company in respect of these Shares between the date of the relevant Deemed Transfer Notice and the expiry of one month after the date of the Sale Notice given in respect of those Shares or, if earlier, the entry in the register of members of the Company of another person as the holder of those Shares.
- 14.4 The Shares the subject of any Deemed Transfer Notice shall be offered for sale in accordance with Article 13 as if they were Sale Shares in respect of which a Transfer Notice had been given save that:
- (a) a Deemed Transfer Notice shall be deemed to have been given on the date of the Transfer Event (the "**Cessation Date**") or, if later, the date of the first meeting of the Board at which details of the facts or circumstances giving rise to the Deemed Transfer Notice are tabled;
 - (b) subject to Article 14.5, the Sale Price shall be a price per Sale Share agreed between the Seller and the Board or, in default of agreement within 21 days after the date of the Transfer Event, the Market Value;
 - (c) a Deemed Transfer Notice shall be deemed not to contain a Total Transfer Condition and shall be irrevocable;
 - (d) the Seller may retain any Sale Shares for which Buyers are not found; and
 - (e) the Sale Shares shall be sold together with all rights, attaching thereto as at the date of the Transfer Event, including the right to any dividend declared or payable on those Shares after that date.
- 14.5 In this Article:
- (a) "**Good Leaver**" means a director or employee of any member of the Group (other than a person who has been declared bankrupt) who ceases to hold either such office and as a consequence is not a director or employee of any member of the Group and such cessation occurs as a result of:
 - (i) death, illness (including mental illness), disability or permanent incapacity through ill health; or
 - (ii) retirement at normal retirement age; or
 - (iii) dismissal by any Group Company other than by reason of any of the circumstances referred to in (c) below

or where such person is otherwise categorised as a Good Leaver by an Investor Director or by the Board with the prior consent of an Investor Director in each case within 6 months of the Cessation Date (or in the event that there is no Investor Director in office with the prior written consent of an Investor Majority).

- (b) **"Early Leaver"** means any director or employee of any member of the Group (other than a Good Leaver or Defaulting Leaver) who ceases to hold either such office and as a consequence is not a director or employee of any member of the Group by reason of (i) voluntary termination of such employment or office on his part or (ii) Non-Adverse Misconduct (as defined below);
- (c) **"Defaulting Leaver"** means:
 - (i) any person in respect of whose holding of shares a deemed Transfer Notice is given by reason of breach of Articles 14.1(e), 14.1(f) and 14.1(g) above, or
 - (ii) any person whose office or employment is terminated summarily in accordance with the terms of his consultancy terms or service contract or is otherwise so terminated at common law (including, without limitation, for fraud or gross misconduct) but excluding misconduct to the extent that such misconduct neither (in the reasonable opinion of the Board with prior consent of an Investor Director (or, in the event that there is no Investor Director in office, with the prior written consent of an Investor Majority) brings any Group Company into disrepute nor would adversely have affected such person's ability to perform his duties (such excluded misconduct being defined for the purposes of these Articles as **"Non-Adverse Misconduct"**);

14.6 The Sale Price for any Sale Shares which are the subject of a Deemed Transfer Notice given as a consequence of a Transfer Event falling within Article 14.1(e) (cessation of employment) shall be:

- (a) in the case of a Good Leaver, their Market Value; and
- (b) in the case of an Early Leaver:
 - (i) if the Cessation Date is on or before the first anniversary of the date of these Articles, the lower of the Issue Price for each of the Sale Shares and their Market Value;
 - (ii) if the Cessation Date is after 31 May 2003 but on or before the second anniversary of the date of these Articles, their Market Value less a discount of 75%;
 - (iii) if the Cessation Date is after 31 May 2004 but on or before the third anniversary of the date of these Articles, their Market Value less a discount of 50%;
 - (iv) if the Cessation Date is after 31 May 2005 but on or before the fourth anniversary of the date of these Articles, their Market Value less a discount of 25%;
 - (v) if the Cessation Date is after 31 May 2006, their Market Value

less, in each case, any dividends on the Sale Shares not yet paid which are to be retained by the Seller.

- (c) in the case of a Defaulting Leaver, the lower of the Issue Price for each of the Sale Shares and their Market Value.

provided that, where the Sale Shares comprise Ordinary Shares and/or B Ordinary Shares, the Sale Price for such combined holding shall equal the Sale Price which would have been payable had the amounts originally subscribed for such Preference Shares been subscribed by way of additional premium in respect of the Ordinary Shares and/or B Ordinary Shares (as appropriate) at the Commencement Date.

- 14.7 A dispute as to whether a person is a Good Leaver, an Early Leaver or a Defaulting Leaver shall not affect the validity of a Deemed Transfer Notice but any person who acquires Sale Shares pursuant to a Deemed Transfer Notice while such a dispute is continuing shall pay to the Seller their Market Value discounted in accordance with Article 14.6 (assuming that the dispute involves no allegation that the Seller is a Defaulting Leaver), or, where it is alleged that the Seller is a Defaulting Member, shall pay the amount referred to in Article 13.6(c), and in each case shall pay the amount of the relevant discount to the Company. The Company shall hold that discount in a separate bank account as trustee to pay it, and interest earned thereon, upon final determination of the dispute to the Buyer or Seller as appropriate.

- 14.8 Notwithstanding any other provisions of these Articles:

- (a) if an Investor Majority so resolves in relation to any Shares held by a director in respect of which a Deemed Transfer Notice is deemed such Shares shall be transferred to the Investors (or any of them) to be held jointly, on trust and interest free for an Incumbent Member (as the same is defined below);
- (b) in the event that a transfer in accordance with this article takes place, the Sale Price shall be calculated in accordance with Article 14.6 but need not be paid by the Investors and shall be paid by the Incumbent Member to the transferor upon the appointment of such Incumbent Member; and
- (c) an Incumbent Member is an individual who shall within 6 months of the Deemed Transfer Notice be appointed as a director in place of the director deemed to have given a Deemed Transfer Notice in accordance with (a) above who shall agree to purchase the Shares (for the Sale Price) the subject of the trust created by (a) above.

Provided that in the event that an Incumbent Member is not so appointed within such period, the Sale Price shall be paid by the Investors.

15 Come Along Option

- 15.1 If an Investor Majority (together "**the Selling Shareholders**") wishes to transfer all their A Ordinary Shares ("**the Relevant Shares**") to a Third Party Buyer, the Selling Shareholders shall have the option ("**the Come Along Option**") to require all the other holders of Shares to transfer all their shares with full title guarantee to the Third Party Buyer or as the Third Party Buyer shall direct in accordance with this Article, provided that (save in the case of any transfer pursuant to Article 12) where such proposed sale is to a company in which any Investor holds shares, such sale shall be on bona fide arm's length terms.

- 15.2 The Selling Shareholders may exercise the Come Along Option by giving notice to that effect ("**a Come Along Notice**") to all other Shareholders ("**the Called Shareholders**") at any time before the transfer of Shares referred to in Article 15.1. A Come Along Notice shall specify that the Called Shareholders are required to transfer all their Shares ("**the Called Shares**") pursuant to this Article to the Third Party Buyer, the price at which the Called Shares are to be transferred (determined in accordance with Article 15.4) and the proposed date of transfer such proposed date of transfer not being less than 10 days after the date of service of the Come Along Notice. The Company shall as soon as reasonably practicable serve a copy of the Come Along Notice on each person holding options over Shares (the "**Optionholders**"). Any Optionholder who exercises an option over Shares on or at any time after the service of the Come Along Notice by the Selling Shareholders shall be deemed to have received the Come Along Notice in his capacity as shareholder in addition to his capacity as an Optionholder in respect of any Shares issued to him pursuant to such exercise and such person shall also thereafter be a Called Shareholder.
- 15.3 A Come Along Notice is irrevocable but the Come Along Notice and all obligations thereunder will lapse if for any reason there is not a Change of Control caused by a transfer of Shares by the Selling Shareholders to the Third Party Buyer within 120 days after the date of the Come Along Notice.
- 15.4 The Called Shareholders shall be obliged to sell the Called Shares at the price specified in the Come Along Notice which shall attribute:
- (a) an equal value to each Equity Share (including the Relevant Shares) taking into account any consideration (in cash or otherwise) payable (or which has been paid) which, having regard to the substance of the transaction as a whole, can reasonably be regarded as part of the price payable in respect of such shares; and
 - (b) a value to each A Preference Share equal to the amount which would be payable for them on an Exit Event; and
 - (c) a value to each Preference Share equal to its Issue Price.
- 15.5 Completion of the sale of the Called Shares shall take place on the same date as the date proposed for completion of the sale of the Selling Shareholders' Shares unless:
- (a) all of the Called Shareholders and the Selling Shareholders agree otherwise; or
 - (b) that date is less than 7 days after the Come Along Notice, where it shall be deferred until the 7th day after the Come Along Notice.
- 15.6 Each of the Called Shareholders shall, on service of the Come Along Notice, be deemed to have irrevocably appointed each of the Selling Shareholders to be his attorney to execute any stock transfer and to do such other things as may be necessary or desirable to accept, transfer and complete the sale of the Called Shares pursuant to this Article.

16 Change of Control

- 16.1 Subject to Article 17 but notwithstanding any other provision in these Articles, no sale or transfer or other disposition of any interest in any Equity Share (the "**Specified Shares**") shall have any effect if it would result in a Change of Control unless before the transfer is lodged for registration the Third Party Buyer has made a bona fide offer

in accordance with these Articles to purchase at the specified price (defined below) all the Shares held by Members who are not acting in concert or otherwise connected with the Third Party Buyer ("**the Uncommitted Shares**").

16.2 An offer made under Article 16.1 must be in writing open for acceptance for at least 21 days, and shall be deemed to be rejected by any Member who has not accepted it in accordance with its terms within the time period prescribed for acceptance and the consideration thereunder shall be settled in full on completion of the purchase and within 30 days of the date of the offer.

16.3 For the purposes of this Article:

(a) the expressions "**transfer**", "**transferor**" and "**transferee**" include respectively the renunciation of a renounceable letter of allotment, and any renouncer and renounee of such letter of allotment; and

(b) the expression "**specified price**" means:

(i) in the case of Uncommitted Shares which are Equity Shares, the higher of:

(A) a price per Equity Share at least equal to the highest price payable by the Third Party Buyer or persons acting in concert with him or connected with him for any Equity Shares plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of the Equity 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 for the Equity Shares Provided always that an equal value shall be attributed to all Equity Shares; and

(B) a price per Share equal to the Issue Price thereof plus a sum equal to any arrears (together with interest) or accruals of the dividends on that Share; and

(ii) in the case of Uncommitted Shares which are A Preference Shares, the amount payable on the redemption of those Shares as if they fell to be redeemed on the date the relevant transfer is completed;

(iii) in the case of Uncommitted Shares which are Preference Shares, a price per Share equal to the Issue Price thereof; and

(iv) in the case of Uncommitted Shares which are Deferred Shares, the sum of £1 for all the Deferred Shares together.

(c) If any part of the specified price is payable otherwise than in cash the Investors may require, as a condition of their acceptance of the offer, to receive in cash on transfer all or any of the price offered for his Uncommitted Shares.

(d) If the specified price or its cash equivalent cannot be agreed within 21 days of the proposed sale or transfer between the Third Party Buyer and Members holding 75 per cent of the class of Shares concerned (excluding the Third Party Buyer and persons acting in concert or otherwise connected with him), it may

be referred to the Valuers by any Member and, pending its determination, such sale or transfer shall have no effect.

17 Prohibited Transfers

17.1 Notwithstanding any other provision of these Articles, no transfer of any Share shall be registered if it is to:

- (a) any infant, bankrupt, trustee in bankruptcy or person of unsound mind; or
- (b) any person who has not executed a Deed of Adherence to, and in the manner required by, the Investment Agreement.
- (c) Notwithstanding any other provision of these Articles, no transfer of any Ordinary Share shall be registered unless a transfer of such proportion (as nearly as possible so as to avoid fractions) of Preference Shares as equates to the proportion of Ordinary Shares is also registered.

18 General Meetings

18.1 The Board shall procure that the annual general meeting in respect of each financial year shall be convened to take place not later than one month after the date of the auditors' report contained in the audited accounts of the Company for the relevant financial year.

18.2 Notice of a general meeting need not be given to any director in that capacity. Regulation 38 shall be modified accordingly.

18.3 Regulation 37 shall be amended by the insertion of the words "or the Investor Director acting alone" after the second word of that regulation.

19 Proceedings at General Meetings

19.1 Regulation 40 shall be amended by the addition at the end of the words "provided that so long as any A Ordinary Share is in issue one such Member shall be a holder of A Ordinary Shares".

19.2 If a meeting is adjourned under regulation 41 because a quorum is not present, and at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the shareholders present shall form a quorum, and regulation 41 shall be modified accordingly.

19.3 Any member having the right to vote at the meeting may demand a poll at a general meeting. Regulation 46 shall be modified accordingly.

19.4 The Chairman shall not be entitled to exercise any second or casting vote. Regulation 50 shall not apply.

19.5 Regulation 54 shall not apply.

19.6 Regulation 62 shall be modified by the deletion in paragraph (a) of the words "deposited at" and by the substitution for them of the words "left at or sent by post or by facsimile transmission to" and by the insertion at the end of the regulation after the word "invalid" of the words "unless a majority of the Board (an Investor Director being part of that majority) resolve otherwise".

19.7 A director shall not be required to hold any share qualification, but nevertheless shall be entitled to attend and speak at any general meeting of the Company and at any separate general meeting of the holders of any class of shares in the capital of the Company.

19.8 Where an ordinary resolution of the Company is expressed to be required for any purpose, a special or extraordinary resolution is also effective for that purpose and where an extraordinary resolution is required, a special resolution is also effective for that purpose.

20 Number of Directors

20.1 The number of directors (other than an Investor Director) shall not be less than two and there shall be no maximum number. Regulation 64 shall not apply.

21 Investor Director

21.1 An Investor Majority may at any one time and on more than one occasion appoint such persons (without limit) as it shall direct to be directors (each such person being designated as an "**Investor Director**" which expression shall, where the context so permits, include a duly appointed alternate of such a director) and at any time and on more than one occasion remove an Investor Director from office.

21.2 Any appointment or removal of an Investor Director shall be in writing served on the Company signed by the Investor Majority appointing such director and shall take effect at the time it is served on the Company or produced to a meeting of the Board, whichever is earlier. Any such appointment or removal by a corporation may be signed on its behalf by its duly authorised representative.

21.3 Notice of meetings of the Board shall be served on an Investor Director who is absent from the United Kingdom at the addresses for service of notice on each Investor under the Investment Agreement. The third sentence of regulation 88 shall not apply to an Investor Director.

21.4 Upon written request by an Investor Majority the Company shall procure that any Investor Director appointed by the Investor Majority is forthwith appointed as a director of any other member of the Group.

21.5 Regulation 81(e) shall not apply to an Investor Director.

22 Alternate Directors

22.1 The words "approved by resolution of the directors and" in regulation 65 shall not apply to an appointment of an alternate director by an Investor Director but an Investor Director shall not appoint an alternate without the prior consultation with the Board, where circumstances reasonably permit, save where the alternate is an employee or officer of any Investor or ECI Ventures Limited.

22.2 Regulation 66 shall be amended by the insertion between the words "shall" and "be" of the words "(subject to his giving the Company an address within the United Kingdom at which notice may be served upon him)".

22.3 A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.

- 22.4 If an alternate director is himself a director or attends any meeting as an alternate director for more than one director, his voting rights shall be cumulative but he shall only be counted once in deciding whether a quorum is present.

23 Proceedings of Directors

- 23.1 The quorum for the transaction of business of the Board shall be two directors including an Investor Director unless either each Investor Director or an Investor Majority has previously agreed otherwise in writing or there is no Investor Director in office at that time.
- 23.2 Any director or his alternate may validly participate in a meeting of the Board or a committee of the Board by conference telephone or other form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no group which is larger than any other group, where the chairman of the meeting then is.
- 23.3 Save with the consent of each Investor Director:
- (a) the Board shall not delegate any of its powers to a committee other than a Remuneration Committee or an Audit Committee constituted as specified in the Investment Agreement or otherwise with the written approval of the Investors; and
 - (b) meetings of the Board shall not be held outside the United Kingdom.
- 23.4 The chairman of the Board shall not have a second or casting vote at a meeting of the Board. The fifth sentence of regulation 88 shall not apply.
- 23.5 A director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or proposed contract (within the meaning of section 317 of the Act) with the Company shall declare the nature of his interest at a meeting of the Board or of any committee of the Board in accordance with that section. Subject to such disclosure, a director may vote at any such meeting on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the Company. Provided that a director on the Remuneration Committee may not at a meeting of such Committee vote on any item concerning his own office, remuneration or benefits or in which he has a direct interest nor be counted in determining the quorum on such matter. Regulations 94 and 95 shall not apply.

24 Retirement of Directors

- 24.1 Directors shall not be required to retire by rotation. Regulations 67 and 78 shall be modified accordingly. Regulations 73 to 77, the last two sentences of regulation 79, regulation 80 and the last sentence of regulation 84 shall not apply.
- 24.2 The office of a director (other than an Investor Director) shall be vacated if both:
- (a) (being an executive director) he is no longer employed by any member of the Group; and

(b) a majority of the Board (including each Investor Director) so requires.

Regulation 81 shall be extended accordingly.

25 Notices

- 25.1 Any notice to be given to the Company pursuant to these Articles shall be sent to the registered office of the Company or presented at a meeting of the Board.
- 25.2 Any notice to be given pursuant to these Articles may be given by facsimile transmission to the facsimile number maintained at the relevant address of the addressee. Such a notice shall be conclusively deemed to have been properly given at the time shown on the transmission report received by the sender.
- 25.3 The figure "24" shall be inserted in substitution for the figure "48" in the second sentence of regulation 115. Any notice or other document delivered or left at a registered address otherwise than by post shall be deemed to have been served or delivered on the day it was so delivered or left.

26 Indemnity

- 26.1 Subject to the provisions of the Act, but without prejudice to any other indemnity to which the person concerned may otherwise be entitled, every director, alternate director, auditor, secretary or other officer of the Company shall be entitled to be indemnified by the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties or the exercise of his powers or otherwise in relation thereto. Regulation 118 shall be extended accordingly.
- 26.2 The Directors may exercise all the powers of the Company to purchase and maintain for every director or other officer insurance against any liability for negligence, default, breach of duty or breach of trust or any other liability which may be lawfully insured against.

27 Share Certificates

- 27.1 Share certificates need not be sealed with the seal and the Company may execute any share certificate, warrant or other document creating or evidencing any security allotted by the Company or any right or option to subscribe granted by the Company under the hand of two Directors or one Director and the Company Secretary. Regulation 6 of Table A shall be amended accordingly.

28 Relationship to the Facility

- 28.1 The provisions of the Articles and in particular Articles 3 to 6 (inclusive) are subject to the following provisions of this Article 28.
- 28.2 Notwithstanding any other provisions of these Articles no payment shall be declared or made by the Company by way of dividend or other distribution, purchase, redemption, reduction or return of shares or capital or by addition to or repayment of any dividend reserve if and to the extent that such payment is prohibited or restricted by the terms of the Facility. No dividends or other distributions payable in respect of shares, whether pursuant to the provisions of these Articles or otherwise shall constitute a debt enforceable against the Company unless permitted to be paid in accordance with the

Facility (but without prejudice to the accrual of interest for late payment in accordance with the terms of these Articles).

- 28.3 Where any dividend or redemption payment is not made because of the provisions of Article 28.2 such dividend shall be paid or redemption payment made upon the necessary consent being obtained or the prohibition thereon ceasing to apply.

Appendix

Calculation of Actual Investment Return

- 1 In this paragraph and Article 7:
 - 1.1 "Investment" means:
 - (a) £855,000 (total issue price) of A Ordinary Shares issued on the Commencement Date;
 - (b) £9,980,000 (total issue price) of A Preference Shares issued on the Commencement Date.
- 2 In these Articles "**Cash Equivalent**" shall mean:
 - 2.1 where the consideration comprises listed securities, the average of the middle market prices at which transactions took place over the 5 dealing days prior to the Exit Date;
 - 2.2 where the consideration comprises loan notes, loan stock or other debt instruments guaranteed unconditionally by an Authorised Bank (as defined by the Banking Act 1987) the face value thereof;
 - 2.3 where the consideration comprises unlisted securities or other instruments not guaranteed as aforesaid, such amount as the Members shall agree to be the value thereof;
 - 2.4 where the consideration comprises future, fixed or contingent payments, such amount as the holders of A Ordinary Shares and Ordinary Shares shall agree.