

**THE COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of**

**KITE PACKAGING GROUP HOLDINGS LIMITED**

**(Company number: 06510008)**

**(Adopted by Special Resolution passed on 4<sup>th</sup>  
January 2023)**

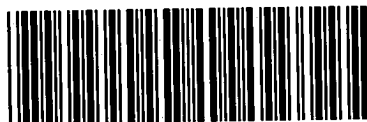
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## **Articles of Association**

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## 1. **PRELIMINARY**

- 1.1 In these Articles "**Model Articles**" means the Model Articles in Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008 No. 3229) and as otherwise amended prior to the adoption of these Articles. Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles.
- 1.2 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by these Articles.
- 1.3 Articles 9(1), 11(2), 13, 14(1), (2), (3) and (4), 17(2), 21, 44(2), 52 and 53 of the Model Articles shall not apply to the Company.
- 1.4 Article 7 of the Model Articles shall be amended by:
- 1.4.1 the insertion of the words "for the time being" at the end of Article 7(2)(a); and
  - 1.4.2 the insertion in Article 7(2) of the words "(for so long as he remains the sole Director)" after the words "and the Director may".
- 1.5 Article 20 of the Model Articles shall be amended by the insertion of the words "(including alternate Directors) and the secretary (if any)" before the words "properly incur".
- 1.6 In Article 25(2)(c) of the Model Articles, the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity".
- 1.7 Article 27(3) of the Model Articles shall be amended by the insertion of the words ", subject to Article 22," after the word "But".
- 1.8 Article 29 of the Model Articles shall be amended by the insertion of the words ", or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under Article 28(2)," after the words "the transmittee's name".
- 1.9 Articles 31(1)(a) to (d) (inclusive) of the Model Articles shall be amended by the deletion, in each case, of the words "either" and "or as the Directors may otherwise decide".

## 2. **PRIVATE COMPANY**

The Company is a private company within the meaning of section 4(1) of the Companies Act 2006.

### 3. INTERPRETATION

- 3.1 In these Articles unless the context otherwise requires, the following expressions have the following meanings:

**Accounting Period(s):** a period of the Company ending on an accounting reference date for which the Company is required to produce audited financial statements pursuant to the Act;

**Act:** means the Companies Act 2006, and every statutory modification, re-enactment or replacement of that Act for the time being in force on the date of adoption of these Articles;

**'A' Ordinary Shares:** means the 'A' Ordinary Shares of £0.10 each in the share capital of the Company from time to time;

**Acting in Concert:** has the meaning given to it in the City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time);

**Auditors:** means the auditors from time to time appointed by the Company;

**Board:** means the board of Directors of the Company from time to time;

**Controlling Interest:** means an interest in shares in the Company conferring in the aggregate 50% or more of the total voting rights conferred by all the Shares;

**Deemed Transfer Notice:** means a Transfer Notice deemed to be given under any provision of these Articles;

**Director:** a director for the time being of the Company;

**Employee:** means an employee of any company within the Group;

**Employee Member:** as provided in Article 11.2.1;

**EST:** the Kite Packaging Employee Share Trust established pursuant to a deed between the Company and the EST Trustees dated 16 April 2019;

**EST Trustees:** shall mean the trustees of the EST;

**Exit:** means a Share Sale or Listing;

**Exit Proceeds:** means:

- (a) in the case of a Listing, the valuation placed on all of the Shares as shown in the prospectus or listing particulars published in connection with the Listing, excluding the gross amount of any new money raised by the Company in connection with the Listing from a subscription for new shares; or
- (b) in the case of a Share Sale, the aggregate price or value of the consideration for all of the Shares subject to the Share Sale;

in each case after payment of all costs and expenses incurred in connection with the Exit by the Shareholders and to the extent that such deductions have not already been taken into account in determining the value of the Shares and any

dispute as to the amount of the Exit Proceeds for the purposes of these Articles will be determined in accordance with Article 4.6;

**Group:** means the Company and its Subsidiaries from time to time any holding company of the Company and any Subsidiaries of such holding company;

**Holding Company:** shall have the meaning given in section 1159 of the Act;

**Investors:** means Bruce Gordon McInnes (and his permitted assigns and successors in title) and/or Colin Gordon McInnes (and his permitted assigns and successors in title) and/or Magdalena Karina McInnes (and her permitted assigns and successors in title);

**Investor Majority:** means an Investor or Investors holding a majority of the Shares held by the Investors at any relevant time;

**Kifin:** means Kifin Limited (and its permitted assigns and successors in title);

**Leaver:** as provided in Article 11.2.2;

**Leaver Event:** means when an Employee Member becomes a Leaver;

**Listing:** the successful application and admission of all or any of the Shares in the capital of the Company, or securities representing such shares (including instruments to the Official List of the UK Listing Authority or on the AIM market operated by the London Stock Exchange plc, or the Nasdaq National Stock Market of the Nasdaq Stock Market Inc. or to any recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000 (as amended)));

**Lotus:** means Lotus Investments Limited (and its permitted assigns and successors in title);

**Market Value:** as provided in Article 12;

**McInnes Family:** means (i) Bruce Gordon McInnes and Magdalena Karina McInnes (ii) any sibling of Bruce Gordon McInnes or Magdalena Karina McInnes (including step or adopted sibling) (iii) any child or grandchild (including step or adopted or illegitimate child/grandchild) of Bruce Gordon McInnes and/or Magdalena Karina McInnes (iv) any child or grandchild (including step or adopted or illegitimate child) of any sibling of Bruce Gordon McInnes or Magdalena Karina McInnes (including step or adopted sibling) (v) any other person considered by Bruce Gordon McInnes, in his absolute discretion, to be a family member and (vi) any other person considered by the Board, in its absolute discretion, to be a family member;

**McInnes Trust:** any trust whose beneficiaries include members of the McInnes Family;

**Paid up:** means, in relation to a share, paid up or credited as paid up;

**Share:** means a share in the capital of the Company of whatever class and "**Shares**" shall be construed accordingly;

**Share Sale:** means the sale of Shares to any person resulting in that person together with any person Acting in Concert with such person holding a Controlling Interest;

**Shareholder:** shall mean a holder of any Shares;

**SIP:** the KPG Holdings Limited Share Incentive Plan 2004 (formerly known as the Kite Investment Holdings Limited Share Incentive Plan 2004 and Kite Packaging Group Limited Share Incentive Plan 2004);

**SIP Trust:** shall mean the trust established pursuant to the trust deed dated 17 October 2004 as amended, supplemented or varied from time to time, established for the purposes of inter alia operating the SIP;

**SIP Trustees:** shall mean the trustees of the SIP Trust.

**Subsidiary:** shall have the meaning given in section 1159 of the Act;

**Transfer Price:** being the Market Value of the relevant Share (being the most recent Market Value determined prior to the date of the Transfer Notice or the Deemed Transfer Notice (as the case may be));

**Transfer Notice:** a notice in writing given by any Shareholder to the Company where that shareholder desires, or is required by these Articles, to transfer (or enter into an agreement to transfer) any shares. Where such notice is deemed to have been served, it shall be referred to as a **Deemed Transfer Notice**;

- 3.2 In these Articles, words or expressions, the definitions of which are contained or referred to in the Act, shall be construed as having the meaning thereby attributed to them but excluding any statutory modification thereof not in force on the date of adoption of these Articles.
- 3.3 In these Articles, words importing the singular include (where appropriate) the plural, words importing any gender include (where appropriate) every gender, and words importing persons include (where appropriate) bodies corporate and unincorporate; and (in each case) vice versa.
- 3.4 In these Articles, in relation to any member, references to any English legal term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal status, court, governmental or administrative authority or agency, official or any legal concept, practice or principle or thing shall in respect of any jurisdiction other than England where that member is domiciled, resident, incorporated or carries on business be deemed to include what most approximates in that jurisdiction to the English legal term concerned.

#### 4. **SHARE CAPITAL**

Save as otherwise set out in these Articles, the Shares shall be treated *pari passu* as if they constituted one class of share. The rights attached to the 'A' Ordinary Shares are as follows:

- 4.1 As regards income (which shall be subject to Article 5):
- 4.1.1 With the exception of interim dividends (as authorised under the Model Articles), the profits of the Company available for distribution shall be applied in paying the amount thereof to the holders of Shares in the manner and in the amounts determined by the Shareholders in general meeting.

4.2 As regards capital:

4.2.1 On a return of assets on liquidation or otherwise the surplus assets of the Company remaining after the payment of its liabilities and available for distribution amongst the Shareholders shall be distributed amongst the holders of the 'A' Ordinary Shares in accordance with the provisions in Article 4.4 (save that reference to Exit Proceeds shall mean surplus assets and reference to Exit shall mean liquidation).

4.3 As regard voting:

4.3.1 In relation to the 'A' Ordinary Shares:

- (a) on a show of hands every holder of 'A' Ordinary Shares who (being an individual) is present in person (or being a corporation) is present by a representative or present by proxy (not being himself a Shareholder) shall (except as hereinafter provided) have one vote; and
- (b) on a poll every Shareholder who is present in person or by proxy or (being a corporation) is present by a representative shall have one vote for every 'A' Ordinary Share they hold, save where the 'A' Ordinary Share is partly paid in which event that Share shall have a fraction of a vote in proportion to the amounts paid up or credited as paid up (in respect of the nominal value of the Shares) on the same.

4.4 As regards to Exit Proceeds:

On an Exit the total of all and any form of consideration received or receivable by the holders of the Shares shall be allocated between the holders of the Shares so as to ensure that the Exit Proceeds shall be allocated between the holders of the 'A' Ordinary Shares as follows:

- 4.4.1 firstly, in paying in respect of the 'A' Ordinary Shares subject to the Exit an amount equal to the dividends declared but unpaid on such 'A' Ordinary Shares;
- 4.4.2 finally, any remaining Exit Proceeds shall be distributed between the holders of the 'A' Ordinary Shares, in the proportion which each such Shareholder's holding bears to the aggregate number of 'A' Ordinary Shares that are then in issue.

4.5 For the avoidance of doubt, the provisions of Article 4.4 shall also apply to any Share Sale that results in the application of Articles 13 and 14 (Tag Along and Come Along).

4.6 Unless it is specifically stated otherwise, any dispute as to value, or as to calculations or adjustments to be made, or as to amount, to or in respect of the Exit Proceeds pursuant to these Articles, may be referred by the Board to the Auditors for final determination. If the Auditors decline to act in respect of any such referral, the matter will be determined by an independent firm of chartered accountants agreed for the purpose by the Board or, in default of agreement within five Business Days after the Auditors have declined to act,

appointed by the incumbent president of the Institute of Chartered Accountants in England and Wales. The Auditors or independent accountants (as the case may be) will act as expert and not as arbiter and their costs will be borne as directed by the Auditors/independent accountants or if they fail to direct the Company. The written certificate of the Auditors/independent accountants (as appropriate) will be conclusive and binding on the Company and the Shareholders (except in the case of fraud or manifest error).

4.7 Investors, Lotus and Kifin consent:

4.7.1 The consent of a Shareholder referred to in Articles 4.7 and 5.1 shall only be required when the Shareholder in question holds the following percentage of the Shares in issue at that time:

- (a) in the case of the Investors, where the Investors hold in aggregate more than 20% of the Shares in issue at that time;
- (b) in the case of Lotus, where Lotus holds more than 15% of the Shares in issue at that time; and
- (c) in the case of Kifin, where Kifin holds more than 15% of the Shares in issue at that time.

4.7.2 The Company shall not without the written consent of (i) the Investor Majority (ii) Lotus and (iii) Kifin:

- (a) enter into any contract, transaction or arrangement outside the ordinary course of business of a value exceeding £2,000,000; or
- (b) enter into any new consolidated debt arrangements if, as a consequence of the new debt, the Group's total debt arrangements are greater than a combination of:
  - (i) the Group's consolidated earnings before interest, amortisation and tax; and
  - (ii) 50% of the Group's property values,in both respects, using the figures in the Group's previous year's consolidated audited financial statements; or
- (c) dispose of a material part of the business of the Company; or
- (d) allot Shares (in one allotment or a series of allotments in a 12 month period) so as to increase the issued share capital of the Company by 5% or more; or
- (e) make, or agree to make, any material strategic decision concerning the Company or any member of its Group; or



- (f) acquire shares in any other company or merge the Company or any other member of its Group with any other company, where the aggregate consideration for such acquisition or merger is in excess of £5,000,000.

## **5. DIVIDENDS**

- 5.1 To the extent permitted under law, the Board shall recommend that the Company's profits available for distribution shall be declared and paid in a manner consistent with the previous distributions that have been declared and paid as dividends in the three preceding Accounting Periods, unless (i) the Investor Majority (ii) Lotus and (iii) Kifin agree otherwise in writing.

## **6. ISSUE OF NEW SHARES**

- 6.1 Subject to Article 4.7.2(d), the Board shall only exercise its power to allot Shares or to grant rights to subscribe for, or to convert any security into, any Shares in the Company in accordance with:

- 6.1.1 the remaining provisions of this Article 6; or

- 6.1.2 as authorised from time to time by an ordinary resolution of the Shareholders.

- 6.2 Subject to the remaining provisions of this Article 6 and Article 4.7.2(d), the Board is generally and unconditionally authorised, for the purposes of section 551 of the 2006 Act and generally, to exercise any power of the Company to:

- 6.2.1 offer or allot;

- 6.2.2 grant rights to subscribe for or to convert any security into;

- 6.2.3 otherwise deal in, or dispose of,

any 'A' Ordinary Shares in the Company to any person, at any time and subject to any terms and conditions as the Board thinks proper.

- 6.3 Subject to Article 4.7.2(d), the authority referred to in Article 6.2:

- 6.3.1 shall be limited to a maximum nominal amount of £5,000,000 (including all Shares in issue on the date of adoption of these Articles), divided into 50,000,000 'A' Ordinary Shares;

- 6.3.2 shall only apply insofar as the Company has not renewed, waived or revoked it by ordinary resolution; and

- 6.3.3 may only be exercised for a period of five years commencing on the date on which these Articles are adopted, save that the Board may make an offer or agreement which would, or might, require 'A' Ordinary Shares to be allotted after

the expiry of such authority (and the Board may allot 'A' Ordinary Shares in pursuance of an offer or agreement as if such authority had not expired).

- 6.4 In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the Company.

## **7. ALTERATION OF SHARE CAPITAL**

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 in contemplation of a winding up only with the consent of the holders of 75% of the issued shares of that class.

## **8. PERMITTED TRANSFER OF SHARES**

- 8.1 Save as provided in Article 8.2, the Board may in their absolute discretion decline to register any transfer of any Share whether or not it is a fully paid share.

- 8.2 The Board shall register the transfer of any Share:

8.2.1 by Lotus to any Subsidiary or Holding Company or nominee of Lotus or to a company controlled by Lotus provided that immediately prior to the cessation of the Subsidiary/Holding Company relationships or control by Lotus any such transferee shall, as Lotus shall direct, transfer the said Shares to Lotus or another Subsidiary, Holding Company or nominee of Lotus or to another company controlled by Lotus;

8.2.2 by any nominee, Subsidiary or Holding Company of Lotus to Lotus;

8.2.3 by Lotus to a McInnes Trust or by a McInnes Trust to any company where the McInnes Trust and/or the Investors jointly or separately own, directly or indirectly, more than 50% of the voting shares of such company;

8.2.4 by a McInnes Trust to an Investor or Lotus;

8.2.5 by Kifin to any Subsidiary or Holding Company or nominee of Kifin or to a company controlled by Kifin provided that immediately prior to the cessation of the Subsidiary/Holding Company relationships or control by Kifin any such transferee shall, as Kifin shall direct, transfer the said Shares to Kifin or another Subsidiary, Holding Company or nominee of Kifin or to another company controlled by Kifin;

8.2.6 by any nominee, Subsidiary or Holding Company of Kifin to Kifin;

8.2.7 by an Investor to Lotus or by Lotus to an Investor;

8.2.8 by an Investor to Kifin or by Kifin to an Investor;

- 8.2.9 by Kifin to Lotus or by Lotus to Kifin;
  - 8.2.10 by Kifin to a McInnes Trust or by a McInnes Trust to Kifin;
  - 8.2.11 by an Investor to any other person within the definition of "Investor" from time to time or in the case of an Investor who is a natural person by that person (or in the event of the death of that person by his personal representatives) to a member or members of that person's family or to the trustees of a trust established for the benefit of a member or members of that person's family (including, without limitation, a McInnes Trust);
  - 8.2.12 by a Shareholder (or on the death of a Shareholder, by his personal representatives) to any other person who is an Employee at that time;
  - 8.2.13 made pursuant to Articles 10, 11, 13 and 14; and
  - 8.2.14 made pursuant to a transfer made with the consent of the Board (including a transfer to a competitor).
- 8.3 The instrument of transfer of a share may be in any usual form or in any other form which the Board may approve and shall be executed by or on behalf of the transferor.

## **9. PROHIBITED TRANSFERS**

- 9.1 Notwithstanding anything else contained in these Articles (other than Article 8.2.14), no Share shall be transferred:
- 9.1.1 to any infant, bankrupt or person of unsound mind; or
  - 9.1.2 if any such Share is partly paid; or
  - 9.1.3 any competitor (as determined by the Board in its discretion).

## **10. VOLUNTARY TRANSFER OF SHARES SUBJECT TO PRE-EMPTION RIGHTS**

- 10.1 In this Article, references to a transfer of a Share include the transfer or assignment of a beneficial or other interest in that Share or the creation of a trust or encumbrance over that Share and reference to a Share includes a beneficial or other interest in a Share.
- 10.2 Except where the provisions of Articles 8 (Permitted Transfer of Shares), 11 (Compulsory Transfers), 13 (Tag Along Rights on a Change of Control) and 14 (Come Along Rights), apply, any transfer or proposed transfer of Shares by a Shareholder;
- 10.2.1 who is not a Leaver; or
  - 10.2.2 who is not a Leaver and has acquired the Sale Shares pursuant to the terms of the SIP;

shall be offered in accordance with the pre-emption rights in this Article 10.

- 10.3 A Shareholder who wishes to sell his Shares ("**Seller**") shall, before transferring or agreeing to transfer any Shares, give a **Transfer Notice** to the Company specifying (i) the number of Shares held by the SIP Trust on his behalf which he wishes to sell (being the "**SIP Sale Shares**") and (ii) all other Shares the Seller wishes to sell (being the "**Sale Shares**").
- 10.4 The SIP Trust shall be obliged to purchase the beneficial interest of the SIP Sale Shares at a price per SIP Sale Share equal to the Transfer Price as soon as reasonably practicable following the Company's receipt of the Transfer Notice and in any event such purchase shall be completed within 28 days of such notice. At completion of such purchase, the SIP Trust shall be obliged to make such deductions for tax (including, without limitation, PAYE and NIC) as required by law.
- 10.5 The Board may, in its absolute discretion, within 28 days of receipt of a Transfer Notice resolve to decline such Transfer Notice in relation to the Sale Shares, in which case such Transfer Notice shall be automatically revoked. If the Board does not decline the Transfer Notice, the Transfer Notice shall constitute the Company (by the Board) the agent of the Seller for the sale of the Sale Shares comprised in the Transfer Notice and the price (in cash) per Share requested by the Seller (such price not to exceed the Transfer Price ("**Sale Price**"). A Transfer Notice shall be irrevocable except with the sanction of the Board.
- 10.6 As soon as practicable the Sale Shares shall be offered for sale to the Company, and/or the EST, and/or the SIP Trust (collectively the "**Selected Offeree(s)**") and/or the Shareholders in the manner set out in Articles 10.7 to 10.8.
- 10.7 The Selected Offeree(s) shall consider whether to purchase the Sale Shares at the Sale Price within 28 days of the date of the Transfer Notice ("**First Offer Period**").
- If, at the end of the First Offer Period, the Selected Offeree(s) have decided not to purchase all of the Sale Shares, the balance ("**Initial Surplus Shares**") shall be dealt with in accordance with Article 10.8.
- 10.8 At the end of the First Offer Period, the Board shall offer the Initial Surplus Shares to all Shareholders other than the Seller and the Selected Offeree(s) ("**Continuing Shareholders**"), inviting them to apply in writing within 28 days of the date of the offer ("**Second Offer Period**") for the maximum number of Initial Surplus Shares they wish to buy for the Sale Price.
- If, at the end of the Second Offer Period, the number of Initial Surplus Shares applied for exceeds the number of Initial Surplus Shares, the Board shall allocate the Initial Surplus Shares to each Continuing Shareholder who has applied for Initial Surplus Shares in such proportions as the Board determines in its absolute discretion.
- If, at the end of the Second Offer Period, the total number of Initial Surplus Shares applied for is equal to or less than the number of Initial Surplus Shares, the Board shall allocate the Initial Surplus Shares to the Continuing Shareholders in accordance with their applications. The balance (if any) shall be retained by the Seller.

10.9 If allocations under Articles 10.7 to 10.8 have been made in respect of some or all of the Sale Shares, the Board shall give written notice of allocation ("**Allocation Notice**") to the Seller and/or the Selected Offeree(s) and/or each Continuing Shareholder to whom Sale Shares have been allocated ("**Applicant**"). The Allocation Notice in relation to the Sale Shares shall specify:

10.9.1 the number of Sale Shares allocated to each Applicant; and

10.9.2 the amount payable by each Applicant for the number of Sale Shares allocated to him ("**Amount Payable**"); and

10.9.3 where (i) the Applicant is the SIP Trust or the EST and (ii) the Amount Payable is more than £250,000, the Amount Payable may be paid (as elected by the Applicant) in three equal tranches as follows:

(a) 1/3 of the Amount Payable on Completion; and

(b) 1/3 of the Amount Payable on the first anniversary of Completion; and

(c) 1/3 of the Amount Payable on the second anniversary of Completion,

all of the above being the "**Deferred Consideration**". No interest shall be payable on the Deferred Consideration; or

10.9.4 where Article 10.9.3 does not apply, the Amount Payable shall be paid at Completion; and

10.9.5 the place and time for completion ("**Completion**") of the transfer of the Sale Shares (which shall be not more than 28 days after the date of the Allocation Notice).

10.10 On the service of an Allocation Notice, the Seller shall, against payment of all amounts of the Amount Payable which are payable at Completion, transfer the Sale Shares allocated in accordance with the requirements specified in the Allocation Notice.

10.11 If the Seller fails to comply with the requirements of the Allocation Notice:

10.11.1 he shall be deemed to have irrevocably appointed the Chairman of the Company (or, failing him, one of the other Directors, or some other person nominated by a resolution of the Board) to be his agent or attorney to, on behalf of the Seller:

(a) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;

(b) receive the Amount Payable and give a good discharge for it; and

- (c) (subject to the transfers being duly stamped or the stamp duty exemption certificate being correctly signed and dated) enter the Applicants in the register of Shareholders as the holders of the Shares purchased by them; and

10.11.2 the Company shall pay the Amount Payable into a separate bank account in the Company's name on trust (but without interest) for the Seller until he has delivered his certificate for the relevant Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate, together with such other evidence (if any) as the Board may reasonably require to prove good title to those Shares) to the Company.

## 11. **COMPULSORY TRANSFERS**

11.1 The provisions of this Article shall apply to any Leaver.

11.2 In these Articles:

11.2.1 an "**Employee Member**" shall mean a Shareholder (other than an Investor) of the Company who is an Employee.

11.2.2 a "**Leaver**" shall mean an Employee Member who ceases to be an Employee for any reason whatsoever.

11.3 A Leaver is deemed to have served, with immediate effect upon the Leaver becoming a Leaver (being the date he ceases to be an Employee), a Deemed Transfer Notice in respect of all of his Shares comprising (i) Shares held by the SIP Trust on behalf of the Leaver (being the "**Leaver's SIP Shares**") and (ii) all other Shares held by the Seller (being the "**Leaver's Shares**").

11.4 Where the Leaver is a Leaver due to retirement, he may postpone his Deemed Transfer Notice for:

11.4.1 12 months from the date of his retirement, in relation to 50% of his Leaver Shares; and

11.4.2 24 months from the date of his retirement, in relation to his remaining Leaver Shares;

by serving a written notice of such postponement on the Company at least 30 days before he becomes a Leaver.

11.5 Where the Leaver is a Leaver due to retirement, he must provide a written declaration to the Company confirming that he is retiring and will not be employed (in any capacity) for at least five years from Completion (the "**Retirement Declaration**"). Such Retirement Declaration shall be received by the Company at least 30 days before he becomes a Leaver and shall include an indemnity in favour of the Company to cover all costs, liabilities and expenses the Company incurs as a consequence of the Leaver breaching

the terms of the Retirement Declaration, in such form as the Board determines from time to time.

- 11.6 The Deemed Transfer Notice shall constitute the Company (by the Board) as the agent of the Leaver empowered to sell the Leaver's Shares (together with all rights attaching thereto at the date of the Deemed Transfer Notice or at any time thereafter) at the Transfer Price. A Deemed Transfer Notice may not be revoked.
- 11.7 The SIP Trust shall be obliged to purchase the beneficial interest of the Leaver's SIP Shares at a price per Leaver's SIP Share equal to the Transfer Price as soon as reasonably practicable following the date of the Deemed Transfer Notice and in any event such transfer shall be completed within 28 days of such notice. At completion of such purchase, the SIP Trust shall be obliged to make such deductions for tax (including, without limitation, PAYE and NIC) as required by law.
- 11.8 As soon as practicable following the date of the Deemed Transfer Notice ("**Offer Date**"), the Board shall offer the Leaver's Shares to the parties as provided in Articles 11.9 to 11.10.
- 11.9 The Board shall consider whether the Company, and/or the EST Trustees shall consider whether the EST, and/or and the SIP Trustees shall consider whether the SIP Trust (collectively the "**Selected Offeree(s)**"), shall purchase the Leaver's Shares at the Transfer Price within 28 days of the date of the Offer Date ("**First Leaver Period**").

If, at the end of the First Leaver Period, the Selected Offeree(s) decide not to purchase all of the Leaver's Shares, the balance ("**Initial Surplus Leaver's Shares**") shall be dealt with in accordance with Article 11.10.

- 11.10 At the end of the First Leaver Period, the Board shall offer the Initial Surplus Leaver's Shares to all Shareholders other than the Seller and the Selected Offeree(s) ("**Continuing Shareholders**"), inviting them to apply in writing within 28 days of the date of the offer ("**Second Leaver Period**") for the maximum number of Initial Surplus Leaver's Shares they wish to buy at the Transfer Price.

If, at the end of the Second Leaver Period, the number of Initial Surplus Leaver's Shares applied for exceeds the number of Initial Surplus Leaver's Shares, the Board shall allocate the Initial Surplus Leaver's Shares to each Continuing Shareholder who has applied for Initial Surplus Leaver's Shares in such proportions as the Board determines in its absolute discretion.

If, at the end of the Second Leaver Period, the total number of Initial Surplus Leaver's Shares applied for is equal to or less than the number of Initial Surplus Leaver's Shares, the Board shall allocate the Initial Surplus Leaver's Shares to the Continuing Shareholders in accordance with their applications. The balance (if any) shall be retained by the Leaver.

- 11.11 If allocations under Articles 11.9 to 11.10 have been made in respect of some or all of the Leaver's Shares, the Board shall give written notice of allocation ("**Allocation Notice**") to the Selected Offeree(s) and/or the Continuing Shareholders to whom Leaver's Shares

have been allocated ("**Applicant**"). The Allocation Notice in relation to the Leaver's Shares shall specify:

- 11.11.1 the number of Leaver's Shares allocated to each Applicant; and
- 11.11.2 the amount payable by each Applicant for the number of Leaver's Shares allocated to him ("**Consideration**"); and
- 11.11.3 where the Leaver is a Leaver due to death and where (i) the Applicant is the SIP Trust or the EST and (ii) the Consideration is more than £250,000, the Consideration may be paid (as elected by the Applicant) in two tranches as follows:
  - (a) 1/3 of the Consideration at Completion; and
  - (b) 2/3 of the Consideration on the first anniversary of Completion, or
- 11.11.4 where the Leaver is a Leaver for any reason other than death and where (i) the Applicant is the SIP Trust or the EST and (ii) the Consideration is more than £250,000, the Consideration may be paid (as elected by the Applicant) in three equal tranches as follows:
  - (a) 1/3 of the Consideration at Completion; and
  - (b) 1/3 of the Consideration on the first anniversary of Completion; and
  - (c) 1/3 of the Consideration on the second anniversary of Completion,

all of the above (in Articles 11.11.3 and 11.11.4) being the "**Deferred Consideration**". No interest shall be payable on the Deferred Consideration; or
- 11.11.5 where Articles 11.11.3 and 11.11.4 do not apply, the Consideration shall be paid at Completion; and
- 11.11.6 the place and time for completion ("**Completion**") of the transfer of the Leaver's Shares (which shall be not more than 28 days after the date of the Allocation Notice).
- 11.12 On the service of an Allocation Notice, the Leaver shall, against payment of all amounts of the Consideration which are payable at Completion, transfer the Leaver Shares allocated in accordance with the requirements specified in the Allocation Notice.
- 11.13 If the Leaver fails to comply with the requirements of the Allocation Notice and/or fails to provide a signed and dated Retirement Declaration (if relevant):
  - 11.13.1 he shall be deemed to have irrevocably appointed the Chairman of the Company (or, failing him, one of the other Directors, or some other person



nominated by a resolution of the Board) to be his agent or attorney to, on behalf of the Leaver:

- (a) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Leaver's Shares to the Applicants;
- (b) receive the Consideration and give a good discharge for it; and
- (c) (subject to the transfers being duly stamped or the stamp duty exemption certificate being correctly signed and dated) enter the Applicants in the register of Shareholders as the holders of the Shares purchased by them; and

11.13.2 the Company shall pay the Consideration into a separate bank account in the Company's name on trust (but without interest) for the Leaver until he has delivered (i) a signed and dated Retirement Declaration (where relevant) and (ii) his certificate for the relevant Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate, together with such other evidence (if any) as the Board may reasonably require to prove good title to those Shares) to the Company.

## 12. SHARE VALUATION

- 12.1 As soon as reasonably practicable after the end of each Accounting Period the Board shall instruct the Auditors to certify the "**Market Value**" of an 'A' Ordinary Share in the capital of the Company as at the end of such Accounting Period. In determining the Market Value the Auditors shall use a basis and methodology consistent with previous certificates and shall value the Company on a going concern basis.
- 12.2 The Auditors shall be considered to be acting as experts and not as arbitrators and their decision shall (save in the case of manifest error) be final and binding. The reasonable costs of the Auditors shall be borne by the Company. Where the Auditors refuse to give the opinion or certificate required of them the matter shall be referred to an independent firm of chartered accountants agreed by the Shareholders or failing agreement within 7 days a firm selected by the President for the time being of the Institute of Chartered Accountants in England and Wales upon the application of any Shareholder.
- 12.3 Where the Market Value of any Share(s) is to be determined by the Seller and the Company under Article 10.4 then such shall be determined by reference to the latest certificate of the Auditors issued pursuant to clause 12.1.

## 13. TAG ALONG RIGHTS ON A CHANGE OF CONTROL

- 13.1 Except in the case of transfers pursuant to Articles 8 and 11, the provisions of Article 13.2 to Article 13.6 shall apply if, in one or a series of related transactions, one or more Sellers propose to transfer ("**Proposed Transfer**") any of their Shares ("**Transfer Shares**") which

would, if carried out, result in any person ("**Buyer**"), and any person Acting in Concert with the Buyer, acquiring a Controlling Interest in the Company.

- 13.2 In the event that a Buyer was acquiring a Controlling Interest in the Company, the Seller or Sellers of the Transfer Shares must first offer the Transfer Shares to the remaining Shareholders ("**Minority Shareholders**") for an amount equal to the price per share offered by the Buyer by giving written notice to that effect ("**Purchase Option Notice**"). The Minority Shareholders must complete the transfer of the entirety of the Transfer Shares (in the proportion to be agreed between the Minority Shareholders) within 8 weeks of serving of the Purchase Option Notice.
- 13.3 In the event that the Minority Shareholders do not purchase the Transfer Shares under Article 13.2, a Seller or Sellers shall procure that the Buyer makes an offer ("**Offer**") to the Minority Shareholders to purchase the same proportion of Shares as the Buyer is purchasing of the Seller or Sellers for a consideration in cash per Share that is equal to the cash per Share offered or paid by the Buyer, or any person Acting in Concert with the Buyer, for the Transfer Shares (subject to such adjustments as are required in accordance with Article 4.4) ("**Specified Price**").
- 13.4 The Offer shall be given by written notice ("**Offer Notice**"), at least 2 weeks ("**Offer Period**") before the proposed sale date ("**Sale Date**"). To the extent not described in any accompanying documents, the Offer Notice shall set out:
- 13.4.1 the identity of the Buyer;
  - 13.4.2 the Specified Price and other terms and conditions of payment;
  - 13.4.3 the Sale Date; and
  - 13.4.4 the number of Shares proposed to be purchased by the Buyer ("**Minority Offer Shares**").
- 13.5 If the Buyer fails to make the Offer to all holders of Shares in the Company in accordance with Articles 13.2 to 13.4, the Seller or Sellers shall not be entitled to complete the Proposed Transfer and the Company shall not register any transfer of Shares effected in accordance with the Proposed Transfer.
- 13.6 If the Offer is accepted by any Minority Shareholders ("**Accepting Minority Shareholder**") within the Offer Period, the completion of the Proposed Transfer shall be conditional on completion of the purchase of all the Minority Offer Shares held by Accepting Minority Shareholders.
14. **COME ALONG RIGHTS**
- 14.1 If the holders of 50% of the Shares in issue for the time being ("**Selling Shareholders**") wish to transfer all of their interest in the Shares ("**Selling Shareholders' Shares**") to a

bona fide arm's length purchaser ("**Proposed Buyer**"), the Selling Shareholders may require all other Shareholders ("**Called Shareholders**") to sell and transfer all their shares to the Proposed Buyer (or as the Proposed Buyer directs) in accordance with the provisions of this Article ("**Come Along Option**").

14.2 In the event that the Selling Shareholders use the Come Along Option, they must first offer the Selling Shareholders' Shares to the Called Shareholders for an amount equal to the price per share offered by the Proposed Buyer by giving written notice to that effect ("**Purchase Option Notice**"). The Called Shareholders must complete the transfer of the Selling Shareholders' Shares (in the proportion to be agreed between the Called Shareholders) within 8 weeks of serving of the Purchase Option Notice.

14.3 In the event that the Called Shareholders do not purchase the Selling Shareholders' Shares under Article 14.2, the Selling Shareholders may exercise the Come Along Option by giving written notice to that effect ("**Come Along Notice**") at any time before the transfer of the Selling Shareholders' Shares to the Proposed Buyer. The Come Along Notice shall specify:

14.3.1 that the Called Shareholders are required to transfer all their Shares ("**Called Shares**") pursuant to this Article 14;

14.3.2 the person to whom the Called Shares are to be transferred;

14.3.3 the consideration payable for the Called Shares which shall, for each Called Share, be an amount equal to the price per share offered by the Proposed Buyer for the Selling Shareholders' Shares (subject to such adjustments as are required in accordance with Article 4.4); and

14.3.4 the proposed date of the transfer.

14.4 Once issued, a Come Along Notice shall be irrevocable. However, a Come Along Notice shall lapse if, for any reason, the Selling Shareholders have not sold the Selling Shareholders' Shares to the Proposed Buyer within 28 days of serving the Come Along Notice. The Selling Shareholders may serve further Come Along Notices following the lapse of any particular Come Along Notice.

14.5 No Come Along Notice shall require a Called Shareholder to agree to any terms except those specifically set out in this Article 14.

14.6 Completion of the sale of the Called Shares shall take place on the Completion Date (as defined below). "**Completion Date**" means the date proposed for completion of the sale of the Selling Shareholders' Shares unless:

14.6.1 all of the Called Shareholders and the Selling Shareholders agree otherwise in which case the Completion Date shall be the date agreed in writing by all of the Called Shareholders and the Selling Shareholders; or

- 14.6.2 that date is less than 14 days after the date on which the Come Along Notice is served, in which case the Completion Date shall be 14 days after service of the Come Along Notice.
- 14.7 The rights of pre-emption set out in these Articles shall not apply to any transfer of shares to a Proposed Buyer (or as it may direct) pursuant to a sale for which a Come Along Notice has been duly served.
- 14.8 Within 14 days of the Selling Shareholders serving a Come Along Notice on the Called Shareholders, the Called Shareholders shall deliver stock transfer forms for the Called Shares, together with the relevant share certificates (or a suitable indemnity for any lost share certificates) to the Company. On the Completion Date, the Company shall pay the Called Shareholders, on behalf of the Proposed Buyer, the amounts they are due for their shares pursuant to Article 14.3.3 to the extent that the Proposed Buyer has put the Company in the requisite funds. The Company's receipt for the price shall be a good discharge to the Proposed Buyer. The Company shall hold the amounts due to the Called Shareholders pursuant to Article 14.3.3 in trust for the Called Shareholders without any obligation to pay interest.
- 14.9 To the extent that the Proposed Buyer has not, on the Completion Date, put the Company in funds to pay the consideration due pursuant to Article 14.3.3, the Called Shareholders shall be entitled to the return of the stock transfer forms and share certificates (or suitable indemnity) for the relevant Called Shares and the Called Shareholders shall have no further rights or obligations under this Article 14 in respect of their Shares.
- 14.10 If any Called Shareholder does not, on completion of the sale of the Called Shares, execute transfer(s) in respect of all of the Called Shares held by it, the defaulting Called Shareholder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Selling Shareholders to be his agent and attorney to execute all necessary transfer(s) on his behalf, against receipt by the Company (on trust for such holder) of the consideration payable for the Called Shares, to deliver such transfer(s) to the Proposed Buyer (or as they may direct) as the holder thereof. After the Proposed Buyer (or its nominee) has been registered as the holder, the validity of such proceedings shall not be questioned by any such person. Failure to produce a share certificate shall not impede the registration of shares under this Article 14.
- 14.11 Following the issue of a Come Along Notice, on any person becoming a Shareholder of the Company pursuant to the exercise of a pre-existing option to acquire shares in the Company or on the conversion of any convertible security of the Company (a "**New Shareholder**"), a Come Along Notice shall be deemed to have been served on the New Shareholder on the same terms as the previous Come Along Notice. The New Shareholder shall then be bound to sell and transfer all Shares acquired by it to the Proposed Buyer (or as the Proposed Buyer may direct) and the provisions of this Article 14 shall apply with the necessary changes to the New Shareholder, except that completion

of the sale of the Shares shall take place immediately on the Come Along Notice being deemed served on the New Shareholder.

## **DIRECTORS**

### **15. CALLING A BOARD MEETING**

- 15.1 Any Director may call a Board meeting by giving reasonable notice of the meeting to the Board or by authorising the company secretary (if any) to give such notice.
- 15.2 Notice of a Board meeting must be sent to every Director, including Directors who are absent from the United Kingdom.
- 15.3 Article 9 of the Model Articles shall be modified accordingly.

### **16. QUORUM FOR BOARD MEETINGS**

- 16.1 Subject to Article 16.2, the quorum for the transaction of business at a Board meeting is any two eligible Directors.
- 16.2 For the purposes of any meeting (or part of a meeting) held pursuant to Article 22 to authorise a Director's conflict, if there is only one eligible Director in office other than the conflicted Director(s), the quorum for such meeting (or part of a meeting) shall be one eligible Director.

### **17. PROCEEDINGS AT BOARD MEETINGS**

- 17.1 Any Director or his alternate may validly participate in a Board meeting or a committee of Directors 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 the 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 any contrary provisions contained in these Articles). Subject to the Act, all business transacted in such manner by the Board or a committee of the Directors shall for the purposes of the Articles be deemed to be validly and effectively transacted at a meeting of the Board or of a committee of the Directors notwithstanding that fewer than two Directors or alternate Directors are physically present at 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. PROPOSING DIRECTORS' WRITTEN RESOLUTIONS**

- 18.1 Any Director may propose a Directors' written resolution.
- 18.2 The company secretary (if any) must propose a Directors' written resolution if a Director so requests.
- 18.3 A Directors' written resolution is proposed by giving notice of the proposed resolution to the Directors.
- 18.4 Notice of a proposed Directors' written resolution must indicate:
- 18.4.1 the proposed resolution; and
  - 18.4.2 the time by which it is proposed that the Directors should adopt it.
- 18.5 Notice of a proposed Directors' written resolution must be given in writing to each Director.
- 18.6 Any decision which a person giving notice of a proposed Directors' written resolution takes regarding the process of adopting that resolution must be taken reasonably in good faith.

**19. ADOPTION OF DIRECTORS' WRITTEN RESOLUTIONS**

- 19.1 A proposed Directors' written resolution is adopted when all the Directors who would have been entitled to vote on the resolution at a Directors' meeting have signed one or more copies of it, provided that those Directors would have formed a quorum at such a meeting.
- 19.2 It is immaterial whether any Director signs the resolution before or after the time by which the notice proposed that it should be adopted.
- 19.3 Once a Directors' written resolution has been adopted, it must be treated as if it had been a decision taken at a Directors' meeting in accordance with the articles.

**20. CASTING VOTE**

- 20.1 If the numbers of votes for and against a proposal at a Board meeting are equal, the chairman or other Director chairing the meeting has a casting vote.
- 20.2 Article 20.1 shall not apply in respect of a particular meeting (or part of a meeting) if, in accordance with the Articles, the chairman or other Director is not an eligible Director for the purposes of that meeting (or part of a meeting).

## 21. TRANSACTIONS OR OTHER ARRANGEMENTS WITH THE COMPANY

Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act and provided he has declared the nature and extent of his interest in accordance with the requirements of the Act, a Director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:

- 21.1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
- 21.2 shall be an eligible Director for the purposes of any proposed decision of the Board (or committee of Directors) in respect of such contract or proposed contract in which he is interested;
- 21.3 shall be entitled to vote at a Board meeting (or of a committee of the Directors) or participate in any unanimous decision, in respect of such contract or proposed contract in which he is interested;
- 21.4 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a Director;
- 21.5 may be a Director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
- 21.6 shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

## 22. DIRECTORS' CONFLICTS OF INTEREST

- 22.1 The Directors may, in accordance with the requirements set out in this Article, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "**Interested Director**") breaching his duty under section 175 of the Act to avoid conflicts of interest ("**Conflict**").
- 22.2 Any authorisation under this Article 22 will be effective only if:
  - 22.2.1 to the extent permitted by the Act, the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Board under the provisions of these Articles or in such other manner as the Board may determine;

- 22.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and
  - 22.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted.
- 22.3 Any authorisation of a Conflict under this Article 22 may (whether at the time of giving the authorisation or subsequently):
- 22.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
  - 22.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at Board meetings or otherwise) related to the Conflict;
  - 22.3.3 provide that the Interested Director shall or shall not be an eligible Director in respect of any future decision of the Board vote in relation to any resolution related to the Conflict;
  - 22.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Board think fit;
  - 22.3.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and
  - 22.3.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any Board meeting and be excused from reviewing papers prepared by, or for, the Board to the extent they relate to such matters.
- 22.4 Where the Board authorises a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the Board in relation to the Conflict.
- 22.5 The Board may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation, in accordance with the terms of such authorisation.
- 22.6 In authorising a Conflict the Board may decide (whether at the time of giving the authorisation or subsequently) that if a Director has obtained any information through his involvement in the Conflict otherwise than as a Director of the Company and in respect of which he owes a duty of confidentiality to another person, the Director is under no obligation to:



22.6.1 disclose such information to the Board or to any Director or other officer or employee of the Company; or

22.6.2 use or apply any such information in performing his duties as a Director,

where to do so would amount to a breach of that confidence.

22.7 A Director is not required, by reason of being a Director (or because of the fiduciary relationship established by reason of being a Director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Board or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

## 23. RECORDS OF DECISIONS TO BE KEPT

Where decisions of the Board are taken by electronic means, such decisions shall be recorded by the Board in permanent form, so that they may be read with the naked eye.

## 24. NUMBER OF DIRECTORS

24.1 Unless otherwise determined by ordinary resolution, the number of Directors (other than alternate Directors) shall not be subject to any maximum but shall not be less than two.

## 25. APPOINTMENT & REMOVAL OF DIRECTORS

25.1 Provided that the Investors hold more than 20% of the Shares in issue at that time, an Investor Majority shall be entitled to appoint two persons and to remove and/or replace any such persons as Directors from time to time (each such Director being an "**Investor Director**"). Any appointment or removal of an Investor Director pursuant to this Article shall be in writing and signed by or on behalf of the Investor Majority and served on the Company at its registered office, marked for the attention of the Board. Any such appointment or removal shall take effect when received by the Company or at such later time as shall be specified in such notice.

25.2 Provided that Lotus holds more than 15% of the Shares in issue at that time, Lotus shall be entitled to appoint one person and to remove and/or replace any such person as a Director from time to time (such Director being the "**Lotus Director**"). Any appointment or removal of the Lotus Director pursuant to this Article shall be in writing and signed by or on behalf of Lotus and served on the Company at its registered office, marked for the attention of the Board. Any such appointment or removal shall take effect when received by the Company or at such later time as shall be specified in such notice.

- 25.3 Provided that Kifin holds more than 15% of the Shares in issue at that time, Kifin shall be entitled to appoint one person and to remove and/or replace any such person as a Director and a director of each member of the Group from time to time (such Director being the "**Kifin Director**"). Any appointment or removal of the Kifin Director pursuant to this Article shall be in writing and signed by or on behalf of Kifin and served on the Company at its registered office, marked for the attention of the Board. Any such appointment or removal shall take effect when received by the Company or at such later time as shall be specified in such notice. Each of the Shareholders and the Board shall exercise such voting rights as for the time being that they may have to secure the appointment, removal or replacement of any Kifin Director of any member of the Group in accordance with the rights set out in this Article.
- 25.4 Any Director (other than a Director who is an Investor) who is an employee of the Company and who ceases to be an employee shall be removed from office from the date his employment ceases.
- 25.5 An Investor Director, the Lotus Director and the Kifin Director shall not be appointed or removed otherwise than pursuant to this Article, save as provided by law.
- 25.6 Any director who is not an Investor Director, the Lotus Director or the Kifin Director shall be subject to removal in accordance with section 168 of the Companies Act 2006.
- 25.7 No person shall be or become incapable of being appointed a Director by reason of his having attained the age of seventy or any other age nor shall any special notice be required in connection with the appointment or the approval of the appointment of such person and no Director shall vacate his office at any time by reason of the fact that he has attained the age of seventy or any other age.
- 25.8 In any case where, as a result of death or bankruptcy, the Company has no Shareholders and no Directors, the transmittee(s) of the last shareholder to have died or to have a bankruptcy order made against him (as the case may be) have the right, by notice in writing, to appoint a natural person (including a transmittee who is a natural person), who is willing to act and is permitted to do so, to be a Director.

## 26. **APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS**

- 26.1 Any Director ("**appointor**") may appoint as an alternate any other Director, or any other person approved by resolution of the Board, to:
- 26.1.1 exercise that Director's powers; and
  - 26.1.2 carry out that Director's responsibilities,

in relation to the taking of decisions by the Board, in the absence of the alternate's appointor.

26.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the Board.

26.3 The notice must:

26.3.1 identify the proposed alternate; and

26.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the Director giving the notice.

## **27. RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS**

27.1 An alternate Director may act as alternate Director to more than one Director and has the same rights in relation to any decision of the Board as the alternate's appointor.

27.2 Except as the Articles specify otherwise, alternate Directors:

27.2.1 are deemed for all purposes to be Directors;

27.2.2 are liable for their own acts and omissions;

27.2.3 are subject to the same restrictions as their appointors; and

27.2.4 are not deemed to be agents of or for their appointors

and, in particular (without limitation), each alternate Director shall be entitled to receive notice of all Board meetings and of all meetings of committees of Directors of which his appointor is a member.

27.3 A person who is an alternate Director but not a Director:

27.3.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating);

27.3.2 may participate in a unanimous decision of the Board (but only if his appointor is an eligible Director in relation to that decision, but does not participate); and

27.3.3 shall not be counted as more than one Director for the purposes of Articles 27.3, 27.3.1 and 27.3.2.

27.4 A Director who is also an alternate Director is entitled, in the absence of his appointor, to a separate vote on behalf of his appointor, in addition to his own vote on any decision of the Board (provided that his appointor is an eligible Director in relation to that decision), but shall not count as more than one Director for the purposes of determining whether a quorum is present.

27.5 An alternate Director may be paid expenses and may be indemnified by the Company to the same extent as his appointor but shall not be entitled to receive any remuneration from

the Company for serving as an alternate Director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company.

## **28. TERMINATION OF ALTERNATE DIRECTORSHIP**

An alternate Director's appointment as an alternate terminates:

- 28.1.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- 28.1.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a Director;
- 28.1.3 on the death of the alternate's appointor; or
- 28.1.4 when the alternate's appointor's appointment as a Director terminates.

## **29. BORROWING POWERS**

Subject to Article 4.7, 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 as otherwise provided in these Articles 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.

## **30. SECRETARY**

The Board may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the Board so decide, appoint a replacement, in each case by a decision of the Board.

## **DECISION MAKING BY SHAREHOLDERS**

### **31. GENERAL MEETINGS**

Notices convening general meetings of the Company shall comply with the provisions of Chapter 3 of Part 13 of the Act.

### **32. POLL VOTES**

- 32.1 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.

- 32.2 Article 44(3) of the Model Articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that Article.

### **33. PROXIES**

- 33.1 Article 45(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the Company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate".
- 33.2 Article 45(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid, unless the Board, in their discretion, accept the notice at any time before the meeting" as a new paragraph at the end of that Article.
- 33.3 Proxies must be deposited at the registered office of the Company or, to such other postal address, electronic mail address or facsimile number as may be specifically permitted for the purpose of depositing proxy forms in the notice convening such general meeting. For the avoidance of doubt, where no such alternative is specifically provided for in the notice convening the relevant general meeting all proxy forms relating to that general meeting must be deposited at the registered office of the Company.
- 33.4 Where there is a vote on a resolution on a show of hands at a general meeting and a member entitled to vote on the resolution has appointed more than one proxy those proxies (when taken together) shall not be entitled to have more votes than the member would have if he or she were present in person.

### **34. SINGLE SHAREHOLDER COMPANY**

- 34.1 If, and for so long as, the Company has only one Shareholder, the following provisions shall apply:
- 34.1.1 The sole Shareholder of the Company (or the proxy or authorised representative of the sole Shareholder representing that Shareholder at the relevant general meeting) shall be the chairman of any general meeting of the Company and Article 39 of the Model Articles shall be modified accordingly.
- 34.1.2 All other provisions of these Articles shall (in the absence of any express provision to the contrary) apply with such modification as may be necessary in relation to a Company which has only one Shareholder.

**35. SHARES**

- 35.1 The Company may issue shares for less than the aggregate of their nominal value.

**36. LIEN, CALLS ON SHARES AND FORFEITURE**

- 36.1 The Company has a lien (the "**Company's Lien**") over every share (whether fully paid up or not) which is registered in the name of a person indebted or under any liability to the Company, whether he is the sole registered holder of the share or one of several joint holders, for all monies payable by him (either alone or jointly with any other person) to the Company, whether payable immediately or at some time in the future.
- 36.2 The provisions of Articles 52(2) and (3) and 53 to 62 (inclusive) for public companies set out in Schedule 3 to The Companies (Model Articles) Regulations 2008 (SI 2008/3229) shall apply to the Company, save that each reference in those Articles to a "member" or "members" shall be deemed to be references to a "shareholder" or "shareholders" (as the case may be).

**ADMINISTRATIVE ARRANGEMENTS**

**37. MEANS OF COMMUNICATION TO BE USED**

- 37.1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- 37.1.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five business days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five business days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
  - 37.1.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
  - 37.1.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied;
  - 37.1.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website; or, if earlier,
  - 37.1.5 as soon as the member acknowledges actual receipt.

For the purposes of this Article, no account shall be taken of any part of a day that is not a working day.

37.2 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Act.

37.3 A member present in person at any meeting of the Company shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.

### **38. INDEMNITY**

38.1 Subject to Article 38.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

38.1.1 each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:

- (a) in the actual or purported execution and/or discharge of his duties, or in relation to them; and
- (b) in relation to the Company's (or any associated Company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated Company's) affairs; and

38.1.2 the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in Article 38.1, 38.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

38.2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

38.3 In this Article:

38.3.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

- 38.3.2 a "relevant officer" means any Director or other officer or former Director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act).

**39. INSURANCE**

- 39.1 The Board may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

**39.2 In this Article:**

- 39.2.1 a "relevant officer" means any Director or other officer or former Director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act);
- 39.2.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company; and
- 39.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.