

THE COMPANIES ACT 2006  
COMPANY LIMITED BY SHARES  
COPY WRITTEN RESOLUTION  
of  
LIVSMART LIMITED  
("Company")

WEDNESDAY



PASSED ON 19 OCTOBER 2011

In accordance with the written resolution procedure in chapter 2 of part 13 of the Companies Act 2006, the following resolution was duly passed on 19 October 2011 as a special resolution

**SPECIAL RESOLUTION**

**That** the articles of association of the Company be amended by

- 1 deleting the definition of *Subscription Agreement* from article 2.1 and amending the definition of Security Document in article 2.1 to read as follows

*"Security Document" means the debenture granted by the Company in favour of MPTE on 10 February 2009",*

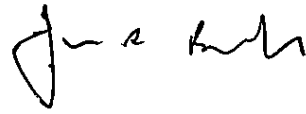
- 2 deleting article 8.4.1,
- 3 deleting article 11.2.2,
- 4 deleting article 26 and replacing it with the following wording

**"26 NUMBER OF DIRECTORS**

*Unless and until otherwise determined by ordinary resolution of the Company, the number of Directors (other than alternate directors) shall not be subject to any maximum but shall not be less than three Regulation 64 shall be modified accordingly",*

- 5 deleting the words "and/or the Subscription Agreement" from article 31.3.2,
- 6 deleting the words "of which one will be a MPTE Director (unless otherwise agreed in writing by the holders of a majority of the A Shares) and one who is not a MPTE Director and Regulation 89 shall be modified accordingly" from the first sentence of article 34.3,
- 7 amending the reference to "David Wade-Smith" at article 34.4 to "Jim Barclay", and

- 8 deleting the words "*(other than any liability arising out of the Subscription Agreement)*" from article 38

A handwritten signature in black ink, appearing to be 'J. R. K. L.', written in a cursive style.

Director



**LIVSMART LIMITED**

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**ARTICLES OF ASSOCIATION**

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*Adopted on 10 February 2009 Amended by way of Special  
Resolution passed  
19 October 2011*

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Company No. 4992246

**COMPANIES ACT 1985**  
**COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**

**LIVSMART LIMITED**

*amended*

(~~adopted~~ by Special Resolution of the Company

passed on ~~10 February 2009~~

*19 October 2011*

**1. TABLE A**

Except as excluded or varied in these articles, Table A (as defined below) will apply to the Company and will be deemed to form part of these articles.

**2. DEFINITIONS AND INTERPRETATION**

2.1 In these articles the following words and expressions will have the following meanings:

"2006 Act" means the Companies Act 2006 including any statutory modification or re-enactment thereof for the time being in force;

"1985 Act" means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force;

"Accepting Shareholders" has the meaning given in Article 17.1;

"Accounting Period" means an accounting reference period of the Company beginning on 1 August in any year and ending on the following 31 July, or such other date as is notified to the Registrar of Companies from time to time;

"Accounts" means the audited consolidated accounts of the Group;

"Act" has the meaning given to it in Table A,

"Acting in Concert" has the meaning given to it in the City Code on Takeovers and Mergers;

"Allocation Notice" has the meaning given in Article 13.11;

"Appointed Accountants" means the accountants appointed in accordance with the provisions of Article 18;

"Approved Offer" has the meaning given in Article 16.2.1;

**"Arrears"** means the whole amount of any dividend payable on the Preference Shares pursuant to Article 5.1 which is unpaid for any reason on any Due Date, as increased in accordance with Article 5.3.2;

**"A Share"** means an A ordinary share of £1 (one pound sterling) in the Company;

**"A Shareholder"** means a registered holder of any A Shares.

**"Auditors"** means the Company's incumbent auditors,

**"Authorised Bank"** means an authorised person (within the meaning of section 31(2) of the FSMA) with a Part IV permission (within the meaning of section 40(4) of the FSMA) which includes accepting deposits, or otherwise authorised in respect of that activity under section 31(1) of the FSMA;

**"Bad Leaver"** means a Relevant Individual who ceases to be an employee and/or director and/or consultant of the Company or any member of the Group and who is not a Good Leaver.

**"Board"** means the incumbent board of Directors including the MPTE Director(s) (if any);

**"B Share"** means a B ordinary share of £1 (one pound sterling) in the Company,

**"B Shareholder"** means a registered holder of any B Shares;

**"Business Day"** means a day (which for these purposes ends at 5.30pm) on which banks are open for commercial business in the City of London other than a Saturday or Sunday,

**"Buyer"** has the meaning given in Article 16.1.1,

**"Cessation Date"** means the date on which a Relevant Individual ceases to be an employee or director or consultant of any Group Member for any reason (including death or bankruptcy) or, if the Relevant Individual is still an employee or director or consultant of a Group Member, the date on which the Relevant Individual becomes eligible for benefits under a permanent health insurance policy;

**"Commencement Date"** means the date on which these articles are adopted,

**"Competitive Business"** shall bear the meaning given in Article 1.1;

**"Compulsory Sale Notice"** means a notice served on a Compulsory Seller pursuant to Article 15.3;

**"Compulsory Seller"** and **"Compulsory Sellers"** have the meanings given in Article 15.3;

**"Connected Person"** has the meaning given in section 839 of the Income and Corporation Taxes Act 1988;

**"Controlling Interest"** in relation to a person means the ownership by that person and his or its Connected Persons of Shares carrying the right to more than 50 per cent of the total number of votes which may be cast on a poll at a general meeting of the Company;

**"Credited as Paid Up"** means amounts paid up or credited as paid up on a Share including any premium;

**"Directors"** means the Company's incumbent directors at the relevant time;

**"Drag Along Right"** has the meaning given in Article 17.1;

**"Due Date"** means the due date or dates for payment of any dividend on the Preference Shares pursuant to Article 5 2 3;

**"Electronic Communication"** means any communication.

- (a) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data and entirely transmitted, conveyed and received by wire, by radio, by optical or by other electromagnetic means, or
- (b) sent or supplied by other means but while in electronic form;

**"Employee Benefit Trust"** means any trust which may be established for the benefit of the employees (which may include past employees) of the Company and/or any other member of the Group, and which satisfies the definition of an "employees' share scheme" set out in section 743 of the 1985 Act;

**"Equity Shareholder"** means a registered holder of any Equity Shares;

**"Equity Shares"** means the issued A Shares and B Shares at any time, and all shares derived from them (and any of them) whether by conversion, consolidation or sub-division or by way of rights or bonus issue or otherwise in issue.

**"Extra Shares"** has the meaning given in Article 13.8;

**"Family Trust"** means a trust (whether arising under a settlement, declaration of trust, testamentary disposition or on an intestacy) under which the only persons being (or capable of being) beneficiaries are the individual beneficial owner of the Shares held in trust and/or his Privileged Relations, and no power of control over the voting powers conferred by such Shares is exercisable at any time by or subject to the consent of any person other than the trustees as trustees or such individual beneficial owner or his Privileged Relations;

**"Former Manager"** means a person who, having been a Manager is no longer an employee, director or consultant of or to the Company and/or any other Group Member and whose Shares have been sold to an Employee Benefit Trust;

**"FSMA"** means the Financial Services and Markets Act 2000;



**"Good Leaver"** means a Relevant Individual.

- (a) who ceases to be an employee and/or director and/or consultant of any Group Member as a result of his death, permanent incapacity due to ill-health (except where such ill-health arises as a result of an abuse of drink or drugs) which, in the opinion of the MPTE Director(s) is sufficiently serious to prevent him from carrying out his normal duties or retirement in accordance with his contract of employment, or
- (b) whose contract of employment or directorship is terminated by the Company or any member of the Group other than in circumstances justifying summary dismissal; or
- (c) in the case of a consultant, whose contract for services is terminated by the Company other than in circumstances justifying immediate termination, or
- (d) who is employed or engaged as a consultant by and/or serves as a director of a subsidiary of the Company and that subsidiary ceases for any reason to be within the Group without the individual continuing as an employee or director or consultant of any other Group Member; or
- (e) who ceases to be employed as a result of their voluntary resignation; or
- (f) who does not fall within categories (a) to (e) above, but is determined by the holders of a majority of the A Shares in their absolute discretion to be a Good Leaver.

**"Group"** means the Company and its subsidiaries (as defined by section 736 of the 1985 Act) from time to time and references to a **"Member of the Group"** or a **"Group Member"** will be construed accordingly;

**"Leaver"** means a person who is a Good Leaver or a Bad Leaver,

**"Leaver Price"** shall have the meaning given in Article 15.5;

**"LIBOR"** means the applicable Screen Rate as at 12pm on the Business Day prior to 1 January in respect of a dividend instalment which is to be paid under clause 5.2 3 of this agreement for the period ending on 1 January, and 12pm on the Business Day prior to 1 July in respect of a dividend instalment which is due to be paid under clause 5.2 3 of this agreement for the period ending on 1 July;

**"Liquidation"** means the passing of a resolution for the winding-up of the Company,

**"Listing"** means

- (a) the admission of all or any of the Equity Shares to trading on a market for listed securities operated by a recognised investment exchange (as that term is defined in FSMA), together with the admission of such Shares to the Official List of the UK Listing Authority; or
- (b) the admission of such Shares to trading on the Alternative Investment Market of the London Stock Exchange plc; or

- (c) the admission of such Shares to, or to trading on, any other market wherever situated agreed to by the holders of fifty one per cent in nominal value of the Equity Shares, together, if necessary, with the admission of such Shares to listing on any official or otherwise prescribed list maintained by a competent or otherwise prescribed listing authority

and "Listed" will be construed accordingly,

"Listing Date" means the date on which all or any of the Equity Shares are Listed (subject only (where relevant) to any announcement required in accordance with the rules of the relevant stock exchange or listing authority),

"Listing Rules" means the listing rules of the UK Listing Authority;

"Majority of the Holders of the B Shares" means persons together holding in excess of fifty per cent (by nominal value) of the B Shares in issue (but not, for the avoidance of doubt, a single Member who holds the majority of the issued B Shares unless such person is the sole Member holding B Shares);

"Managers" means an employee, director or consultant of the Company or another Group Member from time to time, or any of them, (and, for the avoidance of doubt, the Managers as at the Commencement Date are Carl Speight and David Wade-Smith);

"Market Value" has the meaning given in Article 14 in relation to voluntary share transfers, and in Article 15 6 in relation to compulsory share transfers;

"Maximum Deferred Consideration" means, in relation to a Former Manager in respect of Shares where he was a Compulsory Seller, the Leaver Price for his Sale Shares less £1 and in relation to a Former Manager in respect of Shares where he was not a Compulsory Seller, the Transfer Price less £1;

"Member" means a registered holder of any Share as recorded in the Company's register of members,

"MPTE" means Merseyside Passenger Transport Executive a body administered by the Merseyside Passenger Transport Authority incorporated pursuant to the Transport Act 1988, having its headquarters at 24 Hatton Gardens, Liverpool, L3 2AN,

"MPTE Director" means a director appointed as such pursuant to Article 35;

"Original Member" means a beneficial owner (being an individual) of Shares;

"Other Shareholders" has the meaning given in Article 17.1,

"Preference Dividend" means the cumulative fixed cash dividend payable on the Preference Shares in accordance with Article 5;

"Preference Share" means a cumulative redeemable preference share of £1 (one pound sterling) in the Company;

"Preference Shareholder" means a registered holder of any Preference Shares;

**"Privileged Relation"** means in relation to any Member, the Member's spouse and all lineal descendants of that Member (including for this purpose any step-child, adopted child or illegitimate child of the Member or his lineal descendants) or any person who for the time being is married to any such lineal descendant but no lineal descendant may be a Privileged Relation whilst a minor;

**"Proportionate Entitlement"** has the meaning given in Article 13 8;

**"Proposed Transferee"** means a person to whom a Seller proposes to transfer Sale Shares;

**"PRs"** means the legal personal representatives of a deceased Member.

**"Realisation"** means a Share Sale or a Listing;

**"Redemption Monies"** in relation to a Preference Share means a sum equal to the Redemption Price plus all Arrears and accruals of the Preference Dividend (whether earned or declared or not) calculated down to the date of redemption in question;

**"Redemption Price"** means in relation to a Preference Share, a sum equal to the amount Credited as Paid Up on such Share;

**"Relevant Individual"** means an employee or director or consultant of or to any Group Member;

**"Relevant Percentage"** means LIBOR plus 2 per cent;

**"Sale Date"** means the date on which a Share Sale is completed;

**"Sale Shares"** means Shares which a Seller wishes to transfer,

**"Screen Rate"** means the British Bankers Association Interest Settlement Rate displayed on the appropriate page of the Reuters screen;

**"Security Document"** means the ~~security document referred to in the Subscription Agreement;~~ *debenture granted by the Company in favour of MPTE on 10 February 2009;*

**"Seller"** means any Member who wishes to transfer any Shares,

**"Share"** means a share in the capital of the Company,

**"Share Sale"** means the completion of any transaction or series of transactions whereby any person or Connected Persons or group of persons Acting in Concert purchases or otherwise acquires or obtains not less than 90 per cent in nominal value of the Equity Shares;

~~**"Subscription Agreement"** means an agreement dated on the Commencement Date and made between (inter alia) (1) the Company (2) the Managers and (3) MPTE;~~

**"Table A"** means Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 805) (as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1985 No. 1052), the Companies Act 1985 (Electronic Communications) Order 2000 (SI 2000 No 3373), the Companies (Tables

A to F) (Amendment) Regulations 2007 (SI 2007 No. 2541) and the Companies (Tables A to F) (Amendment) (No 2) Regulations 2007 (SI 2007 No. 2826));

**"Total Maximum Deferred Consideration"** means, following a Realisation, the aggregate of the Maximum Deferred Consideration in respect of all Former Managers who are entitled to receive part of the proceeds of such Realisation where such proceeds exceed the Equity Return;

**"Total Transfer Condition"** means a condition in a Transfer Notice stipulating that such Transfer Notice is conditional upon all and not some only of the Sale Shares specified in it being sold;

**"Transfer Notice"** means a notice in writing by a Seller of his wish to transfer any Shares,

**"Transfer Price"** has the meaning given in Article 13 4, and

**"UK Listing Authority"** means the Financial Services Authority acting in its capacity as the competent authority for the purposes of Part VI of the FSMA including, where the context so permits, any committee, employee, officer or servant to whom any function of the UK Listing Authority may for the time being be delegated.

2.2 Words and phrases which are defined or referred to in or for the purposes of the Act (excluding any statutory modification of that meaning not in force when these articles become binding on the Company) or Table A have the same meanings in these articles unless a contrary intention appears.

2.3 In these articles, unless a contrary intention appears:

2.3.1 words which refer to the singular number include the plural number and vice versa, words which refer to one gender include all genders, and words which refer to persons include bodies corporate and unincorporated associations;

2.3.2 reference to a statute or a statutory provision includes reference to:

2.3.2.1 the statute or statutory provision as modified or re-enacted or both from time to time; and

2.3.2.2 any subordinate legislation made under the statutory provision (as modified or re-enacted as set out above),

2.3.3 reference to a Regulation is to a regulation of Table A, and reference to an Article is to a provision of these articles;

2.3.4 reference to a "transfer" of Shares or any similar expression will be deemed to include (without limitation):

2.3.4.1 any sale or other disposition of the legal or equitable interest in a Share (including any voting right attached to a Share) ("Interest");

2.3.4.2 the creation of any mortgage, charge, pledge or other encumbrance over any Interest;

- 2.3.4.3 any direction by a Member entitled to an allotment or issue of Shares that a Share be allotted or issued to some person other than himself; and
- 2.3.4.4 any grant of an option to acquire either or both of the legal and equitable ownership of any Share by any Member entitled to any such Share;
- 2.3.5 reference to a "group undertaking" means, in relation to any undertaking, its holding company (if any) and its subsidiaries (as such terms are defined by section 736 1985 Act) and any other subsidiaries of its holding company; and
- 2.3.6 reference to "written" or "in writing" includes any method of representing or reproducing words in a legible form.
- 2.4 Unless it is specifically stated otherwise, any dispute as to value, or as to calculations or adjustments to be made, as to whether or not a financial test has been met, or as to amount, whether to or in respect of the amount of dividend by reference to management accounts under Article 5 6, Market Value of Sale Shares under Articles 14 or 15 6 or otherwise pursuant to these articles, will be referred immediately to the Auditors for final determination. If the Auditors decline to act in respect of any such referral, the matter will be determined by an independent firm of chartered accountants agreed for the purpose by the parties concerned or, in default of agreement within five Business Days after the Auditors have declined to act, appointed by the incumbent president of the Institute of Chartered Accountants in England and Wales. The Auditors or independent accountants (as the case may be) will act as expert and not as arbitrator and their costs will be borne as directed by the Article in question or, if the Article is silent on the point, as directed by the Auditors/independent accountants. In the absence of any such direction, such costs will be borne equally between the parties concerned. The written certificate of the Auditors/independent accountants (as the case may be) will be conclusive and binding on the Company and the Members (except in the case of fraud or manifest error)
- 2.5 Any consent required to be given by MPTE pursuant to these articles may be given by the MPTE Director(s).
- 2.6 The headings in these articles are included for convenience only and do not affect the meaning of these articles.
- 2.7 Where, for any purpose, an ordinary resolution of the Company is required, a special resolution is also effective for that purpose.

### **3. SHARE CAPITAL**

The authorised share capital of the Company at the date of adoption of these articles is £1,500,196 divided into.

- 3.1 100 A Shares,
- 3.2 96 B Shares; and

3 3 1,500,000 Preference Shares.

**4. SHARE RIGHTS**

Regulation 2 will not apply to the Company. The rights and restrictions attaching to the A Shares, B Shares and Preference Shares are set out in full in these articles.

**5. SHARE RIGHTS - INCOME**

*Cumulative dividends - priority order and payment*

5.1 With effect from 1 January 2010, the profits of the Company which are available for lawful distribution in respect of each Accounting Period ended after such date will be applied in the following order and priority:

Priority	Class of Share	Name of Dividend	Rate
1.	Preference Shares	Preference Dividend	The Relevant Percentage of the amount Credited as Paid Up on Preference Shares

5.2 The following will apply in respect of the dividends set out in the table in Article 5.1:

5.2.1 the dividends will be paid in cash,

5.2.2 the dividends will accrue on a daily basis;

5.2.3 all such dividends will be fixed and will be paid by two equal instalments on 1 July and 1 January in each year in respect of the six month period ending on those dates with the first such payments to be made on the earlier of (i) the date of redemption (where shares are redeemed after 1 January 2010) to the extent that the class of share on which the dividend is payable has been redeemed, and (ii) 30 June 2010;

5.2.4 any amount of dividend will belong to and be paid to the holders of the Preference Shares pro rata according to their holdings of such class;

5.2.5 the dividends will all be cumulative. Notwithstanding anything contained in Regulations 102 to 108 (inclusive), the Company does not need to declare them. Any such dividend, as increased pursuant to Article 5.3.2, will become a debt due from and immediately payable by the Company to the Member or Members to whom it is payable on the date or dates set out in Article 5.2.6 without any requirement for a recommendation of the Directors or a resolution of the Members in general meeting in respect of that dividend;

5.2.6 for the purposes of Article 5.2.5 the date or dates on which any such dividend will become a debt will be:

5.2.6.1 the Due Date if such debt can lawfully arise on such date or dates; or

5.2.6.2 otherwise as soon afterwards as such debt can lawfully arise.

5.3 If the Company fails to pay in full any of the dividends set out in the table in Article 5.1 on any Due Date:

5.3.1 on the Due Date in question (but subject to Articles 5.3.3 and 5.4) the Company will pay to the relevant Members on account of the relevant dividends and in the order of priority set out in the table in Article 5.1, the maximum sum (if any) which can lawfully be paid by the Company,

5.3.2 the whole amount of any unpaid dividend will be increased by 2% per annum above the base lending rate of Barclays Bank plc from time to time (such amount accruing on a daily basis from the Due Date until the date or dates of actual payment); and

5.3.3 all Arrears will be carried forward and on each succeeding Due Date the Company will pay on account of any outstanding balance, in the order of priority set out in Article 5.4, such amount as can then lawfully be paid, and this procedure will continue until such time as the relevant Arrears have been paid in full.

5.4 Whenever there are Arrears outstanding, any profits of the Company which are available for lawful distribution will be applied in the following order and priority:

Priority	Application of Profits
1	Payment of all Arrears of Preference Dividend
2.	Payment of Preference Dividend accruing subsequently

***Non cumulative dividends - priority and payment***

5.5 If:

5.5.1 the Company has in respect of the present and all previous Accounting Periods paid in full all dividends tabled in Article 5.1, together with all Arrears, and

5.5.2 the Company has redeemed all Shares which have fallen due for redemption; and

5.5.3 the Board (with the consent of the MPTE Director(s)) has recommended payment of the same,

then any profits which the Company determines to distribute in respect of any Accounting Period will be applied on a non cumulative basis in the following order and priority

Priority	Class of Share	Maximum amount
1	A Shares and B Shares (as if one class)	Such amount as the Company may determine

Any such dividend will be paid in cash on the amounts Credited as Paid Up on the Shares in respect of which it is payable and will belong to and be paid to the holders of the relevant class of Shares pro rata according to their holdings of such class.

#### ***Dividends - general***

- 5.6 If at any time it is not possible to determine the amount of any dividend or payment by reference to any Accounts, such amount will be determined by reference to the latest available management accounts of the Company. Any dispute as to such amount will be determined in accordance with Article 24, whose provisions will apply as if set out in full in this Article.
- 5.7 No dividend shall be declared or paid prior to 1 January 2010 without the prior written consent of an MPTE Director.

### **6. SHARE RIGHTS - RETURN OF CAPITAL**

- 6.1 On a return of capital of the Company on a Liquidation or otherwise (other than a redemption of shares or the purchase by the Company of its own shares), the surplus assets and retained profits of the Company available for distribution among the Members will be applied in the following order and priority.

Priority	Class of Share	Amount to be paid:
1.	Preference Shares	Amounts Credited as Paid Up on all issued Preference Shares, together with an amount equal to all Arrears and accruals of Preference Dividend whether earned or declared or not
2.	A Shares and B Shares (as if one class)	Amounts Credited as Paid Up on all issued A Shares and B Shares

- 6.2 Any return on some but not all of any Shares of a particular class will be made amongst their holders pro rata as nearly as possible to their respective holdings of Shares of that class.

### **7. SHARE RIGHTS - REDEMPTION**

#### ***Events Triggering Redemption***

- 7.1 The Company will redeem for cash at par the following numbers of Preference Shares on the following dates:



<b>Redemption Date</b>	<b>Percentage of outstanding Preference Shares in issue to be Redeemed</b>
31 December 2011	25%
31 December 2012	33%
31 December 2013	50%
31 December 2014	100%

- 7.2 All issued Preference Shares will be redeemed immediately upon the appointment of an administrative receiver or an administrator of the whole or any part of the property and assets of any Group Member.
- 7.3 All issued Preference Shares will be redeemed immediately if the rights attaching to the Preference Shares are varied without the prior approval of the Preference Shareholders obtained in accordance with the provisions of these articles.
- 7.4 All issued Preference Shares will be redeemed immediately on the date of a Realisation unless, in the case of a Share Sale, an offer has been accepted by all the Preference Shareholders to purchase all of their Preference Shares at a price per share which is not less than the Redemption Monies which would otherwise have been payable on redemption at that time.
- 7.5 The Company may at any time redeem all or any of the issued Preference Shares by serving notice on the Preference Shareholders specifying a date (being not less than seven days after the date of the notice) and the particular Preference Shares to be redeemed

***Amount Payable***

- 7.6 The amount payable on each Preference Share redeemed pursuant to Articles 7.1 to 7.5 will be a sum equal to the Redemption Monies calculated in respect of that Share.

***Redemption Date***

- 7.7 Subject to Article 7.8, the redemption date for any redemption will be
- 7.7.1 in the case of a redemption pursuant to Article 7.1, each of the dates specified in that Article;
- 7.7.2 in the case of a redemption pursuant to Article 7.2, the date of the occurrence of the specified event,
- 7.7.3 in the case of a redemption pursuant to Article 7.3, the date of service of the notice referred to in that Article or the date on which the rights referred to are varied;

7.7.4 in the case of a redemption pursuant to Article 7.4, the Sale Date or the Listing Date; and

7.7.5 in the case of a redemption pursuant to Article 7.5, the date specified in the notice from the Company to the Preference Shareholders

7.8 If the Company is unable lawfully to redeem out of distributable profits any of the Preference Shares due to be redeemed on any of the redemption dates set out in Article 7.7, it will effect such redemption as soon afterwards as it is lawfully able to so redeem them and "redemption date" shall be construed accordingly.

#### ***Manner of Redemption***

7.9 On each redemption date:

7.9.1 the Redemption Monies (to the extent that they do not already constitute the same) will become a debt due and payable by the Company to the Preference Shareholders,

7.9.2 each of the Preference Shareholders whose shares are to be redeemed will deliver to the Company the share certificate(s) for such shares and the Company will cancel the same;

7.9.3 the Company, subject to receipt of the relevant share certificate or an indemnity in lieu of the share certificate in a form reasonably satisfactory to the Company, will pay the Redemption Monies to the relevant Preference Shareholders;

7.9.4 the Preference Dividend will cease to accrue in respect of any Preference Shares due to be redeemed on that date unless, on presentation of the share certificate(s) or an indemnity in lieu of the share certificate(s), the Company fails to make payment of the Redemption Monies, in which case the Preference Dividend will continue to accrue until the actual date of payment; and

7.9.5 any redemption of some but not all of any Preference Shares will be made amongst their holders pro rata as nearly as possible to their respective holdings of Preference Shares.

### **8. SHARE RIGHTS - VOTING**

8.1 The voting rights of Members set out in Article 25 are subject to.

8.1.1 the following provisions of this Article 8; and

8.1.2 Articles 15.7 and 15.8 (suspension of voting rights during compulsory transfer procedure)

#### ***Preference Shares***

8.2 Preference Shareholders will have the right to receive notice of, and to attend and speak at all general meetings of the Company

### **Swamping Rights**

8.3 Other than as provided by Article 8.4, the Preference Shares will carry no right to vote at general meetings of the Company.

8.4 On the occurrence of:

~~8.4.1 a breach by the Company of any of the financial tests set out in schedule 11 of the Subscription Agreement or~~

8.4.2 any act, omission or event has occurred which constitutes (or will, with the passage of time or the giving of notice, constitute) an event of default under the Security Document

and for so long as the circumstances comprising such event continue to subsist, the Preference Shareholders will be entitled to vote at every general meeting of the Company and the number of votes attaching to the Preference Shares at any such general meeting will represent 95 per cent of the voting rights attaching to all Shares after the application of this Article.

## **9. VARIATION OF SHARE RIGHTS**

9.1 The rights attached to the Preference Shares, the A Shares and the B Shares may, in each case, be altered or abrogated (whether or not the Company is being wound up) only with the prior consent of the holders of the issued Shares of that class given in accordance with Article 9.2.

9.2 The consent of the holders of a class of Shares may be given by:

9.2.1 a special resolution passed at a separate general meeting of the holders of that class, or

9.2.2 a written resolution in any form signed by or on behalf of the holders of not less than 75 percent in nominal value of the issued Shares of that class.

9.3 Without prejudice to the general effect of Article 9.1, the following will be deemed to constitute a variation of the rights attached to the A Shares:

9.3.1 any variation of the rights attaching to the A Shares, the B Shares or the Preference Shares;

9.3.2 (except for the purposes of redeeming any of the Preference Shares in accordance with these articles) the convening of a meeting to consider the passing of any resolution to reduce the Company's share capital or any amount standing to the credit of its share premium account or capital redemption reserve fund, or to reduce any uncalled liability in respect of partly paid shares;

9.3.3 the convening of a meeting to consider the passing of any resolution to alter the Company's memorandum or articles of association,

9.3.4 the payment of any distribution or return of a capital nature to any shareholder other than to the Preference Shareholders or to the A

Shareholders and the B Shareholders (as if one class) in each case in accordance with these articles;

- 9.3.5 the capitalisation of any undistributed profits (whether or not the same are available for distribution, and including profits standing to the credit of any reserve) or of any sums standing to the credit of the Company's share premium account or capital redemption reserve fund;
- 9.3.6 the payment of any distribution or return of an income nature to any shareholder otherwise than in accordance with these articles;
- 9.3.7 any variation of the authorised or issued share capital of any Group Member (other than a wholly owned subsidiary of the Company);
- 9.3.8 the creation or grant of any option or other right to subscribe for, convert into or issue any shares or other securities in the capital of any Group Member; or
- 9.3.9 the taking of any steps to wind up or dissolve any Group Member.

## **10. ISSUE AND ALLOTMENT OF NEW SHARES**

- 10.1 Subject to Article 10.4, and unless the Company by special resolution directs otherwise, any new Shares will be offered by the Directors for subscription to the holders of the Equity Shares in such proportions as equal (as nearly as possible) the proportion of Equity Shares held by them respectively at that time. For the purpose of this Article, the Equity Shares will be treated as one class of Share
- 10.2 The offer will be made by notice specifying the number and class of Shares offered, the price per Share, and a time (being not less than 14 days) within which the offer, if not accepted, will be deemed to be declined. At the end of that period or, if earlier, on the receipt of an indication from all the person(s) to whom such notice is given that he/they decline(s) to accept some or all of the Shares so offered, the Directors will offer the declined Shares in the same proportions to the holders of Equity Shares who have accepted all the Shares initially offered to them. This further offer will be made in the same manner as the original offer but may, at the discretion of the Directors, be limited to a period of seven days after which it will (to the extent that any Shares remain unaccepted) be deemed to have been withdrawn.
- 10.3 Any Shares not taken up at the end of the procedure set out in Articles 10.1 and 10.2 may be offered by the Directors to a third party (to be approved by the holders of a majority of the A Shares) and, subject to these articles, the provisions of section 80 of the 1985 Act, such Shares will be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms as they think fit. However.
  - 10.3.1 no Shares will be issued at a discount;
  - 10.3.2 no Shares will be issued more than three months after the end of the period for acceptance of the last offer of such Shares under Articles 10.1 and 10.2 unless the procedure set out in those Articles is repeated in respect of such Shares; and

- 10.3.3 no Shares will be issued on terms which are more favourable than those on which they were offered to the Members
- 10.4 The provisions of sections 89(1) and 90(1) to (6) of the 1985 Act will not apply to the Company.
- 10.5 If, due to any inequality between the number of new Shares to be issued and the number of Shares held by Members entitled to have the offer of new Shares made to them, any difficulty arises in the apportionment of any such new Shares amongst the Members, the number of new Shares to be offered to each Member shall be as determined by the Board.

## 11. TRANSFERS OF SHARES - PROHIBITED TRANSFERS

### *General Prohibitions*

- 11.1 The Directors will not register any transfer of Shares to any of the following:
  - 11.1.1 any person who, in the reasonable opinion of the Directors is carrying on (or otherwise controls or has any interest in) any business which is directly or indirectly a competitor of the Company or any member of the Group ("Competitive Business"), except that this restriction will not apply to:
    - 11.1.1.1 any transfer of Shares pursuant to Articles 16 and 17 (Tag Along Rights and Drag Along Rights); or
    - 11.1.1.2 any transfer of shares to MPTE (or any other person or body (including an undertaking (as such term is defined in the 2006 Act) in which it has an interest provided that (unless a Majority of the Holders of the B Shares have provided their prior written consent to such transfer) such other person is not a Competitive Business), or
  - 11.1.2 any person who does not have legal capacity to transfer such Shares or otherwise to comply fully with the provisions of these articles.

### *Prohibition unless in accordance with those articles*

- 11.2 Subject to Article 11.1, the Directors will not register a transfer of Shares unless:
  - 11.2.1 the transfer is permitted by Article 12, (Permitted Transfers), or has been made in accordance with Article 13 (Pre-emption), ~~and~~
  - ~~11.2.2 the proposed transferee has entered into a deed of adherence to, and in the form required by the Subscription Agreement.~~
- 11.3 For the purpose of ensuring that,
  - 11.3.1 a transfer of shares is permitted under these articles; or
  - 11.3.2 no circumstances have arisen whereby a Transfer Notice is required to be or ought to have been given; or
  - 11.3.3 no circumstances have arisen whereby the tag along provisions are required to be or ought to have been triggered pursuant to Article 16,

the Board may, and will if so requested by the MPTE Director(s), require any Member to procure that any person whom the Board or the MPTE Director(s) reasonably believe(s) to have information relevant to such purpose provides the Company with such information and evidence as the Board or the MPTE Director(s) think fit. Pending the provision of such information the Board will be entitled to refuse to register any relevant transfer.

11.4 Regulations 24, 25 and 26 will not apply to the Company

## **12. PERMITTED TRANSFERS**

12.1 Where any Shares are the subject of a Transfer Notice, no transfers of any such Shares shall be permitted pursuant to this Article 12.

12.2 Subject to Articles 11.1 and 12.1, and to Articles 12.3 to 12.6 (inclusive), any Share may be transferred:

12.2.1 subject to Article 12.3, by its beneficial owner to a person shown to the reasonable satisfaction of the Directors to be a nominee for such beneficial owner only, and by any such nominee to the beneficial owner or to another person shown to the reasonable satisfaction of the Directors to be a nominee for the beneficial owner only; or

12.2.2 when required by, and in accordance with, Article 15 (Compulsory Transfers); or

12.2.3 to a Buyer in acceptance of an Approved Offer pursuant to Article 16 (Tag Along Rights) or Article 17 (Drag Along Rights); or

12.2.4 in the case of Shares held by an undertaking, subject to Article 12.4, to a group undertaking of the transferor

### ***Further transfers by privileged relatives, group members etc.***

12.3 Where Shares are held by one or more nominees of their beneficial owner and any such person ceases to be a nominee of the beneficial owner of the Shares such person will on or before the cessation transfer such Shares to a transferee permitted under Article 12.2.1

12.4 Where Shares have been transferred under Article 12.2.4 (transfers to group undertakings) and the transferee ceases to be a group undertaking of the transferor, it will, on or before the cessation, transfer such Shares to the original transferor or to another group undertaking of the original transferor which is a permitted transferee under Article 12.2.

12.5 If a Member fails or refuses to execute and deliver any transfer in respect of any Shares pursuant to its obligations under Article 12.3 or Article 12.4, the Board may (and will if requested by the MPTE Director(s)) authorise any Director to execute and deliver the necessary transfer(s) on the defaulting Member's behalf. The Board will authorise registration of the transfer, and of the transferee as the holder of the Shares so transferred, once appropriate stamp duty (if any) has been paid. After registration, the title of the transferee as registered holder of such Shares will not be affected by

any irregularity in or invalidity of such proceedings, which, will not be questioned by any person.

*Provision specific to A Shares*

- 12.6 A Shares will immediately and without resolution of the Directors or the Members be converted into B Shares upon being held by any person who is not a holder of any other A Shares

**13. PRE-EMPTION**

*Transfer Notices*

- 13.1 Except in the case of a transfer pursuant to Article 12 (Permitted Transfers), and subject to the prohibitions on transfers set out in Article 11, a Seller must give a Transfer Notice to the Company.
- 13.2 Each Transfer Notice will (except as provided in Article 15 (Compulsory Transfers)) relate to one class of Shares only and will specify:
- 13.2.1 the number and class of Sale Shares;
- 13.2.2 the identity of the Proposed Transferee (if any);
- 13.2.3 the price per Share at which the Seller wishes to transfer the Sale Shares; and
- 13.2.4 whether or not the Transfer Notice is subject to a Total Transfer Condition. In the absence of any such stipulation it will be deemed not to be so conditional. No Total Transfer Condition will apply in respect of any Transfer Notice deemed to have been given pursuant to Article 15.
- 13.3 No Transfer Notice will be capable of variation or cancellation without the unanimous consent of the Board unless the Appointed Accountants or the Auditors (as the case may be) subsequently determine the Market Value of the Sale Shares to be less than the price specified in the Transfer Notice.

*Transfer Price*

- 13.4 The Transfer Notice will constitute the Company as the agent of the Seller for the transfer of the Sale Shares in accordance with this Article 13 at the following price ("Transfer Price"):
- 13.4.1 such price as may be agreed between the Seller and the Board (subject to the approval of the MPTE Director(s)) within 10 Business Days after the date of service or deemed service of the Transfer Notice; or
- 13.4.2 in default of agreement under Article 13.4.1 the Market Value of the Sale Shares as at the date of service or deemed service of the Transfer Notice, and as determined in accordance with Article 14, or to the extent any dispute arises from the determination of Market Value in accordance with Article 14, as determined in accordance with the provisions of Article 2.4,

provided that, where (or to the extent that, as the case may be) such Shares are purchased by a person specified in Article 13.5.1.4, the consideration payable in respect of such Shares shall be subject to the provisions of Article 19.

***First offer to Company/EBT etc (at discretion of Board)***

**13.5** The following provisions of this Article 13.5 will apply to any transfer of any Shares by any Member other than MPTE.

**13.5.1** Within ten Business Days after the later of:

**13.5.1.1** the receipt by the Company of a Transfer Notice, and

**13.5.1.2** the agreement or determination of the Transfer Price in accordance with Article 13.4,

MPTE may direct the Company (in its capacity as agent for the Seller) immediately to offer at the Transfer Price such number of Sale Shares as it may determine to:

**13.5.1.3** the Company pursuant to the provisions of part 18 of the 2006 Act; and/or

**13.5.1.4** any person who will hold the Sale Shares for the benefit of existing or future employees including (without limitation), any Employee Benefit Trust of any Group Member or any professional trustee, in any such case to hold the Sale Shares upon the terms of a discretionary trust for the benefit of the class of beneficiaries which includes (without limitation) employees and directors of any Group Member.

**13.5.2** If any offeree of the Sale Shares pursuant to this Article 13.5 applies for any of them within ten Business Days after the date of the offer referred to in Article 13.5.1, the Company will allocate to such offeree the number of Sale Shares applied for on the later of:

**13.5.2.1** the fifteenth Business Day following receipt of the Transfer Notice, and

**13.5.2.2** the date on which the Transfer Price is determined.

**13.5.3** If all of the Sale Shares are so allocated, the provisions of Articles 13.6 to 13.9 will not apply. If none or some only of the Sale Shares are so allocated, the provisions of Articles 13.6 to 13.9 will have effect as if reference to Sale Shares was to those not allocated in accordance with this Article 13.5.

***Offer to Members and notice to Members***

**13.6** Subject to Article 13.5, within 10 Business Days after its receipt of a Transfer Notice or, where later, on the later of the determination of the Transfer Price and 10 Business Days after the exhaustion of the procedure set out in Article 13.5, the Company (in its capacity as agent for the Seller) will give notice in writing to each of the Members (other than the Seller and any other Member who has served or who is deemed to have served a Transfer Notice in respect of his entire holding of Shares pursuant to



which the sale of such Shares has not then been concluded) offering the Sale Shares for sale at the Transfer Price in accordance with Articles 13.7 and 13.8. The notice will specify that the Members will have a period of not less than 10 and up to 20 Business Days from the date of such notice within which to apply for some or all of the Sale Shares.

***Pre-emption Procedure***

13.7 It will be a term of any offer made pursuant to Article 13.6 that, if Members holding Shares of more than one class apply for some or all of the Sale Shares, the Sale Shares of a particular class specified in column (1) in the table below will be treated as offered:

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

13.7.2 to the extent not accepted by persons in column (2) (whether as part of their Proportionate Entitlement or as Extra Shares), to all persons in the category set out in the corresponding line in column (3) in the table below; and

13.7.3 to the extent not accepted by persons in columns (2) and (3) (whether as part of their Proportionate Entitlement or as Extra Shares), to all persons set out in the corresponding line in column (4) in the table below:

(1)	(2)	(3)	(4)
Class of Sale Shares	First Priority	Second Priority	Third Priority
B Shares	B Shareholders	A Shareholders	Preference Shareholders
A Shares	A Shareholders	B Shareholders	Preference Shareholders
Preference Shares	Preference Shareholders	A Shareholders	B Shareholders

13.8 It will be a further term of the offer that, if there is competition within any class of shareholder for the Sale Shares offered to that class, such Sale Shares will be treated as offered among the holders of such class in proportion (as nearly as possible) to their existing holdings of Shares of that class ("Proportionate Entitlement"). However, the offer will also invite Members to indicate in their applications for Sale Shares, whether they would be willing to buy Shares in excess of their Proportionate Entitlement should any such Shares be available and, if so, how many ("Extra Shares").

***Allocation of Shares***

13.9 After the expiry of the offer period specified in Article 13.6, (or, if sooner, upon valid applications being received for all of the Sale Shares in accordance with that Article), the Board will allocate the Sale Shares as follows.

- 13.9.1 if the total number of Sale Shares applied for (including Extra Shares) is equal to or less than the available number of Sale Shares, each offeree will be allocated the number applied for in accordance with his application (subject to Article 13.13); or
  - 13.9.2 if the total number of Sale Shares applied for is greater than the available number of Sale Shares, each offeree will be allocated his Proportionate Entitlement, or, if less, the number of Sale Shares which he has applied for; and
  - 13.9.3 applications for Extra Shares will be allocated in accordance with such applications or, in the event of competition within any class of shareholder, among those applying for Extra Shares in such proportions as equal (as nearly as possible) the proportions of all the Shares of the same class held by such offerees.
- 13.10 Allocations of Sale Shares made by the Company pursuant to this Article 13 will constitute the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them, provided that no person will be obliged to take more than the maximum number of Sale Shares which he has indicated to the Company he is willing to purchase

***Completion of sale and purchase of Sale Shares***

- 13.11 The Company will immediately upon allocating any Sale Shares (whether pursuant to Article 13.5.2 or Article 13.9) give notice in writing ("Allocation Notice") to the Seller and to each person to whom Sale Shares have been allocated specifying:
- 13.11.1 the number of Sale Shares so allocated;
  - 13.11.2 the aggregate price payable for them;
  - 13.11.3 any additional information required by Article 13.13.1 (if applicable); and
  - 13.11.4 (subject to Article 13.13.1) the place and time (being not later than five Business Days after the date of the Allocation Notice) at which the sale of the Sale Shares will be completed
- 13.12 Subject to Article 13.13, completion of the sale and purchase of Sale Shares in accordance with the Allocation Notice will take place at the place and time specified in the Allocation Notice when the Seller will, upon payment of the due price or, where Article 13.17 applies, the sum of £1 on account of the due price, transfer those Sale Shares specified in the Allocation Notice and deliver the relevant Share certificates to the persons to whom they have been allocated.
- 13.13 If the Transfer Notice included a Total Transfer Condition and the total number of Shares applied for is less than the number of Sale Shares.
- 13.13.1 the Allocation Notice will refer to such Total Transfer Condition and will contain a further offer, open for 28 days, to those persons to whom Sale Shares have been allocated to apply for further Sale Shares; and

13.13.2 completion of the transfer in accordance with the preceding paragraphs of this Article 13 will be conditional upon all such Sale Shares being so allocated.

***Default by the Seller***

13 14 Except in the case of an acquisition of Sale Shares by the Company, if the Seller fails by the due completion date to execute and deliver transfers in respect of any of the Sale Shares which he is due to transfer, the Board may (and will if requested by the MPTE Director(s)) authorise any Director to.

13 14.1 execute the necessary transfer(s) on the Seller's behalf, and

13.14.2 against receipt by the Company of the price payable for the relevant Sale Shares on completion of such sale (such amount to be held on trust for the Seller without interest) (the receipt being a good discharge to the offeree who will not be bound to see to the application of it), deliver such transfer(s) to the relevant offeree(s).

The Board will authorise registration of the transfer(s), and of the offeree(s) as the holder(s) of the Sale Shares so transferred, once appropriate stamp duty has been paid. After registration, the title of such offeree(s) as registered holder(s) of such Sale Shares will not be affected by any irregularity in, or invalidity of such proceedings, which will not be questioned by any person.

13 15 In the case of an acquisition of Sale Shares by the Company, if the Seller fails by the due completion date to transfer and/or to deliver the certificates (or a suitable indemnity) in respect of any Sale Shares, the Board may (and will if requested by the MPTE Director(s)) authorise any Director to execute, complete and deliver the necessary transfer and indemnity to the Company on the Seller's behalf. When that instrument has been duly stamped, the Company will ensure that such share capital is cancelled in accordance with the Act, and will hold the purchase monies on trust (without interest) for the Seller.

***Exhaustion of pre-emption rights - rights and restrictions with regard to sale to third party***

13 16 Immediately after the exhaustion of any pre-emption process followed in accordance with these articles, if any Sale Shares remain unallocated, the Company will notify the Seller of that fact. The Seller may, at any time within four calendar months after receiving such notice (but not otherwise unless the pre-emption procedure set out in these articles is repeated), transfer any unsold Sale Shares to the Proposed Transferee at any price which is not less than the Transfer Price, except that:

13.16.1 the Board will refuse registration of any transfer to a Proposed Transferee who is a person to whom Shares may not be transferred by virtue of Articles 11.1.1 or 11.1.2;

13 16.2 if any such transfer would, if made and registered, result in the Proposed Transferee obtaining or increasing a Controlling Interest, the Board will refuse registration of such transfer until such time as an Approved Offer has been made and the provisions of Article 16 (Tag Along Rights) complied with,

13.16.3 if the Seller included a Total Transfer Condition in the Transfer Notice which has not been satisfied, the Seller will be entitled to transfer all (but not some only) of the Sale Shares,

13.16.4 any such transfer must be in good faith and the Board or the MPTE Director(s) may require to be satisfied (in such manner as it or they may reasonably think fit) that the Sale Shares are being sold at a price which is not less than the Transfer Price without any deduction, rebate or allowance whatsoever. If not so satisfied, the Board (subject to the approval of the MPTE Director) may refuse to register the transfer,

13.16.5 no such Shares may be transferred to any person without the consent of the MPTE Director(s); and

13.16.6 in the case of any deemed transfer process pursuant to Article 15, the Compulsory Seller will not be entitled to transfer any unsold Sale Shares to any third party

13.17 This Article 13.17 shall apply where Sale Shares are purchased from a Seller (other than a Compulsory Seller) by a person specified in Article 13.5.1.4. Where this Article 13.17 applies, the aggregate consideration payable in respect of such Shares shall be the Transfer Price as adjusted pursuant to clause 19. Of this consideration, the sum of £1 shall be payable on transfer and the remainder as provided in Article 19.

#### **14. VALUATION**

##### ***Determination of "Market Value"***

If the Appointed Accountants (or, by virtue of Article 2.4, the Auditors) are required to determine Market Value for any purpose of these Articles the provisions set out below will apply.

14.1 Market Value will be determined by the Appointed Accountants, (or Auditors as relevant) first valuing the Company as a whole:

14.1.1 assuming, if the Company is then carrying on business as a going concern, that it will continue to do so,

14.1.2 assuming that the entire issued share capital of the Company is being sold as between a willing buyer and a willing seller by arm's-length private treaty for cash payable in full on completion,

14.1.3 taking account of any Shares which may be allotted pursuant to options which have been issued by the Company and which are still outstanding;

14.1.4 taking account of the impact on the business of the Group of the departure of any Seller who is a Leaver;

14.1.5 taking account of any bona fide offer for the Company received from an unconnected third party within six months prior to the Transfer Notice being served or deemed to have been served; and

14.1.6 recognising that in any other circumstances the Shares are not freely marketable

14.2 Having valued the Company as a whole, the Appointed Accountants, (or Auditors as relevant) will determine the Market Value of the Sale Shares.

14.2.1 having deducted from the value of the Company as a whole (if not already taken into account when so valuing the Company):

14.2.1.1 any Arrears, accruals or deficiencies of dividend on the Preference Shares;

14.2.1.2 any arrears, accruals or deficiencies of dividend on Shares of any other class; and

14.2.1.3 the aggregate nominal value of any Preference Shares in issue;

14.2.2 having regard to the rights and restrictions attached to the Shares concerned in respect of income, capital and transfer; and

14.2.3 (where the Sale Shares are A Shares or B Shares), such that the value attributed to the Sale Shares shall be X % of the aggregate value attributable to all the A Shares and B Shares in issue where X =

$$\frac{Y}{T} \times \frac{100}{1}$$

and

Y = nominal value of Sale Shares; and

T = nominal value of all A Shares and B Shares in issue at the relevant time.

14.3 The Appointed Accountants or Auditors, as the case may be, shall be required to deliver a notice of the Market Value within 20 Business Days after their appointment.

## 15. COMPULSORY TRANSFERS

### *Circumstances which trigger compulsory transfer*

15.1 This Article 15 applies when:

15.1.1 a Relevant Individual is a B Shareholder, and/or

15.1.2 a B Shareholder holds B Shares as the nominee of a Relevant Individual, and/or

15.1.3 B Shares are held by a company, any part of the issued share capital of which is beneficially owned by the Relevant Individual or a person to whom the Relevant Individual is permitted to transfer Shares under Article 12,

and the Relevant Individual ceases for any reason (including death or bankruptcy) to be an employee and/or director or consultant of any member of the Group or, though

still an employee or director or consultant of a member of the Group, becomes eligible for benefits under a permanent health insurance policy

- 15.2 For the purposes of this Article, the Relevant Individual will cease to be an employee and/or director or consultant of a member of the Group on the Cessation Date.

***Compulsory Pre-emption Procedure***

- 15.3 Within four months after the Cessation Date the Board may serve notice ("Compulsory Sale Notice") on the Relevant Individual and/or any holder of B Shares referred to in Article 15.1 (or the PRs or the trustee in bankruptcy of any bankrupt Member) (each a "Compulsory Seller" and together "Compulsory Sellers") requiring each such person to offer such number as the MPTE Director(s) may decide of the Shares registered in his or their name(s) or to which he is or they are or may become entitled whether as a result of his or their holding of Shares or otherwise.

- 15.4 The Shares which are the subject of the Compulsory Sale Notice will be offered for sale (other than to any Compulsory Seller or any other Member who has served or who is deemed to have served a Transfer Notice in respect of his entire holding of Shares which is still outstanding) in accordance with the provisions of Article 13, which will apply as if set out in full in this Article except to the extent that they are varied by the following provisions of this Article 15. The Board may also determine in its absolute discretion to revoke any Transfer Notice previously given or deemed to have been given by the Compulsory Seller(s) which is still outstanding at the Cessation Date.

***Sale Price - Good Leaver/Bad Leaver***

- 15.5 The price payable and, where Article 15.9 applies to Shares purchased from a Compulsory Seller, the maximum price payable for Sale Shares will be

15.5.1 if the Relevant Individual is a Bad Leaver, the lower of.

15.5.1.1 the issue price of the Sale Shares (excluding any premium) (or, where any of the Sale Shares were acquired by a Compulsory Seller by way of transfer rather than allotment, the lower of the issue price (including any premium) and the amount paid by such Compulsory Seller on the transfer); and

15.5.1.2 the Market Value of the Sale Shares on the Cessation Date to be agreed or determined in accordance with Articles 2.4 and 15.6 or;

- 15.5.2 if the Relevant Individual is a Good Leaver, the price payable and, where Article 15.9 applies, the maximum price payable will be the Market Value of the Sale Shares on the Cessation Date, to be agreed or determined as aforesaid.

such price ("Leaver Price") to be adjusted (as the case may be) in accordance with the provisions of Articles 15.9 and 19

15.6 "Market Value" for the purposes of Article 15 will be.

15.6.1 the price agreed between the Compulsory Seller(s) and the MPTE Director(s); or

15.6.2 if they fail to agree a price within 15 Business Days of the date of service of the Compulsory Sale Notice (or within such other timetable as may be determined by the MPTE Director(s)), the price determined by the Appointed Accountant (or, as the case may be, the Auditors) to be the Market Value of such Shares on the Cessation Date, according to the principles set out in Article 14.

***Suspension of voting rights during compulsory transfer procedure***

15.7 Unless the MPTE Director(s) direct(s) otherwise in writing, any Shares held by a Compulsory Seller on the Cessation Date (and any Shares issued to a Compulsory Seller after such date by virtue of the exercise of any right or option granted or arising by virtue of his holding of the Sale Shares) will cease to confer the right to be entitled to receive notice of, attend and vote at any general meeting of the Company, or any meeting of the holders of any class of Shares with effect from the Cessation Date (or, where appropriate, the date of issue of such Shares, if later), and such Shares will not be counted in determining the total number of votes which may be cast at any such meeting, or for the purposes of a written resolution of any Members or class of Members. That right will be restored immediately upon the Company registering a transfer of the Sale Shares in accordance with this Article 15.

15.8 For so long as any Shares are disenfranchised pursuant to Article 15.7, the voting rights attaching to the Equity Shares will be varied so that the holders of A Shares and B Shares are each entitled (as a class) to cast such percentage of votes as they would otherwise have been entitled to cast prior to the suspension of voting rights of the disenfranchised Shares

***Settlement of Price on Compulsory Transfer***

15.9 This article shall apply where (and to the extent that) Sale Shares are acquired from a Compulsory Seller in whole or in part by any person specified in Article 13.5.1.4. Where this Article 15.9 applies, the price which falls to be paid to a Former Manager in respect of his Sale Shares to which this Article applies shall be a sum equal to the Leaver Price and such sum shall be satisfied:

15.9.1 as to £1, by the payment of £1 (on account of the aggregate price payable in respect of all such Sale Shares) on completion of the sale and purchase of the Sale Shares; and

15.9.2 as to the remainder in accordance with the provisions of Article 19.

***Transmission of Shares***

15.10 Regulations 29 to 31 shall take effect subject to Articles 15.11 and 15.12

15.11 Without prejudice to Articles 15.1 and 15.3 (the provisions of which, when operable, will override the provisions of this Article 15.11 and the provisions of Articles 15.10 and 16.11), a person entitled to a Share or Shares in consequence of the death, bankruptcy, receivership or liquidation of a Member or otherwise by operation of law

shall be bound at any time, if called upon in writing to do so by the Directors not later than 90 days after the Directors receive notice from the person concerned that he has become so entitled, to give a Transfer Notice (without specifying a Transfer Price) in respect of all of the Shares then registered in the name of the deceased or insolvent Member in accordance with the provisions of Article 13, which will apply as if set out in full in this Article.

15.12 If any such person fails to give a Transfer Notice in accordance with Article 15.11 within 10 Business Days after being called upon to do so:

15.12.1 the Board may (and will if requested by the MPTE Director(s)) authorise any Director to execute and deliver a transfer of the Shares concerned to a person appointed by the Directors as a nominee for the person entitled to the Shares; and

15.12.2 the Company may give a good receipt for the purchase price of such Shares, register the purchaser or purchasers as the holders of them and issue certificates for the same to such purchasers. After registration, the title of such purchaser or purchasers as registered holder(s) of such Shares will not be affected by any irregularity in, or invalidity of, such proceedings, which will not be questioned by any person. In any such case the person entitled to the Shares as a consequence of the death, insolvency or otherwise by operation of law will be bound to deliver up the certificates for the Shares concerned to the Company whereupon he will become entitled to receive the purchase price. In the meantime, the purchase price will be held by the Company on trust for such person without interest.

## **16. CHANGE OF CONTROL - TAG ALONG RIGHTS**

16.1 With the exception of transfers of Shares pursuant to Article 12 (Permitted Transfers), no transfer of Shares which would result, if made and registered, in a person or persons Acting in Concert obtaining or persons other than MPTE increasing a Controlling Interest, will be made or registered unless:

16.1.1 an Approved Offer is made by the proposed transferee(s) ("Buyer") or, at the Buyer's written request, by the Company as agent for the Buyer, and

16.1.2 the Buyer complies in all respects with the terms of the Approved Offer at the time of completion of the sale and purchase of Shares pursuant to it.

16.2 For the purposes of this Article 16 and Article 17:

16.2.1 "Approved Offer" means an offer in writing served on all Members holding Equity Shares (including the proposing transferor), offering to purchase all the Equity Shares held by such Members (including any Shares which may be allotted pursuant to the exercise or conversion of options, rights to subscribe for or securities convertible into Equity Shares in existence at the date of such offer) which.

16.2.1.1 is stipulated to be open for acceptance for at least 15 Business Days;

16.2.1.2 offers the same or equivalent consideration for each Equity Share (whether in cash, securities or otherwise in any combination),



provided that a reduction, withholding or retention of consideration to take account of tax payable or which might be payable by a Member or by his employing company in relation to the conversion of securities, the exercise of an option over Equity Shares and/or the disposal of Equity Shares shall be deemed not to prejudice the application of this paragraph;

16.2.13 includes an undertaking by or on behalf of the Buyer that, subject to compliance by the Buyer with Article 16.2.1.4, no other consideration, (whether in cash or otherwise) is to be received or receivable by any Member which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Shares to be sold by such Member, and that neither the Buyer nor any person acting by agreement or understanding with it has otherwise entered into more favourable terms or has agreed more favourable terms with any other Member for the purchase of Equity Shares;

16.2.14 makes provision for the redemption in accordance with these articles of all outstanding Preference Shares by the payment in respect of each Preference Share of an amount equal to the Redemption Monies calculated in respect of each such Share or, if the Company is unable lawfully to effect any such redemption, makes provision for the purchase by the Buyer of such Preference Shares at the price at which they would have been redeemed;

16.2.15 is on terms that the sale and purchase of Shares in respect of which the offer is accepted will be completed at the same time and that the aggregate consideration which falls to be paid to shareholders is apportioned between them as provided in these Articles;

16.2.16 is a bona fide offer which is made on arms length terms by a third party; and

16.2.17 is approved by the MPTE Director(s).

## **17. CHANGE OF CONTROL - DRAG ALONG RIGHTS**

17.1 Whenever an Approved Offer is made, the holders of 75% or more of the A Shares shall have the right ("**Drag Along Right**") to require (in the manner set out in Article 17.2) all of the other holders of Equity Shares including persons who acquire Equity Shares following the making of the Approved Offer pursuant to the exercise of options or conversion of securities ("**Other Shareholders**") to accept the Approved Offer in full

17.2 The Drag Along Right may be exercised by the service of notice to that effect on the Other Shareholders at the same time as, or within five Business Days following the making of the Approved Offer (or, if later, within five Business Days following the acquisition by the relevant Other Shareholder of any Equity Shares).

17.3 On the exercise of the Drag Along Right, each of the Other Shareholders will be bound to accept the Approved Offer in respect of its entire holding of Equity Shares and to comply with the obligations assumed by virtue of such acceptance

- 17.4 If any of the Other Shareholders fails to accept the Approved Offer or, having accepted such offer, fails to complete the sale of any of its Equity Shares pursuant to the Approved Offer, or otherwise fails to take any action required of it under the terms of the Approved Offer, any holder of A Shares or any persons so authorised by the Board may accept the offer on behalf of the Other Shareholder in question, or undertake any action required under the terms of the Approved Offer on the part of the Other Shareholder in question. In particular, such person may execute the necessary transfer(s) on that Other Shareholder's behalf; and against

17.4.1 receipt by the Company (on trust for such Other Shareholder) of the consideration payable for the relevant Shares (the receipt being a good discharge to the Buyer, who will not be bound to see to the application of it); and

- 17.4.2 compliance by the Buyer and, where relevant, the Company with all other terms of the Approved Offer

deliver such transfer(s) to the Buyer (or its nominee). The Board will then authorise registration of the transfer(s) and of the Buyer (or its nominee) as the holder of the Shares so transferred. After registration, the title of the Buyer (or its nominee) as registered holder of such Shares will not be affected by any irregularity in, or invalidity of such proceedings, which will not be questioned by any person. The Other Shareholder will in such a case be bound to deliver up its certificate for its Shares to the Company, or a statutory declaration of loss (as appropriate) whereupon the Other Shareholder will be entitled to receive the purchase price for such Shares.

## **18. APPOINTMENT OF ACCOUNTANTS**

- 18.1 Where in these articles reference is to be made to an Appointed Accountant, the provisions of this Article 18 shall apply.

- 18.2 The Appointed Accountant shall be.

18.2.1 a member of KPMG LLP, Deloitte LLP, PricewaterhouseCoopers LLP or Ernst & Young LLP who is an accountant with not less than ten years' experience in the valuation of private companies limited by shares as shall be agreed between the Board and the Seller (or Compulsory Seller, as the case may be), within five Business Days after the expiry of the period of 15 Business Days referred to in Article 15.6.2 or the expiry of the period of 10 Business Days referred to in Article 13.4.1.

18.2.2 failing such agreement, the Board shall request the President for the time being of the Royal Institute of Chartered Accountants in England and Wales to nominate a sufficiently qualified and experienced accountant and he shall be the Appointed Accountant for all purposes.

- 18.3 The Appointed Accountant shall act as expert and not as arbitrator and his written opinion on the matters referred to him shall, save in circumstances of manifest error, be final and binding on the parties

- 18.4 The parties shall be entitled to make submissions to the Appointed Accountant and shall provide the Appointed Accountant with such assistance and (with copies to, as

relevant, the Seller or Compulsory Seller and the Board) such documents as the Appointed Accountant reasonably requests for the purpose of conducting its work

- 18.5 Without prejudice to Article 18.4, the Board and the Seller or Compulsory Seller, as the case may be, shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other party may reasonably require to make a submission under Article 18.4
- 18.6 The costs and expenses of the Appointed Accountant for reporting his opinion of the Market Value will be borne equally between the relevant transferee and the Seller or Compulsory Seller as the case may be unless the Appointed Accountant determines otherwise.

## **19. PROCEEDS ON A SHARE SALE OR LISTING AND PRICE ADJUSTMENT**

- 19.1 On completion of a Realisation, the aggregate proceeds of such Realisation which fall to be paid to shareholders shall be applied as follows:
  - 19.1.1 firstly, in redeeming all issued Preference Shares in accordance with Article 7.4 (the aggregate amount payable in respect of such redemption being the "Preference Share Return");
  - 19.1.2 where the proceeds of the Realisation exceed the Preference Share Return, such excess ("Available Excess") shall first be paid to the Former Managers as deferred consideration such that each Former Manager receives an amount equal to his Maximum Deferred Consideration or, where the Available Excess is less than an amount equal to the aggregate of the Maximum Deferred Consideration applicable to the Former Managers, the Available Excess shall be paid to the Former Managers pro rata to the proportion which each Former Manager's Maximum Deferred Consideration represents of the Total Maximum Deferred Consideration; and
  - 19.1.3 following the payments referred to in Articles 19.1.1 and 19.1.2, the remainder of the Available Excess (if any) shall be paid to the holders of the Equity Shares in consideration for their Equity Shares and apportioned between them pro rata to their holdings of Equity Shares.
- 19.2 Where the Proceeds of the Realisation do not exceed the Preference Share Return, the Transfer Price and/or Leaver Price (as the case may be) which falls to be paid to a Former Manager (if any) shall be adjusted such that the Transfer Price payable to him shall be £1 and the Leaver Price payable to him shall be £1. Where the amount paid to a Former Manager under clause 19.1.2 is greater than zero but less than his Maximum Deferred Consideration, the Leaver Price or, as the case may be, Transfer Price for his Sale Shares and/or Shares sold by him as a Compulsory Seller shall be adjusted such that it is equal to the amount which falls to be paid to such Former Manager under clause 19.1.2, in each case, plus £1.
- 19.3 Any sum which falls to be paid under Article 19.1 shall be paid within 14 Business Days after the date of completion of the Realisation in question.

## **20. ELECTRONIC COMMUNICATION**

Regulation 1 is modified by:

- 20.1 deleting the definition given of "electronic communication" and substituting in its place the definition given in these articles; and
- 20.2 deleting the words "'communication" means the same as in the Electronic Communications Act 2000."

## **21. SHARE CERTIFICATES**

Regulation 6 is modified by adding after "Every certificate shall be sealed with the seal" the words "or executed in such other manner as the Directors authorise, having regard to the Act,".

## **22. LIEN**

- 22.1 Regulation 8 is modified by the deletion of the words "(not being a fully paid share)".
- 22.2 The lien conferred by Regulation 8 will apply to all Shares, whether fully paid or not, and to all Shares registered in the name of any person under a liability to the Company (whether actual or contingent), whether he is the sole registered holder of such Shares or one of two or more joint holders of such Shares

## **23. GENERAL MEETINGS**

- 23.1 Regulation 37 is modified by the insertion of the words "or the MPTE Director(s) acting alone" after the second word of that Regulation.
- 23.2 A general meeting may consist of a conference between Members, some or all of whom are in different places if each Member who participates is able:

23.2.1 to hear each of the other participating Members addressing the meeting, and

23.2.2 if he so wishes, to address all of the other participating Members simultaneously,

whether directly, by conference telephone or by any other form of communications equipment (whether in use when these articles are adopted or not) or by a combination of those methods.

A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of Members required to form a quorum. A meeting held in this way is deemed to take place at the place where the largest group of participating members is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates. A resolution put to the vote of a meeting will be decided by each Member indicating to the chairman (in such manner as the chairman may direct) whether the Member votes in favour of or against the resolution or abstains. References in this Article 23 to Members includes their duly appointed proxies and, in the case of corporate members, their duly authorised representatives

## **24. PROCEEDINGS AT GENERAL MEETINGS**

- 24.1 Regulation 40 is modified so that the quorum for any general meeting (other than a separate class meeting) will include at least one Member present in person or by proxy from each class of Equity Shareholder.
- 24.2 If any meeting is adjourned pursuant to Regulation 41 because a quorum is not present, and at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the shareholders present will form a quorum. Regulation 41 is modified accordingly.
- 24.3 Regulation 46 is modified so that a poll may be demanded by the chairman or by any Member present in person or by proxy and entitled to vote at the meeting.
- 24.4 A corporation which is a member of the Company may, by resolution of its directors or other governing body, authorise such person or persons as it thinks fit to act as its representative or representatives at any meeting of the Company or at any meeting of any class of Members. The provisions of the Act shall apply to determine the powers that may be exercised at any such meeting by any person so authorised. The corporation shall, for the purposes of these articles, be deemed to be present in person at any such meeting if any person so authorised is present at it, and all references to attendance and voting in person shall be construed accordingly.
- 24.5 Regulation 51 is amended by replacing the first and second sentences with the following words: "A poll demanded will be taken immediately".

## **25. VOTES OF MEMBERS**

- 25.1 Regulation 54 shall not apply to the Company.
- 25.2 Regulation 56 shall be modified by the deletion of the words "instruments of proxy, not less than 48 hours before the time appointed for holding" and substituting instead the words "forms of proxy, within the time limits prescribed by these articles for deposit of forms of proxy for use at" and by including the words "or poll" after the words "adjourned meeting"
- 25.3 Regulation 57 is modified by the inclusion after the word "shall" of the phrase ", unless the Directors otherwise determine."
- 25.4 Regulation 59 shall be modified by including the words "and on a show of hands" after the words "On a poll" and by including the words ", provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him. When two or more valid but different forms of proxy or appointments of proxy by electronic means are delivered or received in respect of the same share for use at the same meeting, the one which is last validly delivered or received (regardless of its date or the date of its execution) shall be treated as replacing and revoking the other(s) as regards that share. If the Company is unable to determine which was last delivered or received, none of them shall be treated as valid in respect of that share. Deposit or delivery of an appointment of proxy will not preclude a Member from attending and voting at the meeting or at any adjournment of the meeting" after the words "to attend on the same occasion".

- 25.5 Subject to Article 25.6 a form appointing a proxy shall be in writing in the usual form, or in such other form which the directors may approve, and shall be executed by or on behalf of the appointor.
- 25.6 Subject to the Act, the directors may resolve to allow a proxy to be appointed by an Electronic Communication subject to such limitations, restrictions or conditions as the Directors think fit (including, without limitation, the ability to require such evidence as they consider appropriate to decide whether the appointment of a proxy in such manner is effective).
- 25.7 In order for the appointment of proxy to be valid:
- 25.7.1 (in the case of an appointment of proxy by hard copy) the form of the proxy, together with the relevant documents, if any, must be:
- 25.7.1.1 left at or sent by post to the office (or such other place within the United Kingdom as is specified in the notice convening the meeting and/or in any form of proxy or other accompanying document sent out by the Company in relation to the meeting) by the relevant time; or
- 25.7.1.2 duly delivered in accordance with Article 25.9,
- 25.7.2 (in case of an appointment of proxy by Electronic Communication) the communication appointing the proxy, together with the relevant evidence, must be received at the address by the relevant time
- 25.8 For the purposes of Article 25.7;
- 25.8.1 for the purpose of appointing a proxy by Electronic Communication the "address" means the number or address which has been specified by the Company for the purpose of receiving Electronic Communications appointing proxies;
- 25.8.2 "relevant documents" means either (i) the power of attorney or other authority relied on to sign the form of proxy, or (ii) a copy of such document certified as a true copy of the original by a notary or solicitor or certified in some other way approved by the Directors;
- 25.8.3 "relevant evidence" means any evidence required by the Directors in accordance with the provisions of Article 25.6, and
- 25.8.4 "relevant time" means 48 hours before the time appointed for the commencement of the meeting or adjourned meeting to which the proxy appointment relates.
- 25.9 If a meeting is adjourned for less than 48 hours, a form of proxy may also be delivered in hard copy form at the adjourned meeting to the chairman or to the secretary or to any Director
- 25.10 Regulations 60 to 62 (inclusive) shall not apply to the Company.

## 26. NUMBER OF DIRECTORS

Unless and until otherwise determined by ordinary resolution of the Company, the number of Directors (other than alternate directors) ~~will be 6~~ Regulation 64 shall be modified accordingly.

## 27. ALTERNATE DIRECTORS

Shall not be subject to any maximum but  
shall not be less than three

- 27.1 The MPTE Director(s) may appoint any person willing to act, whether or not he is a director of the Company, to be an alternate director. Regulation 65 is modified so that any such appointment does not need to be approved by resolution of the Directors. In Regulation 67 the words "but, if" and the words which follow to the end of the Regulation are deleted.
- 27.2 Regulation 66 is modified so that an alternate director who is absent from the United Kingdom is entitled to receive notice of all meetings of Directors and of committees of Directors of which his appointor is a member. An alternate director may waive the requirement that notice be given to him of a meeting of Directors or of a committee of Directors of which his appointor is a member, either prospectively or retrospectively.
- 27.3 The first sentence of Regulation 66 is modified so that an alternate director will not be entitled as such to receive any remuneration from the Company although he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as his appointor may direct by notice in writing to the Company.
- 27.4 An alternate director will be entitled to be reimbursed by the Company such expenses as might properly be reimbursed to him if he were a Director
- 27.5 An alternate director's appointment will determine if he resigns by written notice left at or sent to the registered office of the Company.
- 27.6 A director, or any other person mentioned in Regulation 65, may act as an alternate director to represent more than one Director, and an alternate director will be entitled at any meeting 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 will count as only one person for the purpose of determining whether a quorum is present.

## 28. DELEGATION OF DIRECTOR'S POWERS

Regulation 72 is modified by the addition at the end of the Regulation of the following sentence: "Where a provision of these articles refers to the exercise of a power, authority or discretion by the Directors and that power, authority or discretion has been delegated by the Directors to a committee, the provision must be construed as permitting the exercise of the power, authority or discretion by the committee."

## 29. APPOINTMENT AND RETIREMENT OF DIRECTORS

- 29.1 A Director will not retire by rotation Regulations 76 to 77 (inclusive) will not apply to the Company and reference in Regulations 67, 78 and 84 to retirement by rotation will be disregarded

29.2 Regulation 81 will not apply to the Company

29.3 The holder or holders of such number of Shares as give the right to a majority of votes at general meetings of the Company may, by giving notice on the Company, remove any Director from office and/or appoint any person to be a Director. The notice must be signed by or on behalf of such holder or holders (and may consist of several documents in similar form each signed by or on behalf of one or more holders) and must be left at or sent to the registered office or such other place designated by the Directors for the purpose. Such removal or appointment will take effect when the notice is received by the Company or on such later date (if any) as may be specified in the notice. This Article 29.3 will not apply to the appointment or removal of any MPTE Director(s). This Article 29.3 is not to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as Director or of any appointment terminating with that as Director.

### **30. DISQUALIFICATION AND REMOVAL OF DIRECTORS**

The office of a Director will be vacated if:

- 30.1 he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a director;
- 30.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally;
- 30.3 he becomes, in the opinion of all his co-Directors, incapable by reason of mental disorder of discharging his duties as Director;
- 30.4 he resigns his office by notice in writing to the Company,
- 30.5 (other than in the case of the MPTE Director(s)) he has for more than six consecutive months been absent without permission of the Directors from meetings of Directors held during that period and his alternate director (if any) has not during that period attended any such meetings instead of him, and the Directors resolve that his office be vacated;
- 30.6 (other than in the case of the MPTE Director(s)) he is removed from office by notice addressed to him at his last-known address and signed by all his co-Directors,
- 30.7 (other than in the case of the MPTE Director(s)) he is removed from office by notice given by a member or members under Article 29.3; or
- 30.8 being an executive Director he ceases, for whatever reason, to be employed by any member of the Group.

### **31. DIRECTORS' APPOINTMENTS**

- 31.1 Regulation 84 is modified by the addition of the words: "with the consent of MPTE" after the words "the directors" and before the words "may appoint" in the first sentence, and after the words "the directors" and before the word "determine" and after the words "as they" and before the words "think fit" in the second sentence.



31.2 For the purposes of section 175 of the Companies Act 2006 ("2006 Act"):

31.2.1 a Director shall be authorised to hold office as a director or other officer of, be employed or engaged by, hold shares or other securities in, or otherwise be interested in, whether directly or indirectly, any Group Member; and

31.2.2 a MPTE Director shall be authorised to hold office as a director or other officer of, be employed or engaged by, hold shares or other securities in, or otherwise be interested in, whether directly or indirectly.

31.2.2.1 MPTE or any other undertaking in which MPTE is interested;

31.2.2.2 any general body or trustee, nominee, manager of, or adviser to, MPTE or any other undertaking in which MPTE is interested, or

31.2.2.3 any other company or entity in which MPTE or undertaking referred to in Articles 31.2.2.1 and/or 31.2.2.2 above also holds shares or other securities or is otherwise interested

31.3 For the purposes of section 175 of the 2006 Act, where an office, employment, engagement or interest held by a MPTE Director in another entity has been authorised pursuant to Article 31.2 and his relationship with that entity gives rise to an actual or potential conflict of interest, a MPTE Director shall be authorised to:

31.3.1 attend and vote at meetings of the Directors (or any committee thereof) at which any matter relating to the actual or potential conflict of interest will or may be discussed and receive board papers or other documents relating thereto;

31.3.2 receive confidential information and other documents and information relating to the Group, use and apply such information in performing his duties as a director, officer or employee of, or consultant to MPTE or any person referred to in Articles 31.2.2.1 and/or 31.2.2.2 above and disclose that information to third parties in accordance with these articles ~~and/or the Subscription Agreement;~~ and

31.3.3 provided that the circumstances comprising an event specified in Article 31.2 subsist, exercise the rights conferred on him pursuant to that Article 31.2.

31.4 For the purposes of section 175 of the 2006 Act, the Directors shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach of the duty of a director under that section to avoid a situation in which he has, or can have, an actual or potential conflict of interest, provided that authorisation of such a matter shall be effective only if:

31.4.1 any requirement as to the quorum at the meeting of the Directors at which the matter is considered is met without counting the Director in question and any other interested Director (together the "Interested Directors"), and

31.4.2 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.

31.5 The following provisions of this article apply to any authorisation of a matter by the Directors pursuant to Article 31.4.

31.5.1 an authorisation may extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised;

31.5.2 an authorisation shall be subject to such conditions or limitations as the Directors may determine, whether at the time such authorisation is given or subsequently, and may be terminated by the Directors at any time.

31.5.3 a Director shall comply with any obligations imposed on him by the Directors pursuant to any authorisation; and

31.5.4 notwithstanding the provisions of Article 34.3, the quorum necessary for the transaction of business at a meeting of the Directors convened to consider authorisation of a matter pursuant to Article 31.4 shall be one Director.

31.6 If a matter, office, employment, engagement or interest, has been authorised pursuant to Articles 31.2 and 31.4, then the Director in question shall not be required to disclose to the Company any confidential information received by him (other than by virtue of his position as Director) relating to such matter, or such office, employment, engagement or interest, or use such information in relation to the Company's affairs if to do so would result in a breach of a duty or obligation of confidence owed by him in relation to or in connection with that matter, or that office, employment, engagement or interest.

31.7 A Director shall not be accountable to the Company for any remuneration or other benefit which he (or a person connected with him) derives from any office, employment, engagement or interest authorised in or pursuant to Articles 31.2 or 31.4 nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the 2006 Act.

31.8 For the purposes of this Article 31, a conflict of interest includes a conflict of interest and duty and a conflict of duties, and interest includes both direct and indirect interests.

31.9 Regulation 85 is modified by the addition of the words "and except in the case of the MPTE Director(s), to the consent of MPTE" after the words "provisions of the Act" and before the words ", and provided that he has disclosed" in the first sentence.

## **32. DIRECTOR'S GRATUITIES AND PENSIONS**

Regulation 87 is modified by the addition of the words "with the consent of MPTE" after the words "The directors" and before the words "may provide benefits" in the first sentence.

## **33. BORROWING POWERS**

The Directors may exercise all the powers of the Company (whether express or implied) to borrow and/or secure the payment of money, to guarantee the payment of money, the fulfilment of obligations and the performance of contracts and to mortgage or charge the property, assets and uncalled capital of the Company, and (subject to section 80 of the 1985 Act) to issue debentures, debenture stock and all other securities whether outright or as

security for any debt, liability or obligation of the Company or of any third party not exceeding an aggregate sum of £10,000, other than with the consent of MPTE.

### 34. PROCEEDINGS OF DIRECTORS

- 34.1 In the case of an equality of votes, the chairman will not have a second or casting vote. Regulation 88 will be modified accordingly. At a meeting of the Board, those MPTE Directors present shall (between them) be entitled to exercise the same number of votes as all other Directors present.
- 34.2 Regulation 88 is modified by the exclusion of the third sentence and the substitution for it of the following sentences. "Every Director will receive notice of a meeting, whether or not he is absent from the United Kingdom. A Director may waive the requirement that notice be given to him of a meeting of Directors or a committee of Directors, either prospectively or retrospectively" and by the addition of the word "not" between the words "shall" and "have" in the fifth sentence.
- 34.3 The quorum necessary for the transaction of business at any meeting of the Directors will be two ~~of which one will be a MPTE Director (unless otherwise agreed in writing by the holders of a majority of the A Shares) and one who is not a MPTE Director and Regulation 89 will be modified accordingly.~~ If any meeting of the Directors is inquorate then it will be adjourned for the consideration of the same business until the same time and place the next following week when those Directors present (provided that at least one of them is an MPTE Director) will constitute a quorum.
- 34.4 A majority of Directors will within six months of the Commencement Date appoint one of their number to be chairman of the Board, and a majority of Directors may at any time remove him from that office. Until such appointment, ~~David Wade Smith~~ *Jim Barclay* will act as chairman of the Board and if the Directors fail to appoint a chairman within six months of the Commencement Date, then the holders of a majority of the A Shares will appoint the chairman of the Board. The Director so appointed will preside at every meeting of Directors at which he is present, but if he is unwilling to preside or is not present within five minutes after the time appointed for the meeting a MPTE Director will be chairman of the meeting. Regulation 91 will not apply to the Company.
- 34.5 Any Director or alternate may participate in a meeting of the Board or a committee of the Directors by means of conference telephone or similar communications equipment if all persons participating in the meeting can hear and speak to each other throughout the meeting, and any Director or member of a committee participating in a meeting in this manner is deemed to be present in person at such meeting and will be counted when reckoning a quorum.
- 34.6 Without prejudice to the obligation of any Director to disclose his interest in accordance with section 317 of the 1985 Act, a Director may vote at a meeting of Directors or of a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty provided that he has first obtained the consent of MPTE (unless the director concerned is a MPTE Director, in which case no such consent will be required). The Director will be counted in the quorum present when any such resolution is under consideration and if he votes, his vote will be counted. Regulations 94 to 97 (inclusive) shall not apply to the Company.

### **35. MPTE DIRECTOR(S)**

35.1 So long as MPTE holds any Shares it will have the right to appoint three people as non-executive Directors of the Company ("MPTE Director") but.

35.1.1 not more than three people may hold such office at any one time;

35.1.2 any such appointment must be effected by notice in writing to the Company by the holders of a majority of A Shares who may in a similar manner remove from office any MPTE Director appointed pursuant to this Article, and appoint any person in place of any MPTE Director so removed or who had died or otherwise vacated office as such;

35.1.3 subject to section 168 of the 2006 Act, on any resolution to remove a MPTE Director, the A Shares held by MPTE will together carry one vote in excess of fifty per cent of all the other votes exercisable at the general meeting at which such resolution is to be proposed, and if any such MPTE Director is removed pursuant to section 168 of the 2006 Act or otherwise, the holders of a majority of the A Shares may reappoint him or any other person as a MPTE Director.

35.2 The MPTE Director will be entitled to be appointed to the board of directors of any member of the Group and to any committee of the board of any member of the Group

35.3 So long as MPTE holds any Shares it will have the right at any time to appoint any one person to attend observe and speak at meetings of the Board and the provisions of Article 35.1.2 will apply as if they were set out in full in this Article, but with the word "observer" substituted for "MPTE Director". Any person so appointed will not be a Director

### **36. DIVIDENDS**

Regulation 103 is modified by the addition of the following words: "with the consent of MPTE" after the words "the directors" in the first sentence.

### **37. NOTICES**

37.1 Any notice or other document to be given to or by any person pursuant to these articles (other than a notice calling a meeting of the Directors) shall be in writing and shall be delivered in accordance with Article 37.2.

37.2 Any notice or other document may only be served on, or delivered to, any Member by the Company or by any other Member:

37.2.1 personally;

37.2.2 by sending it through the post in a prepaid envelope addressed to the Member at his registered address (whether such address is in the United Kingdom or otherwise);

- 37.2.3 by delivery of it by hand to or leaving it at that address in an envelope addressed to the Member; or
- 37.2.4 except in the case of a share certificate and only if an electronic address has been specified by the Member for such purpose, by Electronic Communication
- 37.3 Nothing in article 37.2 shall affect any provision of the Act requiring offers, notices or documents to be served on or delivered to a Member in a particular way.
- 37.4 In the case of joint holders of a Share:
- 37.4.1 all notices and other documents shall be given to the person named first in the register in respect of the joint holding, and notice so given shall be sufficient notice to all joint holders; and
- 37.4.2 any request for consent to the receipt of Electronic Communications shall be sent to the person named first in the register in respect of the joint holding and any express consent given by such holder to the receipt of communications in such manner shall bind all joint holders.
- 37.5 Any notice or other document may only be served on, or delivered to, the Company by anyone.
- 37.5.1 by sending it through the post in a prepaid envelope addressed to the Company or any officer of the Company at its registered office or such other place in the United Kingdom as may from time to time be specified by the Company;
- 37.5.2 by delivering it by hand to its registered office or such other place in the United Kingdom as may from time to time be specified by the Company; or
- 37.5.3 if an address has been specified by the Company for such purpose, by Electronic Communication.
- 37.6 Any notice or other document (other than any notice or other document given to the Company including, for the avoidance of doubt, the appointment of a proxy):
- 37.6.1 addressed to the recipient in the manner prescribed by these articles shall, if sent by post, be deemed to have been served or delivered
- 37.6.1.1 (if prepaid as first class) 24 hours after it was posted;
- 37.6.1.2 (if prepaid as second class) 48 hours after it was posted;
- 37.6.1.3 (if prepaid as airmail) 72 hours after it was posted
- and in proving such service, it shall be sufficient to prove that the envelope containing such notice or document was properly addressed, prepaid and posted;
- 37.6.2 not sent by post, but delivered by hand to or left at an address in accordance with these articles, shall be deemed to have been served or delivered on the day it was so delivered or left,

37.6.3 sent by Electronic Communication shall be deemed to have been served or delivered:

37.6.3.1 in the case of a notice or other document sent in an electronic form but by a manner authorised by articles 37.2.2 or 37.2.3, in accordance with the provisions of Articles 37.6.1 or 37.6.2, as appropriate;

37.6.3.2 otherwise 48 hours after the Electronic Communication was sent, and in proving such service, it shall be sufficient to produce (in the case of a fax) a transaction report or log generated by a fax machine which evidences the fax transmission and (in any other case) a confirmation setting out either the total number of recipients to whom or each recipient to whom the message was sent.

37.7 Regulations 111, 112 and 115 will not apply to the Company.

### 38. INDEMNITIES

Subject to the provisions of the Act but without prejudice to any indemnity to which he may otherwise be entitled every Director alternate director secretary and other officer or employee of the Company will be indemnified out of the assets of the Company against any liability ~~(other than any liability arising out of the Subscription Agreement)~~ sustained or incurred by him in defending any proceedings whether civil or criminal relating to his conduct as an officer or employee of the Company in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 144 or section 727 of the 1985 Act in which relief is granted to him by the Court. Regulation 118 will not apply to the Company.