

THE COMPANIES ACT 2006

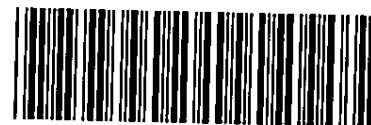
WRITTEN RESOLUTIONS

of

SCALA HOLDINGS LIMITED

Date: 17 December 2009

THURSDAY



PC4 11/02/2010 107  
COMPANIES HOUSE

Under Chapter 2 of Part 13 of the Companies Act 2006 (the "Act"), the directors of the above-named company (the "Company") propose that the following resolutions (the "Resolutions") are passed in the case of resolutions 1, 2, 3 and 4 as ordinary resolutions and in the case of resolutions 5 and 6 as special resolutions

ORDINARY RESOLUTIONS

1. DISAPPLICATION OF LIMIT ON AUTHORISED SHARE CAPITAL

THAT any limit on the authorised share capital of the Company which, by virtue of the provisions of paragraph 42(2)(a) of Schedule 2 of the Act (Commencement No 8, Transitional Provisions and Savings) Order 2008, has effect as a provision of the company's Articles of Association setting out the maximum amount of shares that may be allocated by the Company, shall be revoked to the effect that there shall be no such limit on the amount of shares that may be allotted by the Company

2. RE-DESIGNATION OF SHARE CAPITAL

THAT each of the B ordinary shares currently held by Claire Locke, Glyn Locke, Claire Hallett, Tanya Ingleton and Julia Ruhnke be re-designated as A ordinary shares in the capital of the Company

3. AUTHORITY TO ALLOT SHARES

THAT for the purposes of section 551 of the Companies Act 2006 (the "Act")

- (a) the Directors be and are hereby generally and unconditionally authorised to exercise all powers of the Company to allot any such shares and to grant any such subscription and conversion rights, as are contemplated in sub-sections 551(1)(a) and 551(1)(b) respectively of the Act, up to a maximum nominal value of £42,320, to such persons and at such times and on such terms as they think proper during the period expiring at the end of five years from the date of the passing of this resolution,
- (b) the Company be and is hereby authorised to make prior to the expiry of such period any offer or agreement which would or might require relevant securities to be allotted after the expiry of the said period and the Directors may allot any such shares and

grant any such subscription and conversion rights referred to in (a) in pursuance of any such offer or agreement notwithstanding the expiry of the authority given by this resolution in accordance with the provisions of section 551(7)(b) of the Act

### **SPECIAL RESOLUTIONS**

#### **4. ADOPTION OF NEW ARTICLES OF ASSOCIATION**

**THAT**, pursuant to section 21 of the Act, the Articles of Association of the Company be deleted in their entirety and the regulations contained in the document submitted to the meeting, and for the purpose of identification attached to this resolution, 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

#### **5. DISAPPLICATION OF PRE-EMPTION RIGHTS (UNDER SECTION 561 OF THE COMPANIES ACT 2006)**

**THAT**

- (a) subject to the passing of resolution 3 in accordance with section 570 of the Act, the Directors be and are hereby empowered to allot equity securities (as defined in sub-section (1) of section 560 of the Act) for cash pursuant to the authority conferred on them to allot relevant securities (as defined in section 551 of the Act) by that resolution up to a maximum nominal value of £42,320 as if sub-section (1) of section 561 of the Act did not apply at any time or times, and
- (b) (unless previously revoked, varied or renewed) this power shall expire at the end of five years from the date of this Resolution

  
Chairman

TRAVERS SMITH

THE COMPANIES ACT 2006

---

PRIVATE COMPANY LIMITED BY SHARES

---

NEW

ARTICLES OF ASSOCIATION

-OF-

SCALA HOLDINGS LIMITED

(INCORPORATED IN ENGLAND AND WALES  
UNDER REGISTERED NO 5978728)

(ADOPTED BY SPECIAL RESOLUTION PASSED ON 17 DECEMBER  
2009)

## CONTENTS

Article		Page
1	Model Articles	1
2	Definitions and Interpretation	1
3	Share Capital	9
4	Dividend Rights	9
5	Rights on a Sale or Return of Capital	9
6	Voting Rights	10
7	Lien and forfeiture	11
8	Prohibited Transfers	12
9	Permitted Transfers	14
10	Leavers	15
11	change of control - drag along rights	21
12	Tag Along	22
13	Proceedings of Shareholders	22
14	Number of Directors	23
15	Alternate Directors	23
16	Proceedings of Directors	23
17	Appointment and removal of directors	29
18	Retirement by Rotation	29
19	The seal	29
20	Indemnity and Insurance	30
21	Overriding Provisions	30
22	Variation	30
23	Notices	31
24	Winding Up	33

## **1. MODEL ARTICLES**

- 1.1** The articles of association of the Company (the "**Articles**") shall comprise the regulations contained herein together with the regulations contained in Schedule 3 to the Companies (Model Articles) Regulations (SI 2008/3229) (the "**Regulations**"), save insofar as they are excluded or modified by, or are inconsistent with, the regulations contained herein
- 1.2** The whole of Regulations 5(2), 6(2), 9, 10, 11, 13(3), 14, 16, 19, 20, 21, 23(2), 23(3), 23(4), 25(1), 25(3)(b), 26(3)(a), 28, 30, 32, 33, 34, 36, 37(4), 37(5), 37(7), 37(8), 39, 40, 42, 43(2), 46(2)(a), 50, 63(5), 64, 67(3), 70(5), 70(6), 70(7), 80, 81, 85 and 86 shall not apply to the Company

## **2. DEFINITIONS AND INTERPRETATION**

- 2.1** In these Articles the following expressions shall have the following meanings

**Act** means the Companies Act 2006

**Allocation Notice** has the meaning given in Article 10.10

**A Ordinary Shares** means the A ordinary shares of 1p each in the capital of the Company

**Approved Offer** means an offer in writing served on all Shareholders (including the proposing transferor), offering to purchase all the Shares held by such Shareholders (including any Shares which may be allotted pursuant to the exercise or conversion of options, rights to subscribe for or securities convertible into Shares in existence at the date of such offer) which

- (a) is stipulated to be open for acceptance for at least 15 Business Days,
- (b) offers the same or equivalent consideration for each Share, provided that a reduction, withholding or retention of consideration to take account of tax payable or which might be payable by a Shareholder or by his employing company in relation to the conversion of securities and/or the disposal of Shares shall not prejudice the application of this paragraph,
- (c) is on terms that each Shareholder pays its own pro rata proportion of the reasonable and bona fide third party professional adviser costs for advice provided to the Shareholders relating solely to the sale,
- (d) is on terms that the sale and purchase of Shares in respect of which the offer is accepted will be completed at the same time, and
- (d) is approved by the Investor

**Articles** shall be as defined in Article 1.1

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

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

**Bad Leaver** shall be as defined in Article 10.4.2

**Board** means the board of directors of the Company (or any duly authorised committee thereof) from time to time

**B Ordinary Shares** means the B ordinary shares of 1p each in the capital of the Company

**Business Day** means any day other than a Saturday, Sunday or English bank or public holiday

**Buyer** means a proposed buyer of Shares pursuant to an Approved Offer,

**C Ordinary Shares** means the C ordinary shares of 1p each in the capital of the Company

**Co-Investment Scheme** shall be as defined in Article 9.1.4(d)

**Company's website** means any website operated or controlled by the Company which contains information about the Company

**Confidential Information** shall be as defined in Article 16.7

**D Ordinary Shares** means the D ordinary shares of 1p each in the capital of the Company

**Defaulting Shareholder** shall be as defined in Article 8.3

**Director** means a director of the Company from time to time

**Dividend** means any dividend payable in accordance with Article 4

**Drag Along Right** has the meaning giving in Article 11.1

**E Ordinary Shares** means the E ordinary shares of 1p each in the capital of the Company

**EBT** means the Scala Holdings Limited Employee Benefit Trust

**Employee Trust** means any trust established to enable or facilitate the holding of Shares by, or for the benefit of, all or most of the bona fide employees of any Group Company

**Excluded Notices** means a Sale Notice, a notice to a Defaulting Shareholder or a notice to appoint or remove a Director

**Extra Shares** has the meaning given in Article 10.7

**Facilities Agreement** means the sterling term and multi currency revolving facilities agreement originally dated 15 December 2006 as amended from time to time and as amended and restated on 16 December 2009 and made between, inter alia the Company, Lloyds TSB Bank PLC (as the same may be amended, supplemented, novated or restated from time to time)

**Fair Price** shall be as defined in Article 10.4.4

**Family Member** means, in relation to a Relevant Employee, his spouse and/or any one or more of his children (including step-children) and grandchildren (including step-grandchildren)

**Family Trust** means, in relation to a Relevant Employee, a trust or settlement set up wholly for the benefit of that person and/or his Family Members including a self-invested personal pension scheme which is a registered scheme within the meaning of the Finance Act 2004

**Finance Documents** has the meaning given to it in the Facilities Agreement

**Financial Services Authority** means the Financial Services Authority or any body with responsibility under legislation replacing the FSMA for carrying out regulatory actions

**FSMA** means the Financial Services and Markets Act 2000

**Fund** means any bank, company, unit trust, investment trust, investment company, limited, general or other partnership, industrial provident or friendly society, any collective investment scheme (as defined by the FSMA), any investment professional (as defined in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion Order) 2005 (the "FPO")), any high net worth company, unincorporated association or partnership (as defined in article 49(2) of the FPO) or any high value trust (as defined in article 49(6) of the FPO), any pension fund or insurance company or any person who is an authorised person under the FSMA

**Fund Participant** shall be as defined in Article 8.5

**Good Leaver** shall be as defined in Article 10.4.1

**Garden Leave** shall mean any period during which the Company or other Group Company shall, in respect of an employee and pursuant to the service contract between the Company

or relevant Group Company and that employee, cease or have ceased to provide that employee with work and withdraw or have withdrawn his right of access to any premises of the Company and any other Group Company

**Group** means the Company and any company which is a subsidiary undertaking of the Company from time to time and references to "**Group Company**" and "**members of the Group**" shall be construed accordingly

**Group Company Interest** shall be as defined in Article 16.5

**in electronic form** means in a form specified by section 1168(3) of the Act and otherwise complying with the requirements of section 1168 of that Act

**Independent Expert** means a partner of at least 10 years' standing at a leading UK firm of accountants (acting as an expert and not as an arbitrator) nominated by the parties concerned or, in the event of disagreement as to nomination, appointed by the President from time to time of the Institute of Chartered Accountants in England and Wales

**Investment Agreement** means the investment agreement proposed to be entered into between (1) the Company, (2) Ian Gray and others, (3) Barclays Private Equity European Fund "A" and others, (4) Barclays Private Equity Limited and (5) Ranelagh Nominees Limited as amended and novated from time to time

**Investor** means any person who is or becomes an Investor for the purposes of the Investment Agreement and "**Investors**" shall be construed accordingly

**Investor Associate** means, in relation to an Investor

- (a) each member of that Investor's Investor Group (other than the Investor itself),
- (b) any general partner, limited partner or other partner in, or trustee, nominee, custodian, operator or manager of, or adviser to, that Investor or any member of its Investor Group,
- (c) any member of the same group of companies as any trustee, nominee, custodian, operator or manager of, or adviser to, that Investor or any member of its Investor Group,
- (d) any Fund which has the same general partner, trustee, nominee, operator, manager or adviser as that Investor or any member of its Investor Group,
- (e) any Fund which is advised, or the assets of which (or some material part thereof) are managed (whether solely or jointly with others), by that Investor or any member of its Investor Group, or



- (f) any Fund in respect of which that Investor or any member of its Investor Group is a general partner

**Investor Director** shall be as defined in the Investment Agreement

**Investor Director Interest** shall be as defined in Article 16.6

**Investor Group** means, in relation to an Investor, that Investor and its subsidiary undertakings or, as the case may be, that Investor, any parent undertaking, whether direct or indirect, of that Investor and any other subsidiary undertaking of any such parent undertaking from time to time and references to "member" or "members" of the or an "Investor Group" shall be construed accordingly

**Lead Investor** means Ranelagh Nominees Limited or such other Investor as the holders of a majority of the D Ordinary Shares shall together determine and notify from time to time to the Company at its registered office

**Leaver** means

- (a) any Shareholder who ceases, or has ceased, to be a Relevant Employee after the date of adoption of these Articles, provided that, for these purposes, a Shareholder shall be deemed to cease, or have ceased to be a Relevant Employee upon the commencement of any period during which the relevant individual is placed on Garden Leave pursuant to their service contract with the Company or other Group Company, notwithstanding that the relevant individual remains an employee of the Company or any other Group Company provided that such Shareholder ceases, or has ceased to be a Director or a director of any other Group Company,
- (b) any Shareholder who is (or is the nominee of) a Family Member of any person who ceases to be a Relevant Employee,
- (c) any Shareholder who is (or is the nominee of) the trustee of a Family Trust of any person who ceases to be a Relevant Employee in respect of the Shares held on behalf of such person or on behalf of any Family Member of such person,
- (d) any Shareholder (not being an Investor) holding Shares as a result of a transfer made after the date of the adoption of these Articles by a person in relation to whom such Shareholder was a permitted transferee under the provisions of Article 9 (Permitted Transfers) who ceases to be a permitted transferee in relation to such person, including, without limitation, any Shareholder who ceases to be the spouse of a Relevant Employee,

- (e) any person who holds or becomes entitled to any Shares
  - (i) following the death of a Shareholder (other than a Locke Investor),
  - (ii) following the bankruptcy of a Shareholder (other than a Locke Investor) (if an individual) or the receivership, administrative receivership, administration, liquidation or other arrangement for the winding-up (whether solvent or insolvent) of a Shareholder (if a company), or
  - (iii) following the exercise of an option after ceasing to be a Relevant Employee, or
- (f) any Shareholder holding Shares as a nominee for any person who ceases, or who has ceased, to be a Relevant Employee in respect of the Shares held on behalf of such person

**Leaver's Shares** means all of the Shares held by a Leaver, or to which he is entitled, on the Leaving Date and any Shares acquired by a Leaver after the Leaving Date under an employee share scheme

**Leaving Date** means the date on which the relevant person becomes a Leaver

**Locke Investors** means Claire Locke and/or Glynn Locke and where applicable their permitted assigns and successors

**Manager** means any person who is or becomes a Manager for the purposes of the Investment Agreement and "**Managers**" shall be construed accordingly

**Offeror** shall be as defined in Article 11.1

**Other Shareholders** shall be as defined in Article 11.1

**Proportionate Entitlement** means in proportion (as nearly as possible) to a Shareholder's existing holding of Shares

**Proposed Buyer** shall be as defined in Article 12.1

**Proposed Sale** shall be as defined in Article 12.1

**Proposed Sellers** shall be as defined in Article 12.1

**Quotation** means the admission of the whole of any class of the issued share capital of the Company to the Official List of the Financial Services Authority and to trading on the

London Stock Exchange's market for listed securities or to trading on the Alternative Investment Market of the London Stock Exchange or on any other Recognised Stock Exchange

**Recognised Stock Exchange** means a recognised investment exchange, recognised overseas investment exchange, designated investment exchange or designated overseas investment exchange, in each case for the purposes of FSMA

**Regulations** shall be as defined in Article 1 1

**Relevant Employee** shall mean

- (a) an employee of the Company or of any other Group Company, or
- (b) a Director or a director of any other Group Company

**Relevant Investor** shall be as defined in Article 16 6 1

**Relevant Shares** shall be as defined in Article 8 3

**Sale Notice** shall be as defined in Article 10 2

**Sale Price** shall be as defined in Article 10 4 3

**Seller** means a Leaver who is transferring Shares

**Share** means any share in the capital of the Company from time to time

**Shareholder** means any holder of any Share from time to time

**Shareholder Communication** means any notice, resolution, document or information which the Company wishes or is required to communicate with Shareholders or other persons

**Situational Conflict** shall mean a direct or indirect interest of a Director which conflicts or may potentially conflict with the interests of the Company or of a Group Company (other than a Transactional Conflict or in circumstances which cannot reasonably be regarded as likely to give rise to a conflict of interest) For these purposes a conflict of interest shall include a conflict of interest and duty and a conflict of duties

**Statutes** means the Act and the Electronic Communications Act 2000 (including any subordinate legislation made under them)

**Transactional Conflict** means a direct or indirect conflict of interest of a Director which

arises in relation to an existing or proposed transaction or arrangement with the Company or within a Group Company

**website communication** means the publication of a Shareholder Communication on the Company's website in accordance with Part 4 of Schedule 5 of the Act

2.2 Unless the context otherwise requires, words and expressions defined in or having a meaning provided by the Act shall have the same meaning in these Articles. The term "**connected person**" shall have the meaning attributed to it at the date of adoption of these Articles by section 839 of the Income and Corporation Taxes Act 1988 and the words "**connected with**" shall be construed accordingly. The term "**acting in concert**" shall have the meaning attributed to it at the date of adoption of these Articles by the City Code on Takeovers and Mergers.

2.3 Unless the context otherwise requires, references in these Articles to

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

2.3.2 the singular shall include the plural and vice versa,

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

2.3.4 save where used in the definition of "Employee Trust", employees shall be deemed to include consultants, and references to contracts of employment and to commencement or cessation of employment shall be deemed to include contracts for consultancy and commencement or cessation of consultancy,

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

2.3.6 an "**Investor Consent**" or an "**Investor Direction**" shall mean the giving of a written consent or direction by Ranelagh

2.3.7 a "**subsidiary undertaking**" or a "**group undertaking**" is to be construed in accordance with sections 1162 and 1161 respectively of the Act and a reference to a "**subsidiary**" or a "**holding company**" is to be construed in accordance with section 1159 of the Act

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

2.5 In construing these Articles, general words introduced by the word "**other**" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating

a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words

### **3. SHARE CAPITAL**

**3.1** The share capital of the Company at the date of adoption of these Articles is £53 748 50, divided into

- 299,540 A Ordinary Shares,
- 492,373 B Ordinary Shares,
- 2,373,169 C Ordinary Shares,
- 1,066,735 D Ordinary Shares, and
- 1,143,033 E Ordinary Shares

**3.2** Regulation 43(1) shall be amended by the insertion of the words "with Investor Consent" after the words "the Company may" and before the words "issue shares"

**3.3** Regulation 44(2)(a) shall be amended by the insertion of the words "with Investor Consent" after the words "in cash, or" and before the words "in fully paid or partly paid shares or other securities" and also immediately before the words ""or partly in one way and partly in another"

### **4. DIVIDEND RIGHTS**

**4.1** Subject to (i) the Board recommending payment of the same and (ii) Investor Consent, any Available Profits which the Company may determine to distribute in respect of any financial year shall be distributed amongst the holders of the Shares (pari passu as if the same constituted one class of share) according to the number of such Shares held by the relevant Shareholder at the relevant time

**4.2** Regulation 70(1) shall be amended by the insertion of the words "Subject to Article 4.1" at the start of that Regulation

**4.3** Regulation 70(2) shall be amended by the insertion of the words "Subject to Article 4.1" at the start of that Regulation

### **5. RIGHTS ON A SALE OR RETURN OF CAPITAL**

**5.1** On a return of capital on liquidation or otherwise (except on a redemption or purchase by the Company of any Shares), the surplus assets of the Company remaining after the payment of its liabilities shall be distributed amongst the holders of Shares pro rata to the number of Shares held by them

## **6. VOTING RIGHTS**

**6.1** The voting rights attached to each class of Shares shall be as set out in this Article

**6.1.1** on a written resolution, every Shareholder holding one or more B, D or E Ordinary Shares on the date on which the resolution is circulated as required by the Act shall, subject to sections 289 and 290 of the Act, have one vote for each B, D or E Ordinary Share held by him,

**6.1.2** on a resolution to be passed at a general meeting of the Company on a show of hands, every qualifying person (as defined in section 318(3) of the Act) present shall, subject to section 323(4) of the Act, have one vote, save that a member, as defined in section 318(3)(a) of the Act, who only holds A or C Ordinary Shares shall not count as a qualifying person for the purposes of this Article 6.1.2, and

**6.1.3** on a resolution to be passed at a general meeting of the Company on a poll, every Shareholder holding one or more B, D or E Ordinary Shares, who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy, shall have one vote for each B, D or E Ordinary Share of which he is the holder

**6.2** Subject to the provisions of Articles 6.1 to 6.4 the A and C Ordinary Shares will entitle the holders thereof to

**6.2.1** receive a copy of any written resolution circulated to eligible members under the Act at the same time as the resolution is so circulated but not to vote on such a resolution, and

**6.2.2** receive notice of all general meetings but not to attend or vote at any general meeting

**6.3** The provisions of Article 6.4 shall apply if at any time (without Investor Consent)

**6.3.1** any Shareholder (other than an Investor) is in material breach of the provisions of these Articles (without prejudice to the provisions of Article 8.3) and/or the Investment Agreement,

**6.3.2** any Group Company is entitled to terminate any contract of employment by reason of a repudiatory breach thereof by a Shareholder, or

**6.3.3** any person becomes a Leaver

**6.4** If the provisions of this Article apply

**6.4 1** the Shares which such person holds or to which he is entitled, and

**6 4 2** any Shares formerly held by such person which have been transferred either in breach of the provisions of these Articles or in accordance with Article 9 (Permitted Transfers)

shall immediately cease to entitle the holders thereof to vote on any written resolution of the Company and to attend and vote (whether on a show of hands or on a poll) at any general meeting or at any separate class meeting of the Company

**6.5** The provisions of Article 6 4 shall continue

**6 5.1** in the case of Article 6 3 1, for so long as such breach subsists,

**6 5 2** in the case of Article 6 3 2, until such time as such person ceases to be a Shareholder, or

**6.5 3** in the case of Article 6 3 3, until such time as the provisions of Article 10 (Leavers) cease to apply

**6.6** Notwithstanding any other provision of these Articles, the votes attaching to the D Ordinary Shares when taken together with the votes attaching to any E Ordinary Shares registered in the name of any Investor Director, shall in no circumstances exceed 49% of the total number of votes attaching to all Shares of any class

**7 LIEN AND FORFEITURE**

**7 1** The lien conferred by Regulation 52(1) shall attach to all Shares of any class, 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 two or more joint holders. Regulation 52 shall be modified accordingly

**7 2** Regulation 52(3) shall be amended by the insertion of the words "with Investor Consent" after the words "the directors may"

**7 3** Regulation 53(1) shall be amended by the insertion of the words "to such person(s) and on such terms as shall be contained in an Investor Direction" after the words "in such manner as the directors decide"

**7 4** Regulation 60(2)(c) shall be amended by the insertion of the words "subject always to compliance with the provisions of Article 10" at the end of that Regulation

7.5 Regulation 61(1) shall be amended by the insertion of the words "(subject to Article 8)" after "If" and immediately prior to the words "a forfeited share"

7.6 Any amount unpaid in respect of a subscription for either C Ordinary Shares or D Ordinary Shares shall only become payable immediately prior to, but conditional upon the occurrence of, an Exit

## 8. PROHIBITED TRANSFERS

8.1 Any person who holds, or becomes entitled to, any Share shall not, without Investor Consent, effect a transfer of such Shares, except in accordance with Article 9 (Permitted Transfers), Article 10 (Leavers), Article 11 (Drag Along) or Article 12 (Tag Along)

8.2 The reference in Article 8.1 to the transfer of a Share shall mean the transfer of either or both of the legal and beneficial ownership in such Share and/or the grant of an option to acquire either or both of the legal and beneficial ownership in such Share and the following shall be deemed (but without limitation) to be a transfer of a Share

8.2.1 any direction (by way of renunciation or otherwise) by a Shareholder entitled to an allotment or issue of any Share that such Share be allotted or issued to some person other than himself,

8.2.2 any sale or other disposition of any legal or equitable interest in a Share (including any voting right attached thereto) and whether or not by the registered holder thereof and whether or not for consideration or otherwise and whether or not effected by an instrument in writing and

8.2.3 any grant of a legal or equitable mortgage or charge over any Share

8.3 For the purpose of ensuring compliance with Article 8.1, the Company shall immediately on an Investor Direction and may with Investor Consent require any Leaver or other Shareholder to procure that (i) he or (ii) 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 failing such information and/or evidence being provided the Board shall forthwith upon receipt of an Investor Direction, or otherwise with Investor Consent, notify the relevant Leaver or Shareholder (the "**Defaulting Shareholder**") that a breach of the transfer provisions of these Articles is deemed to have occurred, whereupon

8.3.1 the Company shall refuse to register any transfer of the Relevant Shares (otherwise than with an Investor Consent),

8.3.2 the Relevant Shares shall cease to confer on the holder thereof (or any proxy thereof) any rights



- (a) to vote (whether on a show of hands or on a poll and whether exercisable at a general meeting of the Company or at any separate meeting of the class in question), or
- (b) to receive dividends or other distributions (other than upon a return of capital),

otherwise attaching to the Relevant Shares or to any further Shares issued pursuant to the exercise of a right attaching to the Relevant Shares or in pursuance of an offer made to the holder thereof, and

- 8.3.3 if the Defaulting Shareholder is not a Leaver, he shall (upon an Investor Direction) forthwith be treated as a Leaver, or if no such Investor Direction is made, he may be required at any time following such notice to transfer (or procure the transfer of) some or all of the Relevant Shares to such person(s) at a price determined by the Board with Investor Consent or as directed by an Investor Direction

The rights referred to in Article 8.3.2 may be reinstated by the Board (with Investor Consent) or if earlier, upon the completion of the transfer of the Leaver's Shares or other transfer as contemplated by Article 8.3.3. The expression "**Relevant Shares**" shall mean the Shares which the Defaulting Shareholder holds or to which he is entitled and any Shares formerly held by him which have been transferred in breach of Article 8.1 or in accordance with Article 9 (Permitted Transfers)

- 8.4 Each Shareholder hereby irrevocably appoints any Director as his agent to execute, complete and deliver any form of transfer or other document required to give effect to the provisions of these Articles for and on his behalf
- 8.5 Notwithstanding the provisions of Article 8.2, any transfer by any partner, unitholder, shareholder, or other participant in, or operator, manager or custodian of any Fund (a "**Fund Participant**") (or by any trustee or nominee for any such Fund Participant) of any interest in such Fund to any person who is, or as a result of such transfer becomes, a Fund Participant, shall not, and shall not be deemed to, be a transfer of Shares for any purpose under these Articles
- 8.6 Regulation 67(4) shall be amended by the insertion at the end of that Regulation of the words "and, accordingly, shall be subject to the restrictions on transfers of Shares contained in Article 8"

## **9. PERMITTED TRANSFERS**

### **9.1 Subject to the provisions of Article 8 (Prohibited Transfers)**

**9.1.1** any Relevant Employee may, with consent of the Board (which will only be given in circumstances where the Investor Director is satisfied that such proposed transfer is undertaken for bona fide tax reasons) transfer up to 50% of his Shares to any of his Family Members over the age of 18 or to the trustees of his Family Trust,

**9.1.2** any Shareholder who is a trustee of a Family Trust may at any time transfer any Share which he holds in that capacity to

- (a) the new or remaining trustees of the Family Trust upon any change of trustees, and
- (b) any Relevant Employee or any of his Family Members on their becoming entitled to the same under the terms of the Family Trust,

**9.1.3** any Shareholder who is a trustee of an Employee Trust may at any time transfer any Share which he holds in that capacity to

- (a) the new or remaining trustees of the Employee Trust upon any change of trustees, and
- (b) any beneficiary of the Employee Trust,

**9.1.4** any Shareholder who is an Investor or any person who holds Shares as a nominee, custodian or trustee or otherwise on behalf of an Investor may at any time transfer any Share to

- (a) any Investor Associate of that Investor,
- (b) the beneficial owner of the Shares,
- (c) on a distribution in kind or otherwise under the relevant partnership agreement or trust deed or other constitutional document(s) of a Fund, the partners of a limited partnership or to the holders of units in a unit trust or to the shareholders of, participants in, or holders of any other interest in, any Fund, or
- (d) any co-investment scheme, being a scheme under which certain officers, employees or partners of an Investor or its adviser, manager operator, nominee or any member of its Investor Group are entitled or

required (as individuals or through a Fund or any other vehicle) to acquire Shares ("Co-Investment Scheme"),

**9.1.5** any Shareholder holding Shares in connection with a Co-Investment Scheme may at any time transfer any Share to

(a) another person who holds or is to hold Shares in connection with such Co-Investment Scheme, or

(b) any persons on their becoming entitled to the same under the terms of such Co-Investment Scheme,

**9.1.6** any Shareholder holding Shares as a result of a transfer made after the date of the adoption of these Articles by a person in relation to whom such Shareholder was a permitted transferee under the provisions of this Article may at any time transfer any Share to the person who originally transferred such Shares (or to any other permitted transferee of such original transferor),

**9.1.7** any Shareholder may transfer any Shares to any person with Investor Consent, and

**9.1.8** any Locke Investor may at any time, including upon death transfer shares to a Family Member or to the trustees of a Family Trust or to personal representative or executors

**9.2** For the avoidance of doubt, any Shareholder who transfers shares in one class to another person pursuant to this Article 9 shall not be required by virtue only of such transfer to transfer any shares in another class that are held by him

**9.3** Subject to Article 8.3 the Company shall be obliged to register any transfer made pursuant to the above provisions

**9.4** Subject to Article 8.3, if, at any time following the transfer of any Shares to a person who is a permitted transferee pursuant to Article 9.1, such person ceases to be a permitted transferee, then the Company shall be entitled to, and shall within 1 month of such person ceasing to be a permitted transferee, procure the transfer of such Shares to any Shareholder or other person who is a permitted transferee pursuant to Article 9.1

## **10. LEAVERS**

**10.1** The provisions of this Article shall apply to any Leaver and to any Leaver's Shares

**10.2** Within the period commencing on the relevant Leaving Date and expiring at midnight on the first anniversary of such date, the Lead Investor may direct the Company by an Investor

Direction immediately to serve a notice on the Leaver notifying him that he is, with immediate effect, deemed to have offered such number and class of his Leaver's Shares as may be specified in the Investor Direction (a "**Sale Notice**") On receipt of such Sale Notice, the Leaver shall be obliged forthwith to transfer, at the Sale Price as determined in accordance with Article 10.4, his Leaver's Shares ("**Sale Shares**") to the person(s) and in the priority specified in Articles 10.6 to 10.8

- 10.3** Save in the case of an acquisition of Leaver's Shares by the Company, if the Leaver defaults in transferring any Leaver's Shares pursuant to Article 10.2, the Company may receive the relevant purchase money and may nominate some person to execute an instrument of transfer of such Leaver's Shares in the name and on behalf of the Leaver and thereafter, when such instrument has been duly stamped (if required), the Company shall cause the name of the proposed transferee to be entered in the register of members as the holder of such Leaver's Shares and shall hold the purchase money on trust (without interest) for the Leaver. The receipt of the Company for the purchase money shall be a good discharge to the proposed transferee (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 Leaver's Shares by the Company, if the Leaver defaults in transferring any Leaver's Shares pursuant to Article 10.2, the Company may nominate some person to execute an instrument of transfer of such Leaver's Shares in the name and on behalf of the Leaver and thereafter, when such instrument has been duly stamped (if required), the Company shall cause such share capital to be cancelled in accordance with the Act and shall hold the purchase money on trust (without interest) for the Leaver

**10.4** In these Articles

- 10.4.1** a Shareholder shall be deemed to be a "**Good Leaver**" in circumstances where the relevant person
- (a) dies,
  - (b) is dismissed or has his office as director terminated in circumstances where the Relevant Employee is held to have been wrongfully dismissed),
  - (c) is unable to perform all or substantially all of his duties for a period of at least 12 months by virtue of the mental or physical ill health (as determined by at least 2 medical reports from independent medical specialists),
  - (d) retires at the age of 65, or such other retirement age as may be specified in his service agreement, letter of appointment or consultancy agreement, with a Group Company,

- (e) does not fall within sub-sections (a) to (d) above but is determined by the remuneration committee of the Board to be a Good Leaver,
- 10.4.2 a Shareholder shall be deemed to be a **"Bad Leaver"** in circumstances where the relevant person is not deemed to be a Good Leaver, unless he is designated as a Good Leaver by an Investor Direction
- 10.4.3 the **"Sale Price"** shall be
  - (a) in the case of a Good Leaver, the Fair Price,
  - (b) in the case of a Bad Leaver, the lower of the nominal of the Sale Shares and the Fair Price,
- 10.4.4 the **"Fair Price"** shall be such price as the transferor and (with Investor Consent) the Company shall agree within 10 Business Days of the date of the deemed Sale Notice or, failing such agreement, such price as the Auditors (or, if the Auditors are unable or unwilling to act for any reason, an Independent Expert) shall determine pursuant to Article 10.5,
- 10.4.5 for the purposes of this Article 10 in relation to Sale Shares which were originally acquired by the Leaver by way of transfer rather than allotment, references to the nominal value shall be deemed to be references to the lower of the nominal value and the price paid by the Leaver on such transfer
- 10.5 If the Fair Price falls to be determined by the Auditors (which expression shall, for the purposes of this Article 10.5, be deemed to include a reference to the Independent Expert if the Auditors are unable or unwilling to act)
  - 10.5.1 the Company shall immediately instruct the Auditors to determine the Fair Price on the basis which, in their 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 Auditors shall not take account of whether the Leaver's Shares comprise a majority or minority interest in the Company and the fact that their transferability is restricted by these Articles,
  - 10.5.2 the Auditors shall certify the Fair Price as soon as possible after being instructed by the Company and, in so certifying, the Auditors shall be deemed to be acting as experts and not as arbitrators and the Arbitration Act 1996 shall not apply
  - 10.5.3 the certificate of the Auditors shall, in the absence of manifest error, be final and binding, and

**10.5.4** 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 law or (ii) the Fair Price as determined by the Auditors is not more than 110% of that price (if any) which the Company had previously notified to the Leaver as being in its opinion the Fair Price (or, if the price which the Company had previously notified was zero, the Fair Price as determined by the Auditors is not more than 10% of the Issue Price of such Shares), in which event the cost shall be borne by the Leaver

## **10.6 Transfers**

### ***First offer to Company/EBT etc at discretion of Board with Investor Consent***

The following provisions of this Article 10.6 will apply to any transfer of any Shares by any Leaver

**10.6.1** Within five Business Days after the later of

- (a) the date of the Sale Notice, and
- (b) the determination of the Sale Price

the Directors with Investor Consent may direct the Company (in its capacity as agent for the Seller) immediately to offer at the Sale Price such number of Sale Shares as they may determine to

- (i) the Company and/or
- (ii) any person who will hold the Sale Shares for the benefit of existing or future employees including (without limitation), the EBT, any Employee Trust or any professional trustee, in any such case to hold the Sale Shares upon the terms of a discretionary trust for the benefit of the class of beneficiaries which includes (without limitation) employees and directors of any Group Company

**10.6.2** If any offeree of the Sale Shares pursuant to Article 10.6.1 applies for any of them within five Business Days after the date of the offer, the Company will allocate to such offeree the number of Sale Shares applied for on the later of

- (a) the fifteenth Business Day following the date of the Transfer Notice, and
- (b) the date on which the Sale Price is determined

**10.6.3** If all of the Sale Shares are so allocated, the provisions of Articles 10.7 and 10.8 will not apply. If none or some only of the Sale Shares are so allocated, the provisions of Articles 10.7 and 10.8 will have effect as if reference to Sale Shares was to those not allocated in accordance with this Article 10.6.

*Offer to Members and notice to Investor(s)*

**10.7** Subject to Article 10.6, within 10 Business Days after the date of a Transfer Notice or, where later, on the determination of the Sale Price, the Company (in its capacity as agent for the Seller) will give notice in writing to each of the Shareholders (other than the Leaver and any other Shareholder who is deemed to have served a Sale Notice in respect of his entire holding of Shares pursuant to which the sale of such Shares has not then been concluded) offering the Sale Shares for sale at the Sale Price. The notice will specify that the Shareholders will have a period of up to 10 Business Days from the date of such notice within which to apply for some or all of the Sale Shares. The offer will also invite Shareholders to indicate in their applications for Sale Shares whether they would be willing to buy shares in excess of their Proportionate Entitlement should any such Shares be available and if so how many ("**Extra Shares**")

**10.8** After the expiry of the offer period specified in Article 10.7 the Board will allocate the Sale Shares as follows

**10.8.1** if the total number of Sale Shares applied for (including Extra Shares) is equal to or less than the available number of Sale Shares, each offeree will be allocated the number applied for in accordance with his application, or

**10.8.2** if the total number of Sale Shares applied for is greater than the available number of Sale Shares each offeree will be allocated his Proportionate Entitlement, or if less, the number of Sale Shares which he has applied for, and

**10.8.3** applications for Extra Shares will be allocated in accordance with such applications or, in the event of competition within any class of shareholder, among those applying for Extra Shares in such proportions as equal (as nearly as possible) the proportions of all the Shares of the same class held by such offerees

**10.9** Allocations of Sale Shares made by the Company pursuant to this Article 10 will constitute the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them, provided that no person will be obliged to take more

than the maximum number of Sale Shares which he has indicated to the Company he is willing to purchase

*Completion of sale and purchase of Sale Shares*

**10 10** The Company will immediately upon allocating any Sale Shares (whether pursuant to Article 10 6 2 or Article 10 8) give notice in writing ("**Allocation Notice**") to the Seller and to each person to whom Sale Shares have been allocated specifying

**10 10.1** the number of Sale Shares so allocated,

**10.10 2** the aggregate price payable for them,

**10.10.3** the place and time (being not later than 5 Business Days after the date of the Allocation Notice) at which the sale of the Sale Shares will be completed

**10 11** Completion of the sale and purchase of Sale Shares in accordance with the Allocation Notice will take place at the place and time specified in the Allocation Notice when the Seller will, upon payment of the due price, transfer those Sale Shares specified in the Allocation Notice and deliver the relevant Share certificates to the persons to whom they have been allocated

*Exhaustion of pre-emption rights - rights and restrictions with regard to sale to third party*

**10 12** Immediately after the exhaustion of any pre-emption process followed in accordance with these Articles, if any Sale Shares remain unallocated, the Company will notify the Leaver of that fact. The Leaver may, at any time within one calendar month after receiving such notice (but not otherwise unless the pre-emption procedure set out in these articles is repeated), transfer any unsold Sale Shares at any price which is not less than the Sale Price, except that

**10 12 1** the Board will refuse registration of any transfer to a proposed transferee who is a person to whom Shares may not be transferred by virtue of Article 8,

**10 12 2** if any such transfer would, if made and registered, result in the proposed transferee obtaining or increasing his holding to 50% or more of the issued voting share capital of the Company, the Board will refuse registration of such transfer until such time as the provisions of Article 12 1 (Tag Along Rights) have been complied with, and

**10 12 3** any such transfer must be in good faith and the Board may require to be satisfied (in such manner as it may reasonably think fit) that the Sale Shares are being sold at a price which is not less than the Sale Price without any deduction, rebate or allowance whatsoever. If not so satisfied, the Board (subject to the Investor Consent) may refuse to register the transfer



## **11 CHANGE OF CONTROL - DRAG ALONG RIGHTS**

**11.1** Whenever an Approved Offer is made, the holders of 75% or more of the D Ordinary Shares shall have the right ("**Drag Along Right**") to require (in the manner set out in Article 11.2) all of the other holders of Shares including persons who acquire Shares following the making of the Approved Offer pursuant to the exercise of options or conversion of securities ("**Other Shareholders**") to accept the Approved Offer in full

**11.2** The Drag Along Right may be exercised by the service of notice to that effect on the Other Shareholders at the same time as, or within five Business Days following the making of the Approved Offer (or, if later, within five Business Days following the acquisition by the relevant Other Shareholder of any Shares)

**11.3** On the exercise of the Drag Along Right, each of the Other Shareholders will be bound to accept the Approved Offer in respect of its entire holding Shares and to comply with the obligations assumed by virtue of such acceptance

**11.4** If any of the Other Shareholders fails to accept the Approved Offer or, having accepted such offer, fails to complete the sale of any of its Shares pursuant to the Approved Offer, or otherwise fails to take any action required of it under the terms of the Approved Offer, any holder of D Shares or any persons so authorised by the Board with Investor Consent may accept the offer on behalf of the Other Shareholder in question, or undertake any action required under the terms of the Approved Offer on the part of the Other Shareholder in question. In particular, such person may execute the necessary transfer(s) on that Other Shareholder's behalf and against

**11.4.1** receipt by the Company (on trust for such Other Shareholder) of the consideration payable for the relevant shares (the receipt being a good discharge to the Buyer who will not be bound to see to the application of it), and

**11.4.2** compliance by the Buyer and, where relevant, the Company with all other terms of the Approved Offer

deliver such transfer(s) to the Buyer (or its nominee). The Board will then authorise registration of the transfer(s) and of the Buyer (or its nominee) as the holder of the Shares so transferred. After registration, the title of the Buyer (or its nominee) as registered holder of such Shares will not be affected by any irregularity in, or invalidity of such proceedings, which will not be questioned by any person. The Other Shareholder will in such a case be bound to deliver up its certificate for its Shares to the Company, or a statutory declaration of loss (as appropriate) whereupon the Other Shareholder will be entitled to receive the purchase price for such Shares

## 12 TAG ALONG

- 12 1 If at any time one or more Shareholders (the "**Proposed Sellers**") propose to sell to any person, in one or a series of related transactions, such number of Shares which would, if registered, result in that person (together with persons connected or acting in concert with him) holding or increasing his holding to 50% or more of the issued voting share capital of the Company (a "**Proposed Sale**"), the Proposed Sellers shall give written notice to the other holders of Shares of any Proposed Sale at least 10 Business Days prior to the proposed date of completion thereof. Such notice shall set out, to the extent not described in any accompanying documents, the identity of the proposed buyer (the "**Proposed Buyer**"), the sale price and other terms and conditions of payment, the proposed date of sale and the number of Shares to be acquired by the Proposed Buyer.
- 12 2 The Proposed Sale may not be completed unless the Proposed Buyer has unconditionally offered to buy all the other issued Shares (other than any Shares already owned by the Proposed Buyer or persons connected or acting in concert with him) on the same terms and conditions as apply to the Proposed Sale. Such offer shall remain open for acceptance for not less than 21 days.

- 12 3 The provisions of Articles 12 1 and 12 2 shall not apply to any Proposed Sale which is a Permitted Transfer under Article 9 or which is to take place pursuant to Article 11.

## 13 PROCEEDINGS OF SHAREHOLDERS

- 13 1 No business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business and, for its duration. Two persons entitled to vote upon the business to be transacted, each being a Shareholder or a proxy for a Shareholder or a duly authorised representative of a corporation (and at least one of which shall be either the Lead Investor or a proxy for, or a duly authorised representative of, the Lead Investor) shall be a quorum.
- 13 2 A resolution put to the vote of a meeting shall be decided on a show of hands of the holders of B, D and E Ordinary Shares unless before, or on the declaration of the result of, the show of hands, a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded at any general meeting by the chairman, or by any Shareholder present in person or by proxy and entitled to vote or by a duly authorised representative of a corporation which is a Shareholder entitled to vote.
- 13 3 An instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notari ally or in some other way approved by the Board must be delivered to the registered office of the Company.
- 13 3 1 in the case of a general meeting or an adjourned meeting, not less than 48 hours before the time appointed for the holding of the meeting or to the place of the

meeting at any time before the time appointed for the holding of the meeting,  
and

**13 3.2** subject to Article 13 5, in the case of a proxy notice given in relation to a poll,  
before the end of the meeting at which the poll was demanded

In calculating when a proxy notice is to be delivered, no account is to be taken of any part of  
a day that is not a Business Day A notice revoking the appointment of a proxy must be  
given in accordance with the Act

**13 4** When a poll has been demanded it shall be taken immediately following the demand

**13 5** The provisions of these Articles relating to general meetings of the Company or to the  
proceedings thereat shall, with the necessary changes being made, apply to every separate  
meeting of the holders of any class of Share, except that the necessary quorum shall be two  
persons holding or representing by proxy at least one third in nominal amount of the issued  
shares of that class (but so that if at any adjourned meeting of such holders a quorum as  
above defined is not present then the provisions of Article 13 2 shall apply)

#### **14 NUMBER OF DIRECTORS**

The number of Directors (including the Investor Director but excluding alternate directors)  
shall not be less than two in number nor more than five

#### **15 ALTERNATE DIRECTORS**

**15 1** An Investor Director (other than an alternate director) may appoint any other person  
whomsoever, to be an alternate director and may remove from office an alternate director so  
appointed

**15 2** A person who holds office only as an alternate director shall, if his appointor is not present,  
be counted in the quorum

**15.3** Any Director who is appointed an alternate director shall be entitled to vote at a meeting of  
the Board on behalf of the Director so appointing him in addition to being entitled to vote in  
his own capacity as a Director and shall also be considered as two Directors for the purpose  
of making a quorum of Directors unless he is the only individual present

#### **16 PROCEEDINGS OF DIRECTORS**

##### **General**

**16.1** The Directors may meet together for the despatch of business, adjourn and otherwise  
regulate their meetings as they think fit Subject to Article 16 4 any two Directors (of whom

at least one shall be an Investor Director) shall constitute a quorum (provided that a meeting of the Board will not be quorate with only 2 Investor Directors in attendance) and a quorum of Directors must be present throughout all meetings of the Board, save that if the number of Directors is less than the number fixed as the quorum, the continuing Director or Directors may act only for the purpose of appointing another Director or Directors in accordance with Article 17.12 or of calling a general meeting. If the chairman appointed pursuant to the Investment Agreement is not present at a meeting of the Board, the provisions of Regulation 12 shall apply and a chairman appointed pursuant to such Regulation 12 shall be appointed solely for the relevant Board meeting. Regulation 12 shall be amended accordingly. The chairman of the meeting shall not have a second or casting vote, in the case of an equality of votes. Notwithstanding any other provision of these Articles the votes cast by the Investor Directors (or either of them) or their alternatives at any meeting of the Board shall in no circumstances exceed more than 50% of the total votes cast by all Directors present at the relevant meeting of the Board.

- 16.2** Any Director or alternate director may validly participate in a meeting of the Board through the medium of conference telephone or similar form of communication equipment provided that all persons participating in the meeting are able to hear and speak to each other throughout such meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Subject to the Act, all business transacted in such manner by the Board or a committee of the Board shall for the purpose of these Articles be deemed to be validly and effectively transacted at a meeting of the Board or a committee of the Board notwithstanding that a quorum of Directors is not physically present in the same place. 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.

#### **Directors' conflicts of interest – Board approval for Situational Conflicts**

- 16.3** If a situation arises or exists in which a Director has or could have a Situational Conflict, without prejudice to the provisions of Articles 16.5 to 16.9, the Director concerned, or any other Director, may propose to the Board that such Situational Conflict be authorised, such proposal to be made in writing and delivered to the other Directors or made orally at a meeting of the Board, in each case setting out particulars of the Situational Conflict in question. Subject to the Act, the Directors may authorise such Situational Conflict and the continuing performance by the relevant Director of his duties as a Director of the Company on such terms as they may think fit.
- 16.4** The relevant Director shall not be counted in the quorum at the relevant meeting of the Directors to authorise such Situational Conflict nor be entitled to vote on the resolution authorising it. If the relevant Director is the sole Investor Director, for the purposes of any part of the meeting of the Directors at which a resolution authorising the relevant Situational Conflict pursuant to section 175(4)(b) of the Act is to be considered, the quorum

requirement for such part of the meeting shall be any two Directors, neither of whom have any interest in the matter and notwithstanding the provisions of Article 16 1 it shall not be necessary for such Investor Director to be present during such part of the meeting for the quorum requirement to be met

#### **Directors Situational Conflicts – pre-approval for all Directors**

**16 5** Subject to compliance by him with his duties as a Director under Part X of the Act (other than the duty in section 175(1) of the Act which is the subject of this Article 16 5), a Director (including the chairman of the Company (if any) and any other non-executive Director) may

**16.5.1** be an officer of, employed by, or hold Shares or other securities (whether directly or indirectly) in the Company, or

**16.5.2** be a director or other officer of, employed by or hold shares or other securities (whether directly or indirectly) in, or otherwise be interested, whether directly or indirectly, in any other Group Company

(in either case a "**Group Company Interest**") and notwithstanding his office or the existence of an actual or potential conflict between any Group Company Interest and the interests of the Company, which would fall within the ambit of that section 175(1), the relevant Director

**16 5 3** shall be entitled to attend any meeting or part of a meeting of the Directors or a committee of the Directors at which any matter which may be relevant to the Group Company Interest may be discussed, and to vote on any resolution of the Directors or a committee thereof relating to such matter, and any board papers relating to such matter shall be provided to the relevant Director at the same time as the other Directors (save that a Director may not vote on any resolution in respect of matters relating to his employment with the Company or other Group Company),

**16.5 4** shall not be obliged to account to the Company for any remuneration or other benefits received by him in consequence of any Group Company Interest, and

**16 5 5** will not be obliged to disclose to the Company or use for the benefit of the Company any confidential information received by him by virtue of his Group Company Interest and otherwise than by virtue of his position as a Director, if to do so would breach any duty of confidentiality to any other Group Company or third party

#### **Directors' Situational Conflicts – pre-approval for Investor Directors**

16.6 Subject to compliance by him with his duties as a Director under Part X of the Act (other than the duty in section 175(1) of the Act to the extent that it is the subject of this Article 16.6), an Investor Director may be a director or other officer of, employed by, hold shares or other securities in, or otherwise be interested, whether directly or indirectly, in

16.6.1 any Investor, Investor Associate, or other entity which, directly or indirectly, holds Shares in the Company (a "**Relevant Investor**") and as such the Investor Director may, on behalf of the Investor, give or withhold any consent or give any direction required of any Investor or Investors pursuant to the terms of any subscription, investment or shareholders' agreement relating to the Company, or of any similar agreement or document ancillary to such an agreement, or

16.6.2 any other company in which a Relevant Investor also holds shares or other securities or is otherwise interested, whether directly or indirectly,

(in either case an "**Investor Director Interest**"), and notwithstanding his office or the existence of an actual or potential conflict between any Investor Director Interest and the interests of the Company which would fall within the ambit of section 175(1) of the Act the relevant Investor Director

16.6.3 shall be entitled to attend any meeting or part of a meeting of the Directors or a committee of the Directors at which any matter which may be relevant to the Investor Director Interest may be discussed, and to vote on a resolution of the Directors or a committee thereof relating to such matter, and any board papers relating to such matter shall be provided to the relevant Investor Director at the same time as other Directors,

16.6.4 shall not be obliged to account to the Company for any remuneration or other benefits received by him in consequence of any Investor Director Interest

16.6.5 shall be entitled to consult freely about the Group and its affairs with, and to disclose, for investment appraisal purposes, Confidential Information to, any Investor Investor Associate or proposed investor in the Group or any other person on whose behalf it is investing in the Group, and to the Group's auditors, lenders and proposed lenders (or with and to any of its or their professional advisers), and

16.6.6 for the purposes of facilitating a Sale or Quotation, shall be entitled to disclose any Confidential Information to any proposed purchaser, underwriter sponsor or broker, subject to the relevant Investor Director using his reasonable endeavours to procure that any such recipient is made aware that it is Confidential Information and agrees to treat it accordingly, and

16.6.7 will not be obliged to disclose to the Company or use for the benefit of the

Company any other confidential information received by him by virtue of his Investor Director Interest and otherwise than by virtue of his position as a Director

- 16.7 For the purposes of Article 16 6, the expression "**Confidential Information**" shall mean all information (whether oral or recorded in any medium) relating to any Group Company's business, financial or other affairs (including future plans of any Group Company) which is treated by a Group Company as confidential (or is marked or is by its nature confidential)

**Directors' Situational Conflicts – disclosure of interests**

- 16 8 Any Director who has a Group Company Interest and any Investor Director who has an Investor Director Interest shall, as soon as reasonably practicable following the relevant Interest arising, disclose to the Board the existence of such Interest and the nature and extent of such Interest so far as the relevant Investor Director or other Director is able at the time the disclosure is made PROVIDED that no such disclosure is required to be made of any matter in respect of which the relevant Investor Director or other Director owes any duty of confidentiality to any third party A disclosure made to the Board under this Article 16 8 may be made either at a meeting of the Board or by notice in writing to the Company marked for the attention of the Directors

**Directors' Situational Conflicts – shareholder approval**

- 16 9 Notwithstanding the provisions of Articles 16 3, 16 5 and 16 6, the Lead Investor may, at any time, by notice in writing to the Company, authorise, on such terms as it shall think fit and shall specify in the notice

16 9 1 any Situational Conflict which has been notified to the Board by any Director under Article 16 3,

16 9 2 any Situational Conflict which has been notified to the Board by the chairman of the Company (if any) under Article 16 3 and which arises by virtue of his appointment or proposed appointment as a director or other officer of, and/or his holding of shares or other securities (whether directly or indirectly) in, any company other than a Group Company (a "**Chairman's Interest**"), or

16 9 3 any Group Company Interest or Investor Director Interest which has been disclosed to the Board under Article 16 8,

(whether or not the matter has already been considered under, or deemed to fall within, Article 16 3, 16 5 or 16 6, as the case may be)

- 16 10 No contract entered into shall be liable to be avoided by virtue of

- 16.10.1 any Director having an interest of the type referred to in Article 16 3 where the relevant Situational Conflict has been approved as provided by that Article or which is authorised pursuant to Article 16 9,
- 16.10.2 the chairman of the Company (if any) having a Chairman's Interest which has been approved by the Board under Article 16 3 or which is authorised pursuant to Article 16 9,
- 16.10 3 any Director having a Group Company Interest which falls within Article 16 5 or which is authorised pursuant to Article 16 9, or
- 16 10 4 any Investor Director having an Investor Director Interest which falls within Article 16 6 or which is authorised pursuant to Article 16 9

#### **Directors' conflicts of interest – Transactional Conflicts**

- 16 11 The provisions of Articles 16 3 to 16 10 shall not apply to Transactional Conflicts but the following provisions of this Article 16 11 and Article 16 12 shall so apply Any Director may be interested in an existing or proposed transaction or arrangement with the Company provided that he complies with the Act and (if applicable) Articles 16 12 and 16 13
- 16 12 Subject to the provisions of the Act, and provided that he has disclosed to the other Directors the nature and extent of any material interest of his, a Director may notwithstanding his office
  - 16.12.1 may be a party to, or otherwise interested in, any existing or proposed transaction or arrangement with the Company or in which the Company is otherwise interested,
  - 16 12 2 may be a director or other officer of or employed by, or a party to any existing or proposed transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested, and
  - 16 12 3 shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office 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
- 16.13 For the purposes of Article 16 12
  - 16.13 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 existing or



proposed 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, and

**16.13 2** an interest in 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

**16 14** Without prejudice to the obligation of each Director to declare an interest in accordance with the Act, a Director may vote at a meeting of the Board or of a committee of the Board on any resolution concerning a matter in which he has an interest, whether direct or indirect, which relates to a transaction or arrangement with the Company, or in relation to which he has a duty. Having so declared any such interest or duty he may have, the Director shall be counted in the quorum present when any such resolution is under consideration and if he votes on such resolution his vote shall be counted.

#### **Delegation and Committees**

**16.15** Regulation 5(1) shall be amended by the insertion of the words "with Investor Consent" after the words "the directors may"

### **17 APPOINTMENT AND REMOVAL OF DIRECTORS**

**17 1** Any person who is willing to act as a director and is permitted by law to do so may be appointed as a director of the Company either

**17.1 1** by ordinary resolution of the members or

**17 1 2** subject to Investor Consent, by a resolution of the Board

### **18 RETIREMENT BY ROTATION**

The Directors shall not be liable to retire by rotation

### **19 THE SEAL**

In addition to its powers under section 44 of the Act, the Company may have a seal and the Directors shall provide for the safe custody of any such seal. If there is a seal, the Directors shall determine who may sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by at least one authorised person in the presence of a witness who attests his signature. For the purposes of this article, an authorised person is any Director, the Company Secretary (if any) or any person authorised by the Directors for the purpose of signing documents to which the seal is applied.

## **20 INDEMNITY AND INSURANCE**

**20 1** Subject to and on such terms as may be permitted by the Act, the Company may

**20 1.1** indemnify, out of the assets of the Company, any director of the Company or any associated company against all losses and liabilities which he may sustain or incur in the performance of the duties of his office or otherwise in relation thereto (including, in respect of any director of either the Company or any associated company, where the Company or such associated company acts as trustee of a Pension Scheme, against liability incurred in connection with the relevant company's activities as trustee of such scheme),

**20 1.2** provide a Director with funds to meet expenditure incurred or to be incurred by him

(a) at any time in defending any civil or criminal proceedings brought or threatened against him, or

(b) in defending himself in an investigation by a regulatory authority or against action proposed to be taken by a regulatory authority,

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

**20.1 3** purchase and maintain insurance for any Director or any director of any associated company against any liability attaching to any such person in connection with any negligence, default, breach of duty or breach of trust by him in relation to the Company or any such associated company

**20 2** For the purpose of Article 20 1 above, a company will be "associated" with another if one is a subsidiary of the other or both are subsidiaries of the same body corporate

## **21. OVERRIDING PROVISIONS**

The Company shall not pay any dividends on its Shares, redeem its Shares or purchase its Shares if to do so would cause the Company to be in breach of the provisions of clause 25 18 of the Facilities Agreement

## **22. VARIATION**

**22.1** None of the following shall be done or permitted without the prior consent of the holders of

at least 75% of any class of shares in issue

**22.1.1** the amendment or variation of any of the rights attaching to that class of Shares (including without limitation, the rights under Articles 11 and 12,)

**22.1.2** the allotment and issue of any further Shares of that class, or

**22.1.3** the amendment or variation of the rights attaching to any class of Shares or the creation of any additional class of Shares, in a manner which would result in any of those Shares ranking in priority over that class of Shares or which would otherwise affect the priority of that class of Shares

## **23 NOTICES**

**23.1** Subject to the specific terms of these Articles, any notice to be given to or by any person pursuant to these Articles (other than a notice calling a meeting of the Board or a committee thereof) shall be in writing

**23.2** Any Shareholder Communication may be served by the Company on or supplied by the Company to, a Shareholder or other person personally or by sending it by first-class post in a pre-paid envelope addressed to such Shareholder or other person at his postal address (as appearing in the Company's register of members in the case of Shareholders) or (except in the case of Excluded Notices and share certificates) by sending or supplying it in electronic form or by website communication in accordance with Articles 23.4 or 23.5. Excluded Notices shall be sent to or served upon the relevant person as required by these Articles in hard copy and delivered personally or sent by first-class post in a pre-paid envelope and shall not be sent in electronic form

**23.3** In the case of a Shareholder Communication (including an Excluded Notice) sent by post proof that an envelope containing the communication was properly addressed, pre-paid and posted shall be conclusive evidence that it was sent and it shall be deemed to be given or received at the expiration of 48 hours after the envelope containing it was posted. In calculating the period of hours for the purposes of this Article, no account shall be taken of Sundays or Bank Holidays

**23.4** Subject to the provisions of the Statutes, any Shareholder Communication (except an Excluded Notice or a share certificate) will be validly sent or supplied by the Company to a person if sent or supplied in electronic form provided that person has agreed (generally or specifically) (or, if the person is a company and is deemed by the Statutes to have agreed) that the communication may be sent or supplied in that form and

**23.4.1** the Shareholder Communication is sent in electronic form to such address as may for the time being be notified by the relevant person to the Company (generally or specifically) for that purpose or, if that relevant person is a

company, to such address as may be deemed by a provision of the Statutes to have been so specified, and

23.4 2 that person has not revoked the agreement

23.5 Subject to the provisions of the Statutes, any Shareholder Communication (except an Excluded Notice or a share certificate) will be validly sent or supplied by the Company to a person if it is made available by means of a website communication where that person has agreed, or is deemed by the Statutes to have agreed (generally or specifically) that the communication may be sent or supplied to him in that manner and

23.5 1 that person has not revoked the agreement,

23.5.2 the person is notified in a manner for the time being agreed for the purpose between the person and the Company of

(a) the presence of the Shareholder Communication on the Company's website,

(b) the address of that website, and

(c) the place on that website where the Shareholder Communication may be accessed and how it may be accessed, and

23.5 3 the Shareholder Communication continues to be published on the Company's website throughout the period specified in the Act, provided that if it is published on the website for part but not all of such period, the Shareholder Communication will be treated as published throughout that period if the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the Company to prevent or avoid

23.6 When any Shareholder Communication is sent by the Company in electronic form, it shall be deemed to have been given on the same day as it was sent to the address supplied by the Shareholder, and in the case of the provision of a Shareholder Communication by website communication, it shall be deemed to have been received when it was first made available on the website or, if later, when the recipient received (or is deemed to have received) notice of the fact that it was available on the website pursuant to Article 22.52

23.7 Where in accordance with these Articles a Shareholder or other person is entitled or required to give or send to the Company a notice in writing (other than an Excluded Notice), the Company may, in its absolute discretion, (or shall, if it is deemed to have so agreed by any provision of the Statutes) permit such notices (or specified classes thereof) to be sent to the Company in such electronic form and at such address as may from time to time be specified

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

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

**23.9** In the case of joint holders of a Share, all Shareholder Communications shall be sent or supplied to the joint holder who is named first in the register and a Shareholder Communication so sent or supplied shall be deemed sent or supplied to all joint holders. Any provision of this Article 24 which refers to anything agreed, notified or specified by a member shall be deemed to have been validly agreed, notified or specified, notwithstanding any provisions of the Statutes if agreed, notified or specified by only one and not all of the joint holders of any Shares held in joint names.

## **24 WINDING UP**

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Act divide among the members in specie the whole or any part of the assets of the company and may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.