

THE COMPANIES ACTS 1985 TO 1989
PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION

of

NEUROPHARM LIMITED (the "Company")

(Registered in England and Wales under company number 5510905)

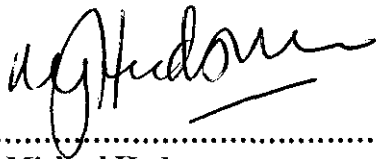
dated 22 June 2006

We, the undersigned, being all the members of the Company entitled to attend and vote at a general meeting of the Company, pass the following resolution as a written resolution to have effect as if passed as a special resolution at a general meeting of the Company in accordance with Article 18 of the Company's Articles of Association and hereby consent to the matters referred to therein:-

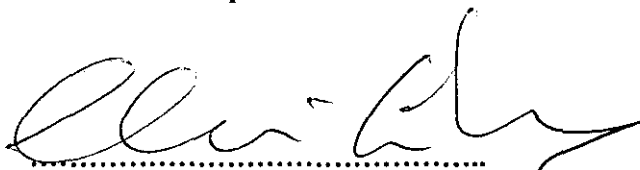
Special Resolution

Amendment of Articles

the regulations contained in the document attached hereto and for the purposes of identification signed by the Chairman as relative to this Resolution be and are hereby approved and adopted as the new Articles of Association of the Company in substitution for and to the exclusion of the existing Articles of Association of the Company.



.....
Dr Michael Hudson


.....
Dr Michael Snape
.....
Professor Sir Christopher Thomas Evans

23/05/2006 21:15

44-1494-565712

DR M J HUDSON

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THE COMPANIES ACTS 1985 AND 1989

A PRIVATE COMPANY LIMITED BY SHARES

**ARTICLES OF ASSOCIATION
OF
NEUROPHARM LIMITED**



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Glasgow

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THE COMPANIES ACT 1985
PRIVATE COMPANY LIMITED BY SHARES

Articles of Association
of
NEUROPHARM LIMITED
(the "Company")

1 DEFINITIONS AND INTERPRETATION

1.1 In these Articles, unless the context requires otherwise:

"**A Ordinary Shares**" means the A ordinary shares of £1 each of the Company, having the rights set out in Article 3;

"**A Shareholder**" means the holder of an A Ordinary Share from time to time;

"**Act**" means the Companies Act 1985 as amended and construed at the date of adoption of these Articles;

"**Auditors**" means the auditors from time to time of the Company;

"**B Ordinary Shares**" means the B ordinary shares of £1 each of the Company, having the rights set out in Article 3;

"**B Shareholder**" means the holder of a B Ordinary Share from time to time;

"**Ballard Side Letter**" means the side letter between MH, MS and JB dated on or around the date of adoption of these Articles;

"**Board**" means the board of directors of the Company from time to time;

"**business day**" means a day, other than a Saturday or a Sunday, on which clearing banks are open for commercial business in London;

"**CE**" means Professor Sir Christopher Evans OBE of the Science Shed, Glebe House, Bibury, Gloucestershire;

"**Change of Control**" means the acquisition (whether by purchase, transfer, renunciation or otherwise) by any person (who is not presently a member of the company in question) of any interest in the Equity Share Capital of that company if, upon completion of that acquisition, the acquiror, together with persons acting in concert or connected with him, would hold more than 50 per cent in nominal value of such Equity Share Capital;

"**Completion Date**" means the date of adoption of these Articles;

"**connected with**" has the meaning ascribed to it in Section 839 Income and Corporation Taxes Act 1988 save that there shall be deemed to be control for that purpose whenever either Section 416 or Section 840 of that Act would so require;

"**Deadlock**" shall have the meaning ascribed to it in Article 16;

"**Deadlock Majority**" means, in relation to a Deadlock, the holders from time to time of 65% or more of the Shares which shall include the Investor Majority;

"**Deadlock Minority**" means, in relation to a Deadlock, the holders from time to time of 35% or less of the Shares;

"**Deed of Adherence**" shall have the meaning ascribed to it in the Investment Agreement;

"**Equity Share Capital**" shall be defined in accordance with Section 744 of the Act and "**Equity Shares**" shall be construed accordingly;

"**Group**" means the Company and all its subsidiaries and subsidiary undertakings from time to time and "**member of the Group**" shall be construed accordingly;

"**Initial Subscribers**" shall have the meaning ascribed to it in the Investment Agreement;

"**Investment Agreement**" means the subscription agreement entered into between (1) Dr Michael Hudson and Others; (2) the Investors; and (3) the Company dated on or around the date of adoption of these Articles;

"**Investors**" shall have the meaning ascribed to it in the Investment Agreement;

"**Investor Director**" shall have the meaning ascribed to it in Article 20;

"**Investor Majority**" means the holder(s) of at least 56% in nominal value of the Shares held by the Investors from time to time;

"**Issue Price**" means the amount paid up or credited as paid up (including any premium on issue) on the Shares concerned;

"**Issued Options**" shall have the meaning ascribed to it in the Investment Agreement;

"**JB**" means Dr John William Ballard of 22 Great James Street, London, WC1N 3ES;

"**Management Options**" shall have the meaning ascribed to it in the Investment Agreement;

"**Member**" means any registered holder of a Share;

"**MH**" means Dr Michael Hudson of 9 Upper Hollis, Great Missenden, Buckinghamshire HP16 9HP;

"**MS**" means Dr Michael Snape of 111 Thorkhill Road, Thames Ditton, Surrey KT7 0UW;

"**Ordinary Shares**" means the ordinary shares of £1 each of the Company having the rights set out in Article 3;

"**Shareholder**" has the meaning ascribed to it in the Investment Agreement;

"Shares" means the A Ordinary Shares and the B Ordinary Shares together and **"Share"** means any one share of any such class;

"Table A" means Table A in the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 and as further amended by The Companies Act 1985 (Electronic Communications) Order 2000;

"TB Hunter" means Thomas Blane Hunter c/o Marathon House, Olympic Business Park, Drybridge Road, Dundonald, Ayrshire KA2 9AE;

"Third Party Purchaser" means any person not being a member of the Company as at the date of adoption of these Articles;

"Transfer Notice" means a notice served by a Member pursuant to Article 10.1; and

"Valuers" means the Auditors unless -

- (a) a report on the Market Value (as defined in Article 10.4(b)) is to be made pursuant to a Deemed Transfer Notice and, within 21 days after the date of the Deemed Transfer Notice, the Vendor (as defined in Article 10.1) notifies the Board in writing that it objects to the Auditors making that report; or
- (b) the Auditors give notice to the Company that they decline an instruction to report on Market Value,

when the Valuers shall be a firm of chartered accountants agreed between the Vendor and the Board or, in default of agreement within 20 business days after the event referred to in (i) or (ii) above, appointed by the President of the Institute of Chartered Accountants in England and Wales on the application of the Vendor or the Board.

"West Coast" means West Coast Capital, a partnership established in Scotland;

"West Coast Side Letter" means the side letter between CE and West Coast dated on or around the date of adoption of these Articles;

- 1.2 The regulations of Table A shall be incorporated into and form part of these Articles and shall apply to the Company insofar as such regulations are not excluded, amended or modified by or inconsistent with this document.
- 1.3 References in these Articles to Regulations are to regulations in Table A and references to an Article by number are to a particular Article of these Articles.
- 1.4 Regulations 5, 24, 33 and 64 of Table A shall not apply to the Company and the following Regulations thereof shall be modified:-
 - (a) Regulation 6 by the deletion of the words "sealed with the seal";
 - (b) Regulation 32 by the addition to paragraph (b) of the words "but so that any such consolidation and/or division shall not result in any member becoming entitled to fractions of a share";
 - (c) Regulation 40 by the addition at the end of the second sentence of the words "provided that if the Company shall have only one member, one member present in person or by proxy shall be a quorum";

- (d) Regulation 46 by the deletion of paragraphs (a) to (d) inclusive and the addition of the words "by the Chairman or by any person present entitled to vote upon business to be transacted";
 - (e) Regulation 54 by the addition of the words "or by proxy" between the words "vote" and "shall" and the words "fully paid" between the words "every" and "share";
- 1.5 These Articles and the Regulations incorporated into them shall take effect subject to the requirements of the Act and of every other statute for the time being in force affecting the Company.
- 1.6 In these Articles where the context so permits:
- (a) words importing the singular number only shall include the plural number, and vice versa;
 - (b) words importing the masculine gender only shall include the feminine gender;
 - (c) words importing persons shall include bodies corporate, unincorporated associations and partnerships;
 - (d) the expression "**paid up**" shall include credited as paid up; and
 - (e) the word "**writing**" shall include using electronic communications.
- 1.7 Words and expressions defined in or for the purposes of the Act or Table A shall, unless these Articles provide otherwise, have the same meaning in these Articles.
- 1.8 Words and expressions defined elsewhere in these Articles shall bear the meanings thereby ascribed to them.
- 1.9 Headings used in these Articles shall not affect their construction or interpretation.
- 1.10 References to any statute or section of any statute shall include reference to any statutory amendment, extension, modification or re-enactment thereof for the time being in force.

2 AUTHORISED SHARE CAPITAL

- 2.1 The Company is a private company as defined by Section 1 of the Act and accordingly any offer to the public (whether for cash or otherwise) of any shares in or debentures of the Company or any allotment of or agreement to allot (whether for cash or otherwise) any shares in or debentures of the Company with a view to all or any of these shares or debentures being offered for sale to the public shall be prohibited.
- 2.2 The authorised share capital of the Company at the date of the adoption of these Articles is £100,000 divided into 100,000 ordinary shares of £1 each.

3 ORDINARY SHARES

The A Ordinary Shares and B Ordinary Shares shall rank *pari passu* in all respects save in relation to return of capital, in respect of which the rights attached to the Shares are as follows:-

3.1 Capital

On a return of capital whether on liquidation or capital reduction or otherwise (other than a redemption or purchase of Shares in accordance with these Articles) the surplus assets of the Company remaining after the payment of its liabilities shall be applied:

- (a) first, in paying to each holder of A Ordinary Shares:
 - (i) an amount equal to two times the amount of any dividends thereon which have been declared but are unpaid; and
 - (ii) an amount equal to two times the Issue Price of each A Ordinary Share held by him/them; and
- (b) thereafter, in distributing the balance of such assets amongst the A Shareholders and the B Shareholders in proportion to the number of A Ordinary Shares or B Ordinary Shares held by them.

4 VARIATION OF CLASS RIGHTS

4.1 Whenever the capital of the Company is divided into different classes of shares, the special rights attached to any class may only (unless otherwise provided by the terms of issue of the shares of that class) be varied or abrogated, either whilst the Company is a going concern or during or in contemplation of a winding up, with the consent in writing of the holders of three quarters of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate meeting of the holders of the issued shares of that class, but not otherwise. For the avoidance of doubt, any amendments to these Articles shall be a deemed variation of class rights.

4.2 To every separate general meeting referred to in Article 4.1 all the provisions of these Articles relating to general meetings of the Company and to the proceedings at those meetings shall, with the necessary changes, apply, except that:-

- (a) the necessary quorum at any such meeting (other than an adjourned meeting) shall be two persons holding or representing by proxy not less than 10% in nominal amount of the issued shares of the relevant class (unless only one person holds issued shares of the relevant class in which event such quorum shall be one person holding such shares);
- (b) at an adjourned meeting the necessary quorum shall be one person holding shares of the relevant class or his proxy;
- (c) the holders of shares of the relevant class shall on a poll have one vote in respect of every share of that class held by them respectively; and
- (d) a poll may be demanded by any holder of shares of the relevant class whether present in person or by proxy.

5 ANTI-DILUTION

5.1 In the event that the Company proposes to issue any Shares in the equity share capital of the Company at a price less than £4,098 per Share (the "**Trigger Price**"), (other than an issue of Shares pursuant to (a) the exercise of the Issued Options or the Management Options granted by the Company as at the date of adoption of these Articles, or (b) the fulfilment of the contractual obligations outlined in Clause 4 of the Investment Agreement (the

"Permitted Allotments")) then the Initial Subscribers shall, contemporaneously with the completion of such issue, transfer with full title guarantee and for no consideration such number of B Ordinary Shares (the "**Dilution Shares**") to the Investors as would when taken together with A Ordinary Shares issued to the Investors pursuant to Clause 3.2 of the Investment Agreement but excluding any Shares issued pursuant to Article 5.3 result in the Investors and/or their respective successors holding the same percentage of the equity share capital of the Company as they held immediately after Completion. In the event that any Initial Subscriber has not completed the transfer of their respective Dilution Shares to any Investor within 7 days of completion of such equity issue, each such Initial Subscriber will be deemed to have irrevocably appointed each of the Directors severally to be his attorney to execute any stock transfer form and to do such other things as may be necessary or desirable to transfer the relevant Dilution Shares pursuant to this Article 5.1.

5.2 The Shareholders shall procure that the Company shall redesignate any Dilution Shares transferred to the Investors in accordance with Article 5.1 as A Ordinary Shares. Each holder of Shares hereby waives any right of pre-emption which it may have in respect of any Dilution Shares and is hereby deemed to consent to any transfer of Dilution Shares in accordance with Article 9.6.

5.3 In the event that the Company proposes to issue any Shares in the equity share capital of the Company (other than Permitted Allotments) at a price below the Trigger Price (the "**Equity Offer Price**") any Investor shall be entitled to participate in any such issue at the Equity Offer Price in proportion to the number of Shares held by such Shareholder at the date of the offer (including, for the avoidance of doubt, any Shares transferred or to be transferred pursuant to Article 5.1).

6 ISSUE OF SHARES

6.1 The directors are generally and unconditionally authorised to allot relevant securities (within the meaning of Section 80(2) of the Act) on such terms and at such time or times as they may in their discretion think fit; provided that:

- (a) the maximum nominal amount of relevant securities to be allotted in pursuance of such authority shall be an amount equal to the authorised but unissued share capital of the Company; and
- (b) this authority shall expire, unless sooner revoked or altered by the Company in general meeting, on the expiry of the period of five years from the date of the passing of the resolution by virtue of which this Article was adopted as part of the Articles provided that the Company may before such expiry make one or more offers or agreements which would or might require relevant securities to be allotted after such expiry and the directors may allot relevant securities after such authority has expired in pursuance of every such offer or agreement as if the power conferred hereby had not expired.

6.2 The authority conferred by this Article 6 is in substitution for each (if any) other authority already given pursuant to the said Section 80 whether contained in earlier articles of association of the Company or otherwise and each (if any) such earlier authority is hereby revoked but without prejudice to the validity of any allotment offer or agreement made pursuant to any such earlier authority before the date of adoption of these Articles.

6.3 Section 89(1) and Sections 90(1) to (6) of the Act shall not apply to the Company.

6.4 Except with the prior consent in writing of the Investor Majority, any Shares which are from time to time unissued shall, before issue, be offered by the directors in the first instance to

all holders of fully paid Shares at the date of the offer. Every such offer shall be in writing, shall be in identical terms for each holder, shall state the number of the Shares to be issued, the terms of issue, the aggregate number of Shares in issue (differentiating between fully paid and partly or nil paid shares), the number of Shares held by the holder to whom the offer is addressed (differentiating between fully paid and partly or nil paid shares) and shall be subject to the following conditions, which shall be incorporated in such offer:

- (a) that any acceptance thereof (which may be as regards all or any of the Shares offered) shall be in writing and be delivered to the registered office of the Company within a period of 14 days from the date of service of the said offer;
- (b) that in the event of the aggregate number of Shares accepted exceeding the aggregate number of Shares included in such offer, the holders accepting shall be entitled to receive, and bound to accept, an allocation of either the number of Shares accepted by them respectively or a proportionate number of the Shares offered according to the proportion which the number of fully paid Shares held by the accepting holder bears to the aggregate number of fully paid Shares held by all the accepting holders at the date of the offer, whichever number be less; and
- (c) that any holders to whom such offer shall have been made and whose requirements shall not have been fully met by such allocation shall further be entitled to receive, and bound to accept, an allocation among them of any surplus Shares in proportion, as nearly as may be, to the number of Shares accepted by them respectively in excess of the number of Shares to which they may respectively be entitled on the first allocation thereof as aforesaid.

6.5 The Regulations regarding the service of notices contained in Table A shall apply to any offers made by the directors in terms of Article 6.4.

6.6 If any such offer shall not be accepted in full, the directors may within three months after the date of such offer dispose of any Shares comprised therein and not accepted as aforesaid to such person or persons as they may think fit but only at the same price and upon the same terms as to payment, if any, as were specified in such offer.

7 LIEN

7.1 The lien conferred by Regulation 8 shall attach to all Shares of any class, and to all Shares registered in the name of any Member for all money presently payable by him or his estate to the Company, whether he is their sole registered holder or one of two or more joint holders. Regulation 8 shall be modified accordingly.

7.2 All Shares to be sold in the enforcement of the Company's lien or rights of forfeiture shall be offered in accordance with Article 11 (Compulsory Transfers) as if a Deemed Transfer Notice (as defined in Article 11.2) were deemed given in respect of such Shares.

8 TRANSFER OF SHARES - GENERAL PROVISIONS

8.1 The Board shall not register the transfer of any Share or any interest in any Share unless the transfer:-

- (a) is permitted by Article 9 (Permitted Transfers); or
- (b) is made in accordance with Article 10 (Voluntary Transfers) or Article 11 (Compulsory Transfers);

and, in any such case, is not prohibited under Article 15 (Prohibited Transfers). The Directors may (in their absolute discretion and without assigning any reason therefore) refuse to register the transfer of a share unless the transfer is carried out in accordance with these Articles.

- 8.2 For the purpose of ensuring that a transfer of Shares is in accordance with these Articles or that no circumstances have arisen whereby a Member may be bound to give or be deemed to have given a Transfer Notice the Board may from time to time require any Member or any person named as transferee in any transfer lodged for registration to furnish to the Board such information and evidence as they deem relevant for such purpose.
- 8.3 *Failing such information or evidence being furnished to their reasonable satisfaction within a reasonable time after request under Article 8.2 the Board may (with the approval of an Investor Majority) in their absolute discretion refuse to register the transfer in question or (with the approval of an Investor Majority where no transfer is in question) require by notice in writing to the Member(s) concerned that a Transfer Notice be given in respect of the Shares concerned.*
- 8.4 If such information or evidence requested under Article 8.2 discloses to the satisfaction of the Board in their absolute discretion (with the approval of an Investor Majority) that circumstances have arisen whereby a Member may be bound to give or be deemed to have given a Transfer Notice the Board may in their absolute discretion (with the approval of an Investor Majority) by notice in writing to the Member(s) concerned require that a Transfer Notice be given in respect of the Shares concerned.
- 8.5 An obligation to transfer a Share under these Articles shall be deemed to be an obligation to transfer the entire legal and beneficial interest in such Share free from any lien, charge or encumbrance.
- 8.6 Save as expressly permitted by these Articles no arrangement shall be entered into by any Member whereby the terms upon which that Member holds any Shares are to be varied if as a result any interest in those Shares is varied, disposed of or created or extinguished.
- 8.7 *Regulations 30 and 31 shall be modified to reflect the provisions of this Article 8 and Articles 9 to 15 (inclusive).*

9 PERMITTED TRANSFERS

9.1 Further definitions

For the purposes of Articles 9 to 15:-

- (a) **"acting in concert"** has the meaning ascribed to it in the City Code on Takeovers and Mergers as in force and construed at the date of adoption of these Articles;
- (b) **"Family Member"** means, in relation to a Member, any of his mother, father, spouse (or widow or widower), children, sons-in-law, daughters-in-law, grandchildren (including step and adopted children and grandchildren) and other lineal ascendants or descendants;
- (c) **"Family Shares"** means, in relation to a Member, any Shares for the time being held by that Member or any of his Family Members or trustees of his Family Trust;

- (d) **"Family Trust"** means, in relation to a Member, a trust which does not permit any of the settled property or the income from it to be applied otherwise than for the benefit of that Member or any of his Family Members and under which no power of control over the voting powers conferred by any Shares, the subject of the trust is capable of being exercised by, or being subject to the consent of, any person other than the trustees or such Member or any of his Family Members;
- (e) **"a member of the same group"** means, in relation to a body corporate, any company which is from time to time a holding company of that body corporate or a subsidiary of that body corporate or a subsidiary of any holding company of which that body corporate is also a subsidiary;
- (f) **"permitted transfer"** means any transfer of Shares expressly permitted under this Article 9.

9.2 **Family Members and Family Trusts**

- (a) Subject to Articles 9.2(b) to 9.2(e) (inclusive), Article 9.4, Article 9.7 and to Article 15, any Member who is an individual may at any time transfer Shares held by him to a person or persons shown to the reasonable satisfaction of the Board to be:
 - (i) a Family Member of his; or
 - (ii) trustees to be held under a Family Trust for him.
- (b) No transfer of Shares shall be made under Article 9.2(a):
 - (i) unless an Investor Majority has confirmed in writing its satisfaction:
 - 1) with the terms of the instrument constituting the relevant trust and in particular with the powers of the trustees including but not limited to the express power to give warranties and indemnities on any disposal of trust property;
 - 2) with the identity of the trustees and the procedures for the appointment and removal of trustees;
 - 3) with the restrictions on changes in the terms of the trust instrument and on distributions by the trustees; and
 - 4) that none of the costs incurred in establishing or maintaining the relevant Family Trust will be payable by any member of the Group; and
 - (ii) unless the aggregate number of Shares held by that Member following that transfer exceeds the aggregate number of Shares held by that Member's Family Trusts and Family Members.
- (c) Where Shares are held by trustees under a Family Trust:-
 - (i) those Shares may, on any change of trustees, be transferred by those trustees to any new trustee(s) of that Family Trust whose identity has been approved in writing by an Investor Majority;

- (ii) those Shares may at any time be transferred by those trustees to the settlor of that trust or any other person to whom the settlor could have transferred them under Article 9.2(a) if he had remained the holder of them; and
 - (iii) if and whenever any of those Shares cease to be held under a Family Trust (other than by virtue of a transfer made under Article 9.2(c)(ii)), the trustees shall forthwith give a Transfer Notice (as defined in Article 10.1) in respect of all the Shares then held by those trustees and in any event within 28 days of the Shares ceasing to be so held.
- (d) If any person has acquired Shares as a Family Member of a Member by way of one or more permitted transfers and that person ceases to be a Family Member of that Member, that person shall forthwith transfer all the Shares then held by that person back to that Member, for such consideration as they agree, within 28 days of the cessation or, in default of such agreement, at the Market Value (calculated in accordance with Article 10.15) and if they do not do so within 28 days of the date upon which the person ceases to be a Family Member the directors may require the Transferee to serve a Transfer Notice in respect of such Shares.
- (e) The personal representatives of a deceased Member are permitted under these Articles, within 12 months of the death of such deceased Member, to become registered as the holders of any of the deceased Member's Shares and, if such personal representatives elect to do so within such 12 month period, such Shares may at any time be transferred by those personal representatives under this Article 9.2 to any person to whom the deceased Member could have transferred such Shares under this Article 9 if he had remained the holder of them. No other transfer of such Shares by personal representatives shall be permitted under this Article 9.

9.3 Groups of companies

- (a) Subject to Article 9.3(b), Article 9.4, Article 9.7 and to Article 15, any Member which is a body corporate may at any time transfer any Shares held by it to a member of the same group.
- (b) Where Shares have been transferred under Article 9.3(a) (whether directly or indirectly or by a series of such transfers) from a Member (the "**Transferor**") to a member of the same group as the Transferor (the "**Transferee**") and subsequent to such transfer the Transferee ceases to be a member of the same group as the Transferor, the Transferee shall forthwith transfer all the Shares held by it to the Transferor, for such consideration as they agree and if they do not do so within 28 days of the date upon which the Transferee ceases to be a member of the same group the directors may with the consent of an Investor Majority require the Transferee to serve a Transfer Notice in respect of such Shares.

9.4 West Coast

- (a) Subject to Article 9.4(b), Article 9.7 and to Article 15, West Coast shall be entitled to transfer or dispose of any shares, or any interest in any Shares, or enter into an agreement or arrangement to do any of the foregoing, to one or more of:
 - (i) the Hunter Foundation (a Scottish Charity with registered number SC27532); or

- (ii) any partnership in which TB Hunter owns not less than a 75% economic and voting interest (a "**TBH Partnership**"); or
 - (iii) any company controlled by TB Hunter or a TBH Partnership at the relevant time; or
 - (iv) any trust of which TB Hunter or any person referred to in Article 9.4 is the beneficiary; or
 - (v) any parent, spouse or life partner (or widow) or child or grandchild of TB Hunter.
 - (b) Where Shares have been transferred under Article 9.4(a) (whether directly or indirectly or by a series of such transfers) from West Coast (the "**Seller**") to a person entitled to receive Shares in accordance with Article 9.4(a) (the "**Buyer**") and subsequent to such transfer the Buyer ceases to be a person entitled to receive Shares in accordance with Article 9.4(a); the Buyer shall forthwith transfer all the Shares held by it to the Seller, for such consideration as they agree and if they do not do so within 28 days of the date upon which the Buyer ceases to be a person entitled to receive Shares in accordance with Article 9.4(a) the directors may require the Buyer to serve a Transfer Notice in respect of such Shares.
- 9.5 Subject to Article 9.7 and to Article 15, (i) MH and MS shall be entitled to transfer any Shares held by MS and MH respectively to JB pursuant to the Ballard Side Letter; and (ii) CE shall be entitled to transfer any Shares held by CE to West Coast pursuant to the West Coast Side Letter.
- 9.6 **With consent**
- Subject to Article 15, a Member may transfer any Share to any person at any time with the prior written consent of an Investor Majority.
- 9.7 **Entire interest**
- Any transfer of any Share pursuant to this Article 9 shall only be treated as a permitted transfer for the purposes of these Articles if it is a transfer of the entire legal and beneficial interest in such Share, free from any lien, charge or other encumbrance (save for any interest of beneficiaries under the relevant Family Trust, where applicable).
- 10 **VOLUNTARY TRANSFERS**
- 10.1 Except as expressly permitted under Article 9 (Permitted Transfers), any Member who wishes to transfer any Share or any interest in any Share (a "**Vendor**") shall before transferring or agreeing to transfer such Share or any interest in it, serve notice in writing (a "**Transfer Notice**") on the Company of his wish to make that transfer.
- 10.2 In the Transfer Notice the Vendor shall specify:-
- (a) the number and class of Shares he wishes to transfer (the "**Sale Shares**");
 - (b) the identity of the person (if any) to whom the Vendor wishes to transfer the Sale Shares;
 - (c) the price per Share at which the Vendor wishes to transfer the Sale Shares (the "**Proposed Price**");

- (d) any other terms relating to the transfer of the Sale Shares; and
 - (e) whether the Transfer Notice is conditional upon all (and not part only) of the Sale Shares being sold pursuant to the following provisions of this Article 10 (a "**Total Transfer Condition**").
- 10.3 Each Transfer Notice shall:
- (a) constitute the Company as the agent of the Vendor for the sale of the Sale Shares on the terms of this Article 10;
 - (b) save as provided in Article 10.5, be irrevocable; and
 - (c) not contain or be deemed to contain a Total Transfer Condition unless the same is both expressly stated therein and permitted by these Articles.
- 10.4 The Sale Shares shall be offered for purchase in accordance with this Article 10 at a price per Sale Share (the "**Sale Price**") agreed between the Vendor and the Board or, in default of such agreement by the end of the 20th business day after the date of service of the Transfer Notice, the lower of:-
- (a) the Proposed Price, in which case for the purpose of these Articles the Sale Price shall be deemed to have been agreed at the end of that 20th business day; and
 - (b) if the Board or an Investor Majority so elects within that 20 business day period after the date of service of the Transfer Notice, the price per Sale Share determined by the Valuers to be in their written opinion the open market value of each Sale Share in accordance with Article 10.15 (the "**Market Value**") as at the date of service of the Transfer Notice, in which case for the purposes of these Articles the Sale Price shall be deemed to have been determined on the date of the receipt by the Company of the Valuers' report.
- 10.5 If the Market Value determined and reported by the Valuers under Article 10.4(b) is less than the Proposed Price, the Vendor may revoke the Transfer Notice by written notice given to the Board within the period of 7 business days after the date the Board serves on the Vendor the Valuers' report of the Market Value (the "**Withdrawal Period**").
- 10.6 The Board shall at least 10 business days after and no more than 20 business days after the Sale Price has been agreed or determined give an offer notice (an "**Offer Notice**") to all Members to whom the Sale Shares are to be offered in accordance with these Articles.
- 10.7 An Offer Notice shall expire 15 business days after its service and shall:-
- (a) specify the Sale Price;
 - (b) contain the other information set out in the Transfer Notice; and
 - (c) invite the relevant offerees to apply in writing, before expiry of the Offer Notice, to purchase the numbers of Sale Shares specified by them in their application.
- 10.8 By the Offer Notice the Sale Shares shall be offered to Members holding shares pro rata to their holding (but no Shares shall be treated as offered to the Vendor or any other Member who is then bound to give, has given or is deemed to have given a Transfer Notice).

- 10.9 After the expiry date of the Offer Notice, (or, if earlier, after valid applications being received for all the Sale Shares offered in accordance with Article 10.7), the Board shall allocate the Sale Shares in accordance with the applications received, subject to the other provisions of these Articles and Table A, save that:-
- (a) if there are applications from any class of offerees for more than the number of Sale Shares available for that class of offerees, the Sale Shares shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Sale Shares than the maximum number applied for by him) to the number of Shares then held by them respectively;
 - (b) if it is not possible to allocate any of the Sale Shares without involving fractions, they shall be allocated amongst the applicants of each class in such manner as the Board shall think fit; and
 - (c) if the Transfer Notice contained a Total Transfer Condition, no allocation of Sale Shares shall be made unless all the Sale Shares are allocated.
- 10.10 If after the expiry date of the last Offer Notice, any of the Sale Shares remain unallocated, the Vendor may transfer the Sale Shares to the Proposed Transferee on the terms set out in the Transfer Notice and each Member of the Company shall be deemed to have irrevocably waived their individual rights of pre-emption in respect of such transfer.
- 10.11 Within 5 business days of the expiry date of the last Offer Notice, the Board shall give notice in writing (a "Sale Notice") to the Vendor and to each person to whom Sale Shares have been allocated (each a "Purchaser") specifying the name and address of each Purchaser, the number of Sale Shares agreed to be purchased by him and the total price payable for them.
- 10.12 Completion of a sale and purchase of Sale Shares pursuant to a Sale Notice shall take place at the registered office of the Company at the time specified in the Sale Notice when the Vendor shall, upon payment to him by a Purchaser of the Sale Price in respect of the Sale Shares allocated to that Purchaser, transfer those Sale Shares and deliver the relative Share certificates to that Purchaser.
- 10.13 The Vendor may not sell all or any of those Sale Shares for which a Sale Notice has not been given.
- 10.14 If a Vendor fails for any reason (including death) to transfer any Sale Shares when required pursuant to this Article 10:-
- (a) the Board may authorise any person (who shall be deemed to be irrevocably appointed as the attorney of that Vendor for the purpose) to execute the necessary transfer of such Sale Shares and deliver it on the Vendor's behalf;
 - (b) the Company may receive the purchase money for such Sale Shares from the Purchaser and shall upon receipt (subject, if necessary, to the transfer being duly stamped) register the Purchaser as the holder of such Sale Shares;
 - (c) the Company shall hold such purchase money in a separate bank account on trust for the Vendor but shall not be bound to earn or pay interest on any money so held;
 - (d) the Company's receipt for such purchase money shall be a good discharge to the Purchaser who shall not be bound to see to the application of it; and

- (e) after the name of the Purchaser has been entered in the register of Members in purported exercise of the power conferred by this Article 10.14, the validity of the proceedings shall not be questioned by any person.

10.15 If instructed to report on Market Value under Article 10.4(b) the Valuers shall:-

- (a) act as expert and not as arbitrator and their written determination shall be final and binding on the Members (except in the case of manifest error); and
- (b) proceed on the basis that the open market value of each Sale Share shall be the sum which a willing purchaser would agree with a willing vendor to be the purchase price for all the class of Shares of which the Sale Shares forms part, divided by the number of issued Shares and applying no premium or discount to take into account to the size of the holding the subject of the Transfer Notice and/or any restrictions on the transferability of the Sale Shares.

10.16 The Company will use its reasonable endeavours to procure that the Valuers deliver their report on the Market Value to the Board and to the Vendor within 28 days of being requested to do so.

10.17 The Valuers' fees for reporting on Market Value shall be paid as to one half by the Vendor and as to the other half by the Purchasers *pro rata* to the number of Sale Shares purchased by them unless:-

- (a) the Vendor revokes the Transfer Notice pursuant to Article 10.5; or
- (b) none of the Sale Shares are purchased pursuant to this Article 10;

when the Vendor shall pay all the Valuers' fees.

11 COMPULSORY TRANSFERS

11.1 In this Article 11, a "**Transfer Event**" occurs, in relation to any Member:-

- (a) if that Member being an individual:
 - (i) has a bankruptcy order made against him or is declared bankrupt by any court of competent jurisdiction; or
 - (ii) dies; or
 - (iii) suffers from mental disorder and is admitted to hospital or becomes subject to any court order referred to in Regulation 81(c) of Table A,

and within the following twelve months either an Investor Majority notifies the Company or the Board resolves that such event is a Transfer Event in relation to that Member for the purposes of this Article 11; or

- (b) if that Member makes or offers or purports to make any arrangement or composition with his creditors generally and within the following twelve months either an Investor Majority notifies the Company or the Board resolves that such event is a Transfer Event in relation to that Member for the purposes of this Article 11; or
- (c) if that Member being a body corporate:-

- (i) has a receiver, manager or administrative receiver appointed over all or any part of its undertaking or assets;
 - (ii) has an administrator appointed in relation to it; or
 - (iii) enters into liquidation (other than a voluntary liquidation for the purpose of a *bona fide* scheme of solvent amalgamation or reconstruction); or
 - (iv) has any equivalent action in respect of it taken in any jurisdiction,

and within the following twelve months either an Investor Majority notifies the Company or the Board resolves that such event is a Transfer Event in relation to that Member for the purposes of this Article 11; or
 - (d) subject to Article 11.7, if a Member who is at any time a director, employee or consultant of a member of the Group:-
 - (i) ceases to hold such office or employment or perform such services (other than by circumstances falling within Articles 11.1(a) or 11.1(b)); and
 - (ii) within the following twelve months either an Investor Majority notifies the Company or the Board shall resolve that such event is a Transfer Event in relation to that Member for the purposes of this Article 11; or
 - (e) if a Member or any Family Member or the trustees of any Family Trust of a Member shall attempt to deal with or dispose of any Share or any interest in it otherwise than in accordance with Article 9 (Permitted Transfers), Article 10 (Voluntary Transfers) and this Article 11 (Compulsory Transfers) or in breach of Article 15 (Prohibited Transfers) and within the following twelve months either an Investor Majority notifies the Company or the Board resolves that such event is a Transfer Event in relation to that Member for the purposes of this Article 11; or
 - (f) if a Member shall for any reason not give a Transfer Notice in respect of any Shares or transfer any Shares (as the case may be) as required by Article 8.3, 9.2(c)(iii), 9.2(d) or 9.3(b) and within the following twelve months either an Investor Majority notifies the Company or the Board resolves that such event is a Transfer Event in relation to that Member for the purposes of this Article 11.1.
- 11.2 Upon the giving of a notification or passing of resolution under Article 11.1 that an event is a Transfer Event the Member in respect of whom the Transfer Event has occurred (the "**Relevant Member**") and any other Member who has acquired Shares from him under a permitted transfer (directly or by means of a series of two or more permitted transfers pursuant to Article 9) shall be deemed to have immediately given a Transfer Notice in respect of all the Shares then held by such Member(s) (a "**Deemed Transfer Notice**").
- 11.3 For the purpose of Articles 11.2 and 11.4, any Shares received by way of rights or on a capitalisation by any person to whom Shares may have been transferred (directly or by means of a series of two or more permitted transfers) shall also be treated as included within the Deemed Transfer Notice.
- 11.4 A Deemed Transfer Notice shall supersede and cancel any then current Transfer Notice insofar as it relates to the same Shares except for Shares which have then been validly transferred pursuant to that Transfer Notice.

- 11.5 Notwithstanding any other provision of these Articles, if an Investor Majority so resolves in relation to any Shares, any Member holding Shares in respect of which a Deemed Transfer Notice is deemed given shall not be entitled to exercise any voting rights at general meetings of the Company in respect of those Shares on and from the date of the relevant Deemed Transfer Notice until the entry in the register of Members of the Company of another person as the holder of those Shares.
- 11.6 The Shares the subject of a Deemed Transfer Notice shall be offered for sale in accordance with Article 10 as if they were Sale Shares in respect of which a Transfer Notice had been given and treating as the Vendor the person who is deemed to have given the Deemed Transfer Notice save that:-
- (a) subject to Article 11.7, the Sale Price shall be a price per Sale Share agreed between the Vendor and the Board with the consent of an Investor Majority or, in default of agreement within 15 business days after the passing of the resolution under Article 11.1 that the same is a Transfer Event, the Market Value;
 - (b) a Deemed Transfer Notice shall be deemed not to contain a Total Transfer Condition and shall be irrevocable whether under Article 10.5 or otherwise;
 - (c) the Sale Shares shall be sold together with all rights, attaching thereto as at the date of the Transfer Event, including the right to any dividend declared or payable on those Shares after that date; and
 - (d) Article 15 shall apply.
- 11.7 The Sale Price for any Sale Shares which are the subject of a Deemed Transfer Notice given as a consequence of a Transfer Event falling within Article 11.1(d):-
- (a) if the Relevant Member is a Good Leaver (as defined in Article 11.9(a)) be their Market Value; and
 - (b) if the Relevant Member is a Bad Leaver (as defined in Article 11.9(b)) be the Issue Price of the Sale Shares less a discount as follows:-
 - (i) if the Relevant Member ceases to hold office or employment or perform services within one year of the Completion Date a discount of 50%;
 - (ii) if the Relevant Member ceases to hold office or employment or perform services on or after the first anniversary of the Completion Date but before the second anniversary of the Completion Date a discount of 25%;
 - (iii) if the Relevant Member ceases to hold office or employment or perform services after the second anniversary of the Completion Date, no discount.
- 11.8 A dispute as to whether Article 11.7(a) or 11.7(b) applies to any Sale Shares shall not affect the validity of a Deemed Transfer Notice but any person who acquires Sale Shares (the "**Purchaser**") pursuant to a Deemed Transfer Notice while such a dispute is continuing shall not pay any monies to the Vendor in accordance with Article 11.7(b) (assuming, that the Relevant Member is a Bad Leaver) and shall pay the Market Value to the Company. The Company shall hold that discount in a separate bank deposit account as trustee to pay it, and interest earned thereon, upon final determination of the dispute as follows:-
- (a) to the Purchaser(s) in the case of a Bad Leaver; and

- (b) to the Vendor in the case of a Good Leaver (as defined in Article 11.9(a)).

Provided always that if the Vendor and the Purchaser(s) otherwise agree in writing and notify such agreement to the Company it shall hold and deal with the moneys paid into such account and interest as such agreement and notice may specify even though the issue of whether the Relevant Member was a Good Leaver or a Bad Leaver has not been resolved.

11.9 In Articles 11.7 and 11.8:-

- (a) **"Good Leaver"** means a Relevant Member who ceases to be a director, employee or consultant of the Company or any of its subsidiaries and:-

- (i) the cessation occurs as a result of death, illness (including mental illness), permanent disability, permanent incapacity through ill-health, redundancy within the meaning of the Employment Rights Act 1996, wrongful dismissal, in circumstances where he has been dismissed from employment and such dismissal is found to have been unfair by an industrial tribunal or any appellate body thereof, or retirement on reaching normal retirement age; or
- (ii) the cessation occurs for any other reason where the Relevant Member is not in the opinion of the Board in breach of his obligations to the Company or the Board.

- (b) **"Bad Leaver"** means any Relevant Member who ceases to be an employee or consultant of the Company or any of its subsidiaries as a result of any reason other than those set out in Clause 11.9(a) above.

11.10 For the purpose of Article 11.1(d), the date upon which a Member ceases to hold office as an employee or consultant shall:-

- (a) where the employer terminates or purports to terminate a contract of employment by giving notice to the employee or consultant of the termination of the employment or consultancy agreement, (whether or not the same constitutes a wrongful or unfair dismissal), be the date of that notice or, if later, the date (if any) for the termination expressly stated in such notice (whether or not a payment is made by the employer in lieu of all or part of the notice period required to be given by the employer in respect of such termination);
- (b) where the employee or consultant terminates or purports to terminate a contract of employment or consultancy agreement by giving notice to the employer of the termination of the employment or consultancy agreement (whether or not he is lawfully able so to do), be the date of that notice or, if later, the date (if any) for the termination expressly stated in such notice;
- (c) subject to Article 11.10(a) and 11.10(b) where an employer or employee wrongfully repudiates the contract of employment and the other respectively accepts that the contract of employment has been terminated, be the date of such acceptance by the employee or employer respectively;
- (d) subject to Article 11.10(a) and 11.10(b) where the Company or a consultant wrongfully repudiates the consultancy agreement and the other respectively accepts that the consultancy agreement has been terminated, be the date of such acceptance by the Company or consultant respectively;

- (e) where a contract of employment or consultancy agreement is terminated under the doctrine of frustration, be the date of the frustrating event; and
 - (f) where a contract of employment or consultancy agreement is terminated for any reason other than in the circumstances set out in Article 11.10(a) to (e) (inclusive) be the date on which the action or event giving rise to the termination occurs.
- 11.11 Once a Deemed Transfer Notice shall under these Articles be deemed to have been served in respect of any Share then no permitted transfer under Article 9 may be made in respect of such Share unless and until a Offer Notice shall have been served in respect of such Share and the period of allocation permitted under Article 10 shall have expired without such allocation.
- 12 **PULL ALONG**
- 12.1 If any one or more Members holding at least 60% of the Ordinary Shares (together the "**Selling Shareholders**") wish to transfer all their Ordinary Shares (the "**Relevant Shares**") to a Third Party Purchaser on arms length terms, the Selling Shareholders shall have the option (the "**Pull Option**") to require all the other holders of Ordinary Shares to transfer all their shares with full title guarantee to the Third Party Purchaser or as the Third Party Purchaser shall direct in accordance with this Article 12.
- 12.2 The Selling Shareholders may exercise the Pull Option by giving notice to that effect (a "**Pull Notice**") to all other Members (the "**Pulled Shareholders**") at any time before the registration of the transfer of Ordinary Shares resulting in the Change of Control. A Pull Notice shall specify that the Pulled Shareholders are required to transfer all their Ordinary Shares (the "**Pulled Shares**") pursuant to Article 12.1 to the Third Party Purchaser, the price at which the Pulled Shares are to be transferred (determined in accordance with Article 12.4) *the proposed date of transfer and the identity of the Third Party Purchaser.*
- 12.3 A Pull Notice is irrevocable but the Pull Notice and all obligations thereunder will lapse if for any reason there is not a Change of Control caused by a transfer of Ordinary Shares by the Selling Shareholders to the Third Party Purchaser within 60 days after the date of the Pull Notice.
- 12.4 The Pulled Shareholders shall be obliged to sell the Pulled Shares at the price specified in the Pull Notice which shall attribute an equal value to all Ordinary Shares (including the Relevant Shares).
- 12.5 So far as is reasonably practicable the Company shall use reasonable endeavours to ensure that the Pulled Shareholders are given sufficient information as may be necessary for them to be able to form a reasonable view as to the nature of the proposed transaction.
- 12.6 Completion of the sale of the Pulled Shares shall take place on the same date as the date proposed for completion of the sale of the Selling Shareholders' Shares unless:-
- (a) all of the Pulled Shareholders and the Selling Shareholders agree otherwise; or
 - (b) that date is less than 7 days after the date of the Pull Notice, when it shall be deferred until the 7th day after the date of the Pull Notice.
- 12.7 Each of the Pulled Shareholders shall on service of the Pull Notice be deemed to have irrevocably appointed each of the Selling Shareholders severally to be his attorney to execute any stock transfer and to do such other things as may be necessary or desirable to accept, transfer and complete the sale of the Pulled Shares pursuant to this Article 12.

- 12.8 Save as aforesaid, the provisions of this Article 12 shall prevail over any contrary provisions of these Articles including rights of pre-emption and other restrictions contained in these Articles which shall not apply on any sale and transfer of Ordinary Shares to the Third Party Purchaser named in a Pull Notice. Any Transfer Notice or Deemed Transfer Notice served in respect of any Ordinary Share shall automatically be revoked by the service of a Pull Notice.

13 TAG ALONG

- 13.1 Subject to Article 12 (*Pull Along*) but notwithstanding any other provision in these Articles no sale or transfer or other disposition of any interest in any Ordinary Shares (the "**Specified Shares**") shall have any effect if it would result in a Change of Control unless before the transfer is lodged for registration the Third Party Purchaser has made a *bona fide* offer in accordance with these Articles to purchase at the Specified Price (defined in Article 13.4), all the Ordinary Shares held by Members who are not acting in concert or otherwise connected with the Third Party Purchaser (the "**Uncommitted Shares**").
- 13.2 So far as is reasonably practicable the Company shall use reasonable endeavours to ensure that the holders of the Uncommitted Shares are given sufficient information as may be necessary for them to be able to form a view as to the nature of the proposed transaction.
- 13.3 An offer made under Article 13.1 shall be in writing, given in accordance with Article 24, open for acceptance for at least 7 days, and shall be deemed to be rejected by any Member who has not accepted it in accordance with its terms within the time period prescribed for acceptance and the consideration thereunder shall be settled in full on completion of the purchase and within 30 days of the date of the offer.
- 13.4 For the purposes of this Article 13:-
- (a) the expression "**Specified Price**" means in the case of Uncommitted Shares which are Equity Shares a price per share at least equal to the highest price paid or payable by the Third Party Purchaser or persons acting in concert with him or connected with him for any Equity Shares within the last six months (including to avoid doubt the price proposed to be paid for the Specified Shares) plus an amount equal to the relevant proportion (being the proportion to which the Uncommitted Shares bears to the whole of the issued Shares in the capital of the Company) of any other consideration (in cash or otherwise) received or receivable by the holders of the Specified Shares which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the price paid or payable for the Specified Shares provided always that an equal value shall be attributed to all Shares including the Specified Shares.
 - (b) If any part of the Specified Price is payable otherwise than in cash any Member may require, as a condition of his acceptance of the offer, to receive in cash on transfer all or any of the price offered for his Uncommitted Shares.
 - (c) If the Specified Price or its cash equivalent cannot be agreed between the Third Party Purchaser and Member holding 75 per cent of the Uncommitted Shares, within 7 days of the proposed sale or transfer referred to in Article 13.1 it may be referred to the Valuers by any Shareholder and, pending its determination, the sale or transfer referred to in Article 13.1 shall have no effect.

14 **REDESIGNATION**

14.1 Notwithstanding any other provisions of these Articles, any A Ordinary Shares which are the subject of a Transfer Notice or Deemed Transfer Notice and which are acquired by any holder of B Ordinary Shares shall be automatically redesignated as B Ordinary Shares. The relevant amount of the authorised and issued share capital of the Company and relevant numbers of A Ordinary Shares shall automatically be redesignated as B Ordinary Shares.

14.2 Notwithstanding any other provisions of these Articles, any B Ordinary Shares which are the subject of a Transfer Notice or Deemed Transfer Notice and which are acquired by any holder of A Ordinary Shares shall be automatically redesignated as A Ordinary Shares. The relevant amount of the authorised and issued share capital of the Company and relevant numbers of B Ordinary Shares shall automatically be redesignated as A Ordinary Shares.

15 **PROHIBITED TRANSFERS**

Notwithstanding any other provision of these Articles, no transfer of any Share shall be registered if it is to:

- (a) Any minor, undischarged bankrupt, trustee in bankruptcy or person of unsound mind; or
- (b) any person (other than a Third Party Purchaser named in a Pull Notice) who has not executed a Deed of Adherence to, and in the manner required by, the Investment Agreement.

16 **DEADLOCK**

16.1 The following provisions of this Article 16 shall apply in circumstances where:

16.1.1 a matter requiring the prior written consent of the Investor Majority pursuant to Clause 7 of the Investment Agreement has arisen and the consent of the Investor Majority has not been received; or

16.1.2 a resolution is proposed at a duly convened meeting of the Shareholders and a quorum is not achieved at the meeting and a quorum is also not achieved at any adjourned meeting; or

16.1.3 a resolution is proposed at a duly convened meeting of the Board and a quorum is not achieved at the meeting and a quorum is also not achieved at any adjourned meeting; or

any such circumstances being hereinafter referred to as "**Deadlock**".

16.2 Within 7 days of any Deadlock occurring each of the Shareholders shall circulate to the other Shareholders a memorandum setting out its position in relation to the Deadlock and the reason why it has adopted such position. Following circulation of such memoranda the Shareholders shall use all reasonable endeavours to resolve the Deadlock.

16.3 If the Deadlock has not been resolved within 21 days of circulation of the memoranda referred to in Article 16.2 above (the "**Cooling Off Period**") then, in the absence of any other agreement between the Shareholders, the provisions of Article 17 shall apply

17 **RUSSIAN ROULETTE**

17.1 If the Shareholders are unable to resolve a Deadlock as provided in Article 16 then the Deadlock Majority may by notice in writing (the "**Roulette Notice**") to be given at any time

within 21 days from the expiry of the Cooling Off Period offer to buy all (but not some only) of the Deadlock Minority's Shares for cash at a price per Share specified in the Roulette Notice (the "**Roulette Specified Price**");

- 17.2 A Roulette Notice shall be irrevocable.
- 17.3 Within 21 days of service of the Roulette Notice, the Deadlock Minority may by notice in writing to the Deadlock Majority (the "**Counter Notice**") either:
 - 17.3.1 elect to purchase all (but not some only) of the Deadlock Majority's Shares at the Roulette Specified Price; or
 - 17.3.2 sell all (but not some only) of their Shares to the Deadlock Majority at the Roulette Specified Price.
- 17.4 If no Counter Notice is served by the Deadlock Minority under Article 17.3 the Deadlock Minority shall be deemed to have accepted the offer in the Roulette Notice.
- 17.5 On deemed acceptance of the Roulette Notice under Article 17.4 the relevant Shareholders shall become bound to sell and purchase as the case may be and completion shall take place within one month of such acceptance or service and in accordance with Article 17.8.
- 17.6 On a service of a Counter Notice under Article 17.3, the relevant Shareholders shall become bound to sell and purchase as the case may be and completion shall take place within three months of such acceptance or service and in accordance with Article 17.8.
- 17.7 Shares purchased pursuant to this Article 17 shall be allocated among the Purchasers (as defined in Article 17.8) in proportion to the number of Shares held by the Purchasers immediately prior to the completion of the sale and purchase pursuant to Article 17.8.
- 17.8 At completion of a sale and purchase of Shares pursuant to this Article 17:
 - 17.8.1 a Shareholder selling Shares (a "**Seller**") shall deliver or procure that there is delivered to the relevant party purchasing Shares (a "**Purchaser**") a duly completed stock transfer form transferring the legal and beneficial ownership of the relevant Shares held by the Seller together with the relevant share certificates and such other documents as the Purchasers may reasonably require to transfer good title to the relevant Shares to the Purchasers;
 - 17.8.2 each Purchaser shall deliver to the Sellers the price due for the Shares held by the Seller (the "**Purchase Price**"); and
 - 17.8.3 the relevant Shares shall be sold by each Seller with full title guarantee.
- 17.9 If the Purchasers fail to pay the Purchase Price on the due date, without prejudice to any other remedy which the Sellers may have, the outstanding balance of the Purchase Price shall accrue interest at a rate equal to 4% above the base rate of Bank of Scotland from time to time.
- 17.10 The Shareholders shall procure the registration (subject to due stamping by the Purchasers) of the relevant Shares transfers effected pursuant to this Article 17 and each Shareholder consents to such transfers pursuant to the Article and the Investment Agreement.
- 17.11 In the event that the Deadlock is not resolved in accordance with Article 17.3 or the procedure in Articles 17.1 to 17.10, the Shareholders shall undertake to take such steps as are necessary to market and procure the sale of all of the business and assets of the

Company during the one year period after the expiry of the Cooling Off Period (the "**Wind Down Period**").

At the end of the Wind Down Period the Shareholders shall take all steps to wind up the Company, including without limitation, casting the necessary votes at a general meeting of the Company to approve the voluntary winding up of the Company.

18 **PROCEEDINGS AT GENERAL MEETINGS**

- 18.1 The quorum at any general meeting of the Company or adjourned general meeting shall be two Members (one being an Investor), present in person or by proxy or (if a corporation) by a duly authorised representative.
- 18.2 No business shall be transacted by any general meeting unless a quorum is present at the commencement of the meeting and also when that business is voted on.
- 18.3 If a general meeting is adjourned under 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 Members present shall form a quorum, and Regulation 41 shall be amended accordingly.
- 18.4 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to exercise a second or casting vote in addition to any other vote he may have at any general meeting or at any separate meeting of the holders of any class of Shares. Regulation 50 shall not apply to the Company.
- 18.5 Regulation 37 shall be amended by the insertion of the words "or the Investor Director acting alone" after the second word of the Regulation.
- 18.6 Regulation 62 shall be amended 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" and by the insertion at the end of the Regulation after the word "invalid" of the words "unless a majority of the Board resolve otherwise".
- 18.7 Regulation 63 shall be amended by the addition of the words ", left or sent" after the word "deposited".

19 **NUMBER OF DIRECTORS**

The number of directors shall not be less than two and there shall be no maximum number.

20 **INVESTOR DIRECTOR**

- 20.1 West Coast may at any time and on more than one occasion appoint any person to be a director (an "**Investor Director**" which expression shall, where the context so permits, include a duly appointed alternate of such a director) and at any time and on more than one occasion remove any Investor Director from office.
- 20.2 There shall not be more than one Investor Director in office at any time.
- 20.3 Any appointment or removal of an Investor Director shall be in writing served on the Company signed on behalf of West Coast and shall take effect at the time it is served on the Company or (if later) the date expressly stated therein, whichever is earlier. Any such appointment or removal by a corporation may be signed on its behalf by its duly authorised representative.

20.4 Notice of meetings of the Board shall be served on the Investor Director who is absent from the United Kingdom at the addresses for service of notice on each Investor under the Investment Agreement. The third sentence of Regulation 88 shall not apply.

20.5 Upon written request by West Coast the Company shall procure that any Investor Director is forthwith appointed as a director of any other member of the Group indicated in such request.

20.6 Regulation 81(e) shall not apply to an Investor Director.

21 ALTERNATE DIRECTORS

21.1 The words "approved by resolution of the directors and" in Regulation 65 shall not apply to an appointment of an alternate director by an Investor Director.

21.2 Regulation 66 shall be amended by the insertion in the first sentence between the words "shall" and "be" of the words "(subject to his giving the Company an address within the United Kingdom at which notice may be served upon him)".

21.3 Regulation 67 shall be amended by the deletion of the words from "but" until the end of that Regulation.

21.4 A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.

21.5 If an alternate director is himself a director or attends any meeting as an alternate director for more than one director, his voting rights shall be cumulative but he shall only be counted once in deciding whether a quorum is present.

22 APPOINTMENT AND RETIREMENT OF DIRECTORS

22.1 Directors shall not be required to retire by rotation. Accordingly-

- (a) Regulations 73, 74, 75 and 80 shall not apply to the Company;
- (b) Regulation 76 shall be amended by the deletion of the words "other than a director retiring by rotation", "or reappointed" and "or reappointment" each time they appear in that Regulation;
- (c) Regulation 77 shall be amended by the deletion of the words "(other than a director retiring by rotation at the meeting)", "or reappointment" and "or reappointed" each time they appear in that Regulation;
- (d) Regulation 78 shall be amended by the deletion of the words "and may also determine the rotation in which any additional directors are to retire";
- (e) Regulation 79 shall be amended by the deletion of the second and third sentences in that Regulation; and
- (f) the last sentence of Regulation 84 shall not apply to the Company.

22.2 The office of a director shall be vacated if both:-

- (a) being an executive director of the Company or any subsidiary he ceases to hold office as an employee or consultant of the Company or any subsidiary without

being appointed or continuing to be an employee or consultant of another member of the group; and

- (b) a majority of the Board so requires.

Regulation 81 shall be extended accordingly.

- 22.3 Regulation 82 shall be amended by the addition of the words "by way of directors' fees" shall be inserted between the words "remuneration" and "as".
- 22.4 Regulation 84 shall be amended by the addition of the words "Unless the contrary shall be provided in the terms of his appointment" at the beginning of the third sentence and the deletion of the fourth sentence.
- 22.5 Regulation 85(c) shall be amended by the addition of the words ", subject to the terms of any contract of employment or consultancy agreement between the Company and the director," between the words "shall" and "not".

23 PROCEEDINGS OF DIRECTORS

- 23.1 Regulation 72 shall be amended by the addition of the words "Any committee shall have power, unless the directors direct otherwise, to co-opt as a member or members of the committee for any specific purposes any person, or persons, not being a director of the Company." at the end of that Regulation.
- 23.2 The chairman of the Board shall not have a second or casting vote at a meeting of the Board. The fifth sentence of Regulation 88 shall not apply to the Company.
- 23.3 The quorum for the transaction of business of the Board shall be two directors, one of whom shall be an Investor Director unless either:-
- (a) an Investor Director or an Investor Majority has previously agreed otherwise in writing; or
- (b) there is no Investor Director in office at that time.
- 23.4 Any director or his alternate may validly participate in a meeting of the Board or a committee of the Board by conference telephone or other form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no group which is larger than any other group, where the chairman of the meeting is.
- 23.5 A director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or proposed contract (within the meaning of section 317 of the Act) with the Company shall declare the nature of his interest at a meeting of the Board or of any committee of the Board in accordance with that section. Subject where applicable to such disclosure a director may vote at any such meeting on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the Company and be counted in determining the quorum. Regulations 94 and 95 shall not apply to the Company.

24 **NOTICES**

- 24.1 Any notice to be given to the Company pursuant to these Articles shall be sent to the *registered office of the Company or presented at a meeting of the Board.*
- 24.2 Any notice to be given pursuant to these Articles may be given by facsimile transmission to the facsimile number maintained at the relevant address of the addressee. Such a notice shall be conclusively deemed to have been properly given at the time shown on the transmission report received by the sender.
- 24.3 The figure "24" shall be inserted in substitution for the figure "48" in the second sentence of Regulation 115. Any notice or other document delivered or left at a registered address otherwise than by post shall be deemed to have been served or delivered on the day it was so delivered or left.

25 **INDEMNITY**

- 25.1 Subject to section 310 of the Act, every director or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities incurred by him in the execution of his duties or in relation to them, including any liability incurred by him in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted or in connection with any application under section 144(3) or (4) or section 727 of the Act in which relief is granted to him by the court, and no director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of his duties or in relation to them.
- 25.2 Pursuant to section 310(3) of the Act the Company may purchase and maintain indemnity insurance cover for any director, officer or auditor of the Company and such indemnity *insurance cover extends to former directors and officers of the Company.*

26 **SHARE CERTIFICATES**

The Company may execute any share certificate, warrant or other document creating or evidencing any security allotted by the Company or any right or option to subscribe granted by the Company under the hand of two directors or any one director and the secretary. Regulation 6 shall be extended accordingly.