

• , Company No. 4947027

**THE COMPANIES ACTS 1985, 1989 and 2006**

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**A PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

(adopted by special resolution passed on 19 December 2007)

of

**ADVANCED PAYMENT SOLUTIONS LIMITED**

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13/02/2008  
COMPANIES HOUSE

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1. **PRELIMINARY**

- 1.1 The regulations contained in Table A in the Schedule to the Companies (Table A to F) Regulations 1985 in force at the time of adoption of these Articles such Table hereinafter called "**Table A**" shall apply to the Company, save in so far as they are expressly excluded or varied by these Articles and such regulations (save as so excluded or varied) and these Articles shall together constitute the regulations of the Company.
- 1.2 The regulations of Table A numbered 24, 40, 50, 73 to 77 (inclusive), 80, 88, 89, 96, 101 and 118 do not apply to the Company

2. **INTERPRETATION**

- 2.1 In these articles unless the context otherwise requires each of the following words and expressions shall have the following meanings

<b>"Affiliate"</b>	has the meaning given to that term in the Shareholders' Agreement
<b>"A Ordinary Shares"</b>	A Ordinary Shares of 0.001p each in the capital of the Company resulting from conversion of Series A Convertible Preferred Shares pursuant to Article 5 having the rights set out in Article 8
<b>"Auditors"</b>	the auditors to the Company from time to time
<b>"Board"</b>	the board of directors of the Company from time to time
<b>"Business Days"</b>	any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business
<b>"Change of Control"</b>	means the acquisition whether by purchase, transfer, renunciation or otherwise by a Third Party Purchaser of any interest in any shares if, upon completion of that acquisition, that person together with persons acting in concert or connected with him, would hold more than 50 per cent of the voting rights attached to the issued shares
<b>"Companies Act"</b>	Companies Act 1985 (as amended) from time to time
<b>"Companies Act 2006"</b>	Companies Act 2006 (as amended from time to time)
<b>"C Ordinary Shares"</b>	C Ordinary Shares of 0.001p each in the capital of the Company arising from conversion of Series C Convertible Preferred Shares pursuant to Article 4 having the right set out in Article 8
<b>"Employee Trust"</b>	any trust established by the Company for the benefit of employees and/or any of the persons referred to in

	section 743 Companies Act and which has been approved by the Investor Director
<b>“Equity Incentive Plan”</b>	has the meaning given to that term in the Shareholders’ Agreement
<b>“Equity Share Capital”</b>	any Shares in the capital of the Company with voting rights
<b>“Equity Shares”</b>	the issued Series A Convertible Preferred Shares, Series B Preferred Shares, Ordinary Shares, A Ordinary Shares, Series C Convertible Preferred Shares and C Ordinary Shares
<b>“Exit”</b>	a Relevant Sale, Relevant Asset Sale, or a Listing
<b>“Fair Value”</b>	the amount the Independent Financial Expert shall give their opinion in writing as being the price which represents a fair value for an Equity Share as between a willing vendor and a willing purchaser as at the relevant date. In making such determination, the Independent Financial Expert shall not take any account of whether the Equity Shares comprise a majority or a minority interest in the Company nor the fact that transferability is restricted by these Articles (and shall assume that the entire issued share capital of the Company is being sold) but shall take account of the conversion rights of the Series A Convertible Preferred Shares and of the Series C Convertible Preferred Shares contained in these Articles
<b>“Family Member”</b>	the wife or husband (or widow or widower), children and grandchildren (including step and adopted children and grandchildren) of a member of the Company
<b>“Family Trust”</b>	in relation to a member of the Company, a trust which does not permit any of the settled property or the income from it to be applied otherwise than for the benefit of that member or any of his Family Members and under which no power of control over the voting powers conferred by any Ordinary Shares the subject of the trust is capable of being exercised by, or being subject to the consent of, any person other than the trustees or such member or any of his Family Members
<b>“Financial Year”</b>	an accounting period in respect of which the Company prepares its accounts in accordance with the relevant provisions of the Companies Act

<b>“FSMA”</b>	the Financial Services and Markets Act 2000 (as amended from time to time)
<b>“Group”</b>	the Company and its subsidiary undertakings from time to time and references to “member of the Group” and “Group Company” shall be construed accordingly
<b>“holder”</b>	in respect of any share in the capital of the Company, the person or persons for the time being registered by the Company as the holder of that share
<b>“Independent Financial Expert”</b>	an internationally recognised investment banking firm to be appointed by the Company with the consent of the Investor Majority being a firm which does not and whose directors and executive officers or affiliates do not have a direct or independent financial interest in the Company or the Investors and are not advisers to either and which shall act as experts and not arbitrators and whose decision shall (in the absence of manifest error) be final and binding
<b>“Investor”</b>	the meaning given to that expression in the Shareholders’ Agreement
<b>“Investor Director”</b>	a director appointed in accordance with the provisions of Article 23
<b>“Investor Group”</b>	in relation to each Investor <ul style="list-style-type: none"> <li>(a) the Investor, any subsidiary of the Investor, any holding company, parent of the Investor, any general partner of the Investor, any subsidiary of a holding company of the Investor or any limited partnership whose general partner is the general partner of the Investor (each a “<b>Relevant Person</b>”); or</li> <li>(b) any partnership (together with the partners in any such partnership) or limited liability company (together with the members in such limited liability company) of which any Relevant Person is general partner, manager, managing member, consultant, adviser or management company, or</li> <li>(c) any unit trust or other fund of which any Relevant Person is trustee or manager, or</li> <li>(d) any person or firm, authority or organisation (whether or not incorporated) which is the successor in title to, or in whom is vested,</li> </ul>

or by whom responsibility is assumed for the whole or a substantial part of the functions, assets and liabilities of a Relevant Person, or

(e) any co-investment scheme of any Relevant Person; or

(f) any Affiliate of any Investor.

**“Investor Majority”**

Investors holding at least 60% by number of the Series A Convertible Preferred Shares and any A Ordinary Shares issued on conversion of Series A Convertible Preferred Shares taken in the aggregate

**“Issue Price”**

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

**“Listing”**

(a) the admission by the Financial Services Authority in its capacity as the UK Listing Authority of any part of the Equity Share Capital of any member of the Group to the Official List, and such admission becoming effective, or

(b) the admission by London Stock Exchange plc of any part of the Equity Share Capital of any member of the Group to trading on the Alternative Investment Market, and such admission becoming effective, or

(c) the admission of any part of the Equity Share Capital of any member of the Group on a recognised investment exchange and such admission becoming effective; or

(d) the quotation of any Equity Share Capital of any member of the Group on NASDAQ or any other US National Exchange

**“Listing Shares”**

means the issued equity share capital of the Company (including any equity share capital to be subscribed and issued on such Listing and any new shares to be paid up by way of capitalisation of reserves or arising from any sub-division consolidation or conversion of shares)

**“Loan Stock”**

the £7,300,000 loan stock created pursuant to an instrument created by the Company on 22 April 2005

<b>"Major Holder"</b>	a holder of Equity Shares comprising 4 per cent, or more of the issued Equity Share Capital
<b>"Major Investor"</b>	an Investor or a member of the Investor's Group holding Shares comprising (on a fully as converted into A Ordinary Shares or C Ordinary Shares basis) 5 per cent or more of the issued Equity Share Capital
<b>"Ordinary Shares"</b>	the ordinary shares of 0.1p each in the capital of the Company having the rights set out in Article 6
<b>"Person"</b>	has the meaning given to that term in the Shareholders' Agreement
<b>"Premium"</b>	the sum payable to any holders of Series C Convertible Shares (or C Ordinary Shares arising on conversion) calculated in accordance with Article 4 3.2
<b>"Qualifying Listing"</b>	a Listing which offers for sale securities in the Company worth at least £50 million (excluding any new shares to be issued pursuant to such Listing) such securities to be valued at the listing price stated in the prospectus and the proceeds of such Listing available to the Company (prior to settlement of any commissions, fees or underwriter's discounts) of more than £30 million
<b>"recognised investment exchange"</b>	the meaning given to that expression in section 285(1) FSMA
<b>"Relevant Asset Sale"</b>	a sale of the whole or substantially the whole of the trading assets or trading subsidiaries of the Group whether by a single disposal or a series of connected disposals and in the case of a series of connected disposals after the final such disposal all the connected disposals shall be the Relevant Asset Sale
<b>"Relevant Sale"</b>	a sale, transfer or other disposition of the entire issued share capital of the Company to one Person or group of Persons acting in concert
<b>"Remuneration Committee"</b>	the meaning given to that term in the Shareholders Agreement
<b>"Series A Convertible Preferred Shares"</b>	the Series A Convertible Preferred Shares of 0 1p each in the capital of the Company having the rights set out in Article 5
<b>"Series B Preferred Shares"</b>	the Series B Preferred Shares of 0 1p each in the capital of the Company having the rights set out in Article 6

<b>“Series C Convertible Preferred Shares”</b>	the Series C Convertible Preferred Shares of 0 1p each in the capital of the Company having the rights set out in Article 4
<b>“Shareholders’ Agreement”</b>	the subscription and shareholders’ agreement dated 22 April 2005 between the Company (1) Richard Wagner and others (2) and the Investors (3) as amended by a deed of variation dated 30 March 2007
<b>“Shares”</b>	any shares in the capital of the Company from time to time
<b>“Statutes”</b>	the Companies Act as defined in section 2 of the Companies Act 2006 and every other statute, order, regulation, instrument or other subordinate legislation for the time being in force relating to companies and affecting the Company
<b>“Third Party Purchaser”</b>	any person not an original party to the Shareholders’ Agreement or an Affiliate of an original party to the Shareholders’ Agreement
<b>“Warehouse”</b>	any or all of the Company, an Employee Trust or employees of any Group Company in such numbers and proportions of Shares as the Remuneration Committee (as constituted under the Shareholders Agreement) may determine

2 2 Words and expressions defined in or having a meaning provided by the Companies Act (but excluding any statutory modification not in force on the date of adoption of these articles) or the Shareholders’ Agreement will, unless the context otherwise requires, have the same meanings when used in these Articles

2 3 For the purposes of determining whether any rights are available to any such holder, or in respect of the discharge or exercise of any rights pursuant to these Articles, members of an Investor Group may aggregate the shareholdings of all members of the Investor Group, and any such holders may allocate amongst themselves any rights they may be entitled to exercise pursuant to these Articles as they shall determine. Any members of the Investor Group may designate by notice in writing to the Company one person to serve as the representative for such holders and for the purpose of exercising any rights or undertaking any obligations of such group pursuant to these Articles and the Company shall accordingly be entitled to rely upon the exercise by such representative on behalf of such holders for such purposes

## **SHARE RIGHTS**

### **3 AUTHORISED SHARE CAPITAL**

3 1 The authorised share capital of the Company at the date of adoption of these Articles is £3,807 976 divided into 170,000 Series B Preferred Shares of 0 1p each, 1,132,966 Ordinary Shares of 0 1p each, 2,097,034 Series A Convertible Preferred Shares of 0 1p each, and 407,976 Series C Convertible Preferred Shares of 0 1p each



3.2 A Ordinary Shares may be created by conversion of the Series A Convertible Preferred Shares in accordance with Article 5.5 and the rights attaching to those share classes are set out in these Articles

3.3 C Ordinary Shares may be created by conversion of the Series C Convertible Preferred Shares in accordance with Article 4.5 and the rights attaching to those share classes are set out in these Articles.

#### 4 **SERIES C CONVERTIBLE PREFERRED SHARES**

The rights attached to the Series C Convertible Preferred Shares are as follows:

##### 4.1 **Dividends**

4.1.1 The Series C Convertible Preferred Shares shall rank *pari passu* in all respects with the Series A Convertible Preferred Shares, the Series B Preferred Shares, the Ordinary Shares, the A Ordinary Shares and the C Ordinary Shares as to dividends and other distributions. For the purpose of this calculation, the number of Shares which any holder of Series C Convertible Preferred Shares shall be deemed to have shall be the number of C Ordinary Shares which those holders would have held had those Series C Convertible Preferred Shares been converted in accordance with the provisions of Articles 4.4, 4.5 or 4.6 (as the case may be). Any dividends shall be approved by the Board with an Investor Director voting in the majority.

##### 4.2 **Capital**

On a return of capital on liquidation or capital reduction, Exit or otherwise, the surplus assets of the Company remaining after the payment of its liabilities shall be applied in priority to any other class of share

4.2.1 in paying to each holder of Series C Convertible Preferred Shares and any holder of C Ordinary Shares arising from any conversion of Series C Convertible Preferred Shares an amount equal to the product of the total number of Series C Convertible Preferred Shares and C Ordinary Shares held by him multiplied by the sum of-

- (i) the Series C Issue Price plus
- (ii) an additional amount per share (the "Premium") calculated as D + E + F such terms having the meanings given at Article 4.2.3

4.2.2 thereafter, in the manner prescribed by Article 5.2

4.2.3 for the purposes of this Article 4.3 the following definitions shall apply -

"Series C Issue Date" shall mean the date of issue of a Series C Convertible Preferred Share

"Series C Issue Price" shall mean the original Issue Price per share of the Series C Convertible Preferred Shares subject to appropriate adjustment

for all stock splits, dividends, recapitalisations and the like of the Series C Convertible Preferred Shares from and after the Series C Issue Date.

“A” is the number of days which shall have elapsed from the Series C Issue Date to the earlier of (i) the date on which the Premium is paid and (ii) the first anniversary of the Series C Issue Date

“B” is the number of days which shall have elapsed from the first anniversary of the Series C Issue Date to the earlier of (i) the date on which the Premium is paid and (ii) the second anniversary of the Series C Issue Date provided that B may not be less than zero

“C” is the number of days which shall have elapsed from the second anniversary of the Series C Issue Date to the earlier of (i) the date on which the Premium is paid and (ii) the third anniversary of the Series C Issue Date provided that C may not be less than zero

$$D = \frac{(\text{Series C Issue Price} \times 0.18)}{365} \times A$$

$$E = \frac{(\text{Series C Issue Price} + D) \times 0.18}{365} \times B$$

$$F = \frac{(\text{Series C Issue Price} + D + E) \times 0.18}{365} \times C$$

For the avoidance of doubt at no time shall the aggregate Premium payable per Series C Convertible Preferred Shares exceed an amount equal to the product of (i) the Series C Issue Price multiplied by (ii) 0.65

#### 4.3 Exit/Change of Control

If Series C Convertible Preferred Shares remain in issue at the time of a Qualifying Listing an Exit or a Change of Control the holders thereof shall if the Investor Majority by notice in writing served on the Company so elects, be entitled to require the proceeds thereof to be paid into a trust account operated by the Company and such proceeds shall be allocated and paid out in accordance with the provisions of Articles 4.2 and 5.2 for the avoidance of doubt any Premium shall remain payable upon any Exit or Change of Control

#### 4.4 Conversion

4.4.1 The members holding Series C Convertible Preferred Shares may at any time at their option convert Series C Convertible Preferred Shares into a number of C Ordinary Shares calculated as follows

$$\frac{A}{B}$$

where -

A is the amount of £7.353 per Share.

B is the C Conversion Price per Share of the Series C Convertible Preferred Shares, or where the provisions of Article 4.5 apply, the New C Conversion Price.

- 4.4.2 Any option to convert hereunder shall be exercised by notice in writing given to the Company signed by an Investor Majority. The conversion shall take effect as soon as practicable following the date of delivery of that notice to the Company (unless the notice states that conversion is to be effective when any conditions specified in the notice have been fulfilled in which case conversion shall take effect when those conditions have been fulfilled) (such date being the “**Conversion Date**”) and the Company and members shall do all acts necessary to procure that conversion.
- 4.4.3 Each member holding Series C Convertible Preferred Shares shall deliver the certificates for those Shares (or an indemnity in a form reasonably satisfactory to the Company in respect of any missing share certificate) to the Company on or before the Conversion Date. On the Conversion Date the Company shall issue to the persons entitled thereto certificates for the C Ordinary Shares arising on conversion.
- 4.4.4 The C Ordinary Shares arising on conversion shall, subject to Article 8, rank *pari passu* in all respects with the issued A Ordinary Shares and the issued C Ordinary Shares and shall entitle the holders of them to all dividends and other distributions declared, made or paid by reference to a record date on or after the date of conversion on the C Ordinary Shares.
- 4.4.5 Notwithstanding that all such members may not wish to convert, any member holding Series C Convertible Preferred Shares may at any time, by notice in writing given to the Company by that member, elect to convert all or any portion of that member’s holding of Series C Convertible Preferred Shares into the same number of fully paid C Ordinary Shares as such Series C Convertible Preferred Shares would be converted pursuant to the foregoing provisions of Article 4.4.1 to 4.4.4 (both inclusive) except that no Investor Majority Consent shall be required for such conversion.
- 4.4.6 In the event of a Qualifying Listing the Series C Convertible Preferred Shares in issue will automatically convert immediately prior to and conditional upon the completion of such Qualifying Listing into such number of C Ordinary Shares as if notice to convert had been given by the holders of such Series C Convertible Preferred Shares in accordance with Article 4.4.2. In the event that the operation of this Article 4.4.6 would result in the holders of Series C Convertible Preferred Shares holding C Ordinary Shares, the members shall immediately prior to and conditional upon such Qualifying Listing enter into such reorganisation of the share capital as they may agree, or, in default as the Independent Financial Expert (in accordance with the principles stated at Article 30) may reasonably specify, to ensure that the proceeds of such Qualifying Listing are allocated amongst the members in the proportions in which they hold the Equity Share Capital after the conversion in accordance with this Article 4.4.6.

4 4 7 Notwithstanding anything to the contrary herein contained, each Series C Convertible Preferred Share shall automatically convert into C Ordinary Shares at the then applicable C Conversion Price, forthwith upon a resolution to this effect being passed by the holders of a majority of the then issued Series C Convertible Preferred Shares, or forthwith upon any automatic conversion pursuant to Article 4.4.6

4.4 8 None of the Series C Convertible Preferred Shares converted pursuant to this Article 4 4 or Article 4 5 shall be reissued nor, save as provided in this Article 4.4 and Article 4.5, shall any other shares be issued in place thereof, but the Company may, nevertheless, from time to time thereafter increase its capital in the manner and to the extent permitted by law and by these Articles of Association

#### 4.5 Anti Dilution Conversion

4 5 1 For the purposes of this Article 4 5 and Article 4 4, the following definitions and the definitions at Article 5.5 (if relevant) shall apply

**“C Conversion Price”** a notional price payable for shares in the capital of the Company calculated as follows  $\frac{A}{B}$

where A is the aggregate price paid by the Investors to subscribe for Series C Convertible Preferred Shares at the date of calculation of the initial C Conversion Price

B is the number of Series C Convertible Preferred Shares subscribed for by the Investors at the date of calculation of the initial C Conversion Price

**“New C Conversion Price”** has the meaning given at Article 4 5 2

**“Further Issue”** means any allotment and issue of Additional Shares without consideration or at a consideration per Ordinary Share less than the C Conversion Price (or New C Conversion Price as the case may be) in effect on the date of and immediately prior to such issue

**“Shares Deemed To Be Issued”** shall mean the maximum number of Shares issuable upon the exercise of any Options or Convertible Securities issued by the Company at any time or from time to time after the date of adoption of these Articles the effect of the exercise of which would result in the issue of Additional Shares. The conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities,

shall be deemed to be Additional Shares issued as of the time of such issue of the Options or Convertible Securities; provided that, no further adjustment in the C Conversion Price (or New C Conversion Price, as the case may be) shall be made upon the subsequent issue of Shares or Convertible Securities upon either the exercise of such Options or the conversion or exchange of such Convertible Securities, in each case, pursuant to their respective terms

**“Outstanding Shares”** shall mean and include the following: (1) the Ordinary Shares, A Ordinary Shares, Series B Preferred Shares and Series A Convertible Preferred Shares in issue, (2) the A Ordinary Shares issuable upon conversion of the Series A Convertible Preferred Shares, (3) the C Ordinary Shares issuable upon conversion of the Series C Convertible Preferred Shares (4) shares issuable upon exercise of share options issued or available for issuance under the Employee Share Incentive Scheme up to a maximum of 282,966 Ordinary Shares described in (1), (2) and (3) in the preceding sentence shall be included in such calculation whether vested or unvested, whether contingent or non contingent and whether exercisable or not yet exercisable

- 4.5.2 In the event of a Further Issue, then and in such event the C Conversion Price shall be reduced, concurrently with such Further Issue, to a New C Conversion Price which shall be calculated as follows -

New C Conversion Price

$$X = A \times \frac{(B+C)}{(B+D)}$$

where:-

X is the New C Conversion Price

A is the C Conversion Price (or New C Conversion Price, as the case may be) immediately prior to the Further Issue

B is the number of Outstanding Shares immediately prior to the Further Issue

C is the total number of Additional Shares that the aggregate consideration received by the Company for the total number of Additional Shares issued would buy at the C Conversion Price (or New C Conversion Price as the case may be) in effect immediately prior to such Further Issue

D is the number of Additional Shares issued on the Further Issue

- 4.5 3 No adjustment of the C Conversion Price shall be made in an amount less than £0 01, provided, that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be taken into account in any subsequent adjustment.

#### **4.6 Voting**

- 4.6.1 The holders of the Series C Convertible Preferred Shares shall be entitled to receive notice of and to attend and speak at any general meetings of the Company and any holder of Series C Convertible Preferred Shares who (being an individual) is present in person or by proxy or (being a corporation) is present by duly authorised representative or by proxy shall subject to Article 4 6 2, on a show of hands, have one vote each, and, on a poll, have one vote for each Series C Convertible Preferred Share of which he is the holder
- 4.6.2 Where Series C Convertible Preferred Shares are eligible for conversion pursuant to Articles 4 4 or 4.5 but have yet to be converted the number of votes which the holders of such shares may exercise on a poll shall equal the number of votes they could have exercised had such conversion then taken place

### **5. SERIES A CONVERTIBLE PREFERRED SHARES**

The rights attached to the Series A Convertible Preferred Shares are as follows

#### **5.1 Dividends**

- 5 1 1 The Series A Convertible Preferred Shares shall rank pari passu in all respects with the Series B Preferred Shares, the Ordinary Shares, the A Ordinary Shares and the C Ordinary Shares as to dividends and other distributions. For the purpose of this calculation, the number of Shares which any holder of Series A Convertible Preferred Shares shall be deemed to have shall be the number or A Ordinary Shares which those holders would have held had those Series A Convertible Preferred Shares been converted in accordance with the provisions of Articles 4.5 or 5 5 (as the case may be). Any dividends shall be approved by the Board with an Investor Director voting in the majority.

#### **5 2 Capital**

On a return of capital on liquidation or capital reduction or otherwise, the surplus assets of the Company remaining after the payment of its liabilities shall be applied subject to the payments to the holders of the Series C Convertible Shares and any C Ordinary Shares arising upon this conversion pursuant to Article 4.2

- 5.2.1 in paying to each holder of Series A Convertible Preferred Shares, Series B Preferred Shares, Ordinary Shares and A Ordinary Shares (pari passu as if they constituted one class of Equity Shares) in proportion to the numbers of

Series A Convertible Preferred Shares, Series B Preferred Shares, Ordinary Shares and A Ordinary Shares held by them respectively,

5 2 1 1 all unpaid arrears or accruals of all dividends declared or accruing thereon calculated down to and including the date the return of capital is made,

5 2.1 2 an amount equal to the Issue Price in respect of each Series A Convertible Preferred Share, Series B Preferred Share, Ordinary Share or A Ordinary Share held by him; and

thereafter, in distributing the balance of such assets amongst the holders of the Series A Convertible Preferred Shares, Series B Preferred Shares, the A Ordinary Shares, Ordinary Shares, the Series C Convertible Preferred Shares and the C Ordinary Shares (pari passu as if they constituted one class of Equity Shares) in proportion to the numbers of the Series B Preferred Shares, A Ordinary Shares, Ordinary Shares and in the case of the holders of Series A Convertible Preferred Shares or Series C Convertible Preferred Shares, for the purpose of this calculation, the number of Shares which those holders would have held had those Series A Convertible Preferred Shares or Series C Convertible Preferred Shares been converted in accordance with the provisions of Articles 5 4 or 5 5 or 4.4 or 4.5 (as the case may be)) held by them respectively

### 5.3 Exit/Change of Control

If Series A Convertible Preferred Shares remain in issue at the time of a Qualifying Listing an Exit or a Change of Control the holders thereof shall if the Investor Majority by notice in writing served on the Company so elects, be entitled to require the proceeds thereof to be paid into a trust account operated by the Company and such proceeds shall be allocated and paid out in accordance with the provisions of Article 5 2.

### 5 4 Conversion

5.4.1 The members holding Series A Convertible Preferred Shares may at any time at their option convert Series A Convertible Preferred Shares into a number of A Ordinary Shares calculated as follows

$$\frac{A}{B}$$

where:-

A is the amount of £3 627451 per Share

B is the Conversion Price per Share of the Series A Convertible Preferred Shares, or where the provisions of Article 5 5 apply, the New Conversion Price

5.4 2 Any option to convert hereunder shall be exercised by notice in writing given to the Company signed by an Investor Majority The conversion shall take effect as soon as practicable following the date of delivery of that

notice to the Company (unless the notice states that conversion is to be effective when any conditions specified in the notice have been fulfilled in which case conversion shall take effect when those conditions have been fulfilled) (such date being the “**Conversion Date**”) and the Company and members shall do all acts necessary to procure that conversion

- 5.4.3 Each member holding Series A Convertible Preferred Shares shall deliver the certificates for those Shares (or an indemnity in a form reasonably satisfactory to the Company in respect of any missing share certificate) to the Company on or before the Conversion Date. On the Conversion Date the Company shall issue to the persons entitled thereto certificates for the A Ordinary Shares arising on conversion.
- 5.4.4 The A Ordinary Shares arising on conversion shall rank *pari passu* in all respects with the issued A Ordinary Shares and shall entitle the holders of them to all dividends and other distributions declared, made or paid by reference to a record date on or after the Conversion Date on the A Ordinary Shares.
- 5.4.5 Notwithstanding that all such members may not wish to convert, any member holding Series A Convertible Preferred Shares may at any time, by notice in writing given to the Company by that member, elect to convert all or any portion of that member’s holding of Series A Convertible Preferred Shares into the same number of fully paid A Ordinary Shares as such Series A Convertible Preferred Shares would be converted pursuant to the foregoing provisions of Article 5.4.1 to 5.4.4 (both inclusive) except that no Investor Majority Consent shall be required for such conversion.
- 5.4.6 In the event of a Qualifying Listing, the Series A Convertible Preferred Shares in issue will automatically convert immediately prior to and conditional upon the completion of such Qualifying Listing into such number of A Ordinary Shares as if notice to convert had been given by the holders of such Series A Convertible Preferred Shares in accordance with Articles 5.4.2. In the event that the operation of this Article 5.4.6 would result in the holders of Series A Convertible Preferred Shares holding A Ordinary Shares, the members shall immediately prior to and conditional upon such Qualifying Listing enter into such reorganisation of the share capital as they may agree, or, in default as the Independent Financial Expert (in accordance with the principles stated at Article 30) may reasonably specify, to ensure that the proceeds of such Qualifying Listing are allocated amongst the members in the proportions in which they hold the Equity Share Capital after the conversion in accordance with this Article 5.4.6.
- 5.4.7 Notwithstanding anything to the contrary herein contained, each Series A Convertible Preferred Share shall automatically convert into A Ordinary Shares at the then applicable Conversion Price, forthwith upon a resolution to this effect being passed by the holders of a majority of the then issued Series A Convertible Preferred Shares, or forthwith upon any automatic conversion pursuant to Article 5.4.6.
- 5.4.8 None of the Series A Convertible Preferred Shares converted pursuant to this Article 5.4 or Article 5.5 shall be reissued nor, save as provided in this



Article 5.4 and Article 5.5, shall any other shares be issued in place thereof, but the Company may, nevertheless, from time to time thereafter increase its capital in the manner and to the extent permitted by law and by these Articles of Association.

## 5.5 Anti Dilution Conversion

5.5.1 For the purposes of this Article 5.5 and Article 5.4, the following definitions shall apply:

- “Additional Shares”** means all Shares issued or Shares Deemed To be Issued by the Company after 22 April 2005, other than any Shares issued, issuable or Shares Deemed To Be Issued
- (a) upon conversion of the Series A Convertible Preferred Shares pursuant to Article 5.4,
  - (b) upon conversion of the Series C Convertible Preferred Shares pursuant to Article 4.5.2;
  - (c) in accordance with the provisions of the Equity Incentive Plan up to an aggregate number of 282,966 Ordinary Shares (subject to adjustment for any split or subdivision or similar events),
  - (d) by way of bonus issue or otherwise as a dividend or distribution on the Series A Convertible Preferred Shares
  - (e) in connection with any effect of a split or subdivision of any Shares approved by the Board with an Investor Director voting in the majority;
  - (f) collectively representing up to two per cent (2%) of the Equity Share Capital after such allotment and issue issued or issuable in connection with debt financing transactions or equipment lease financing transactions if such transaction is approved by the Board with an Investor Director voting in the majority;
  - (g) collectively representing up to ten percent (10%) of the Equity Share Capital of the Company after such allotment and issue issued or issuable in connection with a bona fide business acquisition of a strategic nature or other strategic transaction of or by the Company approved by a majority of the Directors and the Investor Director whether

by merger, scheme of arrangement, consolidation, sale of assets, sale or exchange of shares or otherwise,

- (h) any bonus or rights issue provided the same is made to all of the holders of Shares pro rata on a fully as-converted basis and is approved by an Investor Director

**“Conversion Price”**

a notional price payable for shares in the capital of the Company calculated as follows  $\frac{A + B}{C}$

where A is the aggregate price paid by the Investors to subscribe for Loan Stock at the date of calculation of the initial Conversion Price

B is the aggregate price paid by the Investors to subscribe for Series A Convertible Preferred Shares at the date of calculation of the initial Conversion Price

C is the number of Series A Convertible Preferred Shares subscribed for by the Investors at the date of calculation of the initial Conversion Price

**“New Conversion Price”** has the meaning given at Article 5.5.2

**“Convertible Securities”** means any debenture loan notes, shares or other securities convertible into or exchangeable for Shares

**“Further Issue”** means any allotment and issue of Additional Shares without consideration or at a consideration per Ordinary Share less than the Conversion Price (or New Conversion Price as the case may be) in effect on the date of and immediately prior to such issue

**“Options”** means any rights, options or warrants to subscribe for, purchase or otherwise acquire any Shares or Convertible Securities

**“Shares Deemed To Be Issued”** shall mean the maximum number of Shares issuable upon the exercise of any Options or Convertible Securities issued by the Company at any time or from time to time after the date of adoption of these Articles the effect of the exercise of which would result in the issue of Additional Shares. The conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities,

shall be deemed to be Additional Shares issued as of the time of such issue of the Options or Convertible Securities; provided that, no further adjustment in the Conversion Price (or New Conversion Price, as the case may be) shall be made upon the subsequent issue of Shares or Convertible Securities upon either the exercise of such Options or the conversion or exchange of such Convertible Securities, in each case, pursuant to their respective terms

**“Outstanding Shares”** shall mean and include the following (1) the Ordinary Shares, A Ordinary Shares and Series B Preferred Shares in issue, (2) the A Ordinary Shares issuable upon conversion of the Series A Convertible Preferred Shares, (3) shares issuable upon exercise of share options issued or available for issuance under the Employee Share Incentive Scheme up to a maximum of 282,966 Ordinary Shares described in (1), (2) and (3) in the preceding sentence shall be included in such calculation whether vested or unvested, whether contingent or non contingent and whether exercisable or not yet exercisable.

5 5 2 In the event of a Further Issue, then and in such event the Conversion Price shall be reduced, concurrently with such Further Issue, to the New Conversion Price which shall be calculated as follows -

New Conversion Price

$$X = A \times \frac{(B+C)}{(B+D)}$$

where -

X is the New Conversion Price

A is the Conversion Price (or New Conversion Price, as the case may be) immediately prior to the Further Issue

B is the number of Outstanding Shares immediately prior to the Further Issue

C is the total number of Additional Shares that the aggregate consideration received by the Company for the total number of Additional Shares issued would buy at the Conversion Price (or New Conversion Price as the case may be) in effect immediately prior to such Further Issue

D is the number of Additional Shares issued on the Further Issue

- 5 5.3 No adjustment of the Conversion Price shall be made in an amount less than £0.01, provided, that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be taken into account in any subsequent adjustment
- 5 5.4 For purposes of this Article 5.5 and Article 4 5, the consideration received by the Company for the issue of any Additional Shares shall be calculated as follows
- (a) Such consideration shall:
- (i) insofar as it consists of cash, be calculated at the aggregate amount of cash received by the Company, excluding amounts paid or payable for accrued interest or accrued dividends,
  - (ii) insofar as it consists of property other than cash, be computed at the Fair Value thereof at the time of such issue, as determined in good faith by at least a majority of the directors (including an Investor Director); and
  - (iii) in the event Additional Shares are issued together with other shares or securities or other assets of the Company including debentures or loan stock for consideration that covers both, be the proportion of such consideration so received, calculated as provided in paragraphs (i) and (ii) above, as determined in good faith by at least a majority of the directors (including an Investor Director)
- (b) The consideration per share received by the Company for Shares Deemed Be Issued (and comprising Additional Shares), relating to Options and Convertible Securities, shall be determined by dividing
- (i) the total amount, if any, received or receivable by the Company as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities; by
  - (ii) the maximum number of Shares issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or exercise and conversion or exchange of such Options for Convertible Securities, as determined in accordance with the definition of Shares Deemed To Be Issued

- 5 5.5 No fractional shares shall be issued upon the conversion of any of the Series A Convertible Preferred Shares or any of the Series C Convertible Preferred Shares, and the number of A Ordinary Shares or C Ordinary Shares (as the case may be) to be issued shall be rounded down to the nearest whole Share. Whether or not fractional Shares are issuable upon such conversion shall be determined on the basis of the total number of Series A Convertible Preferred Shares or Series C Convertible Preferred Shares the holder is at the time converting into A Ordinary Shares or C Ordinary Shares (as the case may be) and the number of A Ordinary Shares or C Ordinary Shares (as the case may be) issuable upon such aggregate conversion. In lieu of fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the then Fair Value of an A Ordinary Share as determined in good faith by at least a majority of the directors.
- 5 5.6 Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Article 5.5 and the C Conversion Price pursuant to Article 4.5, the Company shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Convertible Preferred Shares or Series C Convertible Preferred Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the reasonable written request at any time of any holder of Series A Convertible Preferred Shares or Series C Convertible Preferred Shares furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the New Conversion Price at the time in effect, and (C) the number of A Ordinary Shares and the amount, if any, of other property that at the time would be received upon the conversion of any Series A Convertible Preferred Share held by such holder.

## 5.6 Voting

- 5.6.1 The holders of the Series A Convertible Preferred Shares and of Series C Convertible Preferred Shares shall be entitled to receive notice of and to attend and speak at any general meetings of the Company and any holder of Series A Convertible Preferred Shares who (being an individual) is present in person or by proxy or (being a corporation) is present by duly authorised representative or by proxy shall subject to Article 5.6.2, on a show of hands, have one vote each, and, on a poll, have one vote for each Series A Convertible Preferred Share of which he is the holder.
- 5.6.2 Where Series A Convertible Preferred Shares are eligible for conversion pursuant to Articles 5.4 or 5.5 but have yet to be converted the number of votes which the holders of such shares may exercise on a poll shall equal the number of votes they could have exercised had such conversion then taken place.

## 6 ORDINARY SHARES

The rights attached to the Ordinary Shares are as follows:

## **6.1 Dividends**

6.1.1 Any profits which the Company determines to distribute in respect of any Financial Year shall, subject to the approval of members of the Company in general meeting, be applied in distributing such profits amongst the holders of the Series A Convertible Preferred Shares, the Series B Preferred Shares, the Ordinary Shares, the A Ordinary Shares, the Series C Convertible Preferred Shares and the C Ordinary Shares then in issue *pari passu* according to the number of such Equity Shares held by them respectively as if they constituted one class of share.

## **6.2 Capital**

On a return of capital on liquidation or capital reduction or otherwise the surplus assets of the Company remaining after the payment of its liabilities shall be applied in accordance with Articles 4.2 and 5.2.

## **6.3 Voting**

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

## **7 SERIES B PREFERRED SHARES**

The Series B Preferred Shares carry the same rights and privileges as the Ordinary Shares and they shall rank *pari passu* in all respects with the Ordinary Shares.

## **8. A ORDINARY SHARES AND C ORDINARY SHARES**

The A Ordinary Shares and C Ordinary Shares carry the same rights and privileges as the Ordinary Shares and they shall rank *pari passu* in all respects with the Ordinary Shares except for any additional rights of the C Ordinary Shares specified in these Articles (including without limitation that if any Premium is unpaid on any Series C Convertible Preferred Shares at the time of their conversion, the C Ordinary Shares arising upon such conversion shall in respect of such Premium be treated for all purposes as if they were Series C Convertible Preferred Shares).

## **9 VARIATION OF RIGHTS**

9.1 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.

9.2 The rights conferred upon the holders of the Series A Convertible Preferred Shares and the holders of the Series C Convertible Preferred Shares shall be deemed to be varied by the following

9.2.1 any variation in the authorised or issued share capital of the Company or any Group Company or (other than pursuant to the Equity Incentive Plan) the creation or the granting of any options or other rights to subscribe for, or convert into, shares of the Company or any Group Company or the variation of the rights attaching to such Shares;

9.2.2 the reduction of the Company's share capital, share premium account, capital redemption reserve or any other reserve or of any uncalled liability in respect of partly paid shares or the purchase by the Company of any of its own Shares;

9.2.3 the amendment of any provisions of the memorandum of association or articles of association of the Company or any Group Company;

9.2.4 the redemption of any loan stock of the Company other than on a redemption in accordance with the terms of the Loan Stock,

9.2.5 the capitalisation of any undistributed profits (whether or not the same are available for distribution and including profits standing to the credit of the reserve) or any sums standing to the credit of the share premium account or capital redemption reserve fund of the Company;

9.2.6 the taking of any steps to wind up the Company or any other Group Company;

9.2.7 any disposal of the whole or substantially the whole of the business of the Company or any Group Company or any of the Shares in any Group Company,

9.2.8 the declaration, making or payment of any dividend or other distribution to the holders of the Equity Shares,

9.2.9 the appointment or removal of auditors to the Company (other than reappointment of an existing auditor);

9.2.10 the designation or issue of any Shares senior to or pari passu with the Series A Convertible Preferred Shares or the Series C Convertible Preferred Shares in respect of dividend rights, rights of redemption or rights of return of capital on liquidation or capital reduction or otherwise;

9.2.11 an Exit, Qualifying Listing or Change of Control.

## 10. ALLOTMENT OF SHARES

10.1 The directors shall not without the authority of the Company in general meeting and any consent required under Article 9.2, allot any Shares

10.2 The directors shall not allot any Equity Shares unless notice in writing is given to each Major Holder specifying

- 10.2 1 the number and classes of Equity Shares which are proposed to be issued,
  - 10.2 2 the consideration payable on such issue, and
  - 10.2 3 any other material terms or conditions
- 10 3 The notice specified in Article 10 2 shall invite each Major Holder to state, in writing within 10 Business Days from the date of such notice (which date shall be specified therein), whether he/it is willing to subscribe for any, and if so, how many Equity Shares
- 10 4 The Equity Shares proposed to be issued pursuant to Article 10.1 shall be issued to the Major Holders accepting the offer in proportion (as nearly as maybe) to their existing holdings of Equity Shares (“Proportionate Entitlement”) It shall be open to each such holder to specify if he/it is willing to subscribe for Equity Shares in excess of his/its Proportionate Entitlement (“Additional Shares”) and, if the holder does so specify, he/it shall state the number of Additional Shares In calculating the Proportionate Entitlement of the holders of Series A Convertible Preferred Shares and the holders of the Series C Convertible Preferred Shares they shall be treated as holding the number of Shares which they would hold if those Series A Convertible Preferred Shares or Series C Convertible Preferred Shares had been converted in accordance with the provisions of Articles 4 4 and/or 4 5 and/or Articles 5.4 and/or 5.5 (as the case may be)
- 10.5 Within three Business Days of the expiry of the invitation made pursuant to Article 10 3 (or sooner if all Major Holders have responded to the invitation and all the Equity Shares proposed to be issued have been accepted in the manner provided in Article 9 3), the Board shall allocate the Equity Shares in the following manner:
- 10 5.1 if the total number of Equity Shares applied for is equal to or less than the available number of Equity Shares to be issued the Company shall allocate the number applied for in accordance with the applications; or
  - 10.5 2 if the total number of Equity Shares applied for is more than the available number of Equity Shares to be issued, each holder shall be allocated his/its Proportionate Entitlement (or such lesser number of Equity Shares to be issued for which he/it may have applied) applications for Additional Shares shall be allocated in accordance with such applications or, in the event of competition, (as nearly as may be) to each holder applying for Additional Shares in his/its Proportionate Entitlement,
- and in either case the Company shall forthwith give notice of each such allocation (an “Issue Notice”) to each of the persons to whom Equity Shares are to be issued (a “Member Subscriber”) and shall specify in the Issue Notice the time (being not later than ten Business Days after the date of the Issue Notice) at which the allotment of the Equity Shares shall be made
- 10.6 Upon such allocations being made as set out in Article 10.5, the Board shall be bound, on payment of the subscription price, to issue the Equity Shares comprised in the Issue Notice to the Member Subscriber named therein at the time therein specified free from any lien, charge or encumbrance.



- 10.7 Notwithstanding anything herein to the contrary, the provisions of this Article 10 shall not apply to any issue in connection with the Equity Incentive Plan of up to 282,966 Ordinary Shares to be issued pursuant to the terms of the Equity Incentive Plan
- 10.8 The provisions of Articles 10.1 to 10.7 shall cease to apply immediately prior to a Listing (including a Qualifying Listing), save that, subject always to the provisions of the Companies Act, any other regulatory or statutory provision, and the terms of the Listing (or Qualifying Listing), the Major Holders shall, on the basis specified at Article 10.4, be entitled to acquire up to 10% of the Listing Shares.
- 10.9 Notwithstanding any other provisions of this Article 10, no Shares shall be allotted to any party not bound by the Shareholders' Agreement unless that party has first entered into a joinder agreement pursuant to the Shareholders Agreement.

## **TRANSFER OF SHARES**

### **11. GENERAL**

- 11.1 No transfer of any share in the capital of the Company shall be made or registered unless such transfer complies with the provisions of these articles and the transferee has, if so required by the terms of the Shareholders' Agreement, first entered into a joinder agreement pursuant to the Shareholders' Agreement. Subject thereto, the Board shall sanction any transfer so made unless (i) the registration thereof would permit the registration of a transfer of shares on which the Company has a lien (ii) the transfer is to a minor or (iii) the Board is otherwise entitled to refuse to register such transfer pursuant to these Articles
- 11.2 For the purposes of these Articles the following shall be deemed (but without limitation) to be a transfer by a holder of Shares in the Company
- 11.2.1 any direction (by way of renunciation or otherwise) by a holder entitled to an allotment or transfer of Shares that a Share be allotted or issued or transferred to some person other than himself, and
- 11.2.2 any sale or any other disposition of any legal or equitable interest in a Share (including any voting right attached to it), (i) whether or not by the relevant holder, (ii) whether or not for consideration, and (iii) whether or not effected by an instrument in writing.

### **12. PERMITTED TRANSFERS**

Notwithstanding the provisions of any other Article, the transfers set out in this Article 12 shall be permitted without restriction and the provisions of Articles 13 and 14 shall have no application

#### **12.1 Permitted transfers by Investors**

- 12.1.1 Any Investor shall be entitled to transfer all or any of its Shares without restriction:-
- 12.1.1.1 to one or more members of its Investor Group,

12.1.1.2 to any person, body, 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 and includes any subsidiary, nominee, custodian or manager used by such person, firm or partnership to hold such investments or to make available such facilities (a "Financial Buyer") other than (unless the Board has consented to this) a Financial Buyer that:

- (a) holds, directly or indirectly, more than twenty five per cent. (25%) of the voting equity of a direct competitor to the Company; or
- (b) holds less than twenty five per cent (25%) of the voting equity of a direct competitor to the Company but also is entitled to appoint a director to the Board of such company

provided, that if any transfer in accordance with Article 12.1.1.2 would result in a Change of Control, the Board shall be entitled to refuse to register such transfer unless the Investor in question has procured the making of an offer by such Financial Buyer in accordance with the provisions of Article 14.

## **12.2 Permitted Transfers by Non-Investors**

12.2.1 Subject to Articles 12.2.1 to 12.2.6 inclusive, any holder who is an individual and who is not an Investor may at any time transfer Shares held by him to a person or persons shown to the reasonable satisfaction of the Board to be:

12.2.1.1 a Family Member of his; or

12.2.1.2 trustees to be held under a Family Trust in relation to that individual

12.2.2 Subject to Article 12.2.4, no Shares shall be transferred under Article 12.2.1 by an individual who previously acquired those Shares by way of transfer under Article 12.2.1 save to another individual who is a Family Member of the original holder of such Shares to trustees to be held under a Family Trust in relation to the original holder of such Shares

12.2.3 No transfer of Shares shall be made by a holder under Article 12.2.1

12.2.3.1 unless in the case of a transfer under Article 12.2.1.2, an Investor Director has confirmed (such confirmation not to be unreasonably withheld or delayed) in writing his satisfaction

- (a) with the terms of the instrument constituting the relevant Family Trust and in particular with the powers of the trustees;
- (b) with the identity of the trustees and the procedures for the appointment and removal of trustees,

- (c) with the restrictions on changes in the terms of the trust instrument and on the distributions by the trustees, and
  - (d) that none of the costs incurred in establishing or maintaining the relevant family trust will be payable by any member of the Group; and
- 12.2.3 2 without the prior approval of an Investor Director, if the proposed transfer will result in 50% or more of the Shares originally held by the member being held by that holder's Family Trust and Family Members.

12.2.4 Where Shares are held by trustees under a Family Trust:

- 12.2.4.1 those Shares may, on any change of trustees, be transferred by those trustees to any new trustee of that Family Trust whose identity has been approved in writing by the Board;
- 12.2 4.2 those Shares may at any time be transferred by those trustees to the settlor of that trust or any person to whom that settlor could have transferred them under Article 12.2.1 if he had remained the holder of them, and
- 12 2 4.3 if any of those Shares cease to be held under a Family Trust (other than by virtue of a transfer made under Articles 12 2 4.1 or 12.2.4.2), the trustees shall transfer the held by them to the seller or beneficiaries if they are Family Members and the trust so permits but to the extent the trustees are unable to comply with this Article 12 they shall be deemed to have given a Transfer Notice in respect of those Shares that cannot be so transferred.

12.2.5 If:

- 12 2 5.1 any person has acquired Ordinary Shares as a Family Member of a holder by way of one or more transfers permitted under this Article 12, and
- 12.2 5.2 that person ceases to be a Family Member of that holder

that person shall forthwith transfer all the Shares then held by that person back to that holder, for such consideration as they agree, within 15 Business Days of the cessation, or, failing such transfer within that period, shall be deemed to have given a Transfer Notice in respect of all the Shares then held by that person pursuant to Article 13.

- 12.2 6 If the personal representatives of a deceased holder are permitted under these articles to become registered as the holders of any of the deceased holder's Shares and elect to do so, those Shares may at any time be transferred by those personal representatives under Article 12 2 to any person to whom the deceased holder could have transferred such Shares under Article 12 2 if he had remained the holder of them No other transfer

of such Shares by personal representatives shall be permitted under this Article 12

**12 3 Permitted Transfers by all Shareholders**

12 3 1 Any holder may at any time transfer any Shares in accordance with the provisions of the Companies Act to the Company.

12 3 2 Any holder may at any time transfer all or any of his Shares to any other person with the prior written consent of the Board and an Investor Director or (if one has not been appointed) an Investor Majority

**13 RIGHT OF REFUSAL**

13 1 Except as permitted under Article 12 any holder of Ordinary Shares or Series B Preferred Shares who wishes to transfer Ordinary Shares or Series B Preferred Shares (the "Vendor") shall (subject always to the provisions of Article 14) give notice in writing (the "Transfer Notice") to the Company of his wish specifying

13.1 1 the number of Ordinary Shares or Series B Preferred Shares (the "Sale Shares") which he wishes to transfer,

13.1 2 the name of any third party to whom he proposes to sell or transfer the Sale Shares;

13.1 3 the price at which he wishes to transfer the Sale Shares (the "Provisional Transfer Price"); and

13.1 4 all other material terms and conditions in respect of the proposed sale or transfer of the Sale Shares.

The Transfer Notice shall not be conditional upon all, and not part only, of the Sale Shares so specified being sold pursuant to the offer

13.2 Where any Transfer Notice is deemed to have been given in accordance with these Articles, the deemed Transfer Notice shall be treated as having specified

13 2.1 that all the Shares registered in the name of the Vendor shall be included for transfer;

13 2.2 that it is not conditional upon all and not part of the Shares the subject thereof being sold.

13 3 No Transfer Notice once given or deemed to be given in accordance with these Articles shall be withdrawn unless the Vendor is obliged to procure the making of an offer under Article 14 and is unable to procure the making of such an offer. In that event the Vendor shall be entitled to withdraw such Transfer Notice without liability to any person, prior to completion of any transfer.

13 4 The Transfer Notice shall constitute the Company the agent of the Vendor for the sale of the Sale Shares at the Transfer Price which will be as follows:-

13.4.1 with the consent of the Board (to include the approval of an Investor Director), the Provisional Transfer Price specified in the Transfer Notice or such other price as may be agreed by the proposing transferor and the Board (to include the approval of an Investor Director),

13.4.2 in default of agreement under Article 13.4.1, the lower of

13.4.2.1 the price per share specified in the Transfer Notice, and

13.4.2.2 if the Board or the proposing transferor elects within 15 business days after the date of service or deemed service of the Transfer Notice to instruct the Independent Financial Expert for the purpose, the fair value of the Shares the subject of the Transfer Notice as at the date of service or deemed service of the Transfer Notice and as determined in accordance with Article 13

13.5

13.5.1 The Company shall forthwith upon receipt of a Transfer Notice or, where later, upon the determination of the Transfer Price give notice in writing to each holder of Shares (other than the Vendor) informing them that the Sale Shares are available and of the Transfer Price. Such notice shall invite each holder to state, in writing within 20 Business Days from the date of such notice (which date shall be specified therein), whether he is willing to purchase any and, if so, how many of the Sale Shares which shall, if he so wishes, include an amount in excess of his Proportionate Entitlement as defined in Article 13.5.2. For the purposes of allocation of the Sale Shares the Sale Shares shall be treated as offered:

13.5.1.1 in the first instance to all persons in the category set out in the corresponding line in column (2) in the table below;

13.5.1.2 To the extent not accepted by persons in column (2), to all persons in the category set out in the corresponding line in column (3) in the table below, and

13.5.1.3 to the extent not accepted by persons in column (3) to all persons in the category set out in the corresponding line in column (4) in the table below;

(1) Class of Sale Shares	(2) First offer to	(3) Second offer to	(4) Third offer to
Series B Preferred Shares	Warehouse	Major Holders	Holders of Shares not being Major Holders
Ordinary Shares	Warehouse	Major Holders	Holders of Shares not being Major Holders

Provided that any acceptance by the Company assumes that the acceptance is given on the basis that the Company has or will on the date of completion have satisfied the requirements of the Companies Act to purchase the Shares in question and any requirement for consent under article 9 1 is satisfied and if any such Shares accepted by the Company cannot be bought back at completion in default of this then this article 13 shall take effect as if no acceptance was given by the Company or (in the case of such default by the Company) by any member in respect of shares offered by or on behalf of that member to the Company

13.5 2 Subject always to the order of priorities set out in article 13 5 1 the Sale Shares shall (save in respect of any offer of Shares offered to all persons in the category set out in the corresponding line in column (2) in the table at article 13.5.1 above, which shall be offered in such numbers and proportions as the Remuneration Committee or in default as an Investor Director shall direct) be treated as offered on terms that, in the event of competition, the Sale Shares offered shall be sold to the holders accepting the offer in proportion (as nearly as may be) to their existing holdings of Shares of the class or classes to which the offer is made (the “**Proportionate Entitlement**”). It shall be open to each such holder to specify if he is willing to purchase Sale Shares in excess of his Proportionate Entitlement (“**Excess Shares**”) and, if the holder does so specify, he shall state the number of Excess Shares. In calculating the Proportionate Entitlement of the holders of Series A Convertible Preferred Shares and the holders of Series C Convertible Preferred Shares they shall be treated as holding the number of Shares which they would have held if those Series A Convertible Preferred Shares or Series C Convertible Preferred Shares had been converted in accordance with the provisions of Articles 4 4 and/or 4.5 and/or 5 4 and/or 5 5 (as the case may be)

13.5 3 Within twenty Business Days of the expiry of the invitation made pursuant to Article 13 5.1 (or sooner if all holders of Equity Shares have responded to the invitation and all the Sale Shares shall have been accepted in the manner provided in Article 13 5.1), the Board shall allocate the Sale Shares in the following manner:

13.5 3 1 if the total number of Sale Shares applied for is equal to or less than the available number of Sale Shares the Company shall allocate the number applied for in accordance with the applications, or

13 5.3.2 if the total number of Sale Shares applied for is more than the available number of Sale Shares, each holder shall be allocated his Proportionate Entitlement (or such lesser number of Sale Shares for which he may have applied), applications for Excess Shares shall be allocated in accordance with such applications or, in the event of competition, (as nearly as may be) to each holder applying for Excess Shares in the proportion which Equity Shares held by such holder bears to the total number of Equity Shares held by all such holders applying for Excess Shares PROVIDED THAT such holder shall not be allocated

more Excess Shares than he shall have stated himself willing to take,

and in either case the Company shall forthwith give notice of each such allocation (an "Allocation Notice") to the Vendor and each of the persons to whom Sale Shares have been allocated (a "Member Applicant") and shall specify in the Allocation Notice the place and time (being not later than ten Business Days after the date of the Allocation Notice) at which the sale of the Sale Shares shall be completed.

- 13.6 Upon such allocations being made as set out in Article 13.5, the Vendor shall be bound, on payment of the Transfer Price, to transfer the Sale Shares comprised in the Allocation Notice to the Member Applicants named therein at the time and place therein specified free from any lien, charge or encumbrance. If he makes default in so doing, the Chairman for the time being of the Company or, failing him, one of the directors, or some other person duly nominated by a resolution of the Board for that purpose, shall forthwith be deemed to be the duly appointed attorney of the Vendor with full power to execute, complete and deliver in the name and on behalf of the Vendor a transfer of the relevant Sale Shares to the Member Applicant and any director may receive and give a good discharge for the purchase money on behalf of the Vendor and (subject to the transfer being duly stamped) enter the name of the Member Applicant in the register of members as the holder or holders by transfer of the Shares so purchased by him or them. The Board shall forthwith pay the purchase money into a separate bank account in the Company's name and shall hold such money on trust (but without interest) for the Vendor until he shall deliver up his certificate or certificates for the relevant Sale Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate) to the Company when he shall thereupon be paid the purchase money.
- 13.7 In the event of all the Sale Shares not being sold under the preceding paragraphs of this Article 13 the Vendor may, at any time within two calendar months after receiving confirmation from the Company that the pre-emption provisions herein contained have been exhausted, transfer any Sale Shares which have not been sold to any person or persons at any price not less than the Transfer Price PROVIDED THAT:
- 13.7.1 the Board shall refuse registration of the proposed transferee unless the transfer has been approved in writing by the Investor Majority;
- 13.7.2 the Board shall be entitled to refuse registration of the proposed transferee if he is or is believed to be a nominee for a person reasonably considered by the Board to be a competitor or connected with a competitor of the business of the Group;
- 13.7.3 the Transfer Notice contained a Total Transfer Condition, the Vendor shall not be entitled, save with the written consent of all the other holders of Equity Shares of the Company, to sell hereunder only some of the Sale Shares comprised in the Transfer Notice to such person or persons;
- 13.7.4 any such sale shall be a bona fide sale and the Board may require to be satisfied in such manner as it may reasonably require that the Sale Shares are being sold in pursuance of a bona fide sale for not less than the Transfer

Price without any deduction, rebate or allowance whatsoever to the purchaser and, if not so satisfied, may refuse to register the instrument of transfer, and

13 7 5 the Board shall refuse registration of the proposed transferee if such transfer obliges the Vendor to procure the making of an offer in accordance with Article 14, until such time as such offer has been made and, if accepted, completed

13.8 The restrictions on transfer in this Article 13 shall not apply to any sale or other disposition of Shares pursuant to Article 12

#### 14. **RIGHT OF CO-SALE**

14.1 Notwithstanding any other provision in these Articles no sale or other disposition of any Ordinary Shares or Series B Preferred Shares or in circumstances set out in Article 12.1 1.2 Series A Convertible Preferred Shares or Series C Convertible Preferred Shares shall have any effect unless before the transfer is lodged for registration the proposed purchaser has made a bona fide offer in accordance with these Articles to purchase at the specified price (defined in Article 14.3) a pro rata proportion (as nearly as may be) of the Equity Shares held by the Major Holders (and in the case of the Major Investors, members of each such Major Investor's Group)

14.2 An offer made under Article 14.1 shall be in writing, open for acceptance for at least 5 Business Days after the expiry of the invitation made pursuant to Article 13 5 1, and shall be deemed to be rejected by any Major Holder 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 10 Business Days of the date of receipt of the offer

14.3 For the purposes of Article 14.1 the expression "specified price" means a price per share at least equal to the highest price paid or payable by the proposed purchaser to the relevant holders of the Ordinary Shares.

14.4 If the specified price cannot be agreed within 15 Business Days of the proposed sale or transfer referred to in Article 14.2, it may be referred to the Independent Financial Expert by an Investor and, pending its determination, the sale or transfer referred to in Article 14 1 shall have no effect

14 5 Notwithstanding anything herein to the contrary, the provisions of this Article 14 shall not apply to any sale or other disposition of Ordinary Shares or Series B Preferred Shares pursuant to Article 12.

#### 15 **DRAG ALONG**

##### **Drag along**

15.1 If the Board approves and an Investor Majority (in Articles 15 1 and 15.2, the "Vendors") wish to transfer their Shares in the Company (the "Offer") to any person (the "Purchaser"), then the Vendors shall also have the option to require all of the other holders of Shares, and any persons who become holders of Shares upon exercise of any options, warrants or other rights to subscribe for Shares which exist at the date of the Offer, to transfer all their Shares in the Company to the Purchaser,



or as the Purchaser directs, by giving notice (the “**Drag Along Notice**”) to that effect to all such other holders (the “**Called Shareholders**”) specifying that the Called Shareholders are, or will, in accordance with this Articles 15 1 and 15 2, be required to transfer their Shares pursuant to Articles 15 1 and 15 2 free from all liens, charges and encumbrances and the price (the “**Proposed Price**”) at which such Shares are proposed to be transferred

- 15 2 If the Called Shareholders (or any of them) shall make default in transferring their Shares pursuant to Articles 15 1 and 15.2, the provisions of Article 13.6 (references therein to the Vendor, Sale Shares, Allocation Notice and Member Applicant being read as references to the holder making such default, the Shares in respect of which such default is made, the Drag Along Notice and the Purchaser respectively) shall apply to the transfer of such Shares mutatis mutandis but the Transfer Price shall be the price offered for such Shares as set out in this Article 15.5 and the provisions of Article 13 7 shall not apply.

## 16. **COMPULSORY TRANSFERS**

- 16.1 In this Article 16, a “**Transfer Event**” means, in relation to any member:

16.1.1 a member who is an individual:

16.1.1 1 becoming bankrupt; or

16.1.1 2 (subject to Article 16 10) dying;

and an Investor Director notifying the Company within six months of the matters coming to his attention that such event is a Transfer Event in relation to that member for the purposes of this article;

16 1.2 a member making any arrangement or composition with his creditors generally and an Investor Director notifying the Company within three months of the matter coming to his attention that such event is a Transfer Event in relation to that member for the purposes of this article,

16 1 3 a member which is a body corporate:

16 1 3 1 having a receiver, manager or administrative receiver appointed over all or any part of its undertaking or assets, or

16 1 3 2 having an administrator appointed in relation to it, or

16 1 3 3 entering into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or reconstruction); or

16.1 3 4 having any equivalent action taken in any jurisdiction,

and an Investor Director notifying the Company within six months of the matter coming to his attention that such event is a Transfer Event in relation to that member for the purpose of this article,

- 16.1.4 (subject to Article 16.10) a member who is an individual and 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 and an Investor Director notifying the Company within six months of the matter coming to his attention that such event is a Transfer Event in relation to that member for the purposes of this article,
  - 16.1.5 a member attempting to deal with or dispose of any Share or any interest in it otherwise than in accordance with these Articles and an Investor Director notifying the Company within six months of the matter coming to his attention that such event is a Transfer Event in relation to that member, and
  - 16.1.6 a member failing to make a transfer of Shares required by Articles 12.2.5 and an Investor Director notifying the Company within six months of the matter coming to his attention that such event is a Transfer Event in relation to that member for the purposes of this article.
- 16.2 Upon the happening of any Transfer Event, the member in question 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) under Articles 12.2, 12.3.1 and 12.3.2 shall be deemed to have immediately given a Transfer Notice in respect of all Shares then held by them or, in the event of a Transfer Notice deemed given in circumstances referred to at Article 16.1.1 such number of Shares calculated by reference to Article 16.10 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.
- 16.3 Notwithstanding any other provision of these articles, if an Investor Director so notifies the Board in relation to any Shares, any member holding Shares in respect of which a Deemed Transfer Notice is deemed given shall not be entitled to exercise any voting rights at general meetings of the Company in respect of those Shares the subject of the Transfer Notice between the date of the relevant Deemed Transfer Notice and the expiry of three months after the date of the Sale Notice given in respect of those Shares or, if earlier, the entry in the register of members of the Company of another person as the holder of those Shares
- 16.4 The Shares the subject of any Deemed Transfer Notice shall be offered for sale in accordance with Article 13 as if they were Sale Shares in respect of which a Transfer Notice had been given save that
- 16.4.1 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;
  - 16.4.2 subject to Article 16.5, the Sale Price shall be a price per Sale Share agreed between the Vendor, the Board and an Investor Director or, in default of agreement, within 15 Business Days after the date of the Transfer Event, the Fair Value;

- 16.4.3 a Deemed Transfer Notice shall be deemed not to contain a Total Transfer Condition and shall be irrevocable;
- 16.4.4 the Vendor may retain any Sale Shares the subject of the Deemed Transfer Notice for which Purchasers are not found or, after the expiry of the relevant Offer Notice and with the prior written approval of an Investor Director, sell all or any of those Sale Shares to any person (including any member) as any price per Sale Share which is not less than the Sale Price; and
- 16.4.5 the Sale Shares shall be sold together with all rights attaching thereto as at the date of the Transfer Event.
- 16.5 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 16.1.4 shall be their Fair Value or, if less, their Issue Price;
- 16.6 In Article 16.10.4
  - 16.6.1 **“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 (as defined in Article 16.9);
  - 16.6.2 **“Dismissed 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 the wrongful termination by the Company or a member of the Group of that person’s employment, or where such termination is adjudged by a court or tribunal to be unfair (other than where such unfairness relates only to a failure to comply with procedural requirements) and is not as a result of the termination by the Company or Group Company in circumstances entitling it to summarily terminate that person’s employment, or following termination of employment by that person;
  - 16.6.3 **“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 or a Dismissed Good Leaver
- 16.7 For the purpose of Article 16.1.4 the date upon which a member ceases to hold office or employment as described therein shall be:
  - 16.7.1 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),
  - 16.7.2 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;

- 16.7.3 save as provided in Article 16.7.1 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,
- 16.7.4 where a contract of employment is terminated under the doctrine of frustration, the date of the frustrating event; and
- 16.7.5 where a contract of employment or directorship is terminated for any reason other than in the circumstances set out in Articles 16.7.1 to 16.7.4 above, the date on which the action or event giving rise to the termination occurs.
- 16.8 **“Fair Value”** for the purposes of these articles means as agreed between the Board (with the approval of an Investor Director) and the Vendor or, in the absence of agreement within 15 Business Days of the Transfer Event, by the Independent Financial Expert in accordance with Article 17.
- 16.9 **“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 Board) as rendering the departing employee incapable of carrying out his role as an employee for the foreseeable future.
- 16.10 The number of Shares which will **NOT** be subject to a Deemed Transfer Notice shall be calculated as follows, the balance to be subject to the provisions of this Article 16.
- 16.10.1 in the case of the holders of Ordinary Shares at the date of adoption of these Articles -

Date of Deemed Transfer Notice	Number of shares not to be offered for sale if a Good Leaver	Number of shares not to be offered for sale if a Dismissed Good Leaver	Number of shares not to be offered for sale if a Bad Leaver
Any time up to 3 years from the date of adoption of these articles	$A + (0.25 \times (B - A))$	$A + (0.5 \times (B - A))$	A
3 years from the date of adoption of these Articles and onwards	B	B	B

For the purposes of this Article 16.10

A is the number of Shares which shall vest and will not be the subject of any Deemed Transfer Notice and is calculated as follows:

$$A = B \times \frac{C}{36}$$

where:

B is the number of Shares in aggregate held on the date of adoption of these Articles by the members whose Shares are the subject of the Deemed Transfer Notice.

C is the number of complete months from the date of adoption of these Articles and the date of the Deemed Transfer Notice (but shall not exceed 36)

16.11 The provisions of this Article 16 shall not apply in respect of an Investor, or in respect of any Shares held by an Investor or any party to whom an Investor has transferred Shares in accordance with Article 12 1.

16.12 The provisions of Article 16 1.1 2, 16 1.4 and 16.2 shall not apply to a holder of Ordinary Shares at the date of adoption of these Articles in the event of a Change of Control having occurred prior to the occurrence of any of the events referred to at Article 16.1.1.2, 16.1 4 and 16.2.

## **17. VALUATION OF SHARES**

17.1 In the event that the Independent Financial Expert is required to determine the price of shares pursuant to these Articles, such price shall be the amount the Independent Financial Expert shall, on the application of the Board (which application shall be made as soon as practicable following the time it becomes apparent that a valuation pursuant to this Article 17 is required), give their opinion in writing as to the price which represents the Fair Value

17.2 Article 31 shall apply to any determination by the Independent Financial Expert under this Article

## **18. COMPLIANCE**

18 1 For the purpose of ensuring (i) that a transfer of Equity Shares is duly authorised under these Articles or that (ii) no circumstances have arisen whereby a Transfer Notice is required to be or ought to have been given under these Articles or (iii) whether an offer is required to be or ought to have been made under Article 14, the Board may require any member or the legal personal representatives of any deceased member or any person named as transferee in any transfer lodged for registration or such other person as the Board may reasonably believe to have information relevant to such purpose, to furnish to the Company such information and evidence as the Board may reasonably think fit regarding any matter which they deem relevant to such purpose, including (but not limited to) the names, addresses and interests of all persons respectively having interests in the Equity Shares from time to time registered in the holder's name

18 2 Failing such information or evidence being furnished to enable the Board to determine to its reasonable satisfaction that no such Transfer Notice is required to be or ought to have been given, or that no offer is required to be or ought to have been made under Article 14, or that as a result of such information and evidence the Board is reasonably satisfied that such Transfer Notice is required to be or ought to have been given, or that an offer is required to be or ought to have been made under Article 14

- 18.2 1 where the purpose of the enquiry by the Board was to establish whether a Transfer Notice is required to be or ought to have been given, then a Transfer Notice shall be deemed to have been given by the holder of the relevant Equity Shares in respect of such Equity Shares, or
- 18.2 2 where the purpose of the enquiry by the Board was to establish whether an offer is required to be or ought to have been made under Article 14 1, then in relation to the Ordinary Shares purported to have been acquired by or on behalf of the relevant person, such Ordinary Shares shall cease to entitle the relevant holder or holders (or any proxy) to voting rights (whether on a show of hands or on a poll and whether exercisable at a general meeting of the Company or at a separate meeting of the class in question) otherwise attaching to such Ordinary Shares or to any further shares issued in right of such Ordinary Shares or in pursuance of an offer made to the relevant holders to the extent that will result in such person or persons only being able to control that percentage of the voting rights attaching to the Ordinary Shares that such person or persons were in a position to control prior to the obligation to procure the making of an offer arising

## **GENERAL**

### **19. GENERAL MEETINGS**

- 19 1 No business shall be transacted at any general meeting unless a quorum of holders is present at the time when the meeting proceeds to business and for its duration Two Persons, being holders of Equity Shares present in person, by proxy or by duly authorised representative (if a corporation), shall be the quorum at any general meeting provided that at least one such Person represents the holders of a majority of the Series A Convertible Preferred Shares, or, in the case of all Series A Convertible Preferred Shares having converted to Ordinary Shares or A Ordinary Shares in accordance with Articles 5.4 or 5 5, such persons being the holders of 60% or more of the Equity Shares in issue (as if one class).
- 19.2 A poll may be demanded at a general meeting either by the chairman of the meeting or by any holder who is present in person, by proxy or by duly authorised representative (if a corporation) and who, in any such case, has the right to vote at the meeting, and regulation 46 of Table A shall be modified accordingly

### **20. WRITTEN RESOLUTIONS**

- 20.1 In the case of a corporation which holds a share or shares in the capital of the Company, the signature of any director or the secretary of such corporation shall be sufficient for the purposes of any resolution in writing as is referred to in regulation 53 of Table A, and regulation 53 of Table A shall be modified accordingly.

### **21 RETIREMENT OF DIRECTORS**

- 21 1 The directors shall not be liable to retire by rotation and, accordingly, the second and third sentences of regulation 79 of Table A shall not apply to the Company; in regulation 78 of Table A, the words "Subject as aforesaid" and the words "and may also determine the rotation in which any additional directors are to retire" shall be deleted

## 22. REMOVAL OF DIRECTORS

The office of any director shall be vacated if

- 22.1 (in the case of an executive director only) he shall, for whatever reason, cease to be employed by the Company or any subsidiary of the Company and he does not remain an employee of any other Group Company; or
- 22.2 (other than in the case of an Investor Director) all the other directors request his resignation in writing,

and the provisions of regulation 81 of Table A shall be extended accordingly

## 23. INVESTOR DIRECTORS

- 23.1 An Investor Majority may from time to time appoint up to two persons to be directors with the title of investor director (an “**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 an Investor Director from office
- 23.2 There shall not be more than two directors bearing the title of Investor Director in office at any time
- 23.3 Any appointment or removal of the Investor Director shall be in writing served on the Company signed by an Investor Majority 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
- 23.4 Notice of meetings of the Board shall be served on any Investor Director who is absent from the United Kingdom at the address for service of notice on the Investor Majority under the Shareholders’ Agreement. The third sentence of regulation 88 shall not apply.
- 23.5 Upon written request by an Investor Majority the Company shall procure that an Investor Director is forthwith appointed as a director of any other member of the Group and to any committee of the Board or the board of any member of the Group
- 23.6 Regulation 81(e) shall not apply to an Investor Director
- 23.7 Where any decision is to be made in relation to the exercise, enforcement or waiver of rights against any member holding Ordinary Shares or Series B Preferred Shares or any director or person connected with any such member or director where any such decision is a matter to be determined by the Board, the member in question, if also a member of the Board, shall not be entitled to participate in any decision or vote in relation to any such matter.

## 24. ALTERNATE DIRECTORS

- 24.1 The appointment by any Investor Director of an alternate director shall not be subject to approval by a resolution of the Board and regulation 65 of Table A shall be modified accordingly. In regulation 67 of Table A the words “but, if” and the words following them (to the end of that regulation) shall be deleted

24.2 An alternate director shall not be entitled (as such) to receive any remuneration from the Company, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may, by notice in writing to the Company from time to time, direct, and the first sentence of regulation 66 of Table A shall be modified accordingly

24.3 A director, or any such other person as is mentioned in regulation 65 of Table A, as modified by Article 25.1 may act as an alternate director to represent more than one director, and an alternate director shall be entitled at any meeting of the Board (or of any committee of the Board) to one vote for every director whom he represents (in addition to his own vote (if any) as a director), but he shall count as only one for the purpose of determining whether a quorum is present at (and during) any such meeting

## **25. PROCEEDINGS OF DIRECTORS**

25.1 Unless otherwise determined by an Investor Majority, the maximum number of directors (other than alternate directors) shall be five and Regulation 64 of Table A shall be modified accordingly

25.2 The quorum for meetings of the Board shall be two directors one of whom must be an Investor Director.

25.3 Any director or member of a committee of the Board may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear and speak to each other, and any director or member of a committee participating in a meeting in this manner shall be deemed to be present in person at such meeting

25.4 Except with the prior written consent of Investor Majority), and subject to Article 23.7 a director shall not vote on any resolution concerning a matter in which he has, directly or indirectly, any kind of material interest or duty whatsoever, save in respect of the matters specified in paragraphs (a) to (d) (inclusive) of regulation 94 of Table A which shall be modified accordingly. Reference in regulation 98 to the "Chairman" shall be construed as a reference to an "Investor Director" for so long as one is appointed

25.5 If a meeting is adjourned because a quorum is not present and at the adjourned meeting (provided it is at least 10 Business Days after the date for the original meeting and proper notice is given for such adjourned meeting) a quorum is not present within half an hour from the time appointed for that adjourned meeting the directors then present shall form a quorum

## **26. THE SEAL**

26.1 If the Company has a seal it shall only be used with the authority of the Board or of a committee of the Board. The Board may determine who shall sign any instrument to which the seal is affixed and, unless otherwise so determined, it shall be signed by a director and by the secretary or a second director. The obligation under regulation 6 of Table A relating to the sealing of share certificates shall apply only if the Company has a seal



- 26.2 The Company may exercise the powers conferred by section 39 of the Companies Act with regard to having an official seal for use abroad, and such powers shall be vested in the Board.

**27. INDEMNITY**

- 27.1 Subject to the provisions of the Companies Act, the Company may indemnify every director or other officer of the Company (other than the Auditors) out of the assets of the Company against all costs, charges, expenses, losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, (other than any proceedings brought by the Company or any Group Company) whether civil or criminal, and in which judgment is given either in his favour or against him, or in which he is acquitted or in connection with any application in which relief is granted to him by any court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company or which is settled out of court or otherwise comes to an end without judgement being obtained in relation to any such matters as aforesaid. No director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the proper execution of the duties of his office or in relation thereto. This Article 27 shall only have effect in so far as its provisions are not avoided by sections 232, 233, 234, 236, 256 and 533 of the Companies Act 2006. The Board shall have power to purchase and maintain for any director or other officer of the Company and the Auditors 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 and may loan monies to any such director or officer for the purposes of settling any costs or expenses incurred in defending any such proceedings including any regulatory proceedings

**28 BORROWING POWERS**

Subject to the terms of the Shareholders' Agreement, the Board may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and, subject to the provisions of the Companies Act, to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

**29 LIEN**

The lien conferred by regulation 8 of Table A shall attach to all shares, whether or not fully paid up and to all shares registered in the name of any person indebted or under liability to the Company (whether he shall be the sole registered holder of such shares or shall be one of two or more joint holders) and shall be for all moneys owing on any account whatsoever to the Company

**30 INDEPENDENT FINANCIAL EXPERT DETERMINATION**

- 30.1 If any matter under these Articles is referred to the Independent Financial Expert for determination then the Independent Financial Expert shall act as expert and not as

arbitrator and their decision shall be conclusive and binding on the Company and all the holders of Equity Shares (in the absence of fraud or manifest error).

- 30.2 The costs of the Independent Financial Expert shall be borne by the Company unless the Independent Financial Expert shall otherwise determine

31. **NOMINAL AMOUNTS**

- 31.1 Where determination is required of the apportionment or other entitlement of or to rights, obligations, dividends, distributions or other returns in respect of shares in the capital of the Company the same shall to the extent lawful be determined by reference to the number of shares and not by reference to the nominal amounts of such shares.