

Company No: 5772214

**THE COMPANIES ACT 2006**

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**PRIVATE COMPANY LIMITED BY SHARES**

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**SPECIAL RESOLUTION**

**OF**

**ENSCO 503 LIMITED**

Pursuant to a resolution in writing passed on the 26 day of 11 / 2009 resolutions 1 and 2 below were duly passed as ordinary resolutions and resolution 3 as a special resolution.

1. That 12,186,319 of the authorised but unissued Ordinary Shares of 0.1p each be converted into 12,186,319 2009 Ordinary Shares of 0.1p each.
2. That 4,807,226 of the authorised but unissued shares of 0.1p each be converted into 4,807,226 Super Ordinary Shares of 0.1p each.
3. That the regulations annexed hereto and signed by the Chairman for the purpose of identification be adopted as the articles of association of the Company.

DATED

2009

  
.....  
Director

THURSDAY



Company Number: 5772214

**THE COMPANIES ACTS 1985 AND 2006**

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**COMPANY LIMITED BY SHARES**

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**ARTICLES OF ASSOCIATION**

of

**ENSCO 503 LIMITED**

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(Adopted by special resolution passed on 26 November 2009)

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Company Number: 5772214

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**ARTICLES OF ASSOCIATION**

**of**

**ENSCO 503 LIMITED**

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(Adopted by special resolution passed on *26 November* 2009)

**1. PRELIMINARY**

- 1.1 In these Articles, the following words and expressions shall have the following meanings unless the context requires otherwise:

**"A Ordinary Share"** an A ordinary share of 0.1p in the capital of the Company;

**"2006 Bad Leaver"** a Leaver who ceases to be an Employee by reason of:

- (a) gross misconduct; or
- (b) material breach of his service agreement, employment contract or letter of appointment;

<b>"2009 Bad Leaver"</b>	a 2009 Leaver who ceases to be an Employee by reason of: <ul style="list-style-type: none"> <li>(a) gross misconduct; or</li> <li>(b) material breach of his service agreement, employment contract or letter of appointment; or</li> <li>(c) his resignation;</li> </ul>
<b>"Board"</b>	the board of directors of the Company (or any duly authorised committee thereof) from time to time;
<b>"Business Transfer"</b>	the sale of the whole or substantial part of the business and undertaking of the Group by one or a series of related transactions;
<b>"CA 1985"</b>	means the Companies Act 1985;
<b>"CA 2006"</b>	means the Companies Act 2006 (and reference to a section followed by (CA 2006) or CA 2006 is to be a section of that act);
<b>"Chairman"</b>	has the meaning given in Article 18;
<b>"Co-Investment Scheme"</b>	means any co-investment scheme (whether a partnership, unincorporated association or any other form of co-investment scheme) which co-invests with any of the Investors, in which the participants are employees of any member of the Defined Group and which is managed or administered by a member of the Defined Group;
<b>"Connected Person"</b>	has the meaning attributed by section 839 ICTA;
<b>"Controlling Interest"</b>	an interest in shares in a company conferring in aggregate more than 50% of the total voting rights conferred by all the issued shares in that company, taking account at the relevant time of provisions regarding voting rights contained in the articles of association of that company;
<b>"Defined Group"</b>	ISIS EP LLP and its subsidiaries and subsidiary undertakings, holding companies and parent undertakings and subsidiaries and subsidiary undertakings of such holding companies and parent undertakings and: <ul style="list-style-type: none"> <li>(a) any partnership of which any of them is general partner, manager or adviser;</li> <li>(b) any unit trust or fund (whether a body corporate or otherwise) of which any of them is trustee, manager, adviser or general partner; and</li> <li>(c) any unit trust, partnership or fund</li> </ul>

(whether a body corporate or otherwise)  
the managers of which are advised by any  
of them

in each case from time to time;

**"2006 Early Leaver"**

a person other than a Founder, who holds 2006 Shares and ceases to be an Employee for whatever reason (other than a reason that would make him a 2006 Bad Leaver) on or before the expiry of the period of two years immediately following the date on which the first of such Employee or his Privileged Relations or Family Trust became a holder of 2006 Shares together with any other person who becomes a Leaver or as a consequence thereof;

**"2009 Early Leaver"**

a person, other than a Founder, who holds 2009 Shares and ceases to be an Employee for whatever reason (other than a reason that would make them a 2009 Bad Leaver) on or before the expiry of the period of three years immediately following the date on which the first of such Employee or his Privileged Relations or Family Trust became a Shareholder;

together with any other person who becomes a 2009 Leaver as a consequence thereof;

**"Elapsed Years"**

the number of complete years between the date the relevant 2009 Leaver became a 2009 Shareholder and that person's Leaving Date;

**"Employee"**

a person (other than an Investor Director) who at any time is a director and/or an employee of any Group Company or whose services are made available to any Group Company under the terms of an agreement between any Group Company on the one hand and such individual or any other person on the other hand (and "employment" shall be construed accordingly to include such an agreement);

**"Employee Trust"**

a trust established with Investor Consent and whose beneficiaries are the bona fide employees of any Group Company;

**"Excluded Person"**

- (a) any Leaver or 2009 Leaver;
- (b) any Employee who has given, or been given, notice to terminate his contract of employment with any Group Company;

**"Exit Event"**

the occurrence of a Share Sale, Business Transfer or Listing;

## **"Exit Proceeds"**

means the value of the issued Shares in the capital of the Company and calculated as follows and on the basis that the relevant Exit Event has been effected in accordance with its terms:

- (a) in the event of a Listing, the market value of the Shares determined by reference to the price per share at which such shares are to be offered for sale, placed or otherwise marketed pursuant to the arrangements relating to the Listing, all as determined by the merchant bank or, if none, the broker appointed by the Board (with Investor Director approval) to advise in connection with the Listing;
- (b) in the event of a Share Sale:
  - (i) if the same are to be sold by private treaty (as distinct from a public offer) and the consideration is a fixed cash sum payable in full on completion of the Share Sale, the total amount of such cash sum;
  - (ii) if a written offer has been made for a cash consideration or, if the Share Sale is pursuant to any other public cash offer or public offer accompanied by a cash alternative, the total cash consideration or cash alternative price for all the shares of the Company for which the offer is made;
  - (iii) if the Share Sale is by private treaty or public offer and the consideration is the issue of securities (not accompanied by a cash alternative):
    - (A) if the securities will rank pari passu with a class of securities already admitted to trading on a Recognised Investment Exchange (in the case of a sale by private treaty) the value attributed to such consideration in the related sale agreement setting out the terms of such sale or, (in the case of a Sale following a public offer or

failing any such attribution in the sale agreement) by reference to the value of such consideration determined by reference to the average middle market quotation of such securities over the period of 5 Business Days ending 3 days prior to the day on which the Share Sale is completed; or

(B) if the securities are not of such a class, the value of the relevant consideration as agreed between an Investor Majority and a Shareholder Majority or, in the absence of such agreement prior to the Sale, such value as is reported on by the Auditors, in a report obtained for the purpose and addressed to (and at the cost, pro rata to their holdings immediately prior to the Share Sale) the holders the Shares;

(iv) to the extent that the Share Sale includes an element of deferred consideration (whether contingent or non-contingent) its value shall not be included in the calculation until such deferred consideration is due and payable the holders of the Shares in which case the full value of the amount actually received shall be taken into account; and

(v) if and to the extent that (i) to (iv) above are not applicable, the value of the relevant consideration as agreed by the Investor Majority or, in the absence of such agreement prior to the Share Sale, such value as is reported on by the Auditors, in a report obtained for the purpose and addressed to (and at the cost, pro rata to their holdings immediately prior to the Sale, of) the holders of the Shares;

**"Fair Price"**

such price as the transferor and (with Investor



Consent) the Company shall agree within ten days after the date of the relevant Transfer Notice or, failing such agreement, such price as the Independent Expert shall determine pursuant to Article 10.4.1.1;

**“Family Trust”**

a trust, the terms and trustees of which have been approved by Investor Consent, which does not permit any of the property subject to the trust or the income therefrom (or any interest in such property and/or income) to be applied otherwise than for the benefit of a Manager and/or a Privileged Relation of that Manager 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 Manager or the Privileged Relations of the Manager; and “trust” includes a trust arising under a settlement, or declaration of trust, inter vivos but excludes testamentary disposition or a trust arising on an intestacy;

**“financial year” and “financial period”**

an accounting reference period (as defined by CA 1985) of the Company;

**“Founder”**

Harvey Jones;

**“Founder Leaver”**

a Founder who is a Leaver;

**“Group”**

the Company and its subsidiaries, all holding companies of the Company, and all subsidiaries of each such holding company, in each case, from time to time;

**“Group Company”**

each of the companies referred to in the definition in these Articles of “Group”;

**“ICTA”**

the Income and Corporation Taxes Act 1988;

**“Independent Expert”**

an umpire (acting as an expert and not as an arbitrator) nominated by the parties concerned or, in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales;

**“Institutional Investor”**

any member of the Defined Group;

**“Investment Agreement”**

the agreement for loan stock and share subscriptions dated on 14 July 2006 between the Company (1) the Managers (2) ISIS EP LLP (3) and the Original Investors (4) (as each is defined therein) together with any deed of adherence to such agreement;

**“Investor Consent”**

the giving of a prior written consent by the Majority Holders;

<b>"Investor Direction"</b>	the giving of a prior written direction by the Majority Holders;
<b>"Investor Director"</b>	a director appointed pursuant to Article 17;
<b>"Investors"</b>	those persons who are "Investors" within the meaning of this expression in the Investment Agreement, or any nominee of any such person and "Investor" means any of them. The expression "member of an Investor's Group" shall mean an Investor, any subsidiary of that Investor, any holding company of that Investor, any subsidiary of any such holding company and any nominee of any of the foregoing and "Investor's Group" shall be construed accordingly;
<b>"Issue Price"</b>	in relation to a Share, the price at which such Share is issued, being the aggregate of the amount paid up or credited as paid up in respect of the nominal value of such Share and any share premium thereon;
<b>"2009 Leaver"</b>	<ul style="list-style-type: none"> <li>(a) any Employee who is a 2009 Shareholder who ceases to be an Employee for whatever reason;</li> <li>(b) any 2009 Shareholder who is the trustee of a Family Trust of any person who ceases to be an Employee;</li> <li>(c) any 2009 Shareholder who is a Privileged Relation of any person who ceases to be an Employee;</li> <li>(d) any 2009 Shareholder (other than an Investor) who ceases to be a director of the Company;</li> <li>(e) any person who becomes entitled to any 2009 Shares: <ul style="list-style-type: none"> <li>(i) on the death of a 2009 Shareholder (if an individual);</li> <li>(ii) on the receivership, administrative receivership, administration, liquidation or other arrangement for the winding up (whether solvent or insolvent) of a 2009 Shareholder (if a company); or</li> <li>(iii) on the exercise of an option after ceasing to be an Employee;</li> </ul> </li> <li>(f) any 2009 Shareholder holding 2009 Shares as a nominee for any person who ceases to be an Employee;</li> </ul>

**"Leaver"**

- (g) any Employee who remains an Employee but becomes entitled by reason of illness or disablement giving rise to permanent incapacity to receive benefits under the permanent health insurance scheme of the Company or any other Group Company;
- (a) any Employee who is a 2006 Shareholder who ceases to be an Employee for whatever reason;
- (b) any 2006 Shareholder who is the trustee of a Family Trust of any person who ceases to be an Employee;
- (c) any 2006 Shareholder who is a Privileged Relation of any person who ceases to be an Employee;
- (d) any 2006 Shareholder (other than an Investor) who ceases to be a director of the Company;
- (e) any person who becomes entitled to any 2006 Shares:
  - (i) on the death of a 2006 Shareholder (if an individual);
  - (ii) on the receivership, administrative receivership, administration, liquidation or other arrangement for the winding up (whether solvent or insolvent) of a 2006 Shareholder (if a company); or
  - (iii) on the exercise of an option after ceasing to be an Employee;
- (f) any 2006 Shareholder holding 2006 Shares as a nominee for any person who ceases to be an Employee;
- (g) any Employee who remains an Employee but becomes entitled by reason of illness or disablement giving rise to permanent incapacity to receive benefits under the permanent health insurance scheme of the Company or any other Group Company,

PROVIDED THAT a Founder ceasing to be either an Employee or a Director of the Company or ceasing to be both will not be treated as a Leaver;

**"Leaver's Shares"**

all of the Shares held by a Leaver or a 2009

	Leaver, or to which he is entitled, on the Leaving Date and any Shares acquired by a Leaver or a 2009 Leaver after the Leaving Date whether under an employees' share scheme or otherwise;
<b>"Leaving Date"</b>	in relation to a Leaver or a 2009 Leaver, the date on which the relevant person becomes a Leaver or 2009 Leaver, which in the case of any Shareholder who becomes a Leaver or a 2009 Leaver by virtue of any person ceasing to be an Employee shall be the Termination Date in relation to such Employee;
<b>"Listing"</b>	the admission of any Shares to listing on the Official List of the UK Listing Authority and to trading on the Main Market of London Stock Exchange plc and such admission becoming effective or the grant of permission for any Shares to be dealt in on any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000) or any other public securities market and such permission becoming effective;
<b>"Loan Stock"</b>	the £7,165,272 principal sum fixed rate secured loan stock 2013 of the Company constituted by an instrument dated on the date of adoption of these Articles together with any PIK notes issued pursuant to Clause 4.6 of the instrument creating such loan stock;
<b>"Majority Holders"</b>	the persons who together at the relevant time hold more than 50% in number of the aggregate of the A Ordinary Shares in issue at that time;
<b>"Market Price"</b>	such price as the transferor and (with Investor Consent) the Company shall agree within ten days after the date of the relevant Transfer Notice or, failing such agreement, such price as the Independent Expert shall determine pursuant to Article 10.4.1.2;
<b>"Manager"</b>	has the meaning given in the Investment Agreement;
<b>"Material Default"</b>	any of the following situations: <ul style="list-style-type: none"> <li>(a) the occurrence of an Event of Default (as those terms are defined in the Senior Loan Agreement) whether the Senior Bank has notified such default or not; or</li> <li>(b) the Company is in material breach of any provision of the Investment Agreement; or</li> <li>(c) the contents of the information delivered or made available to each Investor pursuant to clause 8.1 of the Investment</li> </ul>

Agreement demonstrate that during the period ending on the next but one Test Date (as that term is defined in the Senior Loan Agreement) an Event of Default (as those terms are defined in the Senior Loan Agreement) is likely to occur; or

- (d) any payment of interest or redemption monies pursuant to the terms of the Loan Stock is in arrears; or
- (e) any payment of Participating Dividend is not paid on the due date for payment (whether or not the Company has sufficient distributable profits or reserves out of which to make the payment);
- (f) any indebtedness of any Group Company other than trade creditors (provided that these are paid in accordance with the Company's normal policy) and the indebtedness referred to in (a), (d) and (e) above is not paid when due or demanded or becomes repayable prior to its stated maturity;

**"Mr Slade"**

Timothy Slade of Inlands Farm, Inlands Lane, Nutbourne, Chichester, PO18 8RD;

**"Net Profit"**

the consolidated profit on ordinary activities after taxation of the Group calculated on the historical cost accounting basis and shown in the audited consolidated profit and loss account of the Group for the relevant financial year (to the nearest £1) but adjusted by adding back any amortisation of goodwill;

**"2009 Ordinary Share"**

a 2009 ordinary share of 0.1p in the capital of the Company;

**"Ordinary Share"**

an ordinary share of 0.1p in the capital of the Company;

**"Participating Dividend"**

means the dividend due in respect of the 2006 Shares and calculated pursuant to Article 3.1.2;

**"Privileged Relation"**

in relation to a Manager, the spouse of the Manager and the Manager's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the Shareholder's children and in the case of Harvey Jones shall include Andrea Stokes;

**"Sale Price"**

has the meaning given in Article 10.2;

**"Sale Shares"**

has the meaning given in Articles 9.5 and 11;

<b>"Seller"</b>	the holder of a Share which is the subject of a Transfer Notice;
<b>"Senior Bank"</b>	HSBC Bank plc;
<b>"Senior Loan Agreement"</b>	the agreement dated on the date of adoption of these Articles entered into between the Company and the Senior Bank relating to term loan facilities of £5,000,000;
<b>"Shares"</b>	the Ordinary Shares, A Ordinary Shares, 2009 Ordinary Shares and the Super Ordinary Shares and "Share" shall be construed accordingly;
<b>"2006 Shares"</b>	the Ordinary Shares the A Ordinary Shares and 2006 Share shall be construed accordingly;
<b>"2009 Shares"</b>	the 2009 Ordinary Shares and the Super Ordinary Shares and 2009 Share shall be construed accordingly;
<b>"Shareholder"</b>	a holder of any Share;
<b>"2006 Shareholder"</b>	a holder of any 2006 Shares;
<b>"Shareholder Majority"</b>	the persons who together at the relevant time hold more than 50% in number of the aggregate of the Shares in issue at that time;
<b>"Share Sale"</b>	the completion of any sale (other than any transaction where the Investor takes or increases a Controlling Interest) of any interest in any Shares (whether in one transaction or a series of related transactions) resulting in the transferee (either alone or together with its Connected Persons) holding a Controlling Interest in the Company;
<b>"Start Date"</b>	the date on which the Sale Price of the Sale Shares is agreed or determined;
<b>"Super Ordinary Shares"</b>	a super ordinary share of 0.1p in the capital of the Company;
<b>"Table A"</b>	Table A in the Companies (Tables A-F) Regulations 1985 as amended by the Companies (Tables A-F) (Amendment) Regulations 1985 and as further amended by the Companies Act 1985 (Electronic Communications) Order 2000;
<b>"Termination Date"</b>	<p>(a) where employment ceases by virtue of notice given by the employer to the employee, the date on which such notice expires; or</p> <p>(b) where a contract of employment is terminated by notice given by the employer and a payment is made in lieu of notice, the date on which such notice</p>

was served; or

- (c) where the Employee concerned is a director and an employee of any Group Company, the date on which the Employee's contract of employment with any Group Company is terminated unless the Investors by an Investor Direction direct otherwise; or
- (d) where the Employee concerned is a director (but not an employee) of any Group Company, the date on which the contract for the provision of his services (whether entered into directly with him or with a third party) with any Group Company is terminated; or
- (e) in any other case, the date on which the contract of employment is terminated;

**"Third Party Purchaser"**

a bona fide arm's length person or entity (who is not an Investor) and any Connected Person of such person or entity (in each case whether or not an existing Shareholder);

**"Transfer Notice"**

a written notice deemed to be served on the Company in accordance with Article 9 by a Shareholder who is required to transfer any Shares; and

**"voting rights"**

shall be construed in accordance with section 736(A) of CA 1985.

- 1.2 The regulations contained in or incorporated in Table A shall apply to the Company save insofar as they are excluded or varied hereby or are inconsistent herewith and such regulations (save as so excluded varied or inconsistent) and the Articles hereinafter contained shall be the regulations of the Company.
- 1.3 An Investor Consent or Investor Direction required or permitted to be given under these Articles may be given by any Investor Director who holds office as a director of the Company at the time that the consent or direction (as the case may be) is given. Any written consent or approval given by the Majority Holders after a matter or event in respect of which Investor Consent is required shall, unless such consent or approval expressly states otherwise, be deemed to be an Investor Consent for the purposes of these Articles.
- 1.4 In the last paragraph of Regulation 1 of Table A, the words "and in Articles of association adopting the same" shall be inserted after the word "regulations" in the first line, the words from "but excluding" to "company" shall be deleted and the sentence "Any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force." shall be inserted at the end of that paragraph.
- 1.5 Regulations 26, 50, 54, 64, 73-77 and 79-80 (inclusive), 81, 82, 85, 86, 94-98 (inclusive) and 118, and the last sentence of regulation 112, of Table A shall not apply to the Company.

## 2. SHARE CAPITAL

The authorised share capital of the company is £260,711.708 divided into 100,000,000 A Ordinary Shares, 126,724,618 Ordinary Shares, 12,186,319 2009 Ordinary Shares and 4,807,226 Super Ordinary Shares.

## 3. SHARE RIGHTS

Except as expressly provided otherwise in these Articles, the A Ordinary Shares, the Ordinary Shares, the 2009 Ordinary Shares and Super Ordinary Shares shall rank *pari passu* in all respects.

### 3.1 Income

3.1.1 Notwithstanding any other provision of these Articles the Company shall not make any distribution whilst any of the Loan Stock is in issue.

3.1.2 Subject to Article 3.1.1 the profits of the Company available for distribution shall be applied in paying to the 2006 Shareholders in respect of each financial year of the Company a cumulative preferential cash dividend (the "**Participating Dividend**") of a sum equal to 20% of the Net Profit for the relevant financial year provided that in respect of the financial year in which the Loan Stock is repaid in full the Participating Dividend shall be a sum equal to 20% of the Net Profit for that financial year multiplied by the number of days from the date on which the Loan Stock is repaid in full to the next 31 January (inclusive) divided by 365. The 2006 Shareholders shall be entitled to the Participating Dividend in proportion to the respective number of 2006 Shares held by them on the last day of the financial year of the Company in respect of which the dividend is payable.

3.1.3 The Participating Dividend (if any) shall (subject to Article 3.1.8) be paid not later than the date which falls 4 months after the end of each successive accounting reference period of the Company or not later than 14 days after the audit report on the accounts of the Company for such period is signed by the Company's auditors, whichever is earlier (the earlier of those dates being the "due date") or on the next date as permitted under the Intercreditor Agreement (as defined in the Senior Loan Agreement), if later.

3.1.4 Holders of more than 75% in nominal value of any class of 2006 Shares shall be entitled, at any time before the payment of the Participating Dividend, to require the Company to instruct the Company's auditors (at the Company's cost) to certify the adjustments made in determining the Net Profit for each financial year of the Company. In so certifying the auditors shall be deemed to be acting as experts and not as arbitrators and the amounts as so certified shall be conclusive and binding on the Company and all of its Shareholders for the purposes of these Articles (save in the case of manifest error).

3.1.5 The Participating Dividend shall be payable in full together with all accrued arrears immediately prior to a Share Sale or Listing including, without limitation, an amount determined by the following provisions of this Article 3.1.5 from the commencement of the then current financial year up until the date of Share Sale or Listing (as the case may be). The Participating Dividend shall be pro-rated in respect of any period of less than a financial period of the Company when it is due to be paid. Where the Participating Dividend falls to be pro rated, the pro rata amount of the Participating Dividend from the date of the commencement of the then



current financial period of the Company up until and including the date on which the Participating Dividend is payable or, as the case may be, the date of the Share Sale or Listing ("**relevant date**") shall be calculated on the relevant date on the basis set out in Article 3.1.1 save that "Net Profit" for this purpose shall be:

$$X \times \frac{Z}{Y}$$

where:

- X is the Net Profit (provided that for the purposes of this Article 3.1.5 Net Profit shall be calculated by reference to the latest available unaudited consolidated management accounts of the Group for the period from the start of the then current financial period to the latest practicable date prior to the relevant date);
- Y is the number of days in the period to which such management accounts relate; and
- Z is the number of days from the date of the start of the then current financial period to and including the relevant date.

- 3.1.6 No further dividend shall be declared or paid to the holders of 2006 Shares in respect of any financial year of the Company without Investor Consent and any such dividend shall then be paid to all the holders of Shares (pari passu as if the same constituted one class of share).
- 3.1.7 The Participating Dividend shall accrue on a daily basis.
- 3.1.8 Unless the Company has insufficient profits available for distribution and the Company is thereby prohibited from paying dividends by the Companies Acts, the Participating Dividend shall (notwithstanding regulations 102 to 108 inclusive contained in Table A or any other provision of these Articles and in particular notwithstanding that there has not been a recommendation of the directors or resolution of the Company in general meeting) be paid immediately on the due date and if not then paid shall be a debt due by the Company and be payable in priority to any other dividend (save for any previously declared Participating Dividend) provided that, if due to delays in the preparation of the audited accounts of the Company the Participating Dividend cannot be calculated by the date it is due for payment, then there shall be paid forthwith an interim dividend in respect of the Participating Dividend of a sum equal to the last Participating Dividend payable. The next and (if appropriate) any subsequent Participating Dividend shall be adjusted to take account of any overpayment or underpayment in respect of the said interim dividend which becomes apparent when the audited accounts are available.
- 3.1.9 The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of the Participating Dividend.
- 3.1.10 Interest shall accrue on any amount of any Participating Dividend not paid on the due date (whether or not there were available to the Company any distributable profits or other funds out of which the same could have been paid) at the rate of the higher of 4% per annum over the Senior Bank's

base rate from time to time and 9% per annum until the actual date of payment, such amount accruing daily and being compounded at yearly rests.

- 3.1.11 If the Company has insufficient profits available for distribution to pay any amount of the Participating Dividend in full on any due date:

3.1.11.1 the Company shall on the due date in question, pay to the Shareholders on account of the relevant amount (in proportion to the number of 2006 Shares held by them on that due date), the amount of profits then available for distribution together with accrued but unpaid interest on that amount; and

3.1.11.2 the Company shall pay on every three monthly anniversary thereafter (and may pay at any time between those dates) on account of the balance of the relevant amount remaining outstanding, the amount of profits then available for distribution together with accrued but unpaid interest on that amount.

- 3.2 The 2009 Ordinary Shares and the Super Ordinary Shares shall not be entitled to any distribution that the Company may make.

### 3.3 Capital

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 applied as follows:

3.3.1 first in paying to the holders of the A Ordinary Shares the Issue Price per A Ordinary Share (together with a sum equal to any arrears or accruals of the Participating Dividend due in respect of such shares calculated down to the date of the return of capital); and

3.3.2 second in paying to the holders of the Ordinary Shares (pari passu as if the same constituted one class of share) the Issue Price per Ordinary Share (together with a sum equal to any arrears or accruals of the Participating Dividend due in respect of such shares calculated down to the date of the return of capital); and

3.3.3 the balance of such assets shall be distributed amongst the holders of the Shares on the basis set out in Article 13.

### 3.4 Voting

3.4.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with these Articles, on a show of hands every 2006 Shareholder who (being an individual) is present in person or (being a corporation) is present by a representative not being himself a 2006 Shareholder shall have one vote, and on a poll every 2006 Shareholder who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall (except as hereinafter provided) have one vote for every 2006 Share of which he is the holder. The holders of the 2009 Ordinary Shares and the Super Ordinary Shares shall not be entitled to vote.

3.4.2 If a Material Default has occurred and Majority Holders deliver a notice (a "voting adjustment notice") to that effect to the Company then the voting rights attaching to the A Ordinary Shares shall be amended with

effect from the date of the voting adjustment notice to the effect that on a poll each holder of A Ordinary Shares present in person or by proxy or (being a corporation) which is present by a representative or by proxy shall have one hundred thousand votes for every A Ordinary Share in the capital of the Company of which he is the holder until the earlier of:

3.4.2.1 the date that the Material Default has been rectified; and

3.4.2.2 the date that the Majority Holders give notice in writing to the Company cancelling the voting adjustment notice.

3.4.3 The provisions of this Article 3.4.3 shall apply at any time after any occurrence of a Material Default or a notice is given in writing by the Senior Bank that an occurrence which would constitute a Material Default of the kind referred to in paragraph (a) of that definition is imminent (and for these purposes an occurrence shall be deemed to be imminent if it would reasonably be expected to happen within the period ending on the next Test Date (as defined in the Senior Loan Agreement)), which the Senior Bank has indicated in writing to the Company that it will not waive without additional capital support being provided to the Company and/or any other member of the Group:

3.4.3.1 the Majority Holders shall be entitled to convene an extraordinary general meeting of the Company for the purpose of considering a resolution or resolutions to approve the terms of any additional capital support for the Company and/or other members of the Group, and for this purpose to consider a resolution or resolutions to appoint additional directors and any and all resolutions required by the terms of the additional capital support including, without limitation, a resolution or resolutions constituting and issuing new classes of shares in the capital of the Company;

3.4.3.2 at any meeting called pursuant to this Article 3.4.3 the quorum shall be the holders of not less than 75% in nominal value of the A Ordinary Shares.

3.4.4 At any meeting called pursuant to Article 3.4.3 only the holders of A Ordinary Shares may vote on any resolution relating to its adjournment.

3.4.5 The Majority Holders shall have the right to determine the terms and timing of the additional capital support referred to in Article 3.4.3 at their discretion.

3.4.6 The provisions of sections 561(1) and 562(1) to (5) of the CA 2006 shall not apply to the Company in relation to any allotment or issue of Shares pursuant to Article 3.4.3.

3.4.7 The voting and other rights conferred upon the holders of A Ordinary Shares by Articles 3.4.3, 3.4.4 and 3.4.5 shall cease to apply upon the first to occur of:

3.4.7.1 the date on which the Material Default which triggered such rights or to which the notice given by the Senior Bank pursuant to Article 3.4.3 relates, being rectified;

3.4.7.2 the Test Date (as defined in the Senior Loan Agreement) in which the notice given by the Senior Bank pursuant to

Article 3.4.3 is given elapsing subsequent to the service of that notice without the occurrence of a Material Default; and

3.4.7.3 the Majority Holders giving notice to the Company that such rights shall no longer accrue to the holders of such Shares and cancelling the voting adjustment notice.

#### **4. 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 be varied or abrogated with the consent in writing of the holders of 75% in nominal value of the issued shares of that class.

4.2 Without prejudice to the generality of Article 4.1, the special rights attached to the A Ordinary Shares shall be deemed to be varied by:

4.2.1 any variation in the authorised or issued share capital of the Company; or

4.2.2 the creation or grant of any option or other right over or to subscribe for shares or by the creation, issue or grant of any security convertible into any shares in the capital of the Company or any Group Company; or

4.2.3 any alteration or variation of any of the rights attached to any of the shares for the time being in the capital of the Company or any Group Company; or

4.2.4 the application by way of capitalisation of any sum in or towards paying up any share or loan capital of the Company or any Group Company; or

4.2.5 the redemption of any of the Company's shares or the shares of any Group Company (otherwise than pursuant to these Articles) or by the entering into of a contract by the Company or any Group Company to purchase any of its shares; or

4.2.6 the appointment or removal of any director of the Company or any Group Company (other than pursuant to and in accordance with Article 17.1); or

4.2.7 the appointment or removal of auditors to the Company or any Group Company; or

4.2.8 any alteration of the accounting reference date of the Company or any Group Company; or

4.2.9 any resolution (whether pursuant to the Companies Acts or otherwise) to change the classification or status of the Company or any Group Company; or

4.2.10 any alteration to the Memorandum of Association or Articles of association of the Company or any Group Company; or

4.2.11 any resolution to wind up the Company or any Group Company; or

4.2.12 any sale, transfer or other disposal by the Company or any Group Company of the whole or part of its undertaking, business or assets (other than assets sold in the ordinary course of business); or

4.2.13 the transfer by the Company or any Group Company of any profits to reserves or the taking of any other action (excluding the lawful payment of dividends) which will or may reduce the amount of its profits available for distribution; or

- 4.2.14 any suspension or relaxation by the Company or any Group Company of any provision of its Articles of association which prohibits a director from voting at a meeting of the directors or of a committee of the directors in certain circumstances; or
- 4.2.15 any sale, transfer or other disposal by the Company or any Group Company of all or any part of, or any interest in, the shares of any Group Company by the Company or any other Group Company; or
- 4.2.16 the giving, variation, revocation or renewal of an authority for allotment under section 551 of CA 2006; or
- 4.2.17 the calling of a meeting of the Company to effect or approve any matter which would by virtue of this Article be a variation of the class rights of the A Ordinary Shares; or
- 4.2.18 the disapplication of the provisions of sections 561 and 562 of the CA 2006 in relation to any allotment or issue of Shares by the Company.

## 5. **LIEN**

The lien conferred by regulation 8 of Table A shall apply to all Shares whether fully paid or not and to all Shares registered in the name of any person indebted or under liability to the Company whether he be the sole registered holder thereof or one of several joint holders.

## 6. **CALLS**

The liability of any Shareholder in default in respect of a call shall be increased by the addition at the end of the first sentence of regulation 18 in Table A of the words "and all expenses that may have been incurred by the company by reason of such non-payment".

## 7. **ISSUES OF SHARES**

Subject to these Articles the pre-emption provision of sub-section (1) of section 89 and sub-sections (1) to (5) of section 562 of CA 2006 shall apply to any allotment of the Company's equity securities, provided that:

- 7.1 for the purposes of those sub-sections the A Ordinary Shares and the Ordinary Shares shall be treated as one class; and
- 7.2 the holders of equity securities ("**Equity Shareholders**") who accept Shares shall be entitled to indicate that they would accept Shares that have not been accepted by other Equity Shareholders ("**Excess Shares**") on the same terms as originally offered to all Equity Shareholders and any Shares not so accepted shall be allotted to the Equity Shareholders who have indicated they would accept Excess Shares. Such Excess Shares shall be allotted in the numbers in which they have been accepted by Equity Shareholders or, if the number of Excess Shares is not sufficient for all Equity Shareholders to be allotted all the Excess Shares they have indicated they would accept, then the Excess Shares shall be allotted as nearly as practicable in the proportion that the number of Excess Shares each Equity Shareholder indicated he would accept bears to the total number of Excess Shares applied for.

## 8. **PROVISIONS APPLYING ON EVERY TRANSFER OF SHARES**

- 8.1 The Board shall refuse to register any transfer of Shares made in contravention of the provisions of these Articles but (subject to Regulation 24 of Table A) shall not otherwise be entitled to refuse to register any transfer of shares. For the purpose of

ensuring that a particular transfer of Shares is permitted under the provisions of these Articles, the directors may request the transferor, or the person named as transferee in any transfer lodged for registration, to furnish the Company with such information and evidence as the directors may reasonably think necessary or relevant. Failing such information or evidence being furnished to the satisfaction of the directors within a period of 28 days after such request the directors shall be entitled to refuse to register the transfer in question. Any transfer of Shares made or purported to be made in contravention of the provisions of these Articles shall be of no effect.

- 8.2 Save for transfers pursuant to Articles 9 and 12 no Ordinary Shares, 2009 Ordinary Shares and Super Ordinary Shares may be transferred unless:

8.2.1 an Investor Consent has been obtained; and

8.2.2 save as otherwise required pursuant to the Investment Agreement, the proposed transferee has entered into an agreement to be bound by the Investment Agreement in the form required by that agreement.

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

## **9. TRANSFERS OF SHARES**

### **9.1 Permitted Transfers by Individual Shareholders, Privileged Relations and Family Trusts**

#### **9.1.1 Permitted transfers to Privileged Relations and Family Trusts**

Subject to Article 9.4, any Manager who is a Shareholder and is not an Excluded Person may at any time transfer any Shares held by him to a Privileged Relation over the age of 17 or to trustees to be held upon a Family Trust of which he is the settlor provided that:

9.1.1.1 an individual Shareholder may not transfer any of his Shares under this Article 9.1 if, after the registration of any such transfer in the register of members of the Company, the total number of Shares of any class registered in the name of the individual Shareholder would amount to 50% or less of the total number of Shares of such class registered in the names of the individual Shareholder, the trustees of the individual Shareholder's Family Trusts and his Privileged Relations;

9.1.1.2 any transfer of Shares by an individual Shareholder to a Privileged Relation or trustees of the individual Shareholder's Family Trusts pursuant to this Article 9.1 will be on terms (approved before such transfer by the Board with Investor Consent) that the Privileged Relation or trustees (as the case may be) shall:

9.1.1.2.1 undertake to exercise all voting rights attaching to such Shares and to sign all proxies, consents to short notice and other documents relating to such exercise in accordance with the directions of the individual Shareholder; and

- 9.1.1.2.2 give the individual Shareholder full unconditional and irrevocable authority to sell such Shares on behalf of the trustees or Privileged Relation (as the case may be) on a Listing or a Share Sale or pursuant to Article 12;
    - 9.1.1.2.3 be bound by Articles 9.5 and 10 as a Leaver if the individual Shareholder from whom their Shares were derived (whether directly or indirectly and whether or not such individual shareholder holds any Shares for the time being) is served an Investor Direction under Article 9.5;
  - 9.1.1.3 the Privileged Relations and/or the trustees of Family Trusts to whom Shares are transferred by an individual Shareholder pursuant to this Article 9.1 may transfer such Shares in accordance with Article 9.1.2 at any time but shall not otherwise be entitled to transfer such Shares pursuant to this Article 9.1;
  - 9.1.1.4 if and whenever any Shares held by trustees upon a Family Trust cease to be so held upon a Family Trust (otherwise than in consequence of a transfer to the settlor or to any Privileged Relation of the settlor in accordance with Article 9.1.2) or there cease to be any beneficiaries of the Family Trust other than a charity or charities:
    - 9.1.1.4.1 the trustees of the Family Trust shall notify the Company in writing that such event has occurred; and
    - 9.1.1.4.2 unless the Investors by an Investor Direction direct otherwise, on the date of such cessation the trustees shall be deemed to have given a Transfer Notice which does not specify a Sale Price in favour of the settlor of the Family Trust in respect of the Shares held by the trustees and such Shares may not otherwise be transferred; and
  - 9.1.1.5 if and whenever a Privileged Relation to whom Shares have been transferred pursuant to this Article 9.1 ceases to be a Privileged Relation of the transferring party:
    - 9.1.1.5.1 the transferring party shall notify the Company in writing that such cessation has occurred; and
    - 9.1.1.5.2 unless the Investors by an Investor Direction direct otherwise, on the date of such cessation the former Privileged Relation shall be deemed to have given a Transfer Notice which does not specify a Sale Price in favour of the transferring party in respect of the Shares held by the former Privileged Relation and such Shares may not otherwise be transferred;

and Andrea Stokes shall cease to be a Privileged Relation of Harvey Jones in the event that Harvey Jones notifies the Company of such cessation.

**9.1.2 Permitted transfers by Privileged Relations and/or Family Trusts**

Subject to Article 9.4:

- 9.1.2.1 the Privileged Relations to whom Shares are transferred by a Manager pursuant to Article 9.1 may transfer such Shares to the Manager concerned at any time but shall not otherwise be entitled to transfer such Shares pursuant to this Article 9.1:
- 9.1.2.2 where any Shares are held by trustees upon a Family Trust:
  - 9.1.2.2.1 on any change of trustees such Shares may be transferred to the new trustees of that Family Trust; and
  - 9.1.2.2.2 such Shares may be transferred at any time to the settlor provided the settlor is a Manager or to another Family Trust of which the Manager is the settlor or to any Privileged Relation of the Manager.

**9.2 Permitted transfers by Investors**

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

- 9.2.1 any holder of A Ordinary Shares may transfer such shares to Mr Slade or his Connected Persons;
- 9.2.2 Mr Slade or his Connected Persons may transfer any A Ordinary Shares to any Investor or any Connected Persons of Mr Slade;
- 9.2.3 any holder of A Ordinary Shares which is a body corporate may transfer any such shares to its ultimate parent company or any other body corporate controlled, directly or indirectly, by it or its ultimate parent company PROVIDED ALWAYS THAT the transferee gives an undertaking to the Company that, in the event of any such body corporate ceasing to be controlled, directly or indirectly, by the original shareholder or such ultimate parent company, immediately prior to it so ceasing such shares shall be transferred to another body corporate so controlled (and for the purposes of this Article 9.2.1 "control" has the same meaning as in section 840 of ICTA);
- 9.2.4 any Shares which are held by or on behalf of an Investment Trust (as defined in LR Appendix 1 of the Listing Rules published by the UK Listing Authority) whose shares are listed on the Official List of the UK Listing Authority may be transferred to another such Investment Trust whose shares are also so listed;
- 9.2.5 any A Ordinary Shares may be transferred to any member of the Defined Group or to any trustee or nominee for any such member;
- 9.2.6 any A Ordinary Shares held by or on behalf of a unit trust or partnership



or other unincorporated association, fund or any participant in any Co-Investment Scheme may with Investor Consent be transferred or disposed of to the holder or holders of units in such unit trust or partners in such partnership or members of such unincorporated association or investors in such fund or participant in such Co-Investment Scheme from time to time or to trustees for any such person;

- 9.2.7 the beneficial interest in any A Ordinary Shares held by any Investor may be transferred to any participant in any Co-Investment Scheme to hold upon the terms of such scheme, and the beneficial interest in any such shares may be transferred by any participant in a Co-Investment Scheme to any other participant in such scheme in accordance with the provisions of any agreement governing the rules of the scheme;
- 9.2.8 any holder of A Ordinary Shares which is a nominee or trustee, whether directly or indirectly, for an approved scheme or schemes as defined in section 612 of ICTA may transfer any Shares to any other nominee or trustee, whether direct or indirect, for the same approved scheme or schemes;
- 9.2.9 any A Ordinary Shares held by a nominee or trustee of a partnership may be transferred to the partners or to any new nominee or trustee for such partnership;
- 9.2.10 any A Ordinary Shares held by or on behalf of a partnership, unit trust, investment trust, unincorporated association or other fund (whether a body corporate or otherwise) or corporation may be transferred to another partnership, unit trust, investment trust, unincorporated association or other such fund or corporation which is managed or advised by the same manager or adviser as the transferor or by a holding company of such manager or adviser or any subsidiary company of such holding company;
- 9.2.11 any A Ordinary Shares may be transferred from one Institutional Investor (or its nominee) to another Institutional Investor (or its nominee) with Investor Consent.

### **9.3 Other Permitted Transfers**

#### **9.3.1 Transfers from an Employee Trust**

Notwithstanding any other provision of these Articles, the trustee or trustees of an Employee Trust may, with Investor Consent, at any time transfer all or any Shares to an Employee other than a Manager at a price not less than the price paid per Share by the Employee Trust.

#### **9.3.2 Transfers to the Company**

Any holder of Shares may at any time, with Investor Consent, transfer Shares to the Company in accordance with the Companies Acts and these Articles.

#### **9.3.3 Transfers with Investor Consent**

Notwithstanding any other provisions of these Articles a transfer of any Shares made with Investor Consent may be made without restriction as to price or otherwise.

#### **9.3.4 Transfers pursuant to a Listing, a Share Sale or Article 12**

Notwithstanding any other provision of these Articles, a transfer of any Share made pursuant to and in accordance with a Listing, a Share Sale or Article 12 (Tag Along and Come Along) shall be registered by the directors (subject to stamping).

- 9.4 At any time after a Shareholder becomes an Excluded Person, the Board may with Investor Consent, and shall immediately on an Investor Direction, by notice in writing to such Shareholder revoke any outstanding Transfer Notice deemed to have been given under Article 9.1 by the Privileged Relations and by the trustees of the Family Trusts of such Shareholder prior to that Shareholder becoming an Excluded Person. These Articles shall thereafter operate as if no such Transfer Notice had been given provided that such revocation shall be without prejudice to any sale of the Shares which were the subject of the Transfer Notice completed prior to such revocation.

**9.5 Transfers in respect of Leavers**

- 9.5.1 Within the period commencing on the relevant Leaving Date and expiring at midnight on the first anniversary of such date, the Investors may direct the Company by an Investor Direction immediately to serve a notice on a Leaver or 2009 Leaver notifying him that he is, with immediate effect, deemed to have served one or more Transfer Notices in respect of such number and class of his Leaver's Shares as is specified in the Investor Direction (the "**Sale Shares**").

- 9.5.2 Following the service of a Transfer Notice on a Leaver any Shares held by such Leaver shall not confer right to receive notice of, attend or vote at any general meeting of the Company or meeting of the holders of Shares of the same class and such Shares shall not be counted in determining the total number of votes which may be cast at any such meeting or for the purposes of a written resolution or a written consent of any Shareholder or class of Shareholders nor shall the holder of such Shares be entitled to participate in any allotment of shares pursuant to Article 7.

**9.6 Transfer on change of control of shareholder**

If a Shareholder being a company ceases to be within the control (as such term is defined by section 840 of ICTA) of the person(s) who controlled such company on the date on which it became a Shareholder or on the date of adoption of these Articles (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 which does not specify a Sale Price in favour of the person(s) who controlled such company on the date on which it becomes a Shareholder or on the date of adoption of these Articles (whichever shall be the later) provided that this Article 9.6 shall have no application to an Investor or any nominee of an Investor.

**10. TRANSFER ARRANGEMENTS**

- 10.1 Any Shares which are currently the subject of a Transfer Notice shall not confer the right to receive notice of, attend or vote at any general meeting of the Company or meeting of the holders of Shares of the same class and such Shares shall not be counted in determining the total number of votes which may be cast at any such meeting or for the purposes of a written resolution or a written consent of any Shareholder or class of Shareholders nor shall the holder of such Shares be entitled to participate in any allotment of shares pursuant to Article 7.
- 10.2 Save as otherwise set out in these Articles the Sale Price for the 2006 Shares shall be in the case of:

- 10.2.1 a 2006 Early Leaver or a 2006 Bad Leaver, the lower of the Issue Price and the Fair Price;
- 10.2.2 a Founder Leaver the Fair Price; and
- 10.2.3 a 2006 Leaver who is not a 2006 Early Leaver or a 2006 Bad Leaver, the Fair Price.

PROVIDED ALWAYS THAT a Shareholder Majority with Investor Consent may by an Investor Direction determine that the Sale Price in any circumstance shall be greater than that set out in this Article 10.2.

- 10.3 Save as otherwise set out in these Articles the Sale Price for the 2009 Shares shall be in the case of:

- 10.3.1 a 2009 Bad Leaver, the lower of Issue Price and the Market Price;
- 10.3.2 a 2009 Early Leaver the proportion of the Market Price set out below opposite the relevant number of Elapsed Years;

Elapsed Years	Proportion of Market Price
Less than one	0%
One or more but less than two	33%
Two or more but less than three	66%
Three or more	100%

- 10.3.3 a 2009 Leaver who is not either a 2009 Early Leaver or a 2009 Bad Leaver, the Market Price

PROVIDED ALWAYS THAT a Shareholder Majority with Investor Consent may by an Investor Direction determine that the Sale Price in any circumstance shall be greater than that set out in this Article 10.3.

- 10.4 If either the Market Price or the Fair Price falls to be determined by an Independent Expert:

- 10.4.1 the Company shall immediately instruct the Independent Expert to determine

- 10.4.1.1 either the Fair Price on the basis which, in the Independent Expert's opinion, represents a fair price for the Leaver's Shares at the Leaving Date as between a willing seller and a willing buyer and, in making such determination, the Independent Expert shall ignore the fact that such Leaver's Shares can be subject to the compulsory transfer requirements of Articles 9 (Transfers of Shares) and 12 (Tag Along and Come Along)); or

- 10.4.1.2 the Market Price on the basis which, in the Independent Expert's opinion represents the price the 2009 Leaver's 2009 Shares could be sold for at the Leaving Date to a Third Party Purchaser;

- 10.4.2 the Independent Expert shall certify the Fair Price as soon as possible after being instructed by the Company and in so certifying the

Independent Expert shall be deemed to be acting as expert and not as arbitrator and the Arbitration Act 1996 shall not apply;

- 10.4.3 the certificate of the Independent Expert shall, in the absence of manifest error, be final and binding; and
  - 10.4.4 the Company shall procure that any certificate required hereunder is obtained with due expedition and the cost of obtaining such certificate shall be borne by the Company unless (i) such an arrangement would not be permitted by the Companies Acts or (ii) the Fair Price as determined by the Independent Expert is the same as, or within 10% of, that price (if any) which the Company had previously notified to the Leaver as being in its opinion the Fair Price, in which event the cost shall be borne by the Leaver.
- 10.5 If a person who is deemed to have given a Transfer Notice pursuant to Articles 9.5, and 9.6 has not transferred such Shares in accordance with the Transfer Notice by 30 days after the date on which the Transfer Notice is deemed to have been given the Company may nominate some person to execute an instrument of transfer of such Shares in the name and on behalf of the holder of such Shares and thereafter, when the instrument has been duly stamped, the Company shall cause the name of the transferee to be entered in the register of members as the holder of such Shares.

## **11. PRE-EMPTION RIGHTS**

- 11.1 The Investors may, within twenty-one days after the Start Date, direct the Company by an Investor Direction to offer at the Sale Price such number of Sale Shares to such person as may be specified in the Investor Direction (including, for the avoidance of doubt, the Company and/or any Employee Trust). If the offeree of the Sale Shares applies for any of them within 6 weeks after the Start Date, the Company shall (with Investor Consent) within 7 days after such application allocate to the offeree the number of Sale Shares applied for. If all of the Sale Shares are so allocated, the provisions of Articles 11.2 to 11.8 (inclusive) shall not apply. If none or some only of the Sale Shares are so allocated, the remaining provisions of this Article shall have effect as if references to Sale Shares shall mean those not allocated in accordance with this Article.

- 11.2 The Company shall:

- 11.2.1 on the twenty-second day following the Start Date (or, if that day is not a Business Day, on the next Business Day), if an Investor Direction has not been given pursuant to Article 11.1; or
- 11.2.2 on the day immediately following the expiry of the 6 week period referred to in Article 11.1 (or, if that day is not a Business Day, on the next Business Day), if an Investor Direction has been given pursuant to Article 11.1,

give notice in writing to each of the Shareholders (other than the Seller or an Excluded Person) offering for sale the Sale Shares at the Sale Price, provided that, if the Board considers that the provisions of this Article could mean that the offer of the Sale Shares would require a prospectus (or admission document) in accordance with the Prospectus Rules of the United Kingdom Listing Authority, the Board shall (with Investor Consent) be entitled to devise such other method of offering such Sale Shares which does not require a prospectus (including, but without limitation, offering the Sale Shares to a limited number of Shareholders selected by such method as the Board shall (with Investor Consent) determine). The notice shall specify that the Shareholder shall have a period of 25 days from the date of such notice within which

to apply for some or all of the Sale Shares. If Shareholders of more than one class apply for some or all of the Sale Shares, the Sale Shares shall be treated as having been offered to all Shareholders (other than the Seller or any Excluded Person) holding the class of Shares shown in the line relevant to the class of Sale Shares in columns (2), (3) and (4) below in that order of priority:

(1)	(2)	(3)	(4)
Sale Shares	Offered first to	Offered second to	Offered third to
Ordinary	Ordinary	A Ordinary	2009 Ordinary and Super Ordinary
A Ordinary	A Ordinary	Ordinary	2009 Ordinary and Super Ordinary
2009 Ordinary Shares	Ordinary and A Ordinary	2009 Ordinary	Super Ordinary
Super Ordinary Shares	Ordinary and A Ordinary	2009 Ordinary	Super Ordinary

- 11.3 The Sale Shares shall be treated as having been offered among each class of Shareholder in proportion (as nearly as may be) to their existing holdings of Shares of the class or classes to which the offer is treated as having been made (the "**Proportionate Allocation**"). A Shareholder may, if he so desires, indicate in his application for Sale Shares that he would be willing to purchase a particular number of Shares in excess of his Proportionate Allocation ("**Extra Shares**").
- 11.4 In respect of each class of Shareholder to whom the Sale Shares are offered, the Company shall allocate the Sale Shares as follows:
- 11.4.1 if the total number of Sale Shares applied for is equal to or less than the available number of Sale Shares, each Shareholder shall be allocated the number applied for in accordance with his application; or
- 11.4.2 if the total number of Sale Shares applied for is greater than the available number of Sale Shares, each Shareholder shall be allocated his Proportionate Allocation or such lesser number of Sale Shares for which he has applied and applications for Extra Shares shall be allocated in accordance with such applications or, in the event of competition, among those Shareholders applying for Extra Shares in such proportions as equal (as nearly as may be) the proportions of all the Shares of the same class held by such Shareholder.
- 11.5 Allocations of Sale Shares made by the Company pursuant to this Article shall constitute the acceptance by the Shareholders to whom they are allocated of the offer to sell those Sale Shares on the terms offered to them, provided that no person shall be obliged to take more than the maximum number of Sale Shares that he has indicated to the Company he is willing to purchase.
- 11.6 The Company shall forthwith upon allocating any Sale Shares give notice in writing (a "**Sale Notice**") to the Seller and to each person to whom Sale Shares have been so allocated of the number of Sale Shares so allocated and the aggregate price payable therefor. Completion of the sale and purchase of those Sale Shares in accordance with the Sale Notice shall take place within five days after the date of the Sale Notice whereupon the Seller shall, upon payment of the price due in respect thereof, transfer those Sale Shares specified in the Sale Notice to the persons to whom they have been allocated and deliver the relevant Share certificates.

- 11.7 Save in the case of an acquisition of Sale Shares by the Company, if the Seller defaults in transferring any Sale Shares pursuant to Article 11.6 to a person to whom such Shares have been allocated (the “**allocated person**”), the Company may receive the relevant purchase money from the allocated person and may nominate some person to execute an instrument of transfer of such Sale Shares in the name and on behalf of the Seller and thereafter, when the instrument has been duly stamped, the Company shall cause the name of the allocated person to be entered in the register of members as the holder of such Sale Shares and shall hold the purchase money on trust (without interest) for the Seller. The receipt of the Company for the purchase money shall be a good discharge to the allocated person (who shall not be bound to see to the application thereof) and, after his name has been so entered in the register of members, the validity of the proceedings shall not be questioned by any person. In the case of an acquisition of Sale Shares by the Company, if the Seller defaults in transferring any Sale Shares pursuant to Article 11.6, the Company may nominate some person to execute an instrument of transfer of such Sale Shares in the name and on behalf of the Seller and thereafter, when such instrument has been duly stamped, the Company shall cause such share capital to be cancelled in accordance with the Companies Acts and shall hold the purchase money on trust (without interest) for the Seller.
- 11.8 If not all of the Sale Shares are sold under the pre-emption provisions contained in Articles 11.1 to 11.7 (inclusive), the Company shall (forthwith upon the exhaustion of such provisions) so notify the Seller. The Seller shall not be entitled to sell any of the Sale Shares for which no buyer has been found.
- 11.9 For the purposes of this Article 11, references to the holders of Shares who are to be offered any shares the subject of a Transfer Notice shall be deemed to be a reference to such of those shareholders who are on the register at the close of business on the date of the Transfer Notice other than any Shareholder who at any time before such offer is made has given (or is deemed to have given) a current Transfer Notice in respect of any Shares or who is bound under these Articles to give a Transfer Notice in respect of his Shares or any of them.
- 11.10 Any purported transfer of Shares otherwise than in accordance with the foregoing provisions of these Articles shall be void and have no effect.

## **12. TAG ALONG AND COME ALONG**

### **12.1 Tag Along**

12.1.1 Notwithstanding any other provision of these Articles, no sale or transfer of the legal or beneficial interest in any Shares (the “**Controlling Shares**”) may be made or validly registered if as a result of such sale or transfer and registration of the Controlling Shares a Controlling Interest in the Company would be obtained or increased by any person (whether or not then a Shareholder) unless:

12.1.1.1 before any sale or transfer is made and validly registered the proposed transferee or his nominee has obtained Investor Consent to make, and has thereafter made, an offer (stipulated to be open for acceptance for at least 21 days) to purchase all the other Shares (including any Shares which may be allotted during the offer period or upon the offer becoming unconditional pursuant to the exercise or conversion of options or rights to subscribe for or securities convertible into shares, in existence at the date of such offer) at, in the case of the Shares, the price per

share attributed by the proposed transferee or his nominee for a Controlling Share together with any consideration or benefit receivable by the proposed transferors of the Controlling Shares directly or indirectly for or in connection with the sale or transfer and which offer every offeree shall be bound within 21 days of the making of such offer to him either to accept or reject in writing (and in default of so doing shall be deemed to have rejected the offer); and

- 12.1.1.2 before any sale or transfer is made or registered each such accepted offer is completed and the consideration thereunder paid (except insofar as failure to complete is due to the fault of the offeree).

Provided that the provisions of this Article 12.1 shall not apply to the acquisition of Shares by any member of the Defined Group or pursuant to Article 9.

- 12.1.2 For the purpose of Article 12.1 the expressions "transfer" and "transferee" shall include respectively the renunciation of a renounceable letter of allotment and the renouncee under any such letter of allotment.

## 12.2 Come Along

- 12.2.1 This Article 12.2 applies in the event that a Third Party Purchaser, with Investor Consent, enters into an agreement or agreements (the "**Purchase Agreements**") with a Shareholder Majority at the relevant time (the "**Selling Shareholders**") providing for the acquisition by the Third Party Purchaser of all of the Shares and, if agreed between the Third Party Purchaser and such Shareholders, all of the Loan Stock held by the Selling Shareholders.

- 12.2.2 The Purchase Agreements shall specify the consideration payable or transferable by the Third Party Purchaser to the Selling Shareholders for each Share and, if applicable, for each £1 nominal of each class of Loan Stock held by the Selling Shareholders (together the "**Basic Consideration**") and, if agreed between the Third Party Purchaser and Selling Shareholders may also specify another form of consideration which all Selling Shareholders may elect to receive as an alternative, in whole or in part, to any part of the Basic Consideration (the "**Alternative Consideration**"). The Purchase Agreements shall also contain a provision that they will terminate if the Third Party Purchaser does not give written notice pursuant to Article 12.2.3. The Purchase Agreements may otherwise contain whatever terms and conditions may be agreed between the Third Party Purchaser and any of the Selling Shareholders including, without limitation, a term that some of the Selling Shareholders (other than the Investors) shall be entitled to receive a form of consideration not available to the Investors, other Selling Shareholders or the Other Shareholders (as defined in Article 12.2.3 below).

- 12.2.3 Within a period of 7 days immediately following the later of:

- 12.2.3.1 the date or the latest of the dates on which the Purchase Agreements is or are entered into; and
- 12.2.3.2 if there are any conditions precedent which the Third Party Purchaser and the Selling Shareholders have agreed are to be satisfied or waived before the Third Party Purchaser

gives notice under this Article 12.2.3, the date on which such conditions precedent have been satisfied or waived in accordance with the Purchase Agreements,

the Third Party Purchaser shall give written notice to Shareholders who are not parties to the Purchase Agreements and to all other persons, whether or not members, who at the date of the notice have rights (whether or not contingent) granted by the Company to acquire Shares (together "**Other Shareholders**") requiring them to sell all the Shares and, if so agreed between the Third Party Purchaser and the Selling Shareholders, Loan Stock held by them and shall provide to each Other Shareholder with such notice the following documents in the respective forms agreed pursuant to the Purchase Agreements:

12.2.3.3 a form of transfer for each class of Share held (or which would be held following the exercise of the rights held by him) by that Other Shareholder;

12.2.3.4 a form of power of attorney in relation to the Shares held (or which would be held following the exercise of the rights held by him) by that Other Shareholder authorising the Third Party Purchaser or some other person nominated by the Third Party Purchaser, after completion of the sale of such Shares to the Third Party Purchaser, to exercise all rights attaching to such Shares pending registration of the Third Party Purchaser or its nominees as the holder thereof;

12.2.3.5 if applicable, a form of transfer for each class of Loan Stock held by that Other Shareholder; and

12.2.3.6 if applicable, a form of election for the Alternative Consideration.

12.2.4 Following the giving by the Third Party Purchaser of a written notice to each Other Shareholder under Article 12.2.3, each Other Shareholder shall:

12.2.4.1 be deemed to have agreed to sell all of his Shares and, if applicable, Loan Stock to the Third Party Purchaser for an amount per Share and per £1 nominal of each class of Loan Stock equal to the Basic Consideration therefor (with the right, if provided for in the Purchase Agreements, to elect to receive the Alternative Consideration) at the same time and subject to the same conditions precedent as apply to the sale of Shares and if applicable Loan Stock under the Purchase Agreements (except any of such conditions precedent which the Third Party Purchaser and one or more of the Selling Shareholders agree to waive); and

12.2.4.2 be obliged, within 14 days of the date on which such notice is given or deemed to have been given to him, to deliver up to the Third Party Purchaser the documents provided to him with the written notice pursuant to Article 12.2.3, in each case duly executed by him, together with the original certificates for the Shares and if applicable Loan Stock held by him, except that failure to deliver up a duly executed form of election shall have the consequence that he will only



be entitled to receive an amount per share and £1 nominal of each class of Loan Stock equal to the Basic Consideration.

12.2.5 If any Other Shareholder fails to comply in full with Article 12.2.4.2:

12.2.5.1 the Directors shall authorise and instruct such person or persons as they think fit to execute documents referred to at Article 12.2.3.3 and, if applicable, Article 12.2.3.5 in the respective forms sent to that Other Shareholder and to deliver such documents to the Third Party Purchaser (or its agents) and, against receipt by the Company (on trust for that Other Shareholder) of the consideration receivable for the Shares and, if applicable, Loan Stock held by that Other Shareholder, to register the Third Party Purchaser or its nominees as the holder thereof, and after the Third Party Purchaser or its nominees have been registered as the holder thereof the validity of such proceedings shall not be questioned by any person; and

12.2.5.2 the chairman of any general, class or other meeting of the Company shall, pending registration of the Third Party Purchaser or its nominees as the holder of the Shares held by that Other Shareholder, be deemed to have received from that Other Shareholder an irrevocable form of proxy, regardless of that Other Shareholder's attendance at any such meeting, in respect of those Shares held by that Other Shareholder to attend such meeting and to vote in that Other Shareholder's name, both on a show of hands and on a poll, and the chairman shall be entitled to exercise the voting rights attached to such Shares as he thinks fit.

12.2.6 Completion of the sale to the Third Party Purchaser of Shares and if applicable Loan Stock by the Other Shareholders shall take place, and the payment and/or transfer by the Third Party Purchaser of the consideration therefor shall be made, in accordance with the Purchase Agreements.

12.2.7 For the purpose of ensuring:

12.2.7.1 that no Third Party Purchaser has acquired or may acquire a Controlling Interest otherwise than as permitted by this Article (and to that end for the purpose of determining whether one person is a Connected Person of another); or

12.2.7.2 that a price offered or proposed to be offered for any Shares is the Basic Consideration (with the right, if provided for in the Purchase Agreements, to elect to receive the Alternative Consideration),

the Directors or the Investors may from time to time require any Shareholder to furnish to the Company or the Investors for the time being such information and evidence as the Directors or the Investors may reasonably think fit regarding any matter which they may deem relevant for such purposes.

### 13. EXIT

13.1 In the event of an Exit Event the Company shall procure that the Exit Proceeds shall be placed into a separately designated, interest bearing account held on trust by the Shareholder's solicitors, being Shareholders of the Company immediately prior to the Exit Event, and shall be distributed amongst such Shareholders in the following order of priority.

13.1.1 first, in paying all of the costs of the Exit Event (or, if applicable and to the extent not payable by the Company, a Listing);

13.1.2 second, distributing the balance ("**Net Exit Proceeds**") between the holders of the Shares in the proportions set out in Articles 13.2, 13.3 and 13.4.

13.2 In the event that the Net Exit Proceeds are less than £30,000,000 the amount to be distributed or, if the Net Exit Proceeds exceed £30,000,000 the first £30,000,000 of such Net Exit Proceeds will be distributed will be in the following proportions:

13.2.1 between the holders of the Ordinary Shares and A Ordinary Shares pro-rata to their shareholdings;

13.2.2 no part of the Exit Proceeds shall be distributed to the holders of the 2009 Ordinary Shares and Super Ordinary Shares.

13.3 In the event that the Net Exit Proceeds are in excess of £30,000,000 then the excess of Net Exit Proceeds over £30,000,000 up to a maximum excess of £40,000,000 shall be distributed in the following proportions:

13.3.1 between the holders of the Ordinary Shares, A Ordinary Shares and 2009 Ordinary Shares pro-rata to their shareholdings;

13.3.2 no part of the Exit Proceeds shall be distributed to the holders of the Super Ordinary Shares.

13.4 Any Net Exit Proceeds in excess of £70,000,000 shall be distributed between the holders of the Ordinary Shares, A Ordinary Shares, 2009 Ordinary Shares and Super Ordinary Shares pro-rata to their shareholdings.

13.5 For the avoidance of doubt where the consideration or any part of it on any Exit is a non-cash consideration each Shareholder shall on an Exit be required to receive their proportion of any non-cash consideration as well as any cash consideration in pro-rata to their share of the Exit Proceeds calculated pursuant to this Article

### 14. COMPLIANCE

14.1 For the purpose of ensuring compliance with the transfer provisions of these Articles, the Company shall immediately on an Investor Direction and may with Investor Consent require any Leaver or other Shareholder to procure that:

14.1.1 he; or

14.1.2 any proposed transferee of any Shares; or

14.1.3 such other person as is reasonably believed to have information and/or evidence relevant to such purpose

provides to the Company any information and/or evidence relevant to such purpose and on an Investor Direction and until such information and/or evidence is provided the Company shall refuse to register any relevant transfer (otherwise than with

Investor Consent).

- 14.2 Each Shareholder hereby irrevocably appoints the Company as his attorney (with the power to appoint any member of the Board as a substitute and to delegate to that substitute all or any powers hereby conferred, other than this power of substitution, as if he had been originally appointed by this power of attorney) to give effect to the provisions of these Articles.

## 15. GENERAL MEETINGS

- 15.1 The final sentence of Regulation 38 of Table A shall be modified by the insertion of the words "known by the Board to be" after the words "to all persons".
- 15.2 No meeting of Shareholders shall be quorate unless those Shareholders present include (whether in person or by a duly authorised representative or a proxy) holders of more than 50% of the A Ordinary Shares in issue for the time being and Regulation 40 of Table A shall be construed accordingly.
- 15.3 Regulation 62 of Table A shall be modified by the substitution in paragraph (a) of the words "at any time" in place of "48 hours" and by the substitution in paragraph (b) of the words "at any time" in place of "24 hours".

## 16. DIRECTORS

### 16.1 Numbers of Directors

The number of directors (including an Investor Director but excluding alternate directors) shall not be less than two in number.

### 16.2 Appointment and removal of Directors

- 16.2.1 The Remuneration and Appointments Committee (as defined in the Investment Agreement) may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director.
- 16.2.2 The Majority Holders may by notice in writing to the Company appoint a person who is willing to act to be a director either to fill a vacancy or to act as an additional director and remove any person so appointed.
- 16.2.3 Regulation 84 of Table A shall be modified by the deletion of the third and fourth sentences.
- 16.2.4 No director shall be required to vacate his office as a Director, nor shall any person be ineligible for appointment as a Director, by reason of his having attained any particular age.
- 16.2.5 The office of a director shall be vacated if:
- 16.2.5.1 he ceases to be a director by virtue of any provision of the Companies Acts or these Articles (including (without limitation) Article 16.2.6) or he becomes prohibited by law from being a director of a company; or
  - 16.2.5.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - 16.2.5.3 he is, or may be, suffering from mental disorder and either:
    - 16.2.5.3.1 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

16.2.5.3.2 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

16.2.5.4 he resigns his office by notice in writing to the Company; or

16.2.5.5 he is convicted of a criminal offence (other than a minor motoring offence) and the directors resolve that his office be vacated; or

16.2.5.6 in the case of a person who is also an employee of the Company or another Group Company, he ceases to be such an employee without so remaining an employee of any other member of the Group; or

16.2.5.7 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; or

16.2.5.8 (save in the case of an Investor Director) the Remuneration and Appointments Committee resolve that his office be vacated.

16.2.6 In addition and without prejudice to the provisions of section 168 of CA 2006, the Company may by ordinary resolution remove any director before the expiration of his period of office and may by ordinary resolution appoint another director in his place.

### **16.3 Alternate Directors**

An Investor Director shall be entitled to appoint any person willing to act, whether or not he is a director, to be his alternative director. The appointment of an alternate director by an Investor Director shall not require approval by a resolution of the directors and an appointment of any alternate director shall not be made without Investor Consent and Regulation 65 of Table A shall be modified accordingly.

### **16.4 Proceedings of Directors**

16.4.1 Notice of every meeting of the directors shall be given to each director at any address in the United Kingdom supplied by him to the Company for that purpose whether or not he is present in the United Kingdom provided that any director may waive notice of any meeting either prospectively or retrospectively and if he does so it shall be no objection to the validity of the meeting that notice was not given to him.

16.4.2 The quorum for the transaction of the business of the Directors shall be at least two Directors provided that if an Investor Director shall have been appointed then at least one director shall be an Investor Director (or his alternate) save for when the business of the Directors to be transacted is the approval of a conflict or potential conflict of interest of an Investor Director and the Company (in accordance with section 175(4) of CA 2006)

when the quorum for the transaction of that particular business only shall be at least two directors.

16.4.3 Notices of meetings of the directors shall be given in writing and in its application to the Company, Regulation 111 of Table A shall be modified accordingly.

16.4.4 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 the Companies Acts, 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.

16.4.5 Subject to the provisions of CA 2006 and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:

16.4.5.1 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;

16.4.5.2 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;

16.4.5.3 may (and any firm or company of which he is a partner or 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;

16.4.5.4 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

16.4.5.5 shall subject to Article 15.4.8 be entitled to vote and be counted in the quorum on any matter concerning the foregoing paragraphs of this Article.

16.4.6 For the purposes of this Article:

16.4.6.1 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;

- 16.4.6.2 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
- 16.4.6.3 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.
- 16.4.7 If a Material Default has occurred and a voting adjustment notice has been given and not cancelled (or otherwise ceased to apply pursuant to Article 3.4.7), or notice has been given in writing to the Company by the Senior Bank pursuant to Article 3.4.3, then, notwithstanding any other provision of these Articles, no meeting of the Board shall be quorate unless an Investor Director (if appointed) is present in person, and at such meeting:
  - 16.4.7.1 if an Investor Director votes at such meeting against any resolution put to that meeting, that resolution shall be deemed not to have been carried notwithstanding that the number of votes cast in its favour exceeds those cast against it and notwithstanding any of the provisions of these Articles or any regulation of Table A to the contrary; and
  - 16.4.7.2 if an Investor Director votes at such meeting in favour of any resolution put to that meeting, that resolution shall be deemed to have been carried notwithstanding that the number of votes cast against such resolution exceeds those cast in its favour and notwithstanding any of the provisions of these Articles or any regulation of Table A to the contrary.
- 16.4.8 For the purposes of section 175 of CA 2006, the Directors shall have the power to authorise, on such terms (including as regards duration and revocation), and subject to such limits or conditions, if any, as they may determine, any matter proposed to them in accordance with these articles which would or might, if not so authorised, constitute or give rise to a situation (a **"Relevant Situation"**) in which a Director (an **"Interested Director"**) has, or can have, a direct or indirect interest which conflicts, or possibly may conflict, with the interests of the Company (including, without limitation, in relation to the exploitation of any property, *information or opportunity*, whether or not the Company could take advantage of it). Any authorisation of a Relevant Situation pursuant to this Article 15.4.9 shall extend to any actual or possible conflict of interest which may reasonably be expected to arise out of the Relevant Situation so authorised.
- 16.4.9 Where Directors give authority under Article 15.4.9 the terms of the authority shall be recorded in writing (but the authority shall be effective whether or not the terms are so recorded).
- 16.4.10 Any such authorisation will be effective only if:

- 16.4.10.1 at the meeting of the Directors at which the Relevant Situation is considered any requirement as to quorum is met without counting the Interested Director; and
- 16.4.10.2 the authorisation was agreed to without any Interested Director voting, or would have been agreed to if the votes of all Interested Directors had not been counted.
- 16.4.11 Subject to Article 16.4.10.2, any proposal made to the Directors and any authorisation by the Directors in relation to a Relevant Situation shall be dealt with in the same way as that in which any other matter may be proposed to and resolved upon by the Directors.
- 16.4.12 For the purposes of this Article 16.4, a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 16.4.13 An Interested Director shall be obliged:
  - 16.4.13.1 to disclose to the other Directors the nature and extent of his interest in any Relevant Situation, such disclosure to be made as soon as reasonably practicable; and
  - 16.4.13.2 to act in accordance with any terms, limits or conditions determined by the Directors under Article 16.4.8.
- 16.4.14 Any authorisation of a Relevant Situation given by the Directors under Article 16.4.8 shall mean that:
  - 16.4.14.1 where the Interested Director obtains (other than through his position as a director of the Company) information that is confidential to a third party, he will not be obliged to disclose it to the Company or to use it in relation to the Company's affairs in circumstances where to do so would amount to a breach of that confidence;
  - 16.4.14.2 where the Interested Director has a direct or indirect interest in a matter which conflicts, or may conflict, with the interests of the Company, he may absent himself from the discussion of such matter at any meeting of the Directors and be excused from reviewing papers prepared by or for the Directors to the extent that they relate to that matter; and
  - 16.4.14.3 the Interested Director may exclude himself from the receipt of information, the participation in discussion and/or the making of decisions (whether at Directors' meetings or otherwise) related to the matter which the Interested Director has a direct or direct interest which conflicts, or may conflict, with the interests of the Company,
- 16.4.15 and anything done (or omitted to be done) by the Interested Director in accordance with any such provision (or otherwise in accordance with the terms of any authorisation given under Article 16.4.8) will not constitute a breach by him of his duties under sections 172 to 174 of CA 2006.

## 17. DIRECTORS AND OBSERVER

- 17.1 Notwithstanding any other provisions of these Articles the Majority Holders shall be entitled by notice in writing to the Company to appoint as directors of the Company up to two people (each an "Investor Director") and at any time and from time to

time to remove from office in like manner any person so appointed and to appoint another person in his place. The reasonable expenses to be paid to an Investor Director shall be payable by the Company. Upon request by the Majority Holders the Company shall also procure that any Investor Director be appointed a director to any subsidiary of the Company.

17.2 On any resolution to remove an Investor Director, the A Ordinary Shares shall carry at least one vote in excess of 75% of the votes exercisable at the general meeting at which such resolution is proposed.

17.3 At all meetings of the directors and at all meetings of all committees of the directors taking place whilst there are two Investor Directors appointed, if only one such Investor Director is present, in addition to his own vote, he shall be entitled to vote on behalf of the absent Investor Director.

17.4 If no Investor Director has been appointed in accordance with Article 17.1, the Majority Holders shall have the right to designate up to two representatives to attend, as observers, and speak but not vote at all meetings of the directors and at all meetings of all committees of the directors. If one Investor Director only is present at a meeting of the directors or at any meetings of committees of the directors, the Majority Holders shall have the right to designate one representative to attend as observer and speak, but not vote, at all such meetings. Such representatives will be entitled to receive all written materials and other information given to the directors and to members of the committees of the directors in connection with such meetings at the same time as those materials or information are given to the directors or, as the case may be, to such members.

#### 18. **CHAIRMAN**

18.1 The Shareholder Majority shall have the right, with Investor Consent, at any time and from time to time by notice in writing to the Board to instruct the Board to appoint one of the directors of the Company as Chairman of the Board and shall have the right to instruct the Board to remove from the office of Chairman of the Board any director appointed by it pursuant to this Article and to appoint another director in his or her place.

18.2 If the Shareholder Majority cannot agree on the appointment of a Chairman with Investor Consent and the position of Chairman of the Board has been vacant for a period greater than 4 months the Majority Holders shall have the right, by notice in writing to the Board, to instruct the Board to appoint either a director who shall act as Chairman or one of the directors of the Company as Chairman of the Board.

#### 19. **DIVIDENDS**

Regulations 102 to 105 (inclusive) of Table A shall be subject to Article 3.1 and in Regulation 103 of Table A the words from "If the share capital is divided" to the end of the Regulation shall be deleted.



## 20. INDEMNITIES AND INSURANCE

20.1 Subject to the provisions of, and so far as may be consistent with, the Companies Acts, every director, alternate director and officer (other than an auditor) of the Company and of any associated company (as defined in section 232 of CA 2006) of the Company shall be indemnified out of the assets of the Company against all liabilities attaching to him in connection with any negligence, default, breach of duty or breach of trust by him in relation to the Company or any associated company of the Company other than any liability as is referred to in section 234(2)(3) and (6) of CA 2006.

20.2 Regulation 118 shall not apply.

20.3 Without prejudice to Article 19.1 the directors may exercise all the powers of the Company to purchase and maintain insurance for or for the benefit of any person who is or was at any time:

20.3.1 a director, alternate director or other officer of any Relevant Company (as defined in Article 19.4 below) or

20.3.2 a trustee of any pension fund or retirement, death or disability scheme for the benefit of any employee of any Relevant Company or employees share scheme in which employees of any Relevant Company are interested,

including (without limitation) insurance against any liability within Article 19.1 attaching to him in relation to any Relevant Company, or any such pension fund, retirement or other scheme or employees share scheme.

20.4 For these purposes "**Relevant Company**" shall mean the Company or any other undertaking which is or was at any time:

20.4.1 the holding company of the Company; or

20.4.2 a subsidiary of the Company or of such holding company; or

20.4.3 a company in which the Company has an interest (whether direct or indirect).

## 21. FUNDING OF DIRECTOR'S EXPENDITURE ON DEFENDING PROCEEDINGS

Subject to the provisions of, and so far as may be consistent with, the Companies Acts, the directors may exercise all the powers of the Company to:

21.1 provide a director with funds to meet expenditure incurred or to be incurred by him in defending any criminal or civil proceedings or in connection with any application under any of the provisions mentioned in section 205 of CA 2006; or

21.2 do anything to enable a director to avoid incurring expenditure of the kind referred to in article 20.1,

provided that any loan or other thing done under Article 20 shall be made or done on terms which result in the loan falling to be repaid, or any liability of the Company under any transaction connected with the thing in question falling to be discharged, in the circumstances set out in section 205(2) of CA 2006, not later than the date referred to in the relevant part of that section, as interpreted pursuant to section 205(3) and 205(4) of CA 2006.