

Company No. 4646508

THE COMPANIES ACTS 1985-1989
PRIVATE COMPANY LIMITED BY SHARES
WRITTEN RESOLUTION
of
VIRTALIS LIMITED ("the Company")

DATED: 9 February 2004



WE, the undersigned, being all the members of the Company entitled to receive notice of and to attend and vote at a general meeting of the Company in respect of the Resolutions set out below do hereby agree to and make the following Resolutions pursuant to section 381A Companies Act 1985 which shall have effect as Special Resolutions and be as valid and effective for all purposes as if the same had been duly passed at a general meeting of the Company duly convened and held:

SPECIAL RESOLUTIONS

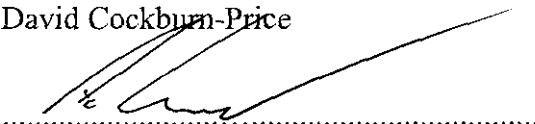
1. That the authorised share capital of the Company be and it is hereby increased from £100,000 to £130,000 by the creation of 30,000 A Ordinary Shares of £1.00 having the rights and being subject to the restrictions for shares of that class as set out in the Articles of Association of the Company to be adopted pursuant to special resolution 4 below.
2. That:
 - 2.1 the Directors of the Company be and they are hereby authorised pursuant to section 80 of the Companies Act 1985 generally and unconditionally to exercise each and every power of the Company to allot relevant securities (as defined in that section) up to a maximum amount in nominal value which when aggregated with the nominal value of all shares in issue on the date of this Resolution shall equal £130,000 such authority to expire 5 years from the date of this resolution;
 - 2.2 the Company be and it is hereby allowed to make before the authority conferred by this Resolution has expired one or more offers or agreements which would or might require relevant securities (as so defined) to be allotted after this authority has expired and the Directors be and they are hereby permitted to allot relevant securities (as so defined) after the authority conferred by this Resolution has expired in pursuance of each and every such offer or agreement made by the Company; and
 - 2.3 the authority conferred by this Resolution be and it is in substitution for each (if any) other authority already given pursuant to the said section 80 and each (if any) such earlier authority is hereby revoked but without prejudice to the

validity of any allotment, offer or agreement made pursuant to any such earlier authority before the date upon which this Resolution is passed.

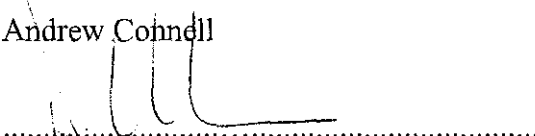
3. That the Directors (being generally authorised by the Resolution numbered 2 above for the purposes of section 80 of the Companies Act 1985) be and they are hereby unconditionally empowered pursuant to section 95 of the Companies Act 1985 to allot or agree to allot the entire unissued share capital of the Company and that the provisions of sections 89 and 90 of the Companies Act 1985 shall not apply to any such allotment or agreement to allot provided that this authorisation shall expire 5 years from the date of this resolution.
4. That the regulations contained in the printed document annexed hereto be and they are hereby adopted as the new Articles of Association of the Company in substitution for and to the exclusion of all the existing Articles of Association of the Company.



David Cockburn-Price



Andrew Connell



David Clark

Company Number 4646508

THE COMPANIES ACT 1985
COMPANY LIMITED BY SHARES

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NEW ARTICLES OF ASSOCIATION
OF
VIRTALIS LIMITED

(as adopted by special resolution passed on 9th Feb 2004)

Examined against original/examined copy in our
possession

Date:
EVERSHEDS LLP

and to report to the

ALL INFORMATION

Company Number 4646508

THE COMPANIES ACT 1985
COMPANY LIMITED BY SHARES
NEW ARTICLES OF ASSOCIATION
VIRTUALIS LIMITED

1. PRELIMINARY

1.1 The regulations contained in Table A as prescribed by the regulations made under the Act in force at the date of adoption of these Articles of Association (hereinafter referred to as "Table A") shall apply to the Company insofar as these Articles do not exclude or modify Table A. Any reference herein to any regulation is to that regulation as set out in Table A.

1.2 In these Articles, the following words and expressions have the following meanings:

"A Ordinary Dividends"	the Fixed Dividend, the Participating Dividend and the Compensatory Dividend
"A Ordinary Shares"	the A Ordinary Shares of £1 each in the capital of the Company
"Act"	the Companies Act 1985 including every statutory modification or re-enactment thereof for the time being in force
"acting in concert"	has, at any time, the meaning set out in the current edition of The City Code on Takeovers and Mergers at that time
"Auditors"	the auditors for the time being of the Company
"Bank Facilities"	means the overdraft facility made available to the Company by HSBC Bank plc pursuant to the Bank Documents
"Banking Documents"	the facility and security documentation relating to the Bank Facilities
"Benefits"	all salary and all sums included as emoluments by paragraph 1(4) of Schedule 6 to the Act
"Board"	the board of Directors of the Company for the time being

"Change of Control"	the acquisition whether by purchase, transfer, renunciation or otherwise of shares in the Company as a result of which any person or persons Connected with each other or persons acting in concert with each other (in each case other than as a result of a transfer permitted under Article 9) would obtain control over that number of shares in the Company which in aggregate confers 50% or more of the voting rights normally exercisable at General Meetings of the Company
"Connected"	has the meaning given by Section 839 of the Income and Corporation Taxes Act 1988
"Directors"	the directors for the time being of the Company or a quorum of such directors present at a duly convened meeting of the directors
"Disposal"	the disposal (by one transaction or a series of transactions) of a substantial part of the business and undertaking of the Company or any of its subsidiaries
"Equity Shares"	the A Ordinary Shares and the Ordinary Shares
"Excess Benefits"	Benefits in excess of £300,000 in aggregate payable in respect of the relevant financial year to the Relevant Executives
"Exit Event"	a Change of Control, a Listing or a Disposal
"Family Trusts"	as regards any particular individual member or deceased member, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the Shares in question is for the time being vested in any person other than that individual and/or Privileged Relations of that individual; and so that for this purpose a person shall be considered to be beneficially interested in a Share if such Share or the income thereof is or may become liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are or may become liable to be exercisable by or as directed by

such person pursuant to the terms of the relevant trusts or in consequence of an exercise of power or discretion conferred thereby on any person or persons

"Group Profit"

the profit of the Group on ordinary activities before tax and before the provision for any dividends, calculated on the historical cost accounting basis adjusted by adding back any amortisation of goodwill and Benefits paid to the Relevant Executives in excess of £300,000 each year

"Investment Agreement"

the investment agreement entered into on or around the date of adoption of these Articles and made between the Company, the Managers (as defined therein) and NWEF

"Investor Majority"

the holder(s) for the time being of more than 75% by nominal value of the issued A Ordinary Shares.

"Issue Price"

means in respect of a share in the capital of the Company, the aggregate of the amount paid up or (credited as paid up) in respect of the nominal value and any share premium

"Listing"

means either:

- (a) the admission by the Financial Services Authority in its capacity as the UK Listing Authority of any of the share capital to the Official List, and such admission becoming effective; or
- (b) the admission by London Stock Exchange plc of any of the share capital to trading on the Alternative Investment Market, and such admission becoming effective; or
- (c) admission of any of the share capital on a recognised investment exchange (within the meaning of section 285 of the Financial Services and Markets Act 2000);

"Member of the same Group"

in relation to a member which is a body corporate any other body corporate which is a group undertaking (as defined by section 259(b) of the Act

“NWEF”	North West Equity Fund Limited Partnership
“Ordinary Shares”	the Ordinary Shares of £1 each in the capital of the Company
“Privileged Relation”	the spouse or widow or widower of the member and the member’s adult children and adult grandchildren (including adult step and adopted adult children and their adult issue)
“Relevant Executive”	a working director and employee or consultant to the Company or any subsidiary undertaking of the Company (but excluding, for the avoidance of doubt, the Investor Director)
“Relevant Member”	a member who is a Relevant Executive or a member who shall have acquired shares of the Company directly or indirectly from a Relevant Executive (including where such shares were subscribed by such member by reason of its relationship with the Relevant Executive)
“Relevant Shares”	(so far as the same remain for the time being held by the trustees of any Family Trusts or by any Transferee Company) the Shares originally acquired by such trustees or Transferee Company and any additional Shares issued to such trustees or Transferee Company by way of capitalisation or acquired by such trustees or Transferring Company in exercise of any right or option granted or arising by virtue of the holding of such Shares or any of them or the membership thereby conferred
“Shares”	the Ordinary Shares and A Ordinary Shares for the time being in issue
“Shareholders”	the holders for the time being of the issued Shares
“Transfer Notice”	a notice in accordance with Article 10 that a member desires to transfer Shares
“Transferee Company”	a body corporate for the time being holding Shares in consequence, directly or indirectly, of a transfer or series of transfers between Members of the same Group (the relevant Transferor company in the case of a series of such transfers being the first transferor in

such series)

2. **SHARES**

- 2.1 At the date of adoption of these Articles, the share capital of the Company is £130,000 divided into:
- 2.1.1 30,000 A Ordinary Shares of £1.00 each;
- 2.1.2 100,000 Ordinary Shares of £1.00 each;
- 2.2 In regulation 8, the words "not being a fully paid Share" shall be omitted. The Company shall have a first and paramount lien on all Shares (whether fully paid or not) standing registered in the name of any person indebted or under liability to the Company (whether he is the sole registered holder thereof or one of two or more joint holders) for all monies presently payable by him or his estate to the Company.
- 2.3 The liability of any member in default in respect of a call shall be increased by the addition of the words "and all expenses that may have been incurred by the Company by reason of such non-repayment" at the end of the first sentence of regulation 18.

3. **ISSUE OF SHARES**

- 3.1 Section 89(1) and sub-sections (1) to (6) of section 90 of the Act shall apply to the Company.
- 3.2 On any allotment of equity securities (as defined in section 94 of the Act) any equity securities offered to a holder of A Ordinary Shares must be in the form of A Ordinary Shares and any offered to the holders of Ordinary Shares must be in the form of Ordinary Shares.

SHARE RIGHTS

4. **DIVIDENDS**

The profits of the Company available for distribution shall be used to pay dividends in the following order or priority:-

- 4.1 First in paying to the holders of the A Ordinary Shares a dividend ("the Fixed Dividend") as follows:
- | | | |
|---------------|---|--|
| Amount | : | 7% of the Issue Price per share per annum |
| Accrual Date | : | accruing from the date of subscription |
| Payment Dates | : | declared and payable half yearly on 28 February and 31 August in each year, the first payment to be made on 31 August 2004 |
- 4.2 Second, in paying to the holders of the A Ordinary Shares as a class in respect of each financial year of the Company a dividend ("the Participating Dividend") as follows:

- Amount : a sum equal to 7% of Group Profit
- Accrual Date : accruing from the date of subscription (the first Participating Dividend will be pro rated to reflect the number of days in the financial year during which the A Ordinary Shares have been in issue)
- Payment Date : not later than 4 months after the end of the relevant accounting period or within 14 days after the audit report on the accounts of the Company for the period is signed by the Company's auditors, whichever is the earlier.

4.3 Third, in paying to the holders of the A Ordinary Shares in respect of each financial year of the Company a dividend ("the Compensatory Dividend") as follows:

- Amount : a sum per share calculated by dividing the Excess Benefits by the number of Ordinary Shares held by Relevant Executives on the last day of the relevant financial year. (if there are no Excess Benefits no Compensatory Dividend is payable)
- Accrual Date : accruing from the date of subscription
- Payment Date : the due date for payment of the Participating Dividend following the end of the relevant financial year..

4.4 Fourth, in paying to the holders of the Ordinary Shares a dividend as follows:

- Amount : such amount as the members may determine in general meeting up to the amount of the Fixed Dividend and Participating Dividend paid on each A Ordinary Share in respect of the last complete financial year
- Accrual Date : dividends do not accrue on Ordinary Shares. Their payment depends on a recommendation by the directors and satisfaction of each of the conditions set out below

Provided always that no dividend shall be payable on the Ordinary Shares in respect of any financial year unless on the proposed payment date each of the following conditions is satisfied:

- 4.4.1 there are no arrears of capital or interest on any loan from NWEF or a holder of any A Ordinary Shares to the Company;
- 4.4.2 there are no arrears of any other dividends;
- 4.4.3 the total amount of all dividends and Excess Benefits paid for the relevant financial year does not exceed one third of the profits of the Company (after tax) for that year;
- 4.4.4 the profits remaining available for distribution after payments of all dividends are in excess of £200,000.

4.5 Once all the foregoing dividends have been paid any remaining profits which the Company may determine to distribute shall, if the holders of 75% of the A Ordinary

Shares agree in writing, be distributed amongst the holders of the Ordinary Shares and A Ordinary Shares (pari passu as if the same were one class of share).

- 4.6 Every dividend shall be distributed to the appropriate shareholders pro rata according to the amount paid up or credited as paid up on the shares held by them respectively and shall accrue on a daily basis (other than on Ordinary Shares which are not cumulative). All dividends are expressed net and shall be paid in cash. The A Ordinary Dividends are cumulative.
- 4.7 Unless the Company has insufficient profits available for distribution and the Company is thereby prohibited from paying dividends by the Act the A Ordinary Dividends shall be paid immediately on the due date. Such payment shall be made notwithstanding regulations 102 to 108 inclusive contained in Table A or any other provision of these articles and in particular notwithstanding that there has not been a recommendation of the directors or resolution of the Company in general meeting. If they are not paid on the due date they shall be a debt due by the Company and shall be payable in priority to any other dividend.
- 4.8 The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time and to the extent that it may lawfully do so declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of the A Ordinary Dividends.

5. RETURN OF CAPITAL

- 5.1 On a return of assets on liquidation or capital reduction or otherwise, the assets of the Company remaining after the payment of its liabilities shall be applied in the following order of priority:

- 5.1.1 first, in paying to the holders of the A Ordinary Shares an amount equal to any arrears and or accruals of the A Ordinary Dividends;
- 5.1.2 second, in paying to the holders of the A Ordinary Shares an amount equal to the Issue Price per share;
- 5.1.3 third, in paying to the holders of the Ordinary Shares, an amount equal to the Issue Price per share; and

the balance of such assets will be distributed amongst the holders of the A Ordinary Shares and Ordinary Shares pari passu as if the same constituted one class of share in proportion to the number of A Ordinary Shares and Ordinary Shares held by them respectively.

6. VOTING

- 6.1 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with this Article (and in particular, Article 6.3), shares in the Company will carry votes as follows:

Ordinary Shares	:	one vote per share
A Ordinary Shares	:	one vote per share

- 6.2 Votes on shares may be exercised:

6.2.1 on a show of hands by every member who (being an individual) is present in person or (being a corporation) is present by a representative (in which case each member holding shares with votes shall have one vote);

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

6.3 In the event that:

6.3.1 any dividend payable by the Company on the A Ordinary Shares in accordance with the Articles is not paid on the due date (for whatever reason); or

6.3.2 the Company fails to repay either of the Loans (as defined in the Investment Agreement) and/or pay interest on the due date in accordance with the terms of the Loan; or

6.3.3 the Company is in breach of any of the Banking Documents; or

6.3.4 any amount payable by the Company under the Bank Facilities has become payable in advance of its stated payment date; or

6.3.5 there is a persistent or material breach of the Investment Agreement by the Company or any of the Managers:

then the Investor Majority may at any time serve notice in writing upon the Company that the holders of A Ordinary Shares shall have the right to exercise 75% of the total voting rights conferred by the Shares of the Company and the provisions of Article 6.4 will apply.

6.4 In the event that Article 6.3 applies, the Investor Majority shall have power at any time, and from time to time, to appoint any number of persons to be directors of the Company or to remove from office any such persons appointed. Any such appointment or removal shall be made by notice in writing to the Company.

6.5 The voting rights attached to the Shares shall be exercisable at any time after any of the events referred to in the paragraphs of Article 6.3 shall have occurred provided that such voting 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. For the purposes of Article 6.3 only, a payment of dividend or redemption of shares shall be deemed to be due notwithstanding any prohibition or restriction in the Group's Banking Facilities.

7. CLASS RIGHTS

7.1 Whenever the share capital of the Company is divided into different classes of share, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding-up) either (i) with the consent in writing of the holders of more than three-fourths of the issued shares of that class, or (ii) with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of that class. To every such

separate general meeting all the provisions of these articles relating to general meetings of the Company (and to the proceedings at such general meetings) shall apply.

7.2 The rights conferred upon the holders of the A Ordinary Shares shall be deemed to be varied by the Company or any of its subsidiaries:

- 7.2.1 altering its memorandum or articles of association; or
- 7.2.2 varying in any way (whether directly or indirectly) the rights attached to any of the shares for the time being in the capital of the Company; or
- 7.2.3 applying by way of capitalisation any sum in or towards paying up any share or loan capital of the Company; or
- 7.2.4 entering into a contract to purchase any of its shares; or
- 7.2.5 redeeming any of its shares (except as specifically provided for in these articles); or
- 7.2.6 passing a resolution that it be wound up; or
- 7.2.7 appointing or removing its auditors; or
- 7.2.8 altering the accounting reference date; or
- 7.2.9 making any bonus issue of shares or loanstock of the Company;
- 7.2.10 altering, increasing, reducing, sub-dividing or consolidating its authorised or issued share capital; or
- 7.2.11 granting any option or other right to subscribe for shares; or
- 7.2.12 disposing of its undertaking or any substantial part thereof; or
- 7.2.13 disposing of or acquiring any interest in any share in the capital of any company.

TRANSFER OF SHARES

8. GENERAL

- 8.1 Subject to Article 10, Shares may be transferred by transfer in writing in usual common form or in any other form approved by the Directors. The instrument of transfer shall be signed by or on behalf of the transferor and, when the share is not fully paid, shall also be signed by the transferee.
- 8.2 The Directors may in their absolute discretion and without assigning any reason therefor refuse to register any transfer of Shares not fully paid or over which the Company has a lien. The Directors may also refuse to register a transfer of Shares, whether fully paid or not, in favour of more than four persons jointly.
- 8.3 The Directors may decline to recognise any instrument of transfer unless the instrument of transfer is duly stamped and is in respect of only one class of share and is accompanied by the relevant share certificate and such other evidence as the

Directors may reasonably require to show the right of the transferor to make the transfer (and, if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do). All instruments of transfer which are registered may be retained by the Company.

9. PERMITTED TRANSFERS

9.1 Subject to the provisions of this Article 9 but notwithstanding the provisions of Article 10 any Shares (other than any Shares in respect of which the holder shall have been required by the Directors under these Articles to give a Transfer Notice or shall have been deemed to have given a Transfer Notice) may at any time be transferred:

9.1.1 by an individual member (not being in relation to the Shares concerned a holder thereof as a trustee of any Family Trusts) to a Privileged Relation of such member; or

9.1.2 by such individual member to trustees to be held upon Family Trusts related to such individual member; or

9.1.3 by any member being a body corporate (not being in relation to the Shares concerned a holder thereof as a trustee of any Family Trusts) to a Member of the same Group as the Transferor Company

provided that in the case of any transfer under Article 9.1.1 or 9.1.2, the member continues to hold over 50% of the shares held by him as at the date of adoption of these Articles.

9.2 Where shares have been transferred under Article 9.1 to trustees of Family Trusts, the trustees and their successors in office may (subject to the provisions of Article 9.1) transfer all or any of the Relevant Shares:

9.2.1 to the trustees for the time being of the Family Trust concerned on any change of trustees;

9.2.2 to the trustees for the time being of any other trusts being Family Trusts in relation to the same individual member or deceased or former member pursuant to the terms of such Family Trusts or to any discretion vested in the trustees thereof or any other person; or

9.2.3 to the Relevant Member or former member or any Privileged Relation of the Relevant Member or deceased or former member who has thereby become entitled to the shares proposed to be transferred on the total or partial termination of or pursuant to the terms of the Family Trusts concerned or in consequence of the exercise of any such power or discretion as aforesaid.

9.3 If and whenever any of the Relevant Shares come to be held otherwise than upon Family Trusts, except in circumstances where a transfer thereof is authorised pursuant to Article 9.1 to be and is to be made to the person or persons entitled thereto, it shall be the duty of the trustees holding such shares to notify the Directors in writing that such event has occurred and the trustees shall be bound to give a Transfer Notice in respect of the Shares concerned.

- 9.4 If a person to whom Shares have been transferred pursuant to Article 9.1.1 shall cease to be a Privileged Relation, such person shall be bound (unless a majority of the Board with the prior written consent of NWEF so consent) to give a Transfer Notice in respect of the Shares concerned.
- 9.5 If a Transferee Company ceases to be a Member of the same Group as the Transferor Company from which (whether directly or by a series of transfers under Article 9.1.3) the Relevant Shares derived, it shall be the duty of the Transferee Company to notify the Directors in writing that such event has occurred and (unless the Relevant Shares are thereupon transferred to the Transferor Company or a Member of the same Group as the Transferor Company, any such transfer being deemed to be authorised under the foregoing provisions of this Article) the Transferee Company shall be bound (unless a majority of the Board with the prior written consent of NWEF so consent) to give a Transfer notice in respect of the Relevant Shares.
- 9.6 Any A Ordinary Shares may be transferred:
- 9.6.1 to the investment fund for whom such shares are held; or
 - 9.6.2 to another investment fund which is managed or advised by the same manager or adviser as the transferor or by a manager or adviser which is a member of the same group as the transferor's manager or adviser; or
 - 9.6.3 to any unitholder, shareholder, partner or participant in, or manager or adviser (or an officer or employee, past or present, of such partner, manager or adviser) of that investment fund; or
 - 9.6.4 to any custodian or nominee or other person so authorised, to be held solely on behalf of any person referred to in Article 9.6.1, 9.6.2 or 9.6.3 above.
- 9.7 Any 'A' Ordinary Shares may with the consent of NWEF be transferred to any person, body or firm or partnership whose business comprises to a material extent the holding for investment purposes of securities in and/or the provision of debt and other financial facilities to United Kingdom unlisted companies and includes any subsidiary, nominee, custodian or manager used by any such person, firm or partnership to hold such investments or to make available such facilities.

10. **PRE-EMPTION ON TRANSFER**

- 10.1 The right to transfer Shares or any interests in Shares shall be subject to the following restrictions and provisions. References in this Article 10 to Shares or Sale Shares shall include any interest in and grant of contractual rights or options over or in respect of such Shares.
- 10.2 Any Shareholders (the "**Proposing Transferor**") proposing to transfer any Shares (the "**Sale Shares**") other than on the death of the Proposing Transferor, shall be required before effecting, or purporting to effect the transfer, to give a notice in writing to the Company that he desires to transfer the Sale Shares and specifying the price at which he is prepared to sell the Sale Shares in accordance with the following provisions of this Article 10. The Transfer Notice shall constitute the Company his agent for the sale of Sale Shares (together with all rights then attached thereto) during the Prescribed Period (as defined in Article 10.6) to any Shareholders on the basis set out in the following provisions of this Article 10 and shall not be revocable except with the consent of the Directors.

- 10.3 The Sale Shares shall be offered for purchase in accordance with this Article 10.3 at a price per Sale Share (the "**Sale Price**") as agreed between the Proposing Transferor and the Directors (with the approval of NWEF) or, failing such agreement, within 21 days after the date of the Transfer Notice, as determined pursuant to Article 10.4.
- 10.4 If agreement of the Sale Price cannot be reached in accordance with Article 10.3, then the Directors shall within 7 days refer the matter to the Auditors and the Auditors shall within 60 days determine and certify the sum per share considered by them to be the fair value thereof as at the Notice Date. In so determining and certifying, the Auditors shall:
- 10.4.1 not take into account the proportion of the relevant class of shares which the Sale Shares represent;
 - 10.4.2 value the Sale Shares as on an arm's length sale between a willing seller and a willing purchaser;
 - 10.4.3 take into account the provisions of this Article 10;
 - 10.4.4 take into account prospective earnings of the Company and its subsidiaries (the "**Group**") for the then current financial year as shown by the agreed budget for the Group and its current management accounts;
 - 10.4.5 assume that, if the Company is then carrying on business, it will continue to do so;
 - 10.4.6 assume that the Sale Shares can be transferred without restriction.

The Auditors shall act hereunder as experts and not as arbitrators and their determination shall be final and binding on all persons concerned and (in the absence of fraud) they shall be under no liability to any such person by reason of their determination or certificate or by anything done or omitted to be done by them for the purpose thereof or in connection therewith.

- 10.5 The Company shall offer the Sale Shares for purchase at the Sale Price by a written Offer Notice (the "**Offer Notice**") given within 21 days after the Sale Price is agreed or determined under Article 10.4 ("**the Notice Date**") to the persons (other than the Proposing Transferor) who, on the Notice Date, were the registered holders of Shares in the Company on terms that the Sale Shares shall be sold to the acceptors in proportion (as nearly as may be without involving fractions or increasing the number sold to any member beyond that applied for by him) to their existing holdings of Shares (and the shareholding of the Proposing Transferor shall be ignored for the purpose of calculating this proportion). Any Shares which are not accepted pursuant to the offer contained in the Offer Notice will be offered by the Company by a further written notice (the "**Further Notice**") given within 21 days of the Notice Date to those Shareholders whom accepted Shares pursuant to the offer contained in the Offer Notice, such second offer to be in proportion to their holdings of Shares as increased by their acceptance of the offer contained in the Offer Notice (again, for the purpose of calculating the relevant proportion, ignoring the Proposing Transferor's shareholding and also ignoring the shareholdings of any Shareholders who did not accept the offer contained in the Offer Notice pursuant to this Article 10.5).

- 10.6 The period during which the relevant Shareholder may accept the offer contained in the Offer Notice shall commence on the date of the Offer Notice and terminate 14 days thereafter. The period during which a relevant shareholder may accept the offer contained in the Further Notice shall commence on the date of Further Notice and terminate 14 days thereafter. The aggregate of the periods referred to in this Article 10.6 shall be referred to in total as the "**Prescribed Period**".
- 10.7 Any Shares not accepted by any of the members pursuant to the foregoing provisions of this Article 10 by the end of the last day of the Prescribed Period may be offered by the Proposing Transferor to such persons as he may think fit for purchase at a price not less than the Sale Price for a period of three months commencing on the day after the day on which the Prescribed Period terminates.
- 10.8 After the expiry of the Prescribed Period, the Directors shall allocate the Sale Shares in accordance with the acceptances received on the basis set out in Article 10.5. The Directors shall within 7 days of the expiry of the Prescribed Period give notice in writing (the "**Sale Notice**") to the Proposing Transferor and to each accepting Shareholder (each a "**Purchaser**") specifying the name and address of each Purchaser, the number of Sale Shares agreed to be purchased by him and the aggregate price payable for them.
- 10.9 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 (being not less than 3 days nor more than ten days after the date of the Sale Notice) when the Proposing Transferor, upon payment to him by a Purchaser of the Sale Price in respect of the Sale Shares allocated to that Purchaser, shall transfer those Sale Shares and deliver the relevant share certificates to that Purchaser.
- 10.10 If a Proposing Transferor shall fail or refuse to transfer any Sale Shares to a Purchaser(s) hereunder the Directors may authorise some person to execute and deliver on his behalf the necessary transfer and the Company may receive the purchase money in trust for the Proposing Transferor and cause the Purchaser(s) to be registered as the holder(s) of such shares. The receipt of the Company for the purchase money shall constitute a good discharge to the Purchaser(s) (who shall not be bound to see to the application thereof) and after the Purchaser(s) has been registered in purported exercise of the aforesaid powers and validity of the proceedings shall not be questioned by any person. The Company shall not pay the purchase money to the Proposing Transferor until he shall have delivered his share certificate(s) or a suitable indemnity and the necessary transfers to the Company.
- 10.11 Unless otherwise agreed in any specific case by the holders of 75% of the A Ordinary Shares:
- 10.11.1 any Ordinary Shares transferred to a holder of A Ordinary Shares shall automatically on registration become A Ordinary Shares; and
- 10.11.2 any A Ordinary Shares transferred to a holder of Ordinary Shares shall automatically become Ordinary Shares.

11. **COMPULSORY TRANSFERS**

- 11.1 In this Article 11, a "Transfer Event" means in relation to any member:

- 11.1.1 a member who is an individual becoming bankrupt or dying;

- 11.1.2 a member who is or was previously a director or employee of a member of the Group ceasing to hold such office or employment and as a consequence no longer being a director or employee of any member of the Group;
- 11.1.3 a member who is an individual being in persistent or material breach of the Investment Agreement.
- 11.2 Upon the happening of any Transfer Event, the member in question ("the Vendor") and any other member who has acquired Shares from him under a permitted transfer (directly or by means of a series of two or more permitted transfers) shall (unless a majority of the Board with the prior written consent of NWEF resolve otherwise) be deemed to have immediately given a Transfer Notice in respect of all the Shares then held by them and which in the case of a transferee of shares were the Shares received directly or indirectly from the member who is the immediate subject of the Transfer Event ("a 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.
- 11.3 Subject to Article 11.4, the Shares the subject of any Deemed Transfer Notice shall be offered for sale in accordance with Article 10 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 or, if later, the date of notification to the Company by the Investor Director that the relevant event is a Transfer Event;
 - (b) subject to article 11.5, the Sale Price shall be a price per Sale Share agreed between the Vendor, the Board and the Investor Director or, in default of agreement, within 21 days after the date of the Transfer Event, the Fair Value (as defined in article 11.8);
 - (c) a Deemed Transfer Notice shall be irrevocable;
 - (d) the Vendor may retain any Sale Shares for which Purchasers are not found or, after the expiry of the relevant Offer Notice and with the prior written approval of the Investor Director, sell all or any of those Sale Shares to any person (including any member) at any price per Sale Share which is not less than the Sale Price;
 - (e) the Sale Shares shall be sold together with all rights attaching thereto as at the date of the Transfer Event.
- 11.4 Unless the holders of 75% of the A Ordinary Shares agree otherwise, any shares being sold by reason of a transfer under Article 11.1.2 or Article 11.1.3 shall be offered first to the Company within 14 days of the Sale Price being determined. Any shares not sold under this article within 7 days of such offer will be available for sale to the members of the Company in accordance with the provisions of Article 10.
- 11.5 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 11.1.2 shall:

- (a) in the case of a Good Leaver (as defined in article 11.6(a)) be their Fair Value; and
- (b) in the case of a Bad Leaver (as defined in article 11.6(b)), be their Fair Value or, if less, £1 per share.

and 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 11.1.3 shall be the Fair Value or, if less, £1 per share.

11.6 In article 11.5:

- (a) **"Good Leaver"** refers to a person who ceases to be a director or employee of any member of the Group and as a consequence is no longer a director or employee of any member of the Group and such cessation occurs as a result of death or Serious Ill Health provided always that the Board with the prior approval of NWEF, can deem any person a Good Leaver;
- (b) **"Bad Leaver"** refers to any person who ceases to be a director or employee of any member of the Group and as a consequence is no longer a director or employee of any member of the Group and who is not a Good Leaver.

11.7 For the purpose of article 11 the date upon which a member ceases to hold office or employment as described therein shall be:

- (a) where a contract of employment or directorship is terminated by the employer by giving notice to the employee of the termination of the employment or directorship, the date of that notice (whether or not a payment is made by the employer in lieu of all or part of the notice period required to be given by the employer in respect of such termination);
- (b) where a contract of employment or directorship is terminated by the employee by giving notice to the employer of the termination of the employment or directorship, the date of that notice;
- (c) save as provided in article 11.7(a) where an employer or employee wrongfully repudiates the contract of employment and the other accepts that the contract of employment has been terminated, the date of such acceptance;
- (d) where a contract of employment is terminated under the doctrine of frustration, the date of the frustrating event; and
- (e) where a contract of employment or directorship is terminated for any reason other than in the circumstances set out in article 11.7(a) to 11.7(d) above, the date on which the action or event giving rise to the termination occurs.

11.8 **"Fair Value"** for the purposes of these articles means as agreed between the Board (with the approval of NWEF) and the Vendor or, in the absence of agreement within 21 days of the Transfer Event, by the Auditors in accordance with article 10.4.

- 11.9 "Serious Ill Health" for the purpose of these articles means an illness or disability certified by a general medical practitioner (nominated or approved by the Investor Director) as rendering the departing employee permanently incapable of carrying out his role as an employee for the foreseeable future.

12. BRING ALONG OPTION

- 12.1 If the holders of more than 75% of the A Ordinary Shares of the Company (the "Selling Shareholders") shall receive a bona fide offer from a third party to acquire all the Shares held by the Selling Shareholders together with such other number of shares as equals at least 50% of the Equity Shares then, before accepting such offer and within 10 days of receipt of such offer, the Selling Shareholders shall serve a notice (an "Article 12.1 Notice") on all the other Shareholders (the "Remaining Shareholders") specifying in reasonable detail the terms of the offer made by the third party, together with a copy of any written offer received by the Selling Shareholders from that third party provided that an Article 12.1 Notice cannot be served within the date 5 years from the date of adoption of these Articles.
- 12.2 Following service of an Article 12.1 Notice, the Remaining Shareholders shall have the right exercisable by written notice (the "Counter Notice") served on the Selling Shareholders within 28 days of the date of service of the Article 12.1 Notice to acquire all (but not some only) of the Selling Shareholders' Shares from the Selling Shareholders subject to the same conditions (if any) and for the same consideration as offered by the third party.
- 12.3 In the event that the Remaining Shareholders shall fail to serve a notice in accordance with Article 12.2 within the period specified in that Article and/or fail to complete the purchase of the shares held by the Selling Shareholders 28 days thereafter or if the Remaining Shareholders agree to waive their rights under Article 12.2, the Selling Shareholders shall have the Option (the "Bring Along Option") to require all the Remaining Shareholders to transfer all their Shares to the third party purchaser or as the third party purchaser shall direct in accordance with the remaining provisions of this Article 12 and upon the same terms as those on which the third party is to acquire the Selling Shareholders' Shares and, for the avoidance of doubt, the provisions of Article 11 shall not apply to such proposed sale or transfer.
- 12.4 The Selling Shareholders shall exercise the Bring Along Option by giving notice to that effect (a "Bring Along Notice") to all the Remaining Shareholders at any time before the transfer of the Selling Shareholders' Shares to the third party purchaser. A Bring Along Notice shall specify that the Remaining Shareholders are required to transfer all their shares (the "Remaining Shares") pursuant to this Article 12 to the third party purchaser, the price at which the Remaining Shares are to be transferred and the proposed date of transfer. A Bring Along Notice shall be irrevocable unless the third party purchaser refuses to acquire the Remaining Shares on the terms of this Article 12 in which case the Remaining Shareholders shall be under no obligation to sell their Shares to such third party purchaser.
- 12.5 The Remaining Shareholders shall be obliged to sell the Remaining Shares at the price specified in the Bring Along Notice and completion of this sale and purchase shall take place on the same date as the date proposed for completion of the sale of the Selling Shareholders' Shares, unless:

12.5.1 all the Remaining Shareholders and the Selling Shareholders agree otherwise;

and

12.5.2 the date is less than 14 days after the Bring Along Notice, in which case completion shall take place on the 14th day after the Bring Along Notice.

12.6 Each of the Remaining Shareholders shall, on service of the Bring Along Notice, be deemed to have appointed each of the Selling Shareholders severally as his attorney to execute any stock transfer form and to do such other things as may be necessary or desirable to accept, transfer and complete the sale of the Remaining Shares to the third party purchaser pursuant to this Article 12.

13. TAG ALONG

13.1 Subject to Article 10, but notwithstanding any other provisions in these Articles no sale or transfer or other disposition of any interest in the Shares shall have any effect (other than any transfers permitted under Article 9) if it were to result in a Change of Control unless before the transfer is lodged for registration the proposed transferee ("the Third Party Purchaser") has made a bona fide offer in accordance with these Articles to purchase at the Specified Price (as defined below) all the Shares held by Shareholders who are not acting in concert or otherwise are connected with the Third Party Purchaser (the "**Uncommitted Shares**").

13.2 An offer made under Article 13.1 shall be in writing, be open for acceptance for at least 21 days and be deemed to have been 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.

13.3 For the purposes of Article 13:

13.3.1 the expression "**transfer**" includes the renunciation of a renounceable letter of allotment;

13.3.2 "Specified Price" shall mean a price per share equal to the higher of:

13.3.2.1 the subscription price paid for such shares (including any premium and all arrears and accruals of dividends on such shares calculated to the date of sale or transfer); and

13.3.2.2 the highest price per share (exclusive of stamp duty, stamp duty reserve tax and commission) paid or to be paid by any person or persons referred to in Article 13.1 at any time in the previous 12 months period for Ordinary Shares or "A" Ordinary Shares plus such further consideration (in cash or otherwise) received or receivable by the Vendor 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 Vendor's shares, multiplied by the number of Ordinary Shares and "A" Ordinary Shares and apportioned between each class in accordance with the percentage of the Equity Share Capital attributable to each class.

- 13.4 If the specified price or its cash equivalent cannot be agreed within 21 days of the proposed sale or transfer referred to in Article 13.1 between the Third Party Purchaser and Shareholders holding not less than 51% of the Shares (excluding the Third Party Purchaser and any persons acting in concert or otherwise connected with him), it may be referred by any Shareholder to the Auditors who shall determine and certify the sum per share considered by them to be the fair value thereof and, pending such determination, the sale or transfer referred to in Article 13.1 shall have no effect.

14. INFORMATION CONCERNING SHAREHOLDINGS AND TRANSFERS

- 14.1 For the purpose of ensuring that no circumstances have arisen whereby a Transfer Notice is or may be required to be given hereunder, or to be satisfied that any proposed sale is bona fide and on the terms stated in the Transfer Notice with no rebate or allowances, the Directors may from time to time require any member or the legal person representing any deceased member or any person named as transferee in the transfer lodged for registration to furnish to the Company such information or evidence as the Directors may think fit regarding any matter which they may deem relevant to such purpose. Failing such information or evidence being furnished to the satisfaction of the Directors within a reasonable time after such request being made, the Directors shall be entitled to refuse to register the transfer in question or (if no transfer is in question) to require by notice in writing that a Transfer Notice be given in accordance with Article 10 in respect of the Shares concerned.
- 14.2 In a case where the Directors have duly required a Transfer Notice to be given in respect of any Shares and such Transfer Notice is not duly given within a period of one month or such longer period as the Directors may allow for the purpose, such Transfer Notice shall be deemed to have been given on such date after the expiration of the said period as the Directors may by resolution determine and the foregoing provisions of these Articles shall take effect accordingly.
- 14.3 From (and including) the date on which the Directors have duly required a Transfer Notice(s), all holders of Shares subject to such Transfer Notice(s) shall not transfer or encumber any of their Shares or any interest in their Shares (other than pursuant to such Transfer Notice(s)) until all proceedings pursuant to such Transfer Notice(s) have been finalised in accordance with these Articles.

15. PROCEEDINGS AT GENERAL MEETINGS

- 15.1 No business shall be transacted at any general meeting unless the requisite quorum is present at the commencement of the business and also when such business is voted upon. Two Shareholders present in person or by proxy shall be a quorum for all purposes. A corporation being a member shall be deemed to be personally present if represented in accordance with the provisions of section 375 of the Act.
- 15.2 A poll may be demanded at any general meeting by the chairman or by any member present in person or by proxy and entitled to vote. Regulation 46 shall be modified accordingly.
- 15.3 A resolution in writing executed or approved by telefax by or on behalf of the holders of all the issued Shares shall be as valid and effectual as if the same had been duly passed at a general meeting and may consist of several documents in the like form, each executed by or on behalf of one or more persons. In the case of a corporation, the resolution may be signed on its behalf by a director or the secretary

thereof or by its duly appointed attorney or duly authorised representative. Regulation 53 shall be modified accordingly.

- 15.4 Regulation 41 shall be amended by the addition of the following words at the end of that regulation:

"if within half an hour of the time appointed for holding of an adjourned meeting a quorum is not present, the meeting shall be dissolved".

- 15.5 The Chairman at any general meeting shall not be entitled to a second or casting vote.

16. **ALTERNATE DIRECTORS**

- 16.1 Any Director (other than an alternate Director) may at any time by writing under his hand and served on the Company at its registered office, or delivered at a meeting of the directors, appoint any other director, or any other person approved by resolution of the Directors and willing to act, to be an alternate Director and may remove from office an alternate Director so appointed by him. The same person may be appointed as the alternate Director of more than one Director.

- 16.2 An alternate Director shall be entitled:

16.2.1 to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his appointor is a member, save that it shall not be necessary to give notice of such meeting to an alternate Director who is absent from the United Kingdom;

16.2.2 to attend, be counted in the quorum for and vote at any such meeting at which the Director appointing him is not personally present; and

16.2.3 generally at such meeting to perform all the functions of his appointor as a Director in his absence.

If an alternate Director is himself a Director or attends any such meeting as an alternate Director for more than one Director, then his voting rights shall be cumulative.

- 16.3 An alternate Director shall cease to be an alternate Director if his appointor ceases to be a Director; but if a Director retires but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate Director made by him which was in force immediately prior to his retirement shall continue after his reappointment.

- 16.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.

- 16.5 An alternate Director shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Director appointing him, except in relation to matters in which he acted (or failed to act) on the direction or at the request of his appointor.

16.6 Save as otherwise provided in these Articles, an alternate Director shall not have power to act as a Director nor shall he be deemed to be a Director for the purposes of these Articles. However, such an alternate Director shall owe the Company the same fiduciary duties and duty of care and skill in the performance of his office as are owned by a Director.

16.7 An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent mutatis mutandis as if he were a Director but he shall not be entitled to receive from the Company in respect of his appointment as an alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointor such appointor may by notice in writing to the Company from time to time direct.

16.8 Regulations 65 to 69 shall not apply to the Company.

17. **INVESTOR DIRECTOR**

17.1 The members holding a majority of the A Ordinary Shares may from time to time appoint any person to be a director with the title of investor director ("**the Investor Director**") which expression shall, where the context so permits, include a duly appointed alternate of such a director) and from time to time remove the Investor Director from office.

17.2 There shall not be more than one director bearing the title of Investor Director in office at any time.

17.3 Any appointment or removal of the Investor Director shall be in writing served on the Company signed by the members holding a majority of the A Ordinary Shares 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.

17.4 Upon written request by a majority of the holders of the A Ordinary Shares the Company shall procure that the Investor Director is forthwith appointed as a director of any other member of the same Group to any committee of the Board or the board of any member of the same Group.

17.5 Regulation 81(e) shall not apply to the Investor Director.

17.6 NWEF is entitled at its own expense (and in addition to its right to appoint the Investor Director under this Article 17) to send a representative as an observer to attend and speak at any meeting of the Board but any such observer shall have no power to vote.

18. **DIRECTORS**

18.1 The Directors shall not be subject to retirement by rotation. Regulations 73 to 75 and the last two sentences of Regulation 79 shall not apply and Regulations 76, 77, 78 and 80 shall be modified accordingly.

18.2 Without prejudice to the first sentence of Regulation 89, a meeting of the Directors or for a committee of the Directors may consist of a conference between Directors who are not all in one place, but of whom each is able (directly or by telephonic or

audiovisual communication) to speak to each of the others, and to be heard by each of the others simultaneously; and the word "meeting" in these Articles shall be construed accordingly. Any such meeting shall be deemed to take place at the location of the Chairman or, if a Chairman has not been appointed, the location where the majority of Directors are present.

- 18.3 A resolution in writing signed (or approved by telefax) by all the directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held and may consist of several documents in the like form each signed by one or more Directors; but a resolution signed by an alternate Director need not also be signed by his appointor and, if it is signed by a Director who has appointed an alternate Director, it need not be signed by the alternate Director in that capacity. Regulation 93 shall not apply.
- 18.4 A Director may vote at a meeting of Directors or of a committee of Directors 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 he has disclosed to the Directors the nature and extent of any material interest or duty. Regulation 94 shall be modified accordingly.
- 18.5 Regulation 89 shall not apply to the Company. A quorum for all meetings of the Directors shall be two Directors present either in person or by a duly appointed alternate provided that at least one such shall be the Investor Director (if appointed) unless he fails to attend an adjourned meeting of which he has been given proper notice or unless he gives prior written consent for the meeting to proceed in his absence.
- 18.6 The Chairman of the Board shall not be entitled to a second or casting vote.

19. **INDEMNITY**

- 19.1 Without prejudice to any indemnity to which such officer may otherwise be entitled, every Director, auditor, secretary or other officer of the Company shall 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 in relation thereto including any liability incurred by him in defending any proceedings, civil or criminal, which related to anything done or omitted or alleged to have been done or omitted by him as an 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 consequence 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. Regulation 118 shall not apply.
- 19.2 The Company may, to the fullest extent permitted by law, purchase and maintain for any Director, secretary or other officer of the Company insurance against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.