

Company no. 5379229

**COMPANIES ACTS 1985 AND 1989**

**COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**OF**

**MOTORCLEAN GROUP LIMITED**

**(the "Company")**

28 AUGUST 2018

**(adopted by special resolution of the Company passed on ~~18.07.2011~~)**

**1 TABLE A**

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

**2 DEFINITIONS AND INTERPRETATION**

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

**"Accounting Period"** means an accounting reference period of the Company beginning on 1 April and ending on the following 31 March, or such other date as is notified to the Registrar of Companies from time to time

**"Accounts"** means the audited consolidated accounts of the Group.

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

**"Allocation Notice"** has the meaning given in Article 13 12.

**"A Ordinary Dividend"** has the meaning given in Article 5 1(b).

**"Approved Offer"** has the meaning given in Article 16.2(a).

**"A Percentage"** means 56.37 per cent

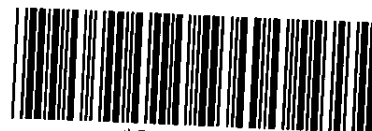
**"A Preference Dividend"** has the meaning given in Article 5.1(a).

**"A Preference Share"** means an A preference share of £1 in the Company having the rights and being subject to the restrictions set out in these articles.

**"A Share"** means an A ordinary share of £1 in the capital of the Company having the rights and being subject to the restrictions set out in these articles

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

**"Audit Committee"** means a standing committee of the Directors, named as such and comprising the chairman of the Board, the group finance director and an



Investor Director (or any other non-executive director of the Company if there is no Investor Director appointed)

**"Auditors"** means the Company's incumbent auditors from time to time appointed by the Board

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

**"Bad Leaver"** means a Relevant Individual who ceases to be an employee and/or director of the Company or any Member of the Group (without immediately becoming or continuing as a director and/or employee of any Member of the Group) and who is not a Good Leaver

**"Bank"** means Lloyds TSB Bank plc and its successors and assigns and any receiver, agent or nominee appointed by such party.

**"Board"** means the board of Directors, or the Directors present at a duly convened meeting of the Directors at which a quorum is present, of the Company for the time being

**"B Percentage"** means 41.63 per cent, less the D Percentage (if any)

**"B Preference Dividend"** has the meaning given in Article 5.1(c).

**"B Preference Shares"** means a B preference share of £1.00 in the capital of the Company having the rights and being subject to the restrictions set out in these articles.

**"B Share"** means a B ordinary share of £1.00 in the capital of the Company having the rights and being subject to the restrictions set out in these articles.

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

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

**"Business Plan"** has the meaning given in the Investment Agreement.

**"Buyer"** has the meaning given in Article 16.1(a).

**"Cash Equivalent"** means

- (a) where the consideration comprises listed securities, the average of the middle market prices at the close of dealings on each of the five dealing days prior to the Exit Date;
- (b) where the consideration comprises loan notes, loan stock or other debt instruments guaranteed unconditionally by an Authorised Bank their face value,

- (c) where the consideration comprises unlisted securities or other instruments not guaranteed by an Authorised Bank or such other form of consideration not provided for in (a) or (b) above or not having a monetary value, such amount as the Members agree to be the fair current value of the same,
- (d) where the consideration comprises future fixed payments, the value actually received;
- (e) to the extent that the consideration comprises future contingent payments the value actually received;

provided that to the extent that any element of the Exit Proceeds is not to be paid on the Exit Date (e.g. the consideration comprises future payments, contingent or otherwise) the Members will enter into such arrangements as are necessary at the Exit Date in relation to the distribution of any future payments received to ensure that the distribution between Members of the total Exit Proceeds (including any future payments received) reflects the principal set out in Article 7 and any dispute as to the value of the Cash Equivalent will be determined in accordance with Article 2.4, which provisions will apply as if set out in full in this definition.

**"Cessation Date"** means in respect of each Member who is a Relevant Individual the first to occur of

- (a) the date on which he ceases to be an employee and/or director of any Group Member for any reason (including death or bankruptcy) and as a consequence is neither (or does not immediately become) an employee or director of any Group Member, or
- (b) if the Relevant Individual is still an employee or director of a Group Member purely for the purposes of maintaining his eligibility for benefits under a permanent health insurance policy, the date on which he becomes eligible for such benefits, or
- (c) the date on which a Relevant Individual gives or is given notice of termination of his contract of employment or the date of occurrence of a repudiatory breach by him of such contract (whichever is the earlier)

**"Co-Investment Scheme"** means a scheme under which certain officers, employees or partners of an Investor or of its advisor or manager are entitled (as individuals or through a body corporate or any other vehicle) to acquire shares

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

**"Companies Act"** means the Companies Act 1985.

**"Compulsory Sale Notice"** has the meaning given in Article 15.2.

**"Compulsory Seller"** and **"Compulsory Sellers"** have the meanings given in Article 15.2

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

**"Controlling Interest"** in relation to a person who is not already a member of the Company, means the ownership by that person and his or its Connected Persons and persons Acting in Concert with that person of Shares carrying the right to more than 50 per cent. of the total number of votes which may be cast on a poll at a general meeting of the Company.

**"C Percentage"** means 2 per cent

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

**"C Share"** means a C ordinary shares of £1 in the capital of the Company having the rights and being subject to the restrictions set out in these articles.

**"C Shareholder"** means a registered holder of any C Shares

**"Directors"** means the Company's incumbent directors

**"D Percentage"** means 4 per cent , less a pro rata amount should the number of D Shares in issue at the relevant time be less than 20,840

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

**"D Share"** means a D ordinary shares of £1 in the capital of the Company having the rights and being subject to the restrictions set out in these articles.

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

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

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

**"Exit"** means a Share Sale, Listing or Liquidation.

**"Exit Date"** means a Listing Date, a Sale Date or a Liquidation Date, as appropriate.

**"Exit Proceeds"** means.

- (a) in the case of a Listing the valuation placed on all of the Equity Shares on the Listing Date, as shown in the prospectus or listing particulars published in connection with the Listing, less the gross amount of any new money raised by the Company in connection with the Listing from a subscription for new shares, or
- (b) in the case of a Share Sale the aggregate price or value of the consideration to be paid in cash or Cash Equivalent for all of the Equity Shares; or

- (c) in the case of a Liquidation, the proceeds available for distribution to the Equity Shareholders as holders of Equity Shares;
- (d) together with, in the case of (b) and (c) above the amount of indebtedness existing at the Exit Date,

in each case after payment of all costs and expenses incurred in connection with the Exit by the Equity Shareholders

**"Extra Shares"** has the meaning given in Article 13.6

**"Facility Agreement"** has the meaning given in the Investment Agreement.

**"Family Member"** means the wife or husband, child or step-child or remoter issue of a Member.

**"Family Trust"** means a trust created in favour of a Member and/or any of his Family Members where no power of control over the voting powers in respect of any Shares held by such trust is exercisable by or subject to the consent of any person other than the trustee or trustees

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

**"Fund"** means any investment trust or investment company (within the meaning of chapter 21 of the listing rules issued by the UK Listing Authority), unit trust, any other collective investment scheme (as defined in section 235 of FSMA), and any co-investment scheme in relation to any of the foregoing.

**"Good Leaver"** means a Relevant Individual who ceases to be an employee and/or director of any Group Member (without immediately becoming or continuing as a director and/or employee of any Member of the Group) as a result of his death, permanent incapacity due to ill-health or injury (except where such ill-health or injury arises as a result of an abuse of drink or drugs) which in the opinion of the Remuneration Committee is sufficiently serious to prevent him from carrying out his normal duties, retirement in accordance with his contract of employment or service agreement, or a person who, following a Substantive Judgment, the Remuneration Committee has determined is a Good Leaver.

**"Group"** means the Company and its subsidiary undertakings from time to time and references to a "Member of the Group" or a "Group Member" will be construed accordingly.

**"Indebtedness"** means in relation to the Group sums then outstanding under the Loan Notes and/or amounts due under the 'A' Preference Shares and/or 'B' Preference Shares and/or the Facility Agreement (and any other bank debt) but less any cash held by or on behalf of the Group.

**"Intercreditor Deed"** means the intercreditor deed dated on the Commencement Date and made between (1) the Company (2) Motorclean Services Limited (3) Motorclean Limited (4) the Bank (5) the Investors and (6) the Managers.

**"Investment Agreement"** means an agreement dated on the Commencement Date and made between (1) the Company (2) the Managers (3) John Cole and (4) the Investors

**"Investor Director"** has the meaning given in Article 33

**"Investors"** means Lloyds TSB Development Capital Limited (company number 1107542) and LDC Co-Investment Plan 2005 L P (acting by Lloyds TSB Venture Nominees Limited) and any transferee of Shares from such persons pursuant to Article 12.

**"Lead Investor"** means Lloyds TSB Development Capital Limited or such other Investor as all the Investors may from time to time notify in writing to the Company provided that there shall only be one Investor as the Lead Investor at any one time.

**"Liquidation"** means the passing of a resolution for the winding-up of the Company or the date of an order of a court of competent jurisdiction for the compulsory winding-up of the Company

**"Liquidation Date"** means the date of a Liquidation.

**"Listing"** means

- (a) the admission of all or any of the Equity Shares to trading on a market for listed securities operated by London Stock Exchange plc and to the Official List of the UK Listing Authority; or
- (b) the admission of such Shares to AIM, a market of London Stock Exchange plc, or
- (c) the admission of such Shares to, or to trading on, any Recognised Investment Exchange approved by the Lead Investor and, if necessary, to any official or otherwise prescribed list maintained by a competent or otherwise prescribed listing authority; or
- (d) the admission of such Shares to, or to trading on, any other market wherever situated agreed to by the Lead Investor and, if necessary, to listing on any official or otherwise prescribed list maintained by a competent or otherwise prescribed listing authority,

and **"Listed"** will be construed accordingly.

**"Listing Date"** means the date on which all or any of the Equity Shares are Listed (subject only (where relevant) to any announcement under rule 7.1 of the Listing Rules or under equivalent rules applicable in any other jurisdiction).

**"Listing Rules"** means the rules of the UK Listing Authority

**"Loan Note Deed"** means the deed dated the Commencement Date constituting the Loan Notes

**"Loan Notes"** means the £2,800,000 subordinated fixed rate unsecured loan notes constituted by the Loan Note Deed

**"Managers"** means David Warren, Brian Impey, John Hammond and Paul Cranwell or any of them.

**"Market Value"** has the meaning given in Article 14 in relation to voluntary share transfers, and in Article 15.5 in relation to compulsory share transfers.

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

**"Observer"** has the meaning given in Article 33.3.

**"Official List"** means the official list of the UK Listing Authority

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

**"Proportionate Entitlement"** has the meaning given in Article 13.9

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

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

**"Recognised Investment Exchange"** has the meaning given in FSMA

**"Relevant Individual"** means an employee and/or director of any Group Member

**"Remuneration Committee"** means a standing committee of the Directors, named as such and comprising the chairman of the Board, the chief executive and an Investor Director (or any other non-executive director of the Company if there is no Investor Director) and, following a Substantive Judgment, an additional Manager (or, if no remaining Managers are engaged by the Company, any other Director approved by the Lead Investor) on a temporary basis solely for the purpose of determining if a person is a Good Leaver

**"Sale Date"** means the date of completion of a Share Sale

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

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

**"Share"** means a share in the Company

**"Share Sale"** means the completion of any transaction or series of transactions whereby any person purchases or otherwise acquires or obtains a Controlling Interest.

**"Substantive Judgment"** means a decision of an employment tribunal or the High Court of England and Wales that a Relevant Individual was wrongfully dismissed or unfairly dismissed on substantive grounds (i.e. not where the unfair dismissal results from any procedural irregularities by the employer) by a Group Member.

**"Table A"** means Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 805) as amended by the Companies (Tables A to

F) (Amendment) Regulations 1985 (SI 1985 No. 1052) and the Companies Act 1985 (Electronic Communications) Order 2000.

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

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

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

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

2 2 Words and phrases which are defined or referred to in or for the purposes of the Companies Act or Table A have the same meanings in these articles unless a contrary intention appears

2 3 In these articles, unless a contrary intention appears

- (a) words which refer to the singular number include the plural number and vice versa, words which refer to one gender include all genders, and words which refer to persons include bodies corporate and unincorporated associations;
- (b) reference to a statute or a statutory provision includes reference to
  - (i) the statute or statutory provision as modified or re-enacted or both from time to time; and
  - (ii) any subordinate legislation made under the statutory provision (as modified or re-enacted as set out above);
- (c) reference to a Regulation is to a regulation of Table A, and reference to an Article is to a provision of these articles;
- (d) reference to a **"transfer"** of Shares or any similar expression will be deemed to include (without limitation)
  - (i) any sale or other disposition of the legal or equitable interest in a Share (including any voting right attached to a Share) (an **"Interest"**);
  - (ii) the creation of any mortgage, charge, pledge or other encumbrance over any Interest;
  - (iii) any direction by a Member entitled to an allotment or issue of Shares that a Share be allotted or issued to some person other than himself; and



- (iv) any grant of an option to acquire an Interest by any Member entitled to any such Share,
  - (e) reference to a "**group undertaking**" means, in relation to any undertaking, its holding company (if any) and its subsidiaries (as such terms are defined by section 736 Companies Act) and any other subsidiaries of its holding company;
  - (f) reference to an address for the purposes of any electronic communication means any number or address used for the purpose of such communication; and
  - (g) reference to "written" or "in writing" includes any method of representing or reproducing words in a legible form including, for the avoidance of doubt, electronic communication.
- 2.4 Unless it is specifically stated otherwise, any dispute as to value, or as to calculations or adjustments to be made, or as to amount, whether to or in respect of Cash Equivalent, Exit Proceeds, Market Value of Sale Shares under Articles 14 or 15.5 or otherwise pursuant to these articles, will be referred immediately to the Auditors for final determination. If the Auditors decline to act in respect of any such referral, the matter will be determined by an independent firm of chartered accountants agreed for the purpose by the parties concerned or, in default of agreement within five Business Days after the Auditors have declined to act, appointed by the incumbent president of the Institute of Chartered Accountants in England and Wales. The Auditors or independent accountants (as the case may be) will act as expert and not as arbitrator and their costs will be borne as directed by the Article in question or, if the Article is silent on the point, as directed by the Auditors or the independent accountants. The written certificate of the Auditors/independent accountants (as appropriate) will be conclusive and binding on the Company and the Members (except in the case of fraud or manifest error)
- 2.5 Any consent required to be given by the A Shareholders, the Investor Director(s) and/or the Investors pursuant to these articles may be given by the Lead Investor and, if so given, the Directors shall be entitled to rely on the same as if it had been given by the A Shareholders (as a class), an Investor Director or the Investors (as the case may be).
- 2.6 The headings in these articles are included for convenience only and do not affect the meaning of these articles
- 2.7 Where, for any purpose, an ordinary resolution of the Company is required, a special or an extraordinary resolution is also effective for that purpose, and where, for any purpose, an extraordinary resolution is required, a special resolution is also effective for that purpose
- 2.8 The liability of the members is limited to the amount, if any, unpaid on the shares held by them

### **3 SHARE CAPITAL**

The share capital of the Company at the date of adoption of these articles is £2,208,000 divided into:

- (a) 200,000 A Shares;
- (b) 196,160 B Shares,
- (c) 8,000 C Shares;
- (d) 1,750,000 A Preference Shares, and
- (e) 53,840 B Preference Shares

#### **4 SHARE RIGHTS**

Regulation 2 will not apply to the Company. The rights and restrictions attaching to the Shares are set out in full in these articles. Save as provided in Article 6.1 and Article 13.8 (in respect of the C Shares and D Shares), Article 7.1 (in respect of the C Shares) and Article 15.4(a) (in respect of the D Shares), the C Shares and the D Shares shall be treated as one class and shall rank *pari passu* with the B Shares and, save where the context otherwise requires, all references to "B Shares" and "B Shareholders" in these articles shall be deemed to include the C Shares and the D Shares and the registered holders of C Shares and D Shares (as the case may be) and such provisions shall apply to those shares and holders of shares *mutatis mutandis*.

#### **5 SHARE RIGHTS - INCOME**

5.1 The profits of the Company which are available for lawful distribution in respect of each Accounting Period shall be applied as follows:

- (a) firstly, in paying to the Members holding A Preference Shares, in priority to the dividends on any other class of share, a fixed cumulative preferential net cash dividend (the "**A Preference Dividend**") at the rate of 8.4 per cent. per annum of the issue price of each A Preference Share in issue. Subject to the Companies Act, the A Preference Dividend shall be paid half-yearly on 31 August in respect of the period from 1 January to 30 June and on 28 February in respect of the period from 1 July to 31 December in each year, the first such payment to be made on 28 February 2006 in respect of the period from the date of the adoption of these articles until 31 December 2005 and such first dividend shall be paid *pro rata* to the number of days between the Commencement Date and 31 December 2005;
- (b) secondly, in paying to the Members holding A Shares, in priority to the dividends on any other class of share (other than the A Preference Shares), a fixed cumulative net cash dividend (the "**A Ordinary Dividend**") at the rate of 8 per cent. per annum of the issue price of each A Share. Subject to the Companies Act, the A Ordinary Dividend shall be paid half-yearly on 31 August in respect of the period from 1 January to 30 June and on 28 February in respect of the period from 1 July to 31 December in each year, the first such payment to be made on 28 February 2006 in respect of the period from the date of the adoption of these articles until 31 December 2005 and such first dividend shall be paid *pro rata* to the number of days between the Commencement Date and 31 December 2005;

- (c) thirdly, in paying to the Members holding B Preference Shares, a fixed cumulative preferential net cash dividend (the "**B Preference Dividend**") at the rate of 10 per cent per annum of the issue price of each B Preference Share in issue which shall accrue and be compounded with half-yearly rests on 30 June and 31 December in each year and shall, subject to the Companies Act, be paid immediately prior to an Exit, and
- (d) fourthly, the A Shares and the B Shares shall rank equally for dividends and profits which the Company determines to distribute and which shall be applied *pari passu* amongst the holders of the A Shares and the B Shares according to the number of such shares held, as if they constituted one class of shares.

5.2 Unless the Company is prohibited from paying dividends by the Companies Act or the Intercreditor Deed:

- (a) the A Preference Dividend, shall (notwithstanding that there has not been a recommendation or declaration of the Board or resolution of the Company in general meeting approving its payment) be paid immediately on its due dates. Such dividends together with any interest thereon if not paid on its due date shall (notwithstanding that such dividends in law or under the Intercreditor Deed shall not be capable of being paid by the Company) constitute a debt due from the Company to the holders of A Preference Shares which shall be payable in priority to any later A Preference Dividend, B Preference Dividend or A Ordinary Dividend; and
- (b) the A Ordinary Dividend, shall (notwithstanding that there has not been a recommendation or declaration of the Board or resolution of the Company in general meeting approving its payment) be paid immediately on its due dates. Such dividends together with any interest thereon if not paid on its due date shall (notwithstanding that such dividends in law or under the Intercreditor Deed shall not be capable of being paid by the Company) constitute a debt due from the Company to the holders of A Shares which shall be payable in priority to any later A Ordinary Dividend or B Preference Dividend, and
- (c) the B Preference Dividend shall (notwithstanding that there has not been a recommendation or declaration of the Board or resolution of the Company in general meeting approving its payment) be paid immediately on its due dates. Such dividends together with any interest thereon if not paid on its due date shall (notwithstanding that such dividends in law or under the Intercreditor Deed shall not be capable of being paid by the Company) constitute a debt due from the Company to the holders of B Preference Shares which shall be payable in priority to any later B Preference Dividend

5.3 If the Company fails to pay an A Preference Dividend on a date specified in this Article 5, interest shall accrue on the amount of such dividend remaining unpaid from that date until payment is made at the rate of 11.4 per cent per annum compounded annually at the end of each Accounting Period. If the Company fails to pay an A Ordinary Dividend on a date specified in this Article 5, interest shall accrue on the amount of such dividend remaining unpaid from that date until payment is made at the rate of 11 per cent per annum compounded annually at the end of each Accounting Period

- 5.4 Where the Company is precluded by the Companies Act from paying any A Preference Dividend, B Preference Dividend or A Ordinary Dividend in full on any date specified in these articles, then in respect of any A Preference Dividend or B Preference Dividend which would otherwise require to be paid pursuant to these articles on that date (in this Article 5.4 any such dividend being hereinafter called the "**Relevant Preference Dividend**") and any A Ordinary Dividend which would otherwise require to be paid pursuant to these articles on that date (in this Article 5.4 any such dividend being hereinafter called the "**Relevant Ordinary Dividend**"):
- (a) the Company shall first pay on that date to the holders of A Preference Shares the maximum part of the Relevant Preference Dividend which can then, consistently with the Companies Act, be paid by the Company;
  - (b) as soon as the Company is no longer precluded from doing so, the Company shall pay to the holders of A Preference Shares the maximum amount of the Relevant Preference Dividend which can, consistently with the Companies Act, be paid by the Company at that time,
  - (c) provided that no part of the Relevant Preference Dividend shall remain unpaid to holders of A Preference Shares, the Company shall then pay on that date to the holders of A Shares the maximum part of the Relevant Ordinary Dividend which can then, consistently with the Companies Act, be paid by the Company,
  - (d) as soon as the Company is no longer precluded from doing so, the Company shall pay to the holders of A Shares the maximum amount of the Relevant Ordinary Dividend which can, consistently with the Companies Act, be paid by the Company at that time;
  - (e) provided that no part of the Relevant Preference Dividend shall remain unpaid to holders of A Preference Shares and no part of the Relevant Ordinary Dividend shall remain unpaid, the Company shall then pay on that date to the holders of B Preference Shares the maximum part of the Relevant Preference Dividend due to them which can consistently with the Companies Act, be paid to them by the Company at that time; and
  - (f) as soon as the Company is no longer precluded from doing so, the Company shall pay to the holders of the B Preference Shares the maximum amount of the Relevant Preference Dividend due to them which can then consistently with the Companies Act, be paid to them by the Company
- 5.5 Any arrears of the A Preference Dividend, B Preference Dividend and A Ordinary Dividend shall be carried forward and any amount which the Company shall subsequently distribute by way of dividend to the holders of A Preference Shares, B Preference Dividend and A Shares (as the case may be) in respect of any Accounting Period shall be applied first in reducing or extinguishing any arrears of such dividend and any interest thereon (which arrears and interest shall rank for payment in the order of priority applicable to such dividends in accordance with these articles) in priority to the payment of any such dividend or interest thereon accruing subsequently

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

- 6.1 Subject to the provisions of Article 7 and the Intercreditor Deed, on a return of capital of the Company on a Liquidation or otherwise (other than a redemption of shares or the purchase by the Company of its own shares), the surplus assets and retained profits of the Company available for distribution among the Members will be applied in the following order and priority:

<b>Priority</b>	<b>Class of Share</b>	<b>Amount to be paid</b>
1	A Preference Shares	Amounts Credited as Paid Up on all issued A Preference Shares and all arrears of and/or accrued but unpaid A Preference Dividends
2	A Shares	Amounts Credited as Paid Up on all issued A Shares and all arrears of and/or accrued but unpaid A Ordinary Dividends
3	B Preference Shares	Amounts Credited as Paid Up on all issued B Preference Shares and all arrears of and/or accrued but unpaid B Preference Dividends
4	B Shares and C Shares	Amounts Credited as Paid Up on all issued B Shares
6	A Shares and B Shares and C Shares	Any further surplus provided always that any such sum shall be distributed such that the holders of A Shares (as a class) shall receive the A Percentage of such distribution, the holders of B Shares (as a class) shall receive the B Percentage of such distribution, the holders of C Shares (as a class) shall receive the C Percentage of such distribution, pro rata to their respective holdings of such Shares

- 6.2 Any return on any Shares of a particular class will be made amongst their holders pro rata as nearly as possible to their respective holdings of Shares of that class.

## **7 EXIT PROCEEDS AND REDEMPTION**

- 7.1 The A Shares shall entitle the A Shareholders (as a class) to the A Percentage of the Exit Proceeds, the B Shares shall entitle the B Shareholders (as a class) to the B Percentage of the Exit Proceeds, the C Shares shall entitle the C Shareholders (as a class) to the C Percentage of the Exit Proceeds, to be divided amongst the holders of such classes of Shares pro rata to their respective holdings of Shares of that class as at the Exit Date. To the extent unredeemed in accordance with Article 7.3 on an Exit each A Preference Share and each B Preference Share shall have a value equal to the aggregate of the issue price of such share and the arrears of and/or accumulated but unpaid A Preference Dividend (in the case of the A Preference Shares) and B Preference Dividend (in the case of the B Preference Shares) on such share (as relevant) calculated to and including the Exit Date.

- 7.2 Subject to the Companies Act, the terms of the Intercreditor Deed and the provisions of these articles, the A Preference Shares shall be redeemed at the price set out in Article 7.7 on 31 July 2012
- 7.3 Subject to the Companies Act and the Intercreditor Deed, the holders of the A Preference Shares and/or B Preference Shares may, by majority by number of A Preference Shares or B Preference Shares held (as the case may be) require the Company, by serving on it a notice (a "**Redemption Notice**"), to redeem all or part of the A Preference Shares (in the case of the holders of A Preference Shares) and B Preference Shares (in the case of the holders of B Preference Shares). The Redemption Notice shall be conditional on an Exit occurring within one month of the date of the notice, failing which the Redemption Notice shall be revoked.
- 7.4 If the Company is at any time redeeming fewer than all the A Preference Shares and/or B Preference Shares from time to time in issue, the number of A Preference Shares and/or B Preference Shares to be redeemed shall (subject to any contrary requirement in a Redemption Notice) be apportioned between those holders of the A Preference Shares (in the case of the A Preference Shares) and/or B Preference Shares (in the case of the B Preference Shares) then in issue pro rata according to the number of A Preference Shares and/or B Preference Shares held by them respectively at the date fixed for redemption and, if both A Preference Shares and B Preference Shares are being redeemed, they shall be redeemed in the order of priority set out in Article 7.12
- 7.5 On the date fixed for redemption, each of the holders of the A Preference Shares and/or B Preference Shares falling to be redeemed shall be bound to deliver to the Company, at the Company's registered office, the certificate(s) for such A Preference Shares and/or B Preference Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate) in order that the same may be cancelled. Upon such delivery, the Company shall pay to the holder (or, in the case of any joint holders, to the holder whose name stands first in the Company's register of members in respect of such Shares) the amount due to it in respect of such redemption against delivery of a proper receipt for the redemption monies.
- 7.6 If any certificate delivered to the Company pursuant to Article 7.5 includes any A Preference Shares and/or B Preference Shares not falling to be redeemed on the date fixed for redemption, a new certificate in respect of those A Preference Shares and/or B Preference Shares shall be issued to the holder(s) thereof as soon as practicable thereafter
- 7.7 There shall be paid by the Company on the redemption of each A Preference Share and/or B Preference Share an amount equal to
- (a) 100 per cent. of the issue price Credited as Paid Up thereon; and
  - (b) all arrears and accruals of A Preference Dividend (in the case of A Preference Shares) and B Preference Dividend (in the case of B Preference Shares) in respect thereof, calculated down to and including the date of actual payment.
- 7.8 Subject to the Intercreditor Deed, the holders of the A Preference Shares may require the Company, by serving on it a notice (a "**Default Redemption**

**Notice")), to redeem such amount of A Preference Shares as is specified in the Default Redemption Notice if, at any time:**

- (i) the Company has not paid the A Preference Dividend on the due date and the same is not remedied within 10 Business Days after notice in writing of such default has been given to the Company by any holder of A Preference Shares requiring the Company to remedy the same; or
- (ii) the Company has not redeemed any A Preference Shares in accordance with the requirements of this Article 7 on the due date and the same is not remedied within 10 Business Days after notice in writing of such default has been given to the Company by any holder of A Preference Shares requiring the Company to remedy the same, or
- (iii) if the Company or any Member of the Group shall cease or threaten to cease all or a substantial part of its operations (other than for the purpose of a voluntary reconstruction the terms of which have been previously sanctioned by the holders of at least 75 per cent. by nominal value of the A Preference Shares in issue); or
- (iv) if a distress or other execution is levied or sued out upon or against a substantial part of the property of the Company or any Member of the Group and is not discharged within 8 Business Days of having been so levied or sued out; or
- (v) if the Company or any Member of the Group shall for the purposes of section 123(1) of the Insolvency Act 1986 be deemed to be unable to pay its debts, or
- (vi) if an order is made or an effective resolution passed for winding up the Company or any Member of the Group (except a voluntary winding up for the purpose of reconstruction or amalgamation the terms of which have been previously sanctioned by the holders of at least 75 per cent. by nominal amount of the A Preference Shares in issue), or
- (vii) if an encumbrancer takes possession of or a receiver is appointed over the whole or any substantial part of the assets or undertaking of the Company or any Member of the Group and is not lifted or discharged within 8 Business Days of such possession or appointment, or
- (viii) if any security or any charge or debenture or mortgage of the Company or any Member of the Group shall become enforceable under the terms thereof and the holder or holders thereof take any proceedings to enforce the same; or
- (ix) if any other indebtedness of the Company or any Member of the Group becomes repayable prior to the due date for repayment thereof by reason of default by the Company or such Member of the Group and the holder or holders thereof take any proceedings to obtain repayment, or

- (x) there is a breach of any of the financial covenants in the Facility Agreement regardless of whether the Bank has taken any action to enforce its rights under the Facility Agreement or related documents in respect of such breach or has taken steps to enforce its security in respect thereof but provided that the breach has not been specifically waived by the Bank; or
  - (xi) there is a breach of any of the covenants in the Facility Agreement and the Bank has taken action to enforce its rights under the Facility Agreement or related documents in respect of such breach or has taken steps to enforce its security in respect thereof
- 7.9 The holders of the A Preference Shares shall be entitled to withdraw the Default Redemption Notice if they serve the Company with written notice to that effect before the redemption takes place
- 7.10 Where a Default Redemption Notice has been duly given, the Company shall be obliged, subject to compliance with the Companies Act and the Intercreditor Deed, to redeem the A Preference Shares specified in the Default Redemption Notice on the first Business Day following the receipt of such notice (which day shall be the date fixed for redemption)
- 7.11 If the Company is unable to redeem in full the relevant number of A Preference Shares on the date fixed for redemption, the Company shall redeem as many of such A Preference Shares as can lawfully and properly be redeemed and the Company shall redeem the balance as soon as it is lawfully and properly able to do so
- 7.12 If the Company fails or is unable to redeem any of the A Preference Shares or B Preference Shares in full on the date due for redemption for any reason whatsoever, all distributable reserves (or other monies which may lawfully be applied for the purpose of redeeming Shares) shall, subject to compliance with the Companies Act and the Intercreditor Deed, be applied in the following order of priority:
  - (i) first, in or toward paying off accruals and/or unpaid amounts of A Preference Dividend together with any interest thereon,
  - (ii) secondly, in or towards redeeming A Preference Shares which have not been redeemed on or by the due date for redemption,
  - (iii) thirdly, in or towards paying off accruals and/or unpaid amounts of A Ordinary Dividend together with any interest thereon;
  - (iv) fourthly, in or towards paying off accruals and/or unpaid amounts of B Preference Dividend; and
  - (v) fifthly, in or towards redeeming B Preference Shares which have not been redeemed on or by the due date for redemption.

## **8 SHARE RIGHTS - VOTING**

### **Swamping Rights**



8.1 If at any time

- (a) there has been a material breach of the Investment Agreement (including, for the avoidance of doubt, any non-payment of fees when due thereunder) or these articles by either the Company or the Managers or the B Shareholders or the holders of B Preference Shares and, if such breach is capable of remedy remains unremedied 15 Business Days after the giving of notice of such breach by the Lead Investor; or
- (b) there has been a failure by the Company and/or the Managers, tested at the end of the Accounting Period and at 6 months through the Accounting Period, to meet the profit before interest and tax or operating cashflow projections or forecasts in the Business Plan or subsequent business plans or budgets of the Company by more than 20 per cent.; or
- (c) more than 5 Business Days have elapsed since the due date for payment of any instalment of interest under the Loan Notes without payment having been made in full of such instalment, or
- (d) the Company has failed or been unable to redeem the Loan Notes on the due date(s) for redemption, or
- (e) any of the Loan Notes have become due and payable in advance of their due date for redemption or repayment in accordance with their terms; or
- (f) any act, omission or event has occurred which constitutes or may constitute (with the passage of time or the giving of notice) a Default (as defined in the Facility Agreement) under the Facility Agreement, or
- (g) more than 5 Business Days have elapsed since the due date for payment of the A Preference Dividend without payment having been made in full,

the provisions of Article 8.2 will apply.

- 8.2 On the occurrence of any of the events specified in Article 8.1, and for so long as the circumstances comprising such event continue to subsist, then upon the Lead Investor giving notice to the Company the number of votes attaching to the A Shares at any such general meeting will represent 95 per cent. of the voting rights attaching to all Equity Shares after the application of this Article

**Preference Shares**

- 8.3 The A Preference Shares shall confer on each holder of A Preference Shares and the B Preference Shares shall confer on each holder of B Preference Shares the right to receive notice of and to attend and speak at all general meetings of the Company but shall not confer any right to vote save as specifically set out elsewhere in these articles.

**9 VARIATION OF SHARE RIGHTS**

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

alteration of the voting rights attaching to Equity Shares by the giving of notice by the Lead Investor to the Company under Article 8.2 shall not be an alteration or abrogation of any rights attaching to Shares requiring any class or other consent from Members

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

- (a) a special resolution passed at a separate general meeting of the holders of that class, or
- (b) a written resolution in any form signed by or on behalf of the holders of not less than 75 per cent in nominal value of the issued Shares of that class

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

- (a) any variation of the rights attaching to the A Shares, the B Shares, the A Preference Shares or the B Preference Shares contained in these articles;
- (b) the convening of a meeting to consider the passing of any resolution to reduce the Company's share capital or any amount standing to the credit of its share premium account or capital redemption reserve fund, or to reduce any uncalled liability in respect of partly paid shares;
- (c) the convening of a meeting to consider the passing of any resolution to alter the Company's memorandum or articles of association,
- (d) the payment of any distribution of capital or return of a capital nature to any shareholder other than.
  - (i) to the A Shareholders and/or B Shareholders and/or the holders of A Preference Shares and/or the holders of the B Preference Shares in accordance with these articles; and
  - (ii) to the holders of the Loan Notes in accordance with the Loan Note Deed;
- (e) the capitalisation of any undistributed profits (whether or not the same are available for distribution, and including profits standing to the credit of any reserve) or of any sums standing to the credit of the Company's share premium account or capital redemption reserve fund;
- (f) the payment of any distribution of income or return of an income nature to any shareholder otherwise than in accordance with these articles and/or the Loan Note Deed, or
- (g) any variation of the authorised or issued share capital of any Group Member,
- (h) other than pursuant to any share option scheme approved by the Lead Investor, the creation or grant of any option or other right to subscribe for, convert into or issue any shares or other securities in the capital of any Group Member; or

- (i) the taking of any steps to wind up or dissolve any Group Member.

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

- 10.1 Subject to Article 10.4, and unless the Company by special resolution directs otherwise, any new Shares will be offered by the Directors for subscription to the holders of the Equity Shares in such proportions as is equal (as nearly as possible) to the proportion of Equity Shares held by them respectively at that time. For the purpose of this Article, the Equity Shares will be treated as one class of Share
- 10.2 The offer will be made by notice specifying the number and class of Shares offered, the price per Share, and a time (being not less than 14 days) within which the offer, if not accepted, will be deemed to be declined. At the end of that period or, if earlier, on the receipt of an indication from the person(s) to whom such notice is given that he/they decline(s) to accept some or all of the Shares so offered, the Directors will offer the declined Shares in the same proportions to the holders of Equity Shares who have accepted all the Shares initially offered to them. This further offer will be made in the same manner as the original offer but may, at the discretion of the Directors, be limited to a period of seven days after which it will (to the extent that any Shares remain unaccepted) be deemed to have been withdrawn.
- 10.3 Any Shares not taken up at the end of the procedure set out in Articles 10.1 and 10.2 may be offered by the Directors to a third party (to be approved by the Lead Investor) and, subject to these articles, the provisions of section 80 of the Companies Act and to the prior approval of the Lead Investor, such Shares will be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms as they think fit. However:
- (a) no Shares will be issued at a discount,
  - (b) no Shares will be issued more than three months after the end of the period for acceptance of the last offer of such Shares under Articles 10.1 and 10.2 unless the procedure set out in those Articles is repeated in respect of such Shares; and
  - (c) no Shares will be issued on terms which are more favourable than those on which they were offered to the Members
- 10.4 The provisions of sections 89(1) and 90(1) to (6) of the Companies Act will not apply to the Company
- 10.5 If, due to any inequality between the number of new Shares to be issued and the number of Shares held by Members entitled to have the offer of new Shares made to them, any fraction of a Share would arise, such fraction will be rounded up or down (as appropriate) to the nearest whole number (with halves being rounded up) and the number of new Shares to be so issued shall be adjusted to the extent necessary to take into account such rounding

## **11 TRANSFERS OF SHARES - PROHIBITED TRANSFERS**

### **General Prohibitions**

- 11.1 The Directors will not register any transfer of Shares to any of the following
- (a) any person who, in the opinion of an Investor Director is carrying on business directly or indirectly in competition with the Company or any Member of the Group, except this restriction will not apply to:
    - (i) any transfer of Shares pursuant to Articles 16 and 17 (Tag Along Rights and Drag Along Rights); or
    - (ii) any transfer of shares to the Investors or any of them; or
    - (iii) any transfer pursuant to Articles 12.5 and 12.6, or
  - (b) any person who does not have legal capacity to transfer such Shares or otherwise to comply fully with the provisions of these articles and the Investment Agreement
- 11.2 Each Manager shall be prohibited from transferring any of the Shares held by him unless it is pursuant to Article 16 or Article 17 or it is a Permitted Transfer pursuant to Article 12 or he first obtains the written consent of an Investor Director to such transfer, except where a Transfer Notice is deemed to have been given pursuant to Article 15 in which case the provisions of Article 15 shall apply.

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

- 11.3 The Directors shall not register a transfer of Shares unless
- (a) the transfer is permitted by Article 12, (Permitted Transfers), or has been made in accordance with Article 13 (Pre-emption) or it is permitted or required by the other provisions of these articles; and
  - (b) the proposed transferee has entered into a deed of adherence to, and in the form required by the Investment Agreement (unless the Investor Director has confirmed in writing to the Company that no deed of adherence is required).
- 11.4 For the purpose of ensuring that
- (a) no transfer of Shares is proposed or has taken place which is not permitted under these articles, or
  - (b) no circumstances have arisen whereby a Transfer Notice is required to be or ought to have been given, or
  - (c) no circumstances have arisen whereby the tag along provisions are required to be or ought to have been triggered pursuant to Article 16

the Board may, and will if so requested by an Investor Director, require any Member to procure that any person whom the Board or an Investor Director reasonably believes to have information relevant to such purpose provides the

Company with such information and evidence as the Board or an Investor Director think fit. Pending the provision of such information the Board will be entitled to refuse to register any relevant transfer

11.5 Regulations 22 and 24 will not apply to the Company

## **12 PERMITTED TRANSFERS**

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

12.2 Subject to Article 12.1 and to Article 12.3, a Member shall be permitted to transfer or dispose of any of the voting rights arising from such Shares, subject to the prior written consent of an Investor Director, to such other person or persons as the Member thinks fit (subject to prior notification to the Board) and, in addition, any Share may be transferred:

- (a) when required by, and in accordance with, Article 15 (Compulsory Transfers), or
- (b) to a Buyer in acceptance of an Approved Offer pursuant to Article 16 (Tag Along Rights) or Article 17 (Drag Along Rights);
- (c) subject to Article 12.3, in the case of Shares held by a company, to a group undertaking of such company and for the purposes of this Article 12.2(b) and Article 12.3, "**group undertaking**" means in relation to a company, any holding company of such company and any subsidiary or subsidiary undertaking of any of them; or
- (d) in the case of A Shares or A Preference Shares held by or on behalf of a Fund.
  - (i) to a manager, nominee or trustee for, or general partner of, the Fund, and by any such manager, nominee or trustee to another manager, nominee or trustee for that Fund or to the Fund itself; or
  - (ii) on a distribution in kind under the constitutive documents of the Fund, to the partners in or holders of units in, or to the shareholders of, participants in or the holders of other interests in the Fund (or to a nominee or trustee for any such partners, holders, members or investors), and by a nominee or trustee for such holders, partners, members or investors to such holders, partners, members or investors or to another nominee or trustee for such holders, partners, members or investors; or
  - (iii) to another Fund which is managed or advised by the same manager or advisor as the transferor (or as the Fund on behalf of whom any such Share is held by the transferor as nominee or trustee) or by a group undertaking of such manager or advisor; or
- (e) in the case of A Shares and A Preference Shares only, to a Co-Investment Scheme, or

- (f) in the case of a Co-Investment Scheme which holds A Shares or A Preference Shares through another undertaking:
  - (i) to another undertaking which holds or is to hold the Shares for the Co-Investment Scheme; or
  - (ii) to any officer, employee or partner entitled to the Shares under the Co-Investment Scheme; or
- (g) in the case of any Shares held by an Employee Benefit Trust, to any beneficiary of that trust or to any replacement trustees or into the joint name of the existing and any new or additional trustees; or
- (h) in the case of B Shares held by a Manager
- (i) (provided that the Company has received prior written consent to such transfer from an Investor Director and such transfer (when aggregated with any such previous transfer(s)) would not lead to more than 10 per cent. (by nominal value) of such B Shares originally held by such Manager being held by his transferees) to a Family Member over the age of 18 or to the trustees of a Family Trust.

#### **Further transfers**

- 12.3 Where Shares have been transferred under Article 12.2(c) (transfers to group undertakings) or Article 12.2(h) or **Error! Reference source not found.** (transfers to Family Members and Family Trusts) and the transferee ceases to be a permitted transferee of the original transferor, it will, on or before the cessation, transfer such Shares to the original transferor or to another group undertaking or Family Member or trustee of a Family Trust (as the case may be) of the original transferor;
- 12.4 If a Member fails or refuses to execute and deliver any transfer in respect of any Shares pursuant to its obligations under Article 12.3, the Board may (and will if requested by an Investor Director) and are hereby empowered to authorise any Director to execute and deliver the necessary transfer on the defaulting Member's behalf. The Board will authorise registration of the transfer, and of the transferee as the holder of the Shares transferred, once appropriate stamp duty has been paid. After registration, title of the transferee as registered holder of such Shares will not be affected by any irregularity in or invalidity of such proceedings, which, will not be questioned by any person.
- 12.5 Where any Shares are charged in favour of a bank or other institution which has provided funding to the Company or a Group Member, those Shares may be transferred to that bank or institution, or a nominee of such bank or institution. A certificate of an official of such bank or institution that the Shares are so charged and that the transferee named in any transfer is a person to whom Shares have been so charged shall be conclusive evidence of such facts. Notwithstanding any other provision of these Articles, the Directors shall not refuse to register a transfer of Shares permitted by this Article 12.5 and, on presentation of any such transfer, shall forthwith register the same
- 12.6 Notwithstanding anything contained in these Articles, whether expressly or impliedly contradictory to the provisions of this Article (to the effect that any

provision contained in this Article shall override any other provision of these Articles):

- (a) The directors shall not decline to register any transfer of shares, nor may they suspend registration thereof, where such transfer:
  - (i) is to any bank, institution or other person which has been granted a security interest in respect of such shares, or to any nominee of such a bank, institution or other person (or a person acting as agent or security trustee for such person) ("Secured Institution") (and a certificate by any such person or an employee of any such person that a security interest over the shares was so granted and the transfer was so executed shall be conclusive evidence of such facts), or
  - (ii) is delivered to the Company for registration by a Secured Institution or its nominee in order to perfect its security over the shares; or
  - (iii) is executed by a Secured Institution or its nominee pursuant to a power of sale or other power existing under such security,

and the directors shall forthwith register any such transfer or shares upon receipt and furthermore notwithstanding anything to the contrary contained in these articles no transferor of any shares in the Company or proposed transferor of such shares to a Secured Institution or its nominee and no Secured Institution or its nominee shall (in either such case) be required to offer the shares which are or are to be the subject of any transfer as aforesaid to the shareholders for the time being of the Company or any of them and no such shareholder shall have any right under the articles or otherwise howsoever to require such shares to be transferred to them whether for any valuable consideration or otherwise.

- (b) The directors shall not issue any share certificates (whether by way of replacement or otherwise) without the prior written consent of (or on behalf of) all (if any) Secured Institutions (as defined in Article 12.6(a)(i) above).

Any variation of this Article shall be deemed to be a variation of the rights of each class of share in the capital of the Company.

## **13 PRE-EMPTION**

### **Transfer Notices**

- 13.1 Except in the case of a transfer pursuant to Article 12 (Permitted Transfers), and subject to the prohibitions on transfers set out in Article 11, a Seller must give a Transfer Notice to the Company copied to the Lead Investor
- 13.2 Each Transfer Notice will (except as provided in Article 15 (Compulsory Transfers)) relate to one class of Shares only and will specify
  - (a) the number and class of Sale Shares;
  - (b) the identity of the Proposed Transferee (if any);

- (c) the price per Share at which the Seller wishes to transfer the Sale Shares; and
- (d) whether or not the Transfer Notice is subject to a Total Transfer Condition. In the absence of any such stipulation it will be deemed not to be so conditional. No Total Transfer Condition will apply in respect of any Transfer Notice deemed to have been given pursuant to Article 15.

13.3 No Transfer Notice will be capable of variation or cancellation without the unanimous consent of the Board.

#### **Transfer Price**

13.4 The Transfer Notice will constitute the Company as the agent of the Seller for the transfer of the Sale Shares in accordance with this Article 13 at the following price ("**Transfer Price**")

- (a) the price specified in the Transfer Notice if the proposed transfer is to a Proposed Transferee who is not a Connected Person and the Investor Director(s) agree(s) in writing, or
- (b) such other price as may be agreed between the Seller and the Board (subject to the prior written approval of an Investor Director) within 10 Business Days after the date of service or deemed service of the Transfer Notice; or
- (c) in default of agreement under Article 13.4(b) (where Article 13.4(b) applies) the lower of:
  - (i) the price per Share specified in the Transfer Notice; and
  - (ii) if an Investor Director elects within 15 Business Days after the date of service or deemed service of the Transfer Notice to instruct the Auditors for the purpose, the Market Value of the Sale Shares as at the date of service or deemed service of the Transfer Notice, and as determined in accordance with Articles 2.4 and 14; or
- (d) in the case of the A Preference Shares and the A Ordinary Shares at the price being the aggregate of the issue price of such shares and the accumulated but unpaid A Preference Dividend or A Ordinary Dividend (as the case may be) on such shares up to the proposed date of transfer.

#### **First offer to Company/EBT**

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

- (a) Within ten Business Days after the later of:
  - (i) the receipt by the Company of a Transfer Notice; and
  - (ii) the determination of the Transfer Price



save in respect of the transfer of D Shares the Lead Investor may direct the Company (in its capacity as agent for the Seller) immediately to offer at the Transfer Price such number of Sale Shares as it may determine to

- (iii) the Company pursuant to the provisions of part V of the Companies Act in respect of a purchase by a company of its own shares; and/or
  - (iv) any person who will hold the Sale Shares for the benefit of existing or future employees including (without limitation), any Employment Benefit Trust of any Group Member or any professional trustee, in any such case to hold the Sale Shares upon the terms of a discretionary trust for the benefit only of some or all of the employees and directors of any Group Member
- (b) If any offeree of the Sale Shares pursuant to this Article 13.5 applies for any of them within 10 Business Days after the date of the offer, the Company will allocate to such offeree the number of Sale Shares applied for on the later of:
- (i) the fifteenth Business Day following receipt of the Transfer Notice; and
  - (ii) the date on which the Transfer Price is determined
- (c) If all of the Sale Shares are so allocated, the provisions of Articles 13.6 to 13.10 will not apply. If none or some only of the Sale Shares are so allocated, the provisions of Articles 13.6 to 13.10 will have effect as if reference to Sale Shares was to those not allocated in accordance with this Article 13.5

#### **Offer to Members and notice to Investors**

- 13.6 Forthwith, upon all of the rights under Article 13.5 being exercised or waived by the Lead Investor, the Company (in its capacity as agent for the Seller) will give notice in writing to each of the Members (other than the Seller and any other Member who has served or who is deemed to have served a Transfer Notice in respect of his entire holding of Shares pursuant to which the sale of such Shares has not then been concluded) offering the Sale Shares for sale at the Transfer Price in accordance with Articles 13.8 and 13.9. The notice will specify that such Members will have a period of up to 20 Business Days from the date of such notice within which to apply for some or all of the Sale Shares. The offer will also invite such Members to indicate in their applications for Sale Shares, whether they would be willing to buy Shares in excess of their Proportionate Entitlement (as defined in Article 13.9 below) should any such Shares be available and, if so, how many ("**Extra Shares**").
- 13.7 Whenever the Sale Shares are B Shares or B Preference Shares, the Company shall notify the Investors in writing of whether any applications are received and, if so, the number of Sale Shares, including Extra Shares, for which such applications are made.

#### **Pre-emption Procedure**

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

- (a) in the first instance to all persons in the category set out in the corresponding line in column (2) in the table below, and
- (b) to the extent not accepted by persons in column (2) (whether as part of their Proportionate Entitlement or as Extra Shares), to all persons set out in the corresponding line in column (3), (4) and (5) (as appropriate) in the table below

(1)	(2)	(3)	(4)	(5)
Class of Sale Shares	First Priority	Second Priority	Third Priority	Fourth Priority
A Shares	A Shareholders	B Shareholders	C Shareholders and D Shareholders	N/A
B Shares	B Shareholders	C Shareholders and D Shareholders	A Shareholders	N/A
C Shares	C Shareholders	42.5 per cent of such shares to the B Shareholders  57.5 per cent of such shares to the A Shareholders	A Shareholders or such person(s) as they may direct	N/A
D Shares	D Shareholders	B Shareholders	C Shareholders	A Shareholders or such person(s) as they may direct
A Preference Shares	A Shareholders	B Shareholders	C Shareholders and D Shareholders	N/A
B Preference Shares	B Shareholders	C Shareholders and D	A Shareholders	N/A

		Shareholders		
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- 13 9 It will be a further term of the offer that, if there is competition within any class of shareholder for the Sale Shares offered to that class, such Sale Shares will be treated as offered among the holders of such class in proportion (as nearly as possible) to their existing holdings of Shares of that class ("**Proportionate Entitlement**").

#### **Allocation of Shares**

- 13 10 After the expiry of the offer period specified in Article 13.5, (or, if sooner, upon valid applications being received from all of the Shareholders for all of the Sale Shares in accordance with that Article), the Board will allocate the Sale Shares as follows.

- (a) if the total number of Sale Shares applied for (including Extra Shares) is equal to or less than the available number of Sale Shares, each offeree will be allocated the number applied for in accordance with his application (subject to Article 13.14); or
- (b) if the total number of Sale Shares applied for is greater than the available number of Sale Shares, each offeree will be allocated shares in accordance with Articles 13 8 and 13 9 or, if less, the number of Sale Shares which he has applied for, and
- (c) applications for Extra Shares will be allocated in accordance with such applications or, in the event of competition within any class of shareholder, among those applying for Extra Shares in such proportions as equal (as nearly as possible) the proportions of all the Shares of the same class held by such offerees

- 13 11 Allocations of Sale Shares made by the Company pursuant to this Article 13 will constitute the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them, provided that no person will be obliged to take more than the maximum number of Sale Shares which he has indicated to the Company he is willing to purchase.

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

- 13 12 The Company will immediately upon allocating any Sale Shares (whether pursuant to Article 13.5(b) or Article 13.10) give notice in writing ("**Allocation Notice**") to the Seller and to each person to whom Sale Shares have been allocated specifying:

- (a) the number of Sale Shares so allocated,
- (b) the aggregate price payable for them;
- (c) any additional information required by Article 13.14(a) (if applicable); and
- (d) (subject to Article 13 14(a)) the place and time (being not later than five Business Days after the date of the Allocation Notice or, if Article 13 14(a)

is applicable, after the date of expiry of the period specified in Article 13 14(a)) at which the sale of the Sale Shares will be completed

13 13 Subject to Article 13 14, completion of the sale and purchase of Sale Shares in accordance with the Allocation Notice will take place at the place and time specified in the Allocation Notice when the Seller will, upon payment of the due price, transfer those Sale Shares specified in the Allocation Notice and deliver the relevant Share certificates (or an appropriate indemnity in respect of any lost or destroyed certificates) to the persons to whom they have been allocated

13 14 If the Transfer Notice included a Total Transfer Condition and the total number of Sale Shares applied for is less than the number of Sale Shares:

- (a) the Allocation Notice will refer to such Total Transfer Condition and will contain a further offer, open for 28 days, to those persons to whom Sale Shares have been allocated to apply for further Sale Shares; and
- (b) completion of transfers in accordance with the preceding paragraphs of this Article 13 will be conditional upon all Sale Shares being allocated within that period.

**Default by the Seller**

13.15 Except in the case of an acquisition of Sale Shares by the Company, if the Seller fails by the due completion date to execute and deliver transfers in respect of any of the Sale Shares which he is due to transfer together with the relevant Share certificates (or an appropriate indemnity in respect of any certificates lost or destroyed), the Board may (and will if requested by an Investor Director) authorise any Director to

- (a) execute the necessary transfer(s) and/or an appropriate indemnity (as the case may be) as agent for the Seller; and
- (b) against receipt by the Company of the Transfer Price payable for the relevant Sale Shares (to be held on trust for the Seller without interest) (the receipt being a good discharge to the offeree who will not be bound to see to the application of it), deliver such transfer(s) to the relevant offeree(s)

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

13 16 In the case of an acquisition of Sale Shares by the Company, if the Seller fails by the due completion date to transfer and/or to deliver the certificates (or a suitable indemnity) in respect of any Sale Shares, the Board may (and will if requested by an Investor Director) authorise any Director to execute, complete and deliver the necessary transfer and indemnity to the Company on the Seller's behalf. When that instrument has been duly stamped, the Company will ensure that such share capital is cancelled in accordance with the Companies Act, and will hold the purchase monies on trust (without interest) for the Seller.

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

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

- (a) the Board will refuse registration of any transfer to a Proposed Transferee who is a person to whom Shares may not be transferred by virtue of Articles 11 1(a) or 11 1(b);
- (b) if any such transfer would, if made and registered, result in the Proposed Transferee obtaining or increasing a Controlling Interest, the Board will refuse registration of such transfer until such time as an Approved Offer has been made and the provisions of Article 16 (Tag Along Rights) complied with;
- (c) if the Seller included a Total Transfer Condition in the Transfer Notice which has not been satisfied, the Seller will be entitled to transfer all (but not some only) of the Sale Shares;
- (d) any such transfer must be in good faith and the Board or the Investor Director(s) may require to be satisfied (in such manner as it or they may reasonably think fit) that the Sale Shares are being sold at a price which is not less than the Transfer Price without any deduction, rebate or allowance whatsoever. If not so satisfied, the Board (subject to the approval of the Investor Director(s)) may refuse to register the transfer, and
- (e) in the case of any deemed transfer process pursuant to Article 15, the Compulsory Seller will not be entitled to transfer any unsold Sale Shares to any third party.

**14 VALUATION**

**Determination of "Market Value"**

If the Auditors (or, by virtue of Article 2 4, independent accountants) are required to determine Market Value pursuant to Article 13 4(c)(ii), the provisions set out below will apply.

14 1 Market Value will be determined by the Auditors or, as the case may be, independent accountants, first valuing the issued share capital of the Company as a whole and then, for the avoidance of doubt, recognising the capital entitlement of each class of Equity Shares provided for in Article 6:

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

- (b) assuming that the entire issued share capital of the Company is being sold as between a willing buyer and a willing seller by arm's length private treaty for cash payable in full on completion,
- (c) taking account of any Shares which may be allotted pursuant to options which have been issued by the Company and which are still outstanding and the price payable to the Company on their exercise,
- (d) taking account of any bona fide offer for the Company received from an unconnected third party within six months prior to the Transfer Notice being served or deemed to have been served,
- (e) disregarding whether the Shares concerned represent a majority or a minority interest, and
- (f) disregarding any restrictions as to transferability under the Investment Agreement, these articles or otherwise

14.2 The costs and expenses of the Auditors (or independent accountants) for reporting on their opinion of the Market Value will be borne unless the Auditors direct otherwise by the Company

## **15 COMPULSORY TRANSFERS**

### **Circumstances which trigger compulsory transfer**

15.1 This Article 15 applies when a Relevant Individual is a holder of B Shares, C Shares, D Shares and/or B Preference Shares and a Cessation Date occurs in relation to the Relevant Individual.

### **Compulsory Pre-emption Procedure**

15.2 Within four months after the Cessation Date the Company may if so directed by an Investor Director(s) serve notice (a "**Compulsory Sale Notice**") on the Relevant Individual (or the PRs of any deceased Member or the trustee in bankruptcy of any bankrupt Member) (each a "**Compulsory Seller**" and together "**Compulsory Sellers**") requiring each such person to offer all Shares whether registered in his or their name(s) or any Family Members or trustees of any Family Trust or any of his other transferees or to which he is or they are or may become entitled as a result of his or their holding of such Shares or otherwise

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

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

15.4 The price for the Sale Shares will be:

- (a) in respect of B Shares, if the Relevant Individual is a Bad Leaver, the lower of:
  - (i) the issue price (including any premium) of the Sale Shares (or, where any of the Sale Shares were acquired by a Compulsory Seller by way of transfer rather than allotment, the amount paid by such Compulsory Seller on the transfer); and
  - (ii) the Market Value of the Sale Shares on the Cessation Date to be agreed or determined in accordance with Articles 2.4 and 15.5; or
- (b) in respect of B Preference Shares, if the Relevant Individual is a Bad Leaver, the lower of
  - (i) the issue price (including any premium and all arrears and accruals of the B Preference Dividend calculated down to and including the date of payment); and
  - (ii) where Market Value is payable for the B Shares of that Relevant Individual in accordance with Article 15.4(a) above, the issue price (including any premium) less the Relevant Percentage and all arrears and accruals of the B Preference Dividend down to and including the date of payment.

**"Relevant Percentage"** means the amount expressed as a percentage by which Market Value of the B Shares determined in accordance with Article 15.4(a)(ii) is less than the issue price of those Equity Shares calculated in accordance with Articles 15.4(a)(i),
- (c) if the Relevant Individual is a Good Leaver, the price will be, in respect of B Shares, the Market Value of the Sale Shares on the Cessation Date, to be agreed or determined as aforesaid and in respect of B Preference Shares shall be the aggregate of the issue price of such Shares and the accumulated but unpaid B Preference Dividend on such Shares calculated up to and including the date of transfer; and
- (d) in respect of D Shares, the lower of the issue price (including any premium) of the Sale Shares (or, where any of the Sale Shares were acquired by a Compulsory Seller by way of transfer rather than allotment, the amount paid by such Compulsory Seller on the transfer).

15.5 **"Market Value"** for the purposes of Article 15 will be:

- (a) the price agreed in writing between the Compulsory Seller(s) and the Investor Director(s); or
- (b) if they fail to agree a price within 15 Business Days of the date of service of the Compulsory Sale Notice (or within such other longer timetable as may be determined by the Investor Director(s)), the price determined by the Auditors (or independent accountant) to be the Market Value of such Shares on the Cessation Date, according to the principles set out in Article 14.

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

- 15.6 Unless an Investor Director directs otherwise in writing, any Shares held by a Compulsory Seller on the Cessation Date (and any Shares issued to a Compulsory Seller after such date by virtue of the exercise of any right or option granted or arising by virtue of his holding of the Sale Shares) will cease to confer the right to be entitled to receive notice of, attend and vote at any general meeting of the Company, or any meeting of the holders of any class of Shares with effect from the Cessation Date (or, where appropriate, the date of issue of such Shares, if later), and such Shares will not be counted in determining the total number of votes which may be cast at any such meeting, or for the purposes of a written resolution of any Members or class of Members. Such rights will be restored immediately upon the Company registering a transfer of the Sale Shares in accordance with this Article 15.
- 15.7 Subject always to the provisions of Article 22.1, for so long as any Shares are disenfranchised pursuant to Article 15.6, the voting rights attaching to the Equity Shares will be varied so that the remaining holders of A Shares and B Shares are each entitled (as a class) to cast such percentage of votes at general meetings as they would otherwise have been entitled to cast prior to the suspension of voting rights of the disenfranchised Shares.

### **Transmission of Shares**

- 15.8 Regulations 29 to 31 shall take effect subject to Articles 15.9 and 15.10.
- 15.9 Without prejudice to Articles 15.1 and 15.2 (the provisions of which, when operable, will override the provisions of this Article 15.9 and the provisions of Articles 15.8 and 13.11), a person entitled to a Share or Shares in consequence of the death, bankruptcy, receivership or liquidation of a Member or otherwise by operation of law shall be bound at any time, if called upon in writing to do so by the Directors with the prior written consent of an Investor Director not later than 90 days after the Directors receive notice from the person concerned that he has become so entitled, to give a Transfer Notice (without specifying a Transfer Price) in respect of all of the Shares then registered in the name of the deceased or insolvent Member in accordance with the provisions of Article 13, which will apply as if set out in full in this Article.
- 15.10 If any such person fails to give a Transfer Notice in accordance with Article 15.9 within 10 Business Days after being called upon to do so:
- (a) the Board may (and will if requested by an Investor Director) authorise any Director to execute and deliver a transfer of the Shares concerned to a person appointed by the Directors as a nominee for the person entitled to the Shares, and
  - (b) the Company may give a good receipt for the purchase price of such Shares when and if sold pursuant to the provisions of Article 13 as incorporated into this Article, register the purchaser or purchasers as the holders of them and issue certificates for the same to such purchasers. After registration, the title of such purchaser or purchasers as registered holder(s) of such Shares will not be affected by any irregularity in, or invalidity of, such proceedings, which will not be questioned by any person. In any such case the person entitled to the Shares as a



consequence of the death, insolvency or otherwise by operation of law will be bound to deliver up the certificates for the Shares concerned to the Company whereupon he will become entitled to receive the purchase price. In the meantime, the purchase price will be held by the Company on trust for such person without interest.

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

16 1 With the exception of transfers of Shares pursuant to Article 12 (Permitted Transfers), no transfer of Shares which would result, if made and registered, in a person obtaining or increasing either a Controlling Interest or such number of the A Shares as shall in accordance with the provisions of these articles confer upon the holder thereof the right to receive in excess of 49 per cent. of the A Percentage of the Exit Proceeds or returns of capital pursuant to Article 6, will be made or registered unless

- (a) an Approved Offer is made by the proposed transferee(s) (the "**Buyer**") or, at the Buyer's written request, by the Company as agent for the Buyer, and
- (b) the Buyer complies in all respects with the terms of the Approved Offer at the time of completion of the sale and purchase of Shares pursuant to it.

16 2 For the purposes of this Article 16 and Article 17:

- (a) "**Approved Offer**" means an offer in writing served on all Members holding Equity Shares, offering to purchase all the Equity Shares (including any Shares which may be allotted pursuant to the exercise or conversion of options, rights to subscribe for or securities convertible into Equity Shares in existence at the date of such offer) which:
  - (i) is stipulated to be open for acceptance for at least 15 Business Days;
  - (ii) offers the same or equivalent consideration (unless waived in respect of any individual Member by such Member) for each Equity Share (taking into account the operation of the provisions of Article 7 as a result of the Approved Offer) (whether in cash, securities or otherwise in any combination) provided that the same combination of cash, securities or other consideration is offered in respect of each Equity Share, provided that a reduction, withholding or retention of consideration to take account of tax payable by the offeror or by his employing company on behalf of a Member in relation to the conversion of securities, the exercise of any option over Equity Shares, the operation of Articles 7 and 8 and/or the disposal of Equity Shares shall not prejudice the application of this paragraph;
  - (iii) includes an undertaking by or on behalf of the Buyer that, subject to compliance by the Buyer with Articles 16 2(a)(iii) and 16 2(a)(iv), no other consideration, (whether in cash or otherwise) is to be received or receivable by any Member which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Shares

to be sold by such Member, and that neither the Buyer nor any person acting by agreement or understanding with it has otherwise entered into more favourable terms or has agreed more favourable terms with any other Member for the purchase of Equity Shares;

- (iv) in the case of the A Shares at a price for each A Share which is not less than the subscription price (including any premium);
- (v) makes provision for the redemption of the Loan Notes in accordance with the Loan Note Deed,
- (vi) is on terms that the sale and purchase of all Shares in respect of which the offer is accepted and the Shares giving rise to the Controlling Interest will be completed at the same time;
- (vii) is approved by an Investor Director; and
- (viii) makes provision for the redemption of the A Preference Shares and B Preference Shares in accordance with Article 7 or the sale thereof to the Buyer at the same price as equals the redemption price provided for in Article 7

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

- 17.1 Whenever an Approved Offer is made, the holders of 75 per cent. or more of the A Shares shall have the right (the "**Drag Along Right**") to require (in the manner set out in Article 17.2) all of the other holders of Shares including persons who acquire Shares following the making of the Approved Offer pursuant to the exercise of options or conversion of securities (the "**Other Shareholders**") to accept the Approved Offer in full
- 17.2 The Drag Along Right may be exercised by the service of notice to that effect on the Other Shareholders at the same time as, or within five Business Days following the making of the Approved Offer (or, if later, within five Business Days following the acquisition by the relevant Other Shareholder of any Shares). Such notice will be accompanied by all documents required to be executed by the Other Shareholders to give effect to the relevant transfer.
- 17.3 On the exercise of the Drag Along Right, each of the Other Shareholders will be bound to accept the Approved Offer in respect of its entire holding of Shares and to comply with the obligations assumed by virtue of such acceptance
- 17.4 If any of the Other Shareholders fails to accept the Approved Offer or, having accepted such offer, fails to complete the sale of any of its Shares pursuant to the Approved Offer, or otherwise fails to take any action required of it under the terms of the Approved Offer, any holder of A Shares or any persons so authorised by the Board with the consent of an Investor Director may accept the offer on behalf of the Other Shareholder in question, or undertake any action required under the terms of the Approved Offer on the part of the Other Shareholder in question. In particular, such person may execute the necessary transfer(s) on that Other Shareholder's behalf; and against:
- (a) receipt by the Company (on trust for such Other Shareholder) of the consideration payable for the relevant Shares (the receipt being a good

discharge to the Buyer, who will not be bound to see to the application of it), and

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

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

## **18 SHARE CERTIFICATES**

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

## **19 LIEN**

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

## **20 GENERAL MEETINGS**

- 20.1 Regulation 37 is modified by the deletion of the words "eight weeks" and the substitution for them of the words "28 days", and by the insertion of the words "or the Investor Directors acting alone" after the second word of that Regulation.
- 20.2 A general meeting may consist of a conference between Members, some or all of whom are in different places if each Member who participates is able.
  - (a) to hear each of the other participating Members addressing the meeting, and
  - (b) if he so wishes, to address all of the other participating Members simultaneously,

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

A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of Members required to form a quorum. A meeting held in this way is deemed to take place at the place where the largest group of participating

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Members is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates. A resolution put to the vote of a meeting will be decided by each Member indicating to the chairman (in such manner as the chairman may direct) whether the Member votes in favour of or against the resolution or abstains. References in this Article 20 to Members includes their duly appointed proxies and, in the case of corporate Members, their duly authorised representatives.

## **21 PROCEEDINGS AT GENERAL MEETINGS**

- 21.1 Regulation 40 is modified so that the quorum for any general meeting (other than a separate class meeting) will include at least one A Shareholder and one B Shareholder present in person or by proxy.
- 21.2 If any meeting is adjourned pursuant to Regulation 41 because a quorum is not present, and at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the shareholders present will form a quorum. Regulation 41 is modified accordingly.
- 21.3 Regulation 46 is modified so that a poll may be demanded by the chairman or by any Member present in person or by proxy and entitled to vote at the meeting.
- 21.4 A corporation which is a Member of the Company may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or at any meeting of any class of Members. The person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member.
- 21.5 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman will not be entitled to a casting vote in addition to any other vote which he may have. Regulation 50 will be modified accordingly.
- 21.6 Regulation 51 is amended by replacing the first and second sentences with the following words: "A poll demanded will be taken immediately".
- 21.7 Regulation 53 is modified by the addition of the following sentence at the end: "If such a resolution in writing is described as a special resolution or as an extraordinary resolution or as an elective resolution, it will have effect accordingly."

## **22 VOTES OF MEMBERS**

- 22.1 Subject to the provisions of Article 8 but otherwise notwithstanding any provision of these articles, the A Shares shall, regardless of the number of A Shares in issue, on a show of hands or on a poll, together represent 49 per cent. of the voting rights attaching to all of the issued Equity Shares and the B Shares shall together represent the balance of the voting rights attaching to the remaining Equity Shares.
- 22.2 Regulation 54 is modified so that:
- (a) a proxy will be entitled to vote whether on a show of hands or on a poll; and

- (b) a duly authorised representative of a corporate Member will be entitled to vote on its behalf whether on a show of hands or on a poll, and whether or not such duly authorised representative is also a Member entitled to vote

22.3 Regulation 57 is modified by the inclusion after the word "shall" of the phrase", unless the Directors otherwise determine,".

22.4 Regulation 59 is modified by the addition of the following sentence at the end "Deposit of an instrument of proxy will not preclude a Member from attending and voting at the meeting or at any adjournment of the meeting."

22.5 Regulation 62 is modified by the deletion in paragraph (a) of the words "deposited at" and by the substitution for them of the words "left at or sent by post to" and by the insertion at the end of the penultimate sentence of the Regulation (after the word "invalid") of the words "unless a majority of the Directors (an Investor Director being part of that majority) resolve otherwise"

## **23 NUMBER OF DIRECTORS**

Unless and until otherwise determined by ordinary resolution of the Company, the number of Directors (other than alternate directors) will be not less than two nor more than ten.

## **24 ALTERNATE DIRECTORS**

24.1 An Investor Director may appoint any person willing to act, whether or not he is a director of the Company, to be an alternate director Regulation 65 is modified so that any such appointment does not need to be approved by resolution of the Directors In Regulation 67 the words "but, if" and the words which follow to the end of the Regulation are deleted

24.2 Regulation 66 is modified so that an alternate director who is absent from the United Kingdom is entitled to receive notice of all meetings of Directors and of committees of Directors of which his appointor is a member An alternate director may waive the requirement that notice be given to him of a meeting of Directors or of a committee of Directors of which his appointor is a member, either prospectively or retrospectively

24.3 The first sentence of Regulation 66 is modified so that an alternate director will not be entitled as such to receive any remuneration from the Company although he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as his appointor may direct by notice in writing to the Company

24.4 An alternate director will be entitled to be reimbursed by the Company such expenses as might properly be reimbursed to him if he were a Director

24.5 An alternate director's appointment will determine if he resigns by written notice left at or sent to the registered office of the Company

24.6 A director, or any other person mentioned in Regulation 65, may act as an alternate director to represent more than one Director, and an alternate director will be entitled at any meeting of the Board to one vote for every Director whom

he represents in addition to his own vote (if any) as a Director, but he will count as only one person for the purpose of determining whether a quorum is present

- 24.7 Regulation 68 is modified by the addition at the end of the first sentence of the following sentence "Any such notice may be left at or sent by post or facsimile transmission to the office or another place designated for the purpose by the Directors."

## **25 DELEGATION OF DIRECTOR'S POWERS**

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

## **26 APPOINTMENT AND RETIREMENT OF DIRECTORS**

- 26.1 No person will be disqualified from being appointed a Director and no Director will be required to vacate that office by reason only of the fact that he has attained the age of 70 years or any other age.
- 26.2 A Director will not retire by rotation and a Director appointed to fill a vacancy or as an additional director will not retire from office at the annual general meeting next following his appointment Regulations 73 to 77 (inclusive) and 80 will not apply to the Company, reference in Regulations 67, 78 and 84 to retirement by rotation will be disregarded and the last two sentences of Regulation 79 are deleted
- 26.3 Regulation 81(e) will not apply to the Company.
- 26.4 The holder or holders of such number of Shares as give the right to a majority of votes at general meetings of the Company may, by giving notice on the Company, remove any Director from office and/or appoint any person to be a Director. The notice must be signed by or on behalf of such holder or holders (and may consist of several documents in similar form each signed by or on behalf of one or more holders) and must be left at or sent by post or fax to the registered office or such other place designated by the Directors for the purpose. Such removal or appointment will take effect when the notice is received by the Company or on such later date (if any) as may be specified in the notice. This Article 26.4 will not apply to the appointment or removal of the Investor Director(s).

## **27 DISQUALIFICATION AND REMOVAL OF DIRECTORS**

The office of a Director will be vacated if:

- 27.1 he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a director;
- 27.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally;

- 27.3 he becomes, in the opinion of all his co-Directors, incapable by reason of mental disorder of discharging his duties as Director,
- 27.4 he resigns his office by notice in writing to the Company;
- 27.5 (other than in the case of an Investor Director) he has for more than six consecutive months been absent without permission of the Directors from meetings of Directors held during that period and his alternate director (if any) has not during that period attended any such meetings instead of him, and the Directors resolve that his office be vacated;
- 27.6 (other than in the case of an Investor Director) he is removed from office by notice addressed to him at his last-known address and signed by all his co-Directors;
- 27.7 (other than in the case of an Investor Director) he is removed from office by notice given by a Member or Members under Article 26.4; or
- 27.8 being an executive Director he ceases, for whatever reason, to be employed by any Member of the Group without immediately becoming or continuing as a director of any other Member of the Group.

## **28 REMUNERATION AND AUDIT COMMITTEES**

Without prejudice to Regulation 72 there will be a Remuneration Committee and an Audit Committee which will operate in accordance with the Investment Agreement. Regulation 82 will not apply to the Company.

## **29 DIRECTORS' APPOINTMENTS AND INTERESTS**

- 29.1 Regulation 84 is modified by addition of the words, "with the consent of the Lead Investor" after the words "the directors" and before the words "may appoint" in the first sentence, and after the words "the directors" and before the word "determine" and after the words "as they" and before the words "think fit" in the second sentence.
- 29.2 Regulation 85 is modified by the addition of the words: "and except in the case of the Investor Director(s), to the consent of the Investors" after the words "provisions of the Act" and before the words", and provided that he has disclosed" in the first sentence.

## **30 DIRECTOR'S GRATUITIES AND PENSIONS**

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

## **31 BORROWING POWERS**

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

debenture stock and all other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party not exceeding an aggregate sum of £10,000,000 (ten million pounds)

## **32 PROCEEDINGS OF DIRECTORS**

- 32.1 In the case of an equality of votes, the chairman will not have a second or casting vote. Regulation 88 will be modified accordingly.
- 32.2 Regulation 88 is modified by the exclusion of the third sentence and the substitution for it of the following sentences: "Every Director will receive notice of a meeting, whether or not he is absent from the United Kingdom. A Director may waive the requirement that notice be given to him of a meeting of Directors or a committee of Directors, either prospectively or retrospectively" and by the addition of the word "not" between the words "shall" and "have" in the fourth sentence.
- 32.3 The quorum necessary for the transaction of business at any meeting of the Directors will be two and Regulation 89 will be modified accordingly. If any meeting of the Directors is inquorate then it will be adjourned for the consideration of the same business until the same time and place the next following week when those Directors present will constitute a quorum.
- 32.4 A majority of Directors will be entitled to appoint the chairman of the Board and may at any time remove him from that office. Regulation 91 will not apply to the Company.
- 32.5 Any Director or alternate may participate in a meeting of the Board or a committee of the Directors by means of conference telephone or similar communications equipment if all persons participating in the meeting can hear and speak to each other throughout the meeting, and any Director or member of a committee participating in a meeting in this manner is deemed to be present in person at such meeting and will be counted when reckoning a quorum.
- 32.6 Without prejudice to the obligation of any Director to disclose his interest in accordance with section 317 of the Act, a Director may vote at a meeting of Directors or of a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty provided that he has first obtained the consent of the Investors (unless the director concerned is an Investor Director, in which case no such consent will be required). Where such consent has been obtained, the Director will be counted in the quorum present when any such resolution is under consideration and if he votes, his vote will be counted.

## **33 INVESTOR DIRECTORS**

- 33.1 So long as the Investors or any of them hold any Shares, the Lead Investor will have the right to appoint two persons as non-executive Directors of the Company (each such person being an "Investor Director") but
- (a) any such appointment must be effected by notice in writing to the Company by the Lead Investor who may in a similar manner remove from office an Investor Director appointed pursuant to this Article, and appoint



any person in place of any Investor Director so removed or who had died or otherwise vacated office as such;

- (b) subject to section 303 of the Companies Act, on any resolution to remove an Investor Director, the A Shares held by the Investors will together carry one vote in excess of fifty per cent. of all the other votes exercisable at the general meeting at which such resolution is to be proposed, and if any such Investor Director is removed pursuant to section 303 of the Companies Act or otherwise, the Investors may reappoint him or any other person as an Investor Director;
- (c) provided that the Lead Investor shall not be able to exercise the right to appoint such a Director to the extent that any appointment would result in the Director appointed pursuant to this Article holding a majority of the votes on the Board from time to time.

33.2 Each Investor Director will be entitled to be appointed to the board of directors of any Member of the Group and to any committee of the board of any Member of the Group

33.3 So long as the Investors or any of them hold any Shares they will have the right at any time to appoint any one person (an "**Observer**") in addition to the Investor Directors to attend observe and speak at meetings of the Board and the provisions of Article 33 1(a) will apply as if they were set out in full in this Article, but with the word "observer" substituted for "Investor Director". Any person so appointed will not be a Director and shall not be entitled to vote at meetings of the Board

#### **34 DIVIDENDS**

Regulation 103 shall apply to the Company

#### **35 NOTICES**

35 1 Any notice or other document to be served or delivered to or by any person pursuant to these articles (other than a notice calling a meeting of the Directors) shall be in writing and shall be delivered in accordance with Article 35.2

35 2 Any notice or other document may only be served on, or delivered to, any Member by the Company or by any other Member:

- (a) personally;
- (b) by sending it through the post in a prepaid envelope addressed to the Member at his registered address (whether such address is in the United Kingdom or otherwise), or
- (c) by delivery of it by hand to or leaving it at that address in an envelope addressed to the Member.

35.3 In the case of joint holders of a Share, all notices and other documents shall be given to the person named first in the register in respect of the joint holding, and notice so given shall be sufficient notice to all joint holders

35.4 Any notice or other document may only be served on, or delivered to, the Company by anyone

- (a) by sending it through the post in a prepaid envelope addressed to the Company or any officer of the Company at its registered office or such other place in the United Kingdom as may from time to time be specified by the Company,
- (b) by delivering it by hand to its registered office or such other place in the United Kingdom as may from time to time be specified by the Company; or
- (c) if an address has been specified by the Company for such purpose (and in the case of an appointment of a proxy such address has been specified in a document or other communication referred to in Regulation 62), by fax transmission

35.5 Any notice or other document (other than the appointment of a proxy).

- (a) addressed to the recipient in the manner prescribed by these articles shall, if sent by post, be deemed to have been served or delivered:
  - (i) (if prepaid as first class) 24 hours after it was posted, and
  - (ii) (if prepaid as second class) 48 hours after it was posted,
- (b) not sent by post, but delivered by hand to or left at an address in accordance with these articles, shall be deemed to have been served or delivered on the day it was so delivered or left,
- (c) sent by fax shall be deemed to have been served or delivered at the time it was sent, and in proving such service it shall be sufficient to produce a transaction report or log generated by a fax machine which evidences the fax transmission.

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

## **36 INDEMNITIES**

Subject to the provisions of the Companies Act every Director or other officer of the Company (other than the Auditors) will be indemnified out of the assets of the Company (other than in respect of any liability arising out of the Investment Agreement) against costs, charges, expenses, losses or liabilities incurred or sustained by him in defending any proceedings whether civil or criminal relating to his conduct as an officer or employee of the Company in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by any court of competent jurisdiction from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company. This Article 36 shall only have effect insofar as its provisions are not avoided by section 310 of the Companies Act. The Board shall have power to purchase and maintain for any Director or other officer of the Company insurance against any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust which he may be guilty of in relation to the Company

### **37    Transfer**

*Notwithstanding anything contained in these Articles, the Directors of the Company may not decline to register any transfer of shares in the Company and may not suspend any registration thereof, where such transfer is:*

*(i)            to a bank or other institution to which such shares have been mortgaged or charged by way of security (whether as lender, or agent and trustee for a group of banks or institutions or otherwise) (a “**Secured Institution**”), or to any nominee of such Secured Institution pursuant to any such security, or to any purchaser of such shares following enforcement of such security;*

*(ii)           executed by a Secured Institution or its nominee pursuant to the power of sale or other power under any such security; or*

*(iii)           executed by a receiver or manager appointed by or on behalf of any Secured Institution or its nominee, under any such security,*

*and furthermore, notwithstanding anything to the contrary contained in these Articles:*

*(i)            no Secured Institution or its nominee;*

*(ii)           no receiver or manager appointed by or on behalf of a Secured Institution or its nominee; and*

*(iii)           no person to whom shares are transferred by a Security Institution or its nominee, manager or receiver,*

*shall be required as a condition of registration of any transfer of shares to be bound by the terms of any shareholder agreement.*