

Company number 06353159

PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTIONS

of

ROYSTON POWER GENERATION LIMITED (Company)

Resolution passed on 13 MAY 2019

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Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the following resolution was passed as a special resolution as detailed below:

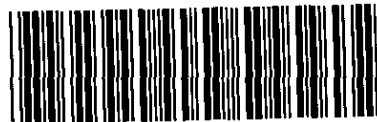
1. **THAT** the draft articles of association of the Company, a copy of which are attached to this resolution, be and they are hereby adopted as the articles of association of the Company to the exclusion of the existing articles of association of the Company.



..... (Director)

13 May 2019..... (Date)

WEDNESDAY



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COMPANIES HOUSE

Company No. 6353159

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES


NEW

ARTICLES OF ASSOCIATION

(adopted by written resolution passed on 13 MAY 2019)

of

ROYSTON POWER GENERATION LIMITED

 S.W.

1. PRELIMINARY

- 1.1 The regulations contained in Table A in the Schedule to the Companies (Table A to F) Regulations 1985 in force at the time of adoption of these Articles such Table hereinafter called "Table A" shall apply to the Company, save in so far as they are expressly excluded or varied by these Articles and such regulations (save as so excluded or varied) and these Articles shall together constitute the regulations of the Company.
- 1.2 The regulations of Table A numbered 24, 40, 73 to 77 (inclusive), 80, 96, 101 and 118 do not apply to the Company.

2. INTERPRETATION

- 2.1 In these Articles unless the context otherwise requires each of the following words and expressions shall have the following meanings:

"A" Ordinary Shares"	the "A" Ordinary Shares of £1.00 each of the Company having the rights set out in Article 4
"acting in concert"	the meaning set out in the City Code on Takeovers and Mergers for the time being
"Auditors"	the auditors to the Company for the time being
"B" Ordinary Shares"	the "B" Ordinary Shares of £1 each in the Company, to be created pursuant to Article 4.5 on the basis that they shall carry no dividend or voting rights or any rights for their holders to receive any capital amount in respect thereof unless and until the holders of all other Shares shall have received upon such capital return the sum of £1,000,000 per Share, whereupon the holders of the "B" Ordinary shares shall be entitled to receive an amount equal to the Issue Price in respect of such shares
"Board"	the board of directors of the Company from time to time
"Business Day"	any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business
"Cash Return"	the aggregate of the following sums paid to the Investor:

- (a) all payments of capital and interest pursuant to the Loan Stock Instrument and the Mezzanine Debt Agreements; and
- (b) all dividends, distributions or consideration paid on or in connection with the "A" Ordinary Shares which shall include for the avoidance of doubt any such sums payable on a Sale or Listing

"Cash Target"	£2,140,000
"the Companies Act"	the Companies Act 1985 (as amended from time to time)
"Compensatory Dividend"	the dividend referred to in Article 4.1.4
"Controlling Interest"	an interest (within the meaning of schedule 13 Part I and section 324 Companies Act) in Shares in the Company conferring in aggregate more than 50% of the total voting rights normally exercisable at a general meeting of the Company
"connected person"	the meaning given to that expression in section 839 of the Income and Corporation Taxes Act 1988 and "connected with" shall be construed accordingly
"Conversion Date"	the date and time on which "A" Ordinary Shares are to be converted into Ordinary Shares in accordance with Article 4.3
"Employee Trust"	any trust established by the Company for the benefit of employees and/or any of the persons referred to in section 743 Companies Act and which has been approved by the Lead Investor
"Family Member"	the wife or husband (or widow or widower), children and grandchildren (including step and adopted children and grandchildren) of a member of the Company
"Family Shares"	in relation to a member of the Company, any Shares for the time being held by that member or any of his Family Members or trustees of his

Family Trust

"Family Trust"

in relation to a member of the Company, a trust which does not permit any of the settled property or the income from it to be applied otherwise than for the benefit of that member or any of his Family Members and under which no power of control over the voting powers conferred by any Shares the subject of the trust is capable of being exercised by, or being subject to the consent of, any person other than the trustees or such member or any of his Family Members

"Financial Year"

an accounting period in respect of which the Company prepares its accounts in accordance with the relevant provisions of the Companies Act

"FSMA"

the Financial Services and Markets Act 2000 (as amended from time to time)

"Group"

the Company and its subsidiary undertakings from time to time and references to "member of the Group" and "Group Company" shall be construed accordingly

"holder"

In respect of any share in the capital of the Company, the person or persons for the time being registered by the Company as the holder of that share

"Incentive Plan"

an incentive scheme or plan to provide incentives for employees and/or directors of the Group and which has been approved by the Managers

"Investment Agreement"

the investment agreement dated 19 September 2007 and made between the Company, the Investor, NEL and the Managers and others as may be supplemented, varied or amended from time to time

"Investment Date"

the date of completion of the Investment Agreement

"Investor"

any person holding A Ordinary Shares at the time when attempting to enforce the rights of an Investor set out in these Articles.

"Investor Director"

the director appointed pursuant to **Article 20**

"Investor Group"

in relation to each Investor:

- (a) the Investor or any subsidiary or holding company of the Investor or subsidiary of a holding company of the Investor (each a **"Relevant Person"**) or
- (b) any partnership (or the partners in any such partnership) of which any Relevant Person is general partner, manager, consultant or adviser or
- (c) any unit trust or other fund of which any Relevant Person is trustee, manager, consultant or adviser or
- (d) any unit trust, partnership or other fund, the managers of which are advised by any Relevant Person or
- (e) any person or firm, authority or organisation (whether or not incorporated) which is the successor in title to, or in whom is vested, or by whom responsibility is assumed for the whole or a substantial part of the functions, assets and liabilities of a Relevant Person or
- (f) any other fund managed by NEL or
- (g) NEL or any of its subsidiaries

"Issue Price"

In respect of a share in the capital of the Company, the aggregate of the amount paid up (or credited as paid up) in respect of the nominal value and any share premium

"Listing"

the admission by the Financial Conduct Authority in its capacity as the UK Listing Authority of any part of the share capital of the Company to the Official List of London Stock Exchange plc or the admission by London Stock Exchange plc of any part of the share capital of the Company to trading on the Alternative Investment Market of

London Stock Exchange plc or the admission by any recognised investment exchange of any part of the share capital of the Company, and, in each case, such admission becoming effective

"Loan Stock"

the £200,000 unsecured Loan Stock 2007-2011 of the Company to be constituted by the Loan Stock Instrument

"Loan Stock Instrument"

the instrument constituting the Loan Stock as the same may be amended, supplemented or replaced from time to time

"Loan Documents"

a Facility Agreement dated on or about 23 April 2009 between the North East Regional Investment Fund Three Limited, NE Seed Capital Fund Limited Partnership, the Company, Lawrence Joseph Brown and Sarah Wade; an Option Agreement dated on or about 23 April 2009 between North East Regional Investment Fund Three Limited, the Company, Lawrence Joseph Brown and Sarah Wade; and an Option Agreement dated on or about 23 April 2009 between the NE Seed Capital Fund Limited Partnership, the Company, Lawrence Joseph Brown and Sarah Wade

"Managers"

Lawrence Joseph Brown and Sarah Wade

"Mezzanine Debt Agreements"

shall have the meaning given to that term in the Supplemental Investment Agreement

"NEL"

NEL Fund Managers Limited in its capacity as fund manager from time to time of the Investor

"Net Profits"

the net profit of the Company on ordinary activities calculated on the historical cost accounting basis and in accordance with the accounting practices, policies and bases of the Company, consistently applied, which are generally accepted in the United Kingdom and as shown in the audited profit and loss account of the Company (or in the event of there being subsidiaries of the Company the audited consolidated profit and loss account of the

Company and its subsidiaries) for the relevant Financial Year:

- (a) before Interest
- (b) *before depreciation*
- (c) before amortisation of goodwill or provision for the transfer of any sum to reserve
- (d) before deducting corporation tax (and any other tax levied upon or measured by reference to profits or gains) on such profits (including deferred tax)
- (e) before charging directors' emoluments in excess of £180,000 which sum may be adjusted as shall be agreed between the Company and the Investor on each anniversary of the date of adoption of these Articles, but in any event adjusted in accordance with the Retail Prices Index or any substitute or replacement for it. Directors' emoluments includes all salaries cars, fees, bonuses, taxable allowances or expenses, pension contributions and benefits in kind but excludes employers National Insurance contributions
- (f) before exceptional and extraordinary items and
- (g) before provision for, or deducting the amount of, any dividends payable on any Shares or any other distribution

"Option Agreements"

an Option Agreement dated on or about the date of adoption of these Articles between North East Regional Investment Fund Three Limited, the Company, Lawrence Joseph Brown and Sarah Wade; and an Option Agreement dated on or about the date of adoption of these Articles between the NE Seed Capital Fund Limited Partnership, the Company, Lawrence Joseph

Brown and Sarah Wade

"Ordinary Shares"	the ordinary shares of £1.00 each in the capital of the Company having the rights set out in Article 5
"Participating Dividend"	the dividend referred to in Article 4.1.1
"Preferred Dividends"	the Participating Dividend and any Compensatory Dividend
"Recognised investment exchange"	has the meaning given to the expression in section 285(1) FSMA
"Sale"	the transfer (other than a transfer permitted under Articles 10.1, 10.2, 10.3.1 and 10.3.2) of any interest in the Shares to any person (whether by one transaction or by a series of transactions) resulting in that person alone or together with persons acting in concert with such person having the right to exercise a Controlling Interest
"Shares"	the Ordinary Shares and the "A" Ordinary Shares
"Supplemental Investment Agreement"	the supplemental investment agreement entered into on or about the date of adoption of these Articles between the Company, the Investor, NEL and the Managers as may be supplemented, varied, or amended from time to time
"Transfer Price"	in relation to a Transfer Notice given under a voluntary transfer pursuant to Article 11 where the proposed purchaser specified in the Transfer Notice is not connected with any member of the Company, the Provisional Transfer Price (as defined at Article 11.1.3), but in all other cases will be the price agreed between the Board (with the agreement of the Investor) and the Vendors or, failing agreement, the fair value as determined by the Auditors pursuant to Article 14 or such other value as may be provided for in Article 13.4

"Warehouse"

any or both of the Company or an Employee Trust

- 2.2 Words and expressions defined in or having a meaning provided by the Companies Act (but excluding any statutory modification not in force on the date of adoption of these articles) or the Investment Agreement will, unless the context otherwise requires, have the same meanings when used in these Articles.
- 2.3 References in these Articles to an Investor or an Investor Director will only apply when an Investor holds the beneficial title to any A Ordinary Shares.

SHARE RIGHTS

3. LIABILITY OF MEMBERS

- 3.1 The liability of the members is limited to the amount, if any, unpaid on the Shares held by them.

4. "A" ORDINARY SHARES

The rights attached to the "A" Ordinary Shares are as follows:

4.1 Preferred Dividends

- 4.1.1 In respect of each Financial Year the Company shall, without resolution of the Board or the Company in general meeting and before application of any profits to reserve or any other purpose, pay to the members holding "A" Ordinary Shares in priority to the dividends on any other class of shares as a class a cumulative preferential net cash dividend which is equal to the per centum of the Net Profits for the relevant Financial Year set out in the table below ("**Participating Dividend**"). The Participating Dividend shall be adjusted pro rata where the Investor has been invested for part only of a Financial Year. Each Participating Dividend shall be paid four months after the end of the relevant Financial Year or ten Business Days after the date on which the audited accounts of the Company for the relevant Financial Year are signed by the directors, whichever is earlier.

Financial Year	Dividend (% of Net Profits)
Investment Date to the date of its anniversary in 2012	7%
Annually thereafter	10% (rising by an additional 3% of Net Profits on each subsequent Investment Date anniversary subject to a maximum of 13%).

- 4.1.2 Subject to the provisions of **Article 4.1**, the "A" Ordinary Shares shall rank *pari passu* in all respects with the Ordinary Shares as to dividends in accordance with **Article 5.1**.
- 4.1.3 For so long as there are "A" Ordinary Shares in issue, the Company shall require the Auditors at the Company's expense to prepare a statement of the Net Profits for each Financial Year of the Company within four months of the end of the relevant financial year.
- 4.1.4 If the Company fails to pay a Participating Dividend on a date specified in **Article 4.1.1** then an additional dividend (without resolution of the Board or the Company in General Meeting) equivalent to interest thereon (a "**Compensatory Dividend**") shall accrue from that date until payment at the rate of four percent per annum above the base rate of the Bank of England for the time being, compounded daily.
- 4.1.5 Where the Company is precluded by the Companies Act or otherwise by law from paying in full any Preferred Dividends on any date specified in this **Article 4**, then in respect of any such dividend which would otherwise require to be paid pursuant to these Articles on that date:
- 4.1.5.1 the Company shall pay, on that date, to the holders of the "A" Ordinary Shares on account of the Preferred Dividends the maximum sum (if any) which can then, consistent with the Companies Act, be paid by the Company; and
- 4.1.5.2 as soon as the Company is no longer precluded from doing so, the Company shall in respect of the "A" Ordinary Shares pay on account of the balance of Preferred Dividends for the time being remaining outstanding, and until all arrears, accruals and deficiencies of the Preferred Dividend have been paid in full, the maximum amount of Preferred Dividend which can, consistent with the Companies Act, properly be paid by the Company at that time.

4.2 **Capital**

On a return of capital on liquidation or capital reduction or otherwise, the surplus assets of the Company remaining after the payment of its liabilities shall be applied in priority to any other class of share:

- 4.2.1 In paying to each member holding "A" Ordinary Shares:

4.2.1.1 all unpaid arrears and accruals of the Preferred Dividends on the "A" Ordinary Shares held by him (the amount of the Preferred Dividend being calculated on the pro rata basis set out in **Article 4.3.3** as if the date of return of capital were the Conversion Date), calculated down to and including the date the return of capital is made (such arrears and accruals being payable irrespective of whether the relevant dividend has become due and payable in accordance with the articles) and, subject thereto;

4.2.1.2 an amount equal to the Issue Price of all the "A" Ordinary Shares held by him; and

4.2.2 thereafter, in the manner prescribed by **Article 5.2**.

4.3 **Conversion**

4.3.1 The members holding "A" Ordinary Shares may at any time convert all the "A" Ordinary Shares into the same number of fully paid Ordinary Shares by notice in writing given to the Company. The conversion shall take effect immediately upon the date of delivery of that notice to the Company (unless the notice states that conversion is to be effective when any conditions specified in the notice have been fulfilled in which case conversion shall take effect when those conditions have been fulfilled) and the Company and members shall do all acts necessary to procure that conversion.

4.3.2 Each member holding "A" Ordinary Shares shall deliver the certificates for those Shares (or an indemnity in a form reasonably satisfactory to the Company in respect of any missing share certificate) to the Company on or before the Conversion Date. On the Conversion Date the Company shall issue to the persons entitled thereto certificates for the Ordinary Shares arising on conversion.

4.3.3 The "A" Ordinary Shares shall rank for an apportioned part of the Preferred Dividend attributable to the Financial Year of the Company in which the Conversion Date falls, calculated on a daily basis down to and including the Conversion Date. The Company shall accordingly deliver to each holder of "A" Ordinary Shares on the Conversion Date, in cleared funds, an amount equal to the aggregate of:

4.3.3.1 all arrears and accruals of the Preferred Dividends attributable to Financial Years ending on or before the Conversion Date, whether declared or earned and payable under these Articles or not; and

4.3.3.2 the Preferred Dividends from the date of the commencement of the then current Financial Year of the Company down to and including the Conversion Date, whether declared or earned and payable under these articles or not. "Net Profits" for this purpose in respect of the Participating Dividend shall be the net profits of the Company, calculated on the same basis as "Net Profits", by reference to the unaudited management accounts of the Company for the period from the start of the then current Financial Year to the latest practicable date prior to the Conversion Date. If there is any dispute as to the amount of the Net Profits for this purpose the matter shall be referred to the Auditors and **Article 27** shall apply.

4.3.4 The Ordinary Shares arising on conversion shall rank *pari passu* in all respects with the issued Ordinary Shares and shall entitle the holders of them to all dividends and other distributions declared, made or paid by reference to a record date on or after the Conversion Date on the Ordinary Shares.

4.4 **Voting**

The holders of the "A" Ordinary Shares shall be entitled to receive notice of and to attend and speak at any general meetings of the Company and the holder of "A" Ordinary Shares who (being an individual) is present in person or by proxy or (being a corporation) is present by duly authorised representative or by proxy shall, on a show of hands, have one vote, and, on a poll, have one vote each for every Preferred Ordinary Share of which he is the holder.

4.5 **"A" Ordinary Shares Conversion**

In the event that

4.5.1 the Cash Return shall be equal to or greater than the Cash Target; and

4.5.2 such Cash Target shall have been achieved no later than the sixth anniversary of the Investment Date

the holders of all of the Shares shall take all such steps as shall be necessary to convert, immediately prior to the occurrence of the event which shall mean that the Cash Target is achieved, such number of "A" Ordinary Shares into "B" Ordinary Shares so that immediately following such conversion the number of such "A" Ordinary Shares in issue shall equal 31% of the Issued Shares upon the occurrence of such event. Such conversion shall be without prejudice to the terms of the Option Agreements and any "A" Ordinary Shares allotted or to be

allotted by the Company thereunder which, for the avoidance of doubt, will not participate in the conversion pursuant to this Article 4.5.

5. **ORDINARY SHARES**

The Ordinary Shares shall be treated *pari passu* and as if they constituted one class of share. The rights attached to the Ordinary Shares are as follows:

5.1 **Dividends**

Subject to the payment of all of the Preferred Dividends and provided that there is not outstanding any Loan Stock any remaining profits which the Company determines to distribute in respect of any Financial Year shall, subject to the approval of members of the Company in general meeting, be applied in distributing the *balance of such profits amongst the holders of the "A" Ordinary Shares* and the Ordinary Shares then in issue *pari passu* according to the number of such Shares held by them respectively as if they constituted one class of share.

5.2 **Capital**

On a return of capital on liquidation or capital reduction or otherwise the surplus assets of the Company remaining after the payment of its liabilities shall be applied, subject to the payment of all amounts payable to the holders of the "A" Ordinary Shares pursuant to **Article 4.2.1**:

5.2.1 In paying to each holder of Ordinary Shares, firstly, any dividends thereon which have been declared but are unpaid and, secondly, an amount equal to the Issue Price of each Ordinary Share held by him; and

5.2.2 thereafter, in distributing the balance of such assets amongst the holders of the Ordinary Shares and the "A" Ordinary Shares (*pari passu* as if they constituted one class of Share) in proportion to the numbers of the Ordinary Shares and the "A" Ordinary Shares held by them respectively.

5.3 **Voting**

5.3.1 Subject to **Article 5.3.2**, the holders of the Ordinary Shares shall be entitled to receive notice of and to attend and speak at any general meetings of the Company and the holders of Ordinary Shares who (being individuals) are present in person or by proxy or (being corporations) are present by duly authorised representative or by proxy shall, on a show of hands, have one vote each, and, on a poll, shall have one vote for each Ordinary Share of which he is the holder.

- 5.3.2 For so long as there is subsisting any default by the Company under the terms of the Loan Stock Instrument or the conditions attaching to the Loan Stock or the Investment Agreement (or, in any case where a breach is, in the reasonable opinion of the Investor, threatened, proposed or pending) or if the Company fails to pay any Preferred Dividend where it is lawfully able to do so then (if the holders of a majority of the "A" Ordinary Shares have given notice of default to the Company) the Ordinary Shares shall carry no voting rights.

6. SALE OF ALL OR SUBSTANTIAL PART OF THE BUSINESS

- 6.1 In the event of a Sale or the sale of a substantial part of the business or its assets then, notwithstanding anything to the contrary in the terms and conditions governing such Sale the selling holders (immediately prior to such Sale) shall procure that the consideration (whenever received) shall be paid into a designated trustee account and shall be distributed as soon thereafter as is practical amongst such selling holders in the following order of priority :
- 6.1.1 in paying in respect of all the "A" Ordinary Shares an amount equal to all arrears of the Preferred Dividends;
- 6.1.2 in paying, in respect of those "A" Ordinary Shares subject to the Sale, all accruals of Preferred Dividends up to the date of the Sale and the Issue Price thereof as if the Sale were a return of capital pursuant to **Article 4.2.1;**
- 6.1.3 in paying in respect of the Ordinary Shares subject to the Sale an amount equal to the dividends on such Shares as if the same were a return of capital pursuant to **Article 5.2.1;** and
- 6.1.4 thereafter distributing the balance as if the same were a return of capital pursuant to **Article 5.2.2.**

7. VARIATION OF RIGHTS

- 7.1 Whenever the share capital of the Company is divided into different classes of share, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding-up) either (i) with the consent in writing of the holders of more than three-fourths of the issued shares of that class, or (ii) with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of that class. To every such separate general meeting all the provisions of these articles relating to general meetings of the Company (and to the proceedings at such general meetings) shall apply.

7.2 The rights conferred upon the holders of the "A" Ordinary Shares shall be deemed to be varied by the following:

- 7.2.1 any variation in the authorised or issued share capital of the Company or the creation or the granting of any options or other rights to subscribe for, or convert into, shares of the Company or any Group Company or the variation of the rights attaching to such shares;
- 7.2.2 the reduction of the Company's share capital, share premium account, capital redemption reserve or any other reserve or of any uncalled liability in respect of partly paid shares or the purchase by the Company of any of its own shares;
- 7.2.3 the amendment of any provisions of the memorandum of association or articles of association of the Company;
- 7.2.4 the capitalisation of any undistributed profits (whether or not the same are available for distribution and including profits standing to the credit of the reserve) or any sums standing to the credit of the share premium account or capital redemption reserve fund of the Company;
- 7.2.5 the taking of any steps to wind up the Company or enter into arrangement with its creditors (statutory or otherwise);
- 7.2.6 any disposal of the whole or substantially the whole of the business of the Company;
- 7.2.7 the declaration, making or payment of any dividend or other distribution to the holders of the Shares other than as expressly permitted under the Articles;
- 7.2.8 any change in the accounting reference date of the Company;
- 7.2.9 the appointment or removal of auditors to the Company (other than reappointment of an existing auditor);
- 7.2.10 the appointment or removal of any director or chairman of the Company;
- 7.2.11 the creation of any charge or other security by the Company other than arising in the ordinary course of business.
- 7.2.12 the redemption of any loan stock of the Company other than a redemption in accordance with the terms of the Loan Stock.

8. ALLOTMENT OF SHARES

- 8.1 The directors shall not without the authority of the Company in general meeting and any consent required under **Article 7.2.1** allot any shares in the capital of the Company.
- 8.2 The restrictions in Article 8.1 shall not include or apply to the grant of any options to subscribe for Shares under any Incentive Plan and any subsequent issue and allotment of Shares pursuant to any such Incentive Plan, provided such grant is approved by the Board, acting with consent of the Manager.

TRANSFER OF SHARES

9. GENERAL

- 9.1 No transfer of any share in the capital of the Company shall be made or registered unless such transfer complies with the provisions of these articles and the transferee has, if so required by the terms of the Investment Agreement, first entered into a deed of adherence pursuant to the Investment Agreement. Subject thereto, the Board shall sanction any transfer so made unless (i) the registration thereof would permit the registration of a transfer of shares on which the Company has a lien (ii) the transfer is to a minor or (iii) the Board is otherwise entitled to refuse to register such transfer pursuant to these Articles.
- 9.2 For the purposes of these articles the following shall be deemed (but without limitation) to be a transfer by a holder of shares in the Company:
- 9.2.1 any direction (by way of renunciation or otherwise) by a holder entitled to an allotment or transfer of shares that a share be allotted or issued or transferred to some person other than himself; and
- 9.2.2 any sale or any other disposition of any legal or equitable interest in a share (including any voting right attached to it), (i) whether or not by the relevant holder, (ii) whether or not for consideration, and (iii) whether or not effected by an instrument in writing.
- 9.3 Any holder of Shares may at any time transfer all or any of his Shares to any other person pursuant to the terms of an Incentive Plan.

10. PERMITTED TRANSFERS

Notwithstanding the provisions of any other Article, the transfers set out in this **Article 10** shall be permitted without restriction and the provisions of **Articles 11** (Voluntary Transfers) and **12** (Change of Control) shall have no application.

10.1 Permitted transfers by the Investor

- 10.1.1 Any Investor who is a body corporate shall be entitled to transfer all or any of its Shares to any other body corporate which is for the time being its subsidiary or holding company or another subsidiary of its holding company (each such body corporate being a "**Related Company**") but if a Related Company whilst it is a holder of Shares in the Company shall cease to be a Related Company in relation to the body first holding the relevant Shares

it shall, within 15 Business Days of so ceasing, transfer the Shares held by it to such body or any Related Company of such body and failing such transfer the holder shall be deemed to have given a Transfer Notice pursuant to **Articles 11 and 13**.

10.1.2 Any Investor may transfer all or any of its Shares to any person, body, firm or partnership whose business comprises to a material extent the holding for investment purposes of securities in and/or the provision of debt and other financial facilities to United Kingdom unlisted companies and includes any subsidiary, nominee, custodian or manager used by such person, firm or partnership to hold such investments or to make available such facilities.

10.1.3 An Investor may transfer Shares to any other member of its Investor Group.

10.1.4 Any Investor which is a limited partnership may transfer Shares to any partner in such limited partnership acting in such capacity (provided such transfer is made in accordance with the fund or partnership agreement governing such entity or partnership).

10.1.5 Any Shares which are held by an Investor on behalf of any collective investment scheme (within the meaning of section 235 of FSMA), may be transferred to participants (within the meaning of that section), in the scheme in question.

10.2 **Permitted Transfers by non-Investors**

10.2.1 Subject to **Articles 10.2.1 to 10.2.6** inclusive, any holder who is an individual may at any time transfer Shares held by him to a person or persons shown to the reasonable satisfaction of the Board to be:

10.2.1.1 a Family Member of his; or

10.2.1.2 trustees to be held under a Family Trust in relation to that individual.

10.2.2 Subject to **Article 10.2.4**, no Shares shall be transferred under **Article 10.2.1** by an individual who previously acquired those Shares by way of transfer under **Article 10.2.1** save to another individual who is a Family Member of the original holder of such Shares or to trustees to be held under a Family Trust in relation to the original holder of such Shares.

10.2.3 No transfer of Shares shall be made by a holder under **Article 10.2.1**:

10.2.3.1 unless in the case of a transfer under **Article 10.2.1.2**, the Investor has confirmed in writing its satisfaction:

- (a) with the terms of the instrument constituting the relevant Family Trust and in particular with the powers of the trustees;
- (b) with the identity of the trustees and the procedures for the appointment and removal of trustees;
- (c) with the restrictions on changes in the terms of the trust instrument and on the distributions by the trustees; and
- (d) that none of the costs incurred in establishing or maintaining the relevant family trust will be payable by any member of the Group; and

10.2.3.2 if the proposed transfer will result in 50% or more of the Shares originally held by the member being held by that holder's Family Trust and Family Members.

10.2.4 Where Shares are held by trustees under a Family Trust:

10.2.4.1 those Shares may, on any change of trustees, be transferred by those trustees to any new trustee of that Family Trust whose identity has been approved in writing by the Investor;

10.2.4.2 those Shares may at any time be transferred by those trustees to the settlor of that trust or any person to whom that settlor could have transferred them under **Article 10.2.1** if he had remained the holder of them; and

10.2.4.3 If any of those Shares cease to be held under a Family Trust (other than by virtue of a transfer made under **Articles 10.2.4.1** or **10.2.4.2**), the trustees shall be deemed to have given a Transfer Notice in respect of all the Shares then held by those trustees pursuant to **Article 13**.

10.2.5 If:

10.2.5.1 any person has acquired Shares as a Family Member of a holder by way of one or more transfers permitted under this **Article 10.2**; and

10.2.5.2 that person ceases to be a Family Member of that holder that person shall forthwith transfer all the Shares then held by that person back to that holder, for such consideration as they agree, within 15 Business Days of the cessation, or, failing such transfer within that period, shall be deemed to have given a Transfer Notice in respect of all the Shares then held by that person pursuant to **Article 13**.

10.2.6 Subject to the provisions of **Article 13**, if the personal representatives of a deceased holder are permitted under these articles to become registered as the holders of any of the deceased holder's Shares and elect to do so, those Shares may at any time be transferred by those personal representatives under **Article 10.2** to any person to whom the deceased holder could have transferred such Shares under this Article if he had remained the holder of them. No other transfer of such Shares by personal representatives shall be permitted under this **Article 10**.

10.3 **Permitted Transfers by all Shareholders**

10.3.1 Subject to **Article 7.2.2** any holder may at any time transfer any Shares in accordance with the provisions of the Companies Act to the Company.

10.3.2 Any holder may at any time transfer all or any of his Shares to any other person with the prior written consent of the Board and NEL.

11. **VOLUNTARY TRANSFERS**

Except as permitted under **Article 10** any holder who wishes to transfer Shares (the "**Vendor**") shall give notice in writing (the "**Transfer Notice**") to the Company of his wish specifying:

- 11.1.1 the number and class of Shares (the "**Sale Shares**") which he wishes to transfer;
- 11.1.2 the name of any third party to whom he proposes to sell or transfer the Sale Shares;
- 11.1.3 the price at which he wishes to transfer the Sale Shares (the "**Provisional Transfer Price**"); and
- 11.1.4 whether or not the Transfer Notice is conditional upon all, and not part only, of the Sale Shares so specified being sold pursuant to the offer hereinafter mentioned (a "**Total Transfer Condition**") and, in the absence of such stipulation, it shall be deemed not to be so conditional.

11.2 Where any Transfer Notice is deemed to have been given in accordance with these Articles, the deemed Transfer Notice shall be treated as having specified:

11.2.1 that all the Shares registered in the name of the Vendor shall be included for transfer;

11.2.2 that a Total Transfer Condition shall not apply.

11.3 No Transfer Notice once given or deemed to be given in accordance with these Articles shall be withdrawn unless the Vendor is obliged to procure the making of an offer under **Articles 12.1 to 12.3 and** is unable to procure the making of such an offer. In that event the Vendor shall be entitled to withdraw such Transfer Notice without liability to any person, prior to completion of any transfer.

11.4 The Transfer Notice shall constitute the Company the agent of the Vendor for the sale of the Sale Shares at the Transfer Price.

11.5

11.5.1 The Company shall forthwith upon receipt of a Transfer Notice or, where later, upon the determination of the Transfer Price give notice in writing to each of the holders of Shares (other than the Vendor) informing them that the Sale Shares are available and of the Transfer Price. Such notice shall invite each holder to state, in writing within 20 Business Days from the date of such notice (which date shall be specified therein), whether he is willing to purchase any and, if so, how many of the Sale Shares which shall, if he so wishes, include an amount in excess of his Proportionate Entitlement as mentioned in **Article 11.5.2**. For the purposes of allocation of the Sale Shares the Sale Shares shall be treated as offered in the first instance to the Warehouse in priority to all other shareholders and, in so far as such offer shall not be accepted by the Warehouse, shall be treated as having been offered to all of the holders of Shares as if the same constituted one class of Shares:

11.5.2 Subject always to the order of priorities set out in **Article 11.5.1** the Sale Shares shall be treated as offered on terms that, in the event of competition, the Sale Shares offered shall be sold to the holders accepting the offer in proportion (as nearly as may be) to their existing holdings of Shares of the class or classes to which the offer is made (the "**Proportionate Entitlement**"). It shall be open to each such holder to specify if he is willing to purchase Shares in excess of his Proportionate Entitlement ("**Excess Shares**") and, if the holder does so specify, he shall state the number of Excess Shares.

11.5.3 Within three Business Days of the expiry of the invitation made pursuant to **Article 11.5.1** (or sooner if all holders of Shares have responded to the invitation and all the Sale Shares shall have been accepted in the manner provided in **Article 11.5.1**), the Board shall allocate the Sale Shares in the following manner:

11.5.3.1 If the total number of Shares applied for is equal to or less than the available number of Sale Shares the Company shall allocate the number applied for in accordance with the applications; or

11.5.3.2 If the total number of Shares applied for is more than the available number of Sale Shares, each holder shall be allocated his Proportionate Entitlement (or such lesser number of Sale Shares for which he may have applied) in the order of priorities set out in **Article 11.5.1**; applications for Excess Shares shall be allocated in accordance with such applications or, in the event of competition, (as nearly as may be) to each holder applying for Excess Shares in the proportion which Shares held by such holder bears to the total number of Shares held by all such holders applying for Excess Shares PROVIDED THAT such holder shall not be allocated more Excess Shares than he shall have stated himself willing to take,

and in either case the Company shall forthwith give notice of each such allocation (an "**Allocation Notice**") to the Vendor and each of the persons to whom Sale Shares have been allocated (a "**Member Applicant**") and shall specify in the Allocation Notice the place and time (being not later than ten Business Days after the date of the Allocation Notice) at which the sale of the Sale Shares shall be completed.

11.6 Subject to **Article 11.7**, upon such allocations being made as set out in **Article 11.5**, the Vendor shall be bound, on payment of the Transfer Price, to transfer the Sale Shares comprised in the Allocation Notice to the Member Applicants named therein at the time and place therein specified free from any lien, charge or encumbrance. If he makes default in so doing, the chairman for the time being of the Company or, failing him, one of the Directors, or some other person duly nominated by a resolution of the Board for that purpose, shall forthwith be deemed to be the duly appointed attorney of the Vendor with full power to execute, complete and deliver in the name and on behalf of the Vendor a transfer of the relevant Sale Shares to the Member Applicant and any Director may receive and give a good discharge for the purchase money on behalf of the

Vendor and (subject to the transfer being duly stamped) enter the name of the Member Applicant in the register of members as the holder or holders by transfer of the Shares so purchased by him or them. The Board shall forthwith pay the purchase money into a separate bank account in the Company's name and shall hold such money on trust (but without interest) for the Vendor until he shall deliver up his certificate or certificates for the relevant Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate) to the Company when he shall thereupon be paid the purchase money.

- 11.7 If the Vendor shall have included in the Transfer Notice a Total Transfer Condition and if the total number of Shares applied for by Member Applicants is less than the number of Sale Shares then the Allocation Notice shall refer to such provision and shall contain a further invitation, open for ten Business Days, to those persons to whom Sale Shares have been allocated to apply for further Sale Shares and completion of the sales in accordance with the preceding paragraphs of this **Article 11** shall be conditional upon the total Transfer Condition being complied with in full.
- 11.8 In the event of all the Sale Shares not being sold under the preceding paragraphs of this **Article 11** the Vendor may, at any time within three calendar months after receiving confirmation from the Company that the pre-emption provisions herein contained have been exhausted, transfer all the Sale Shares (if a Total Transfer Condition was included in the Transfer Notice) or any Sale Shares which have not been sold (if no Total Transfer Condition was so included in the Transfer Notice) to any person or persons at any price not less than the Transfer Price PROVIDED THAT:
- 11.8.1 If the Transfer Notice contained a Total Transfer Condition, the Vendor shall not be entitled, save with the written consent of all the other shareholders of the Company, to sell hereunder only some of the Sale Shares comprised in the Transfer Notice to such person or persons;
- 11.8.2 any such sale shall be a bona fide sale and the Board may require to be satisfied in such manner as it may reasonably require that the Sale Shares are being sold in pursuance of a bona fide sale for not less than the Transfer Price without any deduction, rebate or allowance whatsoever to the purchaser and, if not so satisfied, may refuse to register the instrument of transfer; and
- 11.8.3 the Board shall refuse registration of the proposed transferee if such transfer obliges the Vendor to procure the making of an offer in accordance with **Articles 12.1 to 12.3**, until such time as such offer, has been made and, if accepted, completed.

12. CHANGE OF CONTROL

Tag along

In this **Article 12 "Come Along Offer"** means an unconditional offer, open for acceptance for not less than 20 Business Days, to purchase Shares held by the recipients of a Come Along Offer or Shares for which recipients may subscribe free from all liens, charges and encumbrances at a price per share equal to the highest price per share (exclusive of stamp duty, stamp duty reserve tax and commission) paid or to be paid by any transferee referred to in **Article 12.1** (or any person with whom such transferee is connected or with whom such transferee is acting in concert) for Shares (inclusive of the Shares giving rise to the obligation to make the Come Along Offer) within the period of one year prior to and on the proposed date of completion of such transfer of Shares.

- 12.1 Subject to **Article 12.2.2** if the effect of any transfer of Shares by a vendor would, if completed, result in the transferee together with persons acting in concert or connected with that transferee obtaining a Controlling Interest, the vendor shall procure the making, by the proposed transferee of the vendor's Shares, of a Come Along Offer to all of the other holders of Shares of the Company. Every holder or recipient of such offer, on receipt of a Come Along Offer, shall be bound within 20 Business Days of the date of such offer (which date shall be specified therein) either to accept or reject such offer in writing (and in default of so doing shall be deemed to have rejected the offer). Until such Come Along Offer has been made and completed the Board shall not sanction the making and registration of the relevant transfer or transfers.
- 12.2 The provisions of **Article 12.1** shall not apply to any transfer of Shares:
 - 12.2.1 pursuant to **Article 10** (other than **Article 10.3.2**); or
 - 12.2.2 to any person who was an original party to the Investment Agreement.
- 12.3 In the event of disagreement, the calculation of the relevant Come Along Offer price shall be referred to the Auditors and **Article 27** shall apply.
- 12.4 If holders of 75% or more in number of the Ordinary Shares and "A" Ordinary Shares (in **Articles 12.4** and **12.5**, the "**Vendors**") wish to transfer their Shares in the Company (the "**Offer**") to any person (the "**Purchaser**"), then the Vendors shall also have the option to require all of the other holders of Shares, and any persons who become holders of Shares upon exercise of any options, warrants or other rights to subscribe for Shares which exist at the date of the Offer, to transfer all their Shares in the Company to the Purchaser, or as the Purchaser directs, by giving notice (the "**Drag Along Notice**") to that effect to all such other holders (the "**Called Shareholders**") specifying that the Called Shareholders are, or will, in accordance with **Articles 12.4** and **12.5**, be

required to transfer their Shares pursuant to **Articles 12.4** and **12.5** free from all liens, charges and encumbrances and the price (the "**Proposed Price**") at which such Shares are proposed to be transferred.

- 12.5 If the Called Shareholders (or any of them) shall make default in transferring their Shares pursuant to **Articles 12.4** and **12.5**, the provisions of **Article 11.6** (references therein to the Vendor, Sale Shares, Allocation Notice and Member Applicant being read as references to the holder making such default, the Shares in respect of which such default is made, the Drag Along Notice and the Purchaser respectively) shall apply to the transfer of such Shares mutatis mutandis but the Transfer Price shall be the price offered for such Shares as set out in this **Article 12.5** and the provisions of **Article 11.7** shall not apply.

13. **COMPULSORY TRANSFERS**

- 13.1 In this **Article 13**, a "**Transfer Event**" means, in relation to any member:

13.1.1 a member who is an individual:

13.1.1.1 becoming bankrupt; or

13.1.1.2 dying;

and the Investor notifying the Company within three months of the matters coming to his attention that such event is a Transfer Event in relation to that member for the purposes of this article;

13.1.2 a member making any arrangement or composition with his creditors generally and NEL notifying the Company within three months of the matter coming to his attention that such event is a Transfer Event in relation to that member for the purposes of this article;

13.1.3 a member which is a body corporate:

13.1.3.1 having a nominee, supervisor, receiver, manager or administrative receiver appointed over all or any part of its undertaking or assets; or

13.1.3.2 having an administrator appointed in relation to it; or

13.1.3.3 entering into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or reconstruction); or

13.1.3.4 having any equivalent action taken in any jurisdiction;

and the Investor notifying the Company within three months of the matter coming to its attention that such event is a Transfer Event in relation to that member for the purpose of this article;

13.1.4 a member who is an individual and who is or was previously a director or employee of a member of the Company ceasing to hold such office or employment and as a consequence no longer being a director or employee of the Company and the Investor notifying the Company within three months of the matter coming to its attention that such event is a Transfer Event in relation to that member for the purposes of this article;

13.1.5 a member attempting to deal with or dispose of any Share or any interest in it otherwise than in accordance with these Articles and the Investor notifying the Company within three months of the matter coming to its attention that such event is a Transfer Event in relation to that member; and

13.1.6 a member failing to make a transfer of Shares required by **Articles 1.0.1.1 or 10.2.5** and the Investor notifying the Company within three months of the matter coming to its attention that such event is a Transfer Event in relation to that member for the purposes of this article.

13.2 Upon the happening of any Transfer Event, the member in question and any other member who has acquired Shares from him under a permitted transfer (directly or by means of a series of two or more permitted transfers) under **Articles 10.1, 10.2, 10.3.1 and 10.3.2** shall be deemed to have immediately given a Transfer Notice in respect of all the Shares then held by them and which in the case of a transferee of Shares were the Shares received directly or indirectly from the member who is the immediate subject of the Transfer Event (a "**Deemed Transfer Notice**"). A Deemed Transfer Notice shall supersede and cancel any then current Transfer Notice insofar as it relates to the same Shares except for Shares which have then been validly transferred pursuant to that Transfer Notice.

13.3 Notwithstanding any other provision of these articles, if the Investor so notifies the Board in relation to any Shares, any member holding Shares in respect of which a Deemed Transfer Notice is deemed given shall not be entitled to exercise any voting rights at general meetings of the Company in respect of those Shares between the date of the relevant Deemed Transfer Notice and the expiry of three months after the date of the Sale Notice given in respect of those Shares or, if earlier, the entry in the register of members of the Company of another person as the holder of those Shares.

- 13.4 The Shares the subject of any Deemed Transfer Notice shall be offered for sale in accordance with **Article 11** as if they were Sale Shares in respect of which a Transfer Notice had been given save that:
- 13.4.1 a Deemed Transfer Notice shall be deemed to have been given on the date of the Transfer Event or, if later, the date of notification to the Company by NEL that the relevant event is a Transfer Event;
 - 13.4.2 subject to **Article 13.5**, the Sale Price shall be a price per Sale Share agreed between the Vendor, the Board and NEL or, in default of agreement, within 15 Business Days after the date of the Transfer Event, the Fair Value;
 - 13.4.3 a Deemed Transfer Notice shall be deemed not to contain a Total Transfer Condition and shall be irrevocable;
 - 13.4.4 the Vendor may retain any Sale Shares for which Purchasers are not found or, after the expiry of the relevant Offer Notice and with the prior written approval of NEL, sell all or any of those Sale Shares to any person (including any member) at any price per Sale Share which is not less than the Sale Price; and
 - 13.4.5 the Sale Shares shall be sold together with all rights attaching thereto as at the date of the Transfer Event.
- 13.5 The Sale Price for any Sale Shares which are the subject of a Deemed Transfer Notice given as a consequence of a Transfer Event falling within **Article 13.1.4** shall:
- 13.5.1 in the case of a Good Leaver (as defined in **Article 13.6**) be their Fair Value (as defined in **Article 13.8**); and
 - 13.5.2 in the case of a Bad Leaver (as defined in **Article 13.6**), be lesser of Fair Value and the Issue Price;
- 13.6 In **Article 13.4**:
- 13.6.1 "**Good Leaver**" refers to a person who ceases to be a director or employee of the Company and as a consequence is no longer a director or employee of the Company and such cessation occurs as a result of death or retirement at 65 years of age or Serious Ill Health (as defined in **Article 13.9**) or where he has been made redundant as a consequence of adverse trading conditions and such redundancy has received the prior written consent of the Investor (such consent not to be unreasonably withheld or delayed) or where following dismissal (whether by the Company or constructively) an Employment Tribunal

or some other Court or Tribunal of competent jurisdiction subsequently determines that contrary to the Employment Rights Act 1996 the person who ceases to be a director or employee has been unfairly dismissed or wrongfully dismissed by reference to the relevant Service Agreement and by reason of the cause of the wrongful dismissal and not by reason of any failure to comply with any procedure relating to wrongful dismissal (whether statutory or otherwise);

13.6.2 **"Bad Leaver"** refers to any person who ceases to be a director or employee of the Company and as a consequence is no longer a director or employee of the Company and who is not a Good Leaver.

13.7 For the purpose of **Article 13.1.4** the date upon which a member ceases to hold office or employment as described therein shall be:

13.7.1 where a contract of employment or directorship is terminated by the employer by giving notice to the employee of the termination of the employment or directorship, the date of that notice (whether or not a payment is made by the employer in lieu of all or part of the notice period required to be given by the employer in respect of such termination);

13.7.2 where a contract of employment or directorship is terminated by the employee by giving notice to the employer of the termination of the employment or directorship, the date of that notice;

13.7.3 save as provided in **Article 13.7.1** where an employer or employee wrongfully repudiates the contract of employment and the other accepts that the contract of employment has been terminated, the date of such acceptance;

13.7.4 where a contract of employment is terminated under the doctrine of frustration, the date of the frustrating event; and

13.7.5 where a contract of employment or directorship is terminated for any reason other than in the circumstances set out in **Articles 13.7.1** to **13.7.4** above, the date on which the action or event giving rise to the termination occurs.

13.8 **"Fair Value"** for the purposes of these articles means as agreed between the Board (with the approval of the Investor) and the Vendor or, in the absence of agreement within 15 Business Days of the Transfer Event, by the Auditors in accordance with **Article 14**.

13.9 **"Serious Ill Health"** for the purpose of these articles means an illness or disability certified by a general medical practitioner (approved by the Investor)

as rendering the departing employee permanently incapable of carrying out his role as an employee for the foreseeable future.

14. VALUATION OF SHARES

14.1 In the event that the Auditors are required to determine the price at which Shares are to be transferred pursuant to these articles, such price shall be the amount the Auditors shall, on the application of the Board (which application shall be made as soon as practicable following the time it becomes apparent that a valuation pursuant to this **Article 14** is required), give their opinion in writing as to the price which represents a fair value for such Shares as between a willing vendor and a willing purchaser as at the date the Transfer Notice or deemed Transfer Notice is given. In making such determination, the Auditors shall not take any account of whether the Sale Shares comprise a majority or a minority interest in the Company nor the fact that transferability is restricted by these articles (and shall assume that the entire issued share capital of the Company is being sold) and comprises only of Ordinary Shares.

14.2 **Article 27** shall apply to any determination by the Auditors under this Article.

15. COMPLIANCE

15.1 For the purpose of ensuring (i) that a transfer of Shares is duly authorised under these articles or that (ii) no- circumstances have arisen whereby a Transfer Notice is required to be or ought to have been given under these articles or (iii) whether an offer is required to be or ought to have been made under **Article 12.1**, the Board may require any member or the legal personal representatives of any deceased member or any person named as transferee in any transfer lodged for registration or such other person as the Board may reasonably believe to have information relevant to such purpose, to furnish to the Company such information and evidence as the Board may reasonably think fit regarding any matter which they deem relevant to such purpose; including (but not limited to) the names, addresses and interests of all persons respectively having interests in the Shares from time to time registered in the holder's name.

15.2 *Failing such information or evidence being furnished to enable the Board to determine to its reasonable satisfaction that no such Transfer Notice is required to be or ought to have been given, or that no offer is required to be or ought to have been made under **Article 12.1**, or that as a result of such information and evidence the Board is reasonably satisfied that such Transfer Notice is required to be or ought to have been given, or that an offer is required to be or ought to have been made under **Article 12**:*

15.2.1 where the purpose of the enquiry by the Board was to establish whether a Transfer Notice is required to be or ought to have been

given, then a Transfer Notice shall be deemed to have been given by the holder of the relevant Shares in respect of such Shares; or

- 15.2.2 where the purpose of the enquiry by the Board was to establish whether an offer is required to be or ought to have been made under **Article 12.1**, then the Shares held by or on behalf of the person or persons connected with each other or acting in concert with each other who has or have (as the case may be) obtained a Controlling Interest as is referred to in **Article 12.1**, such Shares shall cease to entitle the relevant holder or holders (or any proxy) to voting rights (whether on a show of hands or on a poll and whether exercisable at a general meeting of the Company or at a separate meeting of the class in question) otherwise attaching to such Shares or to any further shares issued in right of such Shares or in pursuance of an offer made to the relevant holders to the extent that will result in such person or persons only being able to control that percentage of the voting rights attaching to the Ordinary Shares that such person or persons were in a position to control prior to the obligation to procure the making of an offer arising.

GENERAL

16. GENERAL MEETINGS

- 16.1 No business shall be transacted at any general meeting unless a quorum of holders is present at the time when the meeting proceeds to business and for its duration. Two persons, being holders of Shares (at least one of whom must be a holder of "A" Ordinary Shares) present in person, by proxy or by duly authorised representative (if a corporation), shall be the quorum at any general meeting. If a meeting is adjourned under regulation 41 of Table A because a quorum is not present, and at the adjourned meeting a quorum is not present within half an hour from the time appointed for that adjourned meeting, the holders then present shall form a quorum, and regulation 41 of Table A shall be modified accordingly.
- 16.2 A poll may be demanded at a general meeting either by the chairman of the meeting or by any holder who is present in person, by proxy or by duly authorised representative (if a corporation) and who, in any such case, has the right to vote at the meeting, and regulation 46 of Table A shall be modified accordingly.

17. WRITTEN RESOLUTIONS

- 17.1 In the case of a body corporate which holds a share or shares in the capital of the Company, the signature of any director or the secretary of such body corporate shall be sufficient for the purposes of any resolution in writing as is

referred to in regulation 53 of Table A, and regulation 53 of Table A shall be modified accordingly.

18. RETIREMENT OF DIRECTORS

- 18.1 The Directors shall not be liable to retire by rotation and, accordingly, the second and third sentences of regulation 79 of Table A shall not apply to the Company; in regulation 78 of Table A, the words "Subject as aforesaid" and the words "and may also determine the rotation in which any additional directors are to retire" shall be deleted.

19. REMOVAL OF DIRECTORS

The office of any Director shall be vacated if:

- 19.1 (in the case of an executive Director only) he shall, for whatever reason, cease to be employed by the Company or any subsidiary of the Company and he does not remain an employee of any other Group Company; or
- 19.2 (other than in the case of an Investor Director) all the other Directors request his resignation in writing;

and the provisions of regulation 81 of Table A shall be extended accordingly.

20. INVESTOR DIRECTOR

- 20.1 The members holding a majority of the "A" Ordinary Shares may from time to time appoint any person to be a director with the title of Investor director (the **"Investor Director"** which expression shall, where the context so permits, include a duly appointed alternate of such a director) and from time to time remove the Investor Director from office.
- 20.2 There shall not be more than one director bearing the title of Investor Director in office at any time but in addition to and without prejudice to the rights of the holders of the "A" Ordinary Shares to appoint an Investor Director, the holders of a majority of the "A" Ordinary Shares for the time being in issue shall be entitled by reasonable notice in writing to the Company to appoint one or more persons to attend board meetings of the Company. Such person or persons shall be entitled to reasonable notice of all such meetings and to speak at such meetings but shall not be entitled to vote.
- 20.3 Any appointment or removal of the Investor Director shall be in writing served on the Company signed by the members holding a majority of the "A" Ordinary Shares and shall take effect at the time it is served on the Company or produced to a meeting of the Board, whichever is earlier. Any such appointment or removal by a body corporate may be signed on its behalf by its duly authorised representative.

- 20.4 Notice of meetings of the Board shall be served on any Investor Director who is absent from the United Kingdom at the address for service of notice of the Investor under the Investment Agreement. The third sentence of regulation 88 shall not apply.
- 20.5 Upon written request by a majority of the holders of the "A" Ordinary Shares the Company shall procure that the Investor Director is forthwith appointed as a director of any other member of the Group to any committee of the Board or the board of any member of the Group.
- 20.6 Regulation 81(e) shall not apply to the Investor Director or the Chairman.
- 20.7 Where any decision is to be made by any member of the Group in relation to the exercise, enforcement or waiver of its rights against any member holding Ordinary Shares or any director or person connected with any such member or director, any such decision shall be within the exclusive power of the Investor (to the exclusion of the other directors but after consultation with a majority thereof) who shall have (without limitation) exclusive authority in relation to the conduct of any proceedings of whatever nature arising in connection with any such rights and no other director shall have power to settle or compromise any such claim.

21. **ALTERNATE DIRECTORS**

- 21.1 The appointment by any Investor Director of an alternate director shall not be subject to approval by a resolution of the Board and regulation 65 of Table A shall be modified accordingly. In regulation 67 of Table A the words "but, if" and the words following them (to the end of that regulation) shall be deleted.
- 21.2 An alternate director shall not be entitled (as such) to receive any remuneration from the Company, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may, by notice in writing to the Company from time to time, direct, and the first sentence of regulation 66 of Table A shall be modified accordingly.
- 21.3 A Director, or any such other person as is mentioned in regulation 65 of Table A, as modified by **Article 21.1** may act as an alternate director to represent more than one Director, and an alternate director shall be entitled at any meeting of the Board (or of any committee of the Board) to one vote for every Director whom he represents (in addition to his own vote (if any) as a Director), but he shall count as only one for the purpose of determining whether a quorum is present at (and during) any such meeting.

22. PROCEEDINGS OF DIRECTORS

- 22.1 The quorum for meetings of the Board shall be two directors.
- 22.2 Any Director or member of a committee of the Board may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear and speak to each other, and any Director or member of a committee participating in a meeting in this manner shall be deemed to be present in person at such meeting.
- 22.3 Except with the prior written consent of the Investor (or, in the event that there is no Investor Director, the prior written consent of the holder of a majority in nominal value of the "A" Ordinary Shares), a Director shall not vote on any resolution concerning a matter in which he has, directly or indirectly, any kind of interest or duty whatsoever, save in respect of the matters specified in paragraphs (a) to (d) (inclusive) of regulation 94 of Table A which shall be modified accordingly. Reference in regulation 98 to the "Chairman" shall be construed as a reference to the "Investor Director" for so long as one is appointed.
- 22.4 For so long as there is subsisting any default by the Company under the terms of the Investment Agreement Loan Stock Instrument or the conditions attaching to the Loan Stock or the Loan Documents then (if the holders of a majority of the "A" Ordinary Shares have given notice of default to the Company) the Investor Director shall be deemed to have such number of votes at any meeting of the Board as shall be one more than all the other directors attending and voting at that meeting.

23. THE SEAL

- 23.1 If the Company has a seal it shall only be used with the authority of the Board or of a committee of the Board. The Board may determine who shall sign any instrument to which the seal is affixed and, unless otherwise so determined, it shall be signed by a Director and by the secretary or a second Director. The obligation under regulation 6 of Table A relating to the sealing of share certificates shall apply only if the Company has a seal.
- 23.2 The Company may exercise the powers conferred by section 39 of the Companies Act with regard to having an official seal for use abroad, and such powers shall be vested in the Board.

24. INDEMNITY

- 24.1 Subject to the provisions of the Companies Act, every Director or other officer of the Company (other than the Auditors) shall be indemnified out of the assets of the Company against all costs, charges, expenses, losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by any court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company. No Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the proper execution of the duties of his office or in relation thereto. This Article 24 shall only have effect in so far as its provisions are not avoided by section 310 of the Companies Act. The Board shall have power to purchase and maintain for any Director or other officer of the Company and the Auditors insurance against any 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.

25. BORROWING POWERS

Subject to the terms of the Investment Agreement, the Board may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and, subject to the provisions of the Companies Act, to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

26. LIEN

The lien conferred by regulation 8 of Table A shall attach to all shares, whether or not fully paid up and to all shares registered in the name of any person indebted or under liability to the Company (whether he shall be the sole registered holder of such share[s] or shall be one of two or more joint holders) and shall be for all moneys owing on any account whatsoever to the Company.

27. AUDITORS DETERMINATION

- 27.1 If any matter under these Articles is referred to the Auditors for determination then the Auditors shall act as experts and not as arbitrators and their decision shall be conclusive and binding on the Company and all the holders of Shares (in the absence of fraud or manifest error).

27.2 the costs of Auditors shall be borne by the company unless the Auditors shall otherwise determine.