

Registered Number: 5841599

THE COMPANIES ACTS



**DARWIN EQUITY LIMITED**

PRIVATE COMPANY LIMITED BY SHARES

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**SOLE SHAREHOLDER'S WRITTEN RESOLUTIONS  
PURSUANT TO SECTION 381A  
COMPANIES ACT 1985**

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I, the undersigned, being the sole member of the Company who, at the date of this resolution, is entitled to attend and vote at a general meeting of the Company HEREBY RESOLVE in writing pursuant to section 381A of the Companies Act 1985 as follows:

1. That the authorised share capital of the Company be increased from £100 to £787,350 by the creation of 764,900 ordinary shares of £1 each, 2,087,300 A cumulative participating ordinary shares of £0.01 each and 147,700 B cumulative participating ordinary shares of £0.01 each of the Company.
2. That the directors be and they are hereby generally and unconditionally authorised to exercise all the powers of the Company to allot relevant securities (within the meaning of section 80 Companies Act 1985) up to an aggregate nominal amount of £787,350 provided that this authority shall expire (unless previously renewed, varied or revoked by the Company in general meeting) on 27 July 2011 save that the Company may before such expiry make an offer or agreement which would or might require relevant securities to be allotted after such expiry and the directors may allot relevant securities in pursuance of such offer or agreement as if the authority conferred hereby had not expired.
3. That, the directors be and they are hereby empowered pursuant to section 95 Companies Act 1985 to allot equity securities (within the meaning of section 94 Companies Act 1985) pursuant to the authority conferred by resolution 2 as if section 89(1) Companies Act 1985 did not apply to any such allotment provided that this power shall be limited to the allotment of equity securities up to an aggregate nominal amount of £787,350 and shall expire on 27 July 2011 save that the Company may before such expiry make an offer or agreement which would or might require equity securities to be allotted after such expiry and the directors may allot equity securities in pursuance of such offer or agreement as if the power conferred hereby had not expired.

4. That the regulations contained in the document attached (for the purpose of identification marked "A") be approved and adopted as the Articles of Association of the Company in substitution for and to the exclusion of the existing Articles of Association of the Company.

Signed by  
**KEVIN SARGEANT**

) \_\_\_\_\_ Date 27 July 2006  
) \_\_\_\_\_

**ARTICLES OF ASSOCIATION**  
(adopted on 27 July 2006)

of

**DARWIN EQUITY LIMITED**  
Incorporated on: 8 June 2006  
Registered number : 5841599

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# ARTICLES OF ASSOCIATION

(adopted on 27 July 2006)

of

## DARWIN EQUITY LIMITED

### 1. Interpretation

1.1 Subject as provided in paragraph 1.2 below, the regulations contained in Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No 805) ("**Table A**") shall, together with the following regulations, constitute the articles of association of the Company.

1.2 Regulations numbered 8, 9, 73 to 80 (both inclusive) and 118 in Table A shall not apply to the Company.

1.3 In these Articles:

1.3.1 headings are used for convenience only and shall not affect the construction hereof;

1.3.2 words and expressions which are defined in Table A shall bear the same meaning where used herein and, unless the context otherwise requires or does not so admit or save as otherwise provided herein, words and expressions contained herein shall bear the same meaning as in the Act (as defined below) (but excluding any statutory modification or re-enactment thereof not in force on the date on which these Articles become binding on the Company);

1.3.3 in the event of there being any conflict or inconsistency between any provision in Table A which is applicable to the Company and any provision set forth herein, the latter shall prevail;

1.3.4 the following words and expressions shall have the following meanings:

the "**Act**": the Companies Act 1985 and every statutory modification or re-enactment thereof and every statutory instrument relevant thereto or derived therefrom for the time being in force

**"ABN Group Company"**: ABN AMRO Capital Limited, ABN AMRO Holdings N.V. and any other company (or other entity) which is for the time being a subsidiary undertaking (as defined in section 258 of the Act) of ABN AMRO Holdings N.V. or any fund, partnership, company, syndicate or other entity whose business is managed or advised by any other ABN Group Company

**"Adoption Date"**: 27 July 2006

**“A Ordinary Shares”**: A cumulative participating ordinary shares of £0.01 each in the capital of the Company having rights as set out in these Articles

**“these Articles”**: these articles of association as amended from time to time (and reference to an “article” shall be construed accordingly)

**“Associate”**: the meaning ascribed thereto in article 8.1

**“Bad Leaver”**: a Leaver who is not a Good Leaver

**“Bad Leaver Price”**: the price per Share which is the lesser of:

- (a) fair value, as agreed or determined pursuant to articles 6.6 and 6.7; and
- (b) the Issue Price

**“Bank”**: The Royal Bank of Scotland plc

**“Board”**: the board of directors of the Company as from time to time constituted

**“B Ordinary Leaver”**: the meaning ascribed thereto in article 7.5

**“B Ordinary Shares”**: B cumulative participating ordinary shares of £0.01 each in the capital of the Company having rights as set out in these Articles

**“Cessation Date”**: the meaning ascribed thereto in article 7.3.1

**“Clear Days”**: in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect

**“Controlling Interest”**: the meaning ascribed thereto in article 8.1

**“DDBs”**: the unsecured deep discounted bonds to be issued by Darwin Bond Limited at a price of £47,162,700 on or about the Adoption Date

the **“Directors”**: the directors for the time being of the Company as a body or those of them who are present at a duly convened and quorate meeting of the Directors

**“Equity Shares”**: Ordinary Shares, A Ordinary Shares and B Ordinary Shares

**“Executive Majority”**: the holders of not less than one-half of the total number of B Ordinary Shares for the relevant time being in issue

**“financial year”**: a financial year within the meaning of section 223 of the Act

**“Financing Agreements”:** the Senior Facilities Agreement, the Mezzanine Facility Agreement, and all other documents entered or to be entered into by a Group Company in connection therewith

**“Good Leaver”:** a Leaver who:

- (a) ceases to be employed by a Group Company in any circumstances where the Cessation Date is on or after the fifth anniversary of the Adoption Date; or
- (b) ceases to be employed by a Group Company:
  - (i) in circumstances where he is wrongfully dismissed by the relevant Group Company or in circumstances where a Group Company terminates his employment in accordance with the notice provisions (including, for the avoidance of doubt, any payment in lieu of notice provisions) in his service contract or letter of appointment unless at such time the relevant Group Company was entitled to so terminate his employment in accordance with the terms of his service contract without notice;
  - (ii) in circumstances where a tribunal or other court of competent jurisdiction holds that he is unfairly dismissed (except where the unfair dismissal results solely from procedural irregularities (excluding the giving of notice) relating to the termination of the Leaver’s employment);
  - (iii) in circumstances where a tribunal or other court of competent jurisdiction holds that he has been constructively dismissed;
  - (iv) as a result of death;
  - (v) by reason of redundancy;
  - (vi) due to retirement at the age of 60 years;
  - (vii) because, by virtue of mental or physical ill health, he is determined by at least two medical reports from independent medical specialists to be unable to perform all or substantially all of his duties as an employee of a Group Company for 125 working days in any period of 12 consecutive months and ceases to be an employee of a Group Company as a result thereof; or
  - (viii) in circumstances where he is removed as a director of the relevant Group Company without his consent

unless at the time of such removal the relevant Group Company was entitled to terminate his employment in accordance with the terms of his service contract without notice

**“Group Company”**: the Company and any other company (or other entity) which is for the time being a subsidiary undertaking of the Company as defined in section 258 of the Act (and **“Group”** shall be construed accordingly)

**“holder”**: in relation to Shares, the person whose name is entered in the register of members as the holder of those Shares

**“Investor Approval”**: the prior consent or approval in writing of an Investor Majority

**“Investor Director”**: any Director of the Company appointed pursuant to article 3.5.1

**“Investor Majority”**: the holders of not less than one-half of the total number of A Ordinary Shares for the relevant time being in issue

**“Issue Price”**: the price per Share at which the relevant Shares are issued (being the aggregate of the amount paid up or credited as paid up in respect of the nominal value thereof and any share premium thereon) and, in the event that any Leaver or any Associate of any Leaver acquires Shares at different Issue Prices, the Issue Price in relation to the relevant Shares shall be the weighted average of the different Issue Prices (calculated by reference to the number of Shares acquired at the relevant Issue Price)

**“Leaver”**: the meaning ascribed thereto in article 7.3

**“Listing”**: the admission of all or any of the ordinary share capital of the Company to the Official List of the UK Listing Authority or the admission of the same to trading on the AIM market of the London Stock Exchange plc or the admission of the same to, or the grant of permission by any like authority for the same to be traded on, any other equivalent or similar share market

**“Loan Notes”**: in aggregate, the £6,674,600 nominal unsecured loan notes 2016 to be issued by a Group Company on or about the Adoption Date

**“Member”**: any holder for the time being of Shares

**“Mezzanine Facility Agreement”**: a mezzanine facility agreement made between, amongst others, a Group Company and the Bank dated on or about the Adoption Date

the **“Office”**: the registered office of the Company for the time being



**“Ordinary Shares”:** Ordinary Shares of £1 each in the capital of the Company having rights as set out in these Articles

**“Permitted Transfer”:** the transfer of a Share as permitted under article 5

**“Secretary”:** the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary

**“Senior Facilities Agreement”:** a senior term and revolving facilities agreement made between, amongst others, a Group Company and the Bank dated on or about the Adoption Date

**“Shares”:** (unless the context does not so admit) shares in the capital of the Company (of whatever class)

**“UK Listing Authority”:** the Financial Services Authority acting in its capacity as the competent authority for the purposes of Part VI of the Financial Services and Markets Act 2000.

- 1.4 A Special or Extraordinary Resolution shall be effective for any purpose for which an Ordinary Resolution is expressed to be required under any provision of these Articles or the Act.
- 1.5 Insofar as Table A shall require that the seal be affixed to any document (including a share certificate) such requirement shall be treated as satisfied if such document is executed as provided in Section 36A(4) of the Act (as in force on the Adoption Date).
2. **Share capital**
  - 2.1 The authorised share capital of the Company at the Adoption Date is £787,350 divided into 765,000 Ordinary Shares, 2,087,300 A Ordinary Shares and 147,700 B Ordinary Shares.
3. **Share rights**
  - 3.1 The rights attaching to the Ordinary Shares, the A Ordinary Shares and the B Ordinary Shares (as appropriate) shall be as set out in this article.
  - 3.2 As regards income:
    - 3.2.1 in respect of any financial year of the Company the profits of the Company for the time being available for distribution shall be applied in relation to the fourth financial year following the Adoption Date and each financial year thereafter, first in paying to the holders of the A Ordinary Shares and the B Ordinary Shares (pari passu as if the same constituted one class of share) a cumulative cash dividend (the **“Participating Dividend”**) of a sum equal to one-third of the Adjusted Net Profit (as hereinafter defined) for the relevant financial year; the

Participating Dividend shall begin to accrue from the start of the fourth financial year following the Adoption Date, shall be deemed to accrue from day to day throughout each financial year thereafter and shall become payable and be paid on the date which falls four months after the end of the financial year to which such dividend relates or 14 days after the annual general meeting at which the audited accounts of the Company for such financial year are laid before the Members, whichever is the earlier, provided that if the audited accounts of the Company for such financial year shall not have been so laid at the expiration of four months after the end of the financial year to which they relate there shall be paid to the holders of the A Ordinary Shares and the B Ordinary Shares (pari passu as if the same constituted one class of share) by way of interest-free loan an amount equal to the amount which was (or, in any case where no Participating Dividend was so payable, would have been) payable to the holders of the A Ordinary Shares and the B Ordinary Shares (pari passu as if the same constituted one class of share) by way of Participating Dividend in respect of the financial year immediately preceding that in question; such loan shall be set off against the Participating Dividend for the relevant financial year when calculated or, to the extent that such loan shall exceed the Participating Dividend payable, repaid upon demand made by the Company after such calculation shall have been agreed as finally determined in accordance with article 3.2.7 below.

- 3.2.2 Each Participating Dividend shall become due and payable on the respective dates referred to in article 3.2.1 above ipso facto and without any recommendation or resolution of the Directors or the Company in general meeting (and notwithstanding anything to the contrary contained in these Articles). If any A Ordinary Shares are issued during any financial year, the holders of such A Ordinary Shares shall be entitled to such proportion of the Participating Dividend declared after such subscription issue as the number of A Ordinary Shares issued to such holder bears to the total number of A Ordinary Shares and B Ordinary Shares in issue.
- 3.2.3 The Company shall procure that the profits of any other Group Company for the time being available for distribution shall be paid to it by way of dividend if and to the extent that, but for such payment, the Company would not itself otherwise have sufficient profits available for distribution to pay in full any Participating Dividend.
- 3.2.4 If the Company is not able to pay any Participating Dividend in full on the due date for payment of the same then it shall on such date pay the same to the extent that it is then able so to do and, without prejudice to the respective rights of the holders of the relevant Shares, any amount not then so paid shall be paid as soon thereafter as the Company is lawfully able to pay the same.
- 3.2.5 For so long as any A Ordinary Shares remain in issue, the Company shall not, save with Investor Approval, distribute any profits for the time being available for distribution save as required pursuant to article 3.2.1.

The Company may not distribute any profits in respect of any financial year in addition to those required to be distributed pursuant to article 3.2.1 (if appropriate) unless and until:

- (a) the Participating Dividend in respect of such year and, in addition, any arrears of all or any of the same have been paid in full; and
- (b) Investor Approval shall have been obtained.

Subject thereto, any profits which the Company may determine to distribute in respect of any financial year shall be applied amongst the holders of the A Ordinary Shares, the B Ordinary Shares and the Ordinary Shares (pari passu as if the same constituted one class of share).

3.2.6 The expression “**Adjusted Net Profit**” where used in article 3.2.1 shall mean the net profit after tax of the Company or, if the Company has any subsidiary undertakings during the relevant financial year, the consolidated net profit after tax of the Company and such subsidiary undertakings for the relevant financial year as shown in the audited profit and loss account of the Company or, if the Company has any subsidiary undertakings as aforesaid, a consolidation of the audited profit and loss accounts of the Company and such subsidiary undertakings for such year subject (insofar as such adjustments shall not already have been made) to the following adjustments:

- (a) if such accounts have not been prepared on the historical cost accounting basis, such adjustments as may be necessary to produce the same result as that which would have resulted if such accounts had been prepared on that basis;
- (b) after taking into account any payment in respect of, or provision for, corporation tax (or other tax equivalent to corporation tax in the case of any overseas company) and any other tax (whether of the United Kingdom or otherwise) which may be imposed on or by reference to profits, gains, income or distributions;
- (c) after taking into account any transfer or proposed transfer to reserves; and
- (d) after taking into account extraordinary items and exceptional items.

3.2.7 In the event of any failure to agree the Adjusted Net Profit for a financial year, then the report of the auditors of the Company or, in the event that an Investor Majority shall so require, the report of such other firm of accountants as is nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales as to the amount of the Adjusted Net Profit shall, in the absence of manifest

error, be conclusive and binding on the Company and its Members. In so reporting the auditors or such other firm of accountants shall:

- (a) in any case where the report of the auditors on any of the relevant accounts contains a qualification, be entitled to make, in addition to the adjustments referred to above, such further adjustments as they may in the circumstances acting reasonably consider appropriate; and
- (b) be deemed to be acting as experts not as arbitrators and the provisions of the Arbitration Act 1996 (as from time to time amended) shall not apply. The charges of the auditors or such other firm of accountants for providing any reports pursuant hereto shall be borne by the Company.

3.2.8 No payment of Participating Dividend may be made if and to the extent its payment would contravene the terms of the Financing Agreements, which terms shall prevail to the extent that they conflict with these Articles, PROVIDED THAT this clause shall not supersede any provisions of these Articles which specify the consequence of non-payment of any Participating Dividend to the extent any such consequence is not prohibited by the Financing Agreements.

3.3 As regards capital, on a return of assets on liquidation, reduction of capital or otherwise, the surplus assets of the Company remaining after payment of its liabilities shall be applied:

- 3.3.1 first (if appropriate), in paying to the holders of the A Ordinary Shares and the B Ordinary Shares (pari passu as if the same constituted one class of share) a sum equal to all arrears and accruals of Participating Dividends thereon to be calculated down to the payment date and to be payable irrespective of whether or not any profits have been made or earned by the Company;
- 3.3.2 secondly, in paying to the holders of the A Ordinary Shares and the B Ordinary Shares (pari passu as if the same constituted one class of share) an amount equal to the subscription price (inclusive of any premium) paid for such shares;
- 3.3.3 thirdly, in paying to the holders of the Ordinary Shares an amount equal to the subscription price (inclusive of any premium) paid for such shares;

and, subject thereto, the balance of such assets shall belong to and be distributed amongst the holders of the Ordinary Shares, the A Ordinary Shares and the B Ordinary Shares (pari passu as if the same constituted one class of share).

3.4 As regards voting:

- 3.4.1 Subject to articles 3.4.3 and 7.5, Ordinary Shares, A Ordinary Shares and B Ordinary Shares shall respectively confer on each holder thereof (in that capacity) the right to receive notice of and to attend, speak and vote

at, all general meetings of the Company and on a poll to exercise (save as provided in article 3.4.2) one vote per Share.

3.4.2 In the event that:

- (a) the Participating Dividend has become due for payment and has not been paid in full; or
- (b) all or any part of the principal amount of the DDBs or the Loan Notes, or any interest thereon, has become due for repayment or payment and has not been paid in full; or
- (c) an event of default or potential event of default has occurred under the Financing Agreements (or any of them) which (if capable of remedy) has not been remedied within five days of written notice to the Company from an Investor Majority requiring it to be remedied; or
- (d) a material breach (being a breach of a material provision which has a material consequence for an Investor Majority) by a Group Company of an investment agreement dated on or about the Adoption Date (as the same may be amended or replaced) between the Company and some or all of its Members pursuant to which certain Members subscribed for A Ordinary Shares has occurred, which breach (if capable of remedy) has not been remedied within seven days of written notice to the Company from an Investor Majority requiring it to be remedied,

each such event individually being referred to herein as a **“Default Event”**, then, for so long as any Default Event is continuing and the Investor Majority has notified the Company by the service of written notice upon the company secretary that a Default Event has occurred, each holder of A Ordinary Shares shall be entitled (in that capacity) on a poll to exercise 10 votes for every A Ordinary Share of which he is the holder.

3.4.3 In circumstances where a holder of Ordinary Shares and/or B Ordinary Shares has breached any agreement referred to in article 3.4.2(d) then, for so long as such breach is continuing, any Ordinary Shares and/or B Ordinary Shares held by such Member shall not confer any rights to receive notice of, attend, speak or vote at, any general meeting of the Company or at any class meeting.

3.5 As regards appointment of Directors:

3.5.1 The holders of a majority in number of the A Ordinary Shares in issue at the relevant time shall be entitled from time to time to appoint up to two persons as directors of the Company and each other Group Company and to remove any such person(s) from office.

- 3.5.2 The holders of a majority in number of the A Ordinary Shares in issue at the relevant time shall, following consultation with the holders of the Ordinary Shares, be entitled from time to time to appoint a non-executive director as chairman of the board of directors of the Company and each other Group Company and shall be entitled to remove any such person(s) from office.
- 3.5.3 Any person or persons for the time being holding A Ordinary Shares and entitled to exercise (whether by virtue of such holding(s) of A Ordinary Shares and/or any other holding(s) of Shares of any other class or classes) one-half or more of the total number of votes which can then be cast on a poll at any general meeting of the Company may from time to time (for so long as he or they remain so entitled) remove any or all of the Directors and/or appoint any person or persons as a Director or Directors of the Company.
- 3.5.4 Any such appointment or removal as is referred to in article 3.5.1, 3.5.2 or 3.5.3 above or 3.5.6 below shall be made by notice in writing to the Company and/or the relevant Group Company signed, in the case of an appointment or removal made pursuant to article 3.5.1, 3.5.2 or 3.5.5, by or on behalf of an Investor Majority and, in the case of an appointment or removal made pursuant to article 3.5.3, by or on behalf of such person or persons as are first referred to therein and served, in each case, upon the Company at the Office and such appointment(s) or removal(s) shall take effect immediately on the date on which the relevant notice is so served.
- 3.5.5 Notwithstanding any provision of these Articles to the contrary, any person appointed as a Director pursuant to article 3.5.1 may appoint such person as he thinks fit to be his alternate director.
- 3.5.6 The Company or an Investor Majority shall be entitled from time to time to remove a director of the Company or of any other Group Company (whether appointed pursuant to article 3.5.1 above or otherwise) if such director shall:
- (a) be unable to pay his debts within the meaning of section 272 Insolvency Act 1986 or if he makes an application for an interim order or otherwise manifests his intention to seek an Individual Voluntary Arrangement under Part VIII of that Act;
  - (b) be convicted of any serious criminal offence (other than a motoring offence);
  - (c) be prevented by law from holding office as a director;
  - (d) also being an employee of or consultant to any Group Company, be in material breach of his contract of employment or contract for services (as the case may be) such that any such Group Company would be entitled under the relevant contract of employment or contract for services summarily to dismiss/

terminate the services of such director in accordance with the relevant contract of employment or contract for services (as the case may be); or

- (e) knowingly, with the intention or consequence of causing material damage to the Company, commit any breach of his fiduciary duties to the Company.

3.5.7 If a resolution to remove an Investor Director shall be moved at any general meeting of the Company, then (on a poll), those holders of A Ordinary Shares who are present (whether in person or by corporate representative or proxy) and who vote against such resolution shall be deemed to have had, and to have exercised, such number of votes as will result in such resolution being defeated (and to that extent the relevant provisions in Table A (as to the number of votes which may be cast on a poll) shall be deemed to have been amended accordingly).

3.6 As regards quorums:

3.6.1 No meeting of Members shall be quorate unless those Members present include (whether in person or by a duly authorised representative or a proxy) the holders of not less than 50 per cent of the A Ordinary Shares for the time being in issue.

3.6.2 Save with Investor Approval, no meeting of the Directors held at any time when a person appointed pursuant to article 3.5.1 is in office as a Director of the Company shall be quorate unless such person (or a duly appointed alternate director of such person) is present at such meeting provided that where two persons have been appointed pursuant to article 3.5.1, only one such person need be present at a meeting for it to be quorate.

3.6.3 If, in the case of either a meeting of the Directors or a meeting of Members, a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place provided that in the case of any meeting so adjourned an Investor Majority or (as appropriate) an Investor Director shall not be required to attend in order for such adjourned meeting to be quorate.

3.7 As regards class rights:

3.7.1 The special rights attaching to the Ordinary Shares as a class of shares may be abrogated or varied only if:

- (a) the holders of three-quarters in nominal value of the Ordinary Shares consent in writing to the variation or abrogation; or

- (b) an extraordinary resolution passed at a separate general meeting of the holders of the Ordinary Shares sanctions the variation or abrogation.

3.7.2 The special rights attaching to the A Ordinary Shares and the B Ordinary Shares (together as if the same constituted one class) may be varied or abrogated only if the variation or the abrogation applies in the same manner to the A Ordinary Shares and B Ordinary Shares and either:

- (a) the holders of an aggregate of three-quarters in number of the A Ordinary Shares and the B Ordinary Shares in issue consent in writing to the variation or abrogation; or
- (b) resolutions are passed at separate general meetings of the holders of the A Ordinary Shares and the B Ordinary Shares pursuant to which the holders of an aggregate of three-quarters in number of the A Ordinary Shares and B Ordinary Shares in issue sanction the variation or abrogation.

#### **4. Share transfers - general provisions**

4.1 The instrument of transfer of a Share may be in any usual form or in any other form which the Directors may approve and shall be executed by or on behalf of the transferor (but shall not require to be executed by or on behalf of the transferee unless any Share to which it relates is not fully paid). The transferor shall remain the holder of the Shares concerned until the name of the transferee is entered in the register of members in respect thereof.

4.2 The Directors may refuse to register the transfer of any Share which is not fully paid to a person of whom they do not approve and they may also refuse to register the transfer of a Share on which the Company has a lien. They may also refuse to register a transfer unless:

4.2.1 it is lodged at the Office or at such other place in England as the Directors may appoint and is accompanied by the certificate for the Shares to which it relates or such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;

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

4.2.3 it is in favour of not more than four transferees;

or if it is to an individual who is (or whom the Directors reasonably believe to be) under 18 years of age or who does not have (or whom the Directors reasonably believe does not have) the legal capacity freely to dispose of any Share without let, hindrance or court approval.

4.3 The Directors shall refuse to register the transfer of any Share unless they are satisfied that such transfer is either:



- 4.3.1 a transfer permitted under article 5 (a **“Permitted Transfer”**); or
- 4.3.2 a transfer made in accordance with and permitted under article 6; or
- 4.3.3 a transfer made in accordance with articles 8.6 or 8.7.
- 4.4 Subject as provided in articles 4.2 and 4.5 or as required by law, the Directors shall register any such transfer as is referred to in article 4.3.
- 4.5 If, in relation to a transfer of a Share, the transferor thereof is a party to any shareholders’ agreement between the Company and some or all of its Members (being an agreement additional to these Articles), or if a new Share is proposed to be allotted to a person who is not a Member, then the Directors may or, if an Investor Majority so requires, shall :
  - 4.5.1 require the transferee or proposed allottee (as the case may be) to enter into a written undertaking (in such form as such agreement prescribes) to be bound by the provisions of such agreement; and
  - 4.5.2 decline to register the transfer of, or to allot, such Share (as the case may be) unless and until the transferee or proposed allottee has entered into such written undertaking.

## 5. Permitted share transfers

- 5.1 Subject to article 4, article 5.2 and (subject as provided in article 8.9) to article 8.2, a Member shall be permitted to transfer the legal title to and/or beneficial ownership of a Share:
  - 5.1.1 if the Member is a company, to any holding company or subsidiary of that Member or to any other subsidiary of any such Member’s holding company; or
  - 5.1.2 to a person who is the beneficial owner of such Share or (in the case of the legal title only) to a different or additional nominee or trustee on behalf of such beneficial owner provided that such person has not become the beneficial owner thereof other than in accordance with the provisions of these Articles; or
  - 5.1.3 if the Member is an individual, to an Associate (within the meaning of paragraphs (a) and (b) of the definition of “Associate” contained in article 8.1.3) of such Member provided that (save in the case of a transfer made in accordance with article 5.1.4) no Shares may be transferred by a Member pursuant to this article 5.1.3 if and to the extent that as a result the number of Shares transferred by such Member pursuant to this article 5.1.3 (when aggregated with any previous transfer hereunder) would amount to more than 66.67 per cent of the aggregate number of Shares held by such Member when he was first registered as a Member; or

- 5.1.4 being a B Ordinary Share, if the Member is an individual who has died, to the personal representatives or beneficiaries of such Member provided that such beneficiaries are persons or entities who would have been Associates to whom such Member would have been permitted to make a transfer pursuant to article 5.1.3 prior to such Member's death; or
  - 5.1.5 if the Member is either a person whose principal business is to make, manage or advise upon share investments or a nominee thereof (an "Investor") or a fund, partnership, company, syndicate or other entity whose business is managed or advised by an Investor or a nominee of any such person as aforesaid, to any participant or partner in or member of any such fund, partnership, company or other entity or to the Investor or to any other fund, partnership, company or other entity whose business is managed or advised by the Investor (or, in any such case, a nominee on behalf thereof); or
  - 5.1.6 to a Buyer pursuant to the provisions of article 8 (including, without limitation, articles 8.6 and 8.7) provided that prior to or contemporaneously with such transfer the Buyer has duly acquired or will duly acquire a Controlling Interest and the provisions of article 8 have been complied with; or
  - 5.1.7 where a Priority Notice (as defined in article 7.4) has been given, to any prospective transferees specified in such notice and, where Shares have been transferred to Custodians (as also referred to in article 7.4), to any subsequent transfer by them of all or any such shares made in accordance with article 7.4.3; or
  - 5.1.8 with the prior written consent of the holders of not less than 95 per cent (by number) of the aggregate number of Equity Shares for the relevant time being in issue; or
  - 5.1.9 if the Member is an ABN Group Company, to any other ABN Group Company or to any fund, partnership, company, syndicate or other entity whose business is managed or advised by any ABN Group Company or to any participant, partner or member of any such fund, partnership, company or other entity.
- 5.2 Save with such consent as is referred to in article 5.1.8, no Member may transfer or otherwise dispose of any Share or any interest therein at a time when the same is the subject of a Transfer Notice (as defined in article 6.2) or a Mandatory Transfer Notice (as defined in article 6.4).

## **6. Share transfers: pre-emption provisions**

- 6.1 Except in the case of a Permitted Transfer, the right to transfer or otherwise dispose of a Share or any interest or right in or arising from a Share (an interest for this purpose being deemed to include, without limitation, an option, warrant or other right to acquire any Share, whether by subscription, conversion or otherwise) shall be subject to the provisions contained in these Articles and any

such transfer or other disposal made otherwise than in accordance with such provisions shall be void.

- 6.2 Except in the case of a Permitted Transfer, before transferring or otherwise disposing of any Share or any interest or right in or arising from any Share the person proposing to transfer or otherwise dispose of the same (the **"Transferor"**) shall give notice in writing (a **"Transfer Notice"**) to the Company specifying the Shares, interest and/or rights the Transferor wishes to transfer or dispose of. The Transferor shall, contemporaneously with the giving of a Transfer Notice, deliver up and lodge with the Company the share certificate(s) in respect of the relevant Shares.
- 6.3 Notwithstanding anything in the Transfer Notice to the contrary, the Transfer Notice shall (notwithstanding that it specifies that the Transferor wishes to transfer or dispose only of an interest or right in or arising from or attaching to the Shares referred to therein) unconditionally constitute the Company the agent of the Transferor in relation to the sale of all the legal title to, beneficial ownership of and all interests and rights attaching to, the Shares referred to therein (the **"Sale Shares"**) at a price per Share as hereinafter referred to (the **"Sale Price"**) in accordance with the provisions of this article. A Transfer Notice shall not be revocable except with the consent of the Directors.
- 6.4 Except in the case of a Transfer Notice which a Member is required to give or is deemed to have given pursuant to article 7 (a **"Mandatory Transfer Notice"**), a Transfer Notice may include a condition (a **"Total Transfer Condition"**) that if all the Sale Shares (of whatever class) are not sold to Approved Transferees (as hereinafter defined), then none shall be so sold.
- 6.5 Except in the case of a Mandatory Transfer Notice, the Transfer Notice may state, in addition to details of the Sale Shares:
- 6.5.1 (if applicable) the name or names of a person or persons (such person or persons being hereinafter referred to as the **"Proposed Transferee"**) to whom the Sale Shares (or an interest or right in or arising therefrom) are proposed to be transferred in the event that the Sale Shares are not acquired by Approved Transferees; and
- 6.5.2 the entire consideration per share for which any such transfer or transfers will be made (and, if any of the said consideration is not a cash price expressed in pounds sterling, an amount per Share which is so expressed and which is commensurate with the entire consideration). In such event, subject to the Directors being reasonably satisfied (and to that end being provided with such evidence as they may reasonably require) that the consideration so stated is a bona fide consideration agreed between the Transferor and the Proposed Transferee at arms' length and in good faith, such consideration shall be the Sale Price and the Prescribed Period (as hereinafter referred to) shall commence on the date on which the Transfer Notice is given and shall expire 60 days thereafter.

- 6.6 In the case of a Mandatory Transfer Notice or a Transfer Notice which does not state the further details referred to in article 6.5 above relating to consideration or where the Directors are not satisfied that the consideration stated is a bona fide consideration within the terms of article 6.5, and subject always to the provisions of article 7.3:
- 6.6.1 if, not more than 30 days after the date on which the Transfer Notice was given or was deemed to be given (or such longer period (if any) as the Directors with Investor Approval may, prior to the expiry of such period of 30 days, determine to allow for this purpose, such longer period not being longer than 12 months) the Transferor and the Directors shall have agreed a price per Share as representing the fair value of the Sale Shares or as being acceptable to the Transferor and not more than the fair value thereof then such price shall be the Sale Price and the Prescribed Period shall commence on the date on which such agreement is reached and shall expire 60 days thereafter; or
- 6.6.2 failing such agreement, upon the expiry of 30 days (or such longer period (if any) being not longer than 12 months as aforesaid) after the date on which the Transfer Notice was given or was deemed to be given, the Directors shall instruct the auditors for the time being of the Company (or, in circumstances where the auditors of the Company refuse to act, a different firm of accountants nominated by the Board) to determine and report to the Directors the sum per Share considered by them to be the fair value of the Sale Shares and (subject always to the provisions of article 7.3) the sum per Share so determined and reported shall be the Sale Price and the Prescribed Period shall commence on the date on which the auditors shall so determine and report and shall expire 60 days thereafter.
- 6.7 For the purposes of article 6.6, the auditors or accountants shall act as experts and not as arbitrators and (save only for manifest error) their determination shall be final and binding upon the Company and all Members. The costs and expenses of the auditors or accountants in relation to the making of their determination shall be borne by the Company unless payment of such costs and expenses by the Company would constitute financial assistance for the purposes of sections 151 and 152 of the Companies Act 1985, in which case such costs and expenses shall be borne by the Transferor and the Proposed Transferee, or if the Sale Price as so determined is the same as, or substantially the same as, that (if any) which the Directors had notified to the Transferor as being in their opinion the Sale Price, in which event such costs and expenses shall be borne by the Transferor. For the purposes of article 6.6 and this article, the fair value of Sale Shares shall be the market value thereof as at the date when the relevant Transfer Notice or Mandatory Transfer Notice was given or deemed to have been given (as the case may be) as between a willing buyer and a willing seller at arms' length for the whole of the issued share capital of the Company, such sum being divided by the number of Shares in issue and ignoring any restrictions on transfer (and the auditors or accountants, as the case may be, shall be instructed accordingly). If the Sale Shares are non-voting the auditors or accountants, as the case may be, shall be instructed to value such Shares as if they were voting shares.

- 6.8 Subject as provided in articles 6.9 and 7.4, Sale Shares shall be offered for sale to all the Members of the Company for the relevant time being holding A Ordinary Shares, B Ordinary Shares or Ordinary Shares but so that:
- 6.8.1 if and to the extent that the Sale Shares consist of A Ordinary Shares and/or B Ordinary Shares, they shall be offered first to the holders for the time being of A Ordinary Shares and B Ordinary Shares (pari passu as if the same constituted one class of share) (other than the Transferor or any Associate of the Transferor) and next to the holders of Ordinary Shares;
  - 6.8.2 if and to the extent that the Sale Shares consist of Ordinary Shares, they shall be offered first to the holders for the time being of Ordinary Shares (other than the Transferor or any Associate of the Transferor) and next to the holders of A Ordinary Shares and B Ordinary Shares (pari passu as if the same constituted one class of share). The holders of the A Ordinary Shares shall procure that the Ordinary Shares to which they are entitled pursuant to this article 6.8 are offered to a Custodian (as defined in article 7.4.2(b) below) unless a majority of the holders for the time being of the Ordinary Shares otherwise agree; and
  - 6.8.3 Sale Shares may also be offered to such person or persons (if any) as the Directors (with Investor Approval) think fit ("**Other Nominees**") provided that any such offer is made upon the condition that such Sale Shares shall only be available for purchase by such person or persons if and to the extent that such Shares are not acquired by holders of A Ordinary Shares and/or B Ordinary Shares and/or Ordinary Shares and/or existing or contemplated employees and/or directors of any Group Company following acceptance of such offers as are referred to in articles 6.8.1 and 6.8.2.
- 6.9 The Company shall not be required to, and shall not, offer any Sale Shares to the Transferor, any Associate of the Transferor or any person who remains a Member but who has been deemed to have given a Mandatory Transfer Notice on or prior to the date on which any such offer as is referred to in article 6.8 is made. In addition, if during the period between the date on which any such offer is made and (following the acceptance of such offer by a Member) the sale of Sale Shares to such Member is completed, such Member is deemed to have given a Mandatory Transfer Notice then such Member shall be deemed not to have accepted such offer and the relevant Sale Shares shall be re-offered for sale (at the same Sale Price and as if such price had been determined on the date on which the Mandatory Transfer Notice is deemed to have been given).
- 6.10 Any such offer as is required to be made by the Company pursuant to article 6.8 shall limit a time (not being less than 14 days or (unless an Investor Majority (acting reasonably) otherwise agrees or directs) more than 21 days) after such offer is made within which it must be accepted or, in default, will lapse. Following any such offer, if acceptances are received in respect of an aggregate number of Shares in excess of that offered, the number of Sale Shares shall be allocated according to the class of the Sale Shares on the following basis of priority:

- 6.10.1 if the Sale Shares are A Ordinary Shares and/or B Ordinary Shares (subject in each case as provided in article 6.9), first to the other holders of A Ordinary Shares and B Ordinary Shares (pari passu as if the same constituted one class of share), next to the holders of Ordinary Shares and next to Other Nominees (if any); or
- 6.10.2 if the Sale Shares are Ordinary Shares (subject in each case as provided in article 6.9), first to the other holders of Ordinary Shares, next to the holders of the A Ordinary Shares and B Ordinary Shares (pari passu as if the same constituted one class of share) and, subject to such Ordinary Shares not being required to be transferred to a Custodian as provided in article 6.8.2, next to Other Nominees (if any).
- 6.11 If, by virtue of the application of the provisions in article 6.10, acceptances are received from any such class as therein referred to in respect of an aggregate number of Shares which is in excess of that offered then the number of Sale Shares shall be allocated amongst those who have accepted the same in proportion to the number of Shares of the relevant class held by each acceptor (or, in the case of Other Nominees, on such basis as the Directors (with Investor Approval) shall determine) provided that no acceptor shall be obliged to acquire more Sale Shares than the number for which he has applied and so that the provisions of this article 6.11 shall continue to apply mutatis mutandis until all Shares which any such acceptor would, but for this proviso, have acquired on the proportionate basis specified above have been allocated accordingly.
- 6.12 If a Transfer Notice shall validly contain a Total Transfer Condition then any such offer as aforesaid shall be conditional upon such condition being satisfied and no acceptance of an offer of Sale Shares will become effective unless such condition is satisfied. Subject thereto, any such offer as is required to be made by the Company pursuant to article 6.8 shall be unconditional.
- 6.13 If, prior to the expiry of the Prescribed Period, the Company shall, pursuant to the foregoing provisions of this article 6 or the provisions of article 7.4, find Members or Other Nominees ("**Approved Transferees**") to purchase some, or, if the relevant Transfer Notice validly contains a Total Transfer Condition, all of the Sale Shares, it shall forthwith give notice in writing thereof to the Transferor and the Approved Transferees. Every such notice shall state the name and address of each of the Approved Transferees and the number of the Sale Shares agreed to be purchased by him and shall specify a place and time and date (not being less than three days nor more than 10 days after the date of such notice) at which the sale and purchase shall be completed. Upon the giving by the Company of any such notice as aforesaid the Transferor shall be unconditionally bound (subject only to due payment of the Sale Price) to complete the sale of the Sale Shares to which such notice relates in accordance with its terms.
- 6.14 If a Transferor shall (save only for the reason that an Approved Transferee does not duly pay the Sale Price) fail duly to transfer (or complete the transfer of) any Sale Shares to an Approved Transferee in circumstances where the provisions of article 6.13 apply, the Directors shall be entitled to, and shall, authorise and instruct some person to execute and deliver on his behalf the necessary transfer and the Company may receive the purchase money in trust for the Transferor and

(notwithstanding (if such is the case) that the Transferor has failed to deliver up the relevant share certificate(s)) shall (subject to so receiving the purchase money) cause such Approved Transferee to be registered as the holder of such Shares. The transfer and the receipt of the Company for the purchase money shall constitute a good title to the Sale Shares and the receipt shall be a good discharge to the Approved Transferee, who shall not be bound to see to the application of the purchase money and whose title to the Sale Shares shall not be affected by any irregularity in or invalidity of the proceedings relating to their disposal under this article.

6.15 After the service of a Transfer Notice or a Mandatory Transfer Notice, as the case may be, if the Company shall not, prior to the expiry of the Prescribed Period, find Approved Transferees willing to purchase some, or, if the relevant Transfer Notice validly contains a Total Transfer Condition, all, of the Sale Shares, it shall, as soon as practicable following such expiry, give notice in writing thereof to the Transferor and the Transferor, at any time thereafter up to the expiration of 60 days from the date of such notice, shall (subject as provided below) be at liberty to transfer those of the Sale Shares not purchased by Approved Transferees or all the Sale Shares (as the case may be) to the Proposed Transferee or, where the Transfer Notice did not contain details of a Proposed Transferee (including, for the avoidance of doubt, in the case of a Mandatory Transfer Notice), to any one person on a bona fide sale at any price not being less than the Sale Price. The Directors may require the Transferor to provide evidence to them (to their reasonable satisfaction) that such Shares are being transferred in pursuance of a bona fide sale for the consideration stated in the Transfer Notice without any deduction, rebate, allowance or indulgent terms whatsoever to the purchaser thereof and if not so satisfied may refuse to register the instrument of transfer and/or serve a Disenfranchisement Notice with the effect set out in article 7.8.2 in respect of such Shares as shall have been so sold.

6.16 Any Share required to be transferred by a Transferor to an Approved Transferee pursuant to this article shall be transferred free from any mortgage, charge, lien, option or other encumbrance and with the benefit of all rights and entitlements attaching thereto and if, in determining the Sale Price, there was taken into account any entitlement to any dividend which has been paid prior to the date on which the transfer is registered then the Transferor shall be liable to account to the Approved Transferee for the amount thereof (and the Approved Transferee, when making payment for such Share, may set off such amount against the consideration payable).

## **7. Share transfers: mandatory transfer notices**

7.1 If any person shall purport to transfer or otherwise dispose of any Share or any interest in or right arising from any Share otherwise than as permitted under article 5.1 or in accordance with the provisions of these Articles, such person and any Associate of such person who is a Member shall, unless and to the extent (if any) that the Directors otherwise determine at the relevant time, be deemed to have given, on the date on which the Directors give notice to such person that they have become aware of the purported transfer or other disposal (or on the date (if any) specified in such notice), a Transfer Notice in respect of all Shares of which such person and any such Associate of such person is then the holder.

- 7.2 If any person becomes entitled to Ordinary Shares in consequence of the death, bankruptcy or liquidation of a Member in circumstances where the provisions of article 7.3 do not apply or becomes entitled to B Ordinary Shares in consequence of bankruptcy or liquidation then (unless a transfer to such person would be a Permitted Transfer or the Directors and an Investor Majority determine otherwise at the relevant time) a Transfer Notice shall be deemed to have been given on the date on which the Directors become aware that such entitlement has arisen in respect of all such Shares held by the Member and any Associate(s) of such Member.
- 7.3 If at any time any employee of or consultant to any Group Company shall cease (for whatever reason) to be such an employee or consultant (without remaining an employee of or consultant to at least one other Group Company) (a “Leaver”) and such person and/or any Associate(s) of such person shall be the holder of any Shares, then the Shares (other than any B Ordinary Shares) held by the Leaver and his Associates shall be subject to the following:
- 7.3.1 where a Leaver who is an employee of or a consultant to a Group Company ceases to be an employee or consultant in circumstances where he has served notice on a Group Company or a Group Company has served notice on him terminating his employment or consultancy (as the case may be) then the date of service of such notice shall be the “Cessation Date” and in all other circumstances, unless an Investor Majority so notifies the Company in writing, the Cessation Date shall be deemed to be the date on which the Leaver ceases to be an employee of or a consultant to a Group Company;
  - 7.3.2 (unless and to the extent that the Investor Directors agree otherwise and notify in writing the person concerned at the relevant time) there shall be deemed to have been given on the Cessation Date (or such later date (if any) as the Directors (with Investor Approval) may determine and notify in writing to the person concerned) a Transfer Notice in respect of all Shares (other than B Ordinary Shares) then held and/or beneficially owned by the Leaver and any Associate(s) of the Leaver;
  - 7.3.3 (unless and to the extent that an Investor Majority determines that the Sale Price will be higher) if the Leaver is a Bad Leaver the Sale Price of all the Shares the subject of the Transfer Notice shall be the Bad Leaver Price;
  - 7.3.4 if the Leaver is not a Bad Leaver, then the Sale Price for all the Shares the subject of the Transfer Notice shall be the fair value of such Shares as agreed or determined pursuant to articles 6.6 and 6.7;
  - 7.3.5 if at any time a former employee of or former consultant to any Group Company shall, after ceasing to be such an employee or consultant, acquire (or any Associate of his shall acquire) any Ordinary Shares pursuant to an option, conversion or like right which was granted to or otherwise vested in him prior to such cessation then the provisions of article 7.3.1 above shall apply as if reference in article 7.3.1 to “Cessation Date” were reference to the date on which he acquired such Shares.



## 7.4

- 7.4.1 If any Transfer Notice is deemed to be given pursuant to article 7.3, the Company shall forthwith give written notice of such occurrence (such notice to include details of all the Shares to which such Transfer Notice relates) to the holders of a majority of the A Ordinary Shares. If within 21 days of the giving of such notice by the Company an Investor Majority requires, by written notice to the Company (a **"Priority Notice"**) that all or any Shares to which such Transfer Notice relates should be made or kept available either for any person or persons who is or are (an) existing director(s) (but not Investment Director(s)) and/or employee(s) of a Group Company or a person or persons (whether or not then ascertained) whom in the opinion of such Investor Majority it will be necessary or expedient to appoint as (a) director(s) (but not Investment Director(s)) and/or employee(s) of a Group Company (whether or not in place of the person by whom the relevant Transfer Notice was deemed to be given) then the provisions of article 7.4.2 below shall apply.
- 7.4.2 If a Priority Notice is given, then, in relation to the Shares the subject thereof (the **"Priority Shares"**) the provisions of article 6.8 shall not apply and the Priority Shares shall either:
- (a) be offered to the person(s) (and, in the case of more than one, in the proportions) specified in the Priority Notice (conditional, in the case of any prospective director (but not Investment Director(s)) and/or employee upon his taking up his proposed appointment with a Group Company (if not then taken up)); or
  - (b) if the relevant Priority Notice so requires, be offered to no fewer than two persons or a company designated by an Investor Majority (a **"Custodian"**) to be held (in the event of their acquiring the Priority Shares) on and subject to the terms referred to in article 7.4.3 below.
- 7.4.3 If (a) Custodian(s) become(s) the holder(s) of Priority Shares, then (unless and to the extent that the Directors with Investor Approval otherwise agree from time to time) they or it shall hold the same on, and subject to, the following terms:
- (a) they or it may not exercise any of the voting rights attaching to such Shares;
  - (b) save with the approval of the remuneration committee (as constituted from time to time) of the Board, they or it shall not encumber the same;
  - (c) they or it will (subject as provided in article 7.4.4 below) transfer the legal title to such Shares and all such other interests as they or it may have therein to (and only to) such person or persons and at such time or times and otherwise on such terms

as an Investor Majority may from time to time direct by notice in writing to the Custodian(s) PROVIDED THAT the Custodian(s) may not be required to enter into any agreement or otherwise take any action if and to the extent that they or it would or might incur any personal liability (whether actual or contingent) or suffer any personal loss;

- (d) if an offer is made to them or it for the Priority Shares (whether as part of a general offer or otherwise) then they or it shall seek instructions from an Investor Majority as to what (if any) actions they or it should take with regard thereto but, absent instructions from an Investor Majority within 21 days of seeking the same, the Custodian(s) may accept or decline to accept such offer, as they or it may think fit.

#### 7.4.4 An Investor Majority:

- (a) may not direct the Custodian(s) to transfer all or any Priority Shares other than to an employee benefit trust, or a person who is an existing director (but not Investment Director(s)) and/or employee of a Group Company or who has agreed (subject only to Priority Shares being transferred to him) to accept appointment as such a director (but not Investment Director(s)) and/or employee save with the prior approval of the Directors; and
- (b) may not following the making of an offer as is referred to in article 8.2 direct the Custodian(s) to transfer all or any Priority Shares until and unless such offer has ceased to be capable of acceptance; and
- (c) shall immediately following the acquisition of a controlling interest as is referred to in article 8.1.4 direct the Custodian(s) to transfer the Priority Shares pro rata to the holders of the Ordinary Shares such that they are able to assent such Shares to the offer.

7.5 If at any time any employee of or consultant to any Group Company shall cease (for whatever reason including (without limitation) death) to be an employee of or consultant to any Group Company (without remaining an employee of or consultant to at least one other Group Company) and such person and/or any Associate(s) of such person shall be the holder of any B Ordinary Shares (a “**B Ordinary Leaver**”) then the B Ordinary Shares held by the B Ordinary Leaver and his Associates (“**the B Leaver Shares**”) shall be subject to the following:

- 7.5.1 the B Leaver Shares shall automatically (unless the Directors with Investor Approval determine otherwise within 14 days of the Cessation Date) cease to confer any right to receive notice of, attend, speak or vote at any general meeting of the Company or at any class meeting; and

7.5.2 any B Leaver Shares shall be treated as though they confer votes in the same manner as the remaining B Ordinary Shares when:

- (a) calculating whether or not a Controlling Interest has been acquired for the purpose of the provisions of article 8; and
- (b) calculating the fair market value of such B Leaver Shares in accordance with articles 6.6 or 6.7.

7.6 If a corporation which is a holder and/or beneficial owner of any Share in the Company ceases to be controlled by the person or persons who were in control of the corporation at the time when the corporation became a Member of the Company, it shall, within seven days of such cessation of control, give notice in writing to the Company of that fact and unless the Directors and an Investor Majority determine otherwise at the relevant time there shall be deemed to have been given as from the date on which the Directors become aware of such cessation (however they become so aware) a Transfer Notice in respect of all Shares held and/or beneficially owned by such corporation and any Associate(s) of such corporation. For the purposes of this article 7.6 "control" shall have the same meaning as in section 416 Income and Corporation Taxes Act 1988. The provisions of this article 7.6 shall not apply to any corporation which holds A Ordinary Shares at the time when these provisions would otherwise operate or any holding company for the time being of any such corporation or any subsidiary of any such holding company.

7.7 If a person in whose favour a Permitted Transfer was made pursuant to article 5.1.3 shall cease to be an Associate of the person by whom such transfer was made then, within seven days of such cessation, he shall either (i) transfer the Shares back to the original Member provided that the original Member is still a director or an employee or a consultant of a Group Company and is not the subject of a Mandatory Transfer Notice; or (ii) give notice in writing to the Company of the fact that he has ceased to be an Associate of such person and unless the Directors and an Investor Majority determine otherwise at the relevant time there shall be deemed to have been given as from the date on which the Directors become aware of such cessation (however they become so aware) a Transfer Notice in respect of all Shares held by such person (as is first-mentioned in this article 7.7) and any Associate(s) of such person provided that in the event of the death of a person in whose favour a Permitted Transfer was made pursuant to article 5.1.3, the person by whom such Permitted Transfer was made shall have a period of 180 days within which to re-acquire the Shares so transferred, failing which a Transfer Notice shall be deemed to have been given in respect of those Shares.

7.8 For the purpose of ensuring that a transfer of Shares is a Permitted Transfer or that no circumstances have arisen whereby a Transfer Notice is required or may be deemed to have been given under any provision of article 6 or this article 7, the Directors may from time to time require any Member or the personal representatives of any deceased Member or any person named as transferee in any transfer lodged for registration or any person who was, is or may be an Associate of any of the foregoing to furnish to the Company such information and evidence as the Directors may reasonably think fit regarding any matter which they may

deem relevant to such purpose. If such information or evidence discloses that a Transfer Notice ought to have been given in respect of any Shares the Directors may by notice in writing stipulate that a Mandatory Transfer Notice shall as from the date of such notice or on such future date as may be specified therein be deemed to have been given by the holders of those Shares and/or their Associates in respect of all or any of such Shares. Failing such information or evidence being furnished to the reasonable satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled:

7.8.1 to refuse to register the transfer in question or, in case no transfer is in question, to require by notice in writing to the holder(s) of the relevant Shares that a Transfer Notice be given in respect of all such Shares (and such notice may stipulate that if a Transfer Notice is not given within a specified period then, upon the expiry of such period, a Mandatory Transfer Notice shall be deemed to have been given in respect of all the relevant Shares); and/or

7.8.2 to give to the holder(s) of the Shares in question a notice (a **“Disenfranchisement Notice”**) stating that such Shares shall as from the date of such notice no longer confer any right to attend, speak or vote at any general meeting of the Company or at any class meeting or to receive or be entitled to receive any dividend or other distribution until such time as the Directors shall think fit and, as from such date, such Shares shall no longer confer any such rights accordingly.

7.9 A Director (not being an Investor Director) shall be regarded as having an interest which is material and which conflicts with the interests of the Company in (and accordingly shall not (unless prior written consent from the Investor Directors is obtained) be entitled to vote in relation to) any matter which requires to be determined or otherwise decided upon by the Directors pursuant to or for the purposes of any of articles 4, 5 or 6 or this article 7 to the extent such matter relates to any Shares held by such Director or any Associate of such Director or in which such Director is otherwise interested.

7.10 In any case, where a Mandatory Transfer Notice has been deemed to have been given by a Member, such Member shall, upon demand by the Company, deliver up to and lodge with the Company the share certificate(s) in respect of the relevant Shares.

## **8. Transfer of a Controlling Interest**

8.1 For the purposes of this article:

8.1.1 the expression **“Buyer”** means any one person (whether or not an existing Member of the Company but excluding any ABN Group Company and excluding, for the purposes of article 8.6 only, any entity (other than an ABN Group Company) in which any ABN Group Company holds shares which confer more than 50 per cent. of the voting rights exercisable at general meetings of such company) but so that any Associate of any such person shall be deemed to be such person;

8.1.2 the expression “**acquire**” means to be or become the legal or beneficial owner of Shares (or the right to exercise the votes attaching to Shares), whether directly or indirectly and whether by the issue, transfer, renunciation or conversion of shares or otherwise and whether all at one time or not;

8.1.3 the expression “**Associate**” means:

- (a) the husband, wife, common law spouse, mother, father, grandmother, grandfather, brother, sister, child, step child or other lineal ancestor or descendant by blood, adoption or marriage of the relevant person;
- (b) the trustees of any settlement (whether or not set up by the relevant person) under which the relevant person and/or any other Associate of the relevant person is or is capable of being a beneficiary;
- (c) any nominee or bare trustee for the relevant person or for any other Associate of the relevant person;
- (d) if the relevant person is a company, any subsidiary or holding company of the relevant person and any other subsidiary of any such holding company;
- (e) any person with whom the relevant person or any Associate of the relevant person is connected, the question of whether any such person is so connected falling to be determined for this purpose in accordance with the provisions of section 839 Income and Corporation Taxes Act 1988; and
- (f) any person with whom the relevant person is acting in concert (such expression to have the same definition as that ascribed thereto in the City Code on Take-overs and Mergers as current at relevant time);

8.1.4 the expression a “**Controlling Interest**” means Shares (or the right to exercise the votes attaching to Shares) which confer in the aggregate 50 per cent or more of the total voting rights conferred by all the Shares in the capital of the Company for the relevant time being in issue and conferring the right to vote at all general meetings, but a holder of A Ordinary Shares shall not be deemed to have acquired a Controlling Interest by virtue of the fact that such A Ordinary Shares have, pursuant to article 3.4.2, conferred upon such person the right to additional votes at general meetings of the Company.

8.2 Notwithstanding anything to the contrary contained in these Articles:

8.2.1 no Buyer shall be entitled or permitted to acquire any Shares or any interest or right in or arising from any Shares;

8.2.2 no person shall transfer any Shares (or transfer or otherwise dispose of any interest or right in or arising from any Shares); and

8.2.3 no transfer of any Shares shall be registered

if as a result a Buyer would acquire a Controlling Interest in the Company (any Shares or any interest or right in or arising from any Shares held by an Associate of the Buyer being treated as being held by the Buyer for this purpose) unless and until that Buyer has first made offers in accordance with articles 8.3 and 8.4 to all the holders of all Shares in the Company at the relevant time (of whatever class) (other than the Buyer if he is already such a holder) to purchase from them their entire holdings of Shares in the capital of the Company on the same terms.

8.3 Each such offer as is referred to in article 8.2 (an **"Offer"**) must, in respect of all classes of the Company's share capital, be on the same terms and be in cash or be accompanied by a cash alternative at not less than the highest price paid or agreed to be paid by the Buyer (or his Associates) for Shares of any class during the period when the Offer remains open for acceptance or within 12 months prior to its commencement.

8.4 In addition, any Offer must be made in writing, must be open for acceptance and irrevocable for a period of not less than 30 and not more than 60 days, must not contain any requirement for any holder of Shares (in that capacity) to give any representation, warranties or undertakings other than as to their capacity and capability to sell the relevant Shares and all rights thereto and interests therein free from any option, lien, charge or other encumbrance and must not be subject to any condition save only, if the Buyer so wishes, that acceptances must be received for a specified percentage of all the Shares in respect of which the Offer is made.

8.5 If, within 60 days of the making of an Offer, the Buyer has not acquired a Controlling Interest then such Offer shall be deemed not to have been made to the extent that the Buyer shall not be entitled to acquire a Controlling Interest at any time thereafter unless and until he has made further Offers.

8.6 If a Buyer receives (during the period within which the relevant Offer was open for acceptance in accordance with article 8.5) acceptances of an Offer which will result in the Buyer together with its Associates owning not less than 50 per cent of all the issued Equity Shares then the Buyer (with the Investor Approval) may extend the Offer to the extent that, if within 14 days of receipt by the Buyer of that level of acceptances, the Buyer gives written notice to those Members who have not accepted the Offer requiring them so to do, then each of such non-accepting Members shall upon the giving of such notice:

8.6.1 be deemed to have accepted the same in respect of all Shares held by him in accordance with the terms of the Offer; and

8.6.2 subject to completion of the sale of those Shares in respect of which acceptances of the Offer have been received which give rise to the Buyer obtaining a Controlling Interest, become obliged to deliver up to the Buyer an executed transfer of such Shares and the certificate(s) in respect of the same.

- 8.7 If any such non-accepting Member as is referred to in article 8.6 shall not, within 14 days of becoming required to do so, execute transfers in respect of the Shares held by such Member, the Directors shall be entitled to, and shall, authorise and instruct some person to execute and deliver on his behalf the necessary transfer(s) on his behalf and the Company may receive the purchase money in trust for him and (notwithstanding (if such is the case) that he has failed to deliver up the relevant share certificate(s)) shall (subject to so receiving the purchase money) deliver such transfer(s) to the Buyer (or its agents) and cause the Buyer (or its nominees) to be registered as the holder(s) of such Shares. The transfer(s) and the receipt of the Company for the purchase money shall constitute a good title to the Shares and the receipt shall be a good discharge to the Buyer, who shall not be bound to see to the application of the purchase money and whose title to the Shares shall not be affected by any irregularity in or invalidity of the proceedings relating to their disposal under this article.
- 8.8 In calculating the price at which an Offer is required to be made for the purposes of this article there shall be brought into account any other consideration (in cash or otherwise) received or receivable by any Member or former Member (or any Associate of such Member or former Member) which, having regard to the substance of the relevant transaction as a whole, can reasonably be regarded as part of the consideration paid (or provided) or payable (or to be provided) for the Shares in question.
- 8.9 Any transfer of a Share (or an interest therein) made, or required to be made, pursuant to this article 8 shall be treated as a "Permitted Transfer" for the purposes of article 5.1.
- 8.10 For the purpose of ensuring:
- 8.10.1 that no Buyer 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 an Associate of another); or
- 8.10.2 that a price offered or proposed to be offered for any Shares is in accordance with article 8.3;

the Directors, an Investor Majority or an Executive Majority may from time to time require any Member to furnish to the Company or to one or more of the holders of A Ordinary Shares or B Ordinary Shares for the time being such information and evidence as the Directors, an Investor Majority or an Executive Majority may reasonably think fit regarding any matter which they may deem relevant for such purposes.

## **9. Lien**

- 9.1 The Company shall have a first and paramount lien on every Share (whether or not a fully paid Share) for all moneys (whether presently payable or not) payable or otherwise owing by the holder of such Share (or any Associate of such holder) to the Company or any other Group Company. The Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this

regulation. The Company's lien on a Share shall extend generally as aforesaid as well as to any amount payable in respect of it.

- 9.2 The Company may sell any Shares on which the Company has a lien if a sum in respect of which the lien exists is presently payable and is not paid before the expiry of 14 Clear Days' notice in writing given by the Company to the holder of the Share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold. The provisions of article 6 shall apply to any sale of Shares made by the Company pursuant to this article (on the basis that a Mandatory Transfer Notice shall be deemed to have been given upon the expiry of such period of 14 Clear Days referred to above).

## **10. Forfeiture**

- 10.1 The provisions of article 6 shall apply in relation to any proposed sale, re-allotment or other disposal of a Share pursuant to Regulation 20 of Table A (on the basis that a Mandatory Transfer Notice in respect of such Share shall be deemed to be given on such date as the Directors determine for this purpose).

## **11. Appointment, retirement and removal of Directors**

- 11.1 The Directors shall have power at any time, and from time to time, to appoint any person (willing to act) to be a Director, either to fill a casual vacancy or as an additional Director.
- 11.2 The Company may by ordinary resolution appoint a person (willing to act) to be a Director either to fill a vacancy or as an additional Director.
- 11.3 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.
- 11.4 In addition or provided in Regulation 81 of Table A, the office of a Director shall also be vacated if:
- 11.4.1 he is convicted of a criminal offence (other than a minor motoring offence) and the Directors resolve that his office be vacated; or
  - 11.4.2 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 and the Directors resolve that his office be vacated; or
  - 11.4.3 (without prejudice to their rights as an employee) all the other Directors unanimously resolve that his office be vacated.

## **12. Proceedings of Directors**

- 12.1 Any Director (including an alternate director) or other person may participate in a meeting of the Directors or a committee of which he is a member by means of a conference telephone or similar communicating equipment whereby all persons participating in the meeting can hear each other. Resolutions and decisions of the



kind normally made or taken at a physical meeting of the Directors or a committee in accordance with these articles can accordingly be so made or taken even if no persons so participating are physically present with each other. 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 is. In determining whether the quorum requirements fixed by or in accordance with these articles are fulfilled, all Directors participating in the meeting in accordance with this article shall be counted in the quorum.

### **13. Indemnity**

13.1 Subject to, and to the extent not avoided by, the provisions of the Act, but without prejudice to any indemnity to which he may otherwise be entitled:

13.1.1 any person who is or was at any time a director, secretary or other officer (unless the office is or was as auditor) of the Company or of any of its group undertakings may be indemnified out of the assets of the Company to whatever extent the Directors may determine against any costs, charges, expenses, losses and liabilities sustained or incurred by him in the actual or purported execution of his duties or in the exercise or purported exercise of his powers or otherwise in connection with his office, whether or not sustained or incurred in connection with any negligence, default, breach of duty or breach of trust by him in relation to the Company or the relevant group undertaking

13.1.2 the Directors shall have power to provide funds to meet any expenditure incurred or to be incurred by any person who is or was at any time a Director, secretary or other officer of the Company other than an auditor in defending any criminal or civil proceeding in which he is involved by reason of his office, or in connection with any application under the Act, or in order to enable him to avoid incurring such expenditure; and

13.1.3 every auditor of the Company may be indemnified out of the assets of the Company to whatever extent the Directors may determine against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the Company.

13.2 The Directors may purchase and maintain insurance at the expense of the Company for the benefit of any person who is or was at any time a director or other officer or employee of the Company or of any of its group undertakings indemnifying such person against any liability which may attach to him, and any loss or expenditure which he may incur, in relation to anything actually or allegedly done or omitted to be done by him as a director, officer or employee, whether or not it involves any negligence, default, breach of duty or breach of trust by him in relation to the Company or the relevant group undertaking.

13.3 Subject to the provisions of the Act, a Director shall (in the absence of some other material interest as is indicated below) be entitled to vote (and be counted in the quorum) in respect of any resolution concerning any proposal concerning any insurance which the Company is empowered to purchase and/or maintain for or for the benefit of any Directors provided that for the purposes of this article 13.3 insurance shall mean only insurance against the costs, charges, expenses, losses and liabilities incurred by a Director as are referred to in article 13.2 or any other insurance which the Company is empowered to purchase and/or maintain for or for the benefit of any groups of persons consisting of or including Directors.

#### **14. Subsidiaries**

14.1 The Company shall procure that each other Group Company shall comply with those provisions of these Articles which are expressed to apply to a Group Company and that no other Group Company shall do or permit to be done any act, matter or thing which, if it were done or permitted to be done by the Company, would constitute a breach by the Company of any provision of these Articles or would require any consent, approval or sanction under these Articles, unless in such latter case such consent, approval or sanction has first been obtained.

#### **15. Notices**

15.1 Any notice given under or in connection with these Articles shall be in writing.

15.2 Any notice or other document may be given or served by being delivered to the registered address of the Member (in which case the notice or other document shall be deemed to be served at the time of delivery) or by being sent by facsimile to a number provided by the Member to the Company for this purpose (in which case the notice or other document shall be deemed to be served upon completion of the transmission) or by being sent by first class post to the registered address of the Member (in which case the notice or other document shall be deemed to be served 24 hours after the time of posting).

15.3 In proving service of any notice, it shall be sufficient to prove that delivery was made or that the envelope containing the notice or other document was properly addressed and posted or that the facsimile was transmitted to the number provided, as the case may be.

Registered Number: 5841599

THE COMPANIES ACTS

**DARWIN EQUITY LIMITED**

PRIVATE COMPANY LIMITED BY SHARES

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**SOLE SHAREHOLDER'S WRITTEN RESOLUTIONS  
PURSUANT TO SECTION 381A  
COMPANIES ACT 1985**

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I, the undersigned, being the sole member of the Company who, at the date of this resolution, is entitled to attend and vote at a general meeting of the Company HEREBY RESOLVE in writing pursuant to section 381A of the Companies Act 1985 as follows:

1. That the authorised share capital of the Company be increased from £100 to £787,350 by the creation of 764,900 ordinary shares of £1 each, 2,087,300 A cumulative participating ordinary shares of £0.01 each and 147,700 B cumulative participating ordinary shares of £0.01 each of the Company.
2. That the directors be and they are hereby generally and unconditionally authorised to exercise all the powers of the Company to allot relevant securities (within the meaning of section 80 Companies Act 1985) up to an aggregate nominal amount of £787,350 provided that this authority shall expire (unless previously renewed, varied or revoked by the Company in general meeting) on 27 July 2011 save that the Company may before such expiry make an offer or agreement which would or might require relevant securities to be allotted after such expiry and the directors may allot relevant securities in pursuance of such offer or agreement as if the authority conferred hereby had not expired.
3. That, the directors be and they are hereby empowered pursuant to section 95 Companies Act 1985 to allot equity securities (within the meaning of section 94 Companies Act 1985) pursuant to the authority conferred by resolution 2 as if section 89(1) Companies Act 1985 did not apply to any such allotment provided that this power shall be limited to the allotment of equity securities up to an aggregate nominal amount of £787,350 and shall expire on 27 July 2011 save that the Company may before such expiry make an offer or agreement which would or might require equity securities to be allotted after such expiry and the directors may allot equity securities in pursuance of such offer or agreement as if the power conferred hereby had not expired.

4. That the regulations contained in the document attached (for the purpose of identification marked "A") be approved and adopted as the Articles of Association of the Company in substitution for and to the exclusion of the existing Articles of Association of the Company.

Signed by  
**KEVIN SARGEANT**

) \_\_\_\_\_ Date 27 July 2006  
) \_\_\_\_\_