

**The Companies Act 1985 to 1989**  
**Private Company Limited by Shares**

**ARTICLES OF ASSOCIATION**

5987714

**Fibre 7 UK Limited**



**The Company Act 1985**  
**Company limited by shares**

**Articles of Association**  
**of**  
**Fibre 7 UK Limited**

**As amended pursuant to a special resolution passed on 1 April 2009**

**1. PRELIMINARY**

**1.1 Table A**

The articles of association of the Company (the "**Articles**") shall comprise the regulations contained herein together with the regulations contained in Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (the "**Regulations**"), save insofar as they are excluded or modified by, or are inconsistent with, the regulations contained herein.

**1.2 Provisions of Table A which are excluded**

The whole of Regulations 1, 2, 24, 25, 40, 41, 46, 50, 51, 52, 54 64, 65, 73, 74, 75, 76, 77, 80, 82, 87, 89, 94, 96, 101 and 118, the third and fifth sentence of Regulation 88 and the last sentence of Regulation 112 of Table A shall not apply to the Company.

**1.3 Statutory provisions**

These Articles and the regulations incorporated in them shall take effect subject to the requirements of the Act and of every other statute for the time being in force affecting the Company.

**2. DEFINITIONS**

**2.1 Definitions**

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

**"the Accounts"**

the audited profits and loss account and balance sheet of the Company, or if the Company has any subsidiaries, the audited consolidated profit and loss account and balance sheet of the Company and its subsidiaries together with all notes thereto for each financial year or period (as the case maybe) calculated on the historical cost basis and (where appropriate) prepared in accordance with UK General Accepted Accounting Principles;

<b>"A Shares"</b>	the A shares of £0.01 each in the capital of the Company having the rights set out in these Articles;
<b>"A Shareholder"</b>	a holder for the time being of A Shares;
<b>"Act"</b>	the Companies Act 1985;
<b>"Asset Sale"</b>	a sale by the Company and/or any other member of the Group of all or a substantial part of the business, assets or undertaking of the Group whether in one transaction or a series of related transactions;
<b>"Auditor(s)"</b>	the auditors for the time being of the Company;
<b>"B Shares"</b>	the B shares of £0.01 each in the capital of the Company having the rights set out in these Articles;
<b>"B Shareholder"</b>	a holder for the time being of B Shares;
<b>"Board"</b>	the board of directors of the Company;
<b>"Business Days"</b>	a day other than a Saturday when the banks are open for the conduct of normal banking business in London, England;
<b>"C Shares"</b>	the C Shares of £0.01 each in the capital of the Company having the rights set out in these Articles;
<b>"C Shareholder"</b>	a holder for the time being of C Shares;
<b>"Clear Days"</b>	in relation to the period of notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
<b>"Controlling Interest"</b>	an interest (within the meaning of schedule 13, Part 1, section 324 of the Act) in shares conferring an aggregate 50% or more of the total voting rights conferred by all the shares in the equity share capital of the Company for the time being in issue;
<b>"Cumulative PAT"</b>	the cumulative total of the PAT (as defined below) for the Relevant Period calculated at any time by reference to each completed Year at such time;
<b>"Cumulative PAT Conversion"</b>	any conversion of C Shares into Ordinary Shares pursuant to Article 4.2;

<b>"Directors"</b>	the Directors for the time being of the Company;
<b>"Exit Event"</b>	a Share Sale or an Asset Sale;
<b>"Exit Proceeds"</b>	in the case of an Asset Sale, the amount of capital and assets of the Company available for distribution to its Shareholders and in the case of a Share Sale the consideration payable for the Shares;
<b>"Family Member"</b>	in relation to a Shareholder, any one or more of that person's spouse or children (including step-children or adopted children);
<b>"Family Trust"</b>	in relation to a Shareholder, a trust or settlement set up wholly for the benefit of that person and/or that person's Family Members;
<b>"Group"</b>	the Company and its subsidiaries from time to time and <b>"Group Company"</b> means any of them;
<b>"Leaving Date"</b>	the date on which the relevant person becomes a Leaver;
<b>"Leaver"</b>	as defined in Article 12;
<b>"Ordinary Shares"</b>	the Ordinary Shares of £0.01 each in the capital of the Company;
<b>"Ordinary Shareholder"</b>	a holder of Ordinary Shares;
<b>"Office"</b>	the registered office for the time being of the Company;
<b>"PAT"</b>	the consolidated profits or loss on trading activities of the Company, and if applicable, its subsidiaries and subsidiary undertaking as shown in or ascertained from the Accounts for the relevant financial period having taken into account interest, extraordinary items, extraordinary management charges and taxation and exceptional items;
<b>"Ratchet Shares"</b>	the A Shares, B Shares and/or C Shares;
<b>"Ratchet Shareholders"</b>	the holders of A Shares, B Shares and C Shares;
<b>"Relevant Majority Consent"</b>	the consent in writing of Ordinary Shareholders for the time being of the Company holding 76% in nominal value of the issued Ordinary Shares;

<b>"Secretary"</b>	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;
<b>"Shareholder"</b>	a holder for the time being of shares in the capital of the Company;
<b>"Shares"</b>	the issued shares in the capital of the Company from time to time;
<b>"Share Sale"</b>	the sale of (or the grant of a right to acquire or to dispose of) any of the issued shares in the capital of the Company (in one transaction or as a series of transactions) which will result in any purchaser of such shares (or grantee of such right) and persons connected with him together acquiring a Controlling Interest in the Company;
<b>"Tauranga Group"</b>	each of William Wallace Roome, Philip Edward Cox and Paul Geoffrey Duncan;
<b>"the United Kingdom"</b>	means Great Britain and Northern Ireland; and
<b>"Year"</b>	any year ending 31 December during the Relevant Period.

## 2.2 Statutory definitions

Words and expressions defined in or having a meaning provided by the Act as at the date of adoption of these Articles shall have the same meaning in these Articles unless it is inconsistent with the context. 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.

## 2.3 References to statutory provisions

A reference to any statutory provision in these Articles:

- (a) includes any order, instrument, plan, regulation, permission and direction made or issued under such statutory provision or deriving validity from it;
- (b) shall be construed as a reference to such statutory provision as in force at the date of adoption of these Articles (including, for the avoidance of doubt, any amendments made to such statutory provision that are in force at the date of the adoption of these Articles; and
- (c) shall also be construed as a reference to any statutory provision of which such statutory provision is a re-enactment or consolidation.

## 2.4 Other references

References in these Articles to:

- (a) any of the masculine, feminine and neuter genders shall (where appropriate) include other genders;
- (b) the singular shall (where appropriate) include the plural and vice versa;
- (c) a person shall (where appropriate) include a reference to any natural person, body corporate, unincorporated association, partnership, firm and trust;
- (d) "from time to time" shall include the expression "for the time being"; and
- (e) 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.

## 2.5 Headings

The headings in these Articles are for convenience only and shall not affect their meaning and references to an "**Article**" are to an article of these Articles.

## 2.6 Transfer of shares

A reference in these Articles to the transfer of any 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:

- (a) 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;
- (b) 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
- (c) any grant of a legal or equitable mortgage or charge over any Share.

## 2.7 General words

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.

## **2.8 Nominees**

Where any Shares are held by a bare nominee for any person, that person shall be treated for the purposes of these Articles as the Shareholder in respect of those Shares.

## **3. SHARE CAPITAL AND PARI PASSU CLASS RIGHTS**

### **3.1 Authorised Share Capital**

The authorised share capital of the Company at the date of adoption of these Articles is £80,000 divided into 5,000,000 Ordinary Shares, 1,000,000 A Shares, 1,000,000 B Shares and 1,000,000 C Shares.

### **3.2 Class Rights**

The Ordinary Shares, the A Shares, the B Shares and the C Shares shall constitute different classes of Shares for the purposes of the Act but save as provided in these Articles the Shares shall rank pari passu in all respects.

### **3.3 Voting**

- (a) The Ordinary Shares shall 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.
- (b) The Ratchet Shares shall confer no rights to receive notice of, to attend, speak or vote at general meetings of the Company.
- (c) Where Shares confer a right to vote, on a show of hands each holder of such 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 and on a poll each such holder so present shall have one vote for each Share held by him.

### **3.4 Income**

Any profits which the Directors may lawfully determine to distribute in respect of any financial year shall be distributed amongst the holders of the Ordinary Shares pro rata according to the number of fully paid and issued Ordinary Shares held by each of them. The Ratchet Shareholders (in such capacity) shall not be entitled to participate in any profits of the Company and no dividends shall be distributed to the holders of the Ratchet Shares (in such capacity).

### **3.5 Return of Capital**

Upon a winding up of or other return of capital by the Company or Share Sale the Exit Proceeds shall be distributed among the shareholders as follows:

- (a) first in paying to the holders of the Ordinary Shares any dividend declared in respect of the Ordinary Shares but otherwise unpaid by the Company;

- (b) secondly, the holders of Ratchet Shares shall be entitled to the nominal value of the Ratchet Shares held by them; and
- (c) thirdly, the holders of Ordinary Shares shall be entitled to the balance of the Exit Proceeds (if any) to be shared among the holders of Ordinary Shares pro rata according to the number of fully paid and issued Ordinary Shares held by each of them.

The distributions pursuant to Article 3.5 shall be made following conversion of the Ratchet Shares on the occurrence of any Exit Event during the Relevant Period.

#### 4. **CONVERSION OF RATCHET SHARES INTO ORDINARY SHARES**

##### 4.1 **Conversion Rights**

Subject to Article 12, which specifies circumstances where the conversion rights shall lapse, the Ratchet Shares shall be convertible into Ordinary Shares in accordance with the remaining provisions of this Article.

For the purposes of this Article 4 the "**Proceeds**" shall be the consideration payable in respect of the Exit Event certified by the Board following consultation with the Auditors in respect of the valuation of any deferred or contingent consideration.

##### 4.2 **Conversion of C Shares**

If either A Shares and/or B Shares would have converted into Ordinary Shares if the conversion rights applicable at the time of their issue continued to apply, then a number of C Shares shall automatically convert into Ordinary Shares on the Relevant Conversion Date or on completion of the Exit Event (as the case may be). The number of C Shares to convert shall be calculated as follows:

$$(7.5/92.5) \times Z$$

Where Z = the number of A Shares and/or B Shares which would have converted into Ordinary Shares if the conversion rights applicable at the time of their issue continued to apply on the Relevant Conversion Date or on completion of an Exit Event (as the case may be).

##### 4.3 **Conversion mechanics**

The number of Ratchet Shares to convert pursuant to a Cumulative PAT Conversion shall be calculated on the last day of the month during which the Accounts for each financial period during the Relevant Period are approved by the Company in general meeting or three months after those Accounts are filed with the Registrar of Companies, whichever is the earlier and the Auditors shall deliver to the Company a statement of the PAT and a statement of the Cumulative PAT, together with a statement of adjustments showing the calculation of the PAT and Cumulative PAT and accompanied by an opinion letter from the Auditors to the effect that their calculations have been properly made in accordance with the applicable provisions of these Articles (the "**Conversion Statement**"). The Conversion Statement shall be



sent to each Ratchet Shareholder as soon as is practicable. The Company shall bear the Auditor's costs.

#### **4.4 Right to Object**

If the holders of more than 75% in nominal value of the C Shares disagree with the calculation of PAT or Cumulative PAT as set out in the Conversion Statement they shall have the right, within 15 Business Days after receipt of the Conversion Statement to notify the Company in writing that they wish to refer the matter to the Independent Accountants (as defined below) If no such notification is given within 15 Business Days after receipt of the Conversion Statement, the C Shareholder(s) shall be deemed to have accepted the Conversion Statement.

#### **4.5 Determination of dispute**

In the event that the C Shareholder(s) notify the Company in accordance with Article 4.4 (Right to Object) above, the matter shall be referred to a firm of independent chartered accountants jointly agreed between the Company and the C Shareholder(s) holding 75% or more in nominal value of the C Shares in issue or (failing such agreement) appointed, at the request at any time of either the Company or the C Shareholder(s) by the President for the time being of the Institute of Chartered Accountants in England and Wales, which firm (the "**Independent Accountants**") shall determine the matter in dispute and in the light of the dispute determine PAT and the Cumulative PAT. The Independent Accountants shall act as experts and not as arbitrators and the Arbitration Act 1996 shall not apply and their decision shall be communicated in writing to the Company and the C Shareholder(s) and, save in the case of manifest error, shall be final and binding upon the Company and the C Shareholder(s). The Independent Accountants shall have discretion as to costs.

#### **4.6 Provision of Information**

The Company shall procure that all records, working papers and other information as may be reasonably required by the Auditors or the Independent Accountants for the purpose of this Article shall be made available upon a request for them.

#### **4.7 Relevant Conversion Date**

The Relevant Conversion Date shall mean:

- (a) five Business Days after the date on which the C Shareholder(s) are deemed to have accepted the Conversion Statement pursuant to Article 4.4 (Right to Object); or, if later
- (b) five Business Days after the decision of the Independent Accountants in accordance with Article 4.5 (Determination of dispute) above.

#### **4.8 Completion of a Cumulative PAT Conversion**

Upon the Relevant Conversion Date the C Shareholder(s) shall return to the Company the certificates for the C Shares to be converted and the Company shall issue share

certificates in respect of the Ordinary Shares resulting from the conversion to each such holder and new share certificates for their then balance (if any) of the C Shares.

#### **4.9 Redemption of C Shares**

Following determination of PAT and/or Cumulative PAT in respect of Year 4 or following completion of an Exit Event to the extent that any C Shares remain issued the Company may at its option at any time redeem all or any of such C Shares at par giving the registered holders of the C Shares not less than 28 days' prior written notice of its intention to do so, fixing a time and place for redemption.

### **5. THE ISSUES OF SHARES**

#### **5.1 Directors 'authority to allot**

The unissued Shares in the capital of the Company as at the date of the adoption of these Articles shall be under the control of the Directors, who are hereby generally and unconditionally authorised to allot, grant options over, or otherwise dispose of or deal with any such unissued Shares and relevant securities (as defined in Section 80(2) of the Act) to such persons, on such terms and in such manner as they think fit, but subject to any agreement binding on the Company, provided that the authority contained in this article insofar as the same relates to the relevant securities (as defined as aforesaid) shall, unless revoked or varied in accordance with section 80 or section 80A of the Act expire five years from the date of the adoption of these Articles, but without prejudice to any offer or agreement made before that anniversary which would or might require the exercise by the Directors after such anniversary of their powers in pursuance of the said authority.

#### **5.2 Exclusion of statutory provision**

The provisions of section 89(1) and 90(1) - (6) inclusive of the Act shall be excluded from applying to the Company.

### **6. VARIATION OF CLASS RIGHTS**

Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up, with the consent in writing of the holders of 75% of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate meeting of the holders of the shares of that class but not otherwise. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company shall, mutatis mutandis, apply except that:

- (a) the necessary quorum shall be one or more persons at least holding or representing by proxy one third in nominal amount of the issued shares of the class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present those members who are present shall be a quorum);

- (b) any holder of shares of the class present in person or by proxy may demand a poll; and
- (c) the holders of shares of the class shall, on a poll, have one vote in respect of every share of the class held by them respectively.

## **7. REDEMPTION AND PURCHASE OF SHARES**

Subject to the provisions of Part V of the Act and to the rights of the holders of the Shares, the Company may

- (a) issue shares which are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder concerned;
- (b) purchase its own shares (including any redeemable shares); and
- (c) make a payment in respect of the redemption or purchase under section 159 or 160 or (as the case may be) section 162 of the Act and exercise the relevant power under (a) or (b) above, in respect of any of its own shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares to the extent permitted by section 171 and section 172 of the Act.

## **8. LIEN**

The Company shall have the first and paramount lien on every Share (whether or not it is a fully paid Share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that Share, and the Company shall also have the first and paramount lien on all Shares (whether fully paid or not) standing registered in the name of any person for all moneys presently payable by him or his estate to the Company, whether he shall be the sole registered holder thereof or shall be one of several joint holders, but the Directors may at any time declare any Shares to be wholly or in part exempt from the provisions of this Article. The Company's lien, if any, on a Share shall extend to all dividends payable thereon. Regulations 9-11 of Table A dealing with the sale of a Share subject to a lien shall apply.

## **9. TRANSFERS OF SHARES**

### **9.1 Shares**

The Directors shall not register any transfer of Shares other than a transfer permitted by these Articles or any other agreement between the Shareholders and a Shareholder shall not be entitled to transfer any Shares whether by way of a sale or otherwise except in accordance with the provisions of these Articles or any such agreement.

### **9.2 A Shares and B Shares**

The A Shares and B Shares shall not be transferable.

## 10. PERMITTED TRANSFERS

### 10.1 Consent

Any Ordinary Share and any C Share may be transferred at any time by a Shareholder to any other person with a Relevant Majority Consent.

### 10.2 Tauranga Group

Any member of the Tauranga Group may at any time transfer any Ordinary Share to another member of the Tauranga Group.

### 10.3 Nominees, Family Members and Family Trusts

- (a) Any Shareholder may at any time transfer any Ordinary Share to a nominee but any transfers by such nominee shall be subject to the same restrictions as though they were transfers by the beneficial owner.
- (b) Any Shareholder may at any time transfer any Ordinary Share to a Family Member over the age of 18 or to the trustees of a Family Trust.
- (c) Any Shareholder who is a trustee of a Family Trust may at any time transfer any Ordinary Share to:
  - (i) the new or remaining trustees of the Family Trust upon any change of trustees; and
  - (ii) any persons on their becoming entitled to the same under the terms of the Family Trust.
- (d) Any Shareholder holding Ordinary 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 may at any time transfer any Ordinary Share to the person who originally transferred such Shares (or to any other permitted transferee of such original transferor).

## 11. PRE-EMPTION

### 11.1 Transfer Notice

Except in the case of a transfer pursuant to Article 10 (Permitted Transfers) or Article 14 (Tag along and drag along rights), a Shareholder who wishes to transfer any Ordinary Shares (the "Seller") shall give notice in writing of such wish to the Company (the "Transfer Notice") copied to each other Shareholder. Each Transfer Notice shall:

- (a) specify the number of Ordinary Shares which the Seller wishes to transfer (the "Sale Shares");
- (b) specify the identity of any person to whom the Seller wishes to transfer the Sale Shares (the "Proposed Transferee");

- (c) specify the price per Share (the "**Sale Price**") at which the Seller wishes to transfer the Sale Shares;
- (d) be deemed to constitute the Company the Seller's agent for the sale of the Sale Shares at the Sale Price in the manner prescribed by these Articles; and
- (e) not be varied or cancelled (without a Relevant Majority Direction).

#### 11.2 **Minimum Transfer Condition**

The Seller may provide in the Transfer Notice that, unless buyers are found for all or not less than a specified number of the Sale Shares, he shall not be bound to transfer any of such Ordinary Shares ("**Minimum Transfer Condition**") and any such provision shall be binding on the Company Notwithstanding the other provisions of this Article, if the Transfer Notice contains a Minimum Transfer Condition the Company may not take any allocation of Sale Shares unless and until it has found buyers for the minimum number specified to the Minimum Transfer Condition.

#### 11.3 **Offer to purchase**

The Company shall within five Business Days following receipt of the Transfer Notice give notice in writing to each of the Shareholders. The notice shall offer for sale the Sale Shares at the Sale Price to the relevant Shareholders. The notice shall specify that the relevant Shareholders shall have a period of twenty-five Business Days from the date of such notice within which to apply for some or all of the Sale Shares.

#### 11.4 **Allocation of shares to accepting shareholders**

If the total number of Sale Shares applied for exceeds the number of Sale Shares available, the Sale Shares shall be deemed to have been offered to the relevant Shareholders on terms that, in the event of competition, the Sale Shares shall be allocated to the Shareholders accepting the offer in proportion (as nearly as may be) to their existing holdings of Ordinary Shares (the "**Proportionate Allocation**") However, in his application for Sale Shares a Shareholder may, if he so desires, indicate that he would be willing to purchase a particular number of Shares in excess of his Proportionate Allocation ("**Extra Shares**").

#### 11.5 **Basis of allocations**

Upon the allocation of all the Sale Shares, the Company shall allocate the Sale Shares as follows:

- (a) if the total number of Sale Shares applied for is equal to or less than the available number of Sale Shares, each relevant Shareholder shall be allocated the number applied for in accordance with his application; or
- (b) if the total number of Sale Shares applied for is greater than the available number of Sale Shares, each relevant Shareholder shall be allocated his Proportionate Allocation or such lesser number of Sale Shares for which he has applied and applications for Extra Shares shall be allocated in accordance

with such applications or, in the event of competition, among those relevant Shareholders applying for Extra Shares in such proportions as equal (as nearly as may be) the proportions of all the Ordinary Shares held by such Shareholders.

#### **11.6 Deemed acceptance**

Allocations of Sale Shares made by the Company pursuant to this Article shall 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 shall be obliged to take more than the maximum number of Sale Shares that he has indicated to the Company he is willing to purchase.

#### **11.7 Completion of the sale and purchase**

The Company shall forthwith upon allocating any Sale Shares give notice in writing (a "Sale Notice") to the Seller and to each person to whom Sale Shares have been so allocated of the number of Sale Shares so allocated and the aggregate price payable therefor. Completion of the sale and purchase of those Sale Shares in accordance with the Sale Notice shall take place within five Business Days after the date of the Sale Notice whereupon the Seller shall, upon payment of the price due in respect thereof, transfer those Sale Shares specified in the Sale Notice to the persons to whom they have been allocated and deliver the relevant share certificate.

#### **11.8 Default**

Save in the case of an acquisition of Sale Shares by the Company, if the Seller defaults in transferring any Sale Shares pursuant to Article 11.7, the Company may receive such purchase money and may nominate some person to execute an instrument of transfer of such Sale Shares in the name and on behalf of the Seller and thereafter, when such instrument has been duly stamped, the Company shall cause the name of the proposed transferee to be entered in the register of members as the holder of such Sale Shares and shall hold the purchase money on trust (without interest) for the Seller. The receipt of the Company for the purchase money shall be a good discharge to the 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 Sale Shares by the Company, if the Seller defaults in transferring any Sale Shares pursuant to Article 11.7, the Company shall, when such instrument has been duly stamped, cause such share capital to be cancelled in accordance with the Act and shall hold the purchase money on trust (without interest) for the Seller.

#### **11.9 What if pre-emption rights not taken up**

If all the Sale Shares are not sold under the pre-emption provisions contained in Articles 11.1 to 11.8 (inclusive), the Company shall (forthwith upon the exhaustion of such provisions) so notify the Seller and the Seller may at any time, within three calendar months after receiving such notification, transfer to the Proposed Transferee any unsold Sale Shares at any price not less than the Sale Price, provided that:

- (a) the Shareholders may by a Relevant Majority Direction require the Company to refuse registration of any proposed transferee if they reasonably believe the proposed transferee to be a competitor of the Group or a person connected with such a competitor (or a nominee of either);
- (b) if the Seller stipulated in the Transfer Notice a Minimum Transfer Condition which has not been satisfied, the Seller shall not be entitled to sell less than the number of Sale Shares specified in the Minimum Transfer Condition; and
- (c) any such sale shall be a sale in good faith and any of the Shareholders may require to be satisfied (in such manner as they may reasonable think fit) that the Sale Shares are being sold for not less than the Sale Price without any deduction, rebate or allowance whatsoever and if not so satisfied may (by a Relevant Majority Direction) require the Company to refuse to register the transfer.

## 12. LEAVERS

### 12.1 Who the provisions apply to

The provisions of this Article shall apply to any Leaver and to any such Leaver's Ordinary Shares.

### 12.2 Definitions

In these Articles:

- (a) a "**Relevant Employee**" shall mean:
  - (i) an employee, consultant or director of the Company; or
  - (ii) an employee, consultant or director of any Group Company (other than the Company);
- (b) a "**Good Leaver**" shall mean a Leaver who becomes a Leaver by reason of any of the following circumstances occurring in respect of a Relevant Employee:
  - (i) death;
  - (ii) such person suffering a physical or mental deterioration which, in the reasonable opinion of the Board (having received independent medical advice), is sufficiently serious to prevent the individual from following his normal employment or which seriously prejudices his earning capacity;
  - (iii) such person retiring at the age of 60 or over;
  - (iv) such person ceasing to be employed by any Group Company other than in circumstances where such person (i) is dismissed for cause or (ii) in

the reasonable opinion of the Board does so to join a competitor of the Company, or

- (v) such person ceasing to be employed by any Group Company as a result of the company ceasing to be a subsidiary of the Company;

(c) a "**Leaver**" shall mean:

- (i) a Shareholder who ceases to be a Relevant Employee;
- (ii) any Shareholder who is a Family Member of any person who ceases to be a Relevant Employee;
- (iii) any Shareholders which are trustees of a Family Trust or nominees of any person who ceases to be a Relevant Employee;
- (iv) any Shareholder who is connected with any person who ceases to be a Relevant Employee;
- (v) any Shareholder who ceases to be the spouse of a Relevant Employee, or
- (vi) any person who becomes entitled to any Ordinary Shares:
  - (A) on the bankruptcy of a Shareholder (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
  - (B) on the exercise of an option after ceasing to be a Relevant Employee.

For the purposes of this Article 12 the definition of Relevant Majority Consent shall exclude such Ordinary Shares held by all Leavers who have become Leavers as a result of the same event

### 12.3 Deemed Transfer Notice

Subject to the agreement or determination of PAT and Cumulative PAT for any Final Year (as defined in Article 12.4 below):

- (a) the Board shall, if required by a Relevant Majority Consent to do so, serve notice on a Good Leaver in writing or by email (a "**Board Notice**");
- (b) the Board may and shall if, required by a Relevant Majority Consent to do so, serve a Board Notice on a Leaver who is not a Good Leaver;
- (c) to require such Leaver to serve one or more Transfer Notices in respect of such number of Ordinary Shares as they shall determine at any time during the 12 months following the occurrence of the event which gives rise to such Shareholders being treated as a Leaver or if later the 3 months following the agreement or determination of PAT and Cumulative PAT for the Final Year.



The provisions of this Article shall apply in respect of any such Transfer Notice.

#### **12.4 C Shareholder(s) Leavers**

In circumstances where a Leaver is the holder of any C Shares any conversion rights in respect of such C Shares shall expire on the date where such person becomes a Leaver, save that where determination of PAT and Cumulative PAT is outstanding in respect of any Year which has ended at the date such person becomes a Leaver where the conversion rights shall continue to apply in respect of such Year (the "**Final Year**").

#### **12.5 Terms of deemed transfer**

The provisions of Article 11.1 to 11.8 (inclusive) shall apply to any such Transfer Notice, provided that for these purposes:

- (a) the Sale Shares shall comprise the Ordinary Shares held by the Leaver specified by the Transfer Notice;
- (b) no Proposed Transferee shall be specified in the Transfer Notice;
- (c) the Sale Price shall be determined as at the Leaving Date in accordance with Article 12.6;
- (d) there shall be no Minimum Transfer Condition; and
- (e) reference to "receipt of the Transfer Notice" in Article 11.3 shall be replaced by "the date of determination of the Market Value").

#### **12.6 Determination of Sale Price**

The Sale Price shall be:

- (a) in the case of a Good Leaver the then Market Value of the Sale Shares (as determined in accordance with Article 12.7); or
- (b) otherwise 50% of the then Market Value of the Sale Shares.

#### **12.7 Market Value**

In these Article the "**Market Value**" shall be such price as the Leaver and the Company (with the approval of a Relevant Majority Consent) shall agree within 10 Business Days of the date of the Board Notice or, failing such agreement, such price as the Auditors shall determine pursuant to Article 12.8.

#### **12.8 Determination by auditors**

If the Market Value falls to be determined by the Auditors:

- (a) the Company shall immediately instruct the Auditors to determine the Market Value on the basis which, in their opinion, represents a fair price for the

Leaver's Ordinary Shares at the Leaving Date as between a willing seller and a willing buyer contracting on arm's length terms and, in making such determination, the Auditors shall take account of the fact that the transferability of Leaver's Ordinary Shares is restricted by these Articles (but, for the avoidance of doubt, ignoring the fact that the Leaver's Ordinary Shares comprise a majority or minority interest in the Company at such time and can be subject to the compulsory transfer requirements of this Article 12 (Leavers) and Article 14 (Tag along and drag along rights);

- (b) the Auditors shall certify the Market Value as soon as possible after being instructed by the Company and in so certifying the Auditors shall be deemed to act as experts and not arbitrators and the Arbitration Act 1996 shall not apply;
- (c) the certificate of the Auditors, shall, in the absence of manifest error and subject to the provisions of Article 12.9 be final and binding; and
- (d) the Company shall procure that any certificate required hereunder is obtained with due expedition and the costs of obtaining such certificate shall be borne by the Company unless (i) such an arrangement would not be permitted by the Act or (ii) the Market Value as determined by the Auditors is the same, or substantially the same, as that (if any) which the Company has previously notified to the Leaver as being in its opinion the Market Value, in which event the costs shall be borne by the Leaver.

#### **12.9 Resolution of disputes**

If either the Company or the transferor disagrees with the Auditors certificate that the matter may be referred at the request of either the Company or the transferor within seven Business Days of receipt of the Auditor's certificate to a reputable independent corporate finance advisor agreed between the Company and the transferor or in default of agreement by the President for the time being of the Institute of Chartered Accountants in England and Wales, (the "**Expert**"). The Expert is to certify the Market Value as soon as possible after being instructed by the Company and in so certifying the Expert shall be deemed to be acting as an expert and not an arbitrator and the Arbitration Act 1996 shall not apply. The Expert's certificate shall in the absence of manifest error be final and binding. The Expert shall have discretion as to costs.

### **13. COMPLIANCE**

#### **13.1 Verification of compliance**

For the purpose of ensuring compliance with the transfer provisions of these Articles, the Company shall immediately on a Relevant Majority Direction require any Shareholder to procure that:

- (a) he; or
- (b) any proposed transferee; or

- (c) 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 until such information and/or evidence is provided the Company shall refuse to register any relevant transfer (otherwise than with a Relevant Majority Direction).

### 13.2 **Power of attorney**

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

## 14. **TAG ALONG AND DRAG ALONG RIGHTS**

### 14.1 **Tag Along**

No sale or transfer of the legal or beneficial interest to any Shares in the Company may be made or validly registered if, as a result of such sale or transfer and registration thereof, a Controlling Interest would be obtained in the Company by any person or group of persons acting in concert unless the proposed transferee or transferees or his or their nominees:

- (a) are independent third parties acting in good faith; and
- (b) before the transfer is made, has or have offered to purchase all the Shares in issue and such offer (i) has been notified to each Shareholder in respect of their Ordinary Shares (including any Ordinary Shares resulting from the conversion of Ratchet Shares on the Exit Event occurring) (ii) is on the same terms and conditions for each Shareholder (iii) is to acquire any Ratchet Shares which do not convert on the Exit Event occurring at their par value and (iv) has remained open for acceptance for at least 10 days from the date of such notice.

### 14.2 **Drag Along - Qualifying Offer**

In these Articles a "**Qualifying Offer**" shall mean an arms length offer in writing by or on behalf of any person (the "**Offeror**") on the terms set out in Article 14.1(b).

### 14.3 **Conditions to drag along**

If the holders of more than 75% (in number of shares) of the Shares at the relevant time (the "**Accepting Shareholders**") wish to accept the Qualifying Offer, then the Accepting Shareholders may give written notice to the remaining holders of the equity share capital (the "**Remaining Shareholders**") of their wish to accept the Qualifying Offer and to transfer their Shares on the terms of the Qualifying Offer (including any Shares issuable on the exercise of options on the occurrence of the Exit Event) to the Offeror (or his nominee) with full title guarantee on the date specified by them. The

Remaining Shareholders shall include the holders of any options under any Company share option scheme from time to time.

For the purposes of this Article the definition of Accepting Shareholders shall be calculated on the basis that any C Shares that are to convert into Ordinary Shares on the occurrence of an Exit Event in accordance with Article 4.2 are deemed to have converted.

#### **14.4 Transfer of Shares**

If any Remaining Shareholder shall not, within five Business Days of being required to do so (or in the case of any optionholder immediately on the issue of Shares on the exercise of their option), execute and deliver transfers in respect of the Shares held by him (or to be issued or transferred to him on the exercise of options) and, where applicable, deliver the certificate(s) in respect of the same (or a suitable indemnity in lieu thereof), then any of the Accepting Shareholders shall be entitled to, and shall be entitled to authorise and instruct such person as they think fit to, execute the necessary transfer(s) and indemnities on the Remaining Shareholder's behalf on the same terms and conditions per share as offered to the Accepting Shareholders and, against receipt by the Company (on trust for such Remaining Shareholder) of the consideration payable for the relevant Shares, deliver such transfer(s) and certificate(s) or indemnities to the Offeror (or his nominee) and register such Offeror (or his nominee) as the holder thereof and, after such registration, the validity of such proceedings shall not be questioned by any person.

### **15. PROCEEDINGS OF SHAREHOLDERS**

#### **15.1 Quorum**

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, subject to Article 15.2, for its duration. Five persons entitled to vote upon the business to be transacted, each being a Shareholder or a proxy for a Shareholder or (if the shareholder is a corporation) a duly authorised representative of the corporation, shall be a quorum.

#### **15.2 What if quorum is not present**

If within half an hour from the time appointed for the meeting a quorum is not present, or if during a meeting a quorum ceases to be present for a period exceeding 10 minutes, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the Shareholders present may decide and if at the adjourned meeting a quorum is not present within half a hour from the time appointed for the meeting, the Shareholder or Shareholders present shall constitute a quorum.

#### **15.3 Polls**

A resolution put to the vote of a meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll is duly demanded. Subject to the provisions of 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.

#### **15.4 Proxies**

The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the Board must be delivered to the registered office of the Company 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 Regulation 62 shall be modified accordingly.

#### **15.5 Holding a poll**

When a poll has been demanded it shall be taken immediately following the demand.

#### **15.6 No Casting Vote**

The Chairman of the meeting shall not, in the case of an equality of votes, whether on a show of hands or on a poll, be entitled to exercise any second or casting vote.

#### **15.7 Written resolutions**

With respect to any such resolution in writing as is referred to in Regulation 53, in the case of a corporation which holds a Share, the signature of any director or the secretary thereof shall be sufficient for the purposes of Regulation 53.

### **16. NUMBER OF DIRECTORS**

The maximum number and minimum number respectively of the directors may be determined from time to time by ordinary resolution Subject to and in default of any such determination there shall be no maximum number of directors and the minimum number of directors shall be one. Whenever the minimum number of directors is one, a sole director shall have authority to exercise all the powers and discretions by these Articles expressed to be vested in the directors generally.

### **17. ALTERNATE DIRECTORS**

#### **17.1 Who can be appointed**

A director (other than an alternate director) may appoint any other director or any other person approved by a Relevant Majority Direction to be an alternate director and may remove from office an alternate director so appointed.

#### **17.2 Count in the quorum**

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

### **17.3 Rights of an alternate**

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.

## **18. PROCEEDINGS OF DIRECTORS**

### **18.1 Quorum and form of meetings**

The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Any three directors shall constitute a quorum and a quorum of directors must be present throughout all meetings of the Board. If within half an hour from the time appointed for a meeting a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other time and place as the director(s) present may decide. The Chairman of the meeting shall not have a second or casting vote in the case of an equality of votes.

### **18.2 Telephone meetings**

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 each 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.

### **18.3 Directors' interests**

Provided that he shall have first disclosed in full his interest or duty, a director may vote at a meeting of directors on any resolution concerning a matter which he has directly or indirectly an interest or duty which is material and which conflicts or may conflict with the interest of the Company.

## **19. RETIREMENT BY ROTATION**

The directors shall not be liable to retire by rotation and the words "by rotation or otherwise" and "and deemed to have been re-appointed" in Regulation 67 and the words "and may also determine the rotation to which any additional directors are to retire" in Regulation 78, the last two sentences of Regulation 79 and the last sentence of Regulation 84 shall not apply to the Company.

## **20. NOTICES**

### **20.1 Form of notices**

Any notice given to or by any person pursuant to these Articles shall be in writing except that notice calling a meeting of the Directors need not be in writing Any notice given by or on behalf of any person to the Company may be given by leaving the same at or by sending the same by post to the Office or such other place as the Directors may appoint.

### **20.2 Proof of service**

Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall, unless the contrary is proved, be deemed to be given at the expiration of 24 hours after the envelope containing it was posted.

## **21. INDEMNITY**

Subject to the Act but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in the proper exercise of his powers including a liability incurred 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 affairs of the Company.

## **22. INSURANCE**

The Board shall have the power to purchase and maintain for any director or other officer insurance against liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.