

Company Number: 4419913



**THE COMPANIES ACTS 1985 & 1989**

**A PRIVATE COMPANY LIMITED BY SHARES**

**WRITTEN RESOLUTIONS**

**- OF -**

**SECKLOE 111 LIMITED ("the Company")**

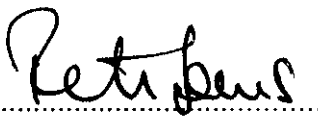
I the undersigned being as of today's date the registered holder of the only issued share of the Company do in accordance with Regulation 53 of Table A to the Companies Act 1985 ("the Act") hereby RESOLVE as follows:

**WRITTEN RESOLUTIONS**

1. THAT the 9,999 authorised but unissued shares and the 1 issued share of £1 each in the capital of the Company be respectively sub-divided into 99,990 and 10 shares of 10 pence each.
2. THAT the authorised share capital of the Company be increased from £10,000 to £23,124.40 by the creation of 73,433 Ordinary Shares of 10p each and 57,811 Preferred Ordinary Shares of £1 each with the rights but subject to the restrictions set out in the Articles of Association of the Company to be adopted pursuant to Resolution 3 and that the Memorandum of Association be altered accordingly.
3. THAT the directors of the Company from time to time be generally and unconditionally authorised to allot and dispose of or grant options over the Company's share capital up to the authorised share capital of the Company (as increased by Resolution 2) at any time or times during the period of five years from

the date of this Resolution;

4. THAT the regulations contained in the accompanying document be and they are hereby adopted as the Articles of Association of the Company in substitution for and to the exclusion of the existing Articles of Association.
5. THAT the directors of the Company from time to time be empowered pursuant to section 95 of the Act to allot the above shares in the capital of the Company pursuant to the authority conferred by Resolution 4 above as if sections 89(1) and 90(1) and (6) of the Act did not apply to such allotment.

  
.....

P D Jones

DATED:.....<sup>25th</sup> July 2002

Ref

**ARTICLES OF ASSOCIATION**  
(adopted on 25th July 2002)

of

**SECKLOE 111 LIMITED**  
**Incorporated on: 18<sup>th</sup> April 2002**  
**Registered number: 4419913**

**emw<sup>law</sup>**  
Seckloe House  
101 North 13th Street  
Milton Keynes  
MK9 3NX

ARTICLES OF ASSOCIATION  
(adopted on 25th July, 2002)

of

SECKLOE 111 LIMITED

**1. INTERPRETATION**

1.1 Subject as provided in Article 1.2, the regulations contained in Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No 805) ("Table A") shall, together with the following provisions, constitute the articles of association of the Company.

1.2 Regulations numbered 8, 9, 73 to 80 (both inclusive) and 82 in Table A shall not apply to the Company.

1.3 In these Articles:

1.3.1 headings are used for convenience only and shall not affect construction;

1.3.2 unless the context otherwise requires or does not so admit, words and expressions defined in (a) Table A; and (b) the Act (but excluding any statutory modification or re-enactment of either of them not in force on the Adoption Date) shall bear the same meaning;

1.3.3 in the event of there being any conflict or inconsistency with Table A, these Articles shall prevail;

1.3.4 the following words and expressions shall have the following meanings:

the "**Act**": the Companies Act 1985 and every statutory modification or re-enactment of and every statutory instrument relevant to or derived from it or the time being in force

"**Adoption Date**": the date upon which these Articles are adopted by the Company's members

"**Approved Transferees**": as defined in article 5.14

**"Associate"**: as defined in article 7.1.3

**"these Articles"**: these articles of association as amended from time to time (and reference to an "Article" shall be construed accordingly)

**"Bad Leaver"**: a holder of Ordinary Shares who:

- (a) ceases to be employed by a Group Company by reason of Proven lawful termination of employment without notice where it is Proven that the circumstances which gave rise to such termination ("Relevant Termination Event") reduced the value of the Shares by 50% or more provided always that if the Company does not issue proceedings to establish whether the holder of Ordinary Shares is a Bad Leaver within six months of the Relevant Termination Event then such holder shall not be a Bad Leaver under the provisions of this sub-paragraph (a); or
- (b) ceases to be employed by a Group Company for any reason and there is a Proven breach by that person of clause 6.1.3 of the Shareholders Agreement provided always that if the Company does not issue proceedings to establish whether there has been a breach of clause 6.1.3 of the Shareholders Agreement within thirteen months of the Cessation Date if the cessation occurs by reason of the Leaver's own volition or within seven months of the Cessation Date if the cessation occurs for any reason other than the Leaver's own volition then such holder shall not be a Bad Leaver under the provisions of this sub-paragraph (b)

**"Bad Leaver Price"**: the price per Share which is the lesser of (a) fair value, as agreed or determined pursuant to Article 5.6; and (b) Issue Price

**"Buyer"**: as defined in Article 7.1.1

**"Cash Equivalent"** means in relation to any consideration payable on deferred terms, the sum agreed between the holders of not less than 50% of the Preferred Ordinary Shares (in issue prior to Conversion) and not less than 50% of the holders of the Ordinary Shares or, failing such agreement, certified by the Valuer as being in their opinion the current value of the right to receive that consideration and, in relation to any consideration payable otherwise than in cash, the sum agreed

between the holders of not less than 50% of the Preferred Ordinary Shares (in issue prior to Conversion) and not less than 50% of the holders of the Ordinary Shares or, failing such agreement, certified by the Valuer as being in their opinion the current market value of that non-cash consideration

**"Controlling Interest"**: as defined in Article 7.1.4

**"Conversion"** means the conversion, without the need for any resolution of the Preferred Ordinary Shares into Deferred Shares in accordance with Article 3.7 (and "Converted" shall be construed accordingly)

**"Deferred Shares"** means deferred shares of one penny each in the capital of the Company having rights as set out in these Articles

**"Directors"**: the directors for the time being of the Company as a body or a quorum of them present at a meeting

**"Disenfranchisement Notice"**: as defined in article 6.10.2

**"Employee Trust"**: any trust established for the purpose of holding Shares for the benefit of any employees of any Group Company

**"Equity Shares"**: Ordinary Shares and Preferred Ordinary Shares

**"Exit"** means the occurrence of a Listing or the completion of Sale

**"Exit Date"** means a date upon which a Listing becomes effective or a Sale is completed

**"Exit Value"** means the Market Capitalisation on Exit

**"Facilities Agreements"**: the overdraft, invoice discounting and VAT refund facilities to be made available on or about the Adoption Date by Barclays Bank plc to the Group, as the same may be varied, supplemented, amended, novated or replaced from time to time

**"Good Leaver"**: a Leaver who is not a Bad Leaver

**"Group Company"**: the Company and any other company which is for the time being a subsidiary undertaking of the Company (and "Group" shall be construed accordingly)

**"Investor"**: as defined in Article 4.5.5

**"Investor Approval"**: the prior consent or approval in writing of an Investor Majority

**"Investor Director"**: as defined in Article 3.5.1

**"Investor Majority"**: the holders of not less than one half of the total number of Preferred Ordinary Shares for the relevant time being in issue

**"Issue Price"**: the price per Share at which the relevant Shares are issued (being the aggregate of the amount paid up or credited as paid up in respect of its nominal value and any share premium) and, in the event that any Leaver or any Associate of any Leaver acquires Shares at different Issue Prices, the Issue Price in relation to the relevant Shares shall be the average of the different Issue Prices (calculated by reference to the number of Shares acquired at the relevant Issue Price)

**"Leaver"**: as defined in Article 6.3

**"Listing"**: the admission of all or any of the Equity Shares to the Official List of the UK Listing Authority or the admission of the same to trading on the Alternative Investment Market of the London Stock Exchange plc or their admission to, or the grant of permission by any like authority for the same to be traded on, any other equivalent or similar share market

**"Loan Notes"**: the series of unsecured variable rate loan notes 2010 in an aggregate nominal amount of £6,450,000 issued by the Company as constituted by an instrument dated on or about the Adoption Date

**"Mandatory Transfer Notice":** as defined in Article 5.5.1

**"Market Capitalisation"** means:

- (a) in the case of Listing, the aggregate market value of the Ordinary Shares and the Preferred Ordinary Shares in issue (on the assumption that Conversion has occurred) determined by reference to the new issue price of any shares to be issued on Listing less in a case where new Shares have been issued on Listing such proportion of market value as shall be equal to the proportion which the total number of new Shares to be issued on Listing will, immediately following their issue, bear to the total number of Ordinary Shares and Preferred Ordinary Shares in issue, or, if there is no new issue, the price at which any Ordinary Shares and Preferred Ordinary Shares are to be placed or offered for sale for the purposes of Listing;
- (b) in the case of a Sale, the aggregate cash consideration payable by the relevant purchasers for the Ordinary Shares and Preferred Ordinary Shares (on the assumption that the entire issued share capital of the Company is acquired by them pursuant to the Sale) plus, to the extent that consideration shall be so payable otherwise than in cash or shall be so payable on deferred terms, the Cash Equivalent of that consideration

**"Members":** the holders for the time being of all of the shares in the capital of the Company of whatever class, and each a "Member"

**"Ordinary Shares":** ordinary shares of 10 pence each in the capital of the Company having rights as set out in these Articles

**"Other Nominees":** as defined in Article 5.9.3

**"Participating Dividend":** as defined in Article 3.1

**"PBT":** as defined in Article 3.1.8

**"Permitted Transfer":** as defined in article 4.2.1



**"Preferred Ordinary Shares":** preferred ordinary shares of 10 pence each in the capital of the Company having the rights set out in these Articles

**"Prescribed Period":** the period referred to in Articles 5.6.2 and 5.7

**"Priority Notice":** as defined in Article 6.4

**"Priority Shares":** as defined in Article 6.5

**"Proposed Transferee":** as defined in Article 5.6.1

**"Proven":** that the matter in question has been determined by a court of competent jurisdiction from which all rights of appeal have been exhausted or extinguished by effluxion of time

**"Relevant Executive"** means a director or employee of, or consultant to, any Group Company

**"Sale"** means any transaction, dealing, sale or disposal the effect of which is that there is a transfer of a Controlling Interest

**"Sale Price":** as referred to in Article 5.5.2 and 5.6

**"Sale Shares":** as defined in Article 5.3

**"Shareholders Agreement":** an agreement dated with the Adoption Date between (1) Peter Jones (2) the Company and (3) Lloyds TSB Development Capital Limited and (4) LDC Co-Investment Plan 2002

**"Shares":** (unless the context does not so admit) shares in the capital of the Company (of whatever class)

**"Substantial Ordinary Shareholding":** as defined in Article 7.1.5

**"Territory":** as defined in the Shareholders Agreement

**"Total Transfer Condition":** as defined in Article 5.5.1

**"Transfer Notice":** as defined in Article 5.2

**"Transferor":** as defined in Article 5.2

**"UK Listing Authority"** means the Financial Services Authority acting in its capacity as the competent authority for the purposes of Part VI of the Financial Services and Markets Act 2000 and in the exercise of its functions in respect of the admission to the Official List

**"Valuer"** means the Company's auditors from time to time (or in the event of their being unwilling or unable to act an independent firm of Chartered Accountants of England and Wales in each case acting as an expert and not as an arbitrator, such firm to be agreed upon by the holders of not less than 50% of the Preferred Ordinary Shares and the holders of not less than 50% of the Ordinary Shares, and in the absence of agreement to be nominated by the President of the Institute of Chartered Accountants in England and Wales upon application by either of the aforementioned)

1.4 In these Articles a Special or Extraordinary Resolution shall be effective for any purpose for which an Ordinary Resolution is expressed to be required under any provision of these Articles or the Act.

1.5 Insofar as Table A shall require that the seal be affixed to any document (including a share certificate) such requirement shall be treated as satisfied if such document is executed as provided in Section 36A(4) of the Act (as in force on the Adoption Date).

## **2. SHARE CAPITAL**

2.1 The authorised share capital of the Company at the Adoption Date is £23,124.40 divided into 173,433 Ordinary Shares and 57,811 Preferred Ordinary Shares.

### **3. SHARE RIGHTS**

3.1 As regards income:

3.1.1 in respect of each financial year of the Company commencing on or after 1<sup>st</sup> May 2004 the profits of the Company for the time being available for distribution shall be applied first in paying to the holders of the Preferred Ordinary Shares as a class a cumulative cash dividend (the "Participating Dividend") of a sum (exclusive of any associated tax credit) of such amount as is equal to five per cent (5%) of PBT for the relevant financial year.

3.1.2 The Participating Dividend (if any) shall accrue from day to day from (and inclusive of) 1<sup>st</sup> May 2004 and shall become payable and be paid not more than 4 months after the end of the financial year to which it relates or not more than 14 days after the annual general meeting at which the accounts of the Company for such financial year are laid before the Members (whichever is the earlier), the first such dividend (if any) to be paid in respect of the financial year of the Company ending 30 April 2005.

3.1.3 Each Participating Dividend shall become due and payable to ipso facto and without any recommendation or resolution of the Directors or the Company in general meeting (and notwithstanding anything to the contrary contained in these Articles). Each payment of any such dividend shall be accompanied by a certificate for the related tax credit (if any).

3.1.4 The Company shall procure that the profits of any other Group Company for the time being available for distribution shall be paid to it by way of dividend if and to the extent that, but for such payment, the Company would not itself otherwise have sufficient profits available for distribution to pay in full any Participating Dividend.

3.1.5 If the Company is not lawfully able to pay any Participating Dividend in full on its due date for payment then it shall on such date pay the same to the extent that it is then lawfully able and, without prejudice to the respective rights of the holders of the Preferred Ordinary Shares, any amount not so paid shall be paid as soon as the Company is lawfully able to do so.

3.1.6 If any Participating Dividend is (for whatever reason) not paid in full on its due date for payment then, as from such date, interest shall accrue on the amount unpaid at the rate of 3 per cent per annum above the base rate of Lloyds TSB Bank plc from time to time and such interest shall become due (as a charge against the Company)

and be paid at the same time as the amount to which it relates is paid or, if any such amount remains outstanding on 30 May or 30 November in any year, on such half-yearly dates to the extent accrued at that time.

3.1.7 Subject thereto, any profits which the Company may determine to distribute in respect of any financial year shall be applied amongst the holders of the Preferred Ordinary Shares and the Ordinary Shares (pari passu as if the same constituted one class of share).

3.1.8 The expression "PBT" shall mean the consolidated net profit of the Group for the relevant financial year as shown in the audited consolidated profit and loss accounts of the Group for such year subject (insofar as such adjustments shall not already have been made) to the following adjustments:

- (a) if such accounts have not been prepared on the historical cost accounting basis, such adjustments as may be necessary to produce the same result as that which would have resulted if such accounts had been prepared on that basis;
- (b) before taking into account any payment in respect of or provision for corporation tax (including advance corporation tax) (or other tax equivalent to corporation tax in the case of any overseas company) and any other tax (whether of the United Kingdom or otherwise) which may be imposed on or by reference to profits, gains, income or distributions;
- (c) before taking into account any payment in respect of or provision for payment of dividends or other distributions;
- (d) before taking into account any transfer or proposed transfer to reserves;
- (e) before taking into account extraordinary items and exceptional items; and
- (f) before taking into account any amount written off in respect of goodwill or other intangible assets. For the avoidance of doubt goodwill includes the amortisation of commission payments arising as a result of the acquisition of the Global Crossing customer base;
- (g) after any payment of interest whether on the Loan Notes or otherwise.

3.1.9 In the event of any failure to agree PBT for a financial year, then the certificate of the auditors of the Company (or, in the event that an Investor Majority shall so require, the certificate of such other firm of accountants as they shall nominate (provided that the Board has approved such other firm of accountants, such approval not to be unreasonably withheld or delayed)) as to the amount of the PBT shall be conclusive and binding on the Company and its Members. In so certifying the auditors or such other firm of accountants shall:

- (a) in any case where the report of the auditors on any of the relevant accounts contains a qualification, be entitled to make, in addition to the adjustments referred to above, such further adjustments as they may in the circumstances consider appropriate; and
- (b) be deemed to be acting as experts not as arbitrators and the provisions of the Arbitration Act 1996 (as from time to time amended) shall not apply. The charges of the auditors (or such other firm of accountants) in providing any such certificate shall be borne by the Company.

3.2 As regards capital:

3.2.1 On a return of assets on liquidation, reduction of capital or otherwise, the surplus assets of the Company remaining after payment of its liabilities (including any interest payable pursuant to Article 3.1.6) shall be applied:

- (a) first in paying to the holders of the Preferred Ordinary Shares an amount equal to the subscription price (inclusive of any premium) paid for such shares together with a sum equal to all arrears and accruals of Participating Dividends thereon to be calculated down to the payment date and to be payable irrespective of whether or not such dividend has been earned;
- (b) next in paying to the holders of the Ordinary Shares an amount equal to the subscription price (inclusive of any premium) paid for such shares; and
- (c) subject thereto, the balance of such assets shall belong to and be distributed amongst the holders of the Ordinary Shares and the Preferred Ordinary Shares *pari passu* as if the same constituted one class of share PROVIDED THAT once the holders of the Ordinary Shares and the Preferred Ordinary Shares shall have received (pursuant to this Article 3.2.1(c)) the sum of £1,000,000 per share, the holders of any Deferred Shares shall be entitled to a payment of 1 pence per Deferred Share after which the balance of such assets shall be distributed amongst the holders of the Ordinary Shares and the Preferred Ordinary Shares *pari passu* as if the same constituted one class of share.

3.2.2 For the avoidance of doubt, the provisions of Article 3.2.1 shall not apply to a Sale.

3.3 As regards voting:

3.3.1 Preferred Ordinary Shares and, subject to Articles 3.3.3 and 3.3.5 below the Ordinary Shares shall respectively confer on each holder thereof (in that capacity) the right to receive notice of and to attend, speak and vote at all general meetings of

the Company.

3.3.2 If at the date of the meeting (which must be called on 21 days notice following a Breach Event) either:

- (a) any Participating Dividend has become due for payment and has not been paid in full on the due date for payment and is still outstanding at the date of the meeting in question; or
- (b) all or any part of the principal amount of the Loan Notes, or any interest thereon, has become due for repayment or payment and has not been paid in full on the due date for payment and is still outstanding at the date of the meeting in question; or
- (c) the Facilities Agreements or any of them have been terminated by Barclays Bank plc for breach and a replacement facility or (as the case may be) replacement facilities have not been put in place within four weeks of termination; or
- (d) a material breach other than by an Investor has occurred of the Shareholders Agreement or these Articles which breach (if capable of remedy) has not been remedied or waived within 14 days of notice to the Company from an Investor Majority requiring it to be remedied; each of (a), (b), [c] and (d) above a "Breach Event".

then each holder of Preferred Ordinary Shares shall be entitled at such meeting (in that capacity) on a poll to exercise 17 votes for every Preferred Ordinary Share of which he is the holder. This right shall only subsist for so long as the Breach Event remains outstanding.

3.3.3 Subject to Article 3.3.5 below, any Ordinary Shares held by or on behalf of any person who has ceased to be a Relevant Executive shall have the following voting rights:

- 3.3.3.1 in respect of such number of Ordinary Shares as shall comprise 26% of the number of Shares in issue from time to time originally held by the Relevant Executive, the right to receive notice of and to attend, speak and vote at general meetings shall vest with the non-executive directors of the Company (excluding the non-executive chairman and the Investor Director) or (if there are no such non-executive directors appointed at the relevant time) with the non-executive chairman or (if there is no such non-executive chairman appointed at the relevant time) with the executive directors of the Company ;

3.3.3.2 in respect of the balance of Ordinary Shares originally held by that Relevant Executive there shall be no right to receive notice of or attend, speak and vote at general meetings of the Company save in respect of a resolution to modify or vary the rights attaching to the Ordinary Shares or to the Preferred Ordinary Shares in respect of which there shall be a right to receive notice of, attend, speak and vote at the general meeting or that part of a general meeting at which such a resolution was proposed;

provided that if there is more than one holder of Ordinary Shares to which this Article 3.3.3 applies then the rights given by this Article shall, as between them, operate on a pro-rata basis.

3.3.4 The Deferred Shares shall not confer on the holders thereof any right to vote at any general meeting of the Company.

3.3.5 Any Ordinary Shares that do not from time to time have the right to receive notice of and to attend, speak and vote at general meetings of the Company in accordance with Article 3.3.3 above shall have all such rights restored following a Listing or Sale or the transfer of a Substantial Ordinary Shareholding pursuant to the provisions of Articles 5, 6 and 7 or the transfer of any such Shares in accordance with the provisions of a Priority Notice served under Article 6.

3.4 As regards class consents:

3.4.1 Except with Investor Approval:

- (a) no Group Company shall modify or vary the rights attaching to any class of its shares;
- (b) no Group Company shall vary or permit any variation in its authorised or issued share capital or grant any option or other rights to subscribe for shares or securities convertible into shares in its capital;
- (c) no Group Company shall pass any resolution for reducing its issued share capital or the amount (if any) for the time being standing to the credit of its share premium account or capital redemption reserve or for reducing any uncalled liability in respect of partly paid shares;
- (d) no Group Company shall purchase or redeem any of its shares;
- (e) no Group Company shall transfer any profits to reserves or otherwise take any action (excluding any payment of dividends to the Company or as required to pay any Participating Dividend) which will or may reduce the amount of its

profits available for distribution;

- (f) no Group Company shall capitalise any profits (whether or not the same are available for distribution and including profits standing to any reserve) or any sum standing to the credit of its share premium account or capital redemption reserve;
- (g) no Group Company shall dispose of all or any part of, or any interest in, the shares or securities convertible into shares or any right to acquire shares or securities so convertible of any other Group Company;
- (h) no Group Company shall allot or issue shares or debentures or loan stock or create any right to any such allotment or issue;
- (i) no Group Company shall dispose of the whole or a substantial part of its business, undertaking or assets;
- (j) no Group Company shall alter its memorandum or articles of association;
- (k) no resolution for the winding-up of a Group Company shall be passed (unless a licensed insolvency practitioner shall have advised that such company is required to be wound up by reason of having become insolvent); and
- (l) no Group Company shall suspend or relax any provision of its articles of association which prohibit a Director from voting at a meeting of Directors or of a committee of Directors in certain circumstances.

3.5 As regards appointment of Directors:

3.5.1 The holders of the Preferred Ordinary Shares shall be entitled from time to time to appoint a person as a non-executive Director of the Company and to remove any such person from office (the "Investor Director").

3.5.2 Any person or persons for the time being holding Preferred Ordinary Shares and entitled to exercise (whether by virtue of such holding(s) of Preferred Ordinary Shares and/or any other holding(s) of Shares of any other class or classes) one half or more of the total number of votes which can then be cast on a poll at any general meeting of the Company may from time to time (for so long as he or they remain so entitled) remove any or all of the Directors (save that Peter Jones may not be removed whilst he remains a Relevant Executive) and/or appoint any person or persons as a Director or Directors of the Company.

3.5.3 Any such appointment or removal as is referred to in Articles 3.5.1 or 3.5.2 shall be made by notice in writing to the Company and/or the relevant Group Company signed, in the case of an appointment or removal made pursuant to Article 3.5.1, by



or on behalf of an Investor Majority and, in the case of an appointment or removal made pursuant to Article 3.5.2, by or on behalf of such person or persons as are first referred to therein and served, in each case, upon the Company at its registered office.

3.5.4 Notwithstanding any provision of these Articles, any person appointed as a Director pursuant to Article 3.5.1 may appoint such person as he thinks fit to be his alternate Director.

3.6 As regards quorums:

3.6.1 No meeting of Members shall be quorate unless those Members present include (whether in person or by a duly authorised representative or a proxy) the holders of not less than fifty per cent (50%) of the Preferred Ordinary Shares for the time being in issue.

3.6.2 Subject to Article 3.6.3 below, save with Investor Approval no meeting of the Directors held at any time when a person appointed pursuant to Article 3.5.1 is in office as a Director of the Company shall be quorate unless such person (or a duly appointed alternate Director of such person) is present at such meeting.

3.6.3 In the event of a quorum not being present for a meeting of the Directors, the meeting shall be adjourned to the same day in the next week at the same time and place and such Directors as may be present at such adjourned meeting shall constitute a quorum.

3.7 As regards Ratchet Arrangements:

3.7.1 Immediately before an Exit the Company shall convert into Deferred Shares a certain number of Preferred Ordinary Shares, in accordance with the following provisions of this Article 3.7.

3.7.2 The number of Preferred Ordinary Shares to be converted shall depend upon the date of the Exit and upon the amount of the Exit Value. If no Exit has taken place

on or before ~~X~~ July 2007 (being five years from the date of adoption of these Articles) no Preferred Ordinary Shares shall be converted into Deferred Shares. If the Exit Value is less than or equal to £40,000,000 then no Preferred Ordinary Shares shall be converted into Deferred Shares. If the Exit takes place on or before ~~X~~ July 2007 and the Exit Value exceeds £40,000,000 then the number of Preferred Ordinary Shares to be converted into Deferred Shares shall be such number of

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Preferred Ordinary Shares as shall be required to be converted to procure that for each Market Capitalisation band shown in the table below the holders of the Preferred Ordinary Shares enjoy on an incremental basis only the percentage of Market Capitalisation shown in the table below:

<b>Market Capitalisation £</b>	<b>% of Market Capitalisation to accrue to holders of Preferred Ordinary Shares on an incremental basis</b>
40,000,0001-50,000,000	20%
50,000,001-60,000,000	15%
60,000,001 +	10%

3.8 General: Subject to the provisions of Article 3.7 all Preferred Ordinary Shares shall be converted (without the need for any resolution) into Ordinary Shares on the occurrence of an Exit.

3.9 For the avoidance of doubt any Conversion of Preferred Ordinary Shares pursuant to Article 3.7 shall be made on the following terms:

3.9.1 conversion shall take effect immediately before (but conditional upon the occurrence of) an Exit at no cost to the holders of the Preferred Ordinary Shares, and the shares to be Converted pursuant to Article 3.7 shall be apportioned rateably (or as near thereto as may be practicable to avoid the apportionment of a fraction of a share) among the holders of the Preferred Ordinary Shares;

3.9.2 the certificate of the Valuer as to the number of Preferred Ordinary Shares to be Converted shall (save in the case of manifest error) be conclusive and binding on the Company and its Members; and

3.9.3 forthwith after Conversion the Company shall issue to the persons entitled thereto certificates for the Deferred Shares resulting from the Conversion and for the remaining Preferred Ordinary Shares, and the holders thereof shall be bound to deliver up to the Company for cancellation the certificates in respect of their pre-conversion holdings of Preferred Ordinary Shares.

3.10 The annexure to these Articles contains examples showing the operation of the provisions contained in Article 3.7. These examples are illustrative only and, in the event of any ambiguity between the provisions of these Articles and the examples the terms of the Articles shall prevail.

3.11 As regards Deferred Shares:

3.11.1 save as provided in Article 3.2.1(c) the holders of the Deferred Shares shall not (in that capacity) be entitled to any participation in the profits or the assets of the Company;

3.12 conversion of Preferred Ordinary Shares into Deferred Shares shall be deemed to confer an irrevocable authority on the Company at any time thereafter to appoint any one or more of the Directors to execute on behalf of the holders of such Deferred Shares a transfer thereof and/or an agreement to transfer the same for no consideration to such holders of the Preferred Ordinary Shares in such proportion as the Directors shall at their absolute discretion determine.

#### **4. SHARE TRANSFERS-GENERAL PROVISIONS**

4.1 In addition to the discretions vested in them pursuant to regulation 24 of Table A, the Directors may refuse to register the transfer of any Share to an individual who is (or whom the Directors reasonably believe to be) under 18 years of age or who does not have (or whom the Directors reasonably believe does not have) the legal capacity freely to dispose of any Share without let, hindrance or court approval.

4.2 Subject to Article 4.7 the Directors shall refuse to register the transfer of any Share unless they are satisfied that such transfer is either:

4.2.1 a transfer permitted under Article 4.5 (a "Permitted Transfer"); or

- 4.2.2 a transfer made in accordance with and permitted under Article 5; or
  - 4.2.3 a transfer made in accordance with Articles 6 or 7; or
  - 4.2.4 a transfer in consequence of the death, bankruptcy or liquidation of a Member where a Transfer Notice has not been deemed to have been given pursuant to the provisions of Article 6.2.
- 4.3 Subject as provided in Articles 4.1 and 4.4 or as required by law, the Directors shall register any such transfer as is referred to in Articles 4.2.1, 4.2.2, 4.2.3 or 4.2.4.
- 4.4 If, in relation to a transfer of a Share, the transferor is a party to any agreement relating to their shareholding between the Company and some or all of its Members (being an agreement additional to these Articles) then the Directors may or, if an Investor Majority so requires, shall:
- 4.4.1 require the transferee of such Share to enter into a written undertaking (in such form as the Directors may with Investor Approval reasonably prescribe) to be bound (to the same extent as the transferor or to such other extent as the Directors and/or an Investor Majority may reasonably stipulate) by the provisions of such agreement; and
  - 4.4.2 decline to register the transfer of such Share unless and until the transferee has entered into such written undertaking in a form acceptable to the Investor Director.
- 4.5 Subject to Articles 4.1, 4.4 and 4.6 and Article 7.2, a Member shall be permitted to transfer the legal title to and/or beneficial ownership of a Share:
- 4.5.1 if the Member is a company, to any holding or subsidiary company of that Member or to any other subsidiary company of any such Member's holding company; or
  - 4.5.2 to a person who is the beneficial owner of such Share or (in the case of the legal title only) to a different or additional nominee or trustee or custodian on behalf of such beneficial owner provided that such person has not become the beneficial owner thereof by virtue of the death of a Member or other than in accordance with the provisions of these Articles;
  - 4.5.3 if the Member is an individual, to an Associate (within the meaning of paragraphs (a) and (b) of the definition of "Associate" contained in Article 7.1.3) of such Member provided that, if the relevant Associate is a trustee of any settlement within such paragraph (b), the terms of such trust shall have been approved by an Investor Majority (such approval not to be unreasonably withheld or delayed); or

- 4.5.4 if the Member is a person whose principal business is to make, manage or advise upon share investments (an "Investor") (or a nominee of such a person or any person to whom any of them may have transferred Shares pursuant to this Article 4.5.5, or any subsequent transferee of such Shares):
- (a) to 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;
  - (b) to any unit holder, shareholder, partner, participant, manager or adviser (or any employee or director of, or any consultant to, any such manager or adviser or of any company which is the subsidiary company, holding company or another subsidiary of the holding company of, or is associated with, such manager or adviser) or to the trustees of any trust of any person of the type referred to in Article 7.1.3(b)) in or of any of the Investors or of any investment fund, collective investment scheme or any co-investment scheme in respect of which Lloyds TSB Development Capital Limited ("LDC") or any of its group companies or entities or the transferor is the manager, adviser or administrator or a nominee or custodian (or of any such fund or scheme which otherwise co-invests with the Investors);
  - (c) to any other investment fund or collective investment scheme managed or advised by LDC or any of its group companies or entities; or
  - (d) to a nominee or custodian of, or to any company which is the subsidiary company, holding company or another subsidiary of the holding company of, the transferor or any of the persons referred to in sub-paragraphs (a), (b) or (c) of this Article 4.5.5);
- 4.5.5 if the Member is LDC, to the LDC Co-Investment Plan 2002 or any nominee or manager or custodian of it (a "Plan Member") and, if the Member is a Plan Member, to LDC;
- 4.5.6 with the prior written consent (which may be subject to terms and conditions) of both (i) an Investor Majority and (ii) the holders of not less than 90 per cent of the aggregate number of Equity Shares for the relevant time being in issue; or
- 4.5.7 to Custodians (as defined Article 6.5.4) pursuant to Article 6.4 and by Custodians in accordance with Article 6.6.
- 4.6 No such Permitted Transfer as is referred to in Articles 4.5.2, 4.5.3 or 4.5.4 may be made in respect of or in relation to any share which for the relevant time being is

the subject of any Transfer Notice or Mandatory Transfer Notice.

- 4.7 Notwithstanding anything contained in these Articles, the Directors shall not decline to register any transfer of shares, nor may they suspend registration thereof where such transfer:-
- 4.7.1 is to any bank or institution to which such shares have been charged by way of security, or to any nominee of such a bank or institution (a "Secured Institution"); or
- 4.7.2 is delivered to the Company for registration by a Secured Institution or its nominee in order to perfect its security over the shares; or
- 4.7.3 is executed by a Secured Institution or its nominee pursuant to the power of sale or other power under such security, and furthermore notwithstanding anything to the contrary contained in these Articles no transferor of any shares in the Company or proposed transferor of such shares to a Secured Institution or its nominee and no Secured Institution or its nominee shall be required to offer the shares which are or are to be the subject of any transfer aforesaid to the shareholders for the time being of the Company or any of them, and no such shareholder shall have any right under the Articles or otherwise howsoever to require such shares to be transferred to them whether for consideration or not.

## **5. SHARE TRANSFERS - PRE-EMPTION PROVISIONS**

- 5.1 Except in the case of a Permitted Transfer, the right to transfer or otherwise dispose of a Share or any interest or right in or arising from a Share (an option, warrant or other right to acquire any Share (whether by subscription, conversion or otherwise) being deemed to be an interest in a Share for this purpose) shall be subject to the provisions contained in this Article and any such transfer or other disposal made otherwise than in accordance with such provisions shall be void.
- 5.2 Subject to the provision of Article 5.5.2 before transferring or otherwise disposing of any Share or any interest or right in or arising from any Share the person proposing to transfer or otherwise dispose of the same (the "Transferor") shall give notice in writing (a "Transfer Notice") to the Company specifying the Shares, interest and/or rights of which the Transferor wishes to dispose. The Transferor shall, contemporaneously with the giving of a Transfer Notice, deliver up and lodge with the Company the share certificate(s) in respect of the relevant shares.

- 5.3 Any holder of Ordinary Shares who has ceased to be a Relevant Executive or who holds these shares as a result of any person ceasing to be a Relevant Executive and any person who becomes entitled to Ordinary Shares in consequence of the death, bankruptcy or liquidation of a Member shall not be entitled to give a Transfer Notice until the date for service by the Directors of a Deemed Transfer Notice shall have elapsed under the provisions of Article 6.3 or (as the case may be) Article 6.2.
- 5.4 Notwithstanding that a Transfer Notice specifies that the Transferor wishes to dispose only of an interest or right in or arising from or attaching to, the Shares referred to therein, the Transfer Notice shall (notwithstanding anything in the Transfer Notice to the contrary) unconditionally constitute the Company the agent of the Transferor in relation to the sale of all the legal title to, beneficial ownership of and all interests and rights attaching to the Shares referred to therein (the "Sale Shares") at the Sale Price (as hereinafter referred to) in accordance with the provisions of this Article. A Transfer Notice shall not be revocable except with the consent of the Directors.
- 5.5.1 Except in the case of a Transfer Notice which a Member is required to give or is deemed to have given pursuant to Article 6 (a "Mandatory Transfer Notice") but subject to the provisions of Article 5.5.2, a Transfer Notice may include a condition (a "Total Transfer Condition") that if all the Sale Shares (of whatever class) are not sold to Approved Transferees (as hereinafter defined), then none shall be so sold.
- 5.5.2 A Transfer Notice served either by a holder of Ordinary Shares who has ceased to be a Relevant Executive or who holds these shares as a result of any person ceasing to be a Relevant Executive or by a person who becomes entitled to Ordinary Shares in consequence of the death, bankruptcy or liquidation of a Member shall only be in respect of all the Shares held by such Shareholder and may include a Total Transfer Condition.
- 5.6 Except in the case of a Mandatory Transfer Notice, the Transfer Notice may state, in addition to details of the Sale Shares:
- 5.6.1 the name or names of a person or persons (such person or persons being hereinafter referred to as the "Proposed Transferee") to whom the Sale Shares (or an interest or right in or arising therefrom) are proposed to be transferred in the event

that the Sale Shares are not acquired by Approved Transferees (as hereinafter defined); and

- 5.6.2 the entire consideration per share for which any such transfer or transfers will be made (and, if any of the said consideration is not a cash price expressed in pounds sterling an amount per share which is so expressed and which is commensurate with the entire consideration). In such event, subject to the Directors being satisfied (and to that end being provided with such evidence as they may reasonably require) that the consideration so stated is a bona fide consideration (not inflated for particular reasons) agreed between the Transferor and the Proposed Transferee at arms' length and in good faith, such consideration shall be the Sale Price and the Prescribed Period shall commence on the date on which the Transfer Notice is given and shall expire 60 days thereafter.

- 5.7 In the case of a Mandatory Transfer Notice or a Transfer Notice which does not state the further details referred to in Article 5.6 then, subject always to Article 6.3:

- 5.7.1 if, not more than 30 days after the date on which the Transfer Notice was given or was deemed to be given (or such longer period (if any) as the Directors with Investor Approval may, prior to the expiry of such period of 30 days, determine to allow for this purpose), the Transferor and the Directors shall have agreed a price per Share as representing the fair value of the Sale Shares or as being acceptable to the Transferor and not more than the fair value thereof then such price shall be the Sale Price and the Prescribed Period shall commence on the date on which such agreement is reached and shall expire 60 days thereafter; or

- 5.7.2 failing such agreement, upon the expiry of 30 days (or such longer period (if any) as aforesaid) after the date on which the Transfer Notice was given or was deemed to be given the Directors shall instruct the auditors for the time being of the Company to determine and report to the Directors the sum per Share considered by them to be the fair value of the Sale Shares and the sum per Share so determined and reported shall be the Sale Price and the Prescribed Period shall commence on the date on which the auditors shall so determine and report and shall expire 60 days thereafter.

- 5.8 For the purposes of Article 5.7, the auditors shall act as experts and not as arbitrators and (save only for manifest error) their determination shall be final and binding upon the Company and all Members. The costs and expenses of the



auditors in relation to the making of their determination shall be borne by the Company unless the Sale Price as so determined is the same as, or substantially the same as, that (if any) which the Directors had notified to the Transferor as being in their opinion the Sale Price, in which event such costs and expenses shall be borne by the Transferor). For the purposes of Article 5.7 and this Article, the fair value of Sale Shares shall be the market value thereof as at the date when the relevant Transfer Notice or Mandatory Transfer Notice was given or deemed to have been given (as the case may be) as between a willing buyer and a willing seller at arms' length but with no discount being made by reason of such Shares (if such be the case) constituting a minority holding (and the auditors shall be instructed accordingly).

- 5.9 Subject as provided in Articles 5.10 and 6.4, Sale Shares shall be offered for sale to all the Members of the Company for the relevant time being holding Preferred Ordinary Shares and Ordinary Shares but so that:
  - 5.9.1 if and to the extent that the Sale Shares consist of Preferred Ordinary Shares the holders for the time being of Preferred Ordinary Shares (other than the Transferor or any Associate of the Transferor) shall have a prior right to purchase the same ahead of the holders of Ordinary Shares; or
  - 5.9.2 if and to the extent that the Sale Shares consist of Ordinary Shares, the holders for the time being of Ordinary Shares (other than the Transferor or any Associate of the Transferor) shall have a prior right to purchase the same ahead of the holders of Preferred Ordinary Shares;
  - 5.9.3 Sale Shares may also be offered to such person or persons (if any) as the Directors (with Investor Approval) think fit ("Other Nominees") provided that any such offer is made upon the condition that such Sale Shares shall only be available for purchase by such person or persons if and to the extent that such Shares are not acquired by holders of Preferred Ordinary Shares and/or Ordinary Shares following acceptance of such offers as are referred to in Articles 5.9.1 and 5.9.2.
- 5.10 The Company shall not be required to, and shall not, offer any Sale Shares to the Transferor, any Associate of the Transferor or any person who remains a Member but who has been deemed to have given a Mandatory Transfer Notice on or prior to the date on which any such offer as is referred to in Article 5.9 is made. In addition, if, during the period between the date on which any such offer is made

and (following the acceptance of such offer by a Member) the sale of Sale Shares to such member is completed, such member is deemed to have given a Mandatory Transfer Notice then such member shall be deemed not to have accepted such offer and the relevant Sale Shares shall be re-offered for sale (at the same Sale Price per share and as if such price had been determined on the date on which the Mandatory Transfer Notice is deemed to have been given).

5.11 Any such offer as is required to be made by the Company pursuant to Article 5.9 shall prescribe a time limit (not being less than 14 days or (unless an Investor Majority otherwise agrees or directs) more than 21 days) after such offer is made within which it must be accepted or, in default, will lapse. Following any such offer, if acceptances are received in respect of an aggregate number of Shares in excess of that offered, the number of Sale Shares shall be allocated according to the class of the Sale Shares on the following basis of priority:

5.11.1 if the Sale Shares are Preferred Ordinary Shares (subject in each case as provided in Article 5.10) first to the other holders of Preferred Ordinary Shares, next to the holders of Ordinary Shares and next to Other Nominees (if any); or

5.11.2 if the Sale Shares are Ordinary Shares (subject in each case as provided in Article 5.10) first to the other holders of Ordinary Shares, next to the holders of the Preferred Ordinary Shares and next to Other Nominees (if any).

5.12 If, by virtue of the application of the provisions in Article 5.11, acceptances are received from any such class as therein referred to in respect of an aggregate number of Shares which is in excess of that offered then the number of Sale Shares shall be allocated amongst those who have accepted the same in proportion to the number of Shares of the relevant class held by each acceptor (or in the case of Other Nominees on such basis as the Directors (with Investor Approval) shall determine) provided that no acceptor shall be obliged to acquire more Sale Shares than the number for which he has applied and so that the provisions of this Article 5.12 shall continue to apply mutatis mutandis until all Shares which any such acceptor would, but for this proviso, have acquired on the proportionate basis specified above have been allocated accordingly.

5.13 If a Transfer Notice shall validly contain a Total Transfer Condition then any such offer as aforesaid shall be conditional upon such condition being satisfied and no

acceptance of an offer of Sale Shares will become effective unless such condition is satisfied. Subject thereto, any such offer as is required to be made by the Company pursuant to Article 5.9 shall be unconditional.

- 5.14 If, prior to the expiry of the Prescribed Period, the Company shall, pursuant to the foregoing provisions, find Members or Other Nominees ("Approved Transferees") to purchase some or (if Article 5.13 shall apply) all the Sale Shares it shall forthwith give notice in writing thereof to the Transferor and the Approved Transferees. Every such notice shall state the name and address of each of the Approved Transferees and the number of the Sale Shares agreed to be purchased by him and shall specify a place and time and date (not being less than 3 days nor more than 10 days after the date of such notice) at which the sale and purchase shall be completed. Upon the giving by the Company of any such notice as aforesaid the Transferor shall be unconditionally bound (subject only to due payment of the Sale Price) to complete the sale of the Sale Shares to which such notice relates in accordance with its terms.
- 5.15 If a Transferor shall (save only for reason that an Approved Transferee does not duly pay the Sale Price) fail duly to transfer (or complete the transfer of) any Sale Shares to an Approved Transferee, the Directors shall be entitled to, and shall, authorise and instruct some person to execute and deliver on his behalf the necessary transfer and the Company may receive the purchase money in trust for the Transferor and (notwithstanding (if such is the case) that the Transferor has failed to deliver up the relevant share certificate(s)) shall (subject to so receiving the same) cause such Approved Transferee to be registered as the holder of such Shares. The receipt of the Company for the purchase money shall be a good discharge to the Approved Transferee (who shall not be bound to see to the application thereof) and after the Approved Transferee has been registered in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.
- 5.16 If the Company shall not, prior to the expiry of the Prescribed Period, find Approved Transferees willing to purchase some, or, if the relevant Transfer Notice validly contains a Total Transfer Condition, all the Sale Shares, it shall give notice in writing thereof to the Transferor and the Transferor, at any time thereafter up to the expiration of 60 days from the date of such notice, shall, (subject as provided

below) be at liberty to transfer those of the Sale Shares not purchased by Approved Transferees or all the Sale Shares (as the case may be) to the Proposed Transferee or, where the Transfer Notice did not contain details of a Proposed Transferee, to anyone person on a bona fide sale at any price not being less than the Sale Price. The Directors may require the Transferor to provide evidence to them (to their reasonable satisfaction) that such Shares are being transferred in pursuance of a bona fide sale for the consideration stated in the Transfer Notice without any deduction, rebate, allowance or indulgent terms whatsoever to the purchaser thereof and, if not so satisfied, may refuse to register the instrument of transfer and/or serve a Disenfranchisement Notice with the effect set out in Article 6.10.2 in respect of such Shares as shall have been so sold.

- 5.17 Any Share required to be transferred by a Transferor to an Approved Transferee pursuant to this article shall be transferred free from any mortgage, charge, lien, option or other encumbrance and with the benefit of all rights and entitlements attaching thereto and if, in determining the Sale Price, there was taken into account any entitlement to any dividend which has been paid prior to the date on which the transfer is registered then the Transferor shall be liable to account to the Approved Transferee for the amount thereof (and the Approved Transferee, when making payment for such Share, may set-off such amount against the Sale Price payable).

## **6. SHARE TRANSFERS - FURTHER PROVISIONS**

- 6.1 If any person shall purport to transfer or otherwise dispose of any Share or any interest in or right arising from any Share otherwise than a transfer which the Directors are satisfied is a transfer to which the provisions of Article 4.2 apply, such person and any Associate of such person who is a Member shall, unless and to the extent (if any) that the Directors otherwise determine at the relevant time, be deemed to have given, on the date on which the Directors give notice to such person that they have become aware of the purported transfer or other disposal (or on the date (if any) specified in such notice), a Transfer Notice in respect of all Shares of which such person and any such Associate of such person is then the holder.

- 6.2 If any person becomes entitled to Ordinary Shares in consequence of the death, bankruptcy or liquidation of a Member then (unless the Directors (with Investor Approval) determine otherwise at the relevant time) a Transfer Notice shall be deemed to have been given on the date of notice to that effect given by the Directors in writing to the person concerned in respect of such number of Shares as shall comprise 26% of the number of Shares in issue from time to time (or such lesser number of shares as that person actually holds) held by the Member and any Associate of such Member provided that if the Directors shall not give notice to that effect within 4 months of becoming entitled so to do then no Transfer Notice shall be deemed to have been given.
- 6.3 If at any time any director (not being a director appointed pursuant to Article 3.5) or employee of or consultant to any Group Company shall cease (for whatever reason) to be such a director or employee or consultant and such person and/or any Associate(s) of such person shall be the holder of any Shares, then the Shares held by such person (the "Leaver") and his Associates shall be subject to the following:
- 6.3.1 the date on which the Leaver ceases to be a director of or an employee of or a consultant to a Group Company shall be the "Cessation Date" for the purposes of these Articles provided always that where a Leaver who is an employee of or consultant to a Group Company ceases to be an employee or consultant in circumstances where he has served notice on a Group Company or a Group Company has served notice on him terminating his employment or consultancy (as the case may be) then, if an Investor Majority so notifies the Company in writing, the Cessation Date shall be deemed to be the date of service of such notice;
- 6.3.2 (unless and to the extent that an Investor Majority agrees otherwise at the relevant time) there shall be deemed to have been given on the date of notice to that effect given by the Directors in writing (with Investor Approval) to the person concerned a Transfer Notice in respect of all Shares then owned and/or held by the Leaver and any Associate of the Leaver (if the Leaver is a Bad Leaver) and such number of Shares as shall comprise 26% of the number of Shares in issue from time to time (or such lesser number of shares as that person actually holds (if the Leaver is a Good Leaver) provided that if the Directors shall not give notice to that effect within:-
- 6.3.2.1 thirteen months of the Cessation Date if the cessation occurs by reason of the Leaver's own volition and the Company does not issue proceedings to establish whether the Leaver was a Bad Leaver under

- the provisions of sub-paragraph (b) of the definition of Bad Leaver;
    - or
  - 6.3.2.2 seven months of the Cessation Date if the cessation occurs for any reason other than the Leaver's own volition and the Company does not issue proceedings to establish whether the Leaver was a Bad Leaver under the provisions of sub-paragraph (b) of the definition of Bad Leaver; or
  - 6.3.2.3 4 months of it being established whether or not the Leaver was a Bad Leaver if the Company does issue proceedings to establish whether the Leaver was a Bad Leaver under the provisions of sub-paragraph (a) or (b) of the definition of Bad Leaver;
  - 6.3.2.4 4 months of the Relevant Termination Event if the Company does not issue proceedings to establish whether the Leaver was a Bad Leaver under the provisions of sub-paragraph (a) of the definition of Bad Leaver;
- then no Transfer Notice shall be deemed to have been given;
- 6.3.3 (unless and to the extent that an Investor Majority determines otherwise) if the Leaver is a Bad Leaver the Sale Price of all the Shares the subject of the Transfer Notice shall be the Bad Leaver Price.
- 6.4 If any Transfer Notice is deemed to be given pursuant to Article 6.3, the Company shall forthwith give written notice of such occurrence (such notice to include details of all the Shares to which such Transfer Notice relates) to each holder of Shares. If within 21 days of the giving of such notice by the Company the Directors (with Investor Approval) require, by written notice to the Company (a "Priority Notice") that all or any Shares to which such Transfer Notice relates should:
  - 6.4.1 be offered for sale to the Company; or
  - 6.4.2 be offered for sale to an Employee Trust; or
  - 6.4.3 be offered for sale to any person or persons who is or are (an) existing director(s) and/or employee(s) of a Group Company or a person or persons (whether or not then ascertained) whom in the opinion of the Directors (with Investor Approval) it will be necessary or expedient to appoint as director(s) and/or employee(s) of a Group Company whether or not in place of the person by whom the relevant Transfer Notice was deemed to be given)
- then the provisions of Article 6.5 shall apply.

- 6.5 If a Priority Notice is given, then, in relation to the Shares the subject thereof (the "Priority Shares") the provisions of Article 5.9 shall not apply and the Priority Shares shall, in accordance with the provisions of the Priority Notice:
  - 6.5.1 be offered to the Company for sale; or
  - 6.5.2 be offered for sale to an Employee Trust; or
  - 6.5.3 be offered for sale to the person(s) (and, in the case of more than one, in the proportions) specified in the Priority Notice (conditional, in the case of any prospective director and/or employee, upon his taking up his proposed appointment with a Group Company if not then taken up); or
  - 6.5.4 be offered for sale to not less than two persons designated by the Directors (with Investor Approval) ("Custodians") to be held (in the event of their acquiring the Priority Shares by share transfer) on and subject to the terms referred to in Article 6.6; or
- 6.6 If Custodians become the holders of Priority Shares following the transfer of Priority Shares to them, then, (unless and to the extent that the Directors with Investor Approval otherwise agree from time to time) they shall hold the same on, and subject to, the following terms:
  - 6.6.1 they may exercise the voting rights (if any) for the time being attaching to such Shares as they think fit;
  - 6.6.2 save as directed by the Directors (with Investor Approval), they shall not encumber the same;
  - 6.6.3 they will (subject as provided in Article 6.7) transfer the legal title to such Shares and all such other interests as they may have therein to (and only to) such person or persons and at such time or times and otherwise on such terms as the Directors (with Investor Approval) may from time to time direct by notice in writing to the Custodians PROVIDED THAT the Custodians may not be required to enter into any agreement or otherwise take any action if and to the extent that they would or might incur any personal liability (whether actual or contingent) or suffer any personal loss;
  - 6.6.4 if an offer is made to them for the Priority Shares (whether as part of a general offer or otherwise) then they shall seek instructions from the Directors as to what (if any) actions they should take with regard thereto but, in the absence of instructions from the Directors (with Investor Approval) within 14 days of seeking the same, the

Custodians may accept or decline to accept such offer, as they think fit.

- 6.7 The Directors may not without Investor Approval direct the Custodians to transfer all or any Priority Shares other than to a person who is an existing director and/or employee of a Group Company or who has agreed (subject only to Priority Shares being transferred to him) to accept appointment as such a director and/or employee.
- 6.8 If a corporation which is a holder and/or beneficial owner of any Share in the Company ceases to be controlled by the person or persons who were in control of the corporation at the time when the corporation became a Member of the Company, it shall, within 7 days of such cessation of control, give notice in writing to the Company of that fact and unless the Directors (with Investor Approval) determine otherwise at the relevant time there shall be deemed to have been given as from the date on which the Directors become aware of such cessation (however they become so aware) a Transfer Notice in respect of all Ordinary Shares held and/or beneficially owned by such corporation and any Associate(s) of such corporation. For the purposes of this paragraph "control" shall have the same meaning as in section 416 Income and Corporation Taxes Act 1988. The provisions of this subparagraph shall not apply to any change of control of any corporation which holds Preferred Ordinary Shares where the change of control is in respect of the corporations' ultimate holding company and the control of the corporation itself remain unaltered.
- 6.9 If a person in whose favour a Permitted Transfer was made pursuant to article 4.5.4 shall cease to be an Associate of the person by whom such transfer was made then he shall, within seven days of such cessation, give notice in writing to the Company of that fact and unless the Directors (with Investor Approval) determine otherwise at the relevant time there shall be deemed to have been given as from the date on which the Directors become aware of such cessation (however they become so aware) a Transfer Notice in respect of all Shares held by such person (as is first mentioned in this Article) and any Associate of such person.
- 6.10 For the purpose of ensuring that a transfer of Shares is a Permitted Transfer or that no circumstances have arisen whereby a Transfer Notice is required or may be deemed to have been given under any provision of Article 5 or this Article 6, the



Directors may from time to time require any Member or the personal representatives of any deceased Member or any person named as transferee in any transfer lodged for registration or any person who was, is or may be an Associate of any of the foregoing to furnish to the Company such information and evidence as the Directors may think fit regarding any matter which they may deem relevant to such purpose. If such information or evidence discloses that a Transfer Notice ought to have been given in respect of any Shares the Directors may by notice in writing stipulate that a Mandatory Transfer Notice shall as from the date of such notice (or on such future date as may be specified therein) be deemed to have been given by the holders of those Shares and/or their Associates in respect of all or any of such Shares. Failing such information or evidence being furnished to the reasonable satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled:

- 6.10.1 to refuse to register the transfer in question or, in case no transfer is in question, to require by notice in writing to the holder(s) of the relevant Shares that a Transfer Notice be given in respect of all such Shares (and such notice may stipulate that if a Transfer Notice is not given within a specified period then, upon the expiry of such period, a Mandatory Transfer Notice shall be deemed to have been given in respect of all the relevant Shares); and/or
- 6.10.2 to give to the holder(s) of the Shares in question a notice ("a Disenfranchisement Notice") stating that such Shares shall as from the date of such notice no longer confer any right to attend, speak or vote at any general meeting of the Company or at any class meeting or to receive or be entitled to receive any dividend or other distribution until such time as the Directors shall think fit and, as from such date, such Shares shall no longer confer any such rights accordingly.
- 6.11 A Director (not being a director appointed pursuant to Article 3.5.1) shall be regarded as having an interest which is material and which conflicts with the interests of the Company in (and accordingly shall not be entitled to vote in relation to) any matter which requires to be determined or otherwise decided upon by the Directors pursuant to or for the purposes of Articles 4 or 5 or this Article 6 to the extent such matter relates to any Shares held by such Director or any Associate of such Director or in which such Director is otherwise interested.
- 6.12 In any case, where a Mandatory Transfer Notice has been deemed to have been

given by a Member, such Member shall, upon demand by the Company, deliver up to and lodge with the Company, the share certificate(s) in respect of the relevant Shares.

## **7 TRANSFER OF A CONTROLLING INTEREST**

7.1 For the purposes of this Article:

7.1.1 the expression "Buyer" means any one person (whether or not an existing Member) but so that any Associate of any such person shall be deemed to be such person;

7.1.2 the expression "acquire" means to be or become the legal or beneficial owner of Shares (or the right to exercise the votes attaching to Shares), whether directly or indirectly and whether by the issue, transfer, renunciation or conversion of shares or otherwise and whether all at one time or not;

7.1.3 the expression "Associate" means:

- (a) the husband, wife, mother, father, grandmother, grandfather, brother, sister, child (including adopted child) or other lineal descendant of the relevant person;
- (b) the trustees of any settlement (whether or not set up by the relevant person) under which the relevant person and/ or any other Associate of the relevant person is or is capable of being a beneficiary;
- (c) any nominee or bare trustee for the relevant person or any other Associate of the relevant person;
- (d) if the relevant person is a company, any subsidiary or holding company of the relevant person and any other subsidiary of any such holding company;
- (e) any person with whom the relevant person or any Associate of the relevant person is connected, the question of whether any such person is so connected falling to be determined for this purpose in accordance with the provisions of section 839 Income and Corporation Taxes Act 1988; and
- (f) any person with whom the relevant person is acting in concert (such expression to have the same definition and meaning as that ascribed thereto in the City Code on Takeovers and Mergers as for the relevant time being current);

7.1.4 Subject as provided in Article 7.1.6 below, the expression "a Controlling Interest" means Shares (or the right to exercise the votes attaching to Shares) which confer in the aggregate more than 50 per cent of the total voting rights conferred by all the Shares in the capital of the Company for the relevant time being in issue and

conferring the right to vote at all general meetings.

7.1.5 The expression "a Substantial Ordinary Shareholding" means a holding of Ordinary Shares comprising 49% or more of the number of Shares in issue from time to time that has been made the subject of a Transfer Notice pursuant to Article 5 (but not for the avoidance of doubt Article 6) either by a holder of Ordinary Shares who is not a Relevant Executive or by a person who becomes entitled to Ordinary Shares in consequence of the death, bankruptcy or liquidation of a Member.

7.1.6 a person, being a holder of Preferred Ordinary Shares, shall not be deemed to have acquired a Controlling Interest by virtue of the operation of Article 3.3.2.

7.2 Notwithstanding anything to the contrary contained in these Articles, save with Investor Approval, no Buyer shall be entitled or permitted to acquire, and no person shall transfer any Shares (or any interest therein) if, as a result, a Buyer (any Shares or any interest in any Shares held by an Associate of the Buyer being treated as being held by the Buyer for this purpose) would acquire a Controlling Interest or a Substantial Ordinary Shareholding in the Company unless and until the Buyer has first made offers, in accordance with Articles 7.3 and 7.4 to all the holders of all Shares in the Company at the relevant time (of whatever class) (other than the Buyer if he is already such a holder) to purchase from them their entire holdings of Shares in the capital of the Company.

7.3 Each such offer as is referred to in Article 7.2 (an "Offer") must, in respect of each class of the Company's share capital, be in cash or be accompanied by a cash alternative at not less than the highest price paid or agreed to be paid by the Buyer (or his Associates) for shares of that class during the period when the Offer remains open for acceptance or within 12 months prior to its commencement.

7.4 In addition, any Offer must be made in writing, must be open for acceptance and irrevocable for a period of not less than 30 and not more than 60 days, must not save with Investor Approval contain any requirement for any holder of Preferred Ordinary Shares to give any representation, warranties or undertakings other than as to their capacity and capability to sell the relevant Shares and all rights thereto and interests therein free from any option, lien, charge or other encumbrance and must not be subject to any condition save only, if the Buyer so wishes, that acceptances must be received for a specified percentage of all the Shares in respect of which the

Offer is made.

- 7.5 If within 60 days of the making of an Offer, the Buyer has not acquired a Controlling Interest or (as the case may be) a Substantial Ordinary Shareholding then such Offer shall be deemed not to have been made to the extent that the Buyer shall not be entitled to acquire a Controlling Interest or (as the case may be) a Substantial Ordinary Shareholding at any time thereafter unless and until he has made further Offers.
- 7.6 If a Buyer receives (within the period of 60 days referred to in Article 7.5) acceptances of an Offer which will result in the Buyer together with his Associates owning not less than seventy five per cent (75%) of the Preferred Ordinary Shares and seventy five per cent (75%) of the Ordinary Shares then in issue then the Buyer may extend the Offer to the extent that, if within 30 days of the expiry of such period of 60 days, the Buyer gives written notice to those Members who have not accepted the Offer requiring them so to do, then each of such non-accepting Members shall upon the giving of such notice:
- 7.6.1 be deemed to have accepted the same in respect of all Shares held by him in accordance with the terms of the Offer; and
- 7.6.2 become obliged to deliver up to the Buyer an executed transfer of such Shares and the certificate(s) in respect of the same.
- 7.7 If any such non-accepting Member as is referred to in Article 7.6 shall not, within 14 days of becoming required to do so, execute transfers in respect of the Shares held by such Member, then the Directors shall be entitled to, and shall, authorise and instruct such person as they think fit to execute the necessary transfer(s) on his behalf and, against receipt by the Company (on trust for such Member) of the purchase moneys payable for the relevant Shares, deliver such transfer(s) to the Buyer (or its agents) and register the Buyer (or its nominees) as the holder thereof, and after the Buyer (or its nominees) has been registered as the holder the validity of such proceedings shall not be questioned by any person.
- 7.8 In calculating the price at which an Offer is required to be made for the purposes of this article there shall be brought into account any other consideration (in cash or otherwise) received or receivable by any Member or former Member (or any

Associate of such member or former Member) which, having regard to the substance of the relevant transaction as a whole, can reasonably be regarded as part of the consideration paid (or provided) or payable (or to be provided) for the Shares in question.

7.9 Any transfer of a Share (or an interest therein) made, or required to be made, pursuant to Articles 7.6 and/or 7.7 shall be treated as a 'Permitted Transfer' for the purposes of Article 5.1.

7.10 For the purpose of ensuring:

7.10.1 that no Buyer has acquired or may acquire a Controlling Interest or a Substantial Ordinary Shareholding otherwise than as permitted by this article (and to that end for the purpose of determining whether one person is an Associate of another); or

7.10.2 that a price offered or proposed to be offered for any Shares is in accordance with Article 7.3

the Directors or an Investor Majority may from time to time require any Member to furnish to the Company or to one or more of the holders of Preferred Ordinary Shares for the time being such information and evidence as the Directors or an Investor Majority may reasonably think fit regarding any matter which they may deem relevant for such purposes.

## **8 LIEN**

8.1 The Company shall have a first and paramount lien on every Share (whether or not a fully paid Share) for all moneys (whether presently payable or not) payable or otherwise owing by the holder of such Share (or any Associate of such holder) to the Company or any other Group Company in respect of that Share. The Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this article.

8.2 The Company may sell any Shares on which the Company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within 14 Clear Days after notice in writing has been given to the holder of the Share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares

may be sold. The provisions of Article 5 shall apply to any sale of Shares made by the Company pursuant to this article (on the basis that a Mandatory Transfer Notice shall be deemed to have been given upon the expiry of such period of 14 days as is above referred to).

## **9 FORFEITURE**

- 9.1 The provisions of Article 5 shall apply in relation to any proposed sale, re-allotment or other disposal of a Share pursuant to Regulation 20 of Table A (on the basis that a Mandatory Transfer Notice in respect of such Share shall be deemed to be given on such date as the Directors determine for this purpose).

## **10 APPOINTMENT AND RETIREMENT OF DIRECTORS**

- 10.1 The Directors shall have power at any time, and from time to time, to appoint any person (willing to act) to be a Director, either to fill a casual vacancy or as an additional Director.
- 10.2 The Company may by ordinary resolution appoint a person (willing to act) to be a Director either to fill a vacancy or as an additional Director.
- 10.3 No Director shall be required to vacate his office as a Director, nor shall any person be ineligible for appointment as a Director, by reason of his having attained any particular age.

## **11 REMOVAL OF DIRECTORS**

- 11.1 In addition or provided in Regulation 81 of Table A, the office of a Director shall also be vacated if:
- 11.1.1 he is convicted of a criminal offence (other than a minor motoring offence) and the Directors resolve that his office be vacated; or
- 11.1.2 in the case of a person who is also an employee of the Company or another Group Company, he ceases to be such an employee and the Directors resolve that his office be vacated.

## **12 PROCEEDINGS OF DIRECTORS**

- 12.1 The Directors, or a committee of the Directors, may hold meetings by telephone either by conference telephone connection(s) or by a series of telephone conversations or by exchange of facsimile transmissions or electronic mail addressed to the chairman. The views of the Directors, or a committee of the Directors, as ascertained by such telephone conversations or facsimile transmissions or electronic mail and communicated to the chairman shall be treated as votes in favour of or against a particular resolution (as appropriate). A resolution passed at any meeting held in this manner and signed by the chairman shall be as valid and effectual as if it had been passed at a meeting of the Directors (or, as the case may be, of that committee) duly convened and held. Such a meeting shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting is then present.

## **13 INDEMNITY**

- 13.1 Subject to the provisions of the Act, every director, auditor, secretary or other officer of the Company shall be entitled to be indemnified by the Company out of its own funds for all costs, charges, losses, expenses and liabilities incurred by him in the actual or purported execution and/ or discharge of his duties and/ or the exercise or purported exercise of his powers and/ or otherwise in relation to or in connection with his duties, powers or office including (without prejudice to the generality of the foregoing) any liability incurred by him in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as officer or employee of the Company and in which judgment is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omission in which relief is granted to him by the Court.
- 13.2 Without prejudice to the provisions of Article 13.1 above, the Directors shall have the power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time directors, officers, employees or auditors of the

Company or of any subsidiary undertaking of the Company including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/ or discharge of their duties and/or the exercise or purported exercise of their powers and/ or otherwise in relation to or in connection with their duties, powers or offices in relation to the Company or any such subsidiary undertaking.

- 13.3 Subject to the provisions of the Act, a director shall (in the absence of some other material interest as is indicated below) be entitled to vote (and be counted in the quorum) in respect of any resolution concerning any proposal concerning any insurance which the Company is empowered to purchase and/ or maintain for or for the benefit of any directors of the Company provided that for the purposes of this Article 13.3 insurance shall mean only insurance against the liability incurred by a director in respect of any such act or omission by him as is referred to in Article 13.2 above or any other insurance which the Company is empowered to purchase and/ or maintain for or for the benefit of any groups of persons consisting of or including directors of the Company.

#### **14 SUBSIDIARIES**

- 14.1 The Company shall procure that each other Group Company shall comply with those provisions of these Articles which are expressed to apply to a Group Company and that no Group Company shall do or permit to be done any act, matter or thing which if it were done or permitted to be done by the Company would constitute a breach by the Company of any provision of these Articles or would require any consent, approval or sanction under these Articles, unless in such latter case such consent, approval or sanction has first been obtained.



**ANNEXURE TO ARTICLES OF ASSOCIATION OF  
SECKLOE 111 LIMITED (REGISTERED NUMBER 4419913)**

<b>Market Capitalisation on Exit - £ Millions</b>	<b>% of Market Capitalisation to accrue to holders of Preferred Ordinary Shares</b>
£45 M	(25% of £40 M) + (20% of £5 M) = 24.4444%
£55 M	(25% of £40 M) + (20% of £10 M) + (15% of £5 M) = 23.1818%
£65 M	(25% of £40 M) + (20% of £10 M) + (15% of £10 M) + (10% of £5 M) = 21.5385%
£47.5 M	(25% of £40 M) + (20% of £7.5 M) = 24.2105%
£67.5 M	(25% of £40 M) + (20% of £10 M) + (15% of £10 M) + (10% of £7.5 M) = 21.1111%
£85m	(25% of £40m) + (20% of £10m) + (15% of £10m) + (10% of £25m) = 18.8235%
£100m	(25% of £40m) + (20% of £10m)

	+ (15% of £10m) + (10% of £40m) = 17.5%
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