

Company number: 05397165

**THE COMPANIES ACTS 1985-2006  
ORDINARY/SPECIAL RESOLUTIONS**

of

**VIVACTA LIMITED**

Passed on 27 November 2007

THURSDAY



The following written resolutions were duly passed by the company as ordinary and or special resolutions as indicated

**ORDINARY RESOLUTIONS**

- 1 That the authorised share capital of the Company be increased from £11,100 to £19,400 by the creation of
  - (a) an additional 118,691 A Ordinary Shares of £0 01 each, and
  - (b) 711,309 B Preference Shares of £0 01 each,each such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below)
- 2 That the 500,000 issued and unissued convertible preference shares of £0,01 each in the capital of the Company be re-designated as 500,000 A Preference Shares of £0 01 each, such shares having the rights and being subject to the restrictions set out in the New Articles (as defined below)
- 3 That the directors be generally and unconditionally authorised for the purposes of section 80 of the Companies Act 1985, as amended (the "Act") to exercise all the powers of the Company to allot relevant securities up to a maximum nominal amount equal to the nominal amount of the authorised but unissued share capital after the passing of resolution provided that this authority shall expire five years after the passing of this resolution and that the company may before such expiry make an offer or agreement which would or might require relevant securities to be allotted after such expiry and the directors may allot relevant securities in pursuance of such offer or agreement notwithstanding that the authority conferred by this resolution has expired In this resolution, the expression "relevant securities" and references to the allotment of "relevant securities" shall bear the same respective meanings as in section 80 of the Act This authority is in substitution for all subsisting authorities to the extent unused

**SPECIAL RESOLUTIONS**

- 4 That the articles of association contained in the document attached to these written resolutions (the "New Articles") be approved and adopted as the new articles of association of the Company in substitution for and to the entire exclusion of the existing articles of association

- 5 That the directors be empowered pursuant to section 95 of the Act to allot equity securities wholly for cash pursuant to the authority contained in resolution 1 as if section 89(1) of the Act and any rights of pre-emption (however expressed) contained in the articles of association of the company did not apply to any such allotment. In this resolution the expression "equity securities" and references to the allotment of "equity securities" shall bear the same respective meanings as in section 94 of the Act.

  
.....  
Chairman

**Company Number 05397165**

**ARTICLES OF ASSOCIATION  
OF VIVACTA LIMITED**

Adopted on 27 November 2007

The Companies Acts 1985 to 2006  
Private Company Limited by Shares

**THE COMPANIES ACTS 1985 TO 2006**

**COMPANY LIMITED BY SHARES**

**NEW ARTICLES OF ASSOCIATION**

**of**

**VIVACTA LIMITED (the "Company")**

**Adopted by special resolution of the Company  
on November 2007**

**1 INTERPRETATION**

**1 1** In these Articles, the following terms have the following meanings

**"2006 Act"** the Companies Act 2006,

**"Accepting Shareholder"** bears the meaning in Article 10 4,

**"the Act"** the Companies Act 1985,

**"Additional Shares"** bears the meaning in Article 5 7 1,

**"AGF"** FCPI AGF Innovation 7, FCPI AGF Innovation 8, FCPI Poste Innovation 8, FCPI AGF Croissance 2005 and FCPI Banque Postale Innovation 3 each being represented by AGF Private Equity, a French company registered in Paris with registered number RCS 414 735 175 and whose registered office is situated at 87 rue de Richelieu, 75002 Paris in each case for so long as they hold a Share,

**"AGF Group"** AGF together with any person to whom AGF transfers Shares in accordance with the provisions of these Articles for so long as they remain a Shareholder and "member of the AGF Group" shall be construed accordingly,

<b>"AGF Shares"</b>	the Shares held by the AGF Group from time to time,
<b>"A Ordinary Shares"</b>	the A ordinary shares of £0.01 each in the capital of the Company,
<b>"A Preference Shares"</b>	the A convertible preference shares of £0.01 each in the capital of the Company,
<b>"Articles"</b>	these articles of association, as amended from time to time,
<b>"Asking Price"</b>	bears the meaning in Article 9.1.2,
<b>"Board"</b>	the board of Directors of the Company from time to time,
<b>"B Ordinary Shares"</b>	the B ordinary shares of £0.01 each in the capital of the Company,
<b>"B Preference Shares"</b>	the B convertible preference shares of £0.01 each in the capital of the Company,
<b>"Change of Control"</b>	any transaction or series of transactions in which the direct or indirect ownership of Shares carrying in excess of 50% of the voting rights attributable to all the Shares is, after such transactions, effectively transferred to any third party,
<b>"Closing Date"</b>	bears the meaning in Article 9.4,
<b>"Company Option Scheme"</b>	the Company's 2007 EMI Scheme and the individual option agreements made between the Company and Werner Schaeffer and Rolf Classon respectively together with any other share incentive scheme adopted by the Company that is approved in writing by (i) the holders of at least 66% of the Shares then in issue and (ii) the holder(s) of a majority of either the AGF Shares or the HBM Shares,
<b>"Defined Group"</b>	each Investor and any member of such Investor's Group and  (a) any partnership of which any of them is general

partner, manager or adviser,

(b) any unit trust or fund of which any of them is trustee, manager, adviser or general partner, and

(c) any unit trust, partnership or fund the manager of which is advised by any of them,

in each case from time to time and "member of the Defined Group" shall be construed accordingly,

**"Directors"**

the directors of the Company from time to time,

**"Equity Shareholders"**

bears the meaning in Article 6 1 3,

**"Excess Sale Shares"**

bears the meaning in Article 9 3 4,

**"Excess Shares"**

bears the meaning in Article 6 1 3,

**"Excluded Notice"**

means a Sale Notice, a Proposed Sale Notice, a Drag Along Notice, or a notice to appoint or remove a Director under Article 14,

**"Existing Investor Director"**

a Director appointed by the Existing Investors pursuant to Article 14 4,

**"Existing Investors"**

Viking and Quester in each case for so long as they are a Shareholder,

**"Fair Value"**

bears the meaning in Article 12 5,

**"Fair Value Determination"**

bears the meaning in Article 12 1,

**"Family Trusts"**

as regards any particular individual Shareholder or deceased or former individual Shareholder, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the Shares in question is for the time being vested in any person other than that individual and/or Privileged Relations of that individual, and so that for

	<p>this purpose a person shall be considered to be beneficially interested in a Share if such Share or the income thereof is or may become liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are or may become liable to be exercisable by or as directed by such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons,</p>
<b>"Founder Director"</b>	<p>a Director appointed by the Founders pursuant to Article 14 4,</p>
<b>"Founders"</b>	<p>Timothy Carter, Steve Ross and Neil Butler in each case for so long as he is a Shareholder,</p>
<b>"FSMA"</b>	<p>the Financial Services and Markets Act 2000,</p>
<b>"Fund"</b>	<p>any bank, company, unit trust, investment trust, investment company, limited, general or other partnership, industrial provident or friendly society, any collective investment scheme (as defined by the FSMA), any investment professional (as defined in article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion Order) 2005 (the "FPO")), any high net worth company, unincorporated association or partnership (as defined in article 49(2) of the FPO) or any high value trust (as defined in article 49(6) of the FPO), any pension fund or insurance company or any person who is an authorised person under the FSMA,</p>
<b>"Fund Participant"</b>	<p>bears the meaning in Article 8 4,</p>
<b>"Good Leaver"</b>	<p>a Leaver who becomes a Leaver at any time by reason of</p> <ul style="list-style-type: none"> <li>(a) death,</li> <li>(b) suffering a physical or mental deterioration which, in the opinion of the Investors, is</li> </ul>

sufficiently serious to prevent the relevant person from following his normal employment or which seriously prejudices his earning capacity,

- (c) the Company terminating his contract of employment or consultancy, as the case may be, by serving notice (in accordance with the terms of that contract) in circumstances where the Leaver is not in breach, nor has been in breach, of his contract,
- (d) dismissal by the Company which is determined by an employment tribunal or at a court of competent jurisdiction from which there is no right to appeal, to be wrongful or constructive, or
- (e) the Board, with the prior approval of a majority of the Investor Directors, determining that the Leaver is a Good Leaver,

**"Group Company"**

the Company and any other company or other entity which is for the time being a subsidiary undertaking of the Company (and "Group" shall be construed accordingly),

**"HBM"**

HBM BioVentures (Cayman) Limited, a company incorporated in the Cayman Islands, the registered office of which is at Centennial Towers, 3<sup>rd</sup> Floor, 2454 West Bay Road, Grand Cayman, Cayman Islands,

**"HBM Group"**

HBM together with any person to whom HBM transfers Shares in accordance with the provisions of these Articles for so long as they remain a Shareholder and "member of the HBM Group" shall be construed accordingly,

**"HBM Shares"**

the Shares held by the HBM Group from time to time,

**"Independent Expert"**

a partner of at least 10 years' standing at a leading UK firm of accountants (acting as an expert and not as an arbitrator) nominated by the parties concerned or, in the



	event of disagreement as to nomination, appointed by the President from time to time of the Institute of Chartered Accountants in England and Wales,
<b>"Investment Agreement"</b>	the investment agreement dated 27 November 2007 and made between the Founders, the Existing Investors, the New Investors and the Company as amended, modified or updated from time to time,
<b>"Investor Director"</b>	a New Investor Director or an Existing Investor Director,
<b>"Investors"</b>	those persons who are Investors within the meaning of this expression in the Investment Agreement or any nominee of any such person and Investor means any of them The expression "member of an Investor's Group" shall mean an Investor, any subsidiary of that Investor, any holding company of that Investor, any subsidiary of any such holding company and any nominee of any of the foregoing and "Investor's Group" shall be construed accordingly,
<b>"Last Round Price"</b>	means the price at which Shares were last issued by the Company in connection with a bona-fide fund-raising by the Company,
<b>"Leaver"</b>	means <ul style="list-style-type: none"> <li>(a) any Shareholder who ceases, or has ceased, to be a Relevant Employee, provided that, for these purposes, a Shareholder shall be deemed to cease, or have ceased, to be a Relevant Employee upon the commencement of any period during which the relevant individual is placed on garden leave pursuant to their service contract with the Company or other Group Company, notwithstanding that the relevant individual remains an employee of the Company or any other Group Company,</li> <li>(b) any Shareholder who is (or is the nominee of) a Privileged Relation of any person who ceases to</li> </ul>

	be a Relevant Employee,
	(c) any Shareholder who is (or is the nominee of) the trustee of a Family Trust of any person who ceases to be a Relevant Employee in respect of the Shares held on behalf of such person or on behalf of any Privileged Relation of such person, or
	(d) any Shareholder holding Shares as a nominee for any person who ceases, or who has ceased, to be a Relevant Employee in respect of the Shares held on behalf of such person,
<b>"Leaver Notice"</b>	bears the meaning in Article 12 1,
<b>"Leaver's Shares"</b>	means all of the Shares held by a Leaver, or to which he is entitled, on the Leaving Date and any Shares acquired by a Leaver after the Leaving Date under an employee share scheme,
<b>"Leaving Date"</b>	means the date on which the relevant person becomes a Leaver,
<b>"Listing"</b>	the admission of all or any of the issued share capital of the Company or the grant of permission by any like authority for the same to be traded or quoted on Nasdaq or on the Official List of the United Kingdom Listing Authority or on the Alternative Investment Market operated by the London Stock Exchange, or on any other Recognised Investment Exchange,
<b>"Majority Shareholders"</b>	bears the meaning in Article 11 2,
<b>"Minimum Transfer Condition"</b>	bears the meaning in Article 9 2,
<b>"New Investor Director"</b>	a Director appointed by the New Investors pursuant to Article 14 4,
<b>"New Investors"</b>	each member of the AGF Group and the HBM Group for so long as they are a Shareholder,

<b>"Offer"</b>	bears the meaning in Article 10 1,
<b>"Offeror"</b>	bears the meaning in Article 11 1,
<b>"Offer Period"</b>	bears the meaning in Article 10 2,
<b>"Ordinary Shares"</b>	the A Ordinary Shares and the B Ordinary Shares,
<b>"Permitted Transfer"</b>	a transfer of Shares authorised by Article 8,
<b>"Permitted Transferee"</b>	a person to whom or which Shares have been, or may be, transferred pursuant to a Permitted Transfer,
<b>"Preference Event"</b>	any (i) merger or acquisition resulting in a Change of Control of the Company, or (ii) reorganisation or other transaction in which there is a Change of Control of the Company (including, for the avoidance of doubt, a Sale),
<b>"Preference Shareholders"</b>	the holders of the Preference Shares from time to time,
<b>"Preference Shares"</b>	the A Preference Shares and the B Preference Shares,
<b>"Privileged Relation"</b>	in relation to an individual Shareholder or deceased or former individual Shareholder, the spouse or the widower or widow,
<b>"Proposed Buyer"</b>	bears the meaning in Article 10 1,
<b>"Proposed Sale"</b>	bears the meaning in Article 10 1,
<b>"Proposed Sale Date"</b>	bears the meaning in Article 10 2,
<b>"Proposed Sale Notice"</b>	bears the meaning in Article 10 2,
<b>"Proposed Sale Shares"</b>	bears the meaning in Article 10 2,
<b>"Proposed Sellers"</b>	bears the meaning in Article 10 1,
<b>"Qualified Public Offering Date"</b>	the point in time at which the Shares are admitted to trading or permission is granted to deal in such Shares pursuant to a Qualified Public Offering,

<b>"Qualified Public Offering"</b>	a Listing that results in net proceeds to the Company of not less than £10,000,000 and which values the Company (by reference to the price per Share at which Shares are offered in the Listing) at not less than £20,000,000 (excluding new money raised in connection with the Listing),
<b>"Quester"</b>	each of Quester VCT plc, Quester VCT 4 plc, Quester VCT 5 plc and Quester Venture Partnership for so long as they hold any Share,
<b>"Recognised Investment Exchange"</b>	a recognised investment exchange or overseas investment exchange as defined in section 285 of FSMA,
<b>"Relevant Employee"</b>	shall mean <ul style="list-style-type: none"> <li>(a) an employee or consultant of the Company or any other Group Company, or</li> <li>(b) a Director or a director of any other Group Company (other than in either case, for the purposes of Article 12, an Investor Director),</li> </ul>
<b>"Relevant Shareholder"</b>	bears the meaning in Article 9 3,
<b>"Sale"</b>	the sale of any part of the issued Shares to any person resulting in that person together with any person acting in concert with such person holding more than 50% of the issued Shares,
<b>"Sale Notice"</b>	bears the meaning in Article 9 1,
<b>"Sale Price"</b>	bears the meaning in Article 10 1,
<b>"Sale Shares"</b>	bears the meaning in Article 9 1,
<b>"Selling Shareholder"</b>	bears the meaning in Article 9 1,
<b>"Shareholder"</b>	any holder of Preference Shares and/or Ordinary Shares from time to time,

<b>"Shareholder Communication"</b>	means any notice, resolution, document or information which the Company wishes or is required to communicate with Shareholders or other persons,
<b>"Shares"</b>	the A Preference Shares, the B Preference Shares, the A Ordinary Shares and the B Ordinary Shares, and "Share" shall mean any one of them,
<b>"Statutes"</b>	means the Act, the 2006 Act and the Electronic Communications Act 2000 (including any subordinate legislation made under them),
<b>"Subscription Price"</b>	in relation to any Share, the amount paid up or credited as paid up thereon (including the full amount of any premium at which such Share was issued whether or not such premium is applied for any purpose thereafter), and
<b>"Viking"</b>	Viking Technologies S A of 10, boulevard du Théâtre, CH-1211 Genève 11, Switzerland

1 2 Words and expressions defined in the Act have the same meanings in these Articles, unless inconsistent with the context The term "connected person" shall have the meaning attributed to it at the date of adoption of these Articles by section 839 of the Income and Corporation Taxes Act 1988 ("ICTA") and the words "connected with" shall be construed accordingly The term "acting in concert" shall have the meaning attributed to it at the date of adoption of these Articles by the City Code on Takeovers and Mergers save that for the purposes of these Articles, the persons who are Investors at the date of adoption of these Articles shall not be deemed to be acting in concert with each other

1 3 Unless the context otherwise requires, references in these Articles to

1 3 1 any of the masculine, feminine and neuter genders shall include other genders,

1 3 2 the singular shall include the plural and vice versa,

1 3 3 a person shall include a reference to any natural person, body corporate, unincorporated association, partnership, firm or trust,

1 3 4 employees shall be deemed to include consultants, and references to contracts of employment or service agreements and to commencement or cessation of

employment shall be deemed to include contracts for consultancy and commencement or cessation of consultancy, and

1 3 5 any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, consolidated, re-enacted or replaced

1 4 The headings in these Articles are for convenience only and shall not affect their meaning

1 5 In construing these Articles, general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words

## **2 TABLE A**

2 1 The regulations contained in Table A in the Schedule to the Companies (Tables A-F) Regulations 1985, as amended by The Companies (Tables A to F) (Amendment) Regulations 2007 (SI2007/2541) and by The Companies (Table A to F) (Amendment (No 2) Regulations 2007 (SI2007/2826) ("Table A"), apply to the Company except to the extent that they are excluded or modified by or are inconsistent with these Articles

2 2 Regulations 24, 51, 52, 64, 76 to 78, 81, 82, 85 to 87, 94 to 98 (inclusive), 101 and 115 and 118 of Table A do not apply

## **3 PRIVATE COMPANY**

The Company is a private company and accordingly any offer to the public to subscribe for any Shares or debentures of the Company is prohibited

## **4 SHARE CAPITAL**

The authorised share capital of the Company at the date of adoption of these Articles is £19,400 divided into 500,000 A Preference Shares, 711,309 B Preference Shares, 318,691 A Ordinary Shares and 410,000 B Ordinary Shares

## **5 RIGHTS OF THE SHARES**

5 1 Save as specifically provided in these Articles, the A Preference Shares, the B Preference Shares, the A Ordinary Shares and the B Ordinary Shares shall rank *pari passu*

## **Income**

- 5 2 The A Preference Shares, the B Preference Shares, the A Ordinary Shares and the B Ordinary Shares shall participate *pari passu* in any dividend that is declared by the Company

## **Capital**

- 5 3 The Preference Shares shall carry a preferential return on a return of capital in accordance with these Articles. For the avoidance of doubt, where the relevant proceeds comprise both cash and non-cash proceeds, the preferential return shall be satisfied preferentially in cash
- 5 4 On a liquidation, reduction of capital, dissolution or winding up of the Company or on the occurrence of a Preference Event, the assets of the Company available for distribution among the Shareholders shall be applied strictly in the following order of priority
- 5 4 1 firstly in paying to all the Shareholders an amount equal to the nominal value of their Shares,
- 5 4 2 secondly in paying to the holders of B Preference Shares an amount equal to £8 40 in respect of each B Preference Share held by them less the amount received by each holder pursuant to article 5 4 1, plus any accrued but unpaid dividends in priority to any distribution to holders of any other class of Shares and in the event of a shortfall, the proceeds shall be distributed to such Shareholders *pro rata* to their respective holdings of B Preference Shares,
- 5 4 3 thirdly in paying to the holders of A Preference Shares an amount equal to the Subscription Price of each of the A Preference Shares held by them less the amount received by each holder pursuant to article 5 4 1, plus any accrued but unpaid dividends, and in the event of a shortfall, the proceeds shall be distributed to such Shareholders *pro rata* to their respective holdings of A Preference Shares,
- 5 4 4 fourthly in paying to the holders of A Preference Shares and the holders of Ordinary Shares *pro rata inter se*, an amount per Share as is equal to the difference between the amount per Share paid to the holders of B Preference Shares pursuant to Articles 5 4 1 and 5 4 2 and the amount per Share paid to the holders of Ordinary Shares and/or A Preference Shares (as the case may be) pursuant to Articles 5 4 1 and 5 4 3, and in the event of a shortfall, the proceeds shall be distributed to such Shareholders *pro rata* to their respective holdings of A Preference Shares and/or Ordinary Shares and taking account of the different Subscription Prices applicable to such Shares. For the avoidance of doubt, it is acknowledged that (i) payments pursuant to this Article 5 4 4 will be (i) calculated on a Share by Share basis and (ii)

will vary according to the relevant Subscription Price of the relevant A Preference Shares or Ordinary Shares (as the case may be), and

5 4 5 finally, any residue will be distributed amongst the Shareholders *pro rata inter se* to their shareholdings (as if their Shares constituted one and the same class)

5 5 On a distribution of the proceeds of a sale of all or a majority of the assets of the Company to the Shareholders or in connection with a merger or other reorganisation of the Company when the Shareholders prior to such reorganisation hold less than a majority of the shares in any resulting entity, the holders of Preference Shares shall receive a preferential return. Such proceeds (including any shares or securities to be issued by any entity in connection with such a merger or other reorganisation) shall be distributed in accordance with Article 5 4 as if the distribution was the consideration receivable on the occurrence of a Preference Event.

### **Conversion**

5 6 The Company shall immediately prior to a Qualified Public Offering Date pursuant to the closing of a Qualified Public Offering or at the election at any time of the holder(s) of at least 66% of the Preference Shares then in issue (including the holder(s) of a majority of the AGF Shares or the HBM Shares) convert all of the Preference Shares and B Ordinary Shares into fully paid A Ordinary Shares on the basis of one A Ordinary Share for each such Preference Share or B Ordinary Share.

### **5 7 Anti-dilution protection for Preference Shareholders**

5 7 1 If at any time after the date of adoption of these Articles, the Company issues any further Shares or securities convertible into Shares, other than (i) any Ordinary Shares issued pursuant to the exercise of options granted under a Company Option Scheme, (ii) as a result of the conversion of any Preference Shares or B Ordinary Shares into A Ordinary Shares or (iii) the allotment of Preference Shares pursuant to this Article 5 7 ("**Additional Shares**"), at a price per Share which is less than the Subscription Price applicable to any Series of Preference Shares (for the purposes of this Article 5 7, a "Series of Preference Shares" shall mean a particular allotment of Preference Shares which is distinguished from other allotments of Preference Shares because either (i) the allotment is at a different Subscription Price or (ii) the allotment relates to a different class of Preference Shares and for the purposes of illustration it is acknowledged that as at the date of adoption of these Articles the following Series of Preference Shares exist: (a) the B Preference Shares allotted at £8 40 per Share, (b) the A Preference Shares allotted at £6 85 per Share and (c) the A Preference Shares allotted at £5 66 per Share), then concurrently with such issue of Additional Shares, the Company shall allot and issue to the holders of



Preference Shares falling within each such Series of Preference Shares, at nominal value, such number of additional Preference Shares (of the same class) as is calculated in accordance with Article 5.7.2. In circumstances where there is only one relevant Series of Preference Shares, the Preference Shares to be issued shall be allocated amongst the relevant holders of Preference Shares pro rata to their then holding of Preference Shares falling within such Series of Preference Shares and in the case of there being more than one relevant Series of Preference Shares, the Preference Shares to be issued to holders of Preference Shares within each relevant Series of Preference Shares shall be issued pro rata to their holding of Preference Shares falling within each such Series of Preference Shares. In case of disagreement amongst the holders of Preference Shares as to allocation, the allocation shall be determined by an Independent Expert whose decision, in the absence of manifest error, shall be final and binding on the relevant holders of Preference Shares.

- 5.7.2 The aggregate number of new Preference Shares to be allotted pursuant to Article 5.7.1 to the relevant holders of each relevant Series of Preference Shares shall be such number as is calculated by dividing the aggregate Subscription Price for all the Preference Shares falling within that relevant Series of Preference Shares in issue prior to the allotment of the Additional Shares by X, where "X" is calculated according to the following formula, and then deducting the number of Preference Shares falling within the relevant Series of Preference Shares in issue prior to the allotment of the Additional Shares from such figure

$$X = (A + B) + (C + D)$$

Where

- "A" is the aggregate Subscription Price paid for the Preference Shares falling within the relevant Series of Preference Shares in issue prior to the allotment of the Additional Shares,
- "B" is the aggregate Subscription Price to be paid in respect of the Additional Shares save that if the Subscription Price per Additional Share is less than £3 per share then the Subscription Price shall be deemed to be £3 per share,
- "C" is the number of Preference Shares falling within the relevant Series of Preference Shares in issue prior to the allotment of the Additional Shares, and

"D" is the number of Additional Shares to be issued

For the avoidance of doubt the calculation contained in Article 5 7 2 shall only be applied for those Series of Preference Shares where the Subscription Price for the Preference Shares falling within the relevant Series of Preference Shares is greater than the Subscription Price of the Additional Shares

5 7 3 For the purposes of Article 5 7 2 the Subscription Price for the Additional Shares shall be computed as follows

- (a) insofar as it consists of cash the aggregate of cash received by the Company excluding any amounts paid or payable for accrued interest or accrued dividends,
- (b) insofar as it consists of property other than cash, the market value thereof at the time of such issue, as determined in good faith by the Board provided that if the majority of the holders of Ordinary Shares disagree with such valuation the fair market value shall be determined by an Independent Expert (who shall act as an expert and not as an arbitrator, whose decision shall be final and binding save in the case of manifest error and whose costs shall be met by the Company), and
- (c) in the event Additional Shares are issued together with other Shares or securities or other assets of the Company for consideration which comprises both cash and property the proportion of such consideration so received shall be computed in accordance with Articles 5 7 3(a) and 5 7 3(b)

5 7 4 The new Preference Shares to which a Shareholder is entitled pursuant to Article 5 7 1 shall for all purposes

- (a) be credited as fully paid subject only to receipt by the Company of the nominal value of those Preference Shares,
- (b) rank par passu in all respects and form one class with the relevant class of Preference Shares then in issue, and
- (c) entitle the holder to receive dividends and other distributions declared, made or paid on Preference Shares by reference to a record date on or after the issue date

5 7 5 A certificate for new Preference Shares shall be made available for collection at the registered office of the Company or despatched (at the holder's risk) to each holder without charge promptly upon receipt of the relevant subscription monies

## 5 8 **Redemption**

Subject to the Act and the 2006 Act, and provided it is a private company, the Company shall be authorised to make a payment in respect of the redemption or purchase of any of its own Shares whether out of distributable profits of the Company or the proceeds of a fresh issue of Shares or otherwise

## 6 **ISSUES OF SHARES**

6 1 Subject to these Articles, the pre-emption provisions of sub-section (1) of section 89 and sub-sections (1)-(6) of section 90 of the Act shall apply to any allotment of the Company's securities provided that

6 1 1 for the purposes of those sub-sections the Preference Shares and the Ordinary Shares shall be treated as one class,

6 1 2 the period specified in section 90(6) of the Act shall be 14 days,

6 1 3 the Shareholders ("**Equity Shareholders**") who accept Shares shall be entitled to indicate that they would accept Shares that have not been accepted by other Equity Shareholders ("**Excess Shares**") on the same terms as originally offered to all Equity Shareholders and any Shares not so accepted shall be allotted to the Equity Shareholders who have indicated they would accept Excess Shares Such Excess Shares shall be allotted in the numbers in which they have been accepted by Equity Shareholders or, if the number of Excess Shares is not sufficient for all Equity Shareholders to be allotted all the Excess Shares they have indicated they would accept, then the Excess Shares shall be allotted to each Equity Shareholder who has applied for Excess Shares pro rata to their holding of Shares, and

6 1 4 the pre-emption provisions of sub-section (1) of section 89 and sub-sections (1)-(6) of section 90 of the Act shall not apply to the issue or allotment of any Ordinary Shares

(a) to employees, directors or consultants pursuant to a Company Option Scheme, or

- (b) in connection with mergers and acquisitions approved by (i) the holders of at least 66% of the Shares then in issue and (ii) the holder(s) of a majority of either the AGF Shares or the HBM Shares, or
- (c) pursuant to a Listing, or
- (d) pursuant to Article 5 7

## **7 GENERAL PROVISIONS ON TRANSFERS OF SHARES**

- 7 1 Shareholders are not entitled to transfer and the Directors may not register a transfer of Shares unless it is expressly permitted by Article 8 (Permitted Transfers) or has been made in accordance with Articles 9 (Pre-Emption Rights), 10 (Tag-Along Rights), 11 (Drag-Along Rights), 12 (Compulsory Transfer) or 13 (Compulsory Transfers – General) (as appropriate) or where such transfer has been approved in writing by (i) the holders of at least 66% of the Shares then in issue and (ii) the holder(s) of a majority of either the AGF Shares or the HBM Shares
- 7 2 In the event of an infringement of this Article 7, the Shareholder holding Shares following such infringement shall be bound to give a Sale Notice in accordance with Article 9 in respect of all such Shares
- 7 3 For the purpose of ensuring that a transfer of Ordinary Shares is permitted under these Articles or that there has been no breach of these Articles, the Directors (acting by a majority) may from time to time, and shall if so required by an Investor Director, require any Shareholder, or the legal personal representative of any deceased Shareholder or any person named as transferee in any transfer lodged for registration, to furnish to the Company such information and evidence as the Directors may think fit regarding any matter which they may deem relevant to such purpose. Failing such information or evidence being furnished to the satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled to refuse to register the transfer in question or, in case no other transfer is in question, to require by notice in writing that a Sale Notice be given in respect of the Ordinary Shares concerned. If such information or evidence discloses that a Sale Notice ought to have been given in respect of any Ordinary Shares, the Directors may by notice in writing require that a Sale Notice be given in respect of the Ordinary Shares concerned
- 7 4 In any case where the Directors have duly required a Sale Notice to be given in respect of any Ordinary Shares and such Sale Notice is not duly given within a period of 14 days, or such longer period as the Directors may allow for the purpose, such Sale Notice shall (except and to the extent that a transfer permitted under these Articles of any such Ordinary Shares shall have been lodged) be deemed to have been given on the date after the expiration of the

said period as the Directors may by resolution determine and the provisions of Article 9 relating to Sale Notices shall take effect accordingly

7 5 From (and including) the date on which the Directors have duly required that a Sale Notice(s) be given, all holders of Shares the subject of such Sale Notice(s) shall not transfer or encumber any of their Shares or any interest in their Shares (other than pursuant to such Sale Notice(s)) until all proceedings pursuant to such Sale Notice(s) have been finalised in accordance with these Articles

7 6 Any reference in these Articles to a transfer of Shares shall include a transfer of any interest in Shares (whether legal, beneficial or otherwise) and any charge, mortgage or other encumbrance granted over Shares and these Articles shall take effect accordingly

## **8 PERMITTED TRANSFERS**

### **8 1 Permitted Transfers by Founders, Privileged Relations and Family Trusts**

#### **8 1 1 Permitted transfers to Privileged Relations and Family Trusts**

Any Founder may at any time transfer any Shares held by him to a Privileged Relation aged 18 or over or to trustees to be held upon a Family Trust of which he is the settlor provided that

8 1 1 1 a Founder may not transfer any of his Shares under this Article 8 1 if, after the registration of any such transfer in the register of members of the Company, the total number of Shares of any class registered in the name of such Founder would amount to 30% or less of the total number of Shares of such class registered in the names of such Founder, the trustees of such Founder's Family Trusts and his Privileged Relations,

8 1 1 2 any transfer of Shares by a Founder to a Privileged Relation or to trustees of such Founder's Family Trusts pursuant to this Article 8 1 will be on terms (approved before such transfer by the Board including an Existing Investor Director and a New Investor Director) that the Privileged Relation or trustees (as the case may be) shall

(i) undertake to exercise all voting rights attaching to such Shares and to sign all proxies, consents to short notice and other documents relating to such exercise in accordance with the directions of such Founder, and

- (ii) give such Founder unconditional and irrevocable authority to sell such Shares on behalf of the trustees and/or Privileged Relation (as the case may be) on a Listing, a Sale or pursuant to Article 11 (Drag-Along Rights),
- 8 1 1 3 the Privileged Relations and/or the trustees of Family Trusts to whom Shares are transferred by a Founder pursuant to this Article 8 1 may transfer such Shares in accordance with Article 8 1 2 at any time but shall not otherwise be entitled to transfer such Shares pursuant to this Article 8 1,
- 8 1 1 4 if and whenever any Shares held by trustees upon a Family Trust cease to be so held upon a Family Trust (otherwise than in consequence of a transfer to the settlor or to any Privileged Relation of the settlor in accordance with Article 8 1 2) or there cease to be any beneficiaries of the Family Trust other than a charity or charities
  - (i) the trustees of the Family Trust shall notify the Company in writing that such event has occurred, and
  - (ii) unless an Investor Director and a New Investor Director require otherwise, on the date of such cessation the trustees shall be deemed to have given a Sale Notice which does not specify a Sale Price in favour of the settlor of the Family Trust in respect of the Shares held by the trustees and such Shares may not otherwise be transferred, and
- 8 1 1 5 if and whenever a Privileged Relation to whom Shares have been transferred pursuant to this Article 8 1 ceases to be a Privileged Relation of the transferring party
  - (i) the transferring party shall notify the Company in writing that such cessation has occurred, and
  - (ii) unless an Existing Investor Director and a New Investor Director require otherwise, on the date of such cessation the former Privileged Relation shall be deemed to have given a Sale Notice which does not specify a Sale Price in favour of the transferring party in respect of the Shares held by the former Privileged Relation and such Shares may not otherwise be transferred

## **8 1 2 Permitted transfers by Privileged Relations and/or Family Trusts**

8 1 2 1 The Privileged Relations to whom Shares are transferred by a Founder pursuant to Article 8 1 may transfer such Shares to the Founder concerned at any time, but shall not otherwise be entitled to transfer such Shares pursuant to this Article 8 1

8 1 2 2 Where any Shares are held by trustees upon a Family Trust

- (i) on any change of trustees such Shares may be transferred to the new trustees of that Family Trust, and
- (ii) such Shares may be transferred at any time to the settlor provided the settlor is an employee of the Group or to another Family Trust of which the relevant Founder is the settlor or to any Privileged Relation of such Founder

## **8 1 3 Permitted transfers by corporates**

Any holder of Ordinary Shares which is a body corporate may transfer any such shares to its ultimate parent company or any other body corporate, controlled, directly or indirectly, by it or its ultimate parent company PROVIDED ALWAYS THAT the transferee gives an undertaking to the Company that, in the event of any such body corporate ceasing to be controlled, directly or indirectly, by the original shareholder or such ultimate parent company, immediately prior to it so ceasing such Shares shall be transferred to another body corporate so controlled (for which purposes "control" has the same meaning as in section 840 of ICTA

## **8 2 Permitted transfers by Investors**

Notwithstanding any other provision in these Articles, the following transfers may be made without restriction as to price or otherwise and any such transfers shall be registered by the Directors (subject to stamping)

8 2 1 any Investor which is a body corporate may transfer any Shares to its ultimate parent company or any other body corporate controlled, directly or indirectly, by it or its ultimate parent company PROVIDED ALWAYS THAT the transferee gives an undertaking to the Company that, in the event of any such body corporate ceasing to be controlled, directly or indirectly, by the original Shareholder or such ultimate parent company, immediately prior to it so ceasing such Shares shall be transferred to another body corporate so controlled (for which purposes "control" has the same meaning as in section 840 of ICTA),

- 8 2 2 any Shares may be transferred or disposed of by an Investor to any member of such Investor's Defined Group or to any trustee or nominee of any such person,
- 8 2 3 any Shares held by or on behalf of a unit trust or partnership or other unincorporated association or fund may be transferred or disposed of to the holder or holders of units in such unit trust or partners in such partnership or members of such unincorporated association or investors in such fund from time to time or to trustees for any such person,
- 8 2 4 any Shares held by a nominee or trustee of a partnership may be transferred to the partnership or to any new nominee or trustee for such partnership, and
- 8 2 5 any Shares held by or on behalf of a partnership, unit trust, investment trust, unincorporated association or other fund or corporation may be transferred to another partnership, unit trust, investment trust, unincorporated association or other fund or corporation which is managed or advised by the same manager or adviser as the transferor or by a parent undertaking of such manager or adviser or any subsidiary undertaking of such parent undertaking

### 8 3 Other Permitted Transfers

#### 8 3 1 Transfers to the Company

Any holder of Shares may at any time with the approval of (i) the holders of at least 66% of the Shares then in issue and (ii) the holder(s) of a majority of either the AGF Shares or the HBM Shares, transfer Shares to the Company in accordance with the Act or the 2006 Act (as applicable) and these Articles

#### 8 3 2 Transfers pursuant to a Listing, a Sale or Article 11

Notwithstanding any other provision of these Articles (but subject to compliance with Article 10 Tag-Along Rights), a transfer of any Share made pursuant to and in accordance with a Listing, a Sale or Article 11 (Drag-Along Rights) shall be registered by the Directors (subject to stamping)

### 8 4 Fund Participants

Notwithstanding anything to the contrary in these Articles, any transfer by any partner, unitholder, shareholder, or other participant in, or operator, manager or custodian of, any Fund (a "Fund Participant") (or by any trustee or nominee for any such Fund Participant) of any interest in such Fund to any person who is, or as a result of such transfer becomes, a Fund Participant, shall not, and shall not be deemed to, be a transfer of Shares for any purpose under these Articles



9        **PRE-EMPTION RIGHTS**

9 1        Except in respect of a Permitted Transfer or a transfer pursuant to Articles 11, 12 or 13, a Shareholder ("**Selling Shareholder**") who wishes to transfer Shares or any beneficial interest therein shall serve notice on the Company ("**Sale Notice**") stating the number of Shares he wishes to transfer ("**Sale Shares**") The Sale Notice shall be irrevocable and shall specify -

9 1 1        the number and class of Sale Shares,

9 1 2        a cash price at which each of the Sale Shares are offered for sale ("**the Asking Price**"),

9 1 3        whether any third party has within the 3 months prior to the date of the Sale Notice indicated a willingness to buy any of the Sale Shares and if so (and if known), the number and class of Shares concerned, the date of that indication and the proposed purchase price, and

9 1 4        the identity of any third party referred to in Article 9 1 3 and (if it is a company or partnership) the person(s) believed by the Selling Shareholder to control it

9 2        Other than a transfer pursuant to Article 13 or where the Directors have required that a Sale Notice be given pursuant to Article 7, the Selling Shareholder may state in the Sale Notice that he is only willing to transfer all the Sale Shares, in which case no Sale Shares can be sold to Relevant Shareholders (as defined below) unless offers are received from Relevant Shareholders for all of them ("**Minimum Transfer Condition**")

9 3        The service on the Company of a Sale Notice shall make the Company the agent of the Selling Shareholder for the sale of the Sale Shares on the following terms, which the Company shall notify to the other Shareholders within seven days of receiving the Sale Notice

9 3 1        the price for each Sale Share is the Asking Price,

9 3 2        the Sale Shares are to be sold free from all liens, charges and encumbrances together with all rights attaching to them,

9 3 3        each of the other Shareholders (except those who are Leavers (or their Permitted Transferees) for the purposes of Article 12) (each a "**Relevant Shareholder**") is entitled to buy the Sale Shares in proportions reflecting, as nearly as possible, the nominal amount of their existing holdings of Shares save always that a Shareholder is entitled to buy fewer Sale Shares than his proportional entitlement,

- 9 3 4 Relevant Shareholders may offer to buy any number of the Shares that are not accepted by the other Relevant Shareholders ("**Excess Sale Shares**"),
  - 9 3 5 whether the Sale Notice contains a Minimum Transfer Condition, and
  - 9 3 6 that the Shareholders have until the Closing Date (as defined below) to reply to the Company's notification
- 9 4 14 days after the Company's despatch of the terms for the sale of the Sale Shares (the "**Closing Date**")
  - 9 4 1 a Relevant Shareholder who has not responded to the offer in writing shall be deemed to have declined it, and
  - 9 4 2 each application by a Relevant Shareholder to acquire Sale Shares shall become irrevocable
- 9 5 If there are Excess Sale Shares and the Company receives applications for more Shares than the number of Excess Sale Shares, each Relevant Shareholder who applied to buy Excess Sale Shares shall be entitled to a number of Excess Sale Shares reflecting, as nearly as possible, the number of Excess Sale Shares he applied to buy as a proportion of the total number of Excess Sale Shares for which applications were received and in the case of competition such Excess Sale Shares shall be split pro rata to the number of Shares held by each Relevant Shareholder
- 9 6 Within seven days after the Closing Date, the Company shall notify the Selling Shareholder and each Relevant Shareholder who applied to buy Sale Shares of the result of their applications and, if any Sale Shares are to be sold pursuant to such applications
  - 9 6 1 the Company shall notify the Selling Shareholder of the names and addresses of the Relevant Shareholders who are to buy Sale Shares and the number to be bought by each,
  - 9 6 2 the Company shall notify each Relevant Shareholder of the number of Sale Shares he is to buy, and
  - 9 6 3 the Company's notices shall state a place and time, between 7 and 14 days later, on which the sale and purchase of the Sale Shares is to be completed
- 9 7 If the Selling Shareholder does not transfer Sale Shares in accordance with Article 9 6, the Directors may authorise any Director to transfer the Sale Shares on the Selling Shareholder's behalf to the Relevant Shareholders concerned against receipt by the Company of the Asking Price per Share The Company shall hold the Asking Price in trust for the Selling Shareholder

without any obligation to pay interest. The Company's receipt of the Asking Price shall be a good discharge to the buying Relevant Shareholder. The Directors shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Selling Shareholder shall surrender his share certificate or an indemnity for lost share certificate (in a form reasonably satisfactory to the Board) for the Sale Shares to the Company. On surrender, he shall be entitled to the Asking Price for the Sale Shares.

- 9.8 If the Sale Notice did not include a Minimum Transfer Condition, the Selling Shareholder may, within a period of thirty days following the Closing Date, sell any Sale Shares for which the Company has not received any applications, to any third party at no lower a price than the Asking Price and otherwise on the same terms as offered to the Relevant Shareholders.
- 9.9 If the Sale Notice did contain a Minimum Transfer Condition and if by the Closing Date the Company has not received offers from Relevant Shareholders for all the Sale Shares the Selling Shareholder shall, for the period of thirty days thereafter be permitted to sell all, but not some only, of the Sale Shares to any third party at no lower price than the Asking Price and otherwise on the same terms as offered to the Relevant Shareholders.
- 9.10 Notwithstanding anything to the contrary in these Articles, no transfer of a Share may be made by any Shareholder pursuant to this Article 9 to a third party whom an Investor reasonably believes to be an existing competitor or any industrial company who may compete with the Company without the written consent of (i) the holders of at least 66% of the Shares then in issue and (ii) the holder(s) of a majority of either the AGF Shares or the HBM Shares.

## 10 TAG-ALONG RIGHTS

- 10.1 If, at any time, one or more Shareholders (the "**Proposed Sellers**") propose to sell to any person (the "**Proposed Buyer**"), in one or a series of related transactions, such number of Shares which would, if registered, result in that person (together with persons connected or acting in concert with him) holding or increasing his holding to more than 50% of the issued share capital of the Company (a "**Proposed Sale**"), the Proposed Sellers must, before completing a Proposed Sale procure the making by the Proposed Buyer of an offer (the "**Offer**") to the other Shareholders to acquire all of the issued share capital of the Company held by such other Shareholders for a consideration per Share which is at least equal to the sale price to be paid by the Proposed Buyer (the "**Sale Price**") and otherwise on the same terms and conditions offered by the Proposed Buyer to the Proposed Sellers.
- 10.2 The Offer must be given by written notice (a "**Proposed Sale Notice**") at least 10 Business Days prior to the proposed sale date (the "**Proposed Sale Date**") (the period from the date on which the Proposed Sale Notice is given until the Proposed Sale Date being the "**Offer Period**"). The Proposed Sale Notice must set out, to the extent not described in any

accompanying documents, the identity of the Proposed Buyer, the Sale Price and other terms and conditions of payment, the Proposed Sale Date and the number of Shares proposed to be purchased by the Proposed Purchaser from the Proposed Sellers (the "**Proposed Sale Shares**")

10 3 If any other holder of Shares is not given the rights accorded him by this Article, no Proposed Seller will be entitled to complete their proposed sale to the Proposed Buyer and the Company will not register any transfer intended to carry any such sale into effect

10 4 If the Offer is accepted by any Shareholder (an "**Accepting Shareholder**") within the Offer Period, the completion of the Proposed Sale will be conditional upon the completion of the purchase of all the Shares held by such Accepting Shareholder

10 5 The purchase of any Accepting Shareholder's Shares shall not be subject to the pre-emption provisions of Article 9

10 6 The provisions of this Article 10 shall not apply to any Proposed Sale which is a Permitted Transfer or which is to take place pursuant to a Qualifying Offer under Article 11

## 11 **DRAG-ALONG RIGHTS**

11 1 In these Articles a "Qualifying Offer" shall mean an offer in writing which is made by or on behalf of any person (the "**Offeror**"), is communicated to any one or more of the Shareholders, and is for the entire equity share capital in the Company not already owned by the Offeror or persons connected to or acting in concert with the Offeror

11 2 If (i) the holders of at least 66% of the Shares and (ii) the holder(s) of a majority of either the AGF Shares or the HBM Shares (the "**Majority Shareholders**") have indicated in writing that they wish to accept the Qualifying Offer, then the provisions of this Article 11 shall apply

11 3 The Majority Shareholders shall give written notice to the remaining holders of the Shares (the "**Other Shareholders**") of their wish to accept the Qualifying Offer and the Other Shareholders shall thereupon become bound to accept the Qualifying Offer and to transfer their Shares to the Offeror (or his nominee) with full title guarantee on the date specified by the Majority Shareholders

11 4 If any Other Shareholder shall not, within ten days of being required to do so, execute and deliver transfers in respect of the Shares held by him and deliver the certificate(s) in respect of the same (or a suitable indemnity in lieu thereof), then any Majority Shareholder shall be entitled to execute, and shall be entitled to authorise and instruct such person as he thinks fit to execute, the necessary transfer(s) and indemnities on the Other Shareholder's behalf and, against receipt by the Company (on trust for such Shareholder) of the consideration payable

for the relevant Shares, deliver such transfer(s) and certificate(s) or indemnities to the Offeror (or his nominee) and register such Offeror (or his nominee) as the holder thereof and, after such registration, the validity of such proceedings shall not be questioned by any person

## 12 **COMPULSORY TRANSFER**

- 12 1 If a person shall become a Leaver then the Company may and shall at the direction of an Existing Investor Director and a New Investor Director within two months of the Leaving Date, require the Leaver by notice in writing (a "**Leaver Notice**"), to transfer the Shares owned by him (whether legally or beneficially) to the Company, subject to it being lawfully able to acquire such Shares, or if the Board with the prior approval of an Existing Investor Director and a New Investor Director does not wish the Company to acquire such Shares then those Shares shall be offered to all the other existing holders of Shares (except any other holder of Shares who is also a Leaver (or any Leaver's Permitted Transferee)) pro rata to their existing shareholding and provided that, where certain of the existing Shareholders indicate that they wish to take up more than their pro rata entitlement to Shares, any Shares not acquired shall be allotted to the Shareholders who indicated a willingness to take up the additional Shares, pro rata to their holding of Shares. The price to be paid to such Leaver for such Shares shall be the nominal price per Share unless the Leaver is a Good Leaver in which case the price of each such Share shall be the Last Round Price provided that (i) the Last Round Price was paid within 12 months of the Leaving Date and (ii) that both the Leaver and the Board agree within 20 days of the Leaving Date (such Board decision being approved by an Existing Investor Director and a New Investor Director (provided that such Directors are in office)) that the Last Round Price is not, as at the Leaving Date, materially different to the Leaver's and the Board's good faith estimation of the market value of the Shares (a "**Fair Value Determination**") or if there is no applicable Last Round Price or (if applicable) if the Board and the Leaver are unable to agree a Fair Value Determination, Fair Value
- 12 2 All transfers effected pursuant to Article 12 1 shall be completed within the period of two months from (i) the Leaving Date if Last Round Price is to be paid, (ii) the date (if any) on which the Board and Leaver agree a Fair Value Determination or (iii) the determination of the Fair Value (as applicable). Such notice from the Company shall specify the number of Shares to be transferred and the proposed date for completion
- 12 3 On completion of such transfers, the Leaver shall deliver to the Board or as it shall direct, one or more duly executed instruments of transfer in respect of the Shares transferred (such transfers to be in favour of the relevant transferee(s), together with such other documents (if any) as may be necessary or expedient for the purposes of vesting in such transferee(s) all of the rights, title and interest in the Shares being so transferred) together with the relevant share certificates or an indemnity for lost share certificates

- 12 4 If the transferee(s) has performed its obligations in full under this Article 12 and the Leaver concerned fails or refuses to deliver to the Board on the transfer date or as the Board shall direct, a duly executed instrument of transfer in respect of the Shares to be transferred or any other document required under this Article 12, any one or more of the Directors shall be authorised to execute and deliver such an instrument of transfer as attorney for such Leaver and to do any other acts and/or execute any other documents on behalf of such Leaver as are required in connection with the transfer of all his right, title and interest in the Shares being transferred to the transferee(s), or as are necessary or expedient for the purpose of vesting in the transferee(s) all his right, title and interest in the Shares being transferred
- 12 5 For the purposes of this Article 12, the "Fair Value" shall be such price as the Leaver and (with the consent of a New Investor Director and an Existing Investor Director) the Company shall agree within 20 days of the date on which a Leaver Notice is served or, failing such agreement, such price as an Independent Expert shall determine pursuant to Article 12 6
- 12 6 If the Fair Value falls to be determined by the Independent Expert
- 12 6 1 the Company shall immediately instruct the Independent Expert to determine the Fair Value on the basis which, in their opinion, represents a fair value for the Leaver's Shares at the date on which he became a Leaver as between a willing seller and a willing buyer and, in making such determination, the Independent Expert shall take account of any factors which he reasonably believes should be taken into account,
- 12 6 2 the Independent Expert shall certify the Fair Value as soon as possible after being instructed by the Company and, in so certifying, the Independent Expert shall be deemed to be acting as experts and not as arbitrators and the Arbitration Act 1996 shall not apply,
- 12 6 3 the certificate of the Independent Expert shall, in the absence of manifest error, be final and binding, and
- 12 6 4 the Company shall procure that any certificate required hereunder is obtained with due expedition and the cost of obtaining such certificate shall be borne by the Company unless (i) such an arrangement would not be permitted by the Act or (ii) the Fair Value as determined by the Independent Expert is not more than 110% of that price (if any) which the Company had previously notified to the Leaver as being in its opinion the Fair Value, in which event the cost shall be borne by the Leaver

### **13 COMPULSORY TRANSFERS - GENERAL**

- 13 1 A person entitled to Shares in consequence of the bankruptcy of a Shareholder shall be bound at any time, if and when required in writing by the Directors so to do, to give a Sale Notice in respect of such Shares and the price per Share shall be the lower of the Subscription Price thereof and the amount payable by Investors on the immediately prior round of funding by the Company
- 13 2 If a Share remains registered in the name of a deceased Shareholder for longer than one year after the date of his death the Directors may require the legal personal representatives to such deceased Shareholder either to effect a transfer of such Shares (including for such purpose an election to be registered in respect thereof) being a Permitted Transfer or to show to the satisfaction of the Directors that a Permitted Transfer will be effected up to or promptly upon the completion of the administration of the estate of the deceased Shareholder or (failing compliance with either of the foregoing within one month or such longer period as the Directors may allow for the purpose) to give a Sale Notice in respect of such Share
- 13 3 If a Shareholder which is a company or a Permitted Transferee of such Shareholder, either suffers or resolves for the appointment of a liquidator, administrator or administrative receiver over it or any material part of its assets, such Shareholder or Permitted Transferee shall forthwith at the request of the Directors be required to give a Sale Notice in respect of all of the Shares held by such Shareholder and/or such permitted transferee and the price per Share shall be the lower of the Subscription Price thereof and the amount payable by Investors on the immediately prior round of funding by the Company

### **14 GENERAL PROVISIONS**

#### **14 1 Shareholders' meetings and resolutions**

- 14 1 1 The Ordinary Shares and the Preference Shares confer on each holder thereof the right to receive notice of and attend, speak and vote at general meetings
- 14 1 2 On a show of hands, each holder of Ordinary Shares and Preference Shares present in person or (being a corporation) by a representative has one vote
- 14 1 3 On a poll each holder of Shares present in person or by proxy or (being a corporation) by a representative, is entitled to exercise the number of votes on the basis of one vote per Share then held
- 14 1 4 Regulation 37 of Table A is modified by the insertion of the words "or an Investor acting alone" after the second word of that regulation

- 14 1 5 Regulation 40 of Table A is modified by the deletion of the second sentence and the substitution for it of the words "Three persons entitled to vote upon the business to be transacted (each being a member or a proxy for a member or a duly authorised representative of a corporation) at least one of whom is a holder of A Preference Shares and at least one of whom is a New Investor shall be a quorum"
- 14 1 6 A corporation or partnership which is a member of the Company may, by resolution of its directors, partners 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 Shareholders of the Company The person so authorised is entitled to exercise the same powers on behalf of the corporation or partnership which he represents as that corporation or partnership could exercise if it were an individual Shareholder
- 14 1 7 A poll may be demanded by the chairman or by any Shareholder present in person or by proxy and entitled to vote and regulation 46 of Table A is modified accordingly When a poll has been demanded it shall be taken immediately following the demand
- 14 1 8 The chairman of the meeting shall not, in the case of equality of votes, whether on a show of hands or a poll, be entitled to exercise any second or casting vote
- 14 1 9 Where an ordinary resolution of the Company is expressed to be required for any purpose, a special resolution is also effective for that purpose
- 14 1 10 Regulation 57 of Table A is modified by the inclusion after the word "shall" of the phrase "unless the directors otherwise determine"
- 14 1 11 Regulation 59 of Table A is modified by the addition at the end of such regulation of the following sentence "Deposit of an instrument of proxy shall not preclude a member from attending and voting at the meeting or at any adjournment of it "
- 14 1 12 Regulation 62 of Table A 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 or by facsimile transmission to", by the substitution in paragraph (a) of the words, "one hour" in place of "48 hours" and by the substitution in paragraph (b) of the words "one hour" in place of "24 hours" A notice revoking the appointment of a proxy must be given in accordance with the 2006 Act



#### **14 2 Number of Directors**

Unless otherwise determined by ordinary resolution, the number of Directors (other than alternate directors) shall be not less than two in number and shall be subject to a maximum of eight

#### **14 3 Alternate directors**

14 3 1 Each Director is entitled to appoint any person willing to act, whether or not he is a Director, to be an alternate director That person need not be approved by resolution of the Directors and regulation 65 of Table A is modified accordingly

14 3 2 An alternate director who is absent from the United Kingdom is entitled to receive notice of all meetings of Directors and meetings of committees of Directors provided that he shall have deposited his contact details outside of the United Kingdom with the Board and regulation 66 of Table A is modified accordingly

14 3 3 Regulation 68 of Table A is modified by the addition at the end of such regulation of the following sentence "Any such notice may be left at or sent by post or facsimile transmission to the registered office of the Company or such other place as may be designated for the purpose by the directors "

#### **14 4 Appointment, retirement and removal of Directors**

14 4 1 The Directors are not subject to retirement by rotation and the words "by rotation or otherwise" and "and deemed to have been reappointed" in regulation 67 and the last sentence of regulation 84 shall not apply to the Company

14 4 2 The Company may by ordinary resolution appoint a person who is willing to act to be a Director either to fill a vacancy or as an additional Director

14 4 3 For so long as the AGF Group together holds not less than 10% of the issued Shares they shall be entitled to appoint and remove a Director by notice in writing to the Company at its registered office and to replace such Director by giving such notice

14 4 4 For so long as the HBM Group together holds not less than 10% of the issued Shares they shall be entitled to appoint and remove a Director by notice in writing to the Company at its registered office and to replace such Director by giving such notice

- 14 4 5 For so long as Quester together holds not less than 10% of the issued Shares they shall be entitled to appoint and remove a Director by notice in writing to the Company at its registered office and to replace such director by giving such notice
- 14 4 6 For so long as Viking holds not less than 10% of the issued Shares it shall be entitled to appoint and remove a Director by notice in writing to the Company at its registered office and to replace such Director by giving such notice
- 14 4 7 For so long as there are at least two Founders, the Founders shall be entitled to appoint and remove two Directors by notice in writing to the Company at its registered office and to replace such Directors by giving such notice In circumstances where there is only one Founder, such Founder shall be entitled to appoint and remove a Director by notice in writing to the Company at its registered office and to replace such Director by giving such notice Any such appointment or removal shall be subject to the prior written consent of a majority of the Investor Directors appointed from time to time
- 14 4 8 Directors appointed by (i) the AGF Group or the HBM Group shall be known as "New Investor Directors", (ii) Quester or Viking shall be known as "Existing Investor Directors" and (iii) by the Founders shall be known as "Founder Directors" in each case for the purposes of these Articles

#### **14 5 Disqualification and removal of Directors**

- 14 5 1 The office of a Director shall be vacated if
  - 14 5 1 1 he ceases to be a Director by virtue of any provision of the Act or the 2006 Act or he becomes prohibited by law from being a director of a company, or
  - 14 5 1 2 he becomes bankrupt or makes any arrangement or composition with his creditors generally, or
  - 14 5 1 3 he resigns his office by notice in writing to the Company, or
  - 14 5 1 4 (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 such period attended any such meetings instead of him, and the Directors resolve that his office be vacated, or

- 14 5 1 5 (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, or
- 14 5 1 6 he is convicted of a criminal offence (other than a minor motoring offence) and the Directors resolve that his office be vacated, or
- 14 5 1 7 he is, or may be, suffering from mental disorder and either (i) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983, or (ii) an order is made by a court having jurisdiction (whether in the UK or elsewhere) in matters concerning mental disorder to his detention or for the appointment of a receiver, *curator bonis* or other person to exercise powers with respect to his property or affairs, or
- 14 5 1 8 in the case of a person who is also an employee of the Company or another Group Company, he ceases to be such an employee without so remaining an employee of any other member of the Group

- 14 5 2 A person voting against a resolution under section 168 of the 2006 Act to remove an Investor Director is deemed, in respect of that resolution and notwithstanding Article 14 1, to have five times the votes of a person voting in favour of the resolution and regulation 54 of Table A is modified accordingly

#### **14 6 Proceedings of Directors**

- 14 6 1 Regulation 88 of Table A is modified by the exclusion of the third sentence and the substitution for it of the following sentence "Every director shall receive notice of a meeting, whether or not he is absent from the United Kingdom. An Investor Director may waive the requirement that notice be given to him of a board meeting either prospectively or retrospectively." Regulation 88 of Table A is also modified by the exclusion of the fifth sentence thereof
- 14 6 2 The quorum for the transaction of the business of the Directors shall be three, comprising at least one Founder Director, one New Investor Director and one Existing Investor Director unless such requirement is waived by an Existing Investor Director and a New Investor Director, in which case the quorum shall be any two Directors. Regulation 89 of Table A is amended accordingly
- 14 6 3 Any Director or his alternate may validly participate in a meeting of the Directors or a committee of the Directors through the medium of conference telephone or similar form of communication equipment if all persons participating in the meeting are able

to hear and speak to each other throughout such meeting. A person participating in this way is deemed to be present in person at the meeting and is counted in a quorum and entitled to vote. Subject to the Act and the 2006 Act, all business transacted in this way by the Directors or a committee of the Directors is for the purposes of these Articles deemed to be validly and effectively transacted at a meeting of the Directors or of a committee of the Directors although fewer than two Directors or alternate directors are physically present at the same place. The meeting is deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is

14.6.4 Meetings of the Board shall take place no less frequently than six times per calendar year and at least 10 working days' notice shall be given to each Director provided that with the consent of an Existing Investor Director and a New Investor Director, Board meetings may be held less frequently and convened on less notice.

14.6.5 If and for so long as there is a sole Director, he may exercise all the powers conferred on the Directors by the Articles by resolution in writing signed by him, and for so long as there is a sole Director regulations 88, 89, 91 and 93 of Table A and Article 14.6.2 shall not apply.

14.6.6 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. The Director shall be counted in the quorum present when any such resolution is under consideration and if he votes his vote shall be counted.

#### **14.7 Borrowing powers of Directors**

The Directors may exercise all the powers of the Company to borrow and raise money and to mortgage and charge all or any part of the undertaking, property and uncalled capital of the Company and, subject to the provisions of the Act and the 2006 Act, to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

#### **14.8 Dividends**

The Directors may deduct from any dividend or other moneys payable to a person in respect of a Share any amounts due from him to the Company on account of a call or otherwise in relation to a Share.

## **14 9 Notices**

- 14 9 1** Subject to the specific terms of these Articles, any notice to be given to or by any person pursuant to these Articles (other than a notice calling a meeting of the Board or a committee thereof) shall be in writing
- 14 9 2** Any Shareholder Communication may be served by the Company on, or supplied by the Company to, a Shareholder or other person personally or by sending it by first-class post in a pre-paid envelope addressed to such Shareholder or other person at his postal address (as appearing in the Company's register of members in the case of Shareholders) or (except in the case of Excluded Notices and share certificates) by sending or supplying it in electronic form or by website communication in accordance with Articles 14 9 4 or 14 9 5 Excluded Notices shall be sent to or served upon the relevant person as required by these Articles in hard copy and delivered personally or sent by first-class post in a pre-paid envelope and shall not be sent in electronic form
- 14 9 3** In the case of a Shareholder Communication (including an Excluded Notice) sent by post, proof that an envelope containing the communication was properly addressed, pre-paid (as airmail if appropriate) and posted shall be conclusive evidence that it was sent and it shall be deemed to be given or received at the expiration of 48 hours after the envelope containing it was posted in the case of an address within the United Kingdom and at the expiration of 96 hours after the envelope containing it was posted in the case of an address outside of the United Kingdom
- 14 9 4** Subject to the provisions of the Statutes, any Shareholder Communication (except an Excluded Notice or a share certificate) will be validly sent or supplied by the Company to a person if sent or supplied in electronic form provided that person has agreed (generally or specifically) (or, if the person is a company and is deemed by the Statutes to have agreed) that the communication may be sent or supplied in that form and
- 14 9 4 1** the Shareholder Communication is sent in electronic form to such address as may for the time being be notified by the relevant person to the Company (generally or specifically) for that purpose or, if that relevant person is a company, to such address as may be deemed by a provision of the Statutes to have been so specified, and
- 14 9 4 2** that person has not revoked the agreement

- 14 9 5 Subject to the provisions of the Statutes, any Shareholder Communication (except an Excluded Notice or a share certificate) will be validly sent or supplied by the Company to a person if it is made available by means of a website communication where that person has agreed, or is deemed by the Statutes to have agreed (generally or specifically) that the communication may be sent or supplied to him in that manner and
- 14 9 5 1 that person has not revoked the agreement,
- 14 9 5 2 the person is notified in a manner for the time being agreed for the purpose between the person and the Company of
- (a) the presence of the Shareholder Communication on the Company's website,
  - (b) the address of that website, and
  - (c) the place on that website where the Shareholder Communication may be accessed and how it may be accessed, and
- 14 9 5 3 the Shareholder Communication continues to be published on the Company's website throughout the period specified in the 2006 Act, provided that if it is published on the website for part but not all of such period, the Shareholder Communication will be treated as published throughout that period if the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the Company to prevent or avoid
- 14 9 6 When any Shareholder Communication is sent by the Company in electronic form, it shall be deemed to have been given on the same day as it was sent to the address supplied by the Shareholder, and in the case of the provision of a Shareholder Communication by website communication, it shall be deemed to have been received when it was first made available on the website or, if later, when the recipient received (or is deemed to have received) notice of the fact that it was available on the website pursuant to Article 14 9 5 2
- 14 9 7 Where in accordance with these Articles a Shareholder or other person is entitled or required to give or send to the Company a notice in writing (other than an Excluded Notice), the Company may, in its absolute discretion, (or shall, if it is deemed to have so agreed by any provision of the Statutes) permit such notices (or specified classes thereof) to be sent to the Company in such electronic form and at such

address as may from time to time be specified (or be deemed by the Statutes to be agreed) by the Company (generally or specifically) for the purpose, subject to any conditions or restrictions that the Board may from time to time prescribe (including as to authentication of the identity of the person giving or sending such notice to the Company)

14 9 8 A Shareholder who has not supplied to the Company either a postal or an electronic address for the service of notices shall not be entitled to receive notices from the Company. If, on three consecutive occasions, a notice to a Shareholder has been returned undelivered, such Shareholder shall not thereafter be entitled to receive notices from the Company until he shall have communicated with the Company and supplied in writing to the office a new postal or electronic address for the service of notices. For these purposes, a notice shall be treated as returned undelivered if the notice is sent by post and is returned to the Company (or its agents) or, if sent in electronic form, if the Company (or its agents) receive(s) notification that the notice was not delivered to the address to which it was sent.

14 9 9 In the case of joint holders of a Share, all Shareholder Communications shall be sent or supplied to the joint holder who is named first in the register, and a Shareholder Communication so sent or supplied shall be deemed sent or supplied to all joint holders. Any provision of this Article 14 9 which refers to anything agreed, notified or specified by a member shall be deemed to have been validly agreed, notified or specified, notwithstanding any provisions of the Statutes, if agreed, notified or specified by only one and not all of the joint holders of any Shares held in joint names.

14 9 10 Where the Articles require notice to be given by the holders of a stated percentage of Shares, notice may consist of several documents in similar form each signed by or on behalf of one or more Shareholders.

#### **14 10 Indemnity**

Subject to, and on such terms as may be permitted by the 2006 Act, the Company may

14 10 1 indemnify, out of the assets of the Company, any Director or any director of any associated company against all losses and liabilities which he may sustain or incur in the performance of the duties of his office or otherwise in relation thereto,

14 10 2 provide a Director with funds to meet expenditure incurred or to be incurred by him

14 10 2 1 at any time in defending any civil or criminal proceedings brought or threatened against him, or

14 10 2 2 on or after 1 October 2007 in defending himself in an investigation by a regulatory authority or against action proposed to be taken by a regulatory authority, and

in either case in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the Company or an associated company and the Company shall be permitted to take or omit to take any action or enter into any arrangement which would otherwise be prohibited under the 2006 Act to enable a Director to avoid incurring such expenditure, and

14 10 2 3 purchase and maintain insurance for any Director or any director of any associated company against any liability attaching to any such person in connection with any negligence, default, breach of duty or breach of trust by him in relation to the Company or any such associated company

14 11 For the purpose of Article 14 10 above, a company will be associated with another if one is a subsidiary of the other or both are subsidiaries of the same body corporate as such terms are defined in the 2006 Act

14 12 The Directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of a person who is a Director, alternate director, secretary or auditor, or former director, alternate director, secretary or auditor, of the Company or of a company which is a subsidiary of the Company or in which the Company has an interest (whether direct or indirect), or who is or was trustee of a retirements benefit scheme or another trust in which a Director, alternate director or secretary or former director, alternate director or secretary is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the Company