

Company number. 05209861

TUESDAY



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COMPANIES HOUSE

**THE COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

**WRITTEN RESOLUTIONS**

of

**ACAL ENERGY LIMITED**

**Passed on 30 July 2012**

Pursuant to chapter 2 of part 13 of the Companies Act 2006, the following ordinary resolutions and special resolutions (as indicated) were duly passed by the company as written resolutions

**ORDINARY RESOLUTION**

- 1 That, conditional on all the Ordinary Resolutions and Special Resolutions herein being passed, the directors be generally and unconditionally authorised for the purposes of section 551 of the Companies Act 2006 to exercise all the powers of the Company to allot shares in the Company or to grant rights to subscribe for or to convert any security into shares in the Company, up to a maximum aggregate nominal amount of £4,320 provided that
  - (a) the authority granted under this resolution shall expire five years after the passing of this resolution, and
  - (b) the Company may, before such expiry under paragraph (a) above of this resolution, make an offer or agreement which would require shares to be allotted or rights to subscribe for or to convert any security into shares to be granted after such expiry and the directors may allot such shares or grant such rights (as the case may be) in pursuance of such offer or agreement notwithstanding that the authority conferred by this resolution has expired

This authority is in addition to all subsisting authorities

**SPECIAL RESOLUTIONS**

- 2 That, conditional on all the Ordinary Resolutions and Special Resolutions herein being passed, for the purposes of article 6 2 1 of the existing articles of association of the Company (the "**Existing Articles**")
  - (a) the holders of A ordinary shares of £0 01 each in the capital of the Company as at the date hereof (the "**Existing A Ordinary Shares**") waive their right to receive the Fixed Dividend (as defined in the Existing Articles) which has accrued from the Accrual Date (as defined in the Existing Articles) to the date of adoption of the New Articles (as defined below),
  - (b) the holders of B ordinary shares of £0 01 each in the capital of the Company as at the date hereof (the "**B Ordinary Shares**") waive their right to receive the

Fixed Dividend (as defined in the Existing Articles) which has accrued from the Accrual Date (as defined in the Existing Articles) to the date of adoption of the New Articles (as defined below),

- (c) the holders of C ordinary shares of £0.01 each in the capital of the Company as at the date hereof (the "**C Ordinary Shares**") waive their right to receive the Fixed Dividend (as defined in the Existing Articles) which has accrued from the Accrual Date (as defined in the Existing Articles) to the date of adoption of the New Articles (as defined below), and
- (d) the holders of C2 ordinary shares of £0.01 each in the capital of the Company as at the date hereof (the "**C2 Ordinary Shares**") waive their right to receive the Fixed Dividend (as defined in the Existing Articles) which has accrued from the Accrual Date (as defined in the Existing Articles) to the date of adoption of the New Articles (as defined below)

3 That, conditional on all the Ordinary Resolutions and Special Resolutions herein being passed

- (a) in respect of each holder of Existing A Ordinary Shares who, pursuant to an investment agreement relating to the Company to be entered into on or around the date hereof (the "**Investment Agreement**"), subscribes for all or part of or more than their Pro Rata Amount (as defined below), such percentage of Existing A Ordinary Shares held by such shareholder as is equal to the percentage subscribed by such shareholder of their Pro Rata Amount pursuant to the Investment Agreement, shall be re-classified at Completion (as defined below) on a one for one basis as A ordinary shares of £0.01 each ("**New A Ordinary Shares**") or A1 ordinary shares of £0.01 each ("**A1 Ordinary Shares**") (in accordance with the class of shares subscribed by such shareholder pursuant to the Investment Agreement), such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below),
- (b) in respect of each holder of B Ordinary Shares who, pursuant to the Investment Agreement, subscribes for all or part of or more than their Pro Rata Amount (as defined below), such percentage of B Ordinary Shares held by such shareholder as is equal to the percentage subscribed by such shareholder of their Pro Rata Amount pursuant to the Investment Agreement, shall be re-classified at Completion (as defined below) on a one for one basis as New A Ordinary Shares or A1 Ordinary Shares (in accordance with the class of shares subscribed by such shareholder pursuant to the Investment Agreement), such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below),
- (c) in respect of each holder of C Ordinary Shares who, pursuant to the Investment Agreement, subscribes for all or part of or more than their Pro Rata Amount (as defined below), such percentage of C Ordinary Shares held by such shareholder as is equal to the percentage subscribed by such shareholder of their Pro Rata Amount pursuant to the Investment Agreement, shall be re-classified at Completion (as defined below) on a one for one basis as New A Ordinary Shares or A1 Ordinary Shares (in accordance with the class of shares subscribed by such shareholder pursuant to the Investment Agreement), such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below), and
- (d) in respect of each holder of C2 Ordinary Shares who, pursuant to the Investment Agreement, subscribes for all or part of or more than their Pro Rata Amount (as defined below), such percentage of C2 Ordinary Shares held by

such shareholder as is equal to the percentage subscribed by such shareholder of their Pro Rata Amount pursuant to the Investment Agreement, shall be re-classified at Completion (as defined below) on a one for one basis as New A Ordinary Shares or A1 Ordinary Shares (in accordance with the class of shares subscribed by such shareholder pursuant to the Investment Agreement), such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below)

For the purposes of these Resolutions

**"Pro Rata Amount"** means, in relation to each shareholder, an amount equal to 35% of their total investment in the Company to date (as detailed in Part 5 of Schedule 2 of the Investment Agreement),

**"Completion"** means completion of the transactions and events specified in clause 3.3 of the Investment Agreement, and

**"Second Completion"** means completion of the transactions and events specified in clause 3.5 of the Investment Agreement

For the avoidance of doubt, the Existing A Ordinary Shares, B Ordinary Shares, C Ordinary Shares and C2 Ordinary Shares to be converted pursuant to this resolution are illustrated in part 1 of the schedule attached hereto

- 4 That, conditional on all the Ordinary Resolutions and Special Resolutions herein being passed
- (a) all Existing A Ordinary Shares that are not re-classified as New A Ordinary Shares or A1 Ordinary Shares in accordance with resolution 3 be re-classified at Completion (as defined above) on a one for one basis as preferred ordinary shares of £0.01 each, such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below),
  - (b) all B Ordinary Shares that are not re-classified as New A Ordinary Shares or A1 Ordinary Shares in accordance with resolution 3 be re-classified at Completion (as defined above) on a one for one basis as preferred ordinary shares of £0.01 each, such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below),
  - (c) all C Ordinary Shares that are not re-classified as New A Ordinary Shares or A1 Ordinary Shares in accordance with resolution 3 be re-classified at Completion (as defined above) on a one for one basis as preferred ordinary shares of £0.01 each, such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below), and
  - (d) all C2 Ordinary Shares that are not re-classified as New A Ordinary Shares or A1 Ordinary Shares in accordance with resolution 3 be re-classified at Completion (as defined above) on a one for one basis as preferred ordinary shares of £0.01 each, such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below)

For the avoidance of doubt, the Existing A Ordinary Shares, B Ordinary Shares, C Ordinary Shares and C2 Ordinary Shares to be converted pursuant to this resolution are illustrated in part 2 of the schedule attached hereto

- 5 That, conditional on all the Ordinary Resolutions and Special Resolutions herein being passed, in respect of each shareholder who, as a result of the passing of resolution 4,

holds preferred ordinary shares of £0.01 each in the capital of the Company (the "**Preferred Ordinary Shares**"), where

- (a) any such holder subsequently subscribes for all or part of or more than their Pro Rata Amount (as defined above) on or before Second Completion (as defined above), and
- (b) in the case of Solvay, to the extent that Solvay does not subscribe for its Pro Rata Amount on or before Second Completion but subscribes for up to 2,777 New A Ordinary Shares on or before 16 January 2014

such number of Preferred Ordinary Shares held by such shareholder shall be re-classified, in the case of (a) above, on Second Completion (as defined above) or, in the case of (b) above, on the date of allotment of such New A Ordinary Shares, on a one for one basis as New A Ordinary Shares or A1 Ordinary Shares (in accordance with the class of shares subscribed by such shareholder pursuant to the Investment Agreement) as results in the aggregate number of Shares redesignated as A Ordinary Shares or A1 Ordinary Shares (as applicable) pursuant to Resolution 3 and this Resolution 5 being that percentage of the total number of Shares held by the shareholder in question prior to Completion which is equal to the percentage of the Pro Rata Amount subscribed (in aggregate) by that shareholder on Completion, Second Completion and (in the case of Solvay) on the date of allotment of New A Ordinary Shares as envisaged in paragraph (b), such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below)

- 6 That, conditional on all the Ordinary Resolutions and Special Resolutions herein being passed, the articles of association contained in the document attached to these written resolutions (the "**New Articles**") be approved and adopted as the new articles of association of the Company in substitution for and to the entire exclusion of the existing articles of association
- 7 That, conditional on all the Ordinary Resolutions and Special Resolutions herein being passed, the provisions in article 8 of the New Articles shall not apply to the issue of shares in the capital of the Company up to an aggregate nominal value of £4,320



Director

## SCHEDULE

### Part 1 – Existing A Ordinary Shares, B Ordinary Shares, C Ordinary Shares and C2 Ordinary Shares to be redesignated as New A Ordinary Shares or A1 Ordinary Shares

Shareholder	Number and class of shares
Andrew Creeth	523 B Ordinary Shares to be redesignated as 523 New A Ordinary Shares
Robert Pettigrew	1,046 B Ordinary Shares and 714 C Ordinary Shares to be redesignated as 1,760 New A Ordinary Shares
James Wilkie	523 B Ordinary Shares and 604 C Ordinary Shares to be redesignated as 1,127 New A Ordinary Shares
Rising Stars Growth Fund LP/Enterprise	33,333 Existing A Ordinary Shares, 13,869 B Ordinary Shares and 3,352 C Ordinary Shares to be redesignated as 50,554 New A Ordinary Shares
Carbon Trust Investments Limited	33,333 Existing A Ordinary Shares, 64,646 B Ordinary Shares and 142,856 C Ordinary Shares to be redesignated as 240,835 New A Ordinary Shares
David Fyfe	2,637 B Ordinary Shares and 1,571 C Ordinary Shares to be redesignated as 4,208 New A Ordinary Shares
SC Green Energy	21,171 B Ordinary Shares to be redesignated as 21,171 New A Ordinary Shares
Sumitomo Corporation	16,657 C Ordinary Shares to be redesignated as 16,657 New A Ordinary Shares
I2BF II	71,428 C Ordinary Shares to be redesignated as 71,428 New A Ordinary Shares
Robert W Shaw Jr	3,025 B Ordinary Shares and 2,010 C Ordinary Shares to be redesignated as 5,035 New A Ordinary Shares
Burgundy Gold Limited	209 B Ordinary Shares to be redesignated as 209 New A Ordinary Shares
NWF	28,571 C Ordinary Shares to be redesignated as 28,571 New A Ordinary Shares
Solvay	40,816 B Ordinary Shares to be redesignated as 40,816 New A Ordinary Shares

**Part 2 - Existing A Ordinary Shares, B Ordinary Shares, C Ordinary Shares and C2 Ordinary Shares to be redesignated as Preferred Ordinary Shares**

<b>Shareholder</b>	<b>Number and class of shares</b>
The North East Co-Investment Fund LP	33,333 Existing A Ordinary Shares and 32,196 B Ordinary Shares
Synergis Technologies Limited	1,563 Existing A Ordinary Shares
Porton Capital Technology Funds	19,270 Existing A Ordinary Shares
Porton Capital Inc	12,500 Existing A Ordinary Shares, 19,520 B Ordinary Shares and 35,714 C Ordinary Shares
Solvay	48,470 B Ordinary Shares and 107,142 C Ordinary Shares
HSV Technology Partners LLC	23,795 B Ordinary Shares and 12,664 C Ordinary Shares
Parkwalk	14,285 C2 Ordinary Shares
Lucem Consulting	2,113 B Ordinary Shares and 1,357 C Ordinary Shares

No. 05209861

**THE COMPANIES ACTS 1985 AND 2006  
COMPANY LIMITED BY SHARES  
NEW ARTICLES OF ASSOCIATION  
OF  
ACAL ENERGY LIMITED**

(adopted by Special Resolution passed by way of written resolution on

30 July, 2012)

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**1 INTERPRETATION**

**1.1 Definitions**

In these Articles:

“**2006 Act**” means the Companies Act 2006 as in force at the date of adoption of these Articles,

“**A Ordinary Shareholders**” means the holders for the time being of A Ordinary Shares,

“**A1 Ordinary Shareholders**” means the holders for the time being of A1 Ordinary Shares,

“**A Ordinary Shares**” means the series A convertible ordinary shares of £0.01 (one pence) each in the capital of the Company,

“**A1 Ordinary Shares**” means the series A1 convertible ordinary shares of £0.01 (one pence) each in the capital of the Company,

“**Articles**” means these Articles of Association;

“**Associate**” means any company, 20% or more of the equity share capital of which is beneficially owned by the Company and/or its Subsidiaries (whether individually or in aggregate),

“**Auditors**” means the auditors of the Company from time to time,

“**Board**” means the board of Directors of the Company,

“**Bonus Issue**” or “**Reorganisation**” means any return of capital, bonus issue of shares or other securities of the Company by way of capitalisation of profits or reserves (other than a capitalisation issue in substitution for or as an alternative to a cash dividend which is made available to the A Ordinary Shareholders) or any consolidation or sub-division or any repurchase or redemption of shares (other than A Ordinary Shares or A1 Ordinary Shares) or

any variation in the subscription price or conversion rate applicable to any other outstanding shares of the Company in each case other than shares issued as a result of a Non-Dilutive Issue;

**“business day”** means a day on which banks are open for the conduct of normal banking business in the United Kingdom (other than a Saturday or a Sunday or any other day on which banks are not open for the conduct of normal banking business in the United Kingdom),

**“Buyer”** means any person and shall include a Connected Person of, or a Concert Party with, such person,

**“COIF”** means The North East Co-Investment Fund Limited Partnership, a limited partnership with registered number LP010249 whose registered office is at 1 St James’ Gate, Newcastle upon Tyne, NE1 4AD;

**“Concert Party”** means any person with which any relevant person is acting in concert within the meaning of the City Code on Takeovers and Mergers as in force at the date of adoption of these Articles or would be so acting in concert if the City Code on Takeovers and Mergers applied in the relevant case,

**“Connected Person”** means any person with which any relevant person is connected (as determined in accordance with the provisions of section 1122 of the Corporation Tax Act 2010),

**“Controlling Interest”** means Shares (or the beneficial interest in Shares) which confer in aggregate on the holders thereof more than 50% of the total voting rights conferred by all the Shares in issue at the relevant time and conferring the right to vote at all general meetings of the Company;

**“CTIL”** means Carbon Trust Investments Limited, a private limited company, incorporated in England and Wales with registered number 4649291 whose registered office is at 4th Floor, Dorset House, 27-45 Stamford Street, London SE1 9NT,

**“Current Price”** means the Issue Price of an A Ordinary Share or an A1 Ordinary Share, subject to any adjustment thereto required to be made in accordance with Article 6.3.9,

**“Deemed Transfer Notice”** means a Transfer Notice deemed to be given under any provision of these Articles,

**“Deferred Shares”** means deferred shares of £0.01 (one pence) each in the capital of the Company,

**“DECC”** means the Department of Energy and Climate Change of the government of the United Kingdom, or any successor organisation which assumes or is assigned the powers or responsibilities of DECC,

**“Devolved Administration”** means any of the Scottish Government (Environment and Rural Affairs Department), the Welsh Assembly

Government and Invest NI, or, in each case, any successor organisation which assumes or is assigned any of the powers or responsibilities of such body,

**“Director”** means a director of the Company,

**“Employee”** means an employee of or consultant to the Company or any of its Subsidiaries including an executive Director,

**“Equity Share”** means any share comprised in the ordinary share capital of the Company but excluding, for the avoidance of doubt, all Deferred Shares,

**“Exit Event”** means the earliest to occur of a Sale or Listing,

**“Family Trust”** means, as regards any individual person or deceased individual, a trust (whether arising under a settlement, declaration of trust or other instrument by whomsoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the shares in question is for the time being vested in any person other than the individual and Privileged Relations of the individual and by virtue of which no voting or other rights attaching thereto are or may become liable to be exercisable by or as directed by or subject to the consent of any person other than the individual and Privileged Relations of the individual or the trustees as trustees of such trust,

**“Fixed Dividend”** has the meaning ascribed to that expression in Article 6.2.1;

**“Group”** means the Company and its Subsidiaries from time to time and **“member of the Group”** shall be construed accordingly;

**“Government Department”** means DECC and/or one or more of the Devolved Administrations, as applicable,

**“Holding Company”** means a holding company as defined in section 1159 of the 2006 Act;

**“HSV”** means HSV Technology Partners LLC, a Delaware limited liability company having an office at 3000 Sand Hill Road, Building 2, Suite 240, Menlo Park, CA 94025, USA,

**“I2BF II”** means I2BF Venture Fund II LP whose principal office is at 110 Greene Street, Suite 600, New York, 10012, acting by its manager, I2BF Capital Management Limited,

**“Investment Agreement”** means an investment agreement relating to the Company dated on or around the date of adoption of these Articles as amended and restated from time to time,

**“Investment Fund”** means a fund, partnership, limited partnership, limited liability partnership, limited liability company (wherever incorporated), company, investment trust or other entity whose principal business is to make

investments and whose business is managed by persons whose principal business is to make, manage or advise upon investments;

• **“Investor Director”** means a Director holding office pursuant to Article 20.3;

**“Investor Majority”** means the acquiescence or positive indication (in writing) of the holders of more than 50% of the total A Ordinary Shares and A1 Ordinary Shares together in issue from time to time,

**“Investor Observer”** has the meaning set out in Article 20.3.2,

**“Investor’s Group”** means in respect of any Investor, any general or limited partner for the time being in that Investor and any Subsidiary or Holding Company from time to time of any limited or general partner of that Investor and any Subsidiary of such Holding Company and any other fund or scheme managed from time to time by that Investor’s manager and any nominee of any of the foregoing and any Subsidiary or Holding Company of an Investor or any Subsidiary of any Holding Company of an Investor or where an Investor is a limited liability company, any member or affiliate of such limited liability company, and in respect of Porton includes any person or entity bearing any of the same relationships to any of the entities comprising Porton and for the avoidance of doubt each entity comprising Porton shall be deemed to be a member of the same Investor Group as each other entity comprising Porton,

**“Investors”** means Rising Stars Growth Fund LP, Carbon Trust Investments Limited, SC Green Energy Tech, Inc, Robert W Shaw Jr, Sumitomo Corporation, I2BF II, NWF and Solvay and **“Investor”** means any of them,

**“Issue Price”** means, in the case of a Share, the amount Paid Up on such Share (plus any premium paid on such Share),

**“Listing”** means the admission of the ordinary share capital of the Company to the Official List of the UK Listing Authority and to trading on the London Stock Exchange, or the grant of permission by any like authority to trading on the Alternative Investment Market of the London Stock Exchange or any other recognised investment exchange (as defined in Part XVIII of the Financial Services and Markets Act 2000),

**“London Stock Exchange”** means London Stock Exchange PLC,

**“Member of the Same Group”** means, in relation to any company, a company which is for the time being the ultimate Holding Company of that company, or a Subsidiary of any such ultimate Holding Company;

**“Mr. Shaw Jr”** means Robert W. Shaw Jr of PO Box 1299, Center Harbor, New Hampshire 03226-1299, USA,

**“Non Dilutive Issue”** means the issue by the Company of any Share in any of the following circumstances -

- (a) pursuant to the exercise of the right to convert A Ordinary Shares and/or A1 Ordinary Shares and/or Preferred Ordinary Shares into Ordinary Shares in accordance with Article 6 3,
- (b) pursuant to the exercise of any warrants issued on or around the date of adoption of these Articles,
- (c) at any time subsequent to the date of the adoption of these Articles the issue of Equity Shares to employees, consultants or directors of the Company or any Subsidiary,
- (d) Shares issued by way of capitalisation of profits or reserves or by way of reinvestment of dividends,
- (e) any Shares issued in conjunction with a Listing;
- (f) any Shares issued as consideration for any merger or acquisition approved by the Board, and
- (g) any Shares issued, or agreed in writing to be issued, where such issue or agreement has taken place on or before the date of adoption of these Articles,

**“NSEI”** means Northstar Equity Investors Limited, a private limited company, incorporated in England and Wales with registered number 5104995 whose registered office is at 1 St James’ Gate, Newcastle upon Tyne, NE1 4AD,

**“NSEI Fund”** means any Investment Fund managed by NSEI or by a Member of the Same Group as NSEI,

**“NWF”** means NWF (Energy and Environmental Technologies) LP, a limited partnership with registered number LP014164 whose registered office is at Suite 415a, Chadwick House, Birchwood Park, Warrington WA3 6AE,

**“Ordinary Shareholders”** means the holders for the time being of Ordinary Shares;

**“Ordinary Shares”** means the ordinary shares of £0 01 (one pence) each in the capital of the Company,

**“Paid Up”** means, in relation to a Share, paid up or credited as paid up,

**“Parkwalk”** means Parkwalk UK Technology EIS Fund I of Warnford Court, 29 Throgmorton Street, London, EC2N 2AT, acting by its manager, Park Walk Advisors Limited;

**“Participating Investor”** means those parties defined as such under the Investment Agreement, and **“Participating Investors”** shall be construed accordingly,

**"PCI"** means Porton Capital Inc , a company registered in Grand Cayman of PO Box 309 GT, Ugland House, South Church Street, George Town, Cayman Islands;

**"PCT"** means Porton Capital Technology Funds, a company registered in Grand Cayman of PO Box 309 GT, Ugland House, South Church Street, George Town, Cayman Islands,

**"Permitted Transfer"** means a transfer of Shares pursuant to Article 11,

**"Permitted Transferee"** means a person to whom Shares are transferred pursuant to Article 11 and a person is regarded as the Permitted Transferee of a shareholder if the Shares held by such person have been transferred to it by or as a result of one or more successive Permitted Transfers the first of which was a transfer by such shareholder;

**"Porton"** means STL, PCI and PCT,

**"Preferred Ordinary Shareholders"** means the holders for the time being of Preferred Ordinary Shares;

**"Preferred Ordinary Shares"** means the preferred ordinary shares of £0 01 (one pence) each in the capital of the Company,

**"Prescribed Period"** has the meaning set out in Article 12 1,

**"Prescribed Price"** has the meaning set out in Article 12 6 or Article 13 1 4 or Article 13.1 5 as the case may be,

**"Privileged Relation"** means, as regards any individual member or deceased or former individual member, the spouse or the widower or widow of the individual, or their nominated partner (provided that such nominated partner can be shown to the reasonable satisfaction of the A Ordinary Shareholders and the A1 Ordinary Shareholders to have been co-habiting with the relevant member for a period of at least three (3) years), and all lineal descendants of the individual and for such purposes a stepchild or adopted child or illegitimate child of any person shall be deemed to be a lineal descendant of such person,

**"Proposing Transferor"** has the meaning set out in Article 12 1,

**"Qualifying IPO"** means the becoming effective of a fully underwritten Listing with price per share equal to or greater than £70 (adjusted to such price as the Auditors shall (acting as experts and not as arbitrators) certify as appropriate to take account of any subsequent capital distribution (as defined in Articles 6 3 6(a)) or the subsequent occurrence of an event set out in Articles 6.3 5) and with gross proceeds of £10,000,000 or more,

**"relevant officer"** means any Director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the 2006 Act), but excluding in each case any person engaged by the Company (or associated

company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor),

**“Representative”** means, in relation to a member, any person or persons who have become entitled to shares in consequence of his death, bankruptcy or mental incapacity,

**“RSGF”** means Rising Stars Growth Fund Limited Partnership, a limited partnership with registered number LP008095 whose registered office is at Preston Technology Management Centre, Marsh Lane, Preston, PR1 8UQ,

**“Sale”** means the sale of shares to any third party, being any person who is not a shareholder in the Company at the date of adoption of these Articles, resulting in that third party (together with any other Concert Party) holding a Controlling Interest;

**“Sale Shares”** has the meaning set out in Article 12 1,

**“SC Green Energy”** means SC Green Energy Tech, Inc. whose office is at 600 Grant Street Suite 5000, Pittsburgh, Pennsylvania 15219, USA,

**“Secretary”** means the secretary of the Company,

**“Shares”** means the issued shares in the capital of the Company from time to time,

**“Share Option Plan”** means a scheme or schemes for the issuing, to employees, officers or consultants of the Company, of options to purchase Ordinary Shares, that has been approved in advance by an Investor Majority,

**“Solvay”** means Solvay SA, a societe anonyme incorporated in Belgium of Solvay Corporate HQ, 310 Rue de Ransbeek, 310, B-1120, Brussels, Belgium,

**“Specified Offer Price”** has the meaning set out in Article 15.1,

**“STL”** means Synergis Technologies Limited, a private limited company, incorporated in England and Wales with registered number 5208257 whose registered office is at 7th Floor, 23 Buckingham Gate, London SW1E 6LB,

**“Subsidiary”** means a subsidiary of a company as defined in section 1159 of the 2006 Act,

**“Sumitomo”** means Sumitomo Corporation, a public limited company incorporated in Japan whose registered office is at 1-8-11 Harumi, Chuo-ku, Tokyo, 104-8610, Japan,

**“Table A”** means Table A in the Schedule to the Companies (Tables A to F) Regulations 1985, as amended inter alia, by the Companies (tables A to F) (Amendment No 2) Regulations 2007 (SI 2007/2826),

**“Termination Date”** means

- (a) where employment or engagement ceases by virtue of notice given by the Company to the Employee, the date on which such notice expires
- (b) where a contract of employment or engagement is terminated by the Company and a payment is made in lieu of notice, the date on which notice of termination was served,
- (c) where an Employee dies, the date of his death,
- (d) where the Employee concerned is a Director but not an employee, the date on which his contract for services with the Company is terminated; and
- (e) in any other case, the date on which the contract of employment or for services is terminated

**“The Carbon Trust”** means The Carbon Trust, a company limited by guarantee with registered number 04190230,

**“Total Sale”** means the acquisition of the entire issued share capital of the Company by a single entity or multiple entities who are Members of the Same Group,

**“Transfer Notice”** has the meaning set out in Article 12.1, 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 Financial Services and Markets Act 2000

**1 2 Same meanings as in the 2006 Act**

Words and expressions defined in the 2006 Act shall, unless the context otherwise requires, have the same meaning in these Articles

**1 3 Statutory Modification**

In these Articles a reference to any statute or provision of a statute includes a reference to any statutory modification or re-enactment of it and to any subordinate legislation made under it in each case for the time being in force.

**1 4 Number, Gender and Person**

In these Articles, unless the context otherwise requires:

- (a) words in the singular include the plural, and vice versa,
- (b) words importing any gender include all genders, and
- (c) a reference to a person shall include bodies corporate, unincorporated associations and partnerships.

**1 5 Miscellaneous Interpretation In these Articles:**

- (a) a reference to an Article is to a clause of these Articles and a reference to a Regulation is to a regulation in Table A;
- (b) references to writing include reference to typewriting, printing, lithography, photography and any other modes of representing or reproducing words in a legible and non-transitory form, and
- (c) references to a committee of the Directors are to a committee established in accordance with these Articles, whether or not comprised wholly of Directors.

## **1 6 Headings**

Headings are inserted for convenience only and do not affect the construction or interpretation of these Articles

## **2 TABLE A**

The regulations contained in Table A shall apply to the Company save insofar as they are varied or excluded by or are inconsistent with these Articles Regulations 40, 54, 64 to 71 (inclusive), 76 to 79 (inclusive), 81, 82, 84, 85, 88, 89, 93, 94 to 98 (inclusive) and 118 of Table A shall not apply to the Company

## **3 LIABILITY OF MEMBERS**

The liability of the members is limited to the amount, if any, unpaid on the Shares held by them

## **4 SHARE CAPITAL**

The share capital of the Company at the date of the adoption of these Articles is divided into A Ordinary Shares, A1 Ordinary Shares, Preferred Ordinary Shares, Ordinary Shares and Deferred Shares

## **5 CLASSES OF SHARES**

The shares of each class of shares shall entitle the holders thereof to the respective rights and privileges and subject them to the respective restrictions and provisions hereinafter appearing

## **6 CLASS RIGHTS**

### **6 1 Capital**

On:

- (i) a winding up of the Company or other return of capital or on a sale of all or substantially all of the Company's assets followed by a winding up of the Company, the surplus assets of the Company remaining after payment of its liabilities and all dividends declared but unpaid

available for distribution among the members shall be applied as follows

- (a) first, in paying to the holders of the A Ordinary Shares £22 50 per A Ordinary Share held,
  - (b) second, in paying to the holders of the A1 Ordinary Shares, the holders of the Preferred Ordinary Shares and the holders of Ordinary Shares an amount equal to the amount subscribed for each such share,
  - (c) third, the balance of such assets or proceeds shall belong to and be distributed among the holders of the A Ordinary Shares, the A1 Ordinary Shares, the Preferred Ordinary Shares and the Ordinary Shares (pari passu as if the same constituted one class of shares) in proportion to the number of Shares held by them,
- (ii) a Total Sale, the proceeds of the Total Sale shall be applied as follows.
- (a) first, in paying to the holders of the A Ordinary Shares and A1 Ordinary Shares £22 50 per A Ordinary Share and/or A1 Ordinary Share held,
  - (b) second, in paying to the holders of the Preferred Ordinary Shares £14 per Preferred Ordinary Share held,
  - (c) third, in paying to the holders of Ordinary Shares £14 per Ordinary Share held,
  - (d) fourth, the balance of such assets or proceeds shall belong to and be distributed among the holders of the A Ordinary Shares, the A1 Ordinary Shares, the Preferred Ordinary Shares and the Ordinary Shares (pari passu as if the same constituted one class of shares) in proportion to the number of Shares held by them.

SAVE THAT, where a Total Sale is made to an existing shareholder (“the **Acquiring Shareholder**”), no payment shall be made to the Acquiring Shareholder in accordance with sub-Articles 6 1(ii)(a) to (c) above and the shareholding of the Acquiring Shareholder shall be ignored in calculating the payments to the other shareholders

## 6 2 **Income**

- 6 2 1 The profits of the Company available for distribution shall first be applied in paying to each A Ordinary Shareholder a dividend (the “**Fixed Dividend**”) per A Ordinary Share as follows

Amount:	8% of the Issue Price per A Ordinary Share per annum,
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Accrual Date            the later of the date of adoption of these Articles or date of issue of such A Ordinary Share to such A Ordinary Shareholder (as the case may be), and

Payment Date            on the earlier of any Exit Event, conversion of A Ordinary Shares (in respect of the Fixed Dividend on the A Ordinary Shares) under Article 6.3, return of capital or the fifth anniversary of the date of adoption of these Articles

6.2.2 Any remaining profits which the Board determines to distribute in any financial year shall be applied in paying a dividend to the holders of the Equity Shares (pari passu as if the same were one class of share) provided always that no dividend or other distribution may be paid or made whilst there are accrued but unpaid Fixed Dividends

6.2.3 Every dividend shall be distributed to the shareholders who held the relevant shares at the end of the period to which the dividend relates pro rata according to the number of fully paid up shares held by them respectively and shall accrue on a daily basis. For the avoidance of doubt no dividend shall be paid on any partly paid share. All dividends are expressed net and shall be paid in cash. The Fixed Dividend is cumulative from the Accrual Date detailed in Article 6.2.1.

6.2.4 Unless the Company has insufficient profits available for distribution and the Company is thereby prohibited from paying dividends by the 2006 Act or any other provisions of these Articles the Fixed Dividend shall (notwithstanding regulations 102 to 108 of Table A) notwithstanding that there has not been a recommendation of the Directors or resolution of the Company in general meeting be paid immediately on each Payment Date detailed in Article 6.2.1 above. If not so paid on the due date it shall be a debt due by the Company and be payable in priority to any other dividend. The balance of Fixed Dividend left unpaid shall be a debt due by the Company payable in priority to any other dividend. All accrued but unpaid Fixed Dividends shall be paid immediately prior to an Exit Event or return of capital.

### 6.3 **Conversion of the A Ordinary Shares, A1 Ordinary Shares and Preferred Ordinary Shares**

6.3.1 The A Ordinary Shares, A1 Ordinary Shares and Preferred Ordinary Shares shall be automatically converted in their entirety into fully paid Ordinary Shares immediately prior to and conditional upon a Qualifying IPO (the "**Conversion Date**") at the rate of:

- (a) one Ordinary Share for each A Ordinary Share (the "**A Conversion Rate**") held by the A Ordinary Shareholders, plus such amount of Ordinary Shares (calculated by reference to their market value, which shall be a sum equal to the per Share offer price relative to the Exit Event) as is equal to any accrued but unpaid dividends in respect of the

A Ordinary Shares The A Conversion Rate shall be adjusted as provided in Article 6.3.5 and 6.3.6 below

- (b) one Ordinary Share for each A1 Ordinary Share (the "**A1 Conversion Rate**") held by the A1 Ordinary Shareholders, and
- (c) one Ordinary Share for each Preferred Ordinary Shares (the "**Preferred Conversion Rate**") held by the Preferred Ordinary Shareholders,

6.3.2 Any A Ordinary Shareholder may at any time by notice in writing (the "**Conversion Notice**") to the Company elect to convert all or any proportion of the A Ordinary Shares held by them into fully paid Ordinary Shares at the A Conversion Rate, plus such amount of Ordinary Shares (calculated by reference to their market value, which shall be such sum per Share as shall be agreed by the Directors or, failing agreement, as shall be determined by an independent expert in accordance with Article 12.7) as is equal to any accrued but unpaid dividends in respect of the A Ordinary Shares held by the A Ordinary Shareholder. The conversion shall be effected promptly and shall be deemed to take effect immediately upon the date of that notice to the Company (and "**Conversion Date**" shall be construed accordingly) (unless the notice states that a conversion is to be effective when any conditions specified in the notice have been fulfilled, in which case conversion shall take effect when those conditions have been fulfilled) and the Company and the members shall do all that is necessary to procure that conversion.

6.3.3 On the Conversion Date the A Ordinary Shareholder or A1 Ordinary Shareholder or Preferred Ordinary Shareholder shall deliver the certificate(s) for those A Ordinary Shares and/or A1 Ordinary Shares and/or Preferred Ordinary Shares (or an indemnity in a form reasonably satisfactory to the Company in respect of any missing share certificate) to the Company whereupon the Company shall issue to the persons entitled thereto certificates for the Ordinary Shares arising on conversion. The converting A Ordinary Shareholder or A1 Ordinary Shareholder or Preferred Ordinary Shareholder shall be deemed to be the registered holder of the relevant number of Ordinary Shares from the Conversion Date.

6.3.4 The Ordinary Shares to which an A Ordinary Shareholder or A1 Ordinary Shareholder or Preferred Ordinary Shareholder is entitled on conversion:

- (a) shall be credited as fully paid,
- (b) shall rank pari passu in all respects and form one class with the Ordinary Shares then in issue, and
- (c) will carry the right to receive all dividends and other distributions declared, made or paid on the Ordinary Share capital of the Company in respect of which the record date falls after the applicable Conversion Date.

- 6.3.5 In the event of any allotment of fully paid Shares by way of capitalisation of profits or reserves or upon any sub-division or consolidation of Ordinary Shares the A Conversion Rate shall be adjusted as appropriate with effect from the date of such capitalisation, sub-division or consolidation
- 6.3.6 If while any A Ordinary Shares remain capable of being converted into Ordinary Shares, the Company shall make any capital distribution to the holders of Ordinary Shares, the A Conversion Rate shall be adjusted as is determined to be appropriate by the Auditors (acting as experts and not as arbitrators) whose certificate shall be conclusive and binding on all concerned, to ensure that on conversion the A Ordinary Shareholders have the same percentage interest in the issued share capital of the Company after the capital distribution as they would have had on conversion before the capital distribution For the purposes of this Article 6.3.6
- (a) “**capital distribution**” means any dividend or other distribution of capital profits (whether realised or not) or capital reserves or any dividend or other distribution of profits or reserves arising after the date of passing of the resolution authorising the allotment of the A Ordinary Shares on a distribution of capital profits (whether realised or not) or capital reserves by a Subsidiary, except, in either case, by means of a capitalisation issue made in the form of fully paid Ordinary Shares in relation to which an adjustment pursuant to Article 6.3.5 is made
- (b) in so far as the relevant audited accounts do not distinguish between capital and revenue profits or reserves, the Company shall be entitled to rely upon a written estimate by the Auditors as to the extent to which any part of any profit or reserves should be regarded as of a capital nature
- 6.3.7 In the event that the Company shall allot and issue any security, other than a Non-Dilutive Issue, which entitles its holder (or another person) to vote at a general meeting of the Company or participate in the distribution of the assets of the Company on a liquidation or otherwise (“**New Securities**”) at a subscription price which equates to less than the Current Price (a “**Qualifying Issue**”) (which in the event that the New Securities are not issued for cash shall be a price certified by the Auditors acting as experts and not as arbitrators as being in their opinion the current cash value of the new consideration for the allotment of the New Securities) then the Company shall, unless and to the extent that any of the holders of A Ordinary Shares shall have specifically waived their rights under this Article in writing, offer (such offer, unless waived, to remain open for acceptance for not less than 15 Business Days) to each holder of A Ordinary Shares (the “**Exercising Investor**”) the right to receive a number of new A Ordinary Shares determined by applying the following formula (and rounding the product, N, down to the nearest whole share), subject to adjustment as certified in accordance with Article 6.3.9 (the “**Anti-Dilution Shares**”)

$$N = \left( \left( \frac{CP}{WA} \right) \times Z \right) - Z$$

Where:

N= Number of Anti-Dilution Shares to be issued to the Exercising Investor,

$$WA = \frac{(CP \times ESC) + (QISP \times NS)}{(ESC + NS)}$$

CP = Current Price

ESC = the number of Equity Shares in issue plus the aggregate number of shares in respect of which options to subscribe have been granted, or which are subject to convertible securities (including but not limited to warrants) in each case immediately prior to the Qualifying Issue

QISP = the lowest per share price of the New Securities issued pursuant to the Qualifying Issue (which in the event that that Equity Interest is not issued for cash shall be the sum certified by the Auditors acting as experts and not arbitrators as being in their opinion the current cash value of the non cash consideration for the allotment of the New Securities)

NS = the number of New Securities issued pursuant to the Qualifying Issue

Z = the number of A Ordinary Shares held by the Exercising Investor prior to the Qualifying Issue

#### 6.3.8 The Anti-Dilution Shares shall:

- (a) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or a majority of the Exercising Investors shall agree otherwise, in which event the Exercising Investors shall be entitled to subscribe for the Anti-Dilution Shares in cash at par (being the par value approved in advance by the Investor Directors) and the entitlement of such Exercising Investors to Anti-Dilution Shares shall be increased by adjustment to the formula set out in Article 6 3 7 so that the Exercising Investors shall be in no worse position than if they had not so subscribed at par. In the event of any dispute between the Company and any Exercising Investor as to the effect of Article 6 3 7 or this Article 6 3 8, the matter shall be referred (at the cost of the Company) to the Auditors for certification of the number of Anti-Dilution Shares to be issued. The Auditor's certification of the matter shall in the absence of manifest error be final and binding on the Company and the Exercising Investor, and
- (b) subject to the payment of any cash payable pursuant to Article 6 3 8(a) (if applicable), be issued, credited fully paid up in cash and shall rank pari passu in all respects with the existing A Ordinary Shares, within

five Business Days of the expiry of the offer being made by the Company to the Exercising Investor and pursuant to Article 6 3.8(a)

- 6 3 9 In the event of any Bonus Issue or Reorganisation, the Current Price shall also be subject to adjustment on such basis as may be agreed by the Company with the Investor Majority within 10 Business Days after any Bonus Issue or Reorganisation. If the Company and the Investor Majority cannot agree such adjustment it shall be referred to the Auditors whose determination shall, in the absence of manifest error, be final and binding on the Company and each of the Shareholders. The costs of the Auditors shall be borne by the Company.
- 6 3 10 Within 14 days of the happening of any of the events listed in Articles 6.3.5 to 6.3 6, the Company shall notify the holders of the A Ordinary Shares then in issue, setting forth brief particulars of the event or events giving rise to such adjustment, of the A Conversion Rate and shall make available for their inspection (at such place as shall be specified in such notice) a copy of any report of the Auditors.
- 6 3 11 Should any conversion of A Ordinary Shares or A1 Ordinary Shares or Preferred Ordinary Shares pursuant to this Article 6 3 not be possible whether due to lack of distributable profits or otherwise, the voting, income and return of capital rights for, and all of the rights attributable to, the A Ordinary Shares and A1 Ordinary Shares and Preferred Ordinary Shares held (and on a Qualifying IPO, the amount payable to the holders of the A Ordinary Shares and/or A1 Ordinary Shares and/or Preferred Ordinary Shares pursuant to Article 6.3 1) shall be treated as adjusted to reflect the position which such holders would have been in had the further issue been made in accordance with these Articles. In such circumstances, the members shall enter into such documentation (including any written resolutions to alter the share capital or to amend these Articles) and take such other actions as an Investor Majority may reasonably require in order to ensure that the rights attributable to the members holding A Ordinary Shares and/or A1 Ordinary Shares and/or Preferred Ordinary Shares, and/or effecting such conversion, are so adjusted.

#### **6 4 Disputes**

In the event of a disagreement as to the calculation of any amount payable by way of dividend or any other amount payable by the Company to the A Ordinary Shareholders or A1 Ordinary Shareholders, the disagreement may be referred by the Company or the Investors to an accountant (acting as an expert and not as an arbitrator) nominated by agreement (or, in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales at the request of either the Company or the Investors) whose decision shall be final and binding. The cost of any such determination shall be borne by the Company.

#### **7 CHANGES TO CLASS RIGHTS**

- 7 1 Whenever the capital of the Company is divided into different classes of Shares the special rights attached to any class of Shares may be varied or abrogated, either whilst the Company is a going concern or during or in

contemplation of a winding up, with the consent in writing of the holders of more than 65% in nominal value of the issued shares of that class, but not otherwise. The provisions of these Articles relating to general meetings shall apply to such a class meeting, modified so far as necessary mutatis mutandis.

## **8. ISSUE OF SHARES**

### **8.1 Pre-emption on Issue**

Subject to Article 8.9, any Equity Shares in the capital of the Company which are unissued shall before they are issued whether for cash or otherwise be offered to the A Ordinary Shareholders, the A1 Ordinary Shareholders, the Preferred Ordinary Shareholders and the Ordinary Shareholders in proportion, as nearly as may be, to their holdings and any offer under this Article 8.1 to COIF can be accepted by an NSEI Fund.

### **8.2 Procedure for Offering**

The offer referred to in Article 8.1 shall be made by notice specifying the number and class of equity securities offered, the proportionate entitlement of the relevant member or NSEI Fund, the price per equity security and a period (being not less than 21 days) within which the offer, if not accepted will be deemed to be declined. After the expiration of such time the Directors shall offer equity securities which have been declined or are deemed to have been declined to (i) first, pro rata to the A Ordinary Shareholders and A1 Ordinary Shareholders and (ii) second, to any persons (other than the A Ordinary Shareholders and the A1 Ordinary Shareholders) who have within the said period accepted all the equity securities offered to them. Such further offer shall be on the same terms as the first offer and shall invite each of the holders (and, if appropriate, the NSEI Fund) to state in writing within a period (being not less than 14 days) whether he is willing to take any, and if so what maximum, number of the equity securities so offered. At the expiration of the time limit in respect of such further offer the Directors shall allot the equity securities so offered to or amongst the persons who have notified their willingness to take such equity securities and in the event of competition in proportion to the number of Ordinary Shares or A Ordinary Shares or A1 Ordinary Shares or Preferred Ordinary Shares (as the case may be) held by such persons (in the case of an offer made to COIF but accepted by an NSEI Fund, the number of A Ordinary Shares or A1 Ordinary Shares held by COIF) respectively. The Directors shall make such arrangements as they shall think fit concerning entitlements to fractions, overseas shareholders and shareholders unable by law or regulation to receive or accept any offer pursuant to this Article 8.

### **8.3 Allotment of Shares after Offers**

At the expiration of the time limited by the notice or notices the Directors shall allot the equity securities so offered to or amongst the members (and, if appropriate, the NSEI Fund) who have notified their willingness to take all or any of such equity securities in accordance with the terms of the relevant offer. No member (nor, if appropriate, the NSEI Fund) shall be obliged to take more

than the maximum number of equity securities he has indicated a willingness to take.

#### **8 4 Issue other than to Members**

Any equity securities not accepted pursuant to the preceding provisions of this Article and any equity securities to which this Article does not apply by virtue of the provisions of Article 8 9 shall be at the disposal of the Directors who may allot, grant options over, or otherwise dispose of them to such persons at such time and generally on such terms and conditions as they determine provided that no equity securities shall be issued at a discount to par and provided further that, in the case of equity securities not accepted as aforesaid, such equity securities shall not be disposed of on terms which are more favourable to the subscribers thereof than the terms on which they were offered to the members

#### **8 5 Disapplication of Statutory Pre-emption Provisions**

Sections 561 and 562 of the 2006 Act shall not apply to the allotment of equity securities (as defined in section 560 of the 2006 Act) by the Company.

#### **8.6 No Renunciation of Allotment**

No equity securities shall be allotted on the terms that the right to take up the equity securities allotted may be renounced in favour of, or assigned to, another person and no person entitled to allotment of an equity security may direct that such equity security may be allotted or issued to any other person

#### **8 7 Special Resolution**

In Regulation 2 the words “ordinary resolution” shall be omitted and the words “special resolution” shall be substituted for them.

#### **8 8 Designation of Shares**

In the event that an A Ordinary Shareholder or A1 Ordinary Shareholder subscribes for Shares in accordance with this Article 8, they shall on issue be designated as A Ordinary Shares or A1 Ordinary Shares..

#### **8 9 Exceptions and waiver**

- (a) The Company may issue Ordinary Shares arising on the exercise of options issued under any Share Option Plan to the option holder without first offering them to the shareholders in accordance with the preceding provisions of this Article 8
- (b) With the direction of a special resolution of the Company and the prior approval of an Investor Majority any of the restrictions or other provisions of this Article 8 may be waived or varied by the Directors in relation to any proposed issue of equity securities.

### **9 LIEN AND FORFEITURE**

**9 1 Lien to Attach to all Shares**

The lien conferred by Regulation 8 will also attach to fully Paid Up shares registered in the name of any person indebted or under liability to the Company, whether he is the sole holder or is one of two or more joint holders of such Shares

**9 2 Pre-emption on Enforcement**

All Shares to be sold in the enforcement of the Company's lien or rights of forfeiture shall be offered in accordance with Article 8 as if they were unissued Shares of the Company Regulations 9 and 20 shall be modified accordingly

**10 TRANSFERS OF SHARES**

**10 1 General Restriction on Transfer**

Save in respect of Deferred Shares (with respect to the transfer of which see Article 31), the right to transfer Shares in the Company shall be subject to the rights and restrictions set out in Articles 10 to 16 (inclusive) and no Share or any interest therein shall be transferred to or become vested in any person otherwise than in accordance with such provisions.

**10 2 Disposal of Whole Interest Only**

Save as permitted pursuant to these Articles, no transfer, disposal, charge, mortgage, assignment or other dealing in any Shares or any interest or right therein shall occur other than the transfer of the whole legal and equitable title to such Shares pursuant to these Articles free from all liens, charges and encumbrances and with all rights, title and interest in existence at the date of transfer together with all rights which may arise in respect thereof thereafter (and "transfer of Shares" shall be construed accordingly in these Articles)

**10 3 Attempted Disposal of Interest in Shares**

If a member at any time attempts to deal with, or dispose of, a Share or any interest therein or right attaching thereto otherwise than in accordance with the provisions of these Articles he shall be deemed immediately prior to such attempt to have given a Transfer Notice in respect of such Shares

**10 4 Equitable and Floating Charges**

No member may create an equitable or floating charge on or over any of his Shares If any such charge is created or established by any such member, such member shall remain the registered holder of the Shares in question and retain all rights and discretions in relation to the exercise of the voting and other rights attaching thereto and in the event that the chargee shall become entitled to realise his security or otherwise exercise his rights as charge and shall seek to do so such holder shall be deemed to have given a Transfer Notice immediately prior to such date

#### **10.5 Reasons for Declining to Approve a Transfer**

The Directors shall not be entitled to decline to register the transfer of any Shares made pursuant to and complying with the provisions of Articles 10 to 14 (inclusive) unless

- (a) they have substantial reasons for believing that a transfer purportedly made in accordance with any such provision is not in fact in any material respect in accordance therewith, or
- (b) it is a transfer to a person who the Board determines in its absolute discretion is competitive with the business being carried on by the Company or any other member of its Group or a person who has a material interest in any such entity,

in which event they shall decline to register such transfer

#### **10.6 Provision of Information - Transfer of Shares**

For the purpose of ensuring that a transfer of Shares is in accordance with these Articles and duly authorised hereunder or that no circumstances have arisen whereby a Transfer Notice is or may be deemed to have been given hereunder or for the purpose of ascertaining when a Transfer Notice is or may be deemed to have been given hereunder or for the purpose of ascertaining whether any relevant provisions of these Articles apply, the Directors may require any member, the Representative of any member, the receiver, administrator, administrative receiver or the liquidator of any corporate member or any person named as transferee in any transfer lodged for registration to furnish to the Company such information and evidence as the Directors shall think fit regarding any matter which they may deem relevant to such purpose. Failing such information or evidence being furnished to the reasonable satisfaction of the Directors within a reasonable time after request the Directors shall refuse to register the transfer in question or (in a case where no transfer is in question) shall by notice in writing deem that a Transfer Notice be given in respect of the shares concerned

#### **10.7 Member to Notify**

If a member or any Representative of a member becomes aware of any event which is deemed to give rise, or may on determination by the Directors be deemed to give rise, to an obligation to serve a Transfer Notice or whereupon a Transfer Notice shall be deemed to be given he shall forthwith give notice thereof to the Directors.

#### **10.8 Receipt of Deemed Transfer Notice**

Where a Transfer Notice in respect of any Share is deemed to have been given under any provisions of these Articles and the circumstances are such that the Directors (as a whole) are unaware of the facts giving rise to the same such Transfer Notice shall be deemed to have been received by the Directors on the

date on which the Directors (as a whole) actually became aware of such facts and the provisions of Article 12 shall apply accordingly

**10 9 Notice to A Ordinary Shareholders and A1 Ordinary Shareholders**

The Directors shall forthwith give notice to the A Ordinary Shareholders and the A1 Ordinary Shareholders upon the Directors becoming aware of any event or circumstance enabling the Investor Majority to give a direction or make a request for the purposes of Article 11 5

**10 10 Suspension of Voting Rights**

The voting rights attached to any Share in respect of which a Transfer Notice shall be deemed or required to have been given pursuant to these Articles shall forthwith be suspended until such time as the relevant Share shall have been transferred in accordance with these Articles or such time as the Directors shall have notified the member pursuant to Article 12.5 that they have no prospect of finding purchasers therefor Any such suspension shall be ignored for the purpose of any calculation required for a determination of a Controlling Interest.

**10 11 Waiver or Variation**

With the direction of a special resolution of the Company and the prior approval of an Investor Majority any of the restrictions or other provisions of Articles 10 to 13 (inclusive) may be waived or varied by the Directors in relation to any proposed transfer of shares or any other matter.

**10.12 Overriding Veto Right**

Save for any transfer made in accordance with Articles 11, 14 or 15 (or of Deferred Shares), any transfer of Shares, in addition to falling within the provisions of Articles 12 to 13 (inclusive) may only be made with the written consent of an Investor Majority

**11 PERMITTED TRANSFERS**

**11 1 Interpretation**

For the purpose of this Article 11

**“Transferor Company”** means a company (other than a Transferee Company) which has transferred or proposes to transfer Shares to a Member of the Same Group (and in the case of a series of transfers the relevant Transferor Company for the purposes of determining whether any company shall be or shall have ceased to be a Member of the Same Group shall be the first transferor in such series),

**“Transferee Company”** means a company for the time being holding Shares in consequence, directly or indirectly, of a transfer or series of transfers of Shares between Members of the Same Group;

**“Relevant Shares”** means (so far as the same remain for the time being held by any Privileged Relation or the trustees of any Family Trust or by any Transferee Company) the Shares originally acquired by such Privileged Relation or trustees of any Family Trust or Transferee Company and any additional Shares issued to such Privileged Relation or trustees of any Family Trust or Transferee Company by way of capitalisation, sub-division or consolidation or acquired by such person in exercise of any right or option granted or arising by virtue of the holding of the Relevant Shares or any of them or the membership thereby conferred

## **11 2 Permitted Transfers**

11.2 1 Any Shares may at any time be transferred without the giving of a notice under Article 12 1 where the following is demonstrated to the reasonable satisfaction of the Board

- (a) by an individual member (not being in relation to the Shares concerned a holder thereof as a trustee of any Family Trust or a nominee) to a Privileged Relation of such member, or
- (b) by any such individual member to trustees to be held upon a Family Trust of which the individual member is the settlor provided that such member gives prior written notice of the transfer to the Company, or
- (c) by any member being a company (not being in relation to the Shares concerned a holder thereof as a trustee of any Family Trust or nominee) to a Member of the Same Group as the Transferor Company, or
- (d) by any member who holds Shares as nominee or trustee for a limited partnership or trust which is primarily a vehicle for institutional investors to any other nominee or trustee for the limited partnership or trust, or
- (e) subject to Article 13, by any person entitled to Shares in consequence of the death of an individual member to any person to whom such individual member, if not dead, would be permitted hereunder to transfer the same, or
- (f) by any member pursuant to any employee share option scheme established by the Company for the benefit of its employees.

### **11 2 2 Investor’s Shares**

Notwithstanding any other provisions of these Articles a transfer of shares or any interest in shares in the Company held by any member of an Investor’s Group (or its transferee in accordance with this Article 11 2 2) may be made

- (a) between the member of that Investor’s Group holding such shares and any other member of that Investor’s Group,

- (b) to any Investment Fund and/or their subsidiary, nominee, custodian, adviser or manager,
- (c) to any participant or partner in or member of or holder of any legal or beneficial interest in such Investment Fund in respect of which the shares to be transferred are held;
- (d) to any successor subsidiary, nominee, custodian, adviser or manager of such Investment Fund,
- (e) with the prior written consent of an Investor Majority,
- (f) in the case of CTIL and its Permitted Transferees, from CTIL to any limited partnership investment fund in which CTIL is a limited partner and which is managed or advised by a manager or adviser in which The Carbon Trust or any subsidiary company of The Carbon Trust is a partner or shareholder or from CTIL to a Government Department or to any entity which succeeds to all or part of the business or activities of CTIL;
- (g) in the case of NWF and its Permitted Transferees, from NWF and its Permitted Transferees to North West Business Finance Limited or any successor of North West Business Finance Limited, in each case provided that the transfer is of the relevant transferor's entire shareholding in the Company,

in each case without restriction as to price or otherwise and the Directors shall register any such transfer

### **11 3 Family Trusts**

Where Shares are held by trustees of a Family Trust, the trustees and their successors in office may (subject to the provisions of Article 11 2 1(b) and 11 4) transfer all or any of the Relevant Shares without the giving of a notice under Article 12.1 as follows

- (a) to the trustees for the time being of the Family Trust concerned on any change of trustees for that Family Trust,
- (b) to the trustees for the time being of any other trust being a Family Trust in relation to the same individual member, and
- (c) to the relevant member or former member who made the original transfer permitted pursuant to Article 11 2 or any Privileged Relation of such relevant member

### **11 4 Cessation of Permitted Transfer Relationship**

If following any transfer of Shares permitted pursuant to this Article.

- (a) any person to whom Shares are transferred as a Privileged Relation ceases to be a Privileged Relation of the relevant member, or

- (b) any of the Relevant Shares come to be held otherwise than upon a Family Trust related to the relevant member, or
- (c) a Transferee Company ceases to be a Member of the Same Group as the Transferor Company;

in each case other than as permitted by or in accordance with the provisions of these Articles it shall be the duty of the relevant member and the former holder of the Relevant Shares to notify the Directors in writing that such event has occurred. Within three months of service of such notice or the date on which the Board otherwise becomes aware that such event has occurred (unless the Relevant Shares are transferred within six weeks of the occurrence of such event to the relevant member or former member or to any person to whom a transfer of Shares by such relevant member or former member would be permitted pursuant to this Article, any such transfer being deemed to be authorised under the foregoing provisions of this Article) the Directors shall be entitled to determine that the trustees of the former Family Trust, the former Privileged Relation, or the Transferee Company shall be deemed to have given a Transfer Notice in respect of the Relevant Shares

#### **11 5 Direction by an Investor Majority**

The Directors shall determine that a Transfer Notice shall be deemed to have been given in respect of the Relevant Shares for the purposes of Article 11 4 if so required by notice in writing from an Investor Majority

#### **11 6 Transfer between holders of different classes of Shares**

For the purposes of this Article 11, A Ordinary Shares and A1 Ordinary Shares shall be of equal class and together shall be deemed to be of the highest class, Preferred Ordinary Shares of the next highest class and Ordinary Shares of the next highest class. Where shares of any class are transferred to a person who holds only shares of a lower class or classes, those shares shall, upon transfer, automatically be converted into shares of the highest class held by the transferee prior to any such transfer. For illustration if A Ordinary Shares are to be transferred, if the transferee holds A Ordinary Shares, Preferred Ordinary Shares and Ordinary Shares pre transfer, the A Ordinary Shares to be transferred shall remain A Ordinary Shares on transfer, if the transferee holds only Preferred Ordinary Shares and Ordinary Shares pre transfer, the A Ordinary Shares to be transferred shall convert to Preferred Ordinary Shares on transfer but if the transferee holds only Ordinary Shares pre transfer, the A Ordinary Shares to be transferred shall convert to Ordinary Shares on transfer. No Share shall convert to a higher class on transfer.

### **12. PRE-EMPTION RIGHTS**

#### **12 1 Transfer Notice**

Before transferring any A Ordinary Shares, A1 Ordinary Shares, Preferred Ordinary Shares or Ordinary Shares, save for a permitted transfer pursuant to Articles 11 2 or 11 3 or transfers made in accordance with Articles 14 or 15,

the A Ordinary Shareholder, A1 Ordinary Shareholder, Preferred Ordinary Shareholder or the Ordinary Shareholder proposing to transfer the same (the **"Proposing Transferor"**) shall give notice in writing (the **"Transfer Notice"**) to the Company that he proposes to transfer such Shares (the **"Sale Shares"**) and, in the event that the Proposing Transferor shall have reached an agreement or an arrangement with a third party for the sale of the Sale Shares to such third party, the Proposing Transferor shall state in the Transfer Notice the name of such third party, the price per share at which the Sale Shares are to be sold to such third party and all other material terms of the proposed transfer. The Transfer Notice shall constitute the Company (by the Board) as agent for the transfer of the Sale Shares at the Prescribed Price referred to below and for the period expiring three months after the date of the Transfer Notice or ten weeks after the agreeing or determination of the Prescribed Price, whichever shall be the later, (the **"Prescribed Period"**) in accordance with the following provisions of this Article 12. Save as hereafter provided, a Transfer Notice once given or required to be given or deemed to have been given shall be irrevocable. A Transfer Notice (other than a Transfer Notice required to be given or deemed to have been given pursuant to these Articles) may contain a provision that unless all or a specified number of the Sale Shares are sold by the Company within the Prescribed Period pursuant to this Article 12, the Transfer Notice shall be withdrawn and any such provision shall be binding on the Company.

## **12.2 Offer of Sale Shares**

12.2.1 The Sale Shares shall, within 28 days of the date the Transfer Notice is received by the Company or is deemed to have been given or within 14 days after the Prescribed Price shall have been agreed or determined as hereinafter provided, whichever shall be the later, be offered by the Company in writing for purchase at the Prescribed Price. Any offer under this Article 12.2.1 to COIF can be accepted by any NSEI Fund. Such offer shall be made to all holders of Shares (excluding the Proposing Transferor) in proportion to their holdings (regardless of class).

12.2.2 Each such offer shall specify a time (being not less than 90 days in the case of an initial offer and 28 days in the case of a subsequent offer) within which it must be accepted failing which it will lapse. In the case of competition in respect of any such offer the Sale Shares so offered shall be allocated to the acceptors in proportion (as nearly as may be without involving fractions or increasing the number sold to any member beyond that applied for by him) to their (in the case of any offer made to COIF but accepted by an NSEI Fund, COIF's) existing holding of Shares (regardless of class).

## **12.3 Notification of Purchasers**

If the Directors shall within the Prescribed Period find members (and, if appropriate, the NSEI Fund) (each such person being a **"Purchaser"**) to purchase the Sale Shares or any of them and give notice in writing thereof to the Proposing Transferor he shall be bound, upon payment of the Prescribed Price, to transfer such of the Sale Shares to the respective Purchasers. If the Transfer Notice stated that the Proposing Transferor was not willing to

transfer part only of the Sale Shares or less than a specified number of such Sale Shares, the obligation in this Article 12 to transfer the Sale Shares shall not apply unless the Directors shall have found Purchasers for the whole of the Sale Shares or not less than such specified number. Every such notice from the Directors shall state the name and address of the Purchaser concerned and the number of Sale Shares agreed to be purchased by him. The purchase shall be completed as soon as reasonably practicable at a place and time to be appointed by the Directors, when against payment of the Prescribed Price and any relevant stamp duties, the Proposing Transferor shall deliver transfers in favour of the Purchaser(s) together with the share certificates in respect of the relevant Sale Shares and the Purchasers shall be registered as the holders of the relevant Sale Shares in the register of members of the Company and share certificates in the names of such Purchasers and in respect of the relevant Sale Shares shall be issued and delivered.

#### **12.4 Failure to Transfer**

If a Proposing Transferor, after having become bound to transfer any Sale Shares to a Purchaser, shall make default in so doing or shall fail to deliver share certificates in respect thereof, the Directors may authorise some person to execute and deliver on his behalf any necessary transfer in favour of the Purchaser and shall receive the purchase money and shall thereupon (subject to the transfer being duly stamped) cause the name of the Purchaser to be entered into the register of members as the holder of the relevant shares. The Company shall hold the purchase money in trust for the Proposing Transferor but shall not be bound to earn or pay interest thereon. The receipt of the Company for the purchase money shall be a good discharge to the Purchaser who shall not be bound to see to the application thereof and after the name of the Purchaser has been entered in the register of members in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.

#### **12.5 Purchasers not found for Sale Shares**

If the Directors shall not within the Prescribed Period find purchasers willing to purchase all the Sale Shares (or any lesser number specified in the Transfer Notice for the purpose of Article 12.1) at the Prescribed Price or if the Directors shall within the Prescribed Period give to the Proposing Transferor notice in writing that the Directors have no prospect of finding purchasers, the Proposing Transferor at any time thereafter up to the expiration of six weeks after the Prescribed Period shall be at liberty to transfer those Sale Shares for which the Company has not found (or has given notice that it has no prospect of finding) purchasers to any person by way of a bona fide sale at any price not being less than the Prescribed Price (after deducting where appropriate, any dividend or other distribution declared or made in respect of the Sale Shares after the giving of the Transfer Notice and to be retained by the Proposing Transferor) and otherwise on the terms set out in the Transfer Notice, provided that.

- (a) if the Transfer Notice shall state that the Proposing Transferor is not willing to transfer part only of the Sale Shares or less than a specified

number of the Sale Shares he shall not be entitled to transfer any of such Sale Shares unless in aggregate the whole of such Sale Shares or, as relevant, not less than the specified number of such Sale Shares are so transferred,

- (b) the Directors may require to be satisfied that the Sale Shares are being transferred pursuant to a bona fide sale upon the material terms and for the consideration stated in the transfer without any deduction, rebate or allowance whatsoever to the Purchaser (other than in respect of any dividend or other distribution as referred to above) and if not so satisfied may refuse to register the instrument of transfer, and
- (c) the provisions of this Article 12.5 shall not apply in the case of a Deemed Transfer Notice.

#### **12.6 Prescribed Price for Sale Shares**

Save in respect of a Transfer Notice served upon the happening of a Compulsory Relevant Event pursuant to Article 13.1.2, the expression "**Prescribed Price**" shall mean in respect of each Sale Share

- (a) the price per share (if any) specified in the Transfer Notice in accordance with the foregoing provisions, or
- (b) if.
  - (i) the relevant Transfer Notice does not name a proposed transferee and does not set out a price per share at which the Sale Shares are proposed to be sold, or
  - (ii) a Transfer Notice is deemed or is required to be given, or
  - (iii) such named proposed transferee is a Connected Person or Concert Party with the Proposing Transferor, or
  - (iv) the terms on which such shares are to be sold to the named proposed transferee do not fully reflect the terms of the proposed transaction or are otherwise than a fixed cash sum payable in full on completion of the sale (for example, because the consideration is to be satisfied otherwise than in cash or because some deduction, consideration, rebate, allowance or arrangement is being made or is passing between the Proposing Transferor and the proposed transferee in addition to the price per share set out in the Transfer Notice),

such sum per share shall be agreed between the Proposing Transferor and the Directors or, failing agreement, as shall be determined by an independent expert ("**Expert**") in accordance with Article 12.7

#### **12.7 Determination of Prescribed Price by Expert**

The Expert shall be appointed by agreement between such parties who have failed to agree the Prescribed Price or, failing agreement as to such appointment, by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert shall state in writing what is in his opinion the fair selling value of the Sale Shares on the open market as between a willing seller and a willing purchaser by reference to the value of the whole of the issued share capital of the Company and not taking account as to whether or not the Sale Shares represent a majority or minority of the shares and not taking account of the restrictions on the transferability of the Sale Shares. For this purpose, the Expert shall be given by the Directors, and shall take account of, all information which a prudent prospective purchaser might reasonably require if he were proposing to purchase the Sale Shares from a willing seller by private treaty and at arm's length together with such information as any member of the Company may wish to provide to him such other information as he may reasonably require. In so stating his opinion, the Expert shall be deemed to act as an expert and not as an arbitrator and his determination shall be final and binding on all concerned. The costs involved in the Expert's determination of the Prescribed Price shall, in the absence of any determination by the Expert, be borne as to one half by the Proposing Transferor and as to the other half by the Purchasers (and as between the Purchasers pro rata to the number of shares purchased).

#### **12.8 Failure to complete by Purchaser**

Where the Directors shall have found a Purchaser or Purchasers and through no default of the Proposing Transferor any purchase is not duly completed, the Directors shall forthwith notify the Purchaser or Purchasers (as the case may be) and if within 7 days of such notice being given, the Purchaser or Purchasers between them shall not have duly completed the purchase of the Sale Shares in respect of which there has been default in completion, the Proposing Transferor shall be deemed to have served a Transfer Notice in respect of such shares and the procedure contained in this Article 12 shall be repeated in respect of them.

### **13 COMPULSORY TRANSFER**

#### **13.1 Interpretation**

For the purposes of this Article 13

##### **13.1.1 a "Compulsory Relevant Event" shall occur when**

- (a) an individual (a "**Leaver**") ceases to be Engaged by the Group (a "**Cessation**") at any time when the Leaver, or any Permitted Transferee of such Leaver, is the beneficial owner of any Shares,
- (b) in relation to an individual member, such member is adjudicated bankrupt,
- (c) in relation to a member being a body corporate,

- (i) a receiver, manager, administrative receiver or administrator being appointed of such body corporate or over all or any part of its undertaking or assets or such body corporate entering into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or an analogous event to the foregoing occurring in relation to a body corporate incorporated other than in England and Wales; or
- (ii) such body corporate referred to in (i) above or the liquidator, receiver, manager, administrative receiver, administrator or other representative thereof acquiring shares pursuant to a right or interest obtained by such body corporate prior to any such event

13 1 2 For the purpose of this Article

- (a) a person is “**Engaged**” by the Group if he is a director or is engaged in the business of any member of the Group whether as an employee or consultant or under any contract whereby his services are made available to any member of the Group,
- (b) a person “**ceases to be Engaged**” at the first time that such person (for whatever reason) is no longer Engaged in any capacity by any member of the Group, and
- (c) a “**Bad Leaver**” means a Leaver who ceases to be Engaged by the Group other than as a result of
  - (i) his death,
  - (ii) his permanent incapacity or illness,
  - (iii) his retirement at normal retirement age,
  - (iv) the termination of his employment by reason of redundancy, or
  - (v) a wrongful termination of his employment by the Company or where a competent tribunal (after final appeal) has held that his dismissal from that employment was unfair,
  - (vi) by mutual agreement (but only where the Company’s agreement has been ratified by an Investor Majority),
  - (vii) in the case of a consultancy or contract for services, such arrangements are terminated by the Company (except where the Company properly terminates the arrangements for breach by the consultant or contractor)

13 1 3 upon the happening of a Compulsory Relevant Event, a Transfer Notice pursuant to Article 12 1 shall be deemed to have been served on the relevant Termination Date in respect of

- (a) all Shares held by the member immediately before the Compulsory Relevant Event; and
- (b) all Shares then held by the member's Privileged Relations and/or Family Trusts (other than Shares which the Directors are satisfied were not acquired by such holders either (i) directly or indirectly from the member or (ii) by reason of their connection with the member and the decision of the Board in this respect will be final)

13 1 4 upon the happening of a Compulsory Relevant Event the Prescribed Price in the Transfer Notice deemed to be issued pursuant to Article 13 1 3 shall be restricted to the amount fully Paid Up for such Shares UNLESS the Compulsory Relevant Event is a Cessation and, either

- (a) the Leaver is not a Bad Leaver; or
- (b) the Cessation occurs after the later of
  - (i) 2 years after the date of adoption of these Articles, or
  - (ii) 3 years after the start of the Leaver's relevant engagement in the business of any member of the Group

in which event the Prescribed Price shall be fair value as agreed between the Leaver and the Company and failing such agreement, as determined in accordance with the provisions set out in Article 12.7.

13 1 5 The Board (acting unanimously but excluding the Leaver if he is a Director) shall have discretion to determine that

- (a) a Bad Leaver may be reclassified as not a Bad Leaver, such that the Prescribed Price shall be fair value as agreed between the Leaver and the Company and failing such agreement, as determined in accordance with the provisions set out in Article 12.7, and/or
- (b) such Leaver shall be entitled to retain some or all of the Shares held by him and/or his Permitted Transferees. Any Shares permitted to be so retained shall automatically and without need for any further resolution have all voting rights suspended in respect of them (whether on a show of hands or a poll vote) and shall carry no entitlement for the holder thereof to
  - (i) receive notices of any general meetings of the Company;
  - (ii) attend or speak at any general meetings of the Company,
  - (iii) receive, sign or vote in favour of or against any resolution proposed to be passed by way of written resolution of the Company

## 13 2 Bankruptcy

If the Compulsory Relevant Event shall be the bankruptcy of a member and if any of the Shares which are offered pursuant to the Transfer Notice shall not be sold to the members (“**Unsold Shares**”) then, after the expiration of the period during which the Unsold Shares might have been purchased by a member or members pursuant thereto, the Representatives of the member in question shall be entitled to elect at any time before the Shares are disposed of by them to be registered themselves as the holders of the Unsold Shares (but so that such election shall not give rise to any obligation to serve a Transfer Notice in respect of the Unsold Shares)

#### **14. TAG ALONG ON CHANGE OF CONTROL**

##### **14.1 Interpretation**

For the purpose of this Article 14:

14.1.1 the “**Specified Price**” shall mean the highest price per Share at which the Buyer shall have acquired or offered to acquire any Share in the Company in the period since the date one year prior to the making of the offer required pursuant to this Article plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable in respect of any such Shares which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for any such shares, and

14.1.2 “**acceptance**” and “**offer**” shall include the execution of a sale agreement between the Buyer and the shareholders or some of them

##### **14.2 Offer to all shareholders**

14.2.1 Notwithstanding any of the provisions of these Articles, no person (the “**Buyer**”) shall be entitled or permitted to obtain a Controlling Interest in the Company and no Share may be transferred if as a result a Buyer would obtain a Controlling Interest in the Company unless

- (a) an Investor Majority consents in writing to the transfer, and
- (b) the Buyer makes a written offer (open for acceptance for a period of at least 28 days and with adequate security as to the performance of its obligations) to all the A Ordinary Shareholders, all the A1 Ordinary Shareholders, all the Preferred Ordinary Shareholders and all the Ordinary Shareholders to purchase all of the Shares held by them at the Specified Price.

14.2.2 Any offer made pursuant to Article 14.2.1 shall not be made conditional upon all or any of the members accepting it or any other condition and shall be on terms that it may be accepted by each member in respect of all or any part of his Shares. The consideration shall be payable in cash in full without any set off within 21 days of acceptance of the offer

##### **14.2.3 Calculation of Specified Price**

In the event of disagreement on the calculation of the Specified Price, the disagreement shall be referred by the Directors to an independent expert (acting as expert and not as arbitrator) nominated by the Directors (or, in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales at the request of any of the parties concerned) whose decision shall be final and binding. The costs of any such independent expert shall be borne by the Company.

#### **14 2 4 Completion of Offer**

The Buyer shall complete the purchase of all Shares in respect of which such offer is accepted before or at the same time as the Buyer completes the purchase of the Shares the proposed transfer of which required a written offer to be made pursuant to this Article. Any transfer pursuant to such written offer shall not require the Proposing Transferor to give a Transfer Notice. The Directors shall not register any transfer to the Buyer and the Buyer shall not be entitled to exercise or direct the exercise of any rights in respect of any shares to be transferred to the Buyer until in each case the Buyer has fulfilled all his obligations pursuant to this Article.

#### **14 2.5 Exclusion of Pre-emption Rights**

The provisions of Article 12 shall not apply to any transfers made under this Article 14.

#### **14 2 6 Provisions to apply on Total Sale**

Notwithstanding the Specified Price being determined in accordance with this Article 14, in connection with any Total Sale the provisions of Article 6 1 shall apply to determine if, and the extent to which, the proceeds from any sale of shares may be re-allocated amongst the members.

### **15 COMPULSORY PURCHASE**

#### **15 1 Compulsory Purchase Notice**

If

- (a) as a result of an offer made pursuant to Article 14 2, a Buyer acquires a Controlling Interest in the Company, or
- (b) at any time A Ordinary Shareholders and/or A1 Ordinary Shareholders holding 65% or more in nominal value of the Shares (regardless of class) held by all A Ordinary Shareholders and all A1 Ordinary Shareholders intend to sell as part of a bona fide arm's length transaction all of their Shares (or any interest therein) to a willing purchaser (the "**Preferred Buyer**") and having served notice on the Company identifying the proposed price per Share (the "**Specified Offer Price**"),

then either (in the event of (a) above) the Buyer or (in the event of (b) above) the Preferred Buyer may by written notice to the Company require the Company as agent for either the Buyer or the Preferred Buyer (as appropriate) to serve notices (each a "**Compulsory Purchase Notice**") on the holders of Ordinary Shares, the Preferred Ordinary Shares, the A Ordinary Shares, the A1 Ordinary Shares and the Deferred Shares who have not accepted such offer (and any persons who have the right to acquire Shares in which case the provisions of Article 15.6 shall apply) (the "**Minority Shareholders**") requiring them to sell such Shares which, for the purposes of this Article, shall also include any options to either the Buyer or Preferred Buyer (as appropriate) at the Specified Offer Price per Share. The Company shall serve the Compulsory Purchase Notices forthwith and for 28 days from the service of the Compulsory Purchase Notices the Minority Shareholders shall not be entitled to transfer their Shares to anyone except the Buyer or Preferred Buyer (as appropriate)

#### **15.2 Completion of Compulsory Purchase**

The Buyer shall complete the purchase of all Shares in respect of which a Compulsory Purchase Notice has been given at the same time and no later than 21 days from the date of the serving of such Compulsory Purchase Notice. The consideration shall be payable in cash in full without any set off. Any transfer pursuant to a Compulsory Purchase Notice shall not require the selling member to give a Transfer Notice. The Directors shall not register any transfer to the Buyer and the Buyer shall not be entitled to exercise or direct the exercise of any rights in respect of any shares to be transferred to the Buyer until in each case the Buyer has fulfilled all his obligations pursuant to this Article.

#### **15.3 Failure to comply with Compulsory Purchase Notice**

If in any case a shareholder, on the expiration of 28 days from the service of the Compulsory Purchase Notice, shall not have transferred his Shares to the person identified by the Buyer or Preferred Buyer (as the case may be) against payment of the price therefor, the Directors may authorise any person to execute and deliver on his behalf any necessary transfer in favour of the Buyer or Preferred Buyer (as the case may be) or the person identified by it and shall receive the purchase money in respect of such Shares and shall thereupon (subject to the transfer being duly stamped) cause the name of the Buyer or Preferred Buyer (as the case may be) (or the person identified by it) to be entered into the register of members as the holder of the relevant Shares. The Company shall hold the purchase money in trust for the Minority Shareholder but shall not be bound to earn or pay any interest thereon. The receipt of the Company for the purchase money shall be a good receipt for the price of the relevant shares but the Buyer or the Preferred Buyer (as the case may be) shall not be discharged from procuring that the Company applies the money in payment to the Minority Shareholder which shall be made against delivery by the Minority Shareholder of the certificate in respect of the shares or an indemnity in respect of the same. After the name of the Buyer or the Preferred Buyer (as the case may be) or the person identified by it has been entered in

the register of members in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.

**15 4 Exclusion of Pre-emption Rights**

The provisions of Article 12 shall not apply to any transfers made under this Article 15

**15 5 Provisions to apply on Total Sale**

Notwithstanding the Specified Offer Price being determined in accordance with this Article 15, in connection with any Total Sale the provisions of Article 6 1 shall apply to determine if, and the extent to which, the proceeds from any sale of shares may be re-allocated amongst the members

**15 6 Optionholders**

Upon any person, following the issue of a Compulsory Purchase Notice, becoming a holder of Shares pursuant to the exercise of a pre-existing option to acquire shares in the Company (whether pursuant to a share option scheme or otherwise howsoever), a Compulsory Purchase Notice, on the same terms as the previous Compulsory Purchase Notice, shall be deemed to have been served upon such person immediately upon such acquisition and such person shall thereupon be bound to sell and transfer all such shares acquired by him to the Preferred Buyer or as the Preferred Buyer may direct and the provisions of this Article 15 shall apply mutatis mutandis to such person save that completion of the sale of such Shares shall take place forthwith upon the Compulsory Purchase Notice being deemed served on such person or, if later, upon the date of completion prescribed by Article 15 2

**16 NOT USED**

**17 PROCEEDINGS AT GENERAL MEETINGS**

**17 1 Quorum**

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. A quorum shall be present if at a general meeting there is in attendance (a) two duly appointed proxies or corporate representatives of either CTIL (for so long as they continue to be a Participating Investor), I2BF (for so long as they continue to be a Participating Investor) or Solvay (which proxy or corporate representative may be an Investor Director subject to the relevant requirements of the 2006 Act being satisfied in respect of their appointment), or (b) a duly appointed proxy or corporate representative of either CTIL (for so long as they continue to be a Participating Investor), I2BF (for so long as they continue to be a Participating Investor) or Solvay (which may be an Investor Director appointed by CTIL, I2BF or Solvay as aforesaid) together with a duly appointed proxy or corporate representative of at least one other Participating Investor. If, at any adjourned meeting which has been so adjourned pursuant to Regulation 41, a quorum is not present within half an hour of the time

appointed for the adjourned meeting or if during a meeting a quorum ceases to be present, the meeting will be dissolved. Regulation 41 shall be construed accordingly

## **17.2 Poll**

A poll may be demanded at any general meeting by the Chairman or any member or members present in person or by proxy or by a duly authorised representative of a corporate member in each case representing not less than 5% of the total voting rights of all the members having the right to vote at the meeting. Regulation 46 shall be modified accordingly

## **18 VOTES OF MEMBERS**

### **18.1 Votes of Members**

18.1.1 Shares in the Company shall carry votes as follows:

**Ordinary Shares**                      one vote per share

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

**A1 Ordinary Shares:**              one vote per share

**Preferred Ordinary Shares:** one vote per share

**Deferred Shares:**                  no vote

18.1.2 Votes on shares may be exercised

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

### **18.2 No Casting Vote of Chairman**

In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a casting vote in addition to any other vote he may have.

## **19 NUMBER OF DIRECTORS**

19.1 Unless otherwise determined by ordinary resolution, the number of Directors (including the Investor Directors) shall be not more than ten nor less than three

## 20 APPOINTMENT OF DIRECTORS

20 1 Subject to Article 20 3, the Company by ordinary resolution may appoint another person in place of a Director removed from office by resolution of a general meeting and, without prejudice to the powers of the Directors under Article 20 2, the next following regulation, may appoint a person who is willing to be a Director either to fill a vacancy or as an additional Director.

20 2 The Directors may appoint a person who is willing to be a Director either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed the number fixed by Article 19 as the maximum number of Directors

### 20 3 Appointment of Investor Directors and Investor Observer

20 3 1 Each of (a) CTIL (for so long as they continue to be a Participating Investor), (b) Solvay and (c) I2BF (for so long as they continue to be a Participating Investor) and (d) the remaining Participating Investors (acting by a majority decision determined by the total amount of money invested by such Investors from time to time) shall be entitled to appoint one person as a non-executive Director of the Company. A Director appointed pursuant to this Article 20 3 1 may at any time be removed from office by the Investor(s) appointing him who may appoint another such person approved as aforesaid in his place. Any such appointment or removal as aforesaid shall be in writing served on the Company and signed by such Investor(s) and shall take effect forthwith upon service of such notice on the Company which shall include delivery to the registered office of the Company, or to a meeting of the Board or to the Secretary

20 3 2 Each Participating Investor who, together with any other Investor who has the same fund manager, holds at least 8% of the issued share capital of the Company shall be entitled to appoint one person (the “**Investor Observer**”) (and to remove or replace such person) who shall have the right to receive notice of and to attend all meetings of the Directors and any meeting of any duly established committee of the Board, and to receive all documentation relating thereto, but who shall not be entitled to vote at any such meeting.

### 20 4 Investor Director Holding Office

Each Investor Director shall hold office until he is either removed pursuant to this Article 20 or dies or vacates office pursuant to Article 26

### 20 5 Disclosure of Information

Each Investor Director and each Investor Observer shall be at liberty from time to time to make such disclosure to the A Ordinary Shareholders and/or the A1 Ordinary Shareholders (or any of them) concerning the Group as he shall think fit

## 21 ROTATION OF DIRECTORS

**21 1 Directors Not to Rotate**

The Directors shall not be liable to retire by rotation

**22 ALTERNATE DIRECTORS**

**22 1 Appointment and Removal**

Any Director (other than an alternate director) may from time to time appoint any other Director or any person approved by the Board (such approval not to be unreasonably withheld or delayed) to be an alternate director of the Company and may at any time remove from office any alternate director so appointed by him and appoint another person approved aforesaid in his place Any appointment of an alternate director may provide for two or more persons in the alternative to act as an alternate director

**22 2 Notice of Appointment or Removal**

Any such appointment or removal shall be by notice to the Company signed by the Director making or revoking the appointment and shall take effect upon service on the Company at its registered office or in any other manner approved by the Directors

**22 3 Cessation of Appointment**

An alternate director shall ipso facto cease to be an alternate director if his appointor ceases for any reason to be a Director or on the happening of an event which, if he were a Director, would cause him to vacate the office of Director, or if by written notice to the Company, he resigns his appointment

**22.4 Functions of Alternate Director**

An alternate director shall (subject to his giving to the Company an address within the United Kingdom at which notices may be served on him) be entitled to receive notices of all meetings of Directors, to attend, to be counted in the quorum for and to vote as a Director at any such meeting at which the Director appointing him is not personally present and generally to perform all functions of his appointor as a Director in the absence of such appointor including, without prejudice to the generality of the foregoing, power to sign any resolution pursuant to Article 27 4

**22 5 Voting Rights Cumulative**

A Director acting as alternate shall have an additional vote at meetings of the Board for each Director for whom he acts as alternate but he shall only count as one person for the purpose of determining whether a quorum is present

**22 6 Alternate Director Responsible for Own Acts**

An alternate director shall be deemed to be an officer of the Company and shall alone be responsible for his own acts and defaults and the Director so appointing him shall not be responsible for the acts and defaults of an alternate

director so appointed. He shall be entitled to be indemnified by the Company to the same extent as if he were a Director.

**22.7 Remuneration**

The remuneration of any such alternate director shall be payable out of the remuneration payable to the Director appointing him and shall consist of such part (if any) of the last mentioned remuneration as may be agreed between the alternate director and the Director appointing him.

**22.8 Power to Act**

Save as otherwise provided in these Articles an alternate director shall not have power to act as a Director nor shall he be deemed to be a Director for the purposes of these Articles.

**23 NO SHARE QUALIFICATION**

23.1 A Director and alternate director shall not require a Share qualification but nevertheless shall be entitled to attend and speak at any general meeting of the Company and at any separate meeting of the holders of any class of Shares of the Company.

**24. POWERS OF DIRECTORS**

**24.1 Management of the Business**

Subject to the provisions of the 2006 Act and these Articles and to any directions given by special resolution, the business of the Company will be managed by the Directors who may exercise all the powers of the Company. No alteration of these Articles and no such direction will invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given.

**24.2 Appointment of Agent**

The Directors may, by power of attorney or otherwise, appoint any person to be the agent of the Company for any purposes and on any conditions as they determine, including authority for the agent to delegate all or any of his powers.

**24.3 Pension funds**

The Directors may, with the consent of an Investor Majority, establish and maintain, or procure the establishment and maintenance of, any pension or superannuation funds (whether contributory or otherwise) for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances and emoluments to, any persons (including Directors and other officers) who are or were at any time in the employment or service of the Company, or of any company which is or was a Subsidiary of the Company or an Associate, or of any of the predecessors in business of the Company or of any such other company as stated above, and the spouses, widows, widowers, families and

dependants of any such persons, and make payments to, for or towards the insurance of or provide benefits otherwise for any such persons as stated above

**24 4 Remuneration of Non-Executive Director**

The remuneration of non-executive Directors will, unless otherwise agreed, be fixed by the Board and, unless otherwise resolved, shall be deemed to accrue from day to day

**24 5 Borrowing Powers of the Board**

The Board may exercise all the powers of the Company to borrow money and, subject to the provisions of these Articles, to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures and other securities

**25 DIRECTORS' INTERESTS**

25 1 A Director who is in any way, whether directly or indirectly, interested in a proposed transaction or arrangement with the Company shall declare the nature and extent of his interest to the other Directors before the Company enters into the transaction or arrangement in accordance with the 2006 Act

25 2 A Director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other Directors as soon as is reasonably practicable in accordance with the 2006 Act, unless the interest has already been declared under Article 25 1

25 3 Subject, where applicable, to the disclosures required under Article 25 1 and Article 25 2, and to any terms and conditions (including, for the avoidance of doubt, any provisions made under Article 32 5) imposed by the Directors in accordance with Article 32, a Director shall be entitled to vote in respect of any proposed or existing transaction or arrangement with the Company in which he is interested and if he shall do so his vote shall be counted and he shall be taken into account in ascertaining whether a quorum is present

25.4 A Director need not declare an interest under Article 25 1 and Article 25 2 as the case may be:

- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest,
- (b) of which the Director is not aware, although for this purpose a Director is treated as being aware of matters of which he ought reasonably to be aware,
- (c) if, or to the extent that, the other Directors are already aware of it, and for this purpose the other Directors are treated as aware of anything of which they ought reasonably to be aware; or

- (d) if, or to the extent that, it concerns the terms of his service contract that have been, or are to be, considered at a board meeting

## 26 **DISQUALIFICATION OF DIRECTORS**

### **The office of a Director shall be vacated:**

- (a) if, by notice in writing to the Company, he resigns the office of Director,
- (b) if he shall for more than 6 consecutive months have been absent without permission of the Board from meetings of the Board held during that period, unless he shall have appointed an alternate director who has not been similarly absent during such period;
- (c) if he appears unable to pay a debt which is payable immediately or to have no reasonable prospect of paying a debt which is not immediately payable in either case within the meanings given to such expressions in section 268 of the Insolvency Act 1986;
- (d) if he is subject to an interim order under section 252 of the Insolvency Act 1986 or enters into a voluntary arrangement within the meaning given in section 253 of that Act,
- (e) if, having been appointed as an Investor Director pursuant to Article 20 3, he is removed from office by those entitled to remove him,
- (f) if he is prohibited from being or is disqualified as a Director by an order made under any provision of the Insolvency Act 1986 or the Company Directors Disqualification Act 1986,
- (g) if he is, or may be, suffering from mental disorder and either
  - (i) a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months, or
  - (ii) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have,
- (h) if, in the case of a Director who holds any executive office, his appointment as such is terminated or expires and the Board resolves that his office be vacated, or
- (i) if he is removed from office under section 168 of the 2006 Act

## **27. PROCEEDINGS OF DIRECTORS**

### **27.1 Quorum**

The quorum necessary for the transaction of the business of the Board shall be three Directors (or their alternates) consisting of two Investor Directors appointed by either CTIL, I2BF or Solvay (if so appointed) and one executive Director. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. If no Investor Director (or his alternate) attends any such meeting then such meeting shall be adjourned for a period of not less than 7 days and if at least one Investor Director (or his alternate) does not attend any such meeting when it is reconvened the quorum shall be those Directors (or their alternates) present at the time fixed for such reconvened meeting.

### **27.2 Meetings in the United Kingdom**

Meetings of the Board shall not without the consent of the Investor Directors be held outside the United Kingdom.

### **27.3 Regulation of Meetings**

27.3.1 Unless otherwise determined by a majority of the Board which majority includes a majority in number of the Investor Directors (if so appointed) in respect of each specified meeting, meetings of the Board shall be held monthly and unless all the Directors indicate their willingness to accept shorter notice of a meeting of the Directors (except in the case of an emergency), a minimum of 5 business days' notice of meetings of the Board accompanied by an agenda of the business to be transacted shall be given to all the Directors. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Board.

27.3.2 Questions arising at any meeting shall be decided by a majority of votes.

27.3.3 A majority of the Board, which majority includes a majority of the Investor Directors present in respect of each specified meeting, shall appoint one of the Directors as a Chairman. The Chairman shall not have a second or casting vote.

27.3.4 Subject as aforesaid, the Directors may adjourn and otherwise regulate their meetings as they think fit.

### **27.4 Signed Resolutions**

A resolution executed or approved in writing by all the Directors shall be as valid and effective for all purposes as a resolution passed at a meeting of the Board duly convened and held and may consist of several documents in the like form, each signed by one or more of the Directors. A resolution signed by an alternate director need not also be signed by his appointor and, if it is signed by a Director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.

## **27.5 Delegation to Committees**

27.5.1 Save with the prior written consent of a majority in number of the Investor Directors (if so appointed), the Board shall not delegate any of its powers to a committee or committees

27.5.2 Any committee of the Board shall have at least one Investor Director appointed as a member thereof. All decisions of such committees shall be made with the consent of the Investor Director(s) so appointed save that, where two Investor Directors are so appointed, the consent of one shall be sufficient

## **27.6 Meetings by Conference Facilities**

27.6.1 Subject to the consent of the Investor Directors, a meeting of the Board may consist of a conference between Directors some or all of whom are in different places provided that each Director who participates is able

- (a) to hear each of the other participating Directors addressing the meeting, and
- (b) if he so wishes, to address each of the other participating Directors simultaneously,

whether directly, by conference telephone or by any other form of communications equipment (whether in use when this Article 27.6 is adopted or developed subsequently) or by a combination of such methods. A quorum shall be deemed to be present if those conditions are satisfied in respect of at least the number of Directors required to form a quorum. A meeting held in this way shall be deemed to take place at the place where the largest group of Directors is assembled or, if no such group is readily identifiable, at the place from where the Chairman of the meeting participates. Any Director may, by prior notice to the Secretary, indicate that he wishes to participate in the meeting in such manner, in which event, the Directors shall procure that an appropriate conference facility is arranged

## **27.7 Notices**

It shall be necessary to give notice of every meeting of the Board to the Investor Directors

## **28 MANAGING OR EXECUTIVE DIRECTORS**

### **28.1 Appointment**

The Directors may from time to time appoint one or more of their number to an executive office (including that of Managing Director, Chief Executive or any other salaried office) for such period and on such terms as shall be thought fit and, subject to the provisions of any agreement entered into in any particular case, may revoke such appointment. A Director so appointed as a Managing Director or Chief Executive shall (without prejudice to any claim he

may have for damages for breach of any contract of service between him and the Company) ipso facto cease to be a Managing Director or Chief Executive if he ceases for any cause to be a Director of the Company and/or of any of its Subsidiaries

**28 2 Remuneration**

The Managing Director, Chief Executive or other executive officer as aforesaid shall receive such remuneration, whether by way of salary, pension contributions, commission or participating in profits or otherwise (either in addition to or in lieu of his remuneration as a Director), as the Directors may determine

**28 3 Delegation of Powers**

The Directors may with the approval of the Investor Directors, entrust to and confer on a Managing Director, Chief Executive or other executive officer as aforesaid any of the powers exercisable by them on such terms and conditions and with such restrictions as they think fit and may from time to time withdraw, alter or vary all or any of such powers

**28 4 Service Contracts**

No Director appointed to an executive office shall, if he is a party to a written service contract with any member of the Group, be entitled to any salary, remuneration or benefit in kind in respect of any appointment to an executive office in addition to that provided for in that contract

**29 ACCOUNTS AND DOCUMENTS**

Subject to such conditions and regulations as the Board may determine having regard to any obligation binding upon the Company to keep confidential information supplied to it by other persons, an A Ordinary Shareholder or an A1 Ordinary Shareholder may inspect personally or by his agent at any time and from time to time any account or book or document of the Company (and take and retain copies thereof) Regulation 109 shall be modified accordingly

**30 INDEMNITY**

- 30 1 Subject to the provisions of, and so far as may be consistent with, the 2006 Act and any other provision of law, but without prejudice to any indemnity to which a relevant officer may otherwise be entitled, the Company shall indemnify every relevant officer out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer in the actual or purported execution and/or discharge of his duties and/or the actual or purported exercise of his powers and/or otherwise in relation to or in connection with his duties, powers or office including (without prejudice to the generality of the foregoing) any liability incurred by him in relation to any proceedings, whether civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as a relevant officer

PROVIDED that in the case of any Director, any such indemnity shall not apply to any liability of that Director

30 1 1 to the Company or to any of its associated companies,

30 1 2 to pay any fine imposed in criminal proceedings or any sum payable to a regulatory authority by way of penalty in respect of non-compliance with any requirement of a regulatory nature (however arising), or

30 1 3 incurred

(a) in defending any criminal proceedings in which he is convicted or any civil proceedings brought by the Company, or any of its associated companies, in which judgment is given against him, or

(b) in connection with any application under any statute for relief from liability in respect of any such act or omission in which the court refuses to grant him relief

in each case where the conviction, judgment or refusal of relief by the court is final within the meaning stated in section 234 of the 2006 Act Regulation 118 of Table A shall be amended accordingly but shall not apply to the Auditors

30 2 The Directors may at their discretion and on such terms as they think fit, purchase and maintain for the Company or for any Director, the Secretary or other manager or officer other than the Auditors, insurance against any liability which might by virtue of any rule of law attach to such Director, Secretary or other manager or officer in relation to any negligence, default, breach of duty or breach of trust in relation to the Company or its business or affairs or to any Subsidiary and against such liability as mentioned in the preceding Article

### 31 DEFERRED SHARES

31 1 The Deferred Shares may be redeemed by the Company at any time at its option for £1 for all the Deferred Shares registered in the name of any holder without obtaining the sanction of the holder or holders and pending the transfer and/or purchase the Company may retain the certificates (if any) in respect of them

31.2 The creation or issue of Deferred Shares shall be deemed to confer irrevocable authority on the Company at any time after that creation or issue to appoint any person to execute or give on behalf of the holder of those shares a transfer of them to such person or persons as the Company may determine

31 3 The Deferred Shares shall not entitle the holders of them to receive notice of, to attend, to speak or to vote at any general meeting of the Company

### 32 DIRECTORS' POWERS TO AUTHORISE CONFLICTS OF INTEREST

32 1 The Directors may, in accordance with the requirements set out in this Article, authorise any matter proposed to them by any Director which would, if not authorised, involve a Director breaching his duty under section 175 of the 2006 Act to avoid conflicts of interest ("**Conflict Situation**")

32 2 Any authorisation under this Article will be effective only if

- (a) the matter in question shall have been proposed by any Director for consideration at a meeting of Directors in the same way that any other matter may be proposed to the Directors under the provisions of these Articles or in such other manner as the Directors may determine,
- (b) 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
- (c) the matter was agreed to without his voting or would have been agreed to if his vote had not been counted

32 3 Any authorisation of a Conflict Situation under this Article may (whether at the time of giving the authorisation or subsequently)

- (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict Situation so authorised,
- (b) be subject to such terms and for such duration, or impose such limits or conditions as the Directors may determine,
- (c) be terminated or varied by the Directors at any time

This will not affect anything done by the Director prior to such termination or variation in accordance with the terms of the authorisation

32 4 In authorising a Conflict Situation the Directors may decide (whether at the time of giving the authorisation or subsequently) that if a Director has obtained any information through his involvement in the Conflict Situation otherwise than as a Director of the Company and in respect of which he owes a duty of confidentiality to another person the Director is under no obligation to

- (a) disclose such information to the Directors or to any Director or other officer or employee of the company;
- (b) use or apply any such information in performing his duties as a Director,

where to do so would amount to a breach of that confidence.

32 5 Where the Directors authorise a Conflict Situation they may provide, without limitation (whether at the time of giving the authorisation or subsequently) that the Director

- (a) is excluded from discussions (whether at meetings of Directors or otherwise) related to the Conflict Situation,
- (b) is not given any documents or other information relating to the Conflict Situation;
- (c) may or may not vote (or may or may not be counted in the quorum) at any future meeting of Directors in relation to any resolution relating to the Conflict Situation

32 6 Where the Directors authorise a Conflict Situation

- (a) the Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict Situation;
- (b) the Director will not infringe any duty he owes to the company by virtue of sections 171 to 177 of the 2006 Act provided he acts in accordance with such terms, limits and conditions (if any) as the Directors impose in respect of its authorisation

32 7 A Director is not required, by reason of being a Director (or because of the fiduciary relationship established by reason of being a Director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict Situation which has been authorised by the Directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds

32 8 For the purposes of sections 175 and 180(4) of the 2006 Act and for all other purposes, it is acknowledged that an Investor Director may be or become subject to a Conflict Situation or Conflict Situations as a result of his also being or having been party to an agreement or arrangement or understanding or circumstance under which he may become an employee, director, trustee, member, partner, officer, nominee, attorney or representative of, or a consultant to, or a direct or indirect investor in and/or otherwise commercially involved with or economically interested in any of the following

- (a) any Investor; and/or
- (b) any “**Investor Affiliate**”, which for these purposes means any person who or which, as regards any Investor or any other Investor Affiliate of any Investor
  - (i) is a holding company of that company, or a wholly owned subsidiary of the company or of any such holding company,
  - (ii) is its investment manager or investment advisor,
  - (iii) is a person in which it may have or acquire a direct or indirect economic interest as part of any portfolio investment,

- (iv) controls or is controlled, managed, advised (in an investment advisor capacity) or promoted by it or its investment manager, and/or
- (v) is a trustee, manager, beneficiary, shareholder, partner, unitholder or other financier or any participant in or of it or any such other Investor Affiliate, and/or
- (vi) any carried interest or incentive arrangement associated with any person or arrangement referred to in Articles (i) to (v) inclusive above

32.9 An Investor Director's duties to the Company arising from him holding office as Director shall not be breached or infringed as a result of any Conflict Situation envisaged by Article 32.8 having arisen or existing in relation to him and he shall not be held accountable to the Company for any benefit he directly or indirectly derives from his involvement with any person or entity referred to in Articles 32.8(a) or 32.8(b) irrespective of whether the activities of such person or entity are or may become competitive with those of the Company and/or any of its subsidiaries

### 33 DATA PROTECTION

33.1 Each of the shareholders and Directors of the Company (from time to time) consent to the processing of their personal data by the Company, its shareholders and directors, (each a "**Recipient**") for the purposes of due diligence exercises, compliance with applicable laws, regulations and procedures and the exchange of information amongst themselves. A Recipient may process such personal data either electronically or manually. The personal data which may be processed for such purposes under this Article shall include any information (but excepting all "sensitive data" as defined in the Data Protection Act 1998 for which it is recognised separate consent would be obtained) which may have a bearing on the prudence or commercial merits of investing, or disposing of any Shares (or other investment or security) in the Company. Subject to any confidentiality undertakings given to them by a Recipient, each of the Company's shareholders and directors (from time to time) consent to the transfer of such personal data to persons acting on behalf of any Recipient and to the offices of any Recipient within the European Economic Area for the purposes stated above, where it is necessary or desirable to do so.