

Company number: 05676785

**The Companies Acts 1985 to 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

of

**E-STACK LIMITED**

SATURDAY



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COMPANIES HOUSE

(Adopted by Written Special Resolution dated 18 December 2008)

**1 Preliminary**

- 1.1 The regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 in force at the time of adoption of these Articles ("**Table A**") shall apply to the Company save in so far as they are excluded or varied by these Articles and such regulations (save as so excluded or varied) and these Articles shall be the regulations of the Company.

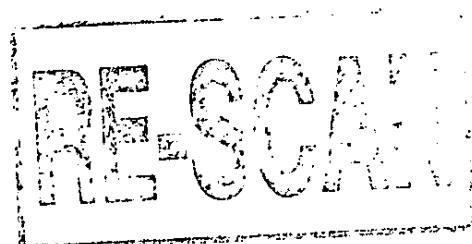
**2 Interpretation**

- 2.1 In these Articles and in Table A the following expressions have the following meanings unless inconsistent with the context:

"**Affiliate**" means in relation to any company, any holding company or subsidiary of such company or any subsidiary of a holding company of such company, in each case within the meaning of sections 736, 736A and 736B CA 1985;

"**Arrears**" means all arrears, accruals and deficiencies of any dividend or other sums payable in respect of the relevant share whether or not earned or declared and irrespective of whether or not the Company has had, at any time, sufficient Available Profits to pay such dividend or sums, together with all interest and other amounts payable thereon

"**Articles**" means these Articles of Association, whether as originally adopted or as from time to time altered by special resolution



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**"Asset Sale"** means the completion of a sale of all or substantially all (as a going concern) of the business and assets of the Company and/or its subsidiaries

**"associated company"** means any subsidiary or holding company of the Company or any other subsidiary of the Company's holding company

**"Auditors"** means the auditors of the Company for the time being or, if the if the Company has lawfully not appointed auditors, its accountants for the time being, or, if in either case such firm is unable or unwilling to act in any particular case, such firm of chartered accountants as may be agreed between the directors of the Company and the proposing transferor (as defined in Article 8.1) or, in default of agreement, as may be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales or any successor body

**"Available Profits"** means profits available for distribution within the meaning of the 1985 Act

**"Board"** means the board of directors of the Company from time to time acting by the resolution of a duly convened and quorate meeting

**"Business days"** means any day other than a Saturday, Sunday or English bank holiday

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

**"CA 2006"** means the Companies Act 2006 for the time being in force;

**"clear days"** in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect

**"communication"** has the same meaning as in the Electronic Communications Act 2000

**"Controlling Interest"** mean an interest in Shares conferring in the aggregate 50% or more of the total voting rights conferred by all the issued Shares in the Company

**"Conversion Ratio"** has the meaning given to such term in Article 4.18;

**"directors"** means the directors for the time being of the Company or (as the context shall require) any of them acting as the board of directors of the Company

**"Employee Benefit Trust"** means any trust set up by the Company from time to time following a recommendation of the directors to hold Shares and to transfer them (or to grant options to acquire them) to employees, officers and consultants of the Company

**"Employee Member"** means a person who is or has been a director and/or an employee of or a consultant to the Company or any of its subsidiaries

**"Event of Default"** means any of those matters set out in Article 4.8

**"executed"** means any mode of execution

**"Family trust"** means a trust which permits the settled property or the income therefrom to be applied only for the benefit of:

- (a) the settlor and/or a Privileged Relation of that settlor; or
- (b) any charity or charities as default beneficiaries (meaning that such charity or charities have no immediate beneficial interest in any of the settled property or the income therefrom when the trust is created but may become so interested if there are no other beneficiaries from time to time except another such charity or charities),

and under which no power of control is capable of being exercised over the votes of any Shares which are the subject of the trust by any person other than the trustees or the settlor or the Privileged Relations of the settlor. For the purposes of this definition **"settlor"** includes a testator or an intestate in relation to a Family Trust arising respectively under a settlement, testamentary disposition or an intestacy of a deceased member

**"Fully Diluted Share Capital"** means, at any point in time, the aggregate of:

- (a) the number of Ordinary Shares then in issue and outstanding;
- (b) the number of Ordinary Shares which would be in issue assuming conversion (at the then applicable Conversion Ratio) of all Preference Shares then in issue and outstanding; and

- (c) the number of Ordinary Shares which would be in issue assuming the exercise of all Ordinary Share Acquisition Rights and all share options and rights to subscribe or convert into Ordinary Shares (whether immediately exercisable or not), which would, when exercised, result in an increase in the number of Ordinary Shares issued and outstanding;

**"Good leaver"** means an Employee Member who ceases to be a director or employee of the Company or any of its subsidiaries in circumstances of:

- (a) death or incapacity;
- (b) retirement (at normal retirement age for the Company);or
- (c) resignation with just cause (as determined by the Board acting reasonably)

and does not continue as either a director or employee in relation to any of them

**"Group"** means any holding company of any corporate member and any subsidiary of any corporate member or any holding company of such corporate member and references to **"members of the Group"** shall be construed accordingly

**"holder"** in relation to Shares means the member whose name is entered in the register of members as the holder of the Shares

**"holding company"** has the meaning set out in section 736 of CA 1985

**"Investment Date"** means the date of adoption of these Articles

**"Investor"** means the relevant entity from (i) BP International Limited ("BPI"), (ii) BP Alternative Energy International Limited ("BPAEI") and (iii) any holding company or subsidiary of BPI and/or BPAEI, which at the relevant time, owns the largest percentage of Preference Shares amongst such entities

**"Investor Director"** means the director appointed pursuant to Article 18.5

**"IPO"** means the admission of the Ordinary Shares to trading on an internationally recognised public market or stock exchange

**"Issue Price"** in relation to any Share, the amount paid up or credited as paid up on it (including the full amount of any premium at which such Share was issued whether or not such premium is applied for any purpose after that)

**"office"** means the registered office of the Company

**"Ordinary Share Acquisition Right"** means any option, warrant, right or invitation of any kind which may result, directly or indirectly, in the issue of any further Ordinary Shares by the Company (including, without limitation, any options, warrants, or rights to subscribe for Ordinary Shares or any securities, other than Preference Shares, that by their terms are convertible into or exchangeable for Ordinary Shares or any options, warrants or rights to subscribe for such convertible securities);

**"Ordinary Shares"** means the ordinary shares of £1 each in the capital of the Company

**"Permitted Transfer"** means a transfer of Shares authorised by Article 9 and **"Permitted Transferee"** shall be construed accordingly

**"Preference Shares"** means the convertible, redeemable, preference shares of £1 each in the capital of the Company

**"Privileged Relation"** in relation to a member means the spouse or widow or widower of the member and the member's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the member's children

**"Realisation Price"** means the value of each Ordinary Share in issue in relation to an IPO determined by reference to the price per share at which Ordinary Shares in the Company are to be offered for sale, placed or otherwise marketed pursuant to the IPO

**"Reserved Matters"** means those matters set out in Article 5.1

**"Sale"** means the transfer (whether through a single transaction or a series of transactions) of shares in the Company as a result of which any person (or persons connected with each other, or persons acting in concert with each other (within the meaning given in the City Code on Takeovers and Mergers as in force at the Investment Date)) would hold or acquire beneficial ownership of or over that number of shares in the Company which in aggregate confers 50 per cent or more of the voting rights normally exercisable at general meetings of the Company

**"seal"** means the common seal of the Company (if any)

**"secretary"** means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary

**"Share Plan"** means any scheme for the grant of Inland Revenue approved or unapproved share options or Enterprise Management Incentive share options pursuant to Schedule 5 of the Income Tax (Earnings and Pensions) Act 2003 to employees, officers and consultants of the Company or any subsidiary of the Company established and amended from time to time

**"Shares"** means the Ordinary Shares and the Preference Shares or any of them

**"subsidiary"** has the meaning set out in section 736 of CA 1985

**"United Kingdom"** means Great Britain and Northern Ireland.

- 2.2 Unless the context otherwise requires, words or expressions contained in these Articles and in Table A shall bear the same meaning as in CA 1985 or CA 2006 (as such may be in force in relation to such word or expression) but excluding any statutory modification thereof not in force when these Articles become binding on the Company. Regulation 1 of Table A shall not apply to the Company.

### **3 Share capital**

- 3.1 The authorised share capital of the Company at the time of adoption of these Articles is £304 divided into 250 Ordinary Shares and 54 Preference Shares.
- 3.2 Subject to Article 3.3, save as may be provided by regulation 110 of Table A as amended by these Articles, or in respect of any Shares to be allotted to any Employee Benefit Trust, to any Employee Member pursuant to any Share Plan, or subject to any Special Resolution to dis-apply this Article 3.2, all Ordinary Shares which the directors propose to issue shall be dealt with in accordance with the following provisions of this Article 3.2:
- 3.2.1 any Ordinary Shares proposed to be issued shall first be offered to the members in proportion to the number of existing Shares held by them respectively, unless the Company shall by special resolution otherwise direct;

- 3.2.2 each such offer shall be made by notice specifying the total number of Ordinary Shares being offered to the members as a whole, the proportionate entitlement of the member to whom the offer is made and the price per Ordinary Share (which shall be the same for each Ordinary Share) and shall require each member to state in writing within a period (not being less than fourteen days) specified in the notice whether he is willing to take any and, if so, what maximum number of the said Ordinary Shares he is willing to take up (up to his proportionate entitlement);
- 3.2.3 an offer if not accepted within the period specified in the notice as regards any Ordinary Shares, will be deemed to be declined as regards those Ordinary Shares and after the expiration of such period, any Ordinary Shares so deemed to be declined (or actually declined) by the holders of Shares shall be offered in the proportion aforesaid to the holders of Shares who have, within the said period, accepted all the Ordinary Shares offered to them;
- 3.2.4 any Ordinary Shares not accepted pursuant to such offer and further offer made in accordance with this Article 3.2 or not capable of being offered as aforesaid except by way of fractions shall not be issued;
- 3.2.5 any Ordinary Shares released from the provisions of this Article 3.2 by special resolution in accordance with this Article 3.2 shall be under the control of the directors, who may allot, grant options over or otherwise dispose of the same to such persons, on such terms, and in such manner as they think fit.
- 3.3 Subject to the provisions of Article 3.2, the directors may for a period of 5 years from the date of adoption of these Articles unconditionally exercise the power of the Company to allot relevant securities (within the meaning of section 80(2) of CA 1985) and without prejudice to the generality of the foregoing any Shares unissued at the date of adoption of these Articles shall be under the control of the directors, who may allot, grant options over or otherwise dispose of the same to such persons (including the directors themselves) on such terms and at such times as they may think proper, provided that no Shares shall be issued at a discount. For the avoidance of doubt, the directors may allot relevant securities under this Article 3.3, notwithstanding that the authority under this Article has expired, if they are allotted in pursuance of an offer or agreement made by the Company before the authority has expired.

- 3.4 Regulation 4 of Table A and, in accordance with section 91(1) of CA 1985, sections 89(1) and 90(1) to (6) (inclusive) of CA 1985 shall not apply to the Company.
- 3.5 Whenever the share capital of the Company is divided into different classes of share, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of winding-up) only with the consent in writing of the holders of shares of that class carrying more than three-fourths of the total voting rights exercisable by the holders of issued shares of that class.

#### **4 Preference Shares**

- 4.1 The Preference Shares shall rank *pari passu* in all respects with the Ordinary Shares, save as set out in Articles 4.2 to 4.28.

##### Capital

- 4.2 On a return of assets on liquidation or capital reduction or otherwise, the assets of the Company remaining after the payment of its liabilities shall be distributed as follows:
- 4.2.1 first in paying to the holders of the Preference Shares £500,000 split *pro rata* between each Preference Share then in issue together with any Arrears in respect of each Preference Share;
  - 4.2.2 second in paying to the holders of the Ordinary Shares an amount per Ordinary Share equal to the amount received per Preference Share by the holders of the Preference Shares pursuant to Article 4.2.1 above together with any Arrears in respect of the Ordinary Shares; and
  - 4.2.3 the balance of such assets shall be distributed amongst the holders of the Ordinary Shares and the Preference Shares *pari passu* as if the same constituted one class of share.
- 4.3 In the event of an Asset Sale, the Company shall thereupon be wound up and the assets available distributed in accordance with Article 4.2.
- 4.4 In the event of a Sale, the total of all and any consideration received (whether in cash or otherwise) in respect of the Preference Shares and Ordinary Shares that are the



subject of the sale shall be reallocated between the sellers of such Shares so as to ensure the sale proceeds are distributed in accordance with Article 4.2.

#### Voting

- 4.5 Subject to Article 4.6, the Preference Shares shall not carry a right for the holder to receive notices of any meeting of the Company, attend or participate in any meeting of the Company or vote in respect of any matter to be put to the members of the Company at any general meeting or in writing.
- 4.6 Where the matter to be put to the members of the Company at a general meeting or in writing is a Reserved Matter, the Preference Shares shall rank *pari passu* with the Ordinary Shares as if the Preference Shares had been converted into Ordinary Shares on the basis of one Preference Share for one Ordinary Share.

#### Redemption

- 4.7 The Preference Shares shall (unless the Investor shall otherwise direct in writing to the Company) be redeemed in full immediately upon the occurrence of an Event of Default.
- 4.8 Each of the following shall constitute an Event of Default:
- 4.8.1 where any announced dividend is not paid in full or in part on the announced payment date, or any part of it is more than 10 days in arrears from the announced payment date, and the Company has enough profits available for distribution to pay it; or
  - 4.8.2 when any Preference Shares are due for redemption, the Company does not pay all the redemption money then payable to the relevant holders of the Preference Shares, and the Company has enough profits available for distribution or other requisite funds to pay the redemption money; or
  - 4.8.3 the making of an order by a competent court or the passing of an effective resolution for the winding-up or dissolution of the Company or any subsidiary; or
  - 4.8.4 the taking of possession by an encumbrancer of, or the appointment or application for the appointment of a trustee, administrator or administrative receiver or manager or a similar officer over, or an

administration order being made or applied for in respect of, any part of the whole of the undertaking or property of the Company or any subsidiary; or

- 4.8.5 if the Company or any subsidiary ceases or threatens to cease to carry on its business or a substantial part of its business, save where such business is transferred to another company in the Group; or
  - 4.8.6 if the Company or any subsidiary initiates or consents to proceedings relating to itself under any applicable bankruptcy, insolvency, composition or other similar laws or makes a conveyance or assignment for the benefit of, or enters into any composition with, its creditors generally; or
  - 4.8.7 the whole or a substantial part of the undertaking or business of the Company is disposed of other than to a wholly-owned subsidiary of the Company; or
  - 4.8.8 the holders of the Preference Shares become aware that any indebtedness of the Company or a subsidiary undertaking has become repayable before its specified maturity or has been the subject of a demand for repayment.
- 4.9 The Company may, with the prior written consent of the Investor, redeem all (but not part) of the Preference Shares at any time.
- 4.10 Where Preference Shares are to be redeemed in accordance with Article 4.9, the Company shall, following receipt of written consent from the Investor, give to the holders of the Preference Shares falling to be redeemed prior notice in writing of the redemption ("**Company Redemption Notice**"). The Company Redemption Notice shall specify the particular Preference Shares to be redeemed and the date fixed for redemption and shall be given not less than 10 nor more than 28 Business Days prior to the date fixed for redemption.
- 4.11 If the Company is unable, because of having insufficient Available Profits or other monies which may lawfully be applied for the purposes of redeeming shares, to redeem in full the relevant number of Preference Shares on the date fixed for redemption, the Company shall redeem as many of such Preference Shares as can lawfully and properly be redeemed and the Company shall redeem the balance as soon as it is lawfully and properly able to do so.

- 4.12 If the Company is at any time redeeming less than all the Preference Shares from time to time in issue, the number of shares to be redeemed shall be apportioned between those holders of the Preference Shares then in issue pro rata according to the number of Preference Shares held by them respectively at the date fixed for redemption.
- 4.13 On the date fixed for redemption, each of the holders of the Preference Shares falling to be redeemed shall be bound to deliver to the Company, at the Company's registered office, the certificate(s) for such Preference Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate) in order that the same may be cancelled. Upon such delivery, the Company shall pay to the holder (or, in the case of any joint holders, to the holder whose name stands first in the Company's register of members in respect of such Preference Shares) the amount due to it in respect of such redemption against delivery of a proper receipt for the redemption monies.
- 4.14 If any certificate delivered to the Company pursuant to Article 4.13 includes any Preference Shares not falling to be redeemed on the date fixed for redemption, a new certificate in respect of those shares shall be issued to the holder(s) thereof as soon as practicable thereafter (and, in any event, within 20 Business Days thereafter).
- 4.15 There shall be paid on the redemption of each Preference Share an amount equal to:
- 4.15.1 £9,259.26; and
- 4.15.2 all Arrears relating to that Preference Share, calculated down to and including the date of actual payment,
- and such aggregate amount shall, subject to the Company having Available Profits or other monies which may be lawfully applied for such redemption, at that time become a debt due from and immediately payable by the Company to the holders of such Preference Shares.
- 4.16 If the Company is unable to pay the amounts referred to in Article 4.15 in full on a date fixed for redemption by reason of having insufficient Available Profits or not having any other monies which may be lawfully applied for such redemption, then the amount so unpaid shall be paid as soon thereafter as, and to the extent that,

Available Profits or other monies that may lawfully be applied for such redemption have arisen.

#### Conversion

4.17 The Preference Shares shall be automatically converted in full without need for any resolution of the Board or the members into Ordinary Shares on the basis set out in Article 4.18:

4.17.1 immediately prior to the completion of an IPO; or

4.17.2 in relation to some or all of the Preference Shares held by a shareholder, on the receipt by the Board of a written notice from such shareholder requiring such conversion.

4.18 Subject to Article 4.19, the Preference Shares are convertible into Ordinary Shares on the basis of one Preference Share for one Ordinary Share (the “**Conversion Ratio**”).

4.19 In the event of any subdivision, consolidation, capitalisation or other re-organisation of the share capital of the Company, the Conversion Ratio shall also be subject to adjustment on such basis as may be agreed by the Company and the holders of a majority of the Preference Shares, as applicable within 10 Business Days after any such share capital re-organisation. If the Company and the holders of a majority of the Preference Shares cannot agree such adjustment it shall be referred to the Auditors whose determination shall, in the absence of manifest error, be final and binding on the Company and the shareholders. The costs of the Auditors shall be borne by the Company.

#### Anti-dilution

4.20 Subject always to the exclusions contained in Article 4.28, while any Preference Shares remain capable of being converted into Ordinary Shares, immediately upon:

4.20.1 the issue by the Company of any Ordinary Shares for cash or otherwise;  
or

4.20.2 the grant of an Ordinary Share Acquisition Right; or

4.20.3 the variation of any Ordinary Share Acquisition Right,

(each a "**Capital Event**"), where the price per Ordinary Share at which such Ordinary Shares are issued or may be obtained under any Ordinary Share Acquisition Right as granted or varied (having regard both to the amount payable for the grant of each such Ordinary Share Acquisition Right and the amount payable upon its exercise) is less than £9,259.26, the Conversion Ratio in respect of each Preference Share shall be adjusted so that the percentage of the Fully Diluted Issued Share Capital into which the Preference Shares convert remains unaffected by the Capital Event and such adjustment shall be applied successively on each occasion upon which it falls to be made so as to have cumulative effect.

- 4.21 Where a Capital Event occurs but the price per Ordinary Share at which such Ordinary Shares are issued and/or at which Ordinary Shares may be obtained under any Ordinary Share Acquisition Right as granted or varied is equal to or greater than £9,259.26, no adjustment shall be made to the Conversion Ratio.
- 4.22 An adjustment to the Conversion Ratio otherwise falling to be made pursuant to Article 4.20 upon an issue of Ordinary Shares that is made pursuant to and in accordance with the terms of any Ordinary Share Acquisition Right, shall not be made if, subject to Article 4.23, an adjustment to the Conversion Ratio has already been made in respect of such Ordinary Share Acquisition Right upon the issue or grant of the same.
- 4.23 Where the terms of any Ordinary Share Acquisition Right provide, with the passage of time or otherwise, for any increase in the consideration payable to the Company, or any decrease in the number of Ordinary Shares issuable thereunder, the Conversion Ratio, as adjusted (if applicable) for the grant of that Ordinary Share Acquisition Right and any subsequent adjustments shall be re-adjusted in accordance with Article 4.20 to reflect such increase or decrease.
- 4.24 Should any Ordinary Share Acquisition Right expire without having been fully exercised or exercised at all, the Conversion Ratio shall be re-adjusted in accordance with Article 4.20 so as to reflect any reduced number of Ordinary Shares issued pursuant thereto (or to reflect that no such Ordinary Shares were in fact issued) and any consideration received by the Company for any such issue (or in the case of an Ordinary Share Acquisition Right which itself consists of a right to subscribe for or convert into or exchange securities for Ordinary Shares, the number of Ordinary Shares which will fall to be issued and the consideration receivable for them on the exercise in full of such part of such right as has been acquired (if any)).

- 4.25 No re-adjustment under this Article 4 shall have the effect of varying the Conversion Ratio so as to reduce the number of Ordinary Shares obtainable on full conversion of the Preference Shares to a lower number than that which would have been so obtainable immediately before the adjustment which gave rise to the re-adjustment.
- 4.26 Where Ordinary Shares are issued for consideration other than cash such consideration shall be taken as being equal to its market value determined in good faith by the Board.
- 4.27 When the Conversion Ratio is such that, on conversion, one Preference Share would convert into more than one Ordinary Share, the additional Ordinary Shares (the **"Additional Ordinary Shares"**) shall be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or holders of 75% of the Preference Shares in respect of which the conversion is to be made (the **"Exercising Holders"**) shall agree otherwise, in which event the Exercising Holders shall be entitled to subscribe for the Additional Ordinary Shares in cash at par. In the event of any dispute between the Company and any Exercising Holder as to the effect of this Article 4.27, the matter shall be referred (at the cost of the Company) to the Company's accountants for certification of the number of Additional Ordinary Shares to be issued. The Company's accountants' certification of the matter shall in the absence of manifest error be final and binding on the Company and the Exercising Holder.
- 4.28 The events specified in this Article 4.28 (**"Excluded Events"**) do not constitute Capital Events for the purposes of Article 4.20 and shall not trigger any change to, or determination of, the Conversion Ratio pursuant to these Articles:
- 4.28.1 an offer or grant by the Company of warrants, options or other rights to subscribe for or purchase Ordinary Shares made pursuant to, and in accordance with any applicable rules of, any Share Plan;
  - 4.28.2 an issue of securities made pursuant to any Share Plan which by the terms of such securities carry rights of conversion into, or exchange or subscription for, Ordinary Shares to be issued by the Company (or the grant of any such rights in respect of existing securities issued) or securities which by their terms might be re-designated as Ordinary Shares;

- 4.28.3 an issue by the Company, wholly for cash, of Ordinary Shares which is made under any Share Plan;
- 4.28.4 an issue by the Company of Ordinary Shares pursuant to a conversion of Preference Shares into Ordinary Shares which is effected in accordance with the provisions of these Articles; and
- 4.28.5 an issue of Ordinary Shares by way of dividend or other distribution in respect of the Preference Shares, on the basis that no new consideration is payable for such Ordinary Shares.

## **5 Reserved Matters**

5.1 The following shall, for the purpose of these Articles, be “**Reserved Matters**”:

- 5.1.1 any change to the Company’s memorandum and Articles of Association;
- 5.1.2 the presentation of any petition for the winding-up of the Company;
- 5.1.3 any change in the Company’s share capital or the creation, allotment or issue of any shares or of any other security or the grant of any option or rights to subscribe for or to convert any instrument into such shares or securities;
- 5.1.4 any reduction of the Company’s share capital or variation of the rights attaching to any class of shares or any redemption, purchase or other acquisition by the Company of any shares or other securities of that company;
- 5.1.5 the entry into of any joint venture, partnership, consortium or other similar arrangement;
- 5.1.6 the appointment, removal and conditions of employment of the Company secretary or any director of the Company (other than the appointment or removal of directors of the Company in accordance with the Articles);
- 5.1.7 the appointment, discharge, remuneration and conditions of employment of any employee earning £70,000 or more each year;

- 5.1.8 the adoption of any bonus or profit-sharing scheme, any share option or share incentive scheme or employee share trust or share ownership plan or retirement benefit scheme;
- 5.1.9 the sale of the Company or any consolidation or amalgamation with any other company;
- 5.1.10 the cessation of any business operation;
- 5.1.11 any material change to the nature or geographical area of the business of the Company;
- 5.1.12 any material transaction with a shareholder or any of its associated companies not in the ordinary course of business or not on arms' length commercial terms;
- 5.1.13 the acquisition of any assets or property (other than in the ordinary course of business) at a total cost (per transaction) of more than £25,000;
- 5.1.14 the sale or disposition of any fixed assets for a total price per transaction of more than £25,000;
- 5.1.15 the borrowing of amounts which when aggregated with all other borrowings (or indebtedness in the nature of borrowings) would exceed £50,000, or the creation of any charge or other security over any assets or property of the Company except for the purpose of securing borrowings (or indebtedness in the nature of borrowings) from bankers in the ordinary course of business of amounts not exceeding in the aggregate £10,000;
- 5.1.16 the incorporation of a new subsidiary undertaking or the acquisition of any share capital or other securities of any body corporate;
- 5.1.17 the giving of any guarantee or indemnity other than in the normal course of its business;
- 5.1.18 the making of any loan or advance to any person, firm, body corporate or other business other than in the normal course of business and on an arms' length basis;
- 5.1.19 any resolution in the event that an Event of Default has occurred; and



5.1.20 any resolution for the winding-up of the Company, the reduction of share capital, the approval of the giving of financial assistance or the purchase by the Company of any of its Shares.

5.2 Any matter that amounts to a Reserved Matter shall require the approval of at least 75 per cent of the total voting rights attaching to the Shares and neither the Board nor any member of the Board shall have authority to determine any matter which could amount to a Reserved Matter.

## **6 Lien**

6.1 The Company shall have a first and paramount lien on all Shares, whether fully paid or not, standing registered in the name of any person to the extent such person has acknowledged in writing any indebtedness to the Company or to the extent such person is adjudicated by any court having competent jurisdiction to be indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company whether or not in respect of the Shares in question. Regulation 8 of Table A shall be modified accordingly.

## **7 Calls on Shares and forfeiture**

7.1 There shall be added at the end of the first sentence of regulation 18 of Table A, so as to increase the liability of any member in default in respect of a call, the words "and all expenses that may have been incurred by the Company by reason of such non-payment".

## **8 Transfer of Shares - transfer procedure**

8.1 Subject to Articles 8.10, 9 (Permitted Transfers), 10 (Compulsory Transfers), 11 (Drag Along) or 12 (Tag Along) any person ("**proposing transferor**") proposing to transfer any Shares shall give notice in writing ("**transfer notice**") to the Company that he desires to transfer the same and specifying the price per Share at which he is willing to sell them. The transfer notice shall constitute the Company the agent of the proposing transferor for the sale of all (but not some only) of the Shares comprised in the transfer notice together with all rights then attached thereto to any member or members holding Shares of the same class as those comprised in the transfer notice and willing to purchase the same ("**purchasing members**") at the price specified therein or at the fair value certified in accordance with Article 8.3 (whichever shall be

the lower). A transfer notice shall not be revocable except with the sanction of the directors given any time prior to completion of the transfer of the Shares in question, or unless notified in writing to the Company by the proposing transferor not more than three days following receipt by him of notice of the certified fair value of each Share (if relevant) provided such transfer notice has not been served due to a compulsory transfer.

8.2 The Shares comprised in any transfer notice shall be offered to the members (other than the proposing transferor and any other person holding Shares who has given or is deemed to have given a transfer notice) as nearly as may be in proportion to the number of Shares held by them respectively. Such offer shall be made by notice in writing ("**offer notice**") within seven days after the receipt by the Company of the transfer notice. The offer notice shall:

8.2.1 state the identity of the proposing transferor, the number of Shares comprised in the transfer notice and the price per Share specified in the transfer notice and inform the members that Shares are offered to them in accordance with the provisions of this Article 8.2;

8.2.2 contain a statement to the effect that the Shares are offered in the first instance in the proportion referred to in the opening sentence of this Article 8.2 but go on to invite each member to state in his reply whether he wishes to purchase more or less Shares than his proportionate entitlement and if so what number; and

8.2.3 state the period in which the offer may be accepted (not being less than twenty-two days or more than forty-two days after the date of the offer notice); and

For the purpose of this Article an offer shall be deemed to be accepted (subject to revocation as provided in Article 8.1) on the day on which the acceptance is received by the Company and may, if so specified in the acceptance, be accepted by a member in respect of a lesser number of Shares than his full proportionate entitlement. If all the members do not accept the offer in respect of their respective proportions in full the Shares not so accepted shall be used to satisfy any claims for additional Shares (notified in response to the invitation referred to in Article 8.2.2) as nearly as may be in proportion to the number of Shares already held by the members claiming additional Shares, provided that no member shall be obliged to take more

Shares than he shall have applied for. If any Shares shall not be capable of being offered to the members in proportion to their existing holdings, except by way of fractions, the same shall be offered to the relevant members, or some of them, in such proportions as the directors may think fit. Any Shares not accepted by members holding shares of the same class as those comprised in the transfer notice shall then be offered to members holding shares of classes other than those in the transfer notice and the foregoing provisions of this Article 8.2 shall apply accordingly to such offer mutatis mutandis.

- 8.3 If no price is specified in the transfer notice, then the Sale Price shall be agreed between the directors and the proposing transferor within 21 days after receipt of the transfer notice. If no such agreement is possible forthwith upon the expiry of such 21 day period the Company shall instruct the Auditors to certify the fair value of the Shares comprised in the transfer notice at the date of that notice and the costs of producing such certificate shall be apportioned among the proposing transferor and the purchasing members (but borne solely by the proposing transferor in the case of any revocation of a transfer notice) and borne by any one or more of them as the Auditors in their absolute discretion shall decide. In certifying the fair value as aforesaid no account shall be taken of the fact (if relevant) that the Shares in question constitute a minority holding. In certifying the fair value the Auditors shall be considered to be acting as expert and not as arbitrator or arbiter and accordingly any provisions of law or statute relating to arbitration shall not apply. Forthwith upon receipt of the certificate of the Auditors, the Company shall by notice in writing inform all members of the Sale Price at which the Shares comprised in the transfer notice are offered for sale.
- 8.4 If purchasing members shall be found for all the Shares comprised in the transfer notice within the appropriate period specified in Article 8.2, the Company shall not later than seven days after the expiry of such appropriate period give notice in writing ("**sale notice**") to the proposing transferor specifying the purchasing members and the number of Shares to be purchased by each purchasing member and the proposing transferor shall be bound upon payment of the price due in respect of all the Shares comprised in the transfer notice to transfer the Shares to the purchasing members.
- 8.5 If in any case the proposing transferor after having become bound as aforesaid makes default in transferring any Shares the Company may receive the purchase money on his behalf, and may authorise some person to execute a transfer of such

Shares on behalf of and as attorney for the proposing transferor in favour of the purchasing members. The receipt of the Company for the purchase money shall be a good discharge to the purchasing members. The Company shall pay the purchase money into a separate bank account and shall hold the same on trust for the proposing transferor.

- 8.6 If the Company shall not have found purchasing members for some or all of the Shares comprised in the transfer notice within the appropriate period specified in Article 8.2, then the proposing transferor shall, during the period of thirty days next following the expiry of the time so specified, be at liberty to transfer all (but not some only) of the Shares comprised in the transfer notice to any person or persons provided that the price per Share obtained upon such Share transfer shall in no circumstances be less than the price per Share specified in the transfer notice served in accordance with Article 8.1 or as certified in accordance with Article 8.3 (whichever shall be the lower) and the proposing transferor shall upon request furnish such information to the directors as they shall require in relation to the price per Share obtained as aforesaid. The directors may require to be satisfied that such Shares are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer without deduction, rebate or allowance whatsoever to the purchaser, and if not so satisfied, may refuse to register the instrument of transfer.
- 8.7 Any transfer or purported transfer of a Share made otherwise than in accordance with the foregoing provisions of Articles 8.1 to 8.6 (inclusive), Articles 8.10, 9 (Permitted Transfers), 10 (Compulsory Transfers), 11 (Drag Along) or 12 (Tag Along) shall be null and void and of no effect.
- 8.8 If and when required by notice in writing by the holder or holders of (in aggregate) a majority in nominal value of the other Shares in the Company so to do ("**call notice**") a member who transfers or purports to transfer any Share in the Company in breach of the provisions of these Articles shall be bound to give a transfer notice in respect of the Shares which he has transferred or purported to transfer in breach of these Articles.

In the event of such member failing to serve a transfer notice within five days of the date of the call notice such member shall be deemed to have given a transfer notice at the expiration of such period of five days and to have specified therein as the price per Share the fair value of each Share to be certified in accordance with Article 8.3. The provisions of Articles 8.2 to 8.6 (inclusive) shall apply mutatis mutandis. A

transfer notice given or deemed given under this Article 8.8 shall be irrevocable unless the directors give their consent to the contrary.

- 8.9 The directors may, in their absolute discretion, decline to register any transfer which would otherwise be permitted under the foregoing provisions of this Article 8 if it is a transfer of a Share on which the Company has a lien or of a Share (not being a fully paid Share) to a person of whom they shall not approve. The directors may also refuse to register a transfer unless:

8.9.1 it is lodged at the office or at such other place as the directors may appoint and is accompanied by the certificate for the Shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

8.9.2 it is in respect of only one class of Shares; and

8.9.3 it is in favour of not more than four transferees.

The directors shall not refuse to register a transfer of Shares made pursuant to Articles 8.18.6 (inclusive) and Articles 8.10, 9 (Permitted Transfers), 10 (Compulsory Transfers), 11 (Drag Along) or 12 (Tag Along). Regulation 24 of Table A shall not apply to the Company.

- 8.10 The provisions of Articles 8.1 to 8.10 (inclusive) may be waived in any particular case if the Investor gives its consent in writing.

## **9 Permitted transfers**

- 9.1 Notwithstanding any other provisions of these Articles:

9.1.1 any member (being an individual) may at any time transfer all or any Shares held by him to a Privileged Relation;

9.1.2 any members may at any time transfer all or any Shares held by him to trustees to be held upon a Family Trust of which he is the settlor;

9.1.3 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;

- (ii) such Shares may be transferred at any time to the settlor or to another Family Trust of which he is the settlor or to any Privileged Relation of the settlor;

9.1.4 any member being a corporation may at any time transfer all (but save with the prior consent in writing of a majority of the Directors, not some only) of the Shares held by it:

- (i) to any subsidiary of the member; or
- (ii) to any company of which the member is a subsidiary or any subsidiary of any such company;
- (iii) to any Affiliate of the member;

9.1.5 the Employee Benefit Trust may transfer any Shares held by it to any employee, officer or consultant of the Company or grant any option or right to any such persons to acquire any Shares held by it;

9.1.6 any person may transfer any of the Shares held by him to the Employee Benefit Trust;

and the directors shall, save as may be required by law, register any transfer to which this Article 9 applies.

## **10 Compulsory transfers**

10.1 If an Employee Member (i) ceases to be a director or employee of the Company or any of its Subsidiaries, (ii) is adjudicated as bankrupt or (iii) makes any voluntary arrangement or composition with its creditors ("**Compulsory Event**") a deemed Transfer Notice shall be deemed to have been immediately given in respect of:

10.1.1 all Shares issued to the relevant Employee Member after the Investment Date and registered in the name of the member immediately before such cessation;

10.1.2 all Shares issued after the Investment Date and then held immediately before such cessation by the Employee Member's Privileged Relations and/or Family Trusts and/or personal representatives (other than Shares which the directors are satisfied were not acquired by such holders either:

- (i) directly or indirectly from the Employee Member; or
- (ii) by reason of their connection with the Employee Member, and the decision of the Board in this respect will be final); and

10.1.3 all Shares acquired by the Employee Member or his Privileged relation and/or Family Trusts and/or his personal representatives after the relevant cessation date under any Share Plan.

10.2 On the happening of a Compulsory Event in circumstances where the relevant Employee Member is a Good Leaver, including where such person is classified as a Good Leaver pursuant to Article 10.3, or on the happening of a Compulsory Event pursuant to Article 10.1.2(i) the Board may exercise their discretion to waive (wholly or partially) the provisions of Article 10.1 so that there shall be no deemed Transfer Notice in respect of some or all of such Employee Member's Shares.

10.3 On the happening of a Compulsory Event in circumstances where the relevant Employee Member is not a Good Leaver, provided no Compulsory Event pursuant to Articles 10.1.2(ii) or 10.1.3 has occurred, the Board may with the consent of the Investor Director exercise their discretion to permit such Employee Member to be classified as a Good Leaver.

10.4 Where there is a deemed Transfer Notice following a Compulsory Event in circumstances where the Employee Member is a Good Leaver, the sale price of the Shares the subject of a deemed Transfer Notice shall be the higher of:

10.4.1 fair value as agreed by the Board and the relevant Employee Member within 30 days of the happening of the relevant Compulsory Event; or

10.4.2 the price certified by the Auditors in accordance with Article 8.3.

10.5 Where there is a deemed Transfer Notice following a Compulsory Event in circumstances where the Employee Member is not a Good Leaver, and has not been classified as a Good Leaver pursuant to Article 10.3, the sale price of the Shares the subject of a deemed Transfer Notice shall be the Issue Price.

10.6 Nothing in this Article 10 shall alter the existing terms of employment of an Employee Member in place at the date of adoption of these Articles.

- 10.7 If a corporate member ceases to be within the control (as such term is defined by section 840 Income and Corporation Taxes Act 1988) of the person(s) who controlled such company on the date on which it became a member of the Company or on the Investment Date (whichever shall be the later) it shall be deemed to have immediately given a Transfer Notice in respect of all the Shares as shall then be registered in its name.
- 10.8 If and whenever a Privileged Relation to whom Shares have been transferred ceases to be a Privileged Relation of the shareholder who made the transfer, a Transfer Notice shall be deemed to have been given in respect of the relevant Shares by the holders thereof and such Shares may not otherwise be transferred.
- 10.9 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, to any Privileged Relation of the settlor or other permitted transfer) or there ceases to be any beneficiaries of the Family Trust other than a charity or charities a Transfer Notice (as hereinafter defined) shall be deemed to have been given in respect of the relevant Shares (as hereinafter defined) by the holders thereof and such Shares may not otherwise be transferred.
- 10.10 For the purposes of Articles 10.8 and 10.9 the expression "relevant Shares" means and includes the Shares originally transferred to the trustees or Privileged Relation and any additional Shares issued or transferred to the trustees or Privileged Relation by virtue of the holding of the relevant Shares or any of them.

## **11 Transfer of Shares – drag along**

- 11.1 If an offeror for Shares in the Company makes bona fide offers to all the members of the Company which are acceptable to the holders of more than 75% of the Shares then provided such offer includes an offer to purchase all the Shares for the same consideration per Share or on the same terms as to price or to value:
- 11.1.1 such offeror may give notice to any non-accepting holders of Shares requiring him to accept the offer within 14 days and stating that, failing such acceptance, he shall be deemed to have accepted such offer in respect of all Shares held by him and irrevocably to have waived any pre-emption rights he may have in relation to any Shares the subject of such offer;



- 11.1.2 upon the expiry of such notice each recipient thereof shall be obliged to deliver to the offeror (or as he may direct) an executed share transfer form and share certificate(s) in respect of the Shares which were the subject of the notice together with an executed waiver of pre-emption rights, if appropriate;
- 11.1.3 if any such member fails to deliver executed share transfer form(s), share certificate(s) and pre-emption waiver(s) (if appropriate) as set out above he shall be deemed to have appointed any director of the Company to be his agent and attorney to execute such documents on his behalf and, against receipt by the Company (on trust for such member) of the appropriate purchase moneys, to deliver such executed transfer(s) and pre-emption waiver(s) (if appropriate) to the offeror and it shall be no impediment to completion of the transfer that such member's share certificate(s) has/have not been produced;
- 11.1.4 after such offeror or his nominee has been registered as the holder of Shares transferred in accordance with this Article the validity of such transaction shall not be questioned by any person.

## **12 Tag along**

- 12.1 Save for any permitted transfer of Shares under Article 9, no sale or transfer of the legal or beneficial interest in any Shares in the Company may be made or validly registered if as a result of such sale or transfer and registration thereof either:
  - 12.1.1 a Controlling Interest would be obtained in the Company by any person or group of persons acting in concert; or
  - 12.1.2 where any person or group of persons acting in concert already own a Controlling Interest, such Controlling Interest is increased by a further 1 per cent.

unless the proposed transferee or transferees or his or their nominees are independent third party bona fide purchasers acting in good faith and has or have offered to purchase the entire issued and to be issued Shares in the Company at the Specified Price (calculated as set out below).

12.2 If any part of the Specified Price is to be paid except by cash then the Investors may, at their option, elect to take a price per Share of such cash sum as may be agreed by them and the proposed transferee having regard to the transaction as a whole.

12.3 In this Article 12 the “**Specified Price**” means:

12.3.1 the consideration (in cash or otherwise) per Share equal to that offered or paid or payable by the proposed transferee or his or their nominees for the Shares of the relevant class being acquired, plus

12.3.2 the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of such other Shares of the relevant class 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, plus all arrears and accruals of the dividends on such Share calculated down to the date of the sale or transfer.

In the event of disagreement the calculation of the Specified Price shall be referred to the Auditors for determination whose decision shall be final and binding.

### **13 General meetings**

13.1 The directors may call general meetings and, on the requisition of members pursuant to the provisions of CA 2006, shall forthwith proceed to convene a general meeting. If there are not within the United Kingdom sufficient directors to call a general meeting any director or any member of the company may call a general meeting.

### **14 Notice of general meetings**

14.1 General meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed by a majority in number of the members having a right to attend and vote being a majority together holding not less than ninety per cent in nominal value of the Shares giving that right.

14.2 The notice shall specify the time and place of the meeting and the general nature of the business to be transacted. Subject to the provisions of these Articles and to any restrictions imposed on any Shares, the notice shall be given to all the members, to all persons entitled to a Share in consequence of the death or bankruptcy of a member and to the directors and auditors.

- 14.3 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

**15 Proceedings at general meetings**

- 15.1 No business shall be transacted at any meeting unless a quorum is present. Three persons (of which one must be a representative of the Investor, one must be Andrew William Woods and one must be Shaun David Fitzgerald) 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, shall be a quorum.
- 15.2 If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the directors may determine and for the purposes of such adjourned meeting two persons entitled to vote upon the business to be transacted at such meeting, each being a member or a proxy for a member or a duly authorised representative of a corporation, who are in attendance at such meeting, shall be a quorum.
- 15.3 The chairman, if any, of the board of directors or in his absence some other director nominated by the directors shall preside as chairman of the meeting, but if neither the chairman nor such other director (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number to be chairman and, if there is only one director present and willing to act, he shall be chairman.
- 15.4 If no director is willing to act as chairman, or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.
- 15.5 A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of Shares in the company.
- 15.6 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other

than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least five clear Business Days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

15.7 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of CA 1985 and CA 2006, a poll may be demanded:

15.7.1 by the chairman; or

15.7.2 by at least two members having the right to vote at the meeting; or

15.7.3 by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

15.7.4 by a member or members holding Shares conferring a right to vote at the meeting being Shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the Shares conferring that right;

and a demand by a person as proxy for a member shall be the same as a demand by the member.

15.8 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

15.9 The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

15.10 A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

- 15.11 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 a casting vote in addition to any other vote he may have.
- 15.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
- 15.13 No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least five clear Business Days' notice shall be given specifying the time and place at which the poll is to be taken.

## **16 Votes of members**

- 16.1 Regulation 54 of Table A shall not apply to the Company. Subject to any rights or restrictions for the time being attached to any class or classes of Shares, on a show of hands every member entitled to vote who (being an individual) is present in person or by proxy (not being himself a member entitled to vote) or (being a corporate body) is present by a representative or proxy (not being himself a member entitled to vote) shall have one vote and, on a poll, every member shall have one vote for each Share of which he is the holder.
- 16.2 The words "be entitled to" shall be inserted between the words "shall" and "vote" in regulation 57 of Table A.

## **17 Alternate directors**

- 17.1 An alternate director shall be entitled to receive notice of all meetings of the directors (but not all meetings of committees of the directors) of which his appointor is a member (subject to his giving to the Company an address within the United Kingdom at which notices may be served on him), to attend and vote at any such meeting at which the director appointing him is not personally present and generally to perform all the functions of his appointor at such meeting as a director in his absence. An

alternate director shall not be entitled as such to receive any remuneration from the Company, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct. Regulation 66 of Table A shall not apply to the Company.

- 17.2 A director, or any such other person as is mentioned in regulation 65 of Table A, may act as an alternate director to represent more than one director, and an alternate director shall be entitled at any meeting of the directors to one vote for every director whom he represents in addition to his own vote (if any) as a director, but he shall count as only one for the purpose of determining whether a quorum is present and the final sentence of regulation 88 shall not apply to the Company.
- 17.3 Save as otherwise provided in the regulations of the Company, an alternate director shall be deemed for the purposes specified in Article 16.1 to be a director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him. Regulation 69 of Table A shall not apply to the Company.
- 17.4 A director may not appoint any person to be an alternate director in respect of any committee of the directors.

## **18 Appointment and retirement of directors**

- 18.1 Regulations 76 to 79 (inclusive) of Table A shall not apply to the Company.
- 18.2 The Company may by ordinary resolution appoint any person who is willing to act to be a director, either to fill a vacancy or as an additional director.
- 18.3 The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number determined in accordance with regulation 64 of Table A as the maximum number of directors for the time being in force.
- 18.4 If, immediately following and as a result of the death of a member, the Company has no members and if at that time it has no directors, the personal representatives of the deceased member may appoint any person to be a director and the director who is appointed will have the same rights and be subject to the same duties and obligations as if appointed by ordinary resolution in accordance with Article 18.2. If

two members die in circumstances rendering it uncertain which of them survived the other, such deaths shall, for the purposes of this Article, be deemed to have occurred in order of seniority and accordingly the younger shall be deemed to have survived the elder.

- 18.5 For so long as the Investor (together with its Permitted Transferee(s)) shall hold not less than 5% of the Fully Diluted Share Capital, it shall be entitled to appoint at any time and from time to time by the delivery of a written notice to the Company one person as a non-executive director of the Company (the “Investor Director”). The Investor shall be entitled to remove such person from office by giving written notice of such to the Company and the Company shall give effect to the provisions of any such notice.
- 18.6 The remuneration and reasonable expenses to be paid to the Investor Director shall be payable by the Company and shall be such sum as may be agreed between him and the Company and upon request by the Investor Director the Company shall also procure (so far as it is able) that such Investor Director be appointed a director to any other member of the Group.
- 18.7 The maximum number of directors shall be 6 and the minimum number shall be 3 for the time being and regulation 64 of Table A shall be amended accordingly.

## **19 Disqualification and removal of directors**

- 19.1 The office of a director shall be vacated if:
- 19.1.1 he ceases to be a director by virtue of any provision of CA 1985 or CA 2006 or these Articles or he becomes prohibited by law from being a director; or
  - 19.1.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - 19.1.3 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, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960; or

- (ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for 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

19.1.4 he resigns his office by notice to the Company; or

19.1.5 he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated

and regulation 81 of Table A shall not apply to the Company.

## **20 Gratuities and pensions**

20.1 Regulation 87 of Table A shall not apply to the Company and the directors may exercise any powers of the Company conferred by its Memorandum of Association to give and provide pensions, annuities, gratuities or any other benefits whatsoever to or for past or present directors or employees (or their dependants) of the Company or any subsidiary or associated company of the Company and the directors shall be entitled to retain any benefits received by them or any of them by reason of the exercise of any such powers.

## **21 Proceedings of the directors**

21.1 Subject to the provisions of CA 2006, and provided that he has disclosed to the directors the nature and extent of any interest of his (unless the circumstances referred to in section 177(5) or section 177(6) or section 182(5) or section 182(6) of the CA 2006 apply, in which case no such disclosure is required), a director notwithstanding his office:

21.1.1 may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;

21.1.2 may be a director or other officer of or employed by or be a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested;



- 21.1.3 may, or any firm or company of which he is a member or director may, act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;
- 21.1.4 shall not by reason of his office be accountable to the Company for any benefit which he derives from such office, service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
- 21.1.5 shall, subject to Articles 21.3 and 21.6, be entitled to vote on any resolution and (whether or not he shall vote) be counted in the quorum on any matter referred to in any of Articles 21.1.1 to 21.1.4 (inclusive) or on any resolution which in any way concerns or relates to a matter in which he has, directly or indirectly, any kind of interest whatsoever and if he shall vote on any resolution as aforesaid his vote shall be counted.
- 21.2 For the purposes of Article 21.1:
- 21.2.1 a general notice to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;
- 21.2.2 an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
- 21.2.3 an interest of a person who is for any purpose of CA 2006 (excluding any statutory modification not in force when these Articles were adopted) connected with a director shall be treated as an interest of the director and in relation to an alternate director an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.
- 21.3 The directors may, in accordance with the requirements set out in this Article, authorise any matter proposed to them by any director which would, if not authorised,

involve a director breaching his duty under section 175 CA 2006 to avoid conflicts of interest ("**Conflict**").

21.3.1 Any authorisation under this Article will be effective only if:

- (i) the matter in question shall have been proposed by any director for consideration at a meeting of directors in the same way that any other matter may be proposed to the directors under the provisions of these articles or in such other manner as the directors may determine; and
- (ii) any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question; and
- (iii) the matter was agreed to without his voting or would have been agreed to if his vote had not been counted.

21.4 Any authorisation of a Conflict under this Article may (whether at the time of giving the authorisation or subsequently):

21.4.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised; and/or

21.4.2 be subject to such terms and for such duration, or impose such limits or conditions as the directors may determine; and/or

21.4.3 be terminated or varied by the directors at any time.

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

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

21.5.1 disclose such information to the directors or to any director or other officer or employee of the Company; and/or

- 21.5.2 use or apply any such information in performing his duties as a director where to do so would amount to a breach of that confidence.
- 21.6 Where the directors authorise a Conflict they may provide, without limitation (whether at the time of giving the authorisation or subsequently) that the director:
- 21.6.1 is excluded from discussions (whether at meetings of directors or otherwise) related to the Conflict; and/or
  - 21.6.2 is not given any documents or other information relating to the Conflict; and/or
  - 21.6.3 may or may not vote (or may or may not be counted in the quorum) at any future meeting of directors in relation to any resolution relating to the Conflict.
- 21.7 Where the directors authorise a Conflict:
- 21.7.1 the director will be obliged to conduct himself in accordance with any terms imposed by the directors in relation to the Conflict; and
  - 21.7.2 the director will not infringe any duty he owes to the Company by virtue of sections 171 to 177 CA 2006 provided he acts in accordance with such terms, limits and conditions (if any) as the directors impose in respect of its authorisation.
- 21.8 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 21.9 For the purposes of sections 155 and 180(4) CA 2006 and for all other purposes, it is acknowledged that an Investor Director may be or become subject to a Conflict or Conflicts as a result of his also being or having been party to an agreement or arrangement or understanding or circumstance under which he may become an employee, director, trustee, member, partner, officer or representative of, or a

consultant to, or a direct or indirect investor in and/or otherwise commercially involved with or economically interested in any of the following:

21.9.1 an Investor; and/or

21.9.2 any "**Investor Affiliate**", which for these purposes means any person who or which, as regards any Investor or any other Investor Affiliate of that Investor:

- (i) is a holding company of that company, or a wholly owned subsidiary of the company or of any such holding company;
- (ii) is its investment manager or investment advisor;
- (iii) is a person in which it may have or acquire a direct or indirect economic interest as part of any portfolio investment;
- (iv) controls or is controlled, managed advised (in an investment advisor capacity) or promoted by it; and/or
- (v) is a trustee, manager, beneficiary, shareholder, partner, unitholder or other financier or any participant in or of it; and/or

21.9.3 any carried interest or incentive arrangement associated with any person or arrangement referred to in paragraphs 21.9.2(i) to 21.9.2(v) inclusive above.

21.10 An Investor Director's duties to the Company arising from him holding office as director shall not be breached or infringed as a result of any Conflict envisaged by Article 21.9 having arisen or existing in relation to him and he shall not be held accountable to the Company for any benefit he directly or indirectly derives from his involvement with any person or entity referred to in Articles 21.9.1 or 21.9.2 irrespective of whether the activities of such person or entity are or may become competitive with those of the Company and/or any of its subsidiaries.

21.11 Any director including an alternate director may participate in a meeting of the directors or a committee of the directors of which he is a member by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in a meeting in this manner shall be deemed to constitute presence in person at such meeting and,

subject to these Articles and CA 2006, he shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be 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.

21.12 Regulation 88 of Table A shall be amended by substituting for the sentence,

"It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom."

the following sentence:

"Notice of every meeting of the directors shall be given to each director and his alternate, including directors and alternate directors who may for the time being be absent from the United Kingdom and have given the Company an address within the United Kingdom for service."

21.13 Regulations 94 to 97 (inclusive) of Table A shall not apply to the Company.

21.14 Any remuneration committee constituted by the Company shall comprise only of non-executive directors and shall include a representative of the Investor.

21.15 The quorum for the transaction of the business of the directors may be fixed by the directors and (save in relation to the authorisation of a Conflict under Article 21.3 when the quorum shall be any two directors who are not interested in the Conflict) unless so fixed at any other number shall be three, comprising, for so long as they are appointed: (1) the Investor Director; (2) Andrew William Woods or his alternate; and (3) Shaun David Fitzgerald or his alternate. A person who holds office only as an alternate director shall, if his appointor is not present be counted in the quorum.

21.16 If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the directors may determine and for the purposes of such adjourned meeting two directors (or their alternates), shall be a quorum.

## **22     The seal**

22.1 If the Company has a seal it shall be used only with the authority of the directors or of a committee of the directors. The directors may determine who shall sign any

instrument to which the seal is affixed and unless otherwise so determined, every instrument to which the seal is affixed shall be signed by one director and by the secretary or another director. The obligation under regulation 6 of Table A relating to the sealing of share certificates shall only apply if the Company has a seal. Regulation 101 of Table A shall not apply to the Company.

## **23     Notices**

- 23.1 In regulation 112 of Table A, the words "first class" shall be inserted immediately before the words "post in a prepaid envelope".
- 23.2 Where a notice is sent by first class post, proof of the notice having been posted in a properly addressed, prepaid envelope shall be conclusive evidence that the notice was given and shall be deemed to have been given at the expiration of 24 hours after the envelope containing the same is posted. Regulation 115 of Table A shall not apply to the Company.

## **24     Winding up**

- 24.1 In regulation 117 of Table A, the words "with the like sanction" shall be inserted immediately before the words "determine how the division".

## **25     Indemnity**

- 25.1 Subject to the provisions of, and so far as may be consistent with the CA 1985 and the CA 2006, but without prejudice to any indemnity to which he may be otherwise entitled, every director or other officer of the Company shall be indemnified by the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution and/or discharge of his duties and/or the exercise of his powers and/or otherwise in relation to or in connection with his duties, powers or office, including any liability incurred by him in defending any proceedings, whether civil or criminal, PROVIDED that in the case of any director of the Company such indemnity shall not apply to any liability of that director:
- 25.1.1 to the Company or to any of its associated companies;
- 25.1.2 to pay any fine imposed in criminal proceedings or any sum payable to a regulatory authority by way of penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or

25.1.3 incurred:

- (i) in defending any criminal proceedings in which he is convicted or any civil proceedings brought by the Company or any of its associated companies in which judgment is given against him; or
- (ii) in connection with any application under any statute for relief from liability in respect of any such act or omission in which the Court refuses to grant him relief,

in each case where the conviction, judgment or refusal by the Court is final within the meaning stated in section 234 CA 2006.

25.2 Provided the board of directors shall so determine, every director shall be entitled to have funds provided to him by the Company to meet expenditure incurred or to be incurred in any proceedings (whether civil or criminal) brought by any party which relate to anything done or omitted or alleged to have been done or omitted by him as a director, provided that he will be obliged to repay such amounts no later than:

25.2.1 in the event he is convicted in proceedings, the date when the conviction becomes final;

25.2.2 in the event of judgment being given against him in proceedings, the date when the judgment becomes final; or

25.2.3 in the event of the Court refusing to grant him relief on any application under any statute for relief from liability, the date when refusal becomes final;

in each case where the conviction, judgment or refusal by the Court is final within the meaning stated in section 234 CA 2006.

25.3 Subject to the provisions of, and so far as may be consistent with the CA 1985 and the CA 2006, provided the board of directors shall so determine, every person engaged by the Company as an auditor may be indemnified by the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution and/or discharge of his duties and/or the exercise of his powers and/or otherwise in relation to or in connection with his duties, powers or office as an auditor including (without prejudice to the generality of the foregoing) any liability incurred by him in defending any proceedings, civil or criminal, which relate to anything done or omitted

or alleged to have been done or omitted by him as an auditor of the Company and in which judgment is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omission in which relief is granted to him by the Court.

- 25.4 Subject to the provisions of CA 2006, the directors shall have power to purchase and maintain for any director (including an alternate director), officer or auditor of the Company insurance against any such liability as is referred in section 233 CA 2006 and against any other liability which may attach to him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a director (including as an alternate director), officer or auditor.
- 25.5 The directors may authorise the directors of companies within the same group of companies as the Company to purchase and maintain insurance at the expense of the Company for the benefit of any director (including an alternate director), other officer or auditor of such company in respect of such liability, loss or expenditure as is referred to in this Article 25.1.

## **26 Data protection**

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