

Registered number: 06641134

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTIONS

OF

QUANTA FLUID SOLUTIONS LTD

(the "Company")

Circulation date: 17 September 2009

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that resolution 1 be passed as a special resolution, and resolutions 2 and 3 be passed as ordinary resolutions (together, the "**Resolutions**").

**SPECIAL RESOLUTION**

1. That the articles of association attached to this resolution at Appendix 1 (the "**New Articles**") be and are by this resolution adopted as the articles of association of the Company in substitution for and to the exclusion of all the existing articles of association and the rights and restrictions attaching to the existing 'A' Ordinary shares of £1.00 each and 'B' Ordinary Shares of £1.00 each in the capital of the Company be and are hereby amended accordingly.

**ORDINARY RESOLUTION**

2. That, subject to the passing of resolution 1, a new class of share, 'A' Preferred Shares, be and is by this resolution created as a new class of shares of the Company having the rights and being subject to the restrictions attaching to such shares as set out in the New Articles; and
3. That, subject to the passing of resolutions 1 and 2, the authorised share capital of the Company be and is by this resolution increased from: £100,000 to £329,412 by the creation of 180,000 new 'A' Preferred Shares of £1.00 each in the capital of the Company and 49,412 new 'B' Ordinary Shares of £1.00 each in the capital of the Company each having the rights and being subject to the restrictions set out in the New Articles.

Please read the notes at the end of this document before signifying your agreement to the Resolution.

The undersigned, being all the persons entitled, or who are duly authorised on behalf of all the persons entitled, to vote on the above Resolutions on the circulation date (being the eligible members of the Company for the purposes of section 289 of the Companies Act 2006), irrevocably agree to the Resolutions.

THURSDAY



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01/10/2009

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COMPANIES HOUSE

SIGNATURE OF MEMBERS:

W. H. Jenkins (Attorney)  
Mr. W. H. Jenkins

SIGNED by  
For and on behalf of  
IMI VISION LIMITED

Date: 17 September 2009

.....  
Martin Johnson

Date: .....

.....  
Clive Buckberry

Date: .....

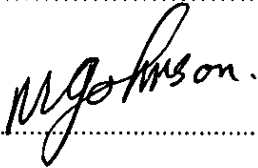
.....  
David Yeomans

Date: .....

SIGNATURE OF MEMBERS:

.....  
SIGNED by  
For and on behalf of  
IMI VISION LIMITED

Date: .....




.....  
Martin Johnson

Date: 17/9/2009



Clive Buckberry

Date: 17/9/2009



.....  
David Yeomans

Date: 17/9/2009

## NOTES

1. If you agree to the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company using one of the following methods:
  - **By Hand:** delivering the signed copy to David Yeomans (and marked for his attention) at Quanta Fluid Solutions Ltd, Tything Road, Alcester, Warwickshire B49 6EU;
  - **Post:** returning the signed copy by post to David Yeomans (and marked for his attention) at Quanta Fluid Solutions Ltd, Tything Road, Alcester, Warwickshire B49 6EU;
  - **Fax:** faxing the signed copy to David Yeomans on +44 (0)1789 762 193 marked "For the attention of David Yeomans"; or
  - **E-mail:** by attaching a scanned copy of the signed document to an e-mail and sending it to [info@quantafs.com](mailto:info@quantafs.com) marked 'For the attention of David Yeomans'.

If you do not agree to the Resolution, you do not need to do anything; you will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to the Resolution, you may not revoke your agreement.
3. Unless, by 5.00 p.m. on the date falling 28 days after the Circulation Date sufficient agreement has been received for the Resolution to pass, they will lapse. If you agree to the Resolution, please ensure that your agreement reaches us before or during this date.
4. In the case of joint holders of shares, only the vote of the senior holder who votes will be counted by the Company. Seniority is determined by the order in which the names of the joint holders appear in the register of members.
5. If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.

.....  
Director  
Quanta Fluid Solutions Ltd

Number 6641134

THE COMPANIES ACTS 1985 to 2006

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PRIVATE COMPANY LIMITED BY SHARES

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N E W

ARTICLES OF ASSOCIATION

(Adopted by Special Resolution  
passed on [            ] 2009)

- of -

QUANTA FLUID SOLUTIONS LIMITED

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THE COMPANIES ACTS 1985 to 2006

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PRIVATE COMPANY LIMITED BY SHARES

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NEW  
ARTICLES OF ASSOCIATION  
(Adopted by Special Resolution  
passed on [ ] 2009)

- of -

QUANTA FLUID SOLUTIONS LIMITED

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**1. PRELIMINARY**

- 1.1 The definitions and other interpretation provisions in the Schedule to these Articles shall apply.
- 1.2 Conditionally upon and with effect from section 2(1)(c) of the 1985 Act being repealed and sections 31(1) and 28 of the 2006 Act coming into force, the objects of the Company shall be unrestricted, notwithstanding any provisions contained in the Memorandum of Association of the Company prior to the date on which the above conditions are fulfilled.
- 1.3 The liability of the members of the Company is limited to the amount, if any, unpaid on the shares held by them.

**2. SHARES**

- 2.1 Immediately following the time of the passing of the resolution adopting these Articles:
- (A) the issued share capital of the Company will comprise 87,000 'A' Ordinary Shares and 10,000 'B' Ordinary Shares; and
  - (B) the Directors will be authorised for the purposes of Article 11 of these Articles (but subject to its provisions) to allot and issue up to a further 180,000 'A' Preferred Shares and 52,412 'B' Ordinary Shares (or option to subscribe for such number of 'B' Ordinary Shares).
- 2.2 Conditionally upon and with effect from section 2(5)(a) of the 1985 Act being repealed and section 28 of the 2006 Act coming into force, there shall be no restriction on the number of shares which may be issued by the Company (notwithstanding any provisions contained in the Memorandum of Association of the Company prior to the date on which the above conditions are fulfilled) except as may be expressly provided for in these Articles.

2.3 Except as otherwise provided in these Articles, the Equity Shares shall rank pari passu in all respects.

2.4 Except as required by law, no person shall be recognised by the Company as holding any share on any trust and (except as otherwise provided by these Articles or by law) the Company shall not be bound by or recognise any interest in any share except an absolute right of the holder to share in its entirety, even if the Company has notice of that interest.

### 3. INCOME

Subject to the class rights attaching to the Investor Shares, any profits resolved to be distributed in any Financial Year or part of it shall be distributed amongst the holders of the Equity Shares, pari passu as if the same are one and the same class of share, pro rata to the number of Equity Shares respectively held by them.

### 4. CAPITAL

4.1 On a return of assets on liquidation or otherwise, the assets of the Company remaining after payment of its debts and liabilities and available for distribution to holders of Equity Shares ("**Remaining Assets**") shall be applied in the following manner and order of priority:

(A) first, in paying to the holders of the 'A' Preferred Shares the Applicable Amount per share provided in Article 4.2 provided that if the assets are insufficient to enable such payment to be made in full in relation to each such 'A' Preferred Share then the assets shall be distributed between the holders of the 'A' Preferred Shares pro rata to the number of such shares respectively held by them, and

(B) lastly, the balance (if any) shall be distributed between the holders of the Equity Shares pro rata to the number of Equity Shares respectively held by them.

4.2 For the purposes of Article 4.1, the Applicable Amount shall be an amount per share equal to its Issue Price per share.

4.3 The total consideration in respect of the Equity Shares received on a Sale shall be allocated and where relevant held on trust and distributed between the sellers of those shares to the extent necessary to ensure that the consideration is apportioned in the priority provided in Article 4.1.

4.4 If any 'A' Preferred Shares and/or 'A' Ordinary Shares are converted into 'B' Ordinary Shares pursuant to the provisions of Articles 5.1(B) or 6.2 respectively, then the allocation of any consideration arising on the Sale under the provisions of Article 4.3 shall be made on the basis as if the 'A' Preferred Shares and/or 'A' Ordinary Shares concerned had not so converted and had been sold under the Sale as shares of those respective classes.

4.5 Where any Sale is completed on terms that any part of the consideration for the shares included in the Sale (the "**deferred consideration**") is to be paid after the date for completion of such Sale (whether contingently or otherwise) then, unless otherwise agreed in writing between an Investor Majority and a majority of the holders of the Ordinary Shares, no account of the deferred consideration shall be taken for the purposes of establishing the consideration arising on such Sale for the purpose of Article 4.3. Should any deferred consideration subsequently be paid or satisfied then upon each payment or satisfaction thereof the calculations set out in this Article 4 for the apportionment of the consideration realised on a Sale shall be repeated as of the date of payment or satisfaction of the deferred consideration by reference to the actual consideration arising from such Sale including all deferred consideration then so paid or satisfied. All necessary adjustments shall thereupon be made

and the deferred consideration shall be apportioned accordingly between the sellers of the shares of the Company included in the original Sale. The provisions of this Article 4.5 shall apply mutatis mutandis on a winding up of the Company where there is more than one distribution of Remaining Assets.

## **5. CONVERSION OF 'A' PREFERRED SHARES**

5.1 The 'A' Preferred Shares shall be converted into 'B' Ordinary Shares, on the basis provided in this Article:

(A) to the extent that a holder of 'A' Preferred Shares so requires by written notice to the Company given in accordance with this Article 5 (a "**Conversion Notice**"); or

(B) automatically on the occurrence of a Flotation or Sale.

5.2 On conversion pursuant to this Article 5 (and subject to adjustment as provided in these Articles) each 'A' Preferred Share shall convert into a single 'B' Ordinary Share.

5.3 A Conversion Notice shall be given to the Company at its registered office and shall be accompanied by the share certificate(s) for the 'A' Preferred Shares to be converted (or an appropriate indemnity if such certificate(s) are not available). Subject as provided below, a Conversion Notice shall take effect immediately upon its delivery and may not be withdrawn without the written consent of the Company.

5.4 A Conversion Notice may be given on the basis that the exercise of conversion rights under it shall be conditional upon the occurrence of any specified event(s) and by the given time clearly described in the notice and, if such a condition is included, the conversion rights shall be deemed exercised upon but with effect immediately prior to the fulfilment of the condition concerned. A conditional Conversion Notice may be withdrawn by written notice given to the Company before it becomes unconditional.

5.5 A Conversion Notice may not be given later than twenty-eight days after the passing of a resolution or making of an order for the winding up of the Company but if given after such resolution or order is passed or made and within such time limit shall take effect immediately before such resolution or order was passed or made.

5.6 Upon conversion of the 'A' Preferred Shares under this Article 5 (or as soon as lawfully permissible thereafter) the Company shall subject to delivery to it of the certificate(s) for the 'A' Preferred Shares converted or an appropriate indemnity if they are not available, issue to the holder a certificate for the 'B' Ordinary Shares resulting from conversion and, if appropriate, a balance certificate for any 'A' Preferred Shares retained by that holder.

5.7 A holder of 'A' Preferred Shares converted into 'B' Ordinary Shares under Article 5.1(B) shall deliver to the Company at its registered office the certificate(s) for his 'A' Preferred Shares (or an appropriate indemnity if they are not available) as soon as practicable and in any event within seven days of their conversion.

5.8 The 'B' Ordinary Shares arising from conversion of 'A' Preferred Shares shall rank *pari passu* in all respects with the other 'B' Ordinary Shares then in issue.

## **6. ADJUSTMENTS ON FLOTATION OR SALE**

6.1 Immediately before a Flotation (but conditionally upon such Flotation being obtained), all Equity Shares (including those to be allotted and issued pursuant to any Subscription Rights



on such event) other than 'A' Preferred Shares (the "**Flotation Adjustment Shares**") shall be subject to the following adjustment provisions:

- (A) such number of Flotation Adjustment Shares as is necessary shall convert into Deferred Shares in order that the Flotation Exit Value attributable to the shares into which the 'A' Preferred Shares shall convert on a Flotation is equal to the portion of the total consideration which would have been attributed to the 'A' Preferred Shares on a Sale pursuant to Article 4.3 had the Flotation Exit Value been consideration received in cash on a Sale;
- (B) the part of the Flotation Exit Value attributable to the Flotation Adjustment Shares to be converted into Deferred Shares pursuant to this Article shall belong to and be attributed exclusively to and on a pro rata basis between the Ordinary Shares in issue immediately before the Flotation (and before any conversion which is to take place pursuant to Article 5.1(B) and this Article 6) and those issued on Flotation under Subscription Rights granted prior to Flotation and shall accordingly not belong to the holders of 'A' Preferred Shares or any other shares in the equity share capital of the Company;
- (C) any shares to be converted into Deferred Shares pursuant to this Article shall be selected pro rata as nearly as may be (without involving any conversion of fractions of such a share) between the holders of each class or holding of share concerned in proportion to the number of shares of such class or in such holding held by them respectively on the Flotation (including for these purposes as if in issue all shares to be issued at the time of or contemporaneously with the Flotation under Subscription Rights, and so that reference to holders of such shares shall include the persons to acquire them on their issue);
- (D) at least fourteen days before a Flotation (or, if later, as soon as practicable after it becomes aware of the real possibility of a Flotation) the Board shall estimate the likely date of such Flotation; procure that the calculations set out in this Article for determination of the Flotation Exit Value (and the apportionment of the Flotation Exit Value between the 'A' Preferred Shares and the Flotation Adjustment Shares) are duly carried out and notify the holders of the 'A' Preferred Shares and the Flotation Adjustment Shares (including for these purposes the holders of applicable Subscription Rights) of the results of such calculations. The Board shall use all reasonable endeavours to reach agreement within seven days after giving such notifications as to the accuracy of such calculations and in such period to record that agreement in a certificate signed by or on behalf of the holders of three quarters or more in nominal value of each such class of shares (treating the holders of Flotation Adjustment Shares and Subscription Rights as a single class for such purposes) and, if they fail to do so, to procure the determination thereof by a Determiner (in accordance with Article 46) who shall issue a certificate to such effect accordingly and shall for such purposes be deemed to be acting as experts and not as arbitrators and the Determiner's certificate shall be final and binding on all shareholders and holders of Subscription Rights, each of whom shall be sent a copy as soon as practicable following its issue and any such certificate of the Determiner shall, notwithstanding the provisions of Article 46, be obtained at the expense of the Company PROVIDED ALWAYS THAT if the Flotation shall not occur by the date as at which or on the terms on which the said calculations were made, the procedures set out in this Article 6.1(D) shall be repeated (if the Flotation is still likely to occur) by reference to the next date on which the Board estimates the Flotation is likely to occur and/or by reference to the actual terms concerned, as appropriate.

- 6.2 On a Flotation or Sale (and subject always to the provisions of Article 6.1), the 'A' Ordinary Shares shall automatically be converted into 'B' Ordinary Shares and the 'B' Ordinary Shares arising from the conversion of 'A' Ordinary Shares shall rank pari passu in all respects with the other 'B' Ordinary Shares then in issue. On such conversion (and subject to adjustment as provided in these Articles), each 'A' Ordinary Share shall convert into a single 'B' Ordinary Share. The 'A' Ordinary Shares shall not be convertible in any other circumstances.
- 6.3 A holder of 'A' Ordinary Shares converted into 'B' Ordinary Shares under Article 6.2 shall deliver to the Company at its registered office the certificate(s) for his 'A' Ordinary Shares (or an appropriate indemnity if they are not available) as soon as practicable and in any event within seven days of their conversion.
- 6.4 On a Flotation the Company shall use all reasonable endeavours to procure the admission to the Official List or the grant of permission for dealings to take place in the shares of the Company deriving from conversion of 'A' Preferred Shares and 'A' Ordinary Shares pursuant to Articles 5.1(B) and 6.2 respectively on the London Stock Exchange (or on any other relevant recognised investment exchange) if as part of any Flotation arrangements then contemplated the shares of that class in issue or to be allotted are or will be so admitted or permission for dealing to take place in the same has been or will be granted aforesaid.
- 6.5 In the event of a Flotation or Sale, and immediately after the same become effective (and, for the avoidance of doubt, after all prior conversions required in accordance with Articles 5.1(B) and 6.2 have been effected), the 'B' Ordinary Shares (including those arising on such conversions) shall be automatically converted into and redesignated as ordinary shares of the same class and nominal amount having the same rights and restrictions as the 'B' Ordinary Shares but without designation of any particular class of share and all share certificates to be issued following the submission of the holders' original certificates under Articles shall take such conversion and redesignation into account accordingly.

## **7. CONVERSION MECHANICS AND ADJUSTMENT PROVISIONS**

- 7.1 Conversion of 'A' Preferred Shares under Article 5, conversion of the 'A' Ordinary Shares under Article 6.2 and conversion of the 'B' Ordinary Shares into undesignated ordinary shares under Article 6.5 shall be effected in such manner as the Directors shall, subject to the provisions of the Companies Acts, from time to time determine and they shall be deemed by these Articles duly authorised (as if all necessary resolutions and consents required under these Articles are hereby passed and given) to effect such conversions.
- 7.2 Without limiting Article 7.1:
- (A) where the nominal value of the 'A' Preferred Shares is the same as the nominal value of the 'B' Ordinary Shares to arise on Conversion, the Conversion may be effected by re-designating each 'A' Preferred Share or 'A' Ordinary Share so converted as a 'B' Ordinary Share and where 'B' Ordinary Shares are to be converted into undesignated ordinary shares pursuant to Article 6.5, they shall be converted by being redesignated accordingly; and
  - (B) to the extent permitted by the Companies Acts, conversion may also be effected by the redemption of 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable at their Issue Price (or, if greater, at the aggregate nominal value of the 'B' Ordinary Shares which are to arise on the conversion of the 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable) and the application of the redemption monies on behalf of the holders of the 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable so redeemed in subscription for that number of 'B' Ordinary Shares of the Company to which such holder shall be entitled on such conversion at such premium

(if any) as shall represent the amount by which the redemption monies exceed the total nominal amount of the 'B' Ordinary Shares to be subscribed; and

- (C) where the aggregate nominal value of the 'B' Ordinary Shares to arise on conversion is greater than the aggregate nominal value of the 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable to be converted, conversion may also be effected by:
- (1) subdivision and where required re-designation of all of the existing 'B' Ordinary Shares (issued and unissued) into:
    - (a) 'B' Ordinary Shares of a lower nominal value (carrying the same rights and restrictions as the Ordinary Shares from which they derive); and
    - (b) Deferred Shares for the balance of their nominal value;
  - (2) subdivision of the 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable to be converted into:
    - (a) the number of new 'B' Ordinary Shares, of the same lower nominal value in paragraph (C)(1)(a) above, required to arise on the conversion; and
    - (b) Deferred Shares for the balance of their nominal value,

and the subdivision and re-designation for these purposes shall be made by written notice from the Directors using their powers under Article 7.1 (without need for any further resolution or sanction from the members or class consents) and they shall also be similarly empowered to deal with any fractions of shares arising on any such subdivisions and re-designations as they see fit, including by transfer(s) and consolidation and/or re-designations into new 'B' Ordinary Shares of requisite lower nominal value of any Deferred Shares to effect a fair result.

**7.3 Where a redemption is made under Article 7.2:**

- (A) it may be made out of the profits of the Company which would otherwise be available for dividend or distribution or out of the proceeds of a fresh issue of shares or in any other manner for the time being permitted by law;
- (B) if made out of profits, the redemption monies in respect of the 'A' Preferred Shares and/or 'A' Ordinary Shares to be converted shall be used to subscribe on behalf of the holder of the appropriate number of fully paid 'B' Ordinary Shares;
- (C) if made out of the proceeds of a fresh issue of shares the Directors may arrange for the issue of the appropriate number of fully paid 'B' Ordinary shares to some person selected by the Directors on terms that that person as trustee for each holder of 'A' Preferred Shares whose 'A' Preferred Shares or, as applicable, 'A' Ordinary Shares whose 'A' Ordinary Shares are to be redeemed will subscribe for those 'B' Ordinary Shares and renounce the allotment of such 'B' Ordinary Shares in favour of the holder against payment out of the redemption monies in respect of such 'A' Preferred Shares and/or 'A' Ordinary Shares, as applicable, of an amount equal to the subscription price of such 'B' Ordinary Shares.

**7.4 Any stamp duty or stamp duty reserve tax ("SDRT") (if any) arising on any transaction referred to in Article 7.3(C) will be met out of the redemption monies by reduction of the**

premium (if any) payable on the 'B' Ordinary Shares or otherwise in such manner as the Directors shall think fit but so that the number of 'B' Ordinary Shares being allotted on such conversion shall not be diminished as a result of it and the trustee shall pay any such stamp duty or SDRT liability.

- 7.5 No fractions of a 'B' Ordinary Share (or balance of any 'A' Preferred Share or 'A' Ordinary Share, as applicable, not converted) shall arise on conversion of any 'A' Preferred Shares or 'A' Ordinary Share, as applicable, and accordingly the number of 'B' Ordinary Shares to arise on conversion shall be rounded down to the nearest whole number of 'B' Ordinary Shares.

## 8. **CONVERSION PRICE ADJUSTMENT, DOWNROUND AND SIMILAR PROTECTIONS**

### *Adjustment on issue or reorganisation*

- 8.1 If, while any 'A' Preferred Shares or 'A' Ordinary Shares remain capable of being converted into 'B' Ordinary Shares under Article 5 or Article 6.2 respectively:

- (A) there is a consolidation and/or sub-division of any Equity Shares, the conversion rate under Article 5.2 or 6.2 (as last adjusted under these Articles, if relevant) shall be appropriately adjusted by the Board (with Investor Consent) to take account of that sub-division or consolidation; and/or
- (B) there is an allotment of fully paid equity share capital by way of capitalisation of profits or reserves (including without limitation share premium account or capital redemption reserve) where no equivalent allotment is made to the holders of the 'A' Preferred Shares and 'A' Ordinary Shares on an as if fully converted basis then (in relation to the 'A' Preferred Shares) (except to the extent that a related compensatory share issue is made to the holders of 'A' Preferred Shares as provided in Article 8.2), the number of the 'B' Ordinary Shares to arise on conversion of 'A' Preferred Shares and 'A' Ordinary Shares shall be appropriately increased to reflect the resultant percentage increase in the 'B' Ordinary Shares in issue.

### *Downround Protection – lower issue price*

- 8.2 In the event that New Shares or other securities convertible into, or carrying the right to subscribe for such shares, ("**New Securities**") are issued by the Company (other than pursuant to a Permitted Share Issue) at a price per New Security which equates to less than the original Issue Price of the 'A' Preferred Shares (a "**Qualifying Issue**") (which in the event that the New Security is not issued for cash shall be a price certified by the Auditors acting as experts and not as arbitrators as being in their opinion the current cash value of the new cash consideration for the allotment of the New Securities) then the Company shall, unless and to the extent that any of the holders of 'A' Preferred Shares (in their capacity as such) have specifically waived their rights under this Article 8.2 in writing, offer (such offer, unless waived, to remain open for acceptance for not less than 15 Business Days) to each holder of 'A' Preferred Shares (the "**Exercising Investor**") the right to receive such number of new 'A' Preferred Shares as is determined by applying the following formula (and rounding the product, N, down to the nearest whole share), subject to adjustment as certified in accordance with Article 8.4 (the "**Anti-Dilution Shares**"):

$$\left( \left( \frac{OIP}{WA} \right) x Z \right) - Z = N$$

Where:

N = Number of Anti-Dilution Shares to be issued to the Exercising Investor

$$W_A = \frac{(OIP \times ESC) + (QISP \times NS)}{(ESC + NS)}$$

OIP = subject to Article 8.5, original Issue Price of the 'A' Preferred Shares;

ESC = the number of Equity Shares in issue plus the aggregate number of shares in respect of which Subscription Rights have been granted in each case immediately prior to a Qualifying Issue;

QISP = the per share price of the New Securities issued pursuant to the Qualifying Issue;

NS = the number of New Securities issued pursuant to the Qualifying Issue; and

Z = the number of 'A' Preferred Shares held by the Exercising Investor;

8.3 The Anti-Dilution Shares shall:

- (A) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or the Exercising Investors shall agree otherwise, in which event the Exercising Investors shall be entitled to subscribe for the Anti-Dilution Shares in cash at par (being such par value approved in advance by the Investor Directors). In the event of any dispute between the Company and any Exercising Investor as to the effect of Article 8.2, the matter shall be referred (at the cost of the Company) to a Determiner for certification of the number of Anti-Dilution Shares to be issued in accordance with Article 46. The Determiner's certification of such matter shall in the absence of manifest error be final and binding on the Company and the Exercising Investor; and
- (B) subject to the payment of any cash payable pursuant to Article 8.3(A) (if applicable), be issued, credited fully paid up in cash and shall rank *pari passu* in all respects with the existing 'A' Preferred Shares within 5 business days of the expiry of the offer being made by the Company to the Exercising Investor and pursuant to Article 8.3(A).

- 8.4 In the event of any issue or reorganisation of share capital as mentioned in Article 8.1(A) or 8.1(B), the amount of the original Issue Price of the 'A' Preferred Shares for the purposes of the formulae contained in Article 8.2 shall also be subject to adjustment on such basis as may be agreed by the Company with the holders of the 'A' Preferred Shares within 10 Business Days after any such issue or reorganisation. Any dispute as to such adjustment shall be determined by a Determiner whose determination shall, in the absence of manifest error, be final and binding on the Company and each of its members. The costs of the Determiner shall be borne by the Company notwithstanding the provisions of Article 46.

***Downround protections – more favourable rights***

- 8.5 If after the Adoption Date the Company issues or enters into a legally binding commitment to issue any New Securities (otherwise than by way of Permitted Share Issue) on terms more favourable (including but not limited to enhanced rights or additional protective provisions for a shareholder but excluding at a lower subscription price, as regards which Articles 8.1(B) and/or 8.2 shall apply) than those attaching to the 'A' Preferred Shares then, each holder of 'A' Preferred Shares and/or of a Subscription Right to acquire 'A' Preferred Shares shall have the right (exercisable in notice in writing to the Company within thirty days of the issue of any

such New Securities and to take effect immediately before the issue of the New Securities), to require that either:

- (A) any or all of the 'A' Preferred Shares held by him and/or over which he holds Subscription Rights shall be converted into and re-designated as New Shares (comprising or the subject of the New Securities) at the rate of one such New Share for every 'A' Preferred Shares so converted and re-designated (and the date on which such conversion takes place shall be a "**Conversion Date**"); or
  - (B) the articles of association of the Company shall be deemed to have been amended so that the rights attaching to the 'A' Preferred Shares held by him shall include any rights attaching to the New Shares (comprising or the subject of the New Securities) which are preferential or in addition to the rights attaching to the 'A' Preferred Shares.
- 8.6 Given the rights of the holders of 'A' Preferred Shares under Article 8.5, no New Shares or New Securities in respect of New Shares shall be issued with a nominal value per share different from that of the 'A' Preferred Shares, without the written consent of an Investor Majority.
- 8.7 The New Shares arising on any such conversion and re-designation shall rank *pari passu* with the New Shares then in issue or to be issued and shall entitle the holders of the New Shares arising on conversion to all dividends and other distributions declared, made or paid on the New Shares by reference to any record date occurring after the Conversion Date.
- 8.8 On a Conversion Date each such holder shall deliver to the Company at the Registered Office the certificates for his 'A' Preferred Shares so converting (or an indemnity in such form as the Board may require if it is not available) and upon such delivery there shall be issued to him a certificate for the number of New Shares resulting from the conversion and re-designation.
- 8.9 The provisions of this Article shall be reapplied (where applicable) on each issue of New Securities at a lower Issue Price or on terms more favourable than those attaching at that time to the 'A' Preferred Shares.
- 8.10 If there is a disagreement between the holders of any Investor Shares on the one hand and the Company or any other member on the other as to any adjustment required under this Article or the effective Issue Price or Conversion Price of any New Shares for the purposes of this Article the disagreement shall, if not resolved within fourteen days of it arising, be referred for Determination by a Determiner and Article 46 shall apply.
- 8.11 Each member shall promptly after request pass such resolutions and provide such consents as shall be reasonably required by an Investor Majority and/or the Company to give effect to this Article 8.

***Pay to play provisions***

- 8.12 If the Company makes a Qualifying Issue and:
- (A) a holder of 'A' Preferred Shares is entitled to participate in such issue by virtue of its pre-emption rights (whether arising under these Articles or otherwise), but excluding the right of a holder of 'A' Preferred Shares to participate pursuant to Article 8.2;
  - (B) the Company offers the holders of the 'A' Preferred Shares the opportunity to participate in the Qualifying Issue; and

- (C) the holder of the 'A' Preferred Shares in question does not subscribe for all of its entitlement of the Qualifying Issue (ignoring any rights which arise from the failure of another person to subscribe),

then, except and to the extent that the reason for not taking up such entitlement is to enable such shares to be issued to an entirely new third party investor (which issue is completed and the subscription monies received), all 'A' Preferred Shares held by such holder in respect of which it did not take up such entitlement (ignoring fractions of shares but rounding up for such purposes to the nearest whole share) will forthwith convert into 'A1' Preferred Shares having in all respects rights identical to the 'A' Preferred Shares and references in these Articles to 'A' Preferred Shares shall be deemed to include 'A1' Preferred Shares save that the provisions of Articles 8.2 to 8.5 shall not apply to the 'A1' Preferred Shares.

## 9. VOTING RIGHTS

- 9.1 Except as expressly provided in these Articles (including, without limitation, Article 16.9(B)), each holder of Equity Shares present in person or by proxy or corporate or other voting representative permitted by these Articles shall be entitled on a show of hands to one vote and on a poll:

- (A) in the case of each holder of Ordinary Shares to one vote for every Ordinary Share of which he is the holder; and
- (B) in the case of each holder of 'A' Preferred Shares to one vote for every Ordinary Share of which he would be the holder if the 'A' Preferred Shares were then converted in full into Ordinary Shares under Article 5,

provided that:

- (1) prior to the service on the Company of a Voting Release Notice and having regard to Article 9.5 and Article 9.6, to the extent that the holders of 'A' Ordinary Shares would otherwise be entitled on a poll to exercise voting rights in respect of twenty per cent. or more of all votes capable of being cast on a poll available to the holders of Equity Shares, the number of votes available to all the holders of 'A' Ordinary Shares shall be limited to such number of votes as is equal to twenty per cent. of all votes capable of being cast on a poll (which shall be exercisable by the holders of 'A' Ordinary Shares pro rata to the number of 'A' Ordinary Shares respectively held by them);
- (2) if following the service on the Company of a Voting Release Notice and having regard to Article 9.5 and Article 9.6, the holders of 'A' Ordinary Shares would otherwise be entitled on a poll to exercise voting rights in respect of thirty three per cent. or more of all votes capable of being cast on a poll available to the holders of Equity Shares, the number of votes available to all the holders of 'A' Ordinary Shares shall be limited to such number of votes as is equal to thirty three per cent. of all votes capable of being cast on a poll (which shall be exercisable by the holders of 'A' Ordinary Shares pro rata to the number of 'A' Ordinary Shares respectively held by them),

and in any such case the balance of the votes to which the holders of 'A' Ordinary Shares would have been entitled but for this proviso shall be attributed to and exercisable by the holders of other Equity Shares pro rata to the number of Equity Shares respectively held by them. For these purposes, a "Voting Release Notice" shall be a notice in writing, served by the holder(s) of a majority of the 'A' Ordinary

Shares on the Company notifying the Company of the lifting of the voting restrictions imposed by this Article 9.1. Such a notice shall only be capable of being served on the Company if Second Completion (as defined in the Subscription Agreement) has not taken place within twenty four months after the date on which Completion (as defined in the Subscription Agreement) takes place. If a valid Voting Release Notice has been served on the Company, the Company shall within five business days of receipt of the same notify each of the holders of Equity Shares of such receipt and of the revised voting rights which then apply as a result.

- 9.2 Subject to Article 9.3, during a Default Period and if an Enhancement Notice to that effect has been given by all the holders of 'A' Preferred Shares and is still in force, only the holders of the 'A' Preferred Shares and 'A' Ordinary Shares (and the holders of such other shares in the Company as may be specified in the Enhancement Notice by all the holders of 'A' Preferred Shares) shall be entitled to vote. The holders of 'A' Preferred Shares shall be entitled in such notice to modify the number of votes per 'A' Preferred Share to which the holder is entitled on a poll but unless any such modification is so specified, the provisions of Article 9.1(B) shall prevail.
- 9.3 During a Default Period and in the event that a Default Remedy Scenario applies and an Enhancement Notice to that effect has been given by all the holders of 'A' Preferred Shares and is still in force, only the holders of the 'A' Preferred Shares (and such other shares in the Company as may be specified in the Enhancement Notice by all the holders of 'A' Preferred Shares) shall be entitled to vote on any resolutions required to effect an Article 12.9 Allotment. The holders of the 'A' Preferred Shares shall be entitled in such notice to modify the number of votes per 'A' Preferred Share to which the holder is entitled on a poll but unless any such modification is so specified, the provisions of Article 9.1(B) shall prevail.
- 9.4 For so long as any Privileged Relation and/or Family Trust of a Relevant Executive or former Relevant Executive shall hold shares in the Company and that Relevant Executive or former Relevant Executive shall be physically able and has legal capacity to do so and is not suffering from mental disorder, all votes attaching to the shares so held shall only be voted by or under direction of that Relevant Executive or former Relevant Executive, except to the extent otherwise agreed in writing from time to time between that Relevant Executive and an Investor Majority and notified to the Company.
- 9.5 Unless otherwise agreed in writing from time to time between that member and an Investor Majority and notified to the Company, no member shall be entitled to exercise any voting rights attaching to his shares during any period in which a Mandatory Transfer Notice may be required to be given in respect of them or whilst a Mandatory Transfer Notice has been given or deemed given in respect of them and has not expired.
- 9.6 Unless otherwise agreed in writing from time to time between that Leaver or the Relevant Member concerned and an Investor Majority and notified to the Company, neither a Leaver nor any Relevant Member of his may exercise any voting rights attaching to his or their Relevant Shares.
- 9.7 Unless otherwise agreed under the terms of the issue of the shares concerned, no member shall be entitled in respect of any share held by him to vote (either personally or by corporate representative or proxy) at any general meeting of the Company or at any separate general meeting of the holders of any class of shares in the Company or to exercise any other right conferred by membership in relation to general meetings unless all calls or other sums presently payable by him in respect of that share have been paid.
- 9.8 Where the consent of any holder(s) of 'A' Ordinary Shares is required under Article 24.2(B) and/or Article 26.3(C), such consent shall not be unreasonably withheld or delayed and if any



such consent is requested and not responded to within twenty business days of the request having been made, the holder(s) of the 'A' Ordinary Shares shall be hereby deemed to have provided consent to the matter the subject of such request.

## **10. CLASS CONSENTS**

10.1 Investor Consent shall be required before the Company or any other member of the Group shall:

- (A) except as expressly provided in the Subscription Agreement or to give effect to Article 5, create or allot or issue or diminish any further share capital or grant or agree to grant to any person any option or right to subscribe for convert into or otherwise to require the issue or allotment of any shares or the creation or allotment or issue of shares, except to the Company or a wholly owned subsidiary of the Company;
- (B) pass a resolution for the reduction or cancellation of its share capital or the reduction of any uncalled liability in respect of it;
- (C) negotiate or give effect to any transaction:
  - (1) whereby a person and his or its associates obtain a Controlling Interest in the Company (such provision being without prejudice to any other provisions of these Articles governing circumstances in which transactions involving the obtaining of a Controlling Interest may be permitted or is restricted); or
  - (2) of an equity nature (e.g. any merger or consolidation or sale of shares of a subsidiary) involving more than £100,000 in value, or any transaction or series of related transactions in which thirty per cent. or more of the voting control in a subsidiary is disposed of directly or indirectly by the Company;
- (D) incur any Indebtedness which, when taken together with all other Indebtedness of the Group, would lead to such aggregate Indebtedness exceeding £100,000;
- (E) purchase or redeem or re-denominate the whole or any part of its share capital other than in accordance with the terms of issue of any class of share capital;
- (F) modify vary alter or abrogate any of the rights privileges or restrictions attaching to any of the classes of its share capital;
- (G) make or permit any material alteration (including cessation) to the general nature of the business carried on by it from time to time;
- (H) except as provided for in the Subscription Agreement establish or adopt or operate any retirement death or disability scheme or any bonus or profit sharing scheme or any share option scheme, employee share ownership plan or employees trust or other similar incentive scheme or amend any such scheme previously approved by Investor Consent;
- (I) change its corporate name or any name under which it carries on its business in whole or part;
- (J) make any alteration to its Memorandum and Articles of Association;

- (K) pass any resolution or seek any order or take any steps with a view to the liquidation, winding up or striking off dissolution or administration or receivership of any member of the Group or the equivalent in any other jurisdiction;
- (L) except for dividends paid to the Company or a wholly owned subsidiary of the Company, make any distribution by way of dividend or otherwise out of the profits or reserves of the Company;
- (M) make or provide any loan or financial facility other than (i) credit given in the ordinary course of business or (ii) loans to the Company or any subsidiary of the Company and (iii) loans not exceeding £1,000 in the aggregate to any individual director or employee by way of advance to cover reasonable business expenses (iv) by way of season ticket loan to any individual director or employee;
- (N) give any guarantee suretyship or indemnity or similar liability in respect of the obligations of any person firm or company other than the Company or a wholly owned subsidiary of the Company;
- (O) enter into any factoring or invoice discounting arrangements in respect of its debts;
- (P) permit or allow or do anything which results or will result in a breach of Article 40 (Borrowing Powers of Directors);
- (Q) issue redeem or purchase any loan stock or loan notes; or
- (R) acquire any share or loan capital of or ownership or partnership interest in another body corporate or in any partnership wherever established (including by way of formation of a wholly owned subsidiary) or any business or undertaking or modify any joint venture arrangement or material trading partnership to whom any member of the Group is a party;
- (S) dispose of or dilute its interest directly or indirectly in any subsidiary or subsidiary undertaking or business or undertaking or partnership;
- (T) acquire, develop, dispose (by transfer or sale or lease or otherwise), relocate or close any property or premises or business outlet (freehold or leasehold) or any interest in them other than by way of renewal of any lease previously held by the Company or the subsidiary concerned on fair market terms;
- (U) except solely on arms length terms in the ordinary course or business, enter into any agreement to occupy or permit any third party to occupy any property or premises (whether freehold or leasehold) or vary any of the material terms under which it occupies or permits any third party to occupy any property or premises;
- (V) enter into or vary any of the material terms of any material agreement for the acquisition and/or user or other exploitation (whether by a member of the Group or a third party) of any intellectual property rights;
- (W) make payment by way of bonus or profit share to, any of its directors or Senior Executives and then only (in the case of a bonus or profit share payments) in amounts approved by a remuneration committee of the Board consisting of a majority of non-executive directors;
- (X) appoint or remove any director (other than an alternate director or an Investor Director pursuant to these Articles);

- (Y) enter into any transaction or arrangement which is neither properly ancillary to nor in the ordinary and proper course of conducting its business;
- (Z) enter into any transaction or arrangement which is not on arm's length terms or which is of a particularly long term or unusual nature;
- (AA) enter into or in any material respect vary the terms of or grant any material waiver or consent in respect of an agreement or a transaction with any person who is or has in the previous twelve months been a director or shareholder director or shareholder of the Company or connected person of a director or shareholder director or shareholder (save as expressly contemplated by the Subscription Agreement or for an agreement or transaction in the ordinary course of its trade and which in the reasonable opinion of an Investor Majority is not material to the Group as a whole);
- (BB) remove its auditors or appoint any new or additional auditors, except in the case of a subsidiary or subsidiary undertaking of the Company to remove its auditors and appoint in their place the auditors of the Company;
- (CC) change its accounting reference date (except, in the case of a subsidiary, to conform with that of the Company);
- (DD) appoint any adviser(s) with a view to or otherwise seek to take any steps to achieve a Sale or Flotation; or
- (EE) enter into any agreement, commitment or arrangement to do any of the above,

provided that no such consent shall be required in the case of any matter specified in any of paragraphs (D), (G), (O) or (T) if such matter is approved in advance by the Board and at the time of such approval there are at least two Investor Directors holding office and all the Investor Directors then holding office vote in favour of the approval of such matter.

- 10.2 The Company shall not, and each other member of the Group shall not, do any matter which is expressly reserved in the Subscription Agreement to the full approval of the Board, unless full approval of the Board (by simple majority) shall have first been obtained.
- 10.3 The prior written consent of the holder(s) of a majority of the issued 'A' Ordinary Shares shall be required:
  - (A) before the Company or any other member of the Group shall issue shares or options to subscribe such shares on a non-pre-emptive basis except where a Default Remedy Scenario applies in which case the provisions of Articles 12.9 and 12.10 shall apply;
  - (B) before the Company or any other member of the Group shall migrate the development and/or commercial exploitation of the SelfCare System (as defined in the Subscription Agreement) to an entity other than a member of the Group in order to deprive the Group of the commercial benefit of developing it and exploiting it itself;
  - (C) before the Company or any other member of the Group shall enter to any agreement with a third party in circumstances where the Company's principal purpose in doing so is demonstrably to reduce or limit the value of the 'A' Ordinary Shares (but, for the avoidance of doubt, the Company shall not be in breach of this Article 10.3(C) if it or another member of the Group enters into an agreement in good faith for bona fide purposes which has the effect of reducing or limiting the value of the 'A' Ordinary Shares where entry into of the same is not demonstrably for the principal purpose of so doing); and

(D) to any amendment to this Article 10.3.

- 10.4 Anything done (whether by the Company or any member of the Group or otherwise) without the necessary consent required under Article 10.1 or in breach of the terms and conditions of any such consent shall be deemed to be a breach of the class rights of the 'A' Preferred Shares.
- 10.5 Anything done (whether by the Company or any member of the Group or otherwise) within the necessary consent required under Article 10.3 or in breach of the terms and conditions of any such consent shall be deemed to be a breach of the class rights of the A Ordinary Shares.
- 10.6 Each member shall exercise his or its rights in that capacity or otherwise available to him to ensure (so far as he or it can through such exercise) that the provisions of this Article 10 are complied with.

## **11. AUTHORITY TO ALLOT**

- 11.1 The unissued shares in the capital of the Company for the time being shall be under the control of the Directors, who are generally and unconditionally authorised by these Articles to allot, grant options over, or otherwise dispose of or deal with any unissued shares and Subscription Rights to such persons, on such terms and in such manner as they shall think fit, but subject to any agreement binding on the Company and to the other provisions of these Articles.
- 11.2 The Directors may not exercise any power under section 550 of the 2006 Act (when it is in force) without Investor Consent.
- 11.3 The authority contained in Article 11.1 shall, unless revoked or varied in accordance with section 80 of the 1985 Act (whilst still in force) or section 551 of the 2006 Act (when in force):
- (A) be limited to a maximum nominal amount of shares equal to the amount of the authorised but unissued share capital of the Company immediately following the time of the passing of the resolution adopting these Articles; and
  - (B) expire on the fifth anniversary of the date of the passing of that resolution but without prejudice to any offer or agreement made before that anniversary which would or might require the exercise by the Directors after that anniversary of their powers in pursuance of the authority.
- 11.4 In exercising their authority under this Article the Directors shall not be required to have regard to Section 89(1) or (insofar as the exclusion of the application of those sub sections is permitted by the 1985 Act) Section 90(1) to (6) (inclusive) of the 1985 Act (whilst in force) or sections 561 and 562 of the 2006 Act (when in force) which shall not apply to the Company.
- 11.5 The reference to the authorised but unissued share capital of the Company in Article 11.3 shall be as interpreted as meaning the shares specified in Article 2.1(B).

## **12. NEW SHARE ISSUES**

- 12.1 Subject to the other provisions of these Articles and without prejudice to the class rights attaching to the Investor Shares or any of them:
- (A) the Company may issue shares with such rights and/or restrictions as may be determined by ordinary resolution or (with Investor Consent and subject to any prior determination by the Company by shareholder resolution) by the Board;

- (B) the Company may issue shares which are to be or are liable to be redeemed (at the option of the Company or their holder) on such terms and conditions and in such manner concerning their redemption as may be determined by the Board with Investor Consent.
- 12.2 For the purposes of these Articles and unless otherwise specified (in compliance with Article 12.1) in the terms of their allotment, all shares in the Company other than:
  - (A) those issued to its subscribers on its incorporation; and
  - (B) any shares issued before the Adoption Date in irredeemable form

shall be redeemable when and if re-designated as Deferred Shares as provided in these Articles or (subject to the rights attaching to the Investor Shares or any of them) with the consent of their holder on the terms agreed between their holder and the Company.
- 12.3 Any consideration to be paid to the Company in consideration for the issue of a share shall be payable at such time or time(s) and in such instalments (if any) as shall be prescribed by the Board and are consistent with Article 12.1 and as regards any premium may be conditional or variable in amount, in whole or in part.
- 12.4 Except as expressly provided in these Articles or in the Subscription Agreement and (subject to those provisions) as may otherwise be resolved by special resolution and agreed by Investor Consent, any unissued shares (whether forming part of the original share capital or not) shall, before they or any Subscription Rights over them are issued, first be offered to the members as follows:
  - (A) the offer shall be made by notice in writing to all the members specifying the number and class and subscription price of the shares on offer limiting the time (not being less than twenty-one days or, during a Default Period, such shorter period as may be agreed by Investor Consent) within which the offer may be accepted;
  - (B) acceptances shall be given to the Company by notice in writing and in that acceptance the applicant shall state the number of the shares on offer which he is willing to subscribe for, which may be up to all of the shares being offered.
- 12.5 After the end of the offer period under Article 12.4 or after the Company shall have received notice of the acceptance or as the case may be refusal of the offer from every offeree (whichever shall be the earlier event) the Directors shall allot the offered shares first to and amongst the applicants who are registered as holders of the then issued Equity Shares and to the extent there is competition between them, pro-rata according to the number of Ordinary Shares in respect of which they are respectively registered as holders (or would be registered if their 'A' Preferred Shares were then fully converted into 'B' Ordinary Shares) and secondly (if any of the offered shares shall remain after the applicants have been satisfied in full and there are any shares which are not Equity Shares then in issue) to and amongst the remaining applicants and, to the extent there is competition between them, pro-rata to the number of shares of the Company other than Equity Shares in respect of which they are respectively registered as holders PROVIDED THAT no applicant shall be obliged to take more than the maximum number of offered shares specified by him in his application.
- 12.6 If all or any of the unissued shares to which Article 12.4 applies are not taken up in accordance with the provisions of Articles 12.4 and 12.5 the Directors may offer those shares to a third party (to be approved by Investor Consent) and, subject to these Articles and to the provisions of the Companies Acts, those shares shall be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and

generally on such terms and conditions as they think proper, provided that, except with Investor Consent:

- (A) none of them shall be issued more than three months after the expiry of the period for acceptance of the last offer of them made under Article 12.4 unless the procedure set out in Articles 12.4 and 12.5 is repeated in respect of them;
- (B) none of them shall be issued at a price less than that at which they were offered in accordance with Article 12.4 and 12.5; and
- (C) if the Directors are proposing to issue them wholly or partly for non-cash consideration, the cash value of such consideration shall be as reasonably determined by the Auditors whose determination shall be final and binding on the Company and each of its members.

12.7 Article 12.4 shall not apply to 'A' Preferred Shares or Ordinary Shares to be allotted under any express provision of the Subscription Agreement or for the purposes of giving effect to the conversion rights of the 'A' Preferred Shares and/or the 'A' Ordinary Shares.

12.8 Article 12.4 shall not apply to Permitted Share Issues, the grant of a Permitted Option nor to the allotment of Ordinary Shares on its exercise but subject always to the terms of any Investor Consent relevant to the Subscription Rights concerned.

12.9 Subject to Article 12.10, Article 12.4 shall not apply to any allotment or issue of shares or Subscription Rights over shares in the Company during a Default Period where a Default Remedy Scenario applies (an "**Article 12.9 Allotment**"). A "**Default Remedy Scenario**" means a scenario where a Default Period has arisen and the Board (acting with Investor Consent and in good faith) resolves that it is necessary to issue shares in the Company and/or grants Subscription Rights over such shares for the purpose of raising equity finance to address the circumstances which gave rise to the Default Period arising and/or which have caused it to continue.

12.10 If an Article 12.9 Allotment takes place, the holders of all Equity Shares shall be given the opportunity to participate in the Article 12.9 Allotment on the basis prescribed in paragraph (A) or (B) below (at the direction of an Investor Majority), namely, either:

- (A) at the same time as the Article 12.9 Allotment is effected, in which case they shall be offered the opportunity to subscribe for their relevant proportion of the new shares proposed on the terms set out in Article 12.4; or
- (B) after the Article 12.9 Allotment is effected, by means of an offer being effected on terms that all member(s) (each a "**Shareholder**") who acquired new shares pursuant to such allotment (the "**Acquired Shares**") shall between them hereby commit to offer for sale to the holders of Equity Shares who were not accorded the ability to participate in the Article 12.9 Allotment such number of the Acquired Shares as is equal (as nearly as may be) to the minimum number of such shares which would have been offered to those holders of Equity Shares had an offer to subscribe such shares been made to them pursuant to paragraph (A) above (the "**Shareholder Catch Up Shares**"). The number of Shareholder Catch Up Shares to be offered for sale by each person who originally subscribed for those shares under the Article 12.9 Allotment shall be determined pro rata according to the number of all such Shareholder Catch Up Shares subscribed by all such persons under the Article 12.9 Allotment. Such offer shall be made through the Company on the basis set out in Article 27 as if a Transfer Notice shall have been given in respect of the Shareholder Catch Up Shares (and the relevant Shareholders shall be required within five business days after the

issue to them of the Shareholder Catch Up Shares, to serve a notice on the Company requiring the Board to commence such offer on their behalf and if he fails to do so he shall be deemed to have done so at the expiry of the five business day period). The Board shall following receipt of such notice initiate the offer process as set out in Article 27, but modified appropriately to give effect to the above provisions and the following provisions:

- (1) the price at which such shares shall be offered shall be the price at which they were subscribed pursuant to the Article 12.9 Allotment and that price shall be deemed to be the Transfer Value of the shares for the purposes of Article 27;
- (2) no Total Transfer Condition may be given in relation to the sale of the Shareholder Catch Up Shares; and
- (3) if more than one Shareholder is required to offer Shareholder Catch Up Shares for sale pursuant to this Article 12.10 then the number of shares to be sold by that Shareholder as a result of the offer being taken up shall be equal (or as nearly as may be) to his Take-up Proportion of all such shares to be so sold. For these purposes, a Shareholder's "**Take-up Proportion**" shall be such proportion as is equal to the proportion which the Shareholder Catch Up Shares subscribed by that Shareholder under the Article 12.9 Allotment bears to the aggregate number Shareholder Catch Up Shares subscribed by all Shareholders under the Article 12.9 Allotment.

Any transfer of Shareholder Catch Up Shares pursuant to this Article 12.10 shall be treated for all purposes as a Permitted Transfer under these Articles. The above provisions shall apply equally in relation to Subscription Rights over shares in the Company granted in a Default Remedy Scenario.

- 12.11 If, in respect of the operation of Article 12.10, the Shareholder is obliged but defaults in accepting payment of the purchase price for any Shareholder Catch Up Share or, as the case may be, in transferring the same, the Directors or any Investor Director may receive such purchase money and may nominate some person to execute an instrument of transfer of the share in the name and on behalf of the Shareholder and when the instrument has been duly stamped the Directors shall cause the name of the transferee to be entered in the Register of Members as the holder of the share and where applicable shall hold the purchase money in trust without interest for the Shareholder. The receipt of the Directors or any Investor Director for the purchase money shall be a good discharge to the purchaser (who shall not be bound to see to its application) and after his name has been entered in the Register of Members in purported exercise of those powers the validity of the proceedings shall not be questioned by any person
- 12.12 No fraction of a share shall be required to be allotted or transferred pursuant to Article 12.10 and, as applicable, the number of shares to be allotted or transferred shall be rounded down in each case.
- 12.13 No allotment or issue of shares or other Restricted Securities shall be made in breach of Article 22.
- 12.14 If it is a requirement of the Subscription Agreement that any person to whom a share is to be allotted or issued shall first or contemporaneously adhere to the Subscription Agreement, the Directors may nominate a person selected by them to act (upon that person becoming a member and bound by these Articles) as the attorney of the person required so to adhere for the purposes of executing and delivering the required deed or other document of adherence on his behalf.

- 12.15 Subject first to obtaining Investor Consent, the Company may exercise all powers conferred by the Companies Acts of paying commissions in relation to a subscription for shares or other allotment. Subject to the Companies Acts, commissions may be satisfied in cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other. The Company may also (with Investor Consent) pay any brokerage in relation to a subscription for shares which is lawful.

### **13. ALTERATION OF SHARE CAPITAL**

- 13.1 Subject to the provisions of the Companies Acts and to the rights of the holders of the respective classes of shares of the Company, the Company may by ordinary resolution:

- (A) increase its share capital by a sum to be divided into shares of amounts prescribed by the resolution;
- (B) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
- (C) sub-divide all or any of its shares into shares of a smaller amount;
- (D) resolve that one or more of the shares resulting from any such division or sub-division may have any preference or other advantage as compared with the others or may be made subject to any restriction as compared with the others;
- (E) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by a person and diminish the amount of its unissued share capital by the amount of the shares so cancelled; and/or
- (F) re-denominate its share capital or any class of it and effect any related reduction in its share capital as provided in Chapter 8 of Part A of the 2006 Act, when in force.

- 13.2 Subject to the provisions of the Companies Acts and to the rights of the holders of the respective classes of shares of the Company, the Company may:

- (A) reduce its share capital or any capital redemption reserve, share premium account or other undistributable reserve in any way;
- (B) purchase its own shares, including any redeemable shares;
- (C) make a payment in respect of the redemption or purchase of its shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares; and/or
- (D) subject to section 686 of the 2006 Act coming into force, make a payment in respect of the redemption of its own shares later than the date of their redemption, if so provided as part of the terms of the issue of the shares concerned (in which case these Articles shall constitute the relevant agreement between the Company and their holder for the purposes of section 686(2) of the 2006 Act) or to the extent otherwise permitted by the Companies Acts.

- 13.3 If, as the result of a consolidation and division or a sub-division of shares, fractions of shares become attributable to members, the Board may on behalf of the members and subject to obtaining prior Investor Consent deal with the fractions as it thinks fit, including (without limitation) by:



- (A) selling shares representing the fractions to any person (including, subject to the Companies Acts, the Company by redemption or purchase) for the best price reasonably obtainable and distributing the net proceeds of sale in due proportion amongst the persons to whom the fractions are attributable (except that if the amount due to a person is less than £5.00, or such other sum as the Board may decide, the Company may retain such sum for its own benefit); and/or
  - (B) consolidating the fractional entitlements into shares of such nominal value as it shall see fit and re-designating those shares as Deferred Shares; and/or
  - (C) issuing to the member(s) concerned, credited as fully paid by way of capitalisation, the minimum number of shares required to round up his/their holding of shares to a number which, following a consolidation and division or a sub-division, leaves a whole number of shares (that issue being deemed to have been effected immediately before the consolidation or the sub-division, as the case may be).
- 13.4 To give effect to any sale of fractional entitlements the Board may authorise a person to execute an instrument of transfer of shares to the purchaser or as the purchaser may direct; and the purchaser will not be bound to see to the application of the purchase monies in respect of that sale. The title of the transferee to the shares will not be affected by any irregularity in or invalidity of the proceedings connected with the sale or transfer. Any such instrument or shall be effective as if it had been executed or exercised by the holder of the shares to which it relates.
- 13.5 The amount required to pay up any shares to be issued as contemplated by Article 13.3(C) may be capitalised as the Board thinks fit out of amounts standing to the credit of any reserve or fund of the Company (including any share premium account, capital redemption reserve and profit and loss account), whether or not available for distribution.
- 13.6 A resolution of the Board consolidating fractional entitlements and redesignating the same as Deferred Shares or (as appropriate) capitalising part of any reserve or fund referred to in Article 13.3 will have the same effect as if the same had been made with the sanction of an appropriate shareholder resolution and in relation to a capitalisation the Board may exercise all the powers conferred on it by these Articles in relation to capitalisations without requirement for further sanction of any shareholder resolution.

## **14. DEFERRED SHARES**

### **14.1 Deferred Shares shall:**

- (A) on a return of capital on winding up or otherwise, entitle their holders only to the repayment of the amounts paid up or credited as paid up on those shares after payment in respect of each ordinary share of the amount paid up on that share and £10,000,000;
- (B) not otherwise entitle their holders to receive or participate in any way in any profits or assets of the Company;
- (C) not entitle their holders to participate in any pre-emptive offer of shares or Subscription Rights for subscription or purchase; and
- (D) not entitle their holders to receive notice of or to attend or vote at any general meeting of the Company.

- 14.2 The Company may at any time appoint any person to execute on behalf of the holders of any Deferred Shares a transfer of them (and/or an agreement to transfer the same) to such person as the Company may determine as custodian and/or to deal with any Conversion arrangements under Article 7 and/or to purchase them (in accordance with the provision of the Companies Acts) for a price not more than an aggregate sum of 1p for all the Deferred Shares without obtaining the sanction of their holder or holders and pending their transfer and/or purchase to retain the certificate for those Deferred Shares.
- 14.3 The Company may at any time after the creation of any Deferred Shares and to the extent permitted under the Companies Acts redeem all or any of the Deferred Shares then in issue, at an aggregate price not exceeding 1p for all the Deferred Shares redeemed, with the recipient of such sum being determined by the Company, upon giving the registered holders of those shares notice in writing of its intention so to do, fixing a time and place for the redemption.

## **15. SHARE CERTIFICATES**

- 15.1 Subject to the Companies Acts and these Articles, every person, upon becoming the holder of a share or upon transferring part only of his holding of shares is entitled, without charge, to one or more certificates for all the shares of a class then or remaining registered in his name or, in the case of shares of more than one class being registered in his name, to separate certificate(s) for each class of shares, unless the terms of issue of the shares provide otherwise.
- 15.2 A certificate shall specify the number and class and nominal value and the distinguishing numbers (if any) of the shares in respect of which it is issued and whether or not the shares are fully paid. It shall be signed by two Directors or one Director and any Secretary of the Company or in such other manner as the Board may approve.
- 15.3 The Company is not bound to issue more than one certificate for shares held jointly by two or more persons. Delivery of a certificate to one joint holder shall be sufficient delivery to all joint holders.
- 15.4 If any certificate is worn-out, defaced, lost or destroyed, the Company may cancel it and issue a replacement certificate subject to such terms as the Board may decide as to evidence and indemnity (with or without security) and to payment of any exceptional out-of-pocket expenses of the Company in investigating such evidence and preparing such indemnity or such security but otherwise free of charge, and (if the certificate is worn-out or defaced) on delivery up of the old certificate.

## **16. VARIATION/ABROGATION/RESERVATION AND EXERCISE OF RIGHTS**

- 16.1 If at any time the share capital is divided into different classes of shares, the rights attached to any class may, whether or not the Company is being wound up, be varied modified abrogated or cancelled only with the approval of a special resolution passed at a separate class meeting of the holders of the issued shares of that class or with the consent in writing of a Majority of that class or in the case of the 'A' Preferred Shares, an Investor Majority.
- 16.2 The provisions of Articles 10.1 and 10.2 (matters requiring Investor Consent) and the other provisions of these Articles requiring Investor Consent to any matter or conferring rights upon an Investor Majority are special rights of (and only of) the 'A' Preferred Shares and this Article 16 shall be construed accordingly.
- 16.3 The provisions of these Articles relating to general meetings shall apply to every separate class meeting referred to in Article 16.1, but the necessary quorum shall be two persons holding or representing by proxy or corporate representative at least a Majority in nominal

value of the issued shares of that class and any holder of shares of the class present in person or by proxy may demand a poll and on a poll each share concerned shall carry one vote PROVIDED THAT where there is only one holder of the issued shares of the relevant class a quorum shall be that holder alone present in person or by proxy or corporate representative.

- 16.4 Subject to Article 16.5, nothing in these Articles or otherwise shall confer any special rights or privileges or class rights or entitlements on the holders of any shares which are not Investor Shares or 'A' Ordinary Shares during any Default Period and nothing done in a Default Period (or subsequently as a necessary consequence of anything done or any right or entitlement granted during a Default Period) by the Company or any member of the Group or any other shareholder of a Group member shall constitute or be deemed to constitute any variation, modification or abrogation of the rights of or require any consent to be obtained from the holders of any shares which are not Investor Shares or 'A' Ordinary Shares ("**Other Shares**") or any of them, other than anything which imposes upon the holder of any Other Shares any liability greater than that to which the subscriber of the same was subject at the time of their issue. As security for the due performance of his obligations under these Articles each holder of Other Shares hereby is deemed under these Articles to give irrevocable authority and power of attorney to each Investor Director or any holder of Investor Shares to sign and give any waivers or consents on his part necessary to give effect to the provisions of this Article 16.4 including any which by virtue of any provision of the Companies Acts or otherwise can only be effective if separately given.
- 16.5 Nothing in these Articles or otherwise shall confer any special rights or privileges or class rights or entitlements on the holders of any A Ordinary Shares during a Default Period where a Default Remedy Scenario applies which would entitle them to prevent an Article 12.9 Allotment being made and the making of an Article 12.9 Allotment by the Company shall not constitute or be deemed to constitute any variation, modification or abrogation of the rights of or require any consent to be obtained from the holders of any 'A' Ordinary Shares or any of them. As security for the due performance of his obligations under these Articles each holder of 'A' Ordinary Shares hereby is deemed under these Articles to give irrevocable authority and power of attorney to each Investor Director or any holder of Investor Shares to sign and give any waivers or consents on his part necessary to give effect to the provisions of this Article 16.5 including any which by virtue of any provision of the Companies Acts or otherwise can only be effective if separately given.
- 16.6 For the avoidance of doubt and subject to Articles 16.4 and 16.5, the variation, modification, abrogation or cancellation of this Article or of any provision of these Articles which contains or affects any class rights shall (except as expressly provided) require the consent (in accordance with this Article) of the holders of shares of the class or classes concerned to be effective.
- 16.7 In exercising any rights as the holder of any shares, their holder shall be entitled to exercise those rights in its absolute discretion as it sees fit including, without limitation, without obligation to have regard to:
- (A) the interests of any other holder(s) of the same class of shares or the rights of holders of that particular class as a whole or the holder(s) of any other class or classes of share or any of them; and
  - (B) the interests of the Company (as a commercial entity or otherwise) and/or the interests of the general body of its shareholders.
- 16.8 Without in any way derogating from the rights of the holders of the Investor Shares or 'A' Ordinary Shares under Article 10, the creation or issue of further shares of the same class

shall not of itself constitute a variation or modification or abrogation of the class rights of the holders of shares of that class already in issue.

- 16.9 Any person who holds 'A' Preferred Shares or other Investment Grade Shares issued by the Company from time to time and who is not an Investor for the purposes of these Articles shall not be entitled to exercise any of the following rights attaching to such shares irrespective of any other provision of these Articles:

- (A) any right to participate in the consideration, giving or denying of any matter requiring approval by Investor Consent or by an Investor Majority; and
- (B) voting rights.

## **17. LIENS**

- 17.1 Subject to the following provisions of this Article, the Company shall have a first and paramount lien on all shares (whether or not fully paid) standing registered in the name of any person indebted or under liability (actual or contingent) to the Company and a right of set off for that debt or liability against all moneys payable by the Company on or in respect of the same, whether he shall be the sole registered holder or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company in respect of those shares.
- 17.2 The Board may, with Investor Consent, resolve that any share or shares be exempt wholly or in part from this Article.
- 17.3 For the purpose of enforcing the Company's lien on any shares and without prejudice to Article 17.4, the Company (which shall be deemed by these Articles irrevocably appointed as the attorney of the member empowered and authorised on his behalf to do execute and deliver any acts things deeds and documents for him as it may consider necessary for the purpose) may sell the shares in such manner as it decides (with Investor Consent) if an amount in respect of which the lien exists is presently payable and is not paid within twenty eight clear days following the giving of a notice to the holder (or any person entitled by transmission to the share) demanding payment of the amount due within such twenty eight clear day period and stating that if the notice is not complied with the shares may be sold.
- 17.4 On a Sale or Flotation or on any sale of such shares under Article 17.3, each member whose shares are subject to a lien as provided in these Articles shall be deemed by these Articles irrevocably to appoint the Company as his attorney and authorised on his behalf to make such arrangements as are necessary to procure that any such amounts payable by him as contemplated by this Article are directly paid to the Company out of any proceeds of sale which are payable for the shares under the arrangements. The Company shall only exercise its rights as attorney under this Article 17.4 if exercised with Investor Consent.
- 17.5 The purchaser or transferee will not be bound to see to the application of the purchase monies in respect of any sale of shares under the powers of the Company conferred by this Article 17. The title of the transferee to the shares will not be affected by any irregularity in or invalidity of the proceedings connected with the sale or transfer. Any such instrument or shall be effective as if it had been executed or exercised by the holder of the shares to which it relates.
- 17.6 The net proceeds of any sale of shares subject to the Company's lien under these Articles (after payment of the costs and expenses of sale) shall be applied in or towards satisfaction of the amount then due to the Company in respect of the shares. Any balance shall be paid to the original holder of, or the person entitled (but for such sale) by transmission to, the shares on surrender to the Company for cancellation of the certificate for those shares (or an indemnity

in such form as the Board may require where it is missing or destroyed) and (in all cases) subject to the Company having a lien on such balance on the same basis as applied to the shares for any amount not presently payable as existed on such shares before the sale.

## **18. PARTLY PAID SHARES AND FORFEITURE**

- 18.1 The powers of the Board under this Article may only be exercised with Investor Consent.
- 18.2 Subject to their terms of issue, the Board may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal amount of the shares or by way of premium) and not payable on a date fixed by or in accordance with the terms of issue, and each member shall (subject to the Company serving upon him at least 14 clear days' notice specifying when and where payment is to be made) pay to the Company as required by the notice the amount called on his shares.
- 18.3 A call may be made payable by instalments. A call may be revoked or postponed, in whole or in part, as the Board may decide. A person upon whom a call is made shall remain liable for all calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.
- 18.4 A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.
- 18.5 The joint holders of a share shall be jointly and severally liable to pay all calls in respect of the share.
- 18.6 If a call remains unpaid after it has become due and payable, the person from whom it is due and payable shall pay interest on the amount unpaid from the day it is due and payable to the time of actual payment at such rate, not exceeding four per cent. per annum above the base lending rate of Barclays Bank plc at the relevant time, as the Board may decide, and all expenses that have been incurred by the Company by reason of that non-payment, but the Board shall be at liberty in any case or cases to waive payment of the interest or expenses wholly or in part.
- 18.7 Any amount which becomes payable in respect of a share on allotment or on any other date fixed by or in accordance with the terms of issue, whether in respect of the nominal amount of the share or by way of premium or as an instalment of a call, shall be deemed to be a call and, if it is not paid, all the provisions of these articles shall apply as if the sum had become due and payable by virtue of a call.
- 18.8 Subject to their terms of issue, the Board may on the issue of shares differentiate between the allottees or holders as to the amount of calls to be paid and the times of payment.
- 18.9 The Board may, if it thinks fit, receive from any member who is willing to advance them all or any part of the moneys uncalled and unpaid upon any shares held by him and on all or any of the moneys so advanced the Company may (until those moneys would, but for the advance, become presently payable) pay interest at such rate, not exceeding (unless the Company by ordinary resolution or Investor Majority shall otherwise direct) the maximum annual percentage specified in Article 18.6.
- 18.10 If any call or instalment of a call remains unpaid on any share after the day appointed for payment, the Board or any Investor Director may serve a notice on the holder requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and any expenses incurred by the Company by reason of that non-payment.

- 18.11 The notice shall name a further day (not being less than twenty eight clear days from the date of the notice) on or before which, and the place where, the payment required by the notice is to be made and shall state that in the event of non-payment on or before the day and at the place appointed, the shares in respect of which the call has been made or instalment is payable will be liable to be forfeited. The Board may accept the surrender of any share liable to be forfeited and, in that event, references in these articles to forfeiture shall include surrender.
- 18.12 If the notice is not complied with, any share in respect of which it was given may, at any time before payment of all calls or instalments and interest and expenses due in respect of it has been made, be forfeited by a resolution of the Board or written notice from an Investor Director to that effect and the forfeiture shall include all dividends declared and other moneys payable in respect of the forfeited shares and not paid before the forfeiture.
- 18.13 When any share has been forfeited, notice of the forfeiture shall be served upon the person who was before forfeiture the holder of the share but no forfeiture shall be invalidated by any omission or neglect to give notice.
- 18.14 Until cancelled in accordance with the requirements of the Companies Acts, a forfeited share shall be deemed to be the property of the Company and may be sold or otherwise disposed of either to the person who was, before forfeiture, the holder or to any other person upon such terms and in such manner as the Board shall decide. The Board or an Investor Majority may for the purposes of the disposal authorise some person to execute an instrument of transfer to the designated transferee. The Company may receive the consideration (if any) given for the share on its disposal. At any time before a sale or disposition the forfeiture may be cancelled by the Board on such terms as the Board may decide or as shall be required by an Investor Majority.
- 18.15 A person whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the Company for cancellation the certificate for the forfeited shares but shall remain liable to pay to the Company all moneys which at the date of the forfeiture were payable by him to the Company in respect of those shares with interest at the rate of 15 per cent. per annum (or such lower rate as the Board may decide) from the date of forfeiture until payment, and the Company may enforce payment without being under any obligation to make any allowance for the value of the shares forfeited or for any consideration received on their disposal.
- 18.16 A statutory declaration that the declarant is a director of the Company or the secretary and that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share. The declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the share and the person to whom the share is sold or otherwise disposed of shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or disposal.

## **19. NOMINATION OF PERSONS TO ENJOY MEMBERS' RIGHTS**

- 19.1 To the extent permitted by section 145 of the 2006 Act when in force and subject to the other provisions of this Article 19, any registered member of the Company may, by giving notice as required by Article 19.3, nominate another person or persons as being entitled to enjoy or exercise all or any rights of the member (in that capacity) in relation to the Company and such of the shares of that member as shall be specified in the notice (being all of his shares for the time being unless otherwise so specified) and which (unless the notice shall prescribe to the contrary) shall be deemed to include the matters prescribed in section 145(3) of the 2006 Act.

- 19.2 Once a notice has been given under Article 19.1 and subject to its terms, anything required or authorised by any provision of the Companies Acts and/or these Articles to be done by or in relation to the member shall instead be done or, (as the case may be) may instead be done, by or in relation to the nominated person (or each of them) as if he were a member of the Company. Unless otherwise agreed by Investor Consent:
- (A) the notice may only be withdrawn or modified by a further notice given as required by Article 19.3 by the member who gave the original notice; and
  - (B) the notice shall be deemed to be of no further effect on registration of a transfer of the shares to which it relates, so far as affecting those shares and any related membership rights.
- 19.3 Any notice given under Article 19.1 or Article 19.2(A) must be given to the Company and the Investors in writing and (unless otherwise agreed by Investor Consent) will take effect thirty days after it is received or deemed received by the Company and will not affect any actions or steps taken in reliance on any arrangements in force prior to the time it comes into effect.
- 19.4 No nomination under this Article may be made or come into effect unless it has been made with prior Investor Consent.
- 19.5 A nomination made in accordance with this Article shall not constitute or be construed as constituting a transfer or proposed transfer of the shares for the purposes of these Articles. However, no person in favour of whom the nomination is made may transfer encumber or otherwise dispose of any rights so conferred upon him and if any such transfer or encumbrance or disposition is made or purported to be made it shall be void and of no effect.
- 19.6 In addition and without prejudice to Article 25.8, the Directors or any Investor Director shall be at liberty by notice in writing to the registered holder of the shares concerned and to the person nominated to enjoy rights in respect of them under this Article to disenfranchise any shares in respect of which any such rights are purportedly the subject of a transfer or encumbrance or disposition in breach of this Article until such time as the Directors (acting reasonably) are satisfied that the provisions of this Article relating to those shares have been complied with.

## **20. TRANSMISSION**

- 20.1 If a member dies, the survivor or survivors, where he was a joint holder, and his personal representatives, where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to his shares; but nothing contained in these Articles shall release the estate of a deceased holder from any liability in respect of any share held by him solely or jointly with other persons.
- 20.2 Where the entitlement of a person to a share in consequence of the death or bankruptcy of a member or of any other event giving rise to its transmission by operation of law is proved to the satisfaction of the Board, the Board shall within two months after proof cause the entitlement of that person to be noted in the Register.
- 20.3 Any transmittee may, subject as provided elsewhere in these Articles, elect either to become the holder of the share or to have some person nominated by him registered as the holder. If he elects to be registered himself he shall give notice to the Company to that effect. If he elects to have another person registered, he shall transfer title to the share to that person. In addition and without prejudice to Article 25.6, the Board may at any time require the transmittee to elect either to be registered himself or to transfer the share and if the requirements are not complied with within 60 days of being issued the Board may (and will if

so required by an Investor Majority) withhold payment of all dividends and other moneys payable in respect of the share until the requirements have been complied with. All the provisions of these Articles relating to the transfer of, and registration of transfers of, shares shall apply to the notice or transfer as if the death or bankruptcy of the member or other event giving rise to the transmission had not occurred and the notice or transfer was given or executed by the member.

- 20.4 Where a person becomes entitled by transmission to a share, the rights of the holder in relation to that share shall cease, but the transmittee may give a good discharge for any dividends or other moneys payable in respect of the share and shall have the same rights in relation to the share as he would have had if he were the holder of it save that, until he becomes the holder, he shall not be entitled in respect of the share (except with the authority of the Board and an Investor Consent) to attend or vote at any general meeting of the Company or at any separate general meeting of the holders of any class of shares in the Company or to exercise any other right conferred by membership in relation to general meetings or shareholder resolutions.
- 20.5 If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the transmittee before the transmittee's name has been entered in the Register in respect of the shares.

## **21. TRANSFERS - GENERAL**

- 21.1 No shares or any interest in them shall be transferred and the Directors shall not register any transfer of shares in the Company other than a Permitted Transfer and, subject only to Article 23, the Directors shall be obliged to register a Permitted Transfer.
- 21.2 Subject to Articles 19.5 and 21.3, for the purposes of the provisions of these Articles relating to transfer of shares, a transfer of shares includes a renunciation of any allotment of shares or of any Subscription Rights and any other disposition of any interest in any share (or its income or capital or other rights) whether legal beneficial or otherwise (including the entry into any option or other agreement (conditionally or otherwise) for its possible sale or transfer or grant of any security over it) and whether or not for consideration or by written disposition or otherwise.
- 21.3 Where any Investor Shares are held by a partnership which is a private equity or similar fund or by a general partner or nominee on behalf of such a partnership, any change in ownership of the underlying partnership interests (through transfer or issue of new partnership interests or otherwise) shall not constitute a transfer of those Investor Shares or any of them or any interest in them for the purposes of these Articles.
- 21.4 Any transfer or purported transfer of any share or of any interest in a share made otherwise than in accordance with these Articles shall be void and of no effect whatsoever. In addition the Directors shall be at liberty by notice in writing to the registered holders thereof to disenfranchise any shares which are the subject of a transfer not made in accordance with these Articles until such time as the Directors (acting reasonably) are satisfied that the provisions of these Articles relating to transfer of shares have been complied with.
- 21.5 The instrument of transfer of a share shall be executed by or on behalf of the transferor and (in the case of a partly paid share) the transferee, and the transferor shall be deemed to remain the holder of the share concerned until the name of the transferee is entered in the Register in respect of it.
- 21.6 No fee shall be charged by the Company for registering any transfer, document or instruction relating to or affecting the title to any share or for making any other entry in the Register.



- 21.7 Where any shares are sold or transferred under the terms of these Articles, then (except to the extent otherwise agreed in writing by the transferee) the transferor shall be deemed hereby to undertake to the transferee that he or it has full power capacity and authority to make the sale or transfer and that the shares concerned are sold or transferred with full title guarantee and free from all charges liens and encumbrances.
- 21.8 If the Board refuses to register a transfer or renunciation pursuant to these Articles, it shall, within two months after the date on which the transfer or renunciation was delivered to the Company, send notice of the refusal to the transferee or renouncee and comply with the provisions of section 771 of the 2006 Act (when in force) as regards the giving of reasons for the refusal and related information.
- 21.9 An instrument of transfer or renunciation which the Board refuses to register shall (except in the case of suspected fraud) be returned to the person delivering it. All instruments of transfer which are registered may, subject to these Articles, be retained by the Company.

## 22. EMPLOYEE SHARE PROVISIONS

- 22.1 If any PAYE or income tax and/or employer's secondary class 1 and employee's primary class 1 national insurance or other social security contributions (or similar or substituted tax liability in any part of the world) and/or related interest penalties, fines, costs and expenses (together "**employee related tax liability**") becomes payable by the Company and/or any subsidiary of the Company by reference to any shares and/or other securities acquired or held or disposed of by any member (even if the employee or director or former employee or director of the Company or other relevant Group member by reference to which the relevant employee related tax liability arises or arose is a person other than that member) including (without limitation) by reason of any election made in respect of any of those shares and/or securities under Part 7 of The Income Tax (Earnings and Pensions) Act 2003 ("**ITEPA**") then (except to the extent that such contribution may not lawfully be demanded) the member concerned shall be liable on demand by the Company or any Investor Director and without right of reimbursement from the Group, to make payment to the Company of such amount as on an after tax basis will meet the employee related tax liability concerned and the Company shall have a lien as referred to in Article 17 (even though the shares concerned are fully paid), as security for any such amount payable, over any shares in the Company held by that member and over any proceeds of their sale or other disposal.
- 22.2 The following provisions of this Article 22 shall apply as regards Restricted Securities, except to the extent otherwise agreed by the Board or by Investor Consent.
- 22.3 For the purposes of these Articles "**Restricted Securities**" shall mean restricted securities or interests in restricted securities as defined in Part 7 of ITEPA in the Company or any member of the Group (and "**Restricted Security**" shall be construed accordingly) and other words and expressions defined in that Part 7 shall bear the same meaning except where clearly inconsistent with the context.
- 22.4 No Restricted Security or interest in a Restricted Security shall be transferred or otherwise disposed of or allotted or issued to any person in circumstances where as a result that person and the Company or another member of the Group could make an election in respect of them under section 431(1) ITEPA (an "**Up Front Election**"), unless the Board and the Investor Directors are satisfied that such election will be made in the manner and by the latest time provided by sections 431(4) and (5) ITEPA.
- 22.5 If any chargeable event shall occur in relation to any Restricted Securities in circumstances where section 426 of ITEPA applies and an election could be made in respect of them under section 430(1) of ITEPA, then (unless otherwise agreed by the Directors with Investor

Consent) that election (an "**Ongoing Election**") shall be made in the manner and within the time limits prescribed in sections 430(2) and (3) ITEPA.

- 22.6 Each member who through employment by or holding of any office with any member of the Group becomes entitled to make an Up Front Election or Ongoing Election or who is an associated person of a person so entitled shall and shall procure that any such associated person shall duly join with his employer or engaging member of the Group in duly making that election in the manner and within the time limits provided in sections 431(4) and (5) or sections 430(2) and (3) ITEPA as appropriate and under these Articles such member irrevocably and as security for his due performance of such obligation appoints the Secretary for the time being of the Company as his attorney for the purposes of signing and making any such election on his behalf.
- 22.7 Each member shall duly provide to the Company and relevant employer member of the Group such information as it shall require or need for the purposes of fulfilling its obligations as a responsible person in relation to that member and/or his associated persons and/or any Restricted Securities or interest in a Restricted Security from time to time held or owned or formerly held or owned or proposed to be acquired by him and/or any such associated person and in particular and without limitation shall notify the Company of any reportable event and/or chargeable event relevant to them without delay after it occurs.
- 22.8 The Company shall procure that any Up Front Elections or Ongoing Elections required to be signed and made by it and/or any other member of the Group as required by this Article are duly made as so required and in the manner and by the latest time provided in sections 431(4) and (5) or sections 430(2) and (3) ITEPA as appropriate.
- 22.9 Neither the provisions of this Article nor any failure to comply with the same shall give rise to any right of action or compensation on the part of any member or other person who may suffer or incur any tax liability or greater tax liability as a result.

### **23. SPECIAL TRANSFER RESTRICTIONS**

- 23.1 No transfer of Ordinary Shares or any interest in them shall be made or registered (except by an Investor) without Investor Consent except:
- (A) pursuant to acceptance of an offer made and completed under and in accordance with Article 26.1 or Article 26.3; or
  - (B) by way of Permitted Family Transfer to the extent expressly permitted by the Subscription Agreement; or
  - (C) where required and made in accordance with Article 25; or
  - (D) in accordance with Article 24.9.
- 23.2 No transfer of any shares or any interest in them shall be made or registered, without Investor Consent:
- (A) in breach of the Subscription Agreement or any deed of adherence to that agreement; or
  - (B) in favour of a Competitor or any nominee of a Competitor; or
  - (C) in breach of Article 22.

23.3 The Directors may in their absolute discretion and shall if required by any Investor Consent, and (to the extent permitted by the Companies Acts) without assigning any reason, decline to register any transfer of any share:

- (A) which is not fully paid, except where it is an Investor Share being transferred to a Permitted Investor Transferee or where the share is being transferred under Article 26; or
- (B) over which the Company has a lien unless the sums the subject of the lien will be discharged in full to the satisfaction of the Board on or before that registration is made; or
- (C) to more than four transferees; or
- (D) covered by a transfer comprising shares of more than one class; or
- (E) to a minor; or
- (F) to a person who or which is insolvent or bankrupt; or
- (G) to a person suffering from mental disorder; or
- (H) which is not duly stamped (if required); or
- (I) which is not delivered for registration to the Registered Office or such other place as the Board may decide and have notified to the members on not less than 14 clear days notice, accompanied by the requisite supporting documents referred to in Article 23.4.

23.4 The supporting documents referred to in Article 23.3 are (i) the certificate for the shares to which the transfer relates (except in the case of a transfer of a share, for which a certificate has not been issued or by a person in respect of whom the Company is not required by the Companies Acts to complete and have ready for delivery a share certificate, and except in the case of a renunciation) or (at the absolute discretion of the Board) such indemnity as the Board may require in the case where any required certificate is not available; and (ii) any other evidence as the Board or Investor Director may reasonably require to prove the title to such share of the transferor or person renouncing and the due execution by him of the transfer or renunciation or, if the transfer or renunciation is executed by some other person on his behalf, the authority of that person to do so.

## **24. EXPRESSLY PERMITTED TRANSFERS**

24.1 The provisions of this Article 24 are subject to the restrictions in Article 23.

24.2 Any share or interest therein may be transferred to any other person:

- (A) in the case of any shares which are not 'A' Preferred Shares, with the prior written consent of the Board and Investor Consent and then subject always to Articles 26 and 27; or
- (B) in the case of any 'A' Preferred Shares, with Investor Consent (in relation to which the proposing transferor shall be entitled to participate) and, during the IMI Consent Period only, the prior written consent of the holder(s) of a majority of the 'A' Ordinary Shares and then subject always to Articles 26 and 27.

- 24.3 Without prejudice to Article 2.4, any share may be transferred to a person to be held as bare nominee and any shares held by a member as bare nominee may be transferred to any other person or persons provided, in either such case, that the transferor and transferee certify to the Company and the Directors (including any Investor Director) are satisfied that no beneficial interest in those shares passed by reason of the transfer.
- 24.4 Subject to Article 24.5, the following transfers of shares shall be permitted with Investor Consent and constitute Permitted Family Transfers for the purposes of these Articles:
- (A) a transfer of shares by their absolute beneficial owner, being an individual ("**the Original Member**") or his personal or other legal representatives, to a Privileged Relation of his or to trustees to be held on Family Trusts of his;
  - (B) a transfer of any shares transferred under Article 24.4(A) and/or any Related Shares of them:
    - (1) to the Original Member or any Privileged Relation of his; or
    - (2) by the trustees of the Family Trust concerned to new or continuing trustees of that Family Trust;
  - (C) a transfer of any shares held on the Adoption Date and/or subsequently acquired by the trustees of a Family Trust of an Approved Beneficiary and/or any Related Shares of them:
    - (1) to the Approved Beneficiary or any Privileged Relation of his; or
    - (2) to new or continuing trustees of that Family Trust.
- 24.5 If a member holds shares as a result of an earlier transfer under Article 24.4 that member may only transfer those shares and/or any Related Shares of them under Article 24.4 to a person to whom the member who originally transferred him the shares could have transferred them under Article 24.4.
- 24.6 Any Investor Shares or any interest in them may be transferred or otherwise disposed of to a Permitted Investor Transferee and each person holding shares as a result of any such Permitted Transfer shall also be an Investor for the purposes of these Articles.
- 24.7 If shares or an interest in them are held as a result of an earlier transfer under Article 24.6, those shares and/or any Related Shares of them and/or any interest in them may only be transferred under Article 24.6 to a person to whom the person who originally transferred the shares or interest could have transferred them under Article 24.6.
- 24.8 Any shares may be transferred to the trustees of an Employees Trust or by the trustees of an Employees Trust to any beneficiary under that trust and the trustees of an Employee Trust may grant options in favour of any such beneficiaries, so long as the transfer or option is effected or granted in accordance with the terms of the trust and has been approved by Investor Consent.
- 24.9 Any 'A' Ordinary Shares or any interest in them may be transferred or otherwise disposed of:
- (A) to any member of the IMI Group at any time provided that if subsequently that transferee ceases to be a member of the IMI Group it shall immediately upon such cessation transfer the relevant shares or interests therein to a member of the IMI Group;

- (B) if Second Completion (as defined in the Subscription Agreement) has not occurred before the second anniversary of Completion (as defined in the Subscription Agreement) at any time between that second anniversary and the date of Second Completion without the requirement for prior Investor Consent but otherwise subject to the provisions of these Articles.

## **25. MANDATORY TRANSFERS**

- 25.1 Subject to Articles 25.2 and 25.3 if a person becomes a Leaver (other than a Good Leaver) or is given or gives notice to terminate his employment or engagement in circumstances where he will as a result become a Leaver:
  - (A) he and each Relevant Member of his shall, if and to the extent required by the Directors or an Investor Majority by notice in writing given to him (or his personal representative, as appropriate) at any time and from time to time during the period of eighteen months following his Leaving Date, give a Mandatory Transfer Notice or Notices in respect of all or any of his or their Relevant Shares;
  - (B) he shall, if he subsequently becomes registered or unconditionally entitled to be registered as the holder of shares in the Company pursuant to a right or opportunity made available to him prior to his becoming a Leaver, be deemed (unless otherwise agreed by all the Directors with Investor Consent) to have served a Mandatory Transfer Notice in respect of all those shares, upon becoming so registered or entitled.
- 25.2 The provisions of this Article 25 shall not apply in respect of the 4,500, 3,000 and 2,500 'B' Ordinary Shares (or any shares derived from such shares or any consolidation, sub-division, reorganisation, restructure or similar event) respectively registered in the names of Martin Johnson, David Yeomans and Clive Buckberry on the Adoption Date. In addition, the Company may from time to time agree in writing, with Investor Consent, to exclude any one or more particular individuals and/or any of his or their Relevant Members from the provisions of Article 25.1, whether generally or in respect of a designated proportion of his or their Relevant Shares.
- 25.3 If a Mandatory Transfer of shares may be required of a Leaver or Relevant Member of a Leaver under Article 25.1 in circumstances where the Transfer Value of all of the shares concerned will not, by reason of the provisions of these Articles, exceed the aggregate amount paid up on them and that aggregate amount does not exceed £500, then during any period in which such a Mandatory Transfer Notice may be required under Article 25.1, the Board may (with Investor Consent) and will if so required by Investor Majority, serve written notice on the holder(s) of the shares concerned to re-designate those shares (or those of them as the Board shall so decide or be required) as Deferred Shares instead of such shares being included in a Mandatory Transfer Notice under Article 25.1. Any such re-designation shall take effect upon the giving of that notice and as if effected by and with the full sanction of a special resolution. The holders of the shares so re-designated shall promptly and in any event within ten days of that notice surrender to the Company the certificates for their shares so re-designated.
- 25.4 If a Family Trust ceases for any reason to be a Family Trust any shares held by that trust shall be transferred (either directly or upon trust) to the Original Member or Approved Beneficiary whose Family Trust it is or to Privileged Relation(s) of that Original Member or Approved Beneficiary within twenty one days of that event failing which the trustees shall be deemed to have given a Mandatory Transfer Notice (in respect of all those shares held by the trustees) at such later time as the Directors of the Company or an Investor Majority shall notify it in writing.

- 25.5 If any person holding shares as a bare nominee as contemplated by Article 24.3 ceases to be such a nominee and shall fail within twenty-one days of such event to transfer all the shares concerned to the original beneficial owner then that person shall be deemed to have given a Mandatory Transfer Notice in respect of those shares at such later time as the Directors of the Company or an Investor Majority shall notify him in writing.
- 25.6 A transmittee in relation to shares of a member shall at any time within eighteen months of becoming so entitled, if called upon in writing by the Directors or an Investor Majority so to do, give a Mandatory Transfer Notice in respect of all shares then registered in the name of the relevant member unless the transmittee is, or shall (within twenty-one days of becoming so entitled) transfer such shares to, a person to whom shares may be transferred pursuant to Article 24.
- 25.7 If shares held by an Investor ("**the Transferring Investor**") or an interest in them are transferred or otherwise disposed of under Article 24.6 to a Permitted Investor Transferee and the transferee subsequently ceases to be a person to whom the Transferring Investor could (if it was still a member) transfer shares under Article 24.6, that transferee (or Transferring Investor to the extent it remains the registered holder of the shares concerned) shall (to the extent it continues to hold them) within twenty-one days of written request of the Directors or any Investor Director transfer or procure the transfer of the relevant shares and any Related Shares of them (or the relevant interest in them) to the Transferring Investor (to hold in its own right) or to a continuing Permitted Investor Transferee of that Transferring Investor. If the requested transfer is not made, a Mandatory Transfer Notice will be deemed to be given by the transferee, in respect of the shares and Related Shares concerned, at the end of the twenty-one day period referred to above.
- 25.8 If the Directors become aware that any rights in respect of any shares which have been conferred upon a person nominated under Article 19 have been the subject of a purported transfer or encumbrance or disposition in breach of that Article they may with Investor Consent (and will if so required in writing by an Investor Majority) require, by written notice, the holder of the shares concerned to give a Mandatory Transfer Notice in respect of all or any of those shares either immediately or within such period as shall be specified in that notice.
- 25.9 If the Directors become aware that any shares are held by or for a Competitor they may with Investor Consent (and will if so required in writing by an Investor Majority) require, by written notice, the holder of the shares concerned to give a Mandatory Transfer Notice in respect of all or any of those shares either immediately or within such period as shall be specified in that notice.
- 25.10 For the purpose of ensuring that a transfer of shares is in accordance with the provisions of these Articles or that no circumstances have arisen under which a Transfer Notice is required to be given under these Articles, the Directors may (and shall if required by a Investor Majority) from time to time require any member or past member (including any one or more of joint holders of shares) or the legal personal representatives or the trustee in bankruptcy of any member or any person named as a transferee in any instrument of transfer lodged for registration, to furnish to the Company such information and evidence as the Directors and/or an Investor Majority may reasonably think fit regarding any matter which they or an Investor Majority may reasonably deem relevant for such purpose.
- 25.11 If any information or evidence requested under Article 25.10 is not provided to the reasonable satisfaction of the Directors or an Investor Majority requesting the same, within fourteen days after that request, the Directors may (and will if required by an Investor Majority) refuse to register the transfer in question or (in case no transfer is in question) require by notice in writing that a Mandatory Transfer Notice is given in respect of the shares concerned. If the

information or evidence discloses that in the reasonable opinion of the Directors a Transfer Notice ought to have been given in respect of any shares the Directors may (and will if required by an Investor Majority) by notice in writing require that a Mandatory Transfer Notice is given pursuant to these Articles in respect of the shares concerned.

- 25.12 Where under the provisions of these Articles a Mandatory Transfer Notice is required to be given in respect of any shares but it is not given within a period of fourteen days of demand for it being made or within any other period specified it shall, be deemed to have been given on the fourteenth day after the demand is made or at the end of the relevant specified period, as appropriate.

## 26. TAG ALONG AND DRAG ALONG

- 26.1 Subject to Article 26.6, no sale or transfer of any shares (the "**Specified Shares**") shall be made which would result if made and registered (when taken together with all other proposed contemporaneous sales or transfers of shares in the Company) in a person or persons obtaining a Controlling Interest in the Company unless the proposed transferee or transferees or his or their nominees has or have made a Qualifying Offer, as provided below.

- 26.2 No sale or transfer of any:

- (A) Investor Shares; or
- (B) 'A' Ordinary Shares; or
- (C) 'A' Preferred Shares or Investment Grade Shares in issue from time to time held by someone who is not an Investor but who is also a holder of 'A' Ordinary Shares ("**Relevant Other Tag Shares**"),

(the "**Specified Tag Shares**") shall be made in circumstances where no offer is required under Article 26.1 in relation to that sale or transfer, unless the proposed transferee or transferees or his or their nominees has or have made a Qualifying Offer, as provided below, to each of the other holders of Investor Shares and 'A' Ordinary Shares ("**relevant Tag Shareholders**") to purchase the same proportion (as nearly as may be, rounding up fractions of a shares to the nearest whole number of shares) of the Investor Shares, 'A' Ordinary Shares and/or Relevant Other Tag Shares held by each such holder as the proportion the Specified Tag Shares represent of the total number of Investor Shares and/or 'A' Ordinary Shares and/or Relevant Other Tag Shares (as applicable) held by the proposed transferor immediately prior to the proposed transfer. For these purposes, references to "Investor Shares" shall include references to 'B' Ordinary Shares arising after conversion from 'A' Preferred Shares where such 'B' Ordinary Shares derive from shares falling within the definition of Investor Shares..

- 26.3 If any Qualifying Offer to acquire all of the shares in the Company is approved in writing for the purposes of this Article 26.3 by:

- (A) where the Investor Exit Value Threshold is achieved on the sale, an Investor Majority;
- (B) where the Investor Exit Value Threshold is not achieved on the sale, an Enhanced Investor Majority;
- (C) in any event during the IMI Consent Period (but not thereafter), the holder(s) of a majority of the 'A' Ordinary Shares; and

- (D) without prejudice to the above, where any Investor or person who would be a Permitted Investor Transferee of an Investor, directly or indirectly makes a Qualifying Offer for the purpose of this Article 26.3, an Enhanced Investor Majority and the holder(s) of a majority of the voting rights attaching to the 'A' Ordinary Shares,

(the shareholders represented thereby being the "**accepting shareholders**") then the holders of the other shares in the Company (including those who become such holders through exercise of Subscription Rights, even if after the date the offer is made or any Sale pursuant to it is completed) shall be deemed under these Articles and as security for the due performance of their obligations under these Articles irrevocably to appoint such person as shall be appointed for this purpose by an Investor Majority as their attorney for the purposes of receiving and accepting and executing any documents and attending to such other things on their part as may be required under the terms of the offer and also receiving as agent or trustee on their behalf (without obligation to earn or pay interest on it) any consideration payable under the terms of the offer. The attorney shall have power to sign and vote on and deliver any resolutions approving any financial assistance involved in the context of the sale of shares under the offer and also to appoint the purchaser or transferee of shares under the offer as the attorney of their holder for the purposes of exercising the voting rights attaching to them pending their registration in the name of the transferee.

26.4 A Qualifying Offer for the purposes of these Articles shall be in writing and:

- (A) Must be a transaction at arm's length in good faith;
- (B) constitute an offer by the offeror to purchase, in the case of an offer required under Article 26.1, all of the shares in the Company then in issue and all shares to be issued on the exercise of any outstanding Subscription Rights or in the case of an offer under Article 26.2 the shares required under its terms, but excluding (to the extent the offeror so elects) any such shares already held or owned by the offeror and/or persons connected or acting in concert with the offeror;
- (C) be unconditional or subject to a condition that if its conditions are not satisfied (or waived by Investor Consent) the proposed sale or transfer of the Specified Shares or Specified Tag Shares (as the case may be) will not proceed;
- (D) be open for acceptance for at least fourteen days from its date, which shall be specified in the offer;
- (E) be made at the Specified Price, as defined below; and
- (F) include a commensurate cash alternative for any part of the Specified Price that would otherwise not have been payable in cash provided that where Article 26.3 applies the offer need only include a cash alternative which is sufficient to cover the tax liability of any member who will crystallise a liability to tax as a result of the sale of shares pursuant to such offer (the amount of which shall be calculated by the Company with Investor Consent in each case, acting reasonably).

26.5 For the purpose of this Article (but without prejudice to Article 4.3) the expression the "**Specified Price**":

- (A) means in the case of any shares and subject as provided below, a price per share which is at least equal to the price which would be payable in respect of that share on the basis of the price offered for the Specified Shares or the Specified Tag Shares assuming (if it is not the case) that a Sale were to take place on the basis of the offer



received and in any event after applying the provisions of Article 4.3 to the aggregate proceeds arising on such Sale; and

- (B) shall include an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holder or holders of the Specified Shares which having regard to the substance of the transaction as a whole can reasonably be regarded as in addition to the price paid or payable for the Specified Shares.

- 26.6 Articles 26.1 and 26.2 shall not apply (except if and to the extent expressly therein provided) to any sale or transfer of shares under any of Articles 24.3 to 24.9 inclusive or pursuant to Article 26.3.
- 26.7 Article 27 shall not apply to any transfer of shares made under Article 26.3 in circumstances where the holders of all the shares in the Company who receive the offer mentioned in that Article accept or are under that Article deemed to accept that offer.
- 26.8 If there is a disagreement between the Company and/or any of its members as to the calculation of the Specified Price or the amount of any cash alternative for the purposes of this Article the disagreement shall, if not resolved within fourteen days of it arising, be referred for Determination by a Determiner and Article 46 shall apply.

## **27. THIRD PARTY TRANSFERS**

- 27.1 Subject to Articles 23, 24 and 26, no shares or any interest in them shall be transferred or disposed of whether by way of sale or otherwise except in accordance with the following provisions of this Article 27.
- 27.2 Every holder of shares or person entitled to be registered in respect of a share or shares of the Company who intends to transfer or dispose of any share or shares registered in his name and/or to which he is so entitled or any interest in them (the "**Proposed Transferor**") shall give notice in writing to the Directors of that intention (a "**Transfer Notice**").
- 27.3 A Transfer Notice shall specify the number and class of shares which (or the interest in which) the Proposed Transferor intends to transfer and where a Transfer Notice is given or deemed given in respect of shares of more than one class a separate Transfer Notice shall be deemed to have been given in respect of each such class of share.
- 27.4 A Voluntary Transfer Notice may provide as a condition (a "**Total Transfer Condition**") that (unless all the shares specified or deemed comprised in it are sold to persons found by the Company pursuant to this Article) none shall be sold, and except as provided below, a Transfer Notice once given or deemed to be given shall not be revocable without the written consent of the Board including a majority of Investor Directors (if any) in office at the time.
- 27.5 A Transfer Notice shall constitute the Company the agent of the Proposed Transferor to sell all the shares specified or deemed comprised in it (the "**Offered Shares**") in accordance with the provisions of this Article.
- 27.6 Upon the expiry of seven days after determination of the Transfer Value of the Offered Shares as provided below and, provided the Proposed Transferor shall not have withdrawn the Transfer Notice as permitted in Article 27.18, the Directors shall forthwith by notice in writing inform:
  - (A) where the Offered Shares are 'A' Preferred Shares or 'A' Ordinary Shares or other Investment Grade Shares, each of the holders of 'A' Preferred Shares, 'A' Ordinary

Shares and Investment Grade Shares (other than the Proposed Transferor) on the basis that such shares are offered for sale amongst the holders of all such 'A' Preferred Shares, 'A' Ordinary Shares and Investment Grade Shares pro rata according to their aggregated holdings (treating all such shares on a single class of share for such purpose but on the assumption that the 'A' Preferred Shares had been full converted pursuant to Article 5);

- (B) where the Offered Shares are 'B' Ordinary Shares, each of the members (other than the Proposed Transferor), on the basis that such shares are offered by way of priority to the other holders of 'B' Ordinary Shares pro rata to their holdings of such shares and, to the extent not taken up, to the holders of the remaining shares pro rata on the basis described in Article 27.6(A),

(together "Offerees") of the number of and the price (being the Transfer Value) of the Offered Shares and invite each member to whom that notice is given to apply in writing to the Company within twenty one days of the date of despatch of the notice (which shall be specified in the notice) for such maximum number of the Offered Shares (being all or any of them) as he shall specify in that application.

27.7 The Directors shall, within seven days after the earliest of

- (A) the end of the twenty one day period referred to in Article 27.6; and
- (B) the date on which responses have been received by the Directors from all Offerees to the invitation made to them under Article 27.6 and an Investor Majority has confirmed whether or not it desires the Company to buy-back any such shares pursuant to Article 27.20,

notify the Proposed Transferor of the number of Offered Shares (if any) for which they have found a purchaser or purchasers under Article 27.6 and/or , if applicable, if the Company is willing itself to acquire any such shares where it is entitled to do so under Article 27.20 and, if the Directors have found such a purchaser or purchasers in respect of some only of the Offered Shares and the Transfer Notice properly contained a Total Transfer Condition, the Proposed Transferor shall be entitled to withdraw the Transfer Notice (in whole but not in part) within five days of such notification.

27.8 During the three months following the end of the period of seven days referred to in Article 27.7 the Proposed Transferor (whether or not the Transfer Notice has been withdrawn under that paragraph) may (subject to Article 23) transfer to any person or persons at any price per share (not being less than their Transfer Value referred to in Article 27.6) any share not allocated in accordance with the provisions of this Article, except that if he has withdrawn the Transfer Notice under Article 27.7, he may not sell only some of the Offered Shares except with Investor Consent.

27.9 If within the period of twenty-one days referred to in Article 27.6 applications are found for all or (except where the Transfer Notice is withdrawn under Article 27.7) any of the Offered Shares, the Directors shall allocate the Offered Shares (or so many of them as shall be applied for under the offer arrangements) in the priorities mentioned in Articles 27.6(A) and 27.6(B)

PROVIDED THAT no applicant shall be obliged to take more than the maximum number of Offered Shares previously applied for by him and that all requisite adjustments shall be made if any applicant allocated Offered Shares fails to complete the purchase of the same when required in accordance with this Article.

- 27.10 The Directors shall forthwith give notice in writing of the allocations of Offered Shares made pursuant to Article 27.9 (an "**Allocation Notice**") to the Proposed Transferor and to the persons to whom Offered Shares have been allocated and (provided that the aggregate number of shares so allocated coincides with the number of shares notified to the Proposed Transferor pursuant to Article 27.7) the Proposed Transferor shall thereupon be bound to transfer the shares allocated upon payment of their Transfer Value. An Allocation Notice shall state the names and address of the purchasers and the number of shares agreed to be purchased by them respectively and the purchases shall be completed at such place and such time as shall be specified by the Directors in the Notice being not less than seven days nor more than twenty eight days after the date of that Notice.
- 27.11 If the Proposed Transferor is obliged but defaults in accepting payment of the purchase price for any Offered Share or, as the case may be, in transferring the same, the Directors or any Investor Director may receive such purchase money and may nominate some person to execute an instrument of transfer of the share in the name and on behalf of the Proposed Transferor and when the instrument has been duly stamped the Directors shall cause the name of the transferee to be entered in the Register of Members as the holder of the share and where applicable shall hold the purchase money in trust without interest for the Proposed Transferor. The receipt of the Directors or any Investor Director for the purchase money shall be a good discharge to the purchaser (who shall not be bound to see to its application) and after his name has been entered in the Register of Members in purported exercise of those powers the validity of the proceedings shall not be questioned by any person.
- 27.12 Subject to Article 27.13, where a Voluntary Transfer Notice is given by an Investor the Transfer Value shall be such price per share as the Proposed Transferor shall specify in such Transfer Notice or, if no such price is specified, the Transfer Value agreed or determined under Article 27.16.
- 27.13 Where a Transfer Notice is given pursuant to acceptance of an offer made under Article 26 to which this Article 27 applies, the Transfer Value shall be the Specified Price of the Offered Shares concerned.
- 27.14 Where a Voluntary Transfer Notice is given by a holder of 'A' Ordinary Shares pursuant to Article 24.9(B), the Transfer Value shall be such price per share as the Proposed Transferor shall specify in such Transfer Notice or, if no such price is specified, the Transfer Value agreed or determined under Article 27.16.
- 27.15 Where a Mandatory Transfer Notice is given pursuant to Article 25.1 (or when it could have been so required):
- (A) by a Bad Leaver or by a Relevant Member of a Bad Leaver, the Transfer Value of the Offered Shares concerned shall be the lesser of:
    - (1) the acquisition cost of such shares or the nominal amount of such shares together with any premium paid up on them if higher; and
    - (2) the Fair Value of such shares; or
  - (B) by an Intermediary Leaver or by a Relevant Member of an Intermediary Leaver, the Transfer Value of the Offered Shares concerned shall be the Adjusted Fair Value or, if higher and agreed to by Investor Consent, their Fair Value. For these purposes, the "**Adjusted Fair Value**" shall mean such amount as would have been the Fair Value had the Sale assumed to have taken place for the purpose of Article 27.16(A) been at a price equal to the value attributed to the entire issued share capital of the company on a post-money received basis for the purpose of the most recent equity fundraising

effected by the Company prior to the date on which the relevant person became a Leaver together with an annual uplift equal to 10% per annum calculated on a daily basis.

27.16 Subject to Articles 27.12, 27.13 and 27.14, the Transfer Value per share of any shares to be transferred pursuant to the provisions of these Articles shall be such sum as may be agreed or (as provided below) deemed agreed between the Proposed Transferor and the Directors (with Investor Consent or the written consent of any Investor Director then in office) within twenty-eight days of the service or deemed service upon the Company of a Transfer Notice in which the Offered Shares are comprised or, in default of such agreement or deemed agreement, such sum as shall be Determined by a Determiner as being in his opinion the fair value thereof on the Relevant Date (as defined below) (the "**Fair Value**") on the following basis:

- (A) assuming a Sale as between a willing vendor and a willing purchaser of the whole of the issued shares of the Company in the open market;
- (B) by attributing to each class of shares such proportion of the sum calculated above as would be attributed on a Sale; and
- (C) by determining the Transfer Value per share of the Offered Shares by dividing the total value so determined of the issued shares of the same class as (and including) the Offered Shares by the number of shares of that class then in issue.

For these purposes, if the Directors shall (with Investor Consent or the consent of an Investor Director as to the amount concerned) notify a Proposed Transferor in writing of the amount which they consider should be the Fair Value of the Offered Shares and the Proposed Transferor shall fail before 5 pm London time on the twenty eighth day after the date of that notification to notify the Directors in writing received at the Registered Office that he disputes that amount (giving reasonable details of the grounds for such dispute), the Fair Value of the Offered Shares shall on the expiry of that time period be deemed to have been agreed at the amount so notified by the Directors.

27.17 For the purposes of Article 27.16 and any Determination of the Transfer Value, the "**Relevant Date**" shall mean:

- (A) in the case of a Voluntary Transfer Notice, the date on which it was given; or
- (B) the Leaving Date of the relevant Leaver, where a Mandatory Transfer Notice is given by a Leaver or a Relevant Member of a Leaver pursuant to Article 25.1 or when it could have been so required; and
- (C) in the case of any other Mandatory Transfer Notice, the date on which it was given or (if earlier) first required to be given under these Articles.

27.18 In the case of a Voluntary Transfer Notice where the Transfer Value is required to be Determined, the Proposed Transferor shall have the right (at any time before the expiry of seven days after issue of the report by the Determiner as to the Transfer Value of the Offered Shares and even if the Determiner has not been appointed at the time) to withdraw the Transfer Notice by giving notice of that withdrawal to the Directors in writing and if he does so he shall be responsible for the fees and expenses of the Determiner to the extent incurred before the date the Transfer Notice was withdrawn.

27.19 Upon receipt of a written application from any member holding shares in the Company, and subject to payment by him of the related fees and expenses, the Directors shall request the Auditors to state the sum which in their opinion is the Fair Value of the share or shares the

subject of that application and such statement shall be confirmed in writing by the Auditors (acting as experts and not as arbitrators). Any member holding shares in the capital of the Company shall be entitled at any time to make an application to the Directors in pursuance of this Article without that application constituting a notice of his intention to transfer shares within the meaning of these Articles.

27.20 In the event that the Offered Shares the subject of any Transfer Notice are 'B' Ordinary Shares then:

(A) to the extent that a purchaser has not been found for all of the 'B' Ordinary Shares pursuant to the provisions of Article 27.6 (but not otherwise), the Company shall be entitled to buy-back such shares at the Enhanced Transfer Value (as defined below), which right shall be exercisable only by an Investor Majority giving notice in writing to the Company within the twenty one day period referred to in Article 27.6 (after expiry of which period, unless exercised before, such right shall itself expire). The right of an Investor Majority to require such buy-back to take place shall be exercisable only if the Investor Majority is reasonably of the opinion that the Company will lawfully be able to buy-back such shares and if such exercise notice is so served:

- (1) a copy thereof shall be promptly served by the Company on all other members of the Company;
- (2) the Company and the members shall (to the extent lawful) do everything within their ability and powers (including the passing of shareholder resolutions) to effect such buy-back as soon as reasonably practicable; and
- (3) subject to Article 27.7, the holder of the 'B' Ordinary Shares the subject of the Transfer Notice shall be bound to sell the relevant shares to the Company and to use reasonable endeavours (subject to compliance with all applicable laws) to perfect such buy-back as soon as reasonably practicable.

For these purposes, the "**Enhanced Transfer Value**" shall be the applicable Transfer Value, together with such additional amount as is necessary in order to ensure that the proceeds of sale after tax in the hands of the transferor in respect of shares bought-back under this Article 27.20 are equal to the proceeds after tax which the transferor would have received had another member acquired such shares under the pre-emption procedures in Article 27 (it being acknowledged at the Adoption Date that the tax treatment of effecting a buy-back of shares may, in the hands of the transferor, be more disadvantageous than a sale of the relevant shares to another party),

(B) the provisions of Article 27.11 shall apply (with appropriate modifications) in relation to any default by the holder of 'B' Ordinary Shares in perfecting the buy-back of the same pursuant to this Article 27.20

## 28. GENERAL MEETINGS: CONVENING AND QUORUM

28.1 All general meetings of the Company shall:

- (A) be held within the United Kingdom or in such other jurisdiction as may be agreed by Investor Consent, but without prejudice to Article 28.7; and
- (B) not be convened on shorter notice than the minimum notice required by the Companies Acts.

- 28.2 Without limiting any other powers of the Board or any of the members to convene or require the convening of a general meeting, a general meeting may be convened by, or a proposed written shareholder resolution may be circulated by, an Investor Majority in the same way as if it is to be convened or circulated by the Board and with the its authority. The Company shall be provided with a copy of the notice convening the meeting or of that proposed written resolution at the same time as it is sent to the members entitled to receive the same.
- 28.3 The accidental omission to give any notice of a meeting or the accidental omission to send any document relating to any meeting to, or the non-receipt of any such notice or document by, any person entitled to receive the notice or document, shall not invalidate the proceedings at that meeting.
- 28.4 No business (other than the appointment of the chairman) shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and at all times throughout the meeting.
- 28.5 If within thirty minutes (or such longer time as the chairman of the meeting may agree) of the time appointed for a general meeting, a quorum is not present, or if during a meeting a quorum ceases to be present, the meeting shall be adjourned to such other day and at such other time and place as the chairman (or in default, the Board) may decide provided that (unless otherwise agreed by Investor Consent) if the meeting is adjourned for 14 days or more, not less than 7 clear days' notice in writing is given of the adjourned meeting to all persons entitled to attend it.
- 28.6 Two members present in person or by proxy (or, being a corporation, by representative) shall be a quorum provided that:
- (A) subject to Article 28.8, one of those members must be a holder of 'A' Preferred Shares present in person or by proxy or corporate representative;
  - (B) if and for so long as, the Company has only one member, that member present in person or by proxy shall be a quorum at any general meeting of the Company or of the holders of any class of shares; and
  - (C) if he is the only person present, a member (or his proxy or corporate representative) may only be counted in the quorum once, notwithstanding that he may also be acting as a proxy or corporate representative for another member or members.
- 28.7 A person (whether being a shareholder or his proxy or corporate representative) may attend and shall be treated as being in attendance at a general meeting if (even though he is not in the same place as other attendees) he is in a position (where is he is entitled to speak at the meeting) to communicate to all those attending the meeting any information or opinions he has on the business of the meeting and (being entitled to vote at the meeting) he is able to vote, during the meeting, on the resolutions put to the meeting and his vote can be taken into account, in determining whether or not such resolutions are passed, at the same time as the votes of the other persons attending the meeting.
- 28.8 If at an adjourned meeting a quorum for the purposes of Article 28.6 is not present within half an hour from the time appointed for the meeting the meeting shall be dissolved, unless the meeting was adjourned for fourteen days or more (or such lesser period as may be agreed by Investor Consent) and at least seven clear days prior written notice of such adjourned meeting is given, in which case the quorum at any such adjourned meeting shall be any two members present in person or by proxy (or, being a corporation, by representative).

- 28.9 The chairman (if any) of the Board or, in his absence, the deputy chairman (if any) shall preside as chairman at every general meeting. If there is no chairman or deputy chairman, or if at any meeting neither the chairman nor any deputy chairman is present within five minutes after the time appointed for the commencement of the meeting, or if neither the chairman nor any deputy chairman is willing to act as chairman, the directors present shall by a majority in number choose one of their number to act, or if one director only is present he shall preside as chairman if willing to act. If no director is present, or if each of the directors present declines to take the chair, the persons present and entitled to vote shall appoint one of their number to be chairman.
- 28.10 Each director shall be entitled to attend and speak at any general meeting of the Company, whether or not he is a shareholder. The chairman or any director may invite any person to attend and speak at any general meeting of the Company where he considers that this will assist in the deliberations of the meeting.
- 28.11 The chairman may at any time with the consent of any meeting at which a quorum is present (and shall if so directed by such a meeting) adjourn the meeting either sine die or to another time or place. When a meeting is adjourned sine die the time and place for the adjourned meeting shall be fixed by the Board.
- 28.12 No business shall be transacted at any adjourned meeting except business which might properly have been transacted at the meeting had the adjournment not taken place.
- 28.13 When a meeting is adjourned for one month or more, or without a date being fixed, at least seven days notice of the adjourned meeting shall be given specifying the place, the day and time of the adjourned meeting and the general nature of the business to be transacted. Except where these Articles otherwise require, it shall not be necessary to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting.

## **29. GENERAL MEETINGS: PROCEEDINGS**

- 29.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before, or on the declaration of the result of, the show of hands) demanded by the chairman or by any member entitled to vote who is present in person or by proxy. On a show of hands or poll votes may be given either personally or by corporate representative or by proxy.
- 29.2 Unless a poll is demanded as provided in Article 29.1, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the Minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- 29.3 If a poll is properly demanded it shall be taken in such manner as the chairman shall direct. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. A poll shall be taken forthwith after it has been properly demanded. A demand for a poll may be withdrawn. A member entitled to more than one vote need not, if he votes, use all his votes or cast all of the votes in the same way.
- 29.4 In the case of joint holders of a share the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

29.5 A member in respect of whom an order has been made by any competent court or official on the ground that he is or may be suffering from mental disorder or is otherwise incapable of managing his affairs may vote at any general meeting of the Company or at any separate general meeting of the holders of any class of shares in the Company and may exercise any other right conferred by membership in relation to general meetings by or through any person authorised in those circumstances to do so on his behalf (and that person may vote on a poll by proxy), provided that evidence to the satisfaction of the Board of the authority of the person claiming to exercise the right to vote or such other right has been delivered at the Registered Office (or at such other place as may be specified in accordance with these Articles for the delivery of instruments appointing a proxy) not later than the last time at which an instrument of proxy should have been delivered in order to be valid for use at that meeting or on the holding of that poll.

29.6 If any objection shall be raised to the qualification of any voter, or any votes have been counted which ought not to have been counted or which might have been rejected, or any votes are not counted which ought to have been counted, the objection or error shall not vitiate the decision of the meeting or adjourned meeting on any resolution unless it is raised or pointed out at the meeting or, as the case may be, the adjourned meeting at which the vote objected to is given or tendered or at which the error occurs.

### **30. PROXIES AND CORPORATE REPRESENTATIVES**

30.1 The appointment of a proxy shall be in any usual form or in any other form which the Board may approve and, in the case of an instrument in writing, shall be executed by or on behalf of the appointor. In the case of an instrument in writing, a corporation may execute a form of proxy either under its common seal (or in any other manner permitted by law and having the same effect as if executed under seal) or under the hand of a duly authorised officer, attorney or other person. A member may appoint more than one proxy to attend on the same occasion, but only one proxy may be appointed in respect of any one share. The appointment of a proxy shall not preclude a member from attending and voting at the meeting or at any adjournment of it. A form of proxy shall, unless it provides to the contrary, be valid for any adjournment of the meeting to which it relates.

30.2 The appointment of a proxy and any authority under which it is executed or a copy of the authority certified notarially or in some other way approved by the Board may:

(A) in the case of an instrument in writing be deposited at the Registered Office or at such other place in the United Kingdom as is specified in the notice convening the meeting, or in any instrument of proxy sent out by the Company in relation to the meeting, not less than forty eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

(B) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications:

(1) in the notice convening the meeting; or

(2) in any instrument of proxy sent out by the Company in relation to the meeting; or

(3) in any invitation contained in an electronic communication to appoint a proxy issued by the Company in relation to the meeting



be received at that address not less than forty eight hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote;

- (C) in the case of a poll taken more than 48 hours after it was demanded, be deposited or received at the place referred to in paragraph (A) or (B) (as appropriate) of this Article after the poll has been demanded and not less than twenty four hours before the time appointed for taking the poll; or
- (D) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting to the chairman of the meeting, the Secretary or any Director.

Conditionally upon and with effect from section 327(3) of the 2006 Act coming into force, in calculating the periods mentioned in sub-paragraphs (A) to (D) above, no account shall be taken of any part of a day which is not a working day for the purposes of section 324(3) of the 2006 Act.

- 30.3 An appointment of proxy which is not deposited, delivered or received in a manner permitted under Article 30.2 shall be invalid unless the chairman of the meeting or an Investor Majority, in its absolute discretion in relation to any such appointment, waives any such requirement and decides to treat that appointment as valid. The appointment of a proxy will not be valid after twelve months from its date or the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve months from that date.
- 30.4 When two or more valid but differing appointments of proxy are delivered or received in respect of the same share for use at the same meeting and in respect of the same matter, the one which is last validly delivered or received (regardless of its date or of the date of its execution) shall be treated as replacing and revoking the other or others as regards that share. If the Company is unable to determine which appointment was last validly delivered or received, none of them shall be treated as valid in respect of that share.
- 30.5 An appointment of proxy shall be deemed (unless the contrary is stated in it) to confer authority to demand or join in demanding a poll and to vote, on a poll, on a resolution or a motion or an amendment of a resolution put to, or other business which may properly come before, the meeting or meetings for which it is given or any adjournment of any such meeting, as the proxy thinks fit. The appointment shall not confer any further right to speak at the meeting, except with the permission of the chairman of the meeting.
- 30.6 The Board may at the expense of the Company send forms of appointment of proxy to the members by post, by electronic communication or otherwise (with or without provision for their return by pre-paid post) for use at any general meeting or at any separate meeting of the holders of any class of shares, either blank or nominating as proxy in the alternative any one or more of the Directors or any other person. If for the purpose of any meeting invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the Company's expense, they shall be issued to all (and not to some only) of the members entitled to be sent notice of the meeting and to vote at it. The accidental omission to send such a form of appointment or to give such an invitation to, or the non-receipt of such form of appointment by, any member entitled to attend and vote at a meeting shall not invalidate the proceedings at that meeting.
- 30.7 A body corporate which is a member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or at any separate meeting of the holders of any class of shares. Any person so

authorised shall be entitled to exercise the same powers on behalf of the corporation (in respect of that part of the corporation's holdings to which the authority relates) as the corporation could exercise if it were an individual member. The body corporate shall for the purposes of these Articles be deemed to be present in person at any such meeting if a person so authorised is present at it. All references in these Articles to attendance and voting in person shall be construed accordingly. A Director, the Secretary or some other person authorised for the purpose by the Secretary may require the representative to produce a certified copy of the resolution so authorising him or such other evidence of his authority reasonably satisfactory to such person before permitting him to exercise his powers.

- 30.8 A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous termination of the authority of the person voting or demanding a poll, unless notice of the termination was received by the Company at the Registered Office, or at such other place at which the instrument of proxy was duly deposited, or, where the appointment of proxy was contained in an electronic communication, at the address at which that appointment was duly received, at least one hour before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll not taken on the same day as the meeting or adjourned meeting) at least one hour before the time appointed for taking the poll.

- 30.9 In this Article "**address**", in relation to documents in electronic form, includes any number or address used for the supply of documents in electronic form.

## **31. WRITTEN SHAREHOLDER RESOLUTIONS**

- 31.1 Shareholder resolutions may be passed in writing as provided in Chapter 2 of Part 13 of the 2006 Act.
- 31.2 For the purposes of Article 31.1 a resolution in writing may consist of several documents in the same form each signed by one or more members. In the case of a corporation the resolution may be signed on its behalf by a director or by its duly appointed or duly authorised representative.

## **32. APPOINTMENT AND REMOVAL OF DIRECTORS**

- 32.1 Subject to the Companies Acts and unless and until the Company by special resolution shall otherwise determine, there shall be a maximum of six Directors and there shall be no minimum number of Directors.
- 32.2 Subject to the class rights of the Investor Shares, a Director may be appointed:
- (A) by ordinary resolution; or
  - (B) by resolution of the Board; or
  - (C) under Article 32.3 or Article 33.
- 32.3 Subject to such action being taken with Investor Consent, the holders for the time being of a Majority of the issued equity share capital of the Company entitled at the time to vote at general meetings may at any time and from time to time by written notice given to the Company at the Registered Office or to any Investor Director (such notice to take effect on delivery) appoint any person as a director and/or secretary of the Company and/or remove any person as a director and/or secretary of the Company, howsoever appointed.
- 32.4 The office of a Director shall be vacated if:

- (A) he ceases to be a Director by virtue of any provision of the Companies Acts or he becomes prohibited by law from being a Director; or
- (B) he becomes bankrupt or insolvent and the Board or an Investor Majority notifies him in writing that he should leave his office; or
- (C) he is suffering from mental disorder and the Board or an Investor Majority notifies him in writing that his office be vacated; or
- (D) (not being precluded from so doing by the terms of any contract with the Company) he resigns the office of Director by notice in writing to the Company or he becomes required so to resign under the terms of any contract made between him and the Company or a member of the Group and he shall fail to do so when so required; or
- (E) he shall for more than six consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the Directors resolve (with any Investor Consent required under these Articles) that his office is vacated (but without prejudice to any right he may have to damages by reason of that removal); or
- (F) he is removed from office (with any Investor Consent required under these Articles) pursuant to any provision of the Companies Acts or these Articles or (in addition to any power of removal by shareholder resolution conferred by the Companies Acts) by ordinary resolution.

32.5 A Director need not hold any shares nor retire by rotation or by reason of having reached any particular age.

### 33. INVESTOR DIRECTORS AND OBSERVERS

33.1 Each of the persons identified as an "Appointor" in the table below shall be entitled to appoint the number of Directors and Observers (as defined in Article 33.6) to the Company specified below and to remove from office or tenure any person so appointed (and subject to removal) to appoint another person in his place:

Appointor	Director Appointment Rights	Observer Appointment Rights
NBGI Representative	Single Director	Single Observer
Seroba Kernel Representative	Single Director	Single Observer
Wellington Partner Representative	Single Director	Single Observer
BTV Representative	None	Single Observer
Majority owner of 'A' Ordinary Shares (for so long as a member of the IMI Group)	None	Single Observer

Any person so appointed as a Director shall be an Investor Director for the purposes of these Articles

33.2 During any Default Period:

- (A) the right to appoint and remove Directors under Article 33.1 may be exercised by Enhanced Investor Consent (but not otherwise) in respect of any number of directors and the removal rights may be exercised in respect of any Director (other than an Investor Director) howsoever appointed; and/or
- (B) an Enhanced Investor Majority may by notice to the Company or any director or the secretary of it declare that upon receipt of that notice the Investor Directors thereafter in office shall when voting collectively and unanimously have that number of votes in relation to resolutions of the Board which exceed by one the number of votes in aggregate of the other Directors, including any casting vote of the Chairman (if any).

33.3 Any appointment or removal of a director under this Article shall be by written notice signed by the relevant appointor(s) given to any officer of the Company (not being the director the subject of the notice) or to the Company at the Registered Office and shall take effect on and from the date on which that notice is so given. Any officer receiving such a notice shall promptly supply a copy of it to the Company.

33.4 An Investor Director shall be entitled to be a member of any committee of the Board and also to be appointed to the boards of such of the other members of the Group as he shall require.

33.5 For so long as the right to appoint an Investor Director under this Article subsists, upon a poll being taken in connection with a resolution of the Company in General Meeting to remove an Investor Director or to restrict or delete this Article 33, the members entitled to appoint the same shall be entitled to exercise such total number of votes in respect of their holdings of 'A' Preferred Shares as shall equal twice the total number of votes cast on that resolution by all other shareholders of the Company.

33.6 For so long as the right to appoint an Investor Director under this Article subsists the holders of the 'A' Preferred Shares entitled to make such appointment may in the same manner as provided in this Article nominate an observer to fulfil the role of such Investor Director in lieu of and, separately (as indicated in Article 33.1) in addition to such Investor Director (with the effect that if an Appointor has not appointed an Investor Director he may appoint up to two Observers). In addition, the holders of the 'A' Ordinary Shares shall be entitled to appoint and remove a single observer (in the same fashion as an Investor representative would be entitled to appoint an observer) on the basis specified in Article 33.1. Any person appointed as an observer pursuant to this Article 33 shall be an "Observer".

33.7 An Observer shall be entitled to all the rights (other than to vote at meetings of the Board) of:

- (A) in the case of any Observer appointed by an Investor representative pursuant to this Article 33, an Investor Director; and
- (B) in the case of any Observer appointed by the holders of 'A' Ordinary Shares pursuant to this Article 33, any director of the Company,

but in no case shall any Observer by virtue of that nomination become a director or alternate director of the Company.

- 33.8 An Investor Majority shall be entitled to nominate the Chairman of the Board and to remove him from the position in the same manner as an Appointor is entitled to appoint and remove an Investor Director.

#### **34. ALTERNATE DIRECTORS**

- 34.1 Each Director (other than an alternate Director) shall have the power at any time to appoint as an alternate Director either another Director or any other person approved for that purpose (except in the case of an appointment of an alternate by an Investor Director, which shall not need that approval) by a resolution of the Directors (such approval not to be unreasonably withheld), and, at any time, to terminate such appointment. Every appointment and removal of an alternate Director shall be in writing signed by the appointor and (subject to any approval required) shall (unless all the Directors agree otherwise) only take effect upon receipt of that written appointment or removal at the Registered Office.
- 34.2 An alternate Director so appointed shall not be entitled in that capacity to receive any remuneration from the Company except only such part (if any) of the remuneration otherwise payable to his appointor as his appointor may by notice in writing to the Company from time to time direct, but shall otherwise be subject to the provisions of these Articles with respect to Directors. An alternate Director shall during his appointment be an officer of the Company and shall not be deemed to be an agent of his appointor.
- 34.3 An alternate Director shall (subject to his giving to the Company an address at which notices may be served upon him) be entitled to receive notices of all meetings of the Directors and of any committee of the Directors of which his appointor is a member and to attend and to vote as a Director at any such meeting at which his appointor is not personally present and generally in the absence of his appointor to perform and exercise all functions, rights, powers and duties as a Director of his appointor and to receive notice of all General Meetings.
- 34.4 The appointment of an alternate Director shall automatically determine on the happening of any event which if he were a Director would cause him to vacate such office or if his appointor shall cease for any reason to be a Director.
- 34.5 A Director or any other person may act as alternate Director to represent more than one Director and an alternate Director shall be entitled at meetings of the Directors or any committee of the Directors 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.

#### **35. DIRECTORS POWERS**

- 35.1 Subject to the Companies Acts, the Company's memorandum of association and these Articles and to any directions given by special resolution of the Company, the business of the Company shall be managed by the Board, which may exercise all the powers of the Company whether relating to the management of the business or not. No alteration of the memorandum of association or of these Articles nor any such direction shall invalidate any prior act of the Board which would have been valid if that alteration had not been made or such direction had not been given. The provisions in these Articles giving specific powers to the Board shall not limit the general powers given by this Article.
- 35.2 The shareholders may by special resolution direct the Board to take, or refrain from taking, specified action. No such special resolution shall invalidate anything which the Board has already done.

- 35.3 If the number of Directors is less than the minimum prescribed in accordance with these Articles, the remaining Director or Directors shall act only for the purposes of appointing an additional Director or Directors to make up such minimum or of convening a general meeting of the Company for the purpose of making that appointment. If there are no Director or Directors able or willing to act, any two members or any Investor may summon a general meeting for the purpose of appointing Directors.

## **36. DELEGATION OF DIRECTORS DUTIES**

- 36.1 The Board may by power of attorney or otherwise, appoint any person or body of persons whether nominated directly or indirectly by the Board to be the agent of the Company upon such terms (including terms as to remuneration) as it may decide and may delegate to any person so appointed any of its powers, authorities and discretions (with power to sub-delegate). The Board may remove any person appointed under this Article and may revoke or vary the delegation but no person dealing in good faith and without notice of the revocation or variation shall be affected by it. The power to delegate contained in this Article shall be effective in relation to the powers, authorities and discretions of the Board generally and shall not be limited by the fact that in certain articles, but not in others, express reference is made to particular powers, authorities or discretions being exercised by the Board or by a committee authorised by the Board.
- 36.2 The Board may entrust to and confer upon any Director any of its powers, authorities and discretions (with power to sub-delegate) upon such terms and conditions and with such restrictions as it thinks fit, and either collaterally with, or to the exclusion of, its own powers, authorities and discretions and may from time to time revoke or vary all or any of them but no person dealing in good faith and without notice of the revocation or variation shall be affected by it. The power to delegate contained in this Article shall be effective in relation to the powers, authorities and discretions of the Board generally and shall not be limited by the fact that in certain articles, but not in others, express reference is made to particular powers, authorities or discretions being exercised by the Board or by a committee authorised by the Board.
- 36.3 The Board may delegate any of its powers, authorities and discretions (including, without limitation, those relating to the payment of monies or other remuneration to, and the conferring of benefits on, a Director) for such time and on such terms and conditions as it shall think fit to a committee consisting of one or more Directors and (if thought fit) one or more other persons. The Board may grant to the committee the power to sub-delegate, and may retain or exclude the right of the Board to exercise the delegated powers, authorities or discretions collaterally with the committee. The Board may at any time revoke the delegation or alter its terms and conditions or discharge the committee in whole or in part. Where a provision of the Articles refers to the exercise of a power, authority or discretion by the Board and that power, authority or discretion has been delegated by the Board to a committee, the provision shall be construed as permitting the exercise of the power, authority or discretion by the committee.
- 36.4 The Board's power under these Articles to delegate to a committee includes (without limitation) the power to delegate the determination of any fee, remuneration or other benefit to be paid or provided to any Director and is not limited by the fact that in some Articles but not others express reference is made to particular powers being exercised by the Board or by a committee.
- 36.5 Any committee so formed shall, in the exercise of the powers, authorities and discretions so delegated, conform to any regulations which may be imposed on it by the Board. The meetings and proceedings of any committee shall be governed by the provisions contained in

these articles for regulating the meetings and proceedings of the Board so far as the same are applicable.

### **37. DIRECTORS MEETINGS**

- 37.1 The quorum necessary for the transaction of business of the Directors shall be three, at least two of whom shall (if he is in office or unless he otherwise agrees in writing) be Investor Directors or in any case his alternate, subject to Article 37.2.
- 37.2 If not less than fourteen days prior notice of any proposed meeting of Directors has been given in writing to each Director or his alternate setting out in reasonable detail the matters proposed to be considered and at the proposed meeting no Investor Director or alternate thereof is present as required by Article 37.1, any two Directors present in person or by alternate shall constitute a quorum.
- 37.3 Subject to Article 37.1, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit provided that (unless otherwise agreed by all the Directors at the time as regards the meeting concerned and without prejudice to Article 37.4) all meetings of the Directors shall be held within the United Kingdom. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
- 37.4 Save in the case of an emergency and unless all the Directors (or their duly appointed alternates) shall agree to the holding of a meeting by shorter notice, at least seven days' notice of every meeting of Directors shall be given to each Director and Observer.
- 37.5 Notice of a Board meeting shall be deemed to be duly given to a Director if it is given to him personally or by word of mouth or sent in writing to his last known address within the United Kingdom or any other address within the United Kingdom given to the Company by him for that purpose or given by electronic communications to an address for the time being notified to the Company by the Director. It shall not be necessary to give notice of a Board meeting to a Director who is absent from the United Kingdom unless the Director has notified the Company in writing of an address in the United Kingdom or an address for electronic communications at which notice of such meetings is to be given to him when he is absent from the United Kingdom. A Director may waive the requirement that notice of any Board meeting be given to him, either prospectively or retrospectively. In this Article "address", in relation to documents in electronic form, includes any number or address used for the supply of documents in electronic form.
- 37.6 Any Director enabled to participate in the proceedings of a meeting by means of a communication device (including a telephone) which allows all of the Directors present at the meeting (whether in person or by means of such type of communication device) to hear at all times the other Directors present at the meeting shall be deemed to be present at the meeting and shall be counted when reckoning a quorum. The 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.
- 37.7 Subject to Article 33.2(B), at any meeting of the Directors each Director (or his alternate Director if the Director himself is not present) present at the meeting shall be entitled to one vote. In the case of an equality of votes at any meeting the Chairman of such meeting shall not be entitled to a second or casting vote.
- 37.8 A resolution in writing signed by the requisite Directors shall be as effective for all purposes as a resolution passed at a meeting of the Directors duly convened and held, and may consist of several documents in the like form, each signed by one or more of the Directors, but need

not be signed by an alternate director if signed by his appointor or vice versa. For these purposes, the requisite Directors shall be:

- (A) all of the Directors entitled to vote on the resolution concerned; or
- (B) subject to Article 37.9, that number of Directors entitled to vote on the resolution concerned as would, at a meeting of the Board duly convened and held, hold sufficient votes to pass that resolution.

- 37.9 No resolution shall be effective for the purposes of Article 37.8(B) unless it is signed by each Investor Director then in office (or his alternate).
- 37.10 If a resolution is to be passed under Article 37.8(B) then (to the extent reasonably practicable) the Directors passing the same shall use all reasonable endeavours to inform the other Directors entitled to vote on it of the nature of the resolution and, in any event, the Company will promptly provide the other Directors with a copy of the resolution as passed.
- 37.11 All acts done by the Board or by any committee or by any person acting as a director or member of a committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any member of the Board or committee or person so acting or that they or any of them were disqualified from holding office or had vacated office or were not entitled to vote, be as valid as if each such member or person had been properly appointed and was qualified and had continued to be a director or member of the committee and had been entitled to vote.

## **38. DIRECTORS' INTERESTS**

- 38.1 Subject to the provisions of the Companies Acts and to the other provisions of these Articles, no Director or proposed or intending Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any office or place of profit or as vendor, purchaser or in any other manner whatever, nor shall any contract in which any Director is in any way interested be liable to be avoided, nor shall any director who is so interested be liable to account to the Company or the members for any remuneration, profit or other benefit realised by the contract by reason of the Director holding that office or of the fiduciary relationship so established.
- 38.2 A Director may hold any other office or place of profit with the Company (except that of auditor) in conjunction with his office of director for such period (subject to the provisions of the Companies Acts) and upon such other terms as the Board may decide, and may be paid such extra remuneration for so doing (whether by way of salary, commission, participation in profits or otherwise) as the Board (or any committee authorised by the Board) may decide, and either in addition to or in lieu of any remuneration provided for by or pursuant to any other Article.
- 38.3 A Director may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested or as regards which it has any power of appointment, and shall not be liable to account to the Company or the members for any remuneration, profit or other benefit received by him as a director or officer of or from his interest in the other company. The Board may also cause any voting power conferred by the shares in any other company held or owned by the Company or any power of appointment to be exercised in such manner in all respects as it thinks fit, including the exercise of the voting power or power of appointment in favour of the appointment of the directors or any of them as directors or officers of the other company, or in favour of the payment of remuneration to the directors or officers of the other company.



- 38.4 A Director may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm may be entitled to remuneration for professional services as if he were not a Director.
- 38.5 Subject to the provisions of the Companies Acts and to Article 38.16, a Director may vote on and be counted in the quorum in relation to any resolution of the Board in respect of any contract in which he has an interest.
- 38.6 Whilst section 317 of the 1985 Act is in force, a Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract with the Company shall declare the nature of his interest at the meeting of the Board at which the question of entering into the contract is first taken into consideration, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested. For the purposes of this Article 38.6, a general notice to the Board by a Director to the effect that (a) he is a member of a specified company or firm and/or is to be regarded as interested in any contract which may after the date of the notice be made with any company or firm or other person or (b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him, shall be deemed to be a sufficient declaration of interest under this Article in relation to any such contract; provided that no such notice shall be effective unless either it is given at a meeting of the Board or the Director takes reasonable steps to secure that it is brought up and read at the next Board meeting after it is given.
- 38.7 A Director who is in any way (directly or indirectly) interested in a proposed transaction or arrangement with the Company shall declare the nature of his interest to the other Directors (i) at a meeting of the Directors; or (ii) by a notice in writing in accordance with section 184 of the 2006 Act; or (iii) by a general notice in accordance with section 185 of the 2006 Act prior to that transaction or arrangement being entered into by the Company (where section 177 of the 2006 Act applies) or as soon as required by section 182 of the 2006 Act, where that section applies. If a declaration of interest under this Article proves to be, or becomes, inaccurate or incomplete, a further declaration must be made. This Article 38.7 does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question. For this purpose a Director shall be deemed to be aware of matters of which he ought reasonably to be aware. A Director need not declare an interest in the circumstances set out in section 177(6) or section 182(6) of the 2006 Act, as applicable.
- 38.8 For the purposes of these Articles and subject to the Companies Acts, and unless his appointors shall by written notice to the Company prescribe that this Article 38.8 is not to apply to the Director concerned, each Investor Director shall be deemed by these Articles generally to have disclosed that he is to be regarded as interested in any contracts between and/or situations involving the Company or any member of the Group on the one hand and any Investor and/or any Investor Affiliate (as defined in Article 38.13) on the other.
- 38.9 References in this Article to:
- (A) a contract include references to any proposed contract and to any transaction or arrangement whether or not constituting a contract;
  - (B) any contract with or situation involving the Company shall include also any contract with or situation involving any of its subsidiaries or subsidiary undertakings for the time being;
  - (C) an interest of a Director shall include any interest of any person who is connected with him for the purposes of section 346 of the 1985 Act or sections 252 to 255

(inclusive) of the 2006 Act, whichever is/are in force when the interest is being considered, to the extent the Director is aware of the interest of that connected person; and

- (D) an interest of an alternate Director shall also include the interest of his appointor, to the extent the alternate Director is aware of that interest.

38.10 Subject to the provisions of the Companies Acts, the Company may, by Investor Consent or by ordinary resolution passed with Investor Consent, suspend or relax the provisions of this Article to any extent or ratify any contract not properly authorised by reason of a contravention of this Article. Neither a Director nor any member connected with him for the purposes of section 239 of the 2006 Act shall vote on any resolution of the Company relating to the ratification of any action by him amounting to negligence, default, breach of duty or breach of trust in relation to the Company.

38.11 Subject to Article 38.12, the Directors are empowered under these Articles, for the purposes of section 175 of the 2006 Act, to authorise any Conflict Situation that may arise and to amend or vary any such authorisation so given. Any such authorisation, amendment or revocation shall be given by resolution of the Directors made in accordance with these Articles and, in the case of such authorisation, that section. The Directors may give any such authorisation subject to such terms as they shall consider appropriate and reasonable in the circumstances.

38.12 Investor Consent shall be required before the Company or any member of the Group shall:

- (A) through its directors, authorise for the purposes of section 175 of the 2006 Act or otherwise any situation or matter in which any director (other than an Investor Director) has, or can have, a direct or indirect interest which conflicts, or may possibly conflict, with the interests of the Company;

- (B) amend or vary any authorisation referred to in Article 38.11

38.13 For the purposes of sections 175 and 180(4) of the 2006 Act and for all other purposes, it is acknowledged that an Investor Director may be or become subject to a Conflict Situation or Conflict Situations as a result of his also being or having been or being party to an agreement or arrangement or understanding or circumstances under which he may become an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or a direct or indirect investor in and/or otherwise commercially involved with or economically interested in any of the following:

- (A) an Investor; and/or

- (B) any Investor Affiliate, which for these purposes means any Person who or which, as regards any Investor or any other Investor Affiliate of that Investor:

- (1) is a member for the time being of its Investor Group or an associated company; and/or
- (2) is an investment manager or investment adviser to or of it and/or another Investor Affiliate; and/or
- (3) is a Person in which the Investor and/or another Investor Affiliate may have or acquire a direct or indirect economic interest, including without limitation any portfolio company investee; and/or

- (4) controls or is controlled, managed, advised (in an investment adviser capacity) or promoted by the Investor and/or such an Investor Affiliate; and/or
- (5) a trustee, manager, beneficiary, shareholder, partner, unitholder or other financier or any participant in or of it and/or that Investor Affiliate, and/or
- (C) any carried interest or similar incentive arrangement associated with any Person or arrangement referred to in paragraph (A) and/or (B) of this Article,

where for these purposes "**Person**" shall mean any individual, body corporate, fund, trust, partnership or other entity whether or not having separate legal status.

- 38.14 An Investor Director's duties to the Company arising from his holding office as director shall not be breached or infringed as a result of any Conflict Situation envisaged by Article 38.13 having arisen or existing in relation to him and he shall not be held accountable to the Company for any benefit he directly or indirectly derives from his involvement with any person or entity referred to in Article 38.13 (a "**Relevant Conflict Person**") provided that if any Investor Director shall as a result of any such Conflict Situation be interested in the activities of a Relevant Conflict Person whose commercial activities are or are reasonably likely to become directly competitive with those of the Company and/or any of its subsidiaries and of which he is a director (or equivalent office holder), he shall as soon as reasonably practicable disclose the same to the Board and he shall not be authorised by anything in these articles to disclose any confidential information belonging or relating to Company and/or any of its subsidiaries to any such person or any of its directors, officers or associated companies.
- 38.15 Any Investor Director the subject of a Conflict Situation envisaged by Article 38.13 shall be entitled to:
- (A) receive notice (including any relevant board papers) of, attend, count in the quorum towards and vote at board meetings relating in any way to, and deal generally with, matters concerning, connected with or arising from the Conflict Situation concerned; and
  - (B) keep confidential and not disclose to the Company any information which comes into his possession as a result of such Conflict Situation where such information is confidential as regards any third party.
- 38.16 The Director in question and any other interested Director shall not vote or be counted in the quorum on any resolution of the Board in accordance with Article 38.11.
- 38.17 The provisions of this Article are without prejudice to the requirements of Article 10.
- 39. FEES, REMUNERATION, EXPENSES AND PENSIONS**
- 39.1 Each of the non executive Directors may be paid a fee at such rate as may from time to time be determined by the Board or as is prescribed by the Subscription Agreement.
- 39.2 Each Director may be paid his reasonable travelling, hotel and incidental expenses of attending and returning from meetings of the Board or committees of the Board or general meetings of the Company or any other meeting which as a Director he is entitled to attend and shall be paid all other costs and expenses properly and reasonably incurred by him in the conduct of the Company's business or in the discharge of his duties as a Director.

- 39.3 The Board or any committee authorised by the Board may exercise all the powers of the Company to provide benefits, either by the payment of gratuities or pensions or by insurance or in any other manner whether similar or not, for any director or former director or the relations, or dependants of, or persons connected to, any director or former director. No director or former director shall be accountable to the Company or the members for any benefit provided pursuant to this article and the receipt of any such benefit shall not disqualify any person from being or becoming a director of the Company.
- 39.4 The Board may exercise any power conferred by the Companies Acts to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the Company or that subsidiary.
- 39.5 The rights conferred by this Article are subject to Article 10, to the extent applicable.

#### **40. BORROWING POWERS OF DIRECTORS**

- 40.1 Subject as otherwise provided in these Articles, the Directors may exercise all the powers of the Company to borrow money, whether in excess of the nominal amount of the share capital of the Company for the time being issued or not, and to mortgage or charge its undertaking, property and uncalled capital, in whole or any part, and, subject to the provisions of these Articles and of the Companies Acts, to issue debentures, debenture stocks and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.
- 40.2 Except with Investor Consent:
- (A) the Directors shall restrict the borrowings of the Company and exercise all rights exercisable by the Company in relation to other members of the Group (other than borrowings between the Company and/or any of its wholly owned subsidiaries) so as to secure (so far as by that exercise they can secure) that, no money shall be borrowed if the aggregate principal amount outstanding of all borrowings by the Group then exceeds or would as a result of that borrowing exceed £100,000 or such greater amount as shall be approved from time to time by Investor Consent;
  - (B) the Company shall not and shall procure that no other member of the Group shall create issue or enter into or allow to subsist or arise any mortgage or charge or other encumbrance whatsoever over any of its assets or undertaking or give any other form of security except:
    - (1) pursuant to the terms of the Facilities referred to in the Subscription Agreement; or
    - (2) the encumbrances clearly disclosed in the Disclosure Letter to the Subscription Agreement as already being in force at the time of its Completion; or
    - (3) liens arising in the ordinary course of business securing monies not yet due for payment and fully provided for; and
  - (C) the Company shall not and shall procure that no other member of the Group shall vary or agree to any material variation in the extent or terms of its borrowings and similar facilities or the extent or terms of any security given in respect of them or open or vary the mandate applicable to any bank account.

- 40.3 In this Article the expression "**borrowings**" shall include any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent, incurred in respect of (i) money borrowed or raised, (ii) any bond, note, loan stock, debenture or similar instrument, (iii) acceptance or documentary credit facilities, (iv) foreign exchange options, (v) rental payments under leases and hire purchase agreements and instalments under conditional sale agreements (in all cases whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or of financing the acquisition or use of the asset concerned, (vi) guarantees, indemnities, bonds, standby letters of credit or other instruments issued in connection with the performance of contracts and or in respect of the indebtedness of any other person (vii) invoice discounting, factoring or similar facilities and (viii) the amount paid up on any share capital of any subsidiary of the Company (other than equity share capital) not for the time being owned by the Company or any subsidiary thereof.
- 40.4 No debt incurred or security given in respect of monies borrowed or to be taken into account as monies borrowed in excess of the limit prescribed by this Article shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was exceeded as a result but no lender or other person dealing with the Company shall be concerned to see or inquire whether that limit is observed.

#### **41. DIVIDENDS AND OTHER PAYMENTS**

- 41.1 Subject to the provisions of the Companies Acts and to Article 10 and the rights attaching to any classes of share, the Company may:
- (A) pay such dividends as appear to the Board to be justified by the financial position of the Company and may pay any dividend payable at a fixed rate at intervals settled by the Board whenever the financial position of the Company, in the opinion of the Board, justifies its payment;
  - (B) by ordinary resolution from time to time declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the Board.
- 41.2 Except in so far as the rights attaching to, or the terms of issue of, any share otherwise provide:
- (A) all dividends shall be declared and paid on the Equity Shares as a class only according to the amounts paid up (excluding any premium) on the share in respect of which the dividend is paid, but no amount paid up on a share in advance of calls shall be treated for the purposes of this article as paid up on the share;
  - (B) all dividends shall be apportioned and paid pro rata according to the amounts paid up (excluding any premium) on the share during any portion or portions of the period in respect of which the dividend is paid; and
  - (C) with prior Investor Consent, dividends may be declared or paid in any currency other than Sterling and the Board may decide the basis of conversion for any currency conversions that may be required and how any costs involved are to be met.
- 41.3 With prior Investor Consent, the Board may deduct from any dividend or other moneys payable to a member by the Company on or in respect of any shares all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in respect of

shares of the Company. Sums so deducted can be used to pay amounts owing to the Company in respect of the shares.

- 41.4 Subject to the rights attaching to, or the terms of issue of, any shares, no dividend or other moneys payable by the Company on or in respect of any share shall bear interest against the Company.
- 41.5 Any dividend or other sum payable in cash by the Company in respect of a share may be paid by cheque, warrant or similar financial instrument delivered to or sent by post addressed to the holder at his registered address or, in the case of joint holders, addressed to the holder whose name stands first in the register in respect of the shares at his address as appearing in the Register or addressed to such person and at such address as the holder or joint holders may in writing direct. Every cheque, warrant or similar financial instrument shall, unless the holder or joint holders otherwise direct, be made payable to the holder or, in the case of joint holders, to the holder whose name stands first on the register in respect of the shares, and shall be sent at his or their risk and payment of the cheque, warrant or similar financial instrument by the financial institution on which it is drawn shall constitute a good discharge to the Company. In addition, any dividend or other sum may be paid by any bank or other funds transfer system or such other means and to or through such person as the holder or joint holders may in writing direct, and the Company shall have no responsibility for any sums lost or delayed in the course of payment by any such system or other means or where it has acted on any such directions. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable or property distributable on or in respect of the shares held by them. Where a person is entitled by transmission to a share, any dividend or other sum payable by the Company in respect of the share may be paid as if he were a holder of the share and his address noted in the Register were his registered address and where two or more persons are so entitled, any one of them may give effectual receipts for any dividends or other moneys payable or property distributable on or in respect of the shares.
- 41.6 The Company may cease to send any cheque, warrant or similar financial instrument through the post or to employ any other means of payment for any dividend payable on any shares in the Company which is normally paid in that manner on those shares if in respect of at least two consecutive dividends payable on those shares the cheques, warrants or similar financial instruments have been returned undelivered or remain uncashed during or at the end of the period for which the same are valid or that means of payment has failed. In addition, the Company may cease to send any cheque, warrant or similar financial instrument through the post or may cease to employ any other means of payment if, in respect of one dividend payable on those shares, the cheque, warrant or similar financial instrument has been returned undelivered or remains uncashed during or at the end of the period for which the same is valid or that means of payment has failed and reasonable enquiries have failed to establish any new address or account of the holder. Subject to the provisions of these Articles, the Company must recommence sending cheques, warrants or similar financial instruments or employing such other means in respect of dividends payable on those shares if the holder or person entitled by transmission requests that commencement in writing.
- 41.7 All dividends or other sums payable on or in respect of any shares which remain unclaimed may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. Any dividend or other sum unclaimed after a period of 12 years from the date when it was declared or became due for payment shall be forfeited and shall revert to the Company and the payment by the Board of any unclaimed dividend or other sum payable on or in respect of a share into a separate account shall not constitute the Company a trustee in respect of it.
- 41.8 Any shareholder resolution declaring a dividend may, upon the recommendation of the Board and with Investor Consent, direct that it shall be satisfied wholly or partly by the distribution

of assets, and in particular of paid up shares or debentures of any other company, and where any difficulty arises in regard to the distribution the Board may settle it as it thinks expedient, and in particular may authorise any person to sell and transfer any fractions or may ignore fractions altogether, and may fix the value for distribution purposes of any assets to be distributed and may determine that cash shall be paid to any members on the basis of the value so fixed in order to secure equality of distribution and may vest any assets to be distributed in trustees as may seem expedient to the Board.

- 41.9 If the Company commences liquidation, the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Companies Acts divide among the members in kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and, for that purpose, set such values as he deems fair upon any property to be divided and determine how the division shall be carried out as between the members or different classes of members, or vest the whole or any part of the assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but no member shall be compelled to accept any shares or other assets upon which there is any liability.
- 41.10 Any person entitled to receive a dividend or other distribution from the Company in respect of any shares may waive their right to receive the same, in whole or in part, by written notice to the Company. No such a waiver shall be effective in respect of any share held by more than one holder or to which more than one person is entitled unless it is signed by all of the holders of that share or persons so entitled, as the case may be.

## **42. CAPITALISATION OF PROFITS AND RESERVES**

42.1 The Board may, with the authority of an ordinary resolution and subject to Article 42.2:

- (A) subject to this Article, resolve to capitalise any undivided profits of the Company not required for paying any preferential dividend (whether or not available for distribution) or any sum standing to the credit of any reserve or fund of the Company (including any share premium account, capital redemption reserve and profit and loss account), whether or not available for distribution;
- (B) appropriate the sum resolved to be capitalised to the holders of Equity Shares in proportion to the nominal amounts of the shares (whether or not fully paid) held by them respectively which would entitle them to participate in a distribution of that sum if the shares were fully paid and the sum were then distributable and were distributed by way of dividend and apply that sum on their behalf either in or towards paying up the amounts, if any, unpaid on any shares held by them respectively, or in paying up in full unissued shares or debentures of the Company of a nominal amount equal to that sum, and allot the shares or debentures credited as fully paid to those holders of Equity Shares or as the Board may direct, in those proportions, or partly in one way and partly in the other, but so that the share premium account, the capital redemption reserve and any profits or reserves which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued shares to be allotted to members credited as fully paid;
- (C) resolve that any shares so allotted to any member in respect of a holding by him of any partly paid shares shall, so long as those shares remain partly paid, rank for dividend only to the extent that those partly paid shares rank for dividend;
- (D) make such provision by the issue of fractional certificates (or by ignoring fractions or by accruing the benefit of fractions to the Company rather than to the holders

concerned) or by payment in cash or otherwise as the Board may determine in the case of shares or debentures becoming distributable in fractions;

(E) authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for either (i) the allotment to them respectively, credited as fully paid, of any further shares or debentures to which they are entitled upon that capitalisation; or (ii) the payment up by the Company on behalf of those members of their respective proportions of the reserves or profits resolved to be capitalised in or towards settlement of the amounts or any part of the amounts remaining unpaid on their existing shares; and so that any such agreement shall be binding on all those members; and

(F) generally do all acts and things required to give effect to that resolution.

42.2 The Board only exercise any powers under Article 42.1 with and in accordance with the terms of an Investor Consent.

### **43. INFORMATION RIGHTS OF MEMBERS**

43.1 No member shall by virtue of that capacity have any right of inspecting any accounting record or other documents or records of the Company unless he is authorised to do so by statute, by order of the court, by the Board or by an ordinary resolution.

43.2 Nothing in Article 43.1 shall restrict the rights of the Investors or any of them or the holders of the 'A' Ordinary Shares to receive or have access to information under the terms of the Subscription Agreement or any provision of these Articles and/or the Companies Acts.

### **44. NOTICES**

44.1 Any notice to be given to or by any person pursuant to these Articles (other than a notice calling a meeting of the Directors) shall be in writing or ((where that person has agreed or is deemed by the 2006 Act to have agreed) to communications being made to him in electronic form and (where permitted) has not withdrawn that agreement) shall be given in electronic form to an address for the time being notified (or deemed notified by a provision of the 2006 Act) for that purpose to the person giving the notice.

44.2 A notice or other document may be given by the Company to any member either personally or by sending it by post in a pre-paid envelope addressed to that member at his registered address or by leaving it at that address or (where permitted under Article 44.1) by giving it in electronic form to an address for the time being notified (or deemed notified by a provision of the 2006 Act) to the Company by the member, or by any other means authorised in writing by the member concerned.

44.3 A notice or other document may be given to the Company by sending it by post in a pre-paid envelope addressed to it at the Registered Office or by leaving it at that address or ( where permitted by Article 44.1) by giving it in electronic form to an address for the time being notified by the Company specified or deemed agreed by the Company as provided in Part 3 of Schedule 5 of the 2006 Act.

44.4 In the case of joint holders of a share, all notices and documents shall be given to the person whose name stands first in the Register in respect of that share. Notice so given shall be sufficient notice to all the joint holders.

44.5 If a member (or, in the case of joint holders, the person first named in the Register) has a registered address outside the United Kingdom but has given to the Company an address in



the United Kingdom at which notices may be given to him or has an address to which notices may be sent in electronic form, he shall be entitled to have notices or documents given to him at that address. Otherwise no such member (including any such joint holder) shall be entitled to receive any notice or other document from the Company.

- 44.6 Any notice or other document to be given to a member may be given by reference to the Register as it stands at any time within the period of 21 days before the day that the notice is given. No change in the Register after that time shall invalidate the giving of that notice or document or require the Company to give that item to any other person.
- 44.7 If on three consecutive occasions notices or other documents have been sent through the post to any member at his registered address or his address for the service of notices but have been returned undelivered, such member shall not be entitled to receive notices or other documents from the Company until he shall have communicated with the Company and supplied in writing a new registered address or address within the United Kingdom for the service of notices.
- 44.8 If on three consecutive occasions notices or other documents have been sent in electronic form to an address for the time being notified (or deemed notified by a provision of the 2006 Act) to the Company by the member and the Company becomes aware that there has been a failure of transmission, the Company shall revert to giving notices and other documents to the member by post or by any other means authorised in writing by the member concerned. That member shall not be entitled to receive notices or other documents from the Company in electronic form until he shall have communicated with the Company and supplied in writing a new address to which notices or other documents may be sent in electronic form.
- 44.9 The Company may send or supply notices, documents or other information to members by making those notices, documents and other information available on a website subject to and provided in compliance with Schedule 5 of the 2006 Act.
- 44.10 A notice or other document addressed to a member at his registered address or address for giving notice in the United Kingdom shall be, if sent by post, deemed to have been given at the time 24 hours after posting if pre-paid as first class post and at the time 48 hours after posting if pre-paid as second class post. In proving that notice has been given it shall be sufficient to prove that the envelope containing the notice or document was properly addressed, pre-paid and posted.
- 44.11 A notice or other document address to a member at an address to which notices may be sent using electronic communications shall be, if sent by electronic communications, deemed to have been given at the expiration of 24 hours after the time it was sent. Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given.
- 44.12 A notice or document not sent by post but left at a registered address or address for giving notice in the United Kingdom shall be deemed to be given at the time it is left.
- 44.13 If by reason of the suspension or curtailment of postal services in the United Kingdom the Company is unable effectively to convene a general meeting by notices sent through the post, any such meeting may be convened by notice advertised once in at least one national newspaper published in the country in which the Company's registered office is located. The Company shall send a copy of the notice to members by post if at least seven clear days before the meeting the posting of notices to addresses throughout the United Kingdom again becomes practicable. Any notice given by advertisement in accordance with this Article shall be deemed to have been served at noon on the day on which the advertisement first appears.

- 44.14 A member present either in person or by proxy, or in the case of a corporate member by a duly authorised representative, at any meeting of the Company or of the holders of any class of shares shall be deemed to have received due notice of that meeting and, where required, of the purposes for which it was called.
- 44.15 A person who becomes entitled to a share by transfer, transmission or otherwise shall be bound by any notice in respect of that share (other than a notice given by the Company under section 793 of the 2006 Act) which, before his name is entered in the Register of Members, has been given to the person from whom he derives his title.
- 44.16 A notice or other document may be given by the Company to a transmittee by sending or delivering it in any manner authorised by these Articles for the giving of notice to a member, addressed to that person by name, or by the title of representative of the deceased or trustee of the bankrupt or by any similar or equivalent description, at the address, if any, in the United Kingdom or to the address to which notices may be sent in electronic form supplied (or deemed supplied by a provision of the 2006 Act) for that purpose by the person claiming to be so entitled. Until such an address has been supplied, a notice or other document may be given in any manner in which it might have been given if the event giving rise to the transmission had not occurred. The giving of notice in accordance with this Article shall be sufficient notice to all other persons interested in the share.
- 44.17 In this Article, "address", in relation to documents in electronic form, includes any number or address used for the supply of documents in electronic form.

#### **45. DATA PROTECTION**

- 45.1 Each of the members and Directors (from time to time) consents to the processing of his personal data by the Company, its members and Directors (each a "**Recipient**") for the purpose of due diligence exercises, compliance with applicable laws, regulations and procedures and the exchange of information amongst themselves, provided effected consistently with any restrictions contained in the Subscription Agreement. A Recipient may process that personal data either electronically or manually. The personal data which may be processed for those purposes under this Article shall include any information which may have a bearing on the prudence or commercial merits of investing, or disposing of any shares or other investment or security in the Company. Subject to any confidentiality undertakings given to them by a Recipient and to any restrictions imposed in the Subscription Agreement, each of the Members and Directors (from time to time) consent to the transfer of that personal data to persons acting on behalf of any Recipient and to the offices of any Recipient both within and outside the European Economic Area for the purposes stated above, where it is necessary or desirable to do so.

#### **46. DETERMINATION PROVISIONS**

- 46.1 If a matter is to be Determined or referred to a Determiner for Determination as provided in these Articles, the following provisions of this Article shall apply.
- 46.2 The Determiner shall be such person as shall be agreed in writing between the Relevant Parties (as defined below) within five business days of the obligation or entitlement to refer the matter for Determination arising, failing which such independent chartered accountant or independent valuer as shall be nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales on application by any such Relevant Party.
- 46.3 For the purposes of these Articles the Relevant Parties shall be:

- (A) in the case where the Determination is to be made for the purposes of Article 26.8 (*Tag Along and Drag Along; Specified Price and/or cash alternative*), the parties to the disagreement concerned; or
  - (B) the Proposed Transferor (or holder of the relevant shares) and the Company, in any other case where the matter to be Determined involves the determination of the Fair Value or Transfer Value of any shares; or
  - (C) in the case of any of Articles 6.1(D), 8.4 or 8.10, the Company and an Investor Majority; or
  - (D) in the case of Article 8.3(A) the Company and the Exercising Investor concerned
- 46.4 The terms of engagement of a Determiner (including without limitation his fees and costs and any limitations on liability) shall be such reasonable commercial terms as shall be agreed between the Determiner and the Lead Appointor (as defined below), consistently with the following provisions of this Article 46:
- (A) the Determiner shall act as an expert and not as an arbitrator;
  - (B) the Determiner shall be instructed to issue his determination in writing and address and supply it to the Relevant Parties;
  - (C) the Determiner shall be instructed to take account of such representations as may be made by the Relevant Parties as he shall see fit, and each of the Relevant Parties shall be entitled to make such representations separately but shall do so as expeditiously as reasonably possible; and
  - (D) the Determiner shall be instructed to make his determination as expeditiously as is reasonably possible.
- 46.5 The terms of engagement need only be signed between the Determiner and the Lead Appointor but shall bind all of the Relevant Parties.
- 46.6 The Lead Appointor shall be:
- (A) in the case where the Determination is to be made for the purposes of Article 26.8 (*Tag Along and Drag Along; Specified Price and/or cash alternative*), the holders of a Majority of the Investor Shares held by the Relevant Parties (or such person as may be nominated in writing for such purposes by such a Majority) or (if there are no Relevant Parties holding Investor Shares) the Company as agent for the Relevant Parties; or
  - (B) in the case where the Determination is to be made for the purposes of Articles 6.1(D), 8.4 or 8.10, such person as is appointed by an Investor Majority for the purpose; or
  - (C) the Company, acting with the consent of an Investor Majority, in any other case where the matter to be Determined involves the determination of the Fair Value or Transfer Value of any shares or is to be Determined for the purposes of Article 8.3(A).
- 46.7 The Lead Appointor shall in that capacity act as it shall see fit in its absolute discretion, and (absent its proven fraud or wilful default) shall not in that capacity be under any liability to any of the Relevant Parties or any other person.

- 46.8 Nothing shall oblige a Lead Appointor to enforce any terms of engagement or other rights against a Determiner unless it shall first have been indemnified and secured to its reasonable satisfaction against any costs, expenses and other liability that may be thereby involved, after taking account of any due proportion of those costs, expenses and liability that should be borne by it having regard to its financial interest in the matter being Determined.
- 46.9 If the Lead Appointor is nominated under Article 46.5, the members and Company shall be deemed hereby irrevocably to appoint the relevant Investor Majority as their attorney to enter into any documentation required to agree on their behalf directly with the Lead Appointor in the terms specified in Articles 46.7 and 46.8.
- 46.10 Each of the Company and other Relevant Parties shall, promptly after request, supply the Determiner with such information as he may from time to time reasonably require for the purposes of making his Determination.
- 46.11 The Determination of a Determiner which shall be in writing and (in the absence of manifest error on its face) shall be final and binding for the purposes of the relevant provisions of these Articles.
- 46.12 Except as expressly provided to the contrary in these Articles, the fees and expenses of the Determiner shall be borne as the Determiner shall direct or, in the absence of such a direction, by the Company, where the dispute is as to the Transfer Value of any of Offered Shares or in any other case where the Company is a party to the dispute or, where the Company is not party to the dispute and/or it is not lawful for the Company to bear such costs, between the other Relevant Parties pro rata to the number of Equity Shares held by them respectively.
- 46.13 The Company and other Relevant Parties shall use all reasonable endeavours to procure that any Determination required is obtained with due expedition.

#### **47. INDEMNITY**

- 47.1 Subject to and to the fullest extent permitted by the Companies Acts, but without prejudice to any indemnity to which he may be otherwise entitled:
- (A) every present and former Director and other officer of the Company (not being its auditor) and alternate Director shall be entitled to be indemnified out of the assets of the Company against all costs and liabilities incurred by him in relation to any proceedings (whether civil or criminal) which relate to anything done or omitted or alleged to have been done or omitted by him as a Director or alternate present and former Director save that no present and former Director or officer or alternate Director shall be entitled to be indemnified:
- (1) for any liability incurred by him to the Company or any associated company of the Company (as defined by section 309(A)(6) of the 1985 Act or section 256 of the 2006 Act, whichever is in force at the time, for these purposes);
  - (2) for any fine imposed in criminal proceedings which have become final;
  - (3) for any sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature howsoever arising;
  - (4) for any costs for which he has become liable in defending any criminal proceedings in which he is convicted and that conviction has become final;

- (5) for any costs for which he has become liable in defending any civil proceedings brought by the Company or an associated company in which a final judgment has been given against him; and
  - (6) for any costs for which he has become liable in connection with any application under sections 144(3) or (4) or 727 of the 1985 Act or sections 661(3) or (4) or 1157 of the 2006 Act in which the court refuses to grant him relief and that refusal has become final.
- (B) every present and former Director and other officer (not being its auditor) and alternate Director shall be entitled to have funds provided to him by the Company to meet expenditure incurred or to be incurred in any proceedings (whether civil or criminal) brought by any party which relate to anything done or omitted or alleged to have been done or omitted by him as a Director or officer or alternate Director, provided that he will be obliged to repay those amounts no later than:
- (1) if he is convicted in proceedings, the date when the conviction becomes final;
  - (2) if judgment is given against him in proceedings, the date when the judgment becomes final; or
  - (3) if the court refuses to grant him relief on any application under sections 144(3) or (4) or 727 of the 1985 Act or sections 661(3) or (4) or 1157 of the 2006 Act, the date when the refusal becomes final.
- 47.2 Conditionally upon and with effect from section 235 of the 2006 Act coming into force, every Director and alternate Director shall be entitled to be indemnified out of the assets of the Company against all costs and liabilities incurred by him in relation to any of the Company's activities as trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act) save that no Director or alternate Director shall be entitled to be indemnified (i) for any fine imposed in criminal proceedings which have become final; or (ii) for any sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature howsoever arising; or (iii) for any costs for which he has become liable in defending any criminal proceedings in which he is convicted and that conviction has become final.
- 47.3 The Company may purchase and maintain for any Director, Secretary or other officer of the Company 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 or which he may be guilty in relation to the Company.

## THE SCHEDULE

### (Definitions and Interpretation)

1. The regulations contained in Table A as prescribed under the 1985 Act, or in any equivalent table prescribed under any former enactment, or any relevant model articles prescribed in accordance with section 20 of the 2006 Act, do not apply to the Company.
2. In these Articles of Association (including this Schedule) ("**these Articles**") unless the context otherwise requires:

"**A' Preferred Shares**" means 'A' Preferred Shares of £1 each in the capital of the Company;

"**A' Ordinary Shares**" means 'A' Ordinary Shares of £1 each in the capital of the Company;

"**Accounts**" means audited accounts of the Company or (as the case may be) audited consolidated accounts of the Group;

"**1985 Act**" means the Companies Act 1985;

"**2006 Act**" means the Companies Act 2006;

"**Adoption Date**" means the date of the passing of the resolution adopting these Articles;

"**Approved Beneficiary**" means any person who, in relation to a Family Trust, is approved as an Approved Beneficiary from time to time by the Board with Investor Consent or is otherwise stated by the Subscription Agreement to be an Approved Beneficiary;

"**Article 12.9 Allotment**" shall have the meaning given to that expression in Article 12.9;

"**associated company**" means, in relation to a company, a subsidiary or subsidiary undertaking or holding company for the time being of that company or a subsidiary or subsidiary undertaking for the time being of such a holding company;

"**Auditors**" means the auditors for the time being of the Company;

"**B' Ordinary Shares**" means 'B' Ordinary Shares of £1 each in the capital of the Company;

"**Bad Leaver**" means any Leaver who:

- (a) before or at any time within the twelve months after becoming a Leaver joins or agrees to join (in any capacity) a Competitor. For the avoidance of doubt, any person who upon becoming a Leaver is categorised as a Good Leaver or Intermediary Leaver but subsequently joins or agrees to join (in any capacity) a Competitor before any transfer of his shares has been registered following his having been required to or having been deemed to serve a Mandatory Transfer Notice in relation thereto shall be recategorised as a Bad Leaver and the provision of Article 25 (Mandatory Transfers) (in conjunction with Article 27 (Third Party Transfers)) shall be given effect to (by repeating the process for offering the shares for sale, if necessary, provided no transfer of the same has been registered beforehand) on the basis of his being a Bad Leaver and not a Good Leaver or an Intermediary Leaver; or
- (b) becomes a Leaver as a result of his employment or engagement by and/or appointment as a director of any Group Company being terminated for any of the following reasons or where any of the following circumstances apply:

- (i) he has been convicted or pleaded guilty to a charge involving any criminal offence (other than a road traffic offence for which no custodian sentence may be imposed); or
- (ii) he is declared bankrupt (or the equivalent in any relevant jurisdiction); or
- (iii) any member of the Group is entitled under his service or consultancy agreement or at law to dismiss him or terminate his engagement summarily (that is to say, without any period of notice as required by his service or consultancy agreement); or
- (iv) he is debarred or prohibited by law from holding the office of director (or equivalent office) of any company in any country; or
- (v) he has, in accordance with generally recognised good human resources practice, received appropriate formal warnings following a disciplinary or performance management process and has failed to meet the standards of conduct or performance reasonably required by the Company after being given a reasonable opportunity to improve;

**"Board"** means the board of directors for the time being of the Company or any duly constituted and authorised committee of that board;

**"BTV Representative"** shall have the meaning given to that term in the definition of Investor Majority;

**"business day"** means a day (not being a Saturday or Sunday) on which banks generally are open for business in London;

**"clear days"** means in relation to the period of a notice, that period excluding the day when the notice is given or deemed given and the day for which it is given or on which it is to take effect;

**"Companies Acts"** means the Companies Acts (as defined in section 2 of the 2006 Act) insofar as they apply to the Company;

**"Competitor"** means any person (other than an Investor) who, in the opinion of the Board (including a majority of the Investor Directors in office at the time) or an Investor Majority, carries on or is interested, directly or indirectly, in any business which competes, directly or indirectly, with any business carried on by the Group or who is connected with or an associated company of such a person;

**"Conflict Situation"** means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company including (without limitation) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the Company could take advantage of the property, information or opportunity);

**"Controlling Interest"** means an interest (within the meaning of sections 820 to 824 (inclusive) of the 2006 Act) in shares which (disregarding the impact of any Default Period) confer in the aggregate more than fifty per cent of the total voting rights conferred by all the shares in the equity share capital of the Company for the time being in issue and conferring the right to vote at all General Meetings;

**"Default Period"** means any period in which, except with Investor Consent:

- (a) the Company or any member of the Group (other than a dormant subsidiary) is insolvent; or
- (b) an event of default (by whatever name called) is outstanding for the purposes of any other borrowings or financial facilities of the Group and has not been remedied or any other event has occurred or circumstances subsist which (with the giving of notice, passing of time or otherwise) would be such an event of default; or
- (c) any of the special rights or privileges attaching to any Investor Shares in these Articles and/or the terms of any Investor Consent shall have been breached and (if remediable) not remedied within fourteen days of the breach to the satisfaction of an Investor Majority; or
- (d) the Company or any other party (not being an Investor) to the Subscription Agreement is in material breach of any of its or his obligations assumed under or pursuant to the Subscription Agreement and (if remediable) shall have failed within fourteen days of the breach to remedy the same to the satisfaction of an Investor Majority,

or which is after the date falling ten weeks after the second anniversary of the date of the Subscription Agreement unless the Milestone has been Achieved (each as defined in the Subscription Agreement) before then;

**"Default Remedy Scenario"** shall have the meaning given to that term in Article 12.9;

**"Deferred Shares"** means deferred shares having the rights and restrictions set out in Article 14;

**"Determiner"** means the accountant or umpire or other person appointed as provided in these Articles to make a determination of a value or any matter in dispute or on which there is disagreement;

**"Employees Trust"** means any trust established by the Company or another member of the Group (with any consent required under Article 10) to acquire and hold shares in the capital of the Company for the benefit of employees and/or former employees of the Group and/or their dependants;

**"Enhanced Investor Consent"** means the written consent of an Enhanced Investor Majority;

**"Enhanced Investor Majority"** means an Investor Majority where the persons constituting such majority include all of the NBGI Representative, the Seroba Kernel Representative and the Wellington Partners Representative (as such terms are defined in the definition of "Investor Majority");

**"Enhancement Notice"** means a notice in writing given to the Company or any Director or the secretary of the Company:

- (a) to confirm that the enhanced voting rights of the 'A' Preferred Shares in Article 9.2 or Article 9.3 shall apply; and/or
- (b) that Article 33.2(B) shall apply;



**"Equity Shares"** means Ordinary Shares and 'A' Preferred Shares and references to **"Equity Share Capital"** shall be construed accordingly;

**"Exempted Shares"** means any 'A' Preferred Shares which are allotted and issued to a person who, immediately before such allotment and issue, was a member of the Company but was not an Investor for the purposes of these Articles;

**"Exit"** means the first to occur of a Sale or Flotation;

**"Fair Value"** means the fair value of any shares in the Company determined as provided in Article 27.16;

**"Family Trust"** means in relation to any Original Member or Approved Beneficiary a trust (whether arising under a settlement inter vivos or a testamentary disposition by whomsoever made or on intestacy) under which:

- (a) no immediate beneficial interest in the shares in question is for the time being vested in any person other than the Original Member or Approved Beneficiary or Privileged Relations of his; and
- (b) no power of control over the voting powers conferred by those shares is for the time being exercisable by or subject to the consent of any person other than the trustees as trustees or the Original Member or Approved Beneficiary or Privileged Relations of his

and so that for this purpose a person shall be considered to be beneficially interested in a share if that share or its income is or may become liable to be transferred or paid or applied or appointed to or for the benefit of that person or any voting or other rights attaching to it are or may become liable to be exercisable by or as directed by that person pursuant to the terms of the relevant trusts or in consequence of any exercise of a power or discretion conferred by them on any person or persons;

**"Financial Year"** means a financial year or other period in respect of which the Company prepares its Accounts in accordance with the relevant provisions of the Companies Acts;

**"Flotation"** means the effective admission of any part of the equity share capital of the Company to the Official List of the UK Listing Authority and trading on The London Stock Exchange or (subject to Investor Consent) the grant of effective permission by The London Stock Exchange for dealings to take place in that share capital on AIM or the commencement of dealings in the same on any other recognised investment exchange (as defined in Part XVIII of the Financial Services and Markets Act 2000) (whichever is the earlier);

**"Flotation Exit Value"** means, in the event of a Flotation, the aggregate market value of all the ordinary shares of the Company (which for these purposes shall include all Equity Shares) allotted or in issue immediately after the time of Flotation:

- (a) assuming that there have been exercised in full all rights of any person (whether or not yet exercisable) to call for the allotment or issue of equity share capital of the Company and that any conversions of Equity Shares required under Article 5 and this Article 6 have taken place;
- (b) excluding any new shares which are to be or have been newly subscribed in order to raise additional capital as part of the Flotation

determined by reference to the price at which the ordinary shares the subject of the Flotation are to be issued or (as appropriate) placed or, in the case of an offer for sale by tender, by reference to the applicable striking price, as part of the Flotation arrangements;

**"Good Leaver"** means a Leaver who:

- (a) becomes a Leaver because
  - (i) he dies; or
  - (ii) he retires with the consent of his employer; or
  - (iii) he is dismissed or resigns because he has suffered a physical or mental deterioration which, in the opinion of an Investor Majority is sufficiently serious to prevent him from duly performing his normal duties as a Relevant Executive and is not caused by abuse of alcohol or drugs; or
  - (iv) he is dismissed or his engagement is terminated in circumstances where his dismissal or termination does not render him a Bad Leaver; or
- (b) does not fall within any of the above categories but nevertheless the Board, with Investor Consent, designates him as a Good Leaver for the purposes of these Articles;

**"Group"** means the Company and its subsidiaries and subsidiary undertakings for the time being;

**"Group Reorganisation"** means any arrangement (by scheme of arrangement, share exchange, under section 110 of the Insolvency Act 1986 or otherwise) under which the shares in the Company are acquired by a new body corporate in terms that the shareholders of the body corporate and their respective shareholdings and percentage equity interests in that new body corporate after that acquisition are the same or substantially the same as they were immediately prior to that acquisition, disregarding any changes in such shareholdings consequent on the exercise of options and similar entitlements under employee and similar share incentive arrangements operated by the Group or any of its members at the time of the acquisition;

**"IMI Group"** means IMI plc and any of its subsidiaries from time to time;

**"IMI Consent Period"** means the period commencing on Completion (as defined in the Subscription Period) and ending on the earlier of:

- (a) the date falling 24 months after the date of Completion; and
- (b) the Second Completion Date (as defined in the Subscription Agreement);

**"Indebtedness"** means any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent, incurred in respect of (a) money borrowed or raised, (b) any bond, note, loan stock, debenture or similar instrument, (c) acceptance or documentary credit facilities, (d) foreign exchange options, (e) rental and periodic payments, under leases and hire purchase agreements and instalments under conditional sale agreements (in all cases whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or of financing the acquisition or use of the asset concerned, (f) payments in the nature of finance charges or repurchase amounts and debt indemnity under factoring and invoice discounting arrangements and (g) guarantees, indemnities, bonds, standby letters of credit or other instruments issued in

connection with the performance of contracts and or in respect of the indebtedness of any other person;

**"Intermediary Leaver"** means any Leaver who voluntarily resigns or terminates his employment or engagement other than as a result of constructive dismissal (where such constructive dismissal has been acknowledged or confirmed by an employment tribunal or court of competent jurisdiction) or whom the Board, with Investor Consent, designates as an Intermediary Leaver for the purposes of these Articles;

**"Investment Grade Shares"** means any shares in the Company bearing rights which are prioritised to those attaching to the Ordinary Shares and reasonably considered by the Investors (acting by an Investor Majority and as confirmed by written notice to the Company) to have features designed to attract investment by venture capital or similar professional investors;

**"Investor"** means any person being an allottee of Investor Shares (including, for the avoidance of doubt, those allottees of such shares who subscribe for them on completion of the Subscription Agreement) and/or any person who becomes an Investor pursuant to Article 24.6 and who in any such case from time to time holds shares in the Company;

**"Investor Consent"** means the written consent of an Investor Majority;

**"Investor Directors"** means any director appointed pursuant to Article 33 and references to an Investor Director shall be construed accordingly;

**"Investor Exit Value"** means, in relation to all Investor Shares sold by the Investors in a Sale, cash proceeds arising from such sale which are at least equal to the aggregate Issue Price of the shares subscribed for and from which the shares so sold were derived (taking into account the conversion provisions of Articles 5 and 6);

**"Investor Group"** means, in relation to any corporate Investor, that Investor and its associated companies from time to time;

**"Investor Majority"** shall mean three or more of the NBGI Representative, the Seroba Kernel Representative, the Wellington Partners Representative and the BTV Representative provided that the persons constituting such majority include at least two of the NBGI Representative, the Seroba Kernel Representative and the Wellington Partners Representative. For these purposes:

- (a) the **"NBGI Representative"** shall be the holder(s) at the relevant time of a majority of the 'A' Preferred Shares originally subscribed by NBGI pursuant to the Subscription Agreement to the extent then in issue and to the extent the same have not been converted into 'B' Ordinary Shares pursuant to these Articles or any person nominated from time to time by such holder(s) (by written notice to the Company);
- (b) the **"Seroba Kernel Representative"** shall be the holder(s) at the relevant time of a majority of the 'A' Preferred Shares comprised in Seroba Kernel's Subscription Commitment to the extent then in issue and to the extent the same have not been converted into 'B' Ordinary Shares pursuant to these Articles or any person nominated from time to time by such holder(s) (by written notice to the Company);
- (c) the **"Wellington Partners Representative"** shall be the holder(s) at the relevant time of a majority of the 'A' Preferred Shares comprised in Wellington Partners Investors Subscription Commitment to the extent then in issue and to the extent the same have not been converted into 'B' Ordinary Shares pursuant to these Articles or any person

nominated from time to time by such holder(s) (by written notice to the Company);  
and

- (d) the **"BTV Representative"** shall be the holder(s) at the relevant time of a majority of the 'A' Preferred Shares comprised in the BTV Investors' Subscription Commitment to the extent then in issue and to the extent the same have not been converted into 'B' Ordinary Shares pursuant to these Articles or any person nominated from time to time by such holder(s) (by written notice to the Company);

**"Investor Shares"** means, subject to Article 26.2, 'A' Preferred Shares other than Exempted Shares and any other shares in the Company which with Investor Consent are designated as Investor Shares by Special Resolution;

**"Issue Price"** means, in relation to any share, the amount paid up or credited as paid up on it;

**"Leaver"** means any person who ceases or (as the case may be) will cease (through having given or been given notice) to be a Relevant Executive in circumstances where he does not or (as the case may be) will not continue immediately afterwards to be a Relevant Executive;

**"Leaving Date"** means the date on which the Leaver concerned became a Leaver or, where he was given or gave notice to terminate his employment or engagement, the date when that notice was given, if earlier;

**"Majority"** means as regards members of a class or classes of shares, a majority by reference to the number of shares of that class or classes held and not by reference to the number of members holding shares of that class or classes;

**"Management Accounts"** means management accounts of the Company or (as the case may be) Group prepared in accordance with the requirements of the Subscription Agreement;

**"Mandatory Transfer"** means any transfer of shares required pursuant to Article 25 or which is given by any person at a time when he could be required under Article 25 to make such a transfer;

**"Mandatory Transfer Notice"** means a Transfer Notice given or deemed to be given pursuant to Article 25 or given by a person at a time when he could be required under Article 25 to give such a Transfer Notice;

**"NBGI Representative"** shall have the meaning given to that term in the definition of Investor Majority;

**"New Shares"** new shares in the equity share capital of the Company;

**"Observer"** shall have the meaning given to that term in Article 33.6;

**"Ordinary Shares"** means 'A' Ordinary Shares and/or 'B' Ordinary Shares, as applicable;

**"Original Member"** means an Original Member as defined in Article 24.4;

**"Permitted Family Transfer"** means a Permitted Family Transfer as defined in Article 24.4 and references to a **"Permitted Family Transferee"** shall be construed accordingly;

**"Permitted Investor Transferee"** means in relation to any holder of Investor Shares or any interest in them (such holder being treated for these purposes as an Investor):

- (a) any member for the time being of its Investor Group;

- (b) any body corporate controlled by that Investor or another member of its Investor Group or any investment manager or adviser that Investor and/or member or which immediately following the transfer of Investor Shares concerned will be such a body corporate;
- (c) any investment fund or trust or partnership controlled or managed or advised (in an investment adviser capacity) or promoted by (i) that Investor or (ii) another member of its Investor Group or (iii) any investment manager or advisor of that Investor and/or any such group member;
- (d) any trustee or manager or beneficiary or shareholder or partner or unitholder or other participant in or of that Investor or any investment fund or trust or partnership referred to in paragraph (c) above;
- (e) any directors or employees of that Investor or a member of its Investor Group or any trust or carried interest or similar partnership in which they or any of them participate; or
- (f) a nominee or custodian for any of the above;

**"Permitted Option"** means any Subscription Right granted after the Adoption Date with Investor Consent;

**"Permitted Share Issue"** means any issue or commitment to issue new shares:

- (a) under any employee share scheme or employee incentivisation arrangements (whether applicable to any particular individual(s) or generally) which have been approved by Investor Consent on the basis that they shall be treated as Permitted Share Issues (including any issued on exercise of a Permitted Option); or
- (b) upon conversion of any 'A' Preferred Shares and/or any 'A' Ordinary Shares; or
- (c) pursuant to clause 8.2;
- (d) issued as a result of a bonus issue of shares or on a sub-division or other re-organisation which in any case has been approved by Investor Majority;
- (e) issued in a further funding which the Investors are offered the opportunity to participate as specified in clause 3.9 of the Subscription Agreement;
- (f) which an Investor Majority have expressly agreed in writing should be excluded from the provisions of Article 8;

**"Permitted Transfer"** means a transfer of shares permitted by Articles 21 to 27 (inclusive);

**"Privileged Relation"** means in relation to an individual member or deceased or former individual member, the husband or wife or the widower or widow of that member and all the lineal descendants in direct line of that member and a husband or wife or widower or widow of any of the above persons and for these purposes a step-child or adopted child or illegitimate child of any person shall be deemed to be his or her lineal descendant;

**"Proposed Transferor"** means a Proposed Transferor as defined in Article 27.2;

**"Register"** means the register of members of the Company required to be maintained by the Companies Acts;

**"Registered Office"** means the registered office of the Company for the time being;

**"Related Shares"** means in relation to any shares, any shares issued in respect of those shares by way of capitalisation or bonus issue or acquired in exercise of any right or option granted or arising by virtue of them;

**"Relevant Executive"** means a director or employee of, or a consultant to, the Company or any member of the Group;

**"Relevant Member"** means, in relation to a particular Relevant Executive or Leaver, and unless an Investor Consent provides otherwise, that Relevant Executive or Leaver and any member to whom that Relevant Executive or Leaver (or his personal representatives) has made or at the relevant time could if he held shares in the Company make a Permitted Family Transfer (assuming for these purposes that any restrictions on such a transfer in the Subscription Agreement or relevant to Mandatory Transfer Notices do not apply);

**"Relevant Parties"** has the meaning given in Article 46;

**"Relevant Shares"** means any shares in the Company for the time being held by a Relevant Member and/or in respect of which a Relevant Member is unconditionally entitled to be registered as the holder;

**"Restricted Securities"** shall have the meaning given in Article 22.3;

**"Sale"** means (subject as provided below) the sale or transfer of any Equity Shares constituting at least ninety per cent of the issued equity share capital of the Company to a single purchaser or to one or more purchasers as part of a single transaction, or the acquisition (whether or not as part of a single transaction) of Equity Shares constituting such an interest by any person or group of persons who are connected persons of each other or who are acting in concert and who did not previously hold such an interest but excluding, unless otherwise agreed by Investor Consent (i) any sale or transfer of shares or interest in them as part of a Group Reorganisation and (ii) any sale or transfer of shares or an interest in them to, or acquisition (by subscription or otherwise) of shares or an interest in them by, any Investor(s) or persons or entities who in relation to any Investor fall within any of categories (a) (b) and (c) of the definition of Permitted Investor Transferee;

**"Secretary"** means any secretary for the time being of the Company;

**"Senior Executive"** means a Relevant Executive who is entitled (or who through any commitment to be entered into by any member of the Group, will become entitled), contingently or otherwise, to receive remuneration (including for this purpose all amounts paid by way of commission or bonus or under any profit sharing bonus or incentive scheme or by way of pensions contribution) in excess of £80,000 per annum or such increased amount as may from time to time have been approved by Investor Consent;

**"Seroba Kernel Representative"** shall have the meaning given to that term in the definition of Investor Majority;

**"shareholder resolution"** means any resolution passed by shareholders entitled to vote on it and which is effective for the purposes of the Companies Acts (as in force at the time) and these Articles;

**"Subscription Agreement"** means the Subscription Agreement entered into on or about the Adoption Date between, inter alios, the Company and certain of its members relating to the subscription of Investor Shares, as from time to time amended supplemented or novated;

**"Subscription Rights"** means any rights (whether under options, warrants, on conversion of any indebtedness or otherwise) to call for the allotment or issue of shares in the Company;

**"Transfer Notice"** means a Voluntary Transfer Notice or a Mandatory Transfer Notice, as the case may be;

**"Transfer Value"** means the value attributable to the shares comprised in any Transfer Notice determined as provided in Article 27;

**"transmittee"** means a person entitled to a share by reason of the death or the bankruptcy of the holder of the share or otherwise by operation of law;

**"Voluntary Transfer"** means any transfer of shares other than a Mandatory Transfer;

**"Voluntary Transfer Notice"** means a Transfer Notice other than a Mandatory Transfer Notice;

**"Wellington Partners Representative"** shall have the meaning given to that term in the definition of Investor Majority.

3. In these Articles references to:

- (A) **"attorney"** shall include separately and in addition "agent" or "agency" as the context may admit and also shall be deemed to include (unless the context otherwise admits) a power for the attorney or agent to delegate his authority as he shall see fit;
- (B) **"document"** includes, unless otherwise specified, any document sent or supplied in electronic form;
- (C) **"electronic form"** and **"hard copy form"** have the meanings respectively given in section 1168 of the 2006 Act;
- (D) a document being **"executed"** include references to its being executed under hand or under seal or as a deed or by any other method and **"execution"** shall be construed accordingly;
- (E) an **"instrument"** means a document in hard copy form; and
- (F) **"writing"** or **"written"** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

4. In these Articles, any reference to a matter to be **"Determined"** or to be referred for **"Determination"**, shall mean that the matter is to be determined by a Determiner as provided in Article 46.

5. In these Articles words denoting the singular number include the plural number and vice versa, words denoting the masculine gender include the feminine gender and words denoting persons include any individual, firm, partnership, unincorporated association, company, corporation or other body corporate.

6. Where the context so admits, words or expressions contained in these Articles bear the same meaning as in the Companies Acts as in force and operative on the Adoption Date except that when a provision of the 2006 Act comes into force, the defined words and expressions for its purposes (as in force on the Adoption Date) shall come into effect for the purposes of these

Articles in replacement for any different definition of the same word or expression in the 1985 Act and so that (without limitation):

- (A) when those sections come into force, the expressions "**ordinary resolution**" and "**special resolution**" shall have the meanings respectively given in section 283 of the 2006 Act as in force on the Adoption Date;
  - (B) when those sections come into force so far as applicable to the subject matter of any provision of these Articles, the expressions "**subsidiary**" and "**subsidiary undertaking**" shall have the meaning given in sections 1159 and 1162 of the 2006 Act, as read in conjunction with section 1161 of that Act, as in each case in force on the Adoption Date; and
  - (C) references in these Articles to a "**dormant subsidiary**" of the Company are references to any subsidiary of the Company which at the relevant time is dormant for the purposes of Section 249AA (1)(a) or (b) of the 1985 Act as in force on the Adoption Date or (where those provisions are in force on the Adoption Date or come into force subsequently) section 480 (1)(a) or (b) of the 2006 Act as in force on the Adoption Date.
- 7. Except where expressly stated references in these Articles to any provision of any enactment or of any subordinate legislation (as defined by Section 21(1) of the Interpretation Act 1978) include any modification or re-enactment of that provision for the time being in force.
  - 8. For the purposes of these Articles a person will be "insolvent" or "bankrupt" if at the time in question (i) any expropriation, attachment, sequestration, distress or execution affects any material asset or assets of that person and has not been discharged; or (ii) the person is unable or admits inability to pay his or its debts as they fall due, suspends making payments on any of his or its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with or has arrangements in force with one or more of his or its creditors with a view to rescheduling any of its indebtedness or (iii) any resolution to wind-up, administration application or notice of an intention to, or a notice to, appoint an administrator or receiver is outstanding in relation that person or a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer has been appointed in respect of that person or any of its material assets or (iv) any analogous procedure or step is taken in any jurisdiction and is still outstanding. For these purposes materiality shall be as reasonably determined by the Board.
  - 9. For the purposes of these Articles a person will be suffering from a "mental disorder" if an order is made by any court of competent jurisdiction on the ground (however formulated) of mental disorder for his detention or for the appointment of a guardian or receiver or other person to exercise powers with respect to his property or affairs or he is admitted to hospital in pursuance of an application for admission for treatment under any legislation relating to mental health.
  - 10. References in these Articles to a "connected person" of any person and "control" shall mean any connected person of that person and control for the purposes of sections 993 to 995 (inclusive) of the Income Tax Act 2007 as in force on the Adoption Date and references to "acting in concert" shall be construed in accordance with the City Code on Take-overs and Mergers published by the Panel on Take-overs and Mergers as in force on the Adoption Date.
  - 11. Unless the context otherwise requires, references in these Articles to (i) a "share" are to a share in the capital of the Company and (ii) a "member" or "holder" in relation to a share are to the person(s) whose name(s) are entered in the register of members of the Company as the holder of that share and references to a "shareholder" shall be construed accordingly.



12. Where a holder of 'A' Preferred Shares is a limited partnership or a nominee on behalf of a limited partnership, the consent or direction of the general partner for the time being of that partnership or of the investment manager for the time being of such a partnership shall be a good and sufficient consent or direction on its behalf for the purposes of these Articles.
13. Except where expressly stated, references to the amount "paid up" on a share shall include (without prejudice to section 738 of the 1985 Act or, when in force, section 583 of the 2006 Act) all amounts credited as paid up on the share including any premium and "fully paid" means, in relation to a share, that the nominal value and any premium to be paid to the Company (or as it shall direct) in respect of that share have been so paid.
14. The headings in these Articles are inserted for convenience only and shall not affect their construction.

**CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL**

*Jones Day*

JONES DAY  
21 TUDOR STREET  
LONDON EC4Y 0DJ

Number 6641134

THE COMPANIES ACTS 1985 to 2006

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PRIVATE COMPANY LIMITED BY SHARES

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N E W

ARTICLES OF ASSOCIATION

(Adopted by Special Resolution  
passed on 17 September 2009)

- of -

QUANTA FLUID SOLUTIONS LIMITED

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THE COMPANIES ACTS 1985 to 2006

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PRIVATE COMPANY LIMITED BY SHARES

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NEW  
ARTICLES OF ASSOCIATION  
(Adopted by Special Resolution  
passed on 17 September 2009)

- of -

QUANTA FLUID SOLUTIONS LIMITED

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**1. PRELIMINARY**

- 1.1 The definitions and other interpretation provisions in the Schedule to these Articles shall apply.
- 1.2 Conditionally upon and with effect from section 2(1)(c) of the 1985 Act being repealed and sections 31(1) and 28 of the 2006 Act coming into force, the objects of the Company shall be unrestricted, notwithstanding any provisions contained in the Memorandum of Association of the Company prior to the date on which the above conditions are fulfilled.
- 1.3 The liability of the members of the Company is limited to the amount, if any, unpaid on the shares held by them.

**2. SHARES**

- 2.1 Immediately following the time of the passing of the resolution adopting these Articles:
  - (A) the issued share capital of the Company will comprise 87,000 'A' Ordinary Shares and 10,000 'B' Ordinary Shares; and
  - (B) the Directors will be authorised for the purposes of Article 11 of these Articles (but subject to its provisions) to allot and issue up to a further 180,000 'A' Preferred Shares and 52,412 'B' Ordinary Shares (or option to subscribe for such number of 'B' Ordinary Shares).
- 2.2 Conditionally upon and with effect from section 2(5)(a) of the 1985 Act being repealed and section 28 of the 2006 Act coming into force, there shall be no restriction on the number of shares which may be issued by the Company (notwithstanding any provisions contained in the Memorandum of Association of the Company prior to the date on which the above conditions are fulfilled) except as may be expressly provided for in these Articles.

2.3 Except as otherwise provided in these Articles, the Equity Shares shall rank pari passu in all respects.

2.4 Except as required by law, no person shall be recognised by the Company as holding any share on any trust and (except as otherwise provided by these Articles or by law) the Company shall not be bound by or recognise any interest in any share except an absolute right of the holder to share in its entirety, even if the Company has notice of that interest.

### 3. INCOME

Subject to the class rights attaching to the Investor Shares, any profits resolved to be distributed in any Financial Year or part of it shall be distributed amongst the holders of the Equity Shares, pari passu as if the same are one and the same class of share, pro rata to the number of Equity Shares respectively held by them.

### 4. CAPITAL

4.1 On a return of assets on liquidation or otherwise, the assets of the Company remaining after payment of its debts and liabilities and available for distribution to holders of Equity Shares ("**Remaining Assets**") shall be applied in the following manner and order of priority:

(A) first, in paying to the holders of the 'A' Preferred Shares the Applicable Amount per share provided in Article 4.2 provided that if the assets are insufficient to enable such payment to be made in full in relation to each such 'A' Preferred Share then the assets shall be distributed between the holders of the 'A' Preferred Shares pro rata to the number of such shares respectively held by them, and

(B) lastly, the balance (if any) shall be distributed between the holders of the Equity Shares pro rata to the number of Equity Shares respectively held by them.

4.2 For the purposes of Article 4.1, the Applicable Amount shall be an amount per share equal to its Issue Price per share.

4.3 The total consideration in respect of the Equity Shares received on a Sale shall be allocated and where relevant held on trust and distributed between the sellers of those shares to the extent necessary to ensure that the consideration is apportioned in the priority provided in Article 4.1.

4.4 If any 'A' Preferred Shares and/or 'A' Ordinary Shares are converted into 'B' Ordinary Shares pursuant to the provisions of Articles 5.1(B) or 6.2 respectively, then the allocation of any consideration arising on the Sale under the provisions of Article 4.3 shall be made on the basis as if the 'A' Preferred Shares and/or 'A' Ordinary Shares concerned had not so converted and had been sold under the Sale as shares of those respective classes.

4.5 Where any Sale is completed on terms that any part of the consideration for the shares included in the Sale (the "**deferred consideration**") is to be paid after the date for completion of such Sale (whether contingently or otherwise) then, unless otherwise agreed in writing between an Investor Majority and a majority of the holders of the Ordinary Shares, no account of the deferred consideration shall be taken for the purposes of establishing the consideration arising on such Sale for the purpose of Article 4.3. Should any deferred consideration subsequently be paid or satisfied then upon each payment or satisfaction thereof the calculations set out in this Article 4 for the apportionment of the consideration realised on a Sale shall be repeated as of the date of payment or satisfaction of the deferred consideration by reference to the actual consideration arising from such Sale including all deferred consideration then so paid or satisfied. All necessary adjustments shall thereupon be made

and the deferred consideration shall be apportioned accordingly between the sellers of the shares of the Company included in the original Sale. The provisions of this Article 4.5 shall apply mutatis mutandis on a winding up of the Company where there is more than one distribution of Remaining Assets.

## **5. CONVERSION OF 'A' PREFERRED SHARES**

5.1 The 'A' Preferred Shares shall be converted into 'B' Ordinary Shares, on the basis provided in this Article:

(A) to the extent that a holder of 'A' Preferred Shares so requires by written notice to the Company given in accordance with this Article 5 (a "Conversion Notice"); or

(B) automatically on the occurrence of a Flotation or Sale.

5.2 On conversion pursuant to this Article 5 (and subject to adjustment as provided in these Articles) each 'A' Preferred Share shall convert into a single 'B' Ordinary Share.

5.3 A Conversion Notice shall be given to the Company at its registered office and shall be accompanied by the share certificate(s) for the 'A' Preferred Shares to be converted (or an appropriate indemnity if such certificate(s) are not available). Subject as provided below, a Conversion Notice shall take effect immediately upon its delivery and may not be withdrawn without the written consent of the Company.

5.4 A Conversion Notice may be given on the basis that the exercise of conversion rights under it shall be conditional upon the occurrence of any specified event(s) and by the given time clearly described in the notice and, if such a condition is included, the conversion rights shall be deemed exercised upon but with effect immediately prior to the fulfilment of the condition concerned. A conditional Conversion Notice may be withdrawn by written notice given to the Company before it becomes unconditional.

5.5 A Conversion Notice may not be given later than twenty-eight days after the passing of a resolution or making of an order for the winding up of the Company but if given after such resolution or order is passed or made and within such time limit shall take effect immediately before such resolution or order was passed or made.

5.6 Upon conversion of the 'A' Preferred Shares under this Article 5 (or as soon as lawfully permissible thereafter) the Company shall subject to delivery to it of the certificate(s) for the 'A' Preferred Shares converted or an appropriate indemnity if they are not available, issue to the holder a certificate for the 'B' Ordinary Shares resulting from conversion and, if appropriate, a balance certificate for any 'A' Preferred Shares retained by that holder.

5.7 A holder of 'A' Preferred Shares converted into 'B' Ordinary Shares under Article 5.1(B) shall deliver to the Company at its registered office the certificate(s) for his 'A' Preferred Shares (or an appropriate indemnity if they are not available) as soon as practicable and in any event within seven days of their conversion.

5.8 The 'B' Ordinary Shares arising from conversion of 'A' Preferred Shares shall rank *pari passu* in all respects with the other 'B' Ordinary Shares then in issue.

## **6. ADJUSTMENTS ON FLOTATION OR SALE**

6.1 Immediately before a Flotation (but conditionally upon such Flotation being obtained), all Equity Shares (including those to be allotted and issued pursuant to any Subscription Rights

on such event) other than 'A' Preferred Shares (the "Flotation Adjustment Shares") shall be subject to the following adjustment provisions:

- (A) such number of Flotation Adjustment Shares as is necessary shall convert into Deferred Shares in order that the Flotation Exit Value attributable to the shares into which the 'A' Preferred Shares shall convert on a Flotation is equal to the portion of the total consideration which would have been attributed to the 'A' Preferred Shares on a Sale pursuant to Article 4.3 had the Flotation Exit Value been consideration received in cash on a Sale;
- (B) the part of the Flotation Exit Value attributable to the Flotation Adjustment Shares to be converted into Deferred Shares pursuant to this Article shall belong to and be attributed exclusively to and on a pro rata basis between the Ordinary Shares in issue immediately before the Flotation (and before any conversion which is to take place pursuant to Article 5.1(B) and this Article 6) and those issued on Flotation under Subscription Rights granted prior to Flotation and shall accordingly not belong to the holders of 'A' Preferred Shares or any other shares in the equity share capital of the Company;
- (C) any shares to be converted into Deferred Shares pursuant to this Article shall be selected pro rata as nearly as may be (without involving any conversion of fractions of such a share) between the holders of each class or holding of share concerned in proportion to the number of shares of such class or in such holding held by them respectively on the Flotation (including for these purposes as if in issue all shares to be issued at the time of or contemporaneously with the Flotation under Subscription Rights, and so that reference to holders of such shares shall include the persons to acquire them on their issue);
- (D) at least fourteen days before a Flotation (or, if later, as soon as practicable after it becomes aware of the real possibility of a Flotation) the Board shall estimate the likely date of such Flotation; procure that the calculations set out in this Article for determination of the Flotation Exit Value (and the apportionment of the Flotation Exit Value between the 'A' Preferred Shares and the Flotation Adjustment Shares) are duly carried out and notify the holders of the 'A' Preferred Shares and the Flotation Adjustment Shares (including for these purposes the holders of applicable Subscription Rights) of the results of such calculations. The Board shall use all reasonable endeavours to reach agreement within seven days after giving such notifications as to the accuracy of such calculations and in such period to record that agreement in a certificate signed by or on behalf of the holders of three quarters or more in nominal value of each such class of shares (treating the holders of Flotation Adjustment Shares and Subscription Rights as a single class for such purposes) and, if they fail to do so, to procure the determination thereof by a Determiner (in accordance with Article 46) who shall issue a certificate to such effect accordingly and shall for such purposes be deemed to be acting as experts and not as arbitrators and the Determiner's certificate shall be final and binding on all shareholders and holders of Subscription Rights, each of whom shall be sent a copy as soon as practicable following its issue and any such certificate of the Determiner shall, notwithstanding the provisions of Article 46, be obtained at the expense of the Company PROVIDED ALWAYS THAT if the Flotation shall not occur by the date as at which or on the terms on which the said calculations were made, the procedures set out in this Article 6.1(D) shall be repeated (if the Flotation is still likely to occur) by reference to the next date on which the Board estimates the Flotation is likely to occur and/or by reference to the actual terms concerned, as appropriate.

- 6.2 On a Flotation or Sale (and subject always to the provisions of Article 6.1), the 'A' Ordinary Shares shall automatically be converted into 'B' Ordinary Shares and the 'B' Ordinary Shares arising from the conversion of 'A' Ordinary Shares shall rank *pari passu* in all respects with the other 'B' Ordinary Shares then in issue. On such conversion (and subject to adjustment as provided in these Articles), each 'A' Ordinary Share shall convert into a single 'B' Ordinary Share. The 'A' Ordinary Shares shall not be convertible in any other circumstances.
- 6.3 A holder of 'A' Ordinary Shares converted into 'B' Ordinary Shares under Article 6.2 shall deliver to the Company at its registered office the certificate(s) for his 'A' Ordinary Shares (or an appropriate indemnity if they are not available) as soon as practicable and in any event within seven days of their conversion.
- 6.4 On a Flotation the Company shall use all reasonable endeavours to procure the admission to the Official List or the grant of permission for dealings to take place in the shares of the Company deriving from conversion of 'A' Preferred Shares and 'A' Ordinary Shares pursuant to Articles 5.1(B) and 6.2 respectively on the London Stock Exchange (or on any other relevant recognised investment exchange) if as part of any Flotation arrangements then contemplated the shares of that class in issue or to be allotted are or will be so admitted or permission for dealing to take place in the same has been or will be granted aforesaid.
- 6.5 In the event of a Flotation or Sale, and immediately after the same become effective (and, for the avoidance of doubt, after all prior conversions required in accordance with Articles 5.1(B) and 6.2 have been effected), the 'B' Ordinary Shares (including those arising on such conversions) shall be automatically converted into and redesignated as ordinary shares of the same class and nominal amount having the same rights and restrictions as the 'B' Ordinary Shares but without designation of any particular class of share and all share certificates to be issued following the submission of the holders' original certificates under Articles shall take such conversion and redesignation into account accordingly.

## **7. CONVERSION MECHANICS AND ADJUSTMENT PROVISIONS**

- 7.1 Conversion of 'A' Preferred Shares under Article 5, conversion of the 'A' Ordinary Shares under Article 6.2 and conversion of the 'B' Ordinary Shares into undesignated ordinary shares under Article 6.5 shall be effected in such manner as the Directors shall, subject to the provisions of the Companies Acts, from time to time determine and they shall be deemed by these Articles duly authorised (as if all necessary resolutions and consents required under these Articles are hereby passed and given) to effect such conversions.
- 7.2 Without limiting Article 7.1:
- (A) where the nominal value of the 'A' Preferred Shares is the same as the nominal value of the 'B' Ordinary Shares to arise on Conversion, the Conversion may be effected by re-designating each 'A' Preferred Share or 'A' Ordinary Share so converted as a 'B' Ordinary Share and where 'B' Ordinary Shares are to be converted into undesignated ordinary shares pursuant to Article 6.5, they shall be converted by being redesignated accordingly; and
  - (B) to the extent permitted by the Companies Acts, conversion may also be effected by the redemption of 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable at their Issue Price (or, if greater, at the aggregate nominal value of the 'B' Ordinary Shares which are to arise on the conversion of the 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable) and the application of the redemption monies on behalf of the holders of the 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable so redeemed in subscription for that number of 'B' Ordinary Shares of the Company to which such holder shall be entitled on such conversion at such premium

(if any) as shall represent the amount by which the redemption monies exceed the total nominal amount of the 'B' Ordinary Shares to be subscribed; and

(C) where the aggregate nominal value of the 'B' Ordinary Shares to arise on conversion is greater than the aggregate nominal value of the 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable to be converted, conversion may also be effected by:

(1) subdivision and where required re-designation of all of the existing 'B' Ordinary Shares (issued and unissued) into:

(a) 'B' Ordinary Shares of a lower nominal value (carrying the same rights and restrictions as the Ordinary Shares from which they derive); and

(b) Deferred Shares for the balance of their nominal value;

(2) subdivision of the 'A' Preferred Shares and/or the 'A' Ordinary Shares, as applicable to be converted into:

(a) the number of new 'B' Ordinary Shares, of the same lower nominal value in paragraph (C)(1)(a) above, required to arise on the conversion; and

(b) Deferred Shares for the balance of their nominal value,

and the subdivision and re-designation for these purposes shall be made by written notice from the Directors using their powers under Article 7.1 (without need for any further resolution or sanction from the members or class consents) and they shall also be similarly empowered to deal with any fractions of shares arising on any such subdivisions and re-designations as they see fit, including by transfer(s) and consolidation and/or re-designations into new 'B' Ordinary Shares of requisite lower nominal value of any Deferred Shares to effect a fair result.

7.3 Where a redemption is made under Article 7.2:

(A) it may be made out of the profits of the Company which would otherwise be available for dividend or distribution or out of the proceeds of a fresh issue of shares or in any other manner for the time being permitted by law;

(B) if made out of profits, the redemption monies in respect of the 'A' Preferred Shares and/or 'A' Ordinary Shares to be converted shall be used to subscribe on behalf of the holder of the appropriate number of fully paid 'B' Ordinary Shares;

(C) if made out of the proceeds of a fresh issue of shares the Directors may arrange for the issue of the appropriate number of fully paid 'B' Ordinary shares to some person selected by the Directors on terms that that person as trustee for each holder of 'A' Preferred Shares whose 'A' Preferred Shares or, as applicable, 'A' Ordinary Shares whose 'A' Ordinary Shares are to be redeemed will subscribe for those 'B' Ordinary Shares and renounce the allotment of such 'B' Ordinary Shares in favour of the holder against payment out of the redemption monies in respect of such 'A' Preferred Shares and/or 'A' Ordinary Shares, as applicable, of an amount equal to the subscription price of such 'B' Ordinary Shares.

7.4 Any stamp duty or stamp duty reserve tax ("SDRT") (if any) arising on any transaction referred to in Article 7.3(C) will be met out of the redemption monies by reduction of the



premium (if any) payable on the 'B' Ordinary Shares or otherwise in such manner as the Directors shall think fit but so that the number of 'B' Ordinary Shares being allotted on such conversion shall not be diminished as a result of it and the trustee shall pay any such stamp duty or SDRT liability.

- 7.5 No fractions of a 'B' Ordinary Share (or balance of any 'A' Preferred Share or 'A' Ordinary Share, as applicable, not converted) shall arise on conversion of any 'A' Preferred Shares or 'A' Ordinary Share, as applicable, and accordingly the number of 'B' Ordinary Shares to arise on conversion shall be rounded down to the nearest whole number of 'B' Ordinary Shares.

## 8. **CONVERSION PRICE ADJUSTMENT, DOWNROUND AND SIMILAR PROTECTIONS**

### *Adjustment on issue or reorganisation*

- 8.1 If, while any 'A' Preferred Shares or 'A' Ordinary Shares remain capable of being converted into 'B' Ordinary Shares under Article 5 or Article 6.2 respectively:
- (A) there is a consolidation and/or sub-division of any Equity Shares, the conversion rate under Article 5.2 or 6.2 (as last adjusted under these Articles, if relevant) shall be appropriately adjusted by the Board (with Investor Consent) to take account of that sub-division or consolidation; and/or
  - (B) there is an allotment of fully paid equity share capital by way of capitalisation of profits or reserves (including without limitation share premium account or capital redemption reserve) where no equivalent allotment is made to the holders of the 'A' Preferred Shares and 'A' Ordinary Shares on an as if fully converted basis then (in relation to the 'A' Preferred Shares) (except to the extent that a related compensatory share issue is made to the holders of 'A' Preferred Shares as provided in Article 8.2), the number of the 'B' Ordinary Shares to arise on conversion of 'A' Preferred Shares and 'A' Ordinary Shares shall be appropriately increased to reflect the resultant percentage increase in the 'B' Ordinary Shares in issue.

### *Downround Protection – lower issue price*

- 8.2 In the event that New Shares or other securities convertible into, or carrying the right to subscribe for such shares, ("New Securities") are issued by the Company (other than pursuant to a Permitted Share Issue) at a price per New Security which equates to less than the original Issue Price of the 'A' Preferred Shares (a "Qualifying Issue") (which in the event that the New Security is not issued for cash shall be a price certified by the Auditors acting as experts and not as arbitrators as being in their opinion the current cash value of the new cash consideration for the allotment of the New Securities) then the Company shall, unless and to the extent that any of the holders of 'A' Preferred Shares (in their capacity as such) have specifically waived their rights under this Article 8.2 in writing, offer (such offer, unless waived, to remain open for acceptance for not less than 15 Business Days) to each holder of 'A' Preferred Shares (the "Exercising Investor") the right to receive such number of new 'A' Preferred Shares as is determined by applying the following formula (and rounding the product, N, down to the nearest whole share), subject to adjustment as certified in accordance with Article 8.4 (the "Anti-Dilution Shares"):

$$\left( \left( \frac{OIP}{WA} \right) \times Z \right) - Z = N$$

Where:

N = Number of Anti-Dilution Shares to be issued to the Exercising Investor

$$WA = \frac{(OIP \times ESC) + (QISP \times NS)}{(ESC + NS)}$$

OIP = subject to Article 8.5, original Issue Price of the 'A' Preferred Shares;

ESC = the number of Equity Shares in issue plus the aggregate number of shares in respect of which Subscription Rights have been granted in each case immediately prior to a Qualifying Issue;

QISP = the per share price of the New Securities issued pursuant to the Qualifying Issue;

NS = the number of New Securities issued pursuant to the Qualifying Issue; and

Z = the number of 'A' Preferred Shares held by the Exercising Investor;

8.3 The Anti-Dilution Shares shall:

- (A) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or the Exercising Investors shall agree otherwise, in which event the Exercising Investors shall be entitled to subscribe for the Anti-Dilution Shares in cash at par (being such par value approved in advance by the Investor Directors). In the event of any dispute between the Company and any Exercising Investor as to the effect of Article 8.2, the matter shall be referred (at the cost of the Company) to a Determiner for certification of the number of Anti-Dilution Shares to be issued in accordance with Article 46. The Determiner's certification of such matter shall in the absence of manifest error be final and binding on the Company and the Exercising Investor; and
- (B) subject to the payment of any cash payable pursuant to Article 8.3(A) (if applicable), be issued, credited fully paid up in cash and shall rank pari passu in all respects with the existing 'A' Preferred Shares within 5 business days of the expiry of the offer being made by the Company to the Exercising Investor and pursuant to Article 8.3(A).

8.4 In the event of any issue or reorganisation of share capital as mentioned in Article 8.1(A) or 8.1(B), the amount of the original Issue Price of the 'A' Preferred Shares for the purposes of the formulae contained in Article 8.2 shall also be subject to adjustment on such basis as may be agreed by the Company with the holders of the 'A' Preferred Shares within 10 Business Days after any such issue or reorganisation. Any dispute as to such adjustment shall be determined by a Determiner whose determination shall, in the absence of manifest error, be final and binding on the Company and each of its members. The costs of the Determiner shall be borne by the Company notwithstanding the provisions of Article 46.

***Downround protections – more favourable rights***

8.5 If after the Adoption Date the Company issues or enters into a legally binding commitment to issue any New Securities (otherwise than by way of Permitted Share Issue) on terms more favourable (including but not limited to enhanced rights or additional protective provisions for a shareholder but excluding at a lower subscription price, as regards which Articles 8.1(B) and/or 8.2 shall apply) than those attaching to the 'A' Preferred Shares then, each holder of 'A' Preferred Shares and/or of a Subscription Right to acquire 'A' Preferred Shares shall have the right (exercisable in notice in writing to the Company within thirty days of the issue of any

such New Securities and to take effect immediately before the issue of the New Securities), to require that either:

- (A) any or all of the 'A' Preferred Shares held by him and/or over which he holds Subscription Rights shall be converted into and re-designated as New Shares (comprising or the subject of the New Securities) at the rate of one such New Share for every 'A' Preferred Shares so converted and re-designated (and the date on which such conversion takes place shall be a "**Conversion Date**"); or
  - (B) the articles of association of the Company shall be deemed to have been amended so that the rights attaching to the 'A' Preferred Shares held by him shall include any rights attaching to the New Shares (comprising or the subject of the New Securities) which are preferential or in addition to the rights attaching to the 'A' Preferred Shares.
- 8.6 Given the rights of the holders of 'A' Preferred Shares under Article 8.5, no New Shares or New Securities in respect of New Shares shall be issued with a nominal value per share different from that of the 'A' Preferred Shares, without the written consent of an Investor Majority.
- 8.7 The New Shares arising on any such conversion and re-designation shall rank *pari passu* with the New Shares then in issue or to be issued and shall entitle the holders of the New Shares arising on conversion to all dividends and other distributions declared, made or paid on the New Shares by reference to any record date occurring after the Conversion Date.
- 8.8 On a Conversion Date each such holder shall deliver to the Company at the Registered Office the certificates for his 'A' Preferred Shares so converting (or an indemnity in such form as the Board may require if it is not available) and upon such delivery there shall be issued to him a certificate for the number of New Shares resulting from the conversion and re-designation.
- 8.9 The provisions of this Article shall be reapplied (where applicable) on each issue of New Securities at a lower Issue Price or on terms more favourable than those attaching at that time to the 'A' Preferred Shares.
- 8.10 If there is a disagreement between the holders of any Investor Shares on the one hand and the Company or any other member on the other as to any adjustment required under this Article or the effective Issue Price or Conversion Price of any New Shares for the purposes of this Article the disagreement shall, if not resolved within fourteen days of it arising, be referred for Determination by a Determiner and Article 46 shall apply.
- 8.11 Each member shall promptly after request pass such resolutions and provide such consents as shall be reasonably required by an Investor Majority and/or the Company to give effect to this Article 8.

*Pay to play provisions*

- 8.12 If the Company makes a Qualifying Issue and:
- (A) a holder of 'A' Preferred Shares is entitled to participate in such issue by virtue of its pre-emption rights (whether arising under these Articles or otherwise), but excluding the right of a holder of 'A' Preferred Shares to participate pursuant to Article 8.2;
  - (B) the Company offers the holders of the 'A' Preferred Shares the opportunity to participate in the Qualifying Issue; and

- (C) the holder of the 'A' Preferred Shares in question does not subscribe for all of its entitlement of the Qualifying Issue (ignoring any rights which arise from the failure of another person to subscribe),

then, except and to the extent that the reason for not taking up such entitlement is to enable such shares to be issued to an entirely new third party investor (which issue is completed and the subscription monies received), all 'A' Preferred Shares held by such holder in respect of which it did not take up such entitlement (ignoring fractions of shares but rounding up for such purposes to the nearest whole share) will forthwith convert into 'A1' Preferred Shares having in all respects rights identical to the 'A' Preferred Shares and references in these Articles to 'A' Preferred Shares shall be deemed to include 'A1' Preferred Shares save that the provisions of Articles 8.2 to 8.5 shall not apply to the 'A1' Preferred Shares.

## 9. VOTING RIGHTS

- 9.1 Except as expressly provided in these Articles (including, without limitation, Article 16.9(B)), each holder of Equity Shares present in person or by proxy or corporate or other voting representative permitted by these Articles shall be entitled on a show of hands to one vote and on a poll:

- (A) in the case of each holder of Ordinary Shares to one vote for every Ordinary Share of which he is the holder; and
- (B) in the case of each holder of 'A' Preferred Shares to one vote for every Ordinary Share of which he would be the holder if the 'A' Preferred Shares were then converted in full into Ordinary Shares under Article 5,

provided that:

- (1) prior to the service on the Company of a Voting Release Notice and having regard to Article 9.5 and Article 9.6, to the extent that the holders of 'A' Ordinary Shares would otherwise be entitled on a poll to exercise voting rights in respect of twenty per cent. or more of all votes capable of being cast on a poll available to the holders of Equity Shares, the number of votes available to all the holders of 'A' Ordinary Shares shall be limited to such number of votes as is equal to twenty per cent. of all votes capable of being cast on a poll (which shall be exercisable by the holders of 'A' Ordinary Shares pro rata to the number of 'A' Ordinary Shares respectively held by them);
- (2) if following the service on the Company of a Voting Release Notice and having regard to Article 9.5 and Article 9.6, the holders of 'A' Ordinary Shares would otherwise be entitled on a poll to exercise voting rights in respect of thirty three per cent. or more of all votes capable of being cast on a poll available to the holders of Equity Shares, the number of votes available to all the holders of 'A' Ordinary Shares shall be limited to such number of votes as is equal to thirty three per cent. of all votes capable of being cast on a poll (which shall be exercisable by the holders of 'A' Ordinary Shares pro rata to the number of 'A' Ordinary Shares respectively held by them),

and in any such case the balance of the votes to which the holders of 'A' Ordinary Shares would have been entitled but for this proviso shall be attributed to and exercisable by the holders of other Equity Shares pro rata to the number of Equity Shares respectively held by them. For these purposes, a "Voting Release Notice" shall be a notice in writing, served by the holder(s) of a majority of the 'A' Ordinary

Shares on the Company notifying the Company of the lifting of the voting restrictions imposed by this Article 9.1. Such a notice shall only be capable of being served on the Company if Second Completion (as defined in the Subscription Agreement) has not taken place within twenty four months after the date on which Completion (as defined in the Subscription Agreement) takes place. If a valid Voting Release Notice has been served on the Company, the Company shall within five business days of receipt of the same notify each of the holders of Equity Shares of such receipt and of the revised voting rights which then apply as a result.

- 9.2 Subject to Article 9.3, during a Default Period and if an Enhancement Notice to that effect has been given by all the holders of 'A' Preferred Shares and is still in force, only the holders of the 'A' Preferred Shares and 'A' Ordinary Shares (and the holders of such other shares in the Company as may be specified in the Enhancement Notice by all the holders of 'A' Preferred Shares) shall be entitled to vote. The holders of 'A' Preferred Shares shall be entitled in such notice to modify the number of votes per 'A' Preferred Share to which the holder is entitled on a poll but unless any such modification is so specified, the provisions of Article 9.1(B) shall prevail.
- 9.3 During a Default Period and in the event that a Default Remedy Scenario applies and an Enhancement Notice to that effect has been given by all the holders of 'A' Preferred Shares and is still in force, only the holders of the 'A' Preferred Shares (and such other shares in the Company as may be specified in the Enhancement Notice by all the holders of 'A' Preferred Shares) shall be entitled to vote on any resolutions required to effect an Article 12.9 Allotment. The holders of the 'A' Preferred Shares shall be entitled in such notice to modify the number of votes per 'A' Preferred Share to which the holder is entitled on a poll but unless any such modification is so specified, the provisions of Article 9.1(B) shall prevail.
- 9.4 For so long as any Privileged Relation and/or Family Trust of a Relevant Executive or former Relevant Executive shall hold shares in the Company and that Relevant Executive or former Relevant Executive shall be physically able and has legal capacity to do so and is not suffering from mental disorder, all votes attaching to the shares so held shall only be voted by or under direction of that Relevant Executive or former Relevant Executive, except to the extent otherwise agreed in writing from time to time between that Relevant Executive and an Investor Majority and notified to the Company.
- 9.5 Unless otherwise agreed in writing from time to time between that member and an Investor Majority and notified to the Company, no member shall be entitled to exercise any voting rights attaching to his shares during any period in which a Mandatory Transfer Notice may be required to be given in respect of them or whilst a Mandatory Transfer Notice has been given or deemed given in respect of them and has not expired.
- 9.6 Unless otherwise agreed in writing from time to time between that Leaver or the Relevant Member concerned and an Investor Majority and notified to the Company, neither a Leaver nor any Relevant Member of his may exercise any voting rights attaching to his or their Relevant Shares.
- 9.7 Unless otherwise agreed under the terms of the issue of the shares concerned, no member shall be entitled in respect of any share held by him to vote (either personally or by corporate representative or proxy) at any general meeting of the Company or at any separate general meeting of the holders of any class of shares in the Company or to exercise any other right conferred by membership in relation to general meetings unless all calls or other sums presently payable by him in respect of that share have been paid.
- 9.8 Where the consent of any holder(s) of 'A' Ordinary Shares is required under Article 24.2(B) and/or Article 26.3(C), such consent shall not be unreasonably withheld or delayed and if any

such consent is requested and not responded to within twenty business days of the request having been made, the holder(s) of the 'A' Ordinary Shares shall be hereby deemed to have provided consent to the matter the subject of such request.

## **10. CLASS CONSENTS**

10.1 Investor Consent shall be required before the Company or any other member of the Group shall:

- (A) except as expressly provided in the Subscription Agreement or to give effect to Article 5, create or allot or issue or diminish any further share capital or grant or agree to grant to any person any option or right to subscribe for convert into or otherwise to require the issue or allotment of any shares or the creation or allotment or issue of shares, except to the Company or a wholly owned subsidiary of the Company;
- (B) pass a resolution for the reduction or cancellation of its share capital or the reduction of any uncalled liability in respect of it;
- (C) negotiate or give effect to any transaction:
  - (1) whereby a person and his or its associates obtain a Controlling Interest in the Company (such provision being without prejudice to any other provisions of these Articles governing circumstances in which transactions involving the obtaining of a Controlling Interest may be permitted or is restricted); or
  - (2) of an equity nature (e.g. any merger or consolidation or sale of shares of a subsidiary) involving more than £100,000 in value, or any transaction or series of related transactions in which thirty per cent. or more of the voting control in a subsidiary is disposed of directly or indirectly by the Company;
- (D) incur any Indebtedness which, when taken together with all other Indebtedness of the Group, would lead to such aggregate Indebtedness exceeding £100,000;
- (E) purchase or redeem or re-denominate the whole or any part of its share capital other than in accordance with the terms of issue of any class of share capital;
- (F) modify vary alter or abrogate any of the rights privileges or restrictions attaching to any of the classes of its share capital;
- (G) make or permit any material alteration (including cessation) to the general nature of the business carried on by it from time to time;
- (H) except as provided for in the Subscription Agreement establish or adopt or operate any retirement death or disability scheme or any bonus or profit sharing scheme or any share option scheme, employee share ownership plan or employees trust or other similar incentive scheme or amend any such scheme previously approved by Investor Consent;
- (I) change its corporate name or any name under which it carries on its business in whole or part;
- (J) make any alteration to its Memorandum and Articles of Association;

- (K) pass any resolution or seek any order or take any steps with a view to the liquidation, winding up or striking off dissolution or administration or receivership of any member of the Group or the equivalent in any other jurisdiction;
- (L) except for dividends paid to the Company or a wholly owned subsidiary of the Company, make any distribution by way of dividend or otherwise out of the profits or reserves of the Company;
- (M) make or provide any loan or financial facility other than (i) credit given in the ordinary course of business or (ii) loans to the Company or any subsidiary of the Company and (iii) loans not exceeding £1,000 in the aggregate to any individual director or employee by way of advance to cover reasonable business expenses (iv) by way of season ticket loan to any individual director or employee;
- (N) give any guarantee suretyship or indemnity or similar liability in respect of the obligations of any person firm or company other than the Company or a wholly owned subsidiary of the Company;
- (O) enter into any factoring or invoice discounting arrangements in respect of its debts;
- (P) permit or allow or do anything which results or will result in a breach of Article 40 (Borrowing Powers of Directors);
- (Q) issue redeem or purchase any loan stock or loan notes; or
- (R) acquire any share or loan capital of or ownership or partnership interest in another body corporate or in any partnership wherever established (including by way of formation of a wholly owned subsidiary) or any business or undertaking or modify any joint venture arrangement or material trading partnership to whom any member of the Group is a party;
- (S) dispose of or dilute its interest directly or indirectly in any subsidiary or subsidiary undertaking or business or undertaking or partnership;
- (T) acquire, develop, dispose (by transfer or sale or lease or otherwise), relocate or close any property or premises or business outlet (freehold or leasehold) or any interest in them other than by way of renewal of any lease previously held by the Company or the subsidiary concerned on fair market terms;
- (U) except solely on arms length terms in the ordinary course or business, enter into any agreement to occupy or permit any third party to occupy any property or premises (whether freehold or leasehold) or vary any of the material terms under which it occupies or permits any third party to occupy any property or premises;
- (V) enter into or vary any of the material terms of any material agreement for the acquisition and/or user or other exploitation (whether by a member of the Group or a third party) of any intellectual property rights;
- (W) make payment by way of bonus or profit share to, any of its directors or Senior Executives and then only (in the case of a bonus or profit share payments) in amounts approved by a remuneration committee of the Board consisting of a majority of non-executive directors;
- (X) appoint or remove any director (other than an alternate director or an Investor Director pursuant to these Articles);

- (Y) enter into any transaction or arrangement which is neither properly ancillary to nor in the ordinary and proper course of conducting its business;
- (Z) enter into any transaction or arrangement which is not on arm's length terms or which is of a particularly long term or unusual nature;
- (AA) enter into or in any material respect vary the terms of or grant any material waiver or consent in respect of an agreement or a transaction with any person who is or has in the previous twelve months been a director or shareholder director or shareholder of the Company or connected person of a director or shareholder director or shareholder (save as expressly contemplated by the Subscription Agreement or for an agreement or transaction in the ordinary course of its trade and which in the reasonable opinion of an Investor Majority is not material to the Group as a whole);
- (BB) remove its auditors or appoint any new or additional auditors, except in the case of a subsidiary or subsidiary undertaking of the Company to remove its auditors and appoint in their place the auditors of the Company;
- (CC) change its accounting reference date (except, in the case of a subsidiary, to conform with that of the Company);
- (DD) appoint any adviser(s) with a view to or otherwise seek to take any steps to achieve a Sale or Flotation; or
- (EE) enter into any agreement, commitment or arrangement to do any of the above,

provided that no such consent shall be required in the case of any matter specified in any of paragraphs (D), (G), (O) or (T) if such matter is approved in advance by the Board and at the time of such approval there are at least two Investor Directors holding office and all the Investor Directors then holding office vote in favour of the approval of such matter.

- 10.2 The Company shall not, and each other member of the Group shall not, do any matter which is expressly reserved in the Subscription Agreement to the full approval of the Board, unless full approval of the Board (by simple majority) shall have first been obtained.
- 10.3 The prior written consent of the holder(s) of a majority of the issued 'A' Ordinary Shares shall be required:
  - (A) before the Company or any other member of the Group shall issue shares or options to subscribe such shares on a non-pre-emptive basis except where a Default Remedy Scenario applies in which case the provisions of Articles 12.9 and 12.10 shall apply;
  - (B) before the Company or any other member of the Group shall migrate the development and/or commercial exploitation of the SelfCare System (as defined in the Subscription Agreement) to an entity other than a member of the Group in order to deprive the Group of the commercial benefit of developing it and exploiting it itself;
  - (C) before the Company or any other member of the Group shall enter to any agreement with a third party in circumstances where the Company's principal purpose in doing so is demonstrably to reduce or limit the value of the 'A' Ordinary Shares (but, for the avoidance of doubt, the Company shall not be in breach of this Article 10.3(C) if it or another member of the Group enters into an agreement in good faith for bona fide purposes which has the effect of reducing or limiting the value of the 'A' Ordinary Shares where entry into of the same is not demonstrably for the principal purpose of so doing); and



(D) to any amendment to this Article 10.3.

- 10.4 Anything done (whether by the Company or any member of the Group or otherwise) without the necessary consent required under Article 10.1 or in breach of the terms and conditions of any such consent shall be deemed to be a breach of the class rights of the 'A' Preferred Shares.
- 10.5 Anything done (whether by the Company or any member of the Group or otherwise) within the necessary consent required under Article 10.3 or in breach of the terms and conditions of any such consent shall be deemed to be a breach of the class rights of the A Ordinary Shares.
- 10.6 Each member shall exercise his or its rights in that capacity or otherwise available to him to ensure (so far as he or it can through such exercise) that the provisions of this Article 10 are complied with.

## **11. AUTHORITY TO ALLOT**

- 11.1 The unissued shares in the capital of the Company for the time being shall be under the control of the Directors, who are generally and unconditionally authorised by these Articles to allot, grant options over, or otherwise dispose of or deal with any unissued shares and Subscription Rights to such persons, on such terms and in such manner as they shall think fit, but subject to any agreement binding on the Company and to the other provisions of these Articles.
- 11.2 The Directors may not exercise any power under section 550 of the 2006 Act (when it is in force) without Investor Consent.
- 11.3 The authority contained in Article 11.1 shall, unless revoked or varied in accordance with section 80 of the 1985 Act (whilst still in force) or section 551 of the 2006 Act (when in force):
- (A) be limited to a maximum nominal amount of shares equal to the amount of the authorised but unissued share capital of the Company immediately following the time of the passing of the resolution adopting these Articles; and
  - (B) expire on the fifth anniversary of the date of the passing of that resolution but without prejudice to any offer or agreement made before that anniversary which would or might require the exercise by the Directors after that anniversary of their powers in pursuance of the authority.
- 11.4 In exercising their authority under this Article the Directors shall not be required to have regard to Section 89(1) or (insofar as the exclusion of the application of those sub sections is permitted by the 1985 Act) Section 90(1) to (6) (inclusive) of the 1985 Act (whilst in force) or sections 561 and 562 of the 2006 Act (when in force) which shall not apply to the Company.
- 11.5 The reference to the authorised but unissued share capital of the Company in Article 11.3 shall be as interpreted as meaning the shares specified in Article 2.1(B).

## **12. NEW SHARE ISSUES**

- 12.1 Subject to the other provisions of these Articles and without prejudice to the class rights attaching to the Investor Shares or any of them:
- (A) the Company may issue shares with such rights and/or restrictions as may be determined by ordinary resolution or (with Investor Consent and subject to any prior determination by the Company by shareholder resolution) by the Board;

- (B) the Company may issue shares which are to be or are liable to be redeemed (at the option of the Company or their holder) on such terms and conditions and in such manner concerning their redemption as may be determined by the Board with Investor Consent.

12.2 For the purposes of these Articles and unless otherwise specified (in compliance with Article 12.1) in the terms of their allotment, all shares in the Company other than:

- (A) those issued to its subscribers on its incorporation; and
- (B) any shares issued before the Adoption Date in irredeemable form

shall be redeemable when and if re-designated as Deferred Shares as provided in these Articles or (subject to the rights attaching to the Investor Shares or any of them) with the consent of their holder on the terms agreed between their holder and the Company.

12.3 Any consideration to be paid to the Company in consideration for the issue of a share shall be payable at such time or time(s) and in such instalments (if any) as shall be prescribed by the Board and are consistent with Article 12.1 and as regards any premium may be conditional or variable in amount, in whole or in part.

12.4 Except as expressly provided in these Articles or in the Subscription Agreement and (subject to those provisions) as may otherwise be resolved by special resolution and agreed by Investor Consent, any unissued shares (whether forming part of the original share capital or not) shall, before they or any Subscription Rights over them are issued, first be offered to the members as follows:

- (A) the offer shall be made by notice in writing to all the members specifying the number and class and subscription price of the shares on offer limiting the time (not being less than twenty-one days or, during a Default Period, such shorter period as may be agreed by Investor Consent) within which the offer may be accepted;
- (B) acceptances shall be given to the Company by notice in writing and in that acceptance the applicant shall state the number of the shares on offer which he is willing to subscribe for, which may be up to all of the shares being offered.

12.5 After the end of the offer period under Article 12.4 or after the Company shall have received notice of the acceptance or as the case may be refusal of the offer from every offeree (whichever shall be the earlier event) the Directors shall allot the offered shares first to and amongst the applicants who are registered as holders of the then issued Equity Shares and to the extent there is competition between them, pro-rata according to the number of Ordinary Shares in respect of which they are respectively registered as holders (or would be registered if their 'A' Preferred Shares were then fully converted into 'B' Ordinary Shares) and secondly (if any of the offered shares shall remain after the applicants have been satisfied in full and there are any shares which are not Equity Shares then in issue) to and amongst the remaining applicants and, to the extent there is competition between them, pro-rata to the number of shares of the Company other than Equity Shares in respect of which they are respectively registered as holders PROVIDED THAT no applicant shall be obliged to take more than the maximum number of offered shares specified by him in his application.

12.6 If all or any of the unissued shares to which Article 12.4 applies are not taken up in accordance with the provisions of Articles 12.4 and 12.5 the Directors may offer those shares to a third party (to be approved by Investor Consent) and, subject to these Articles and to the provisions of the Companies Acts, those shares shall be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and

generally on such terms and conditions as they think proper, provided that, except with Investor Consent:

- (A) none of them shall be issued more than three months after the expiry of the period for acceptance of the last offer of them made under Article 12.4 unless the procedure set out in Articles 12.4 and 12.5 is repeated in respect of them;
  - (B) none of them shall be issued at a price less than that at which they were offered in accordance with Article 12.4 and 12.5; and
  - (C) if the Directors are proposing to issue them wholly or partly for non-cash consideration, the cash value of such consideration shall be as reasonably determined by the Auditors whose determination shall be final and binding on the Company and each of its members.
- 12.7 Article 12.4 shall not apply to 'A' Preferred Shares or Ordinary Shares to be allotted under any express provision of the Subscription Agreement or for the purposes of giving effect to the conversion rights of the 'A' Preferred Shares and/or the 'A' Ordinary Shares.
- 12.8 Article 12.4 shall not apply to Permitted Share Issues, the grant of a Permitted Option nor to the allotment of Ordinary Shares on its exercise but subject always to the terms of any Investor Consent relevant to the Subscription Rights concerned.
- 12.9 Subject to Article 12.10, Article 12.4 shall not apply to any allotment or issue of shares or Subscription Rights over shares in the Company during a Default Period where a Default Remedy Scenario applies (an "**Article 12.9 Allotment**"). A "**Default Remedy Scenario**" means a scenario where a Default Period has arisen and the Board (acting with Investor Consent and in good faith) resolves that it is necessary to issue shares in the Company and/or grants Subscription Rights over such shares for the purpose of raising equity finance to address the circumstances which gave rise to the Default Period arising and/or which have caused it to continue.
- 12.10 If an Article 12.9 Allotment takes place, the holders of all Equity Shares shall be given the opportunity to participate in the Article 12.9 Allotment on the basis prescribed in paragraph (A) or (B) below (at the direction of an Investor Majority), namely, either:
- (A) at the same time as the Article 12.9 Allotment is effected, in which case they shall be offered the opportunity to subscribe for their relevant proportion of the new shares proposed on the terms set out in Article 12.4; or
  - (B) after the Article 12.9 Allotment is effected, by means of an offer being effected on terms that all member(s) (each a "**Shareholder**") who acquired new shares pursuant to such allotment (the "**Acquired Shares**") shall between them hereby commit to offer for sale to the holders of Equity Shares who were not accorded the ability to participate in the Article 12.9 Allotment such number of the Acquired Shares as is equal (as nearly as may be) to the minimum number of such shares which would have been offered to those holders of Equity Shares had an offer to subscribe such shares been made to them pursuant to paragraph (A) above (the "**Shareholder Catch Up Shares**"). The number of Shareholder Catch Up Shares to be offered for sale by each person who originally subscribed for those shares under the Article 12.9 Allotment shall be determined pro rata according to the number of all such Shareholder Catch Up Shares subscribed by all such persons under the Article 12.9 Allotment. Such offer shall be made through the Company on the basis set out in Article 27 as if a Transfer Notice shall have been given in respect of the Shareholder Catch Up Shares (and the relevant Shareholders shall be required within five business days after the

issue to them of the Shareholder Catch Up Shares, to serve a notice on the Company requiring the Board to commence such offer on their behalf and if he fails to do so he shall be deemed to have done so at the expiry of the five business day period). The Board shall following receipt of such notice initiate the offer process as set out in Article 27, but modified appropriately to give effect to the above provisions and the following provisions:

- (1) the price at which such shares shall be offered shall be the price at which they were subscribed pursuant to the Article 12.9 Allotment and that price shall be deemed to be the Transfer Value of the shares for the purposes of Article 27;
- (2) no Total Transfer Condition may be given in relation to the sale of the Shareholder Catch Up Shares; and
- (3) if more than one Shareholder is required to offer Shareholder Catch Up Shares for sale pursuant to this Article 12.10 then the number of shares to be sold by that Shareholder as a result of the offer being taken up shall be equal (or as nearly as may be) to his Take-up Proportion of all such shares to be so sold. For these purposes, a Shareholder's **"Take-up Proportion"** shall be such proportion as is equal to the proportion which the Shareholder Catch Up Shares subscribed by that Shareholder under the Article 12.9 Allotment bears to the aggregate number Shareholder Catch Up Shares subscribed by all Shareholders under the Article 12.9 Allotment.

Any transfer of Shareholder Catch Up Shares pursuant to this Article 12.10 shall be treated for all purposes as a Permitted Transfer under these Articles. The above provisions shall apply equally in relation to Subscription Rights over shares in the Company granted in a Default Remedy Scenario.

- 12.11 If, in respect of the operation of Article 12.10, the Shareholder is obliged but defaults in accepting payment of the purchase price for any Shareholder Catch Up Share or, as the case may be, in transferring the same, the Directors or any Investor Director may receive such purchase money and may nominate some person to execute an instrument of transfer of the share in the name and on behalf of the Shareholder and when the instrument has been duly stamped the Directors shall cause the name of the transferee to be entered in the Register of Members as the holder of the share and where applicable shall hold the purchase money in trust without interest for the Shareholder. The receipt of the Directors or any Investor Director for the purchase money shall be a good discharge to the purchaser (who shall not be bound to see to its application) and after his name has been entered in the Register of Members in purported exercise of those powers the validity of the proceedings shall not be questioned by any person
- 12.12 No fraction of a share shall be required to be allotted or transferred pursuant to Article 12.10 and, as applicable, the number of shares to be allotted or transferred shall be rounded down in each case.
- 12.13 No allotment or issue of shares or other Restricted Securities shall be made in breach of Article 22.
- 12.14 If it is a requirement of the Subscription Agreement that any person to whom a share is to be allotted or issued shall first or contemporaneously adhere to the Subscription Agreement, the Directors may nominate a person selected by them to act (upon that person becoming a member and bound by these Articles) as the attorney of the person required so to adhere for the purposes of executing and delivering the required deed or other document of adherence on his behalf.

- 12.15 Subject first to obtaining Investor Consent, the Company may exercise all powers conferred by the Companies Acts of paying commissions in relation to a subscription for shares or other allotment. Subject to the Companies Acts, commissions may be satisfied in cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other. The Company may also (with Investor Consent) pay any brokerage in relation to a subscription for shares which is lawful.

### **13. ALTERATION OF SHARE CAPITAL**

- 13.1 Subject to the provisions of the Companies Acts and to the rights of the holders of the respective classes of shares of the Company, the Company may by ordinary resolution:

- (A) increase its share capital by a sum to be divided into shares of amounts prescribed by the resolution;
- (B) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
- (C) sub-divide all or any of its shares into shares of a smaller amount;
- (D) resolve that one or more of the shares resulting from any such division or sub-division may have any preference or other advantage as compared with the others or may be made subject to any restriction as compared with the others;
- (E) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by a person and diminish the amount of its unissued share capital by the amount of the shares so cancelled; and/or
- (F) re-denominate its share capital or any class of it and effect any related reduction in its share capital as provided in Chapter 8 of Part A of the 2006 Act, when in force.

- 13.2 Subject to the provisions of the Companies Acts and to the rights of the holders of the respective classes of shares of the Company, the Company may:

- (A) reduce its share capital or any capital redemption reserve, share premium account or other undistributable reserve in any way;
- (B) purchase its own shares, including any redeemable shares;
- (C) make a payment in respect of the redemption or purchase of its shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares; and/or
- (D) subject to section 686 of the 2006 Act coming into force, make a payment in respect of the redemption of its own shares later than the date of their redemption, if so provided as part of the terms of the issue of the shares concerned (in which case these Articles shall constitute the relevant agreement between the Company and their holder for the purposes of section 686(2) of the 2006 Act) or to the extent otherwise permitted by the Companies Acts.

- 13.3 If, as the result of a consolidation and division or a sub-division of shares, fractions of shares become attributable to members, the Board may on behalf of the members and subject to obtaining prior Investor Consent deal with the fractions as it thinks fit, including (without limitation) by:

- (A) selling shares representing the fractions to any person (including, subject to the Companies Acts, the Company by redemption or purchase) for the best price reasonably obtainable and distributing the net proceeds of sale in due proportion amongst the persons to whom the fractions are attributable (except that if the amount due to a person is less than £5.00, or such other sum as the Board may decide, the Company may retain such sum for its own benefit); and/or
  - (B) consolidating the fractional entitlements into shares of such nominal value as it shall see fit and re-designating those shares as Deferred Shares; and/or
  - (C) issuing to the member(s) concerned, credited as fully paid by way of capitalisation, the minimum number of shares required to round up his/their holding of shares to a number which, following a consolidation and division or a sub-division, leaves a whole number of shares (that issue being deemed to have been effected immediately before the consolidation or the sub-division, as the case may be).
- 13.4 To give effect to any sale of fractional entitlements the Board may authorise a person to execute an instrument of transfer of shares to the purchaser or as the purchaser may direct; and the purchaser will not be bound to see to the application of the purchase monies in respect of that sale. The title of the transferee to the shares will not be affected by any irregularity in or invalidity of the proceedings connected with the sale or transfer. Any such instrument or shall be effective as if it had been executed or exercised by the holder of the shares to which it relates.
- 13.5 The amount required to pay up any shares to be issued as contemplated by Article 13.3(C) may be capitalised as the Board thinks fit out of amounts standing to the credit of any reserve or fund of the Company (including any share premium account, capital redemption reserve and profit and loss account), whether or not available for distribution.
- 13.6 A resolution of the Board consolidating fractional entitlements and redesignating the same as Deferred Shares or (as appropriate) capitalising part of any reserve or fund referred to in Article 13.3 will have the same effect as if the same had been made with the sanction of an appropriate shareholder resolution and in relation to a capitalisation the Board may exercise all the powers conferred on it by these Articles in relation to capitalisations without requirement for further sanction of any shareholder resolution.

## **14. DEFERRED SHARES**

### **14.1 Deferred Shares shall:**

- (A) on a return of capital on winding up or otherwise, entitle their holders only to the repayment of the amounts paid up or credited as paid up on those shares after payment in respect of each ordinary share of the amount paid up on that share and £10,000,000;
- (B) not otherwise entitle their holders to receive or participate in any way in any profits or assets of the Company;
- (C) not entitle their holders to participate in any pre-emptive offer of shares or Subscription Rights for subscription or purchase; and
- (D) not entitle their holders to receive notice of or to attend or vote at any general meeting of the Company.

- 14.2 The Company may at any time appoint any person to execute on behalf of the holders of any Deferred Shares a transfer of them (and/or an agreement to transfer the same) to such person as the Company may determine as custodian and/or to deal with any Conversion arrangements under Article 7 and/or to purchase them (in accordance with the provision of the Companies Acts) for a price not more than an aggregate sum of 1p for all the Deferred Shares without obtaining the sanction of their holder or holders and pending their transfer and/or purchase to retain the certificate for those Deferred Shares.
- 14.3 The Company may at any time after the creation of any Deferred Shares and to the extent permitted under the Companies Acts redeem all or any of the Deferred Shares then in issue, at an aggregate price not exceeding 1p for all the Deferred Shares redeemed, with the recipient of such sum being determined by the Company, upon giving the registered holders of those shares notice in writing of its intention so to do, fixing a time and place for the redemption.

## **15. SHARE CERTIFICATES**

- 15.1 Subject to the Companies Acts and these Articles, every person, upon becoming the holder of a share or upon transferring part only of his holding of shares is entitled, without charge, to one or more certificates for all the shares of a class then or remaining registered in his name or, in the case of shares of more than one class being registered in his name, to separate certificate(s) for each class of shares, unless the terms of issue of the shares provide otherwise.
- 15.2 A certificate shall specify the number and class and nominal value and the distinguishing numbers (if any) of the shares in respect of which it is issued and whether or not the shares are fully paid. It shall be signed by two Directors or one Director and any Secretary of the Company or in such other manner as the Board may approve.
- 15.3 The Company is not bound to issue more than one certificate for shares held jointly by two or more persons. Delivery of a certificate to one joint holder shall be sufficient delivery to all joint holders.
- 15.4 If any certificate is worn-out, defaced, lost or destroyed, the Company may cancel it and issue a replacement certificate subject to such terms as the Board may decide as to evidence and indemnity (with or without security) and to payment of any exceptional out-of-pocket expenses of the Company in investigating such evidence and preparing such indemnity or such security but otherwise free of charge, and (if the certificate is worn-out or defaced) on delivery up of the old certificate.

## **16. VARIATION/ABROGATION/RESERVATION AND EXERCISE OF RIGHTS**

- 16.1 If at any time the share capital is divided into different classes of shares, the rights attached to any class may, whether or not the Company is being wound up, be varied modified abrogated or cancelled only with the approval of a special resolution passed at a separate class meeting of the holders of the issued shares of that class or with the consent in writing of a Majority of that class or in the case of the 'A' Preferred Shares, an Investor Majority.
- 16.2 The provisions of Articles 10.1 and 10.2 (matters requiring Investor Consent) and the other provisions of these Articles requiring Investor Consent to any matter or conferring rights upon an Investor Majority are special rights of (and only of) the 'A' Preferred Shares and this Article 16 shall be construed accordingly.
- 16.3 The provisions of these Articles relating to general meetings shall apply to every separate class meeting referred to in Article 16.1, but the necessary quorum shall be two persons holding or representing by proxy or corporate representative at least a Majority in nominal

value of the issued shares of that class and any holder of shares of the class present in person or by proxy may demand a poll and on a poll each share concerned shall carry one vote PROVIDED THAT where there is only one holder of the issued shares of the relevant class a quorum shall be that holder alone present in person or by proxy or corporate representative.

- 16.4 Subject to Article 16.5, nothing in these Articles or otherwise shall confer any special rights or privileges or class rights or entitlements on the holders of any shares which are not Investor Shares or 'A' Ordinary Shares during any Default Period and nothing done in a Default Period (or subsequently as a necessary consequence of anything done or any right or entitlement granted during a Default Period) by the Company or any member of the Group or any other shareholder of a Group member shall constitute or be deemed to constitute any variation, modification or abrogation of the rights of or require any consent to be obtained from the holders of any shares which are not Investor Shares or 'A' Ordinary Shares ("**Other Shares**") or any of them, other than anything which imposes upon the holder of any Other Shares any liability greater than that to which the subscriber of the same was subject at the time of their issue. As security for the due performance of his obligations under these Articles each holder of Other Shares hereby is deemed under these Articles to give irrevocable authority and power of attorney to each Investor Director or any holder of Investor Shares to sign and give any waivers or consents on his part necessary to give effect to the provisions of this Article 16.4 including any which by virtue of any provision of the Companies Acts or otherwise can only be effective if separately given.
- 16.5 Nothing in these Articles or otherwise shall confer any special rights or privileges or class rights or entitlements on the holders of any A Ordinary Shares during a Default Period where a Default Remedy Scenario applies which would entitle them to prevent an Article 12.9 Allotment being made and the making of an Article 12.9 Allotment by the Company shall not constitute or be deemed to constitute any variation, modification or abrogation of the rights of or require any consent to be obtained from the holders of any 'A' Ordinary Shares or any of them. As security for the due performance of his obligations under these Articles each holder of 'A' Ordinary Shares hereby is deemed under these Articles to give irrevocable authority and power of attorney to each Investor Director or any holder of Investor Shares to sign and give any waivers or consents on his part necessary to give effect to the provisions of this Article 16.5 including any which by virtue of any provision of the Companies Acts or otherwise can only be effective if separately given.
- 16.6 For the avoidance of doubt and subject to Articles 16.4 and 16.5, the variation, modification, abrogation or cancellation of this Article or of any provision of these Articles which contains or affects any class rights shall (except as expressly provided) require the consent (in accordance with this Article) of the holders of shares of the class or classes concerned to be effective.
- 16.7 In exercising any rights as the holder of any shares, their holder shall be entitled to exercise those rights in its absolute discretion as it sees fit including, without limitation, without obligation to have regard to:
- (A) the interests of any other holder(s) of the same class of shares or the rights of holders of that particular class as a whole or the holder(s) of any other class or classes of share or any of them; and
  - (B) the interests of the Company (as a commercial entity or otherwise) and/or the interests of the general body of its shareholders.
- 16.8 Without in any way derogating from the rights of the holders of the Investor Shares or 'A' Ordinary Shares under Article 10, the creation or issue of further shares of the same class



shall not of itself constitute a variation or modification or abrogation of the class rights of the holders of shares of that class already in issue.

- 16.9 Any person who holds 'A' Preferred Shares or other Investment Grade Shares issued by the Company from time to time and who is not an Investor for the purposes of these Articles shall not be entitled to exercise any of the following rights attaching to such shares irrespective of any other provision of these Articles:

- (A) any right to participate in the consideration, giving or denying of any matter requiring approval by Investor Consent or by an Investor Majority; and
- (B) voting rights.

## **17. LIENS**

- 17.1 Subject to the following provisions of this Article, the Company shall have a first and paramount lien on all shares (whether or not fully paid) standing registered in the name of any person indebted or under liability (actual or contingent) to the Company and a right of set off for that debt or liability against all moneys payable by the Company on or in respect of the same, whether he shall be the sole registered holder or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company in respect of those shares.
- 17.2 The Board may, with Investor Consent, resolve that any share or shares be exempt wholly or in part from this Article.
- 17.3 For the purpose of enforcing the Company's lien on any shares and without prejudice to Article 17.4, the Company (which shall be deemed by these Articles irrevocably appointed as the attorney of the member empowered and authorised on his behalf to do execute and deliver any acts things deeds and documents for him as it may consider necessary for the purpose) may sell the shares in such manner as it decides (with Investor Consent) if an amount in respect of which the lien exists is presently payable and is not paid within twenty eight clear days following the giving of a notice to the holder (or any person entitled by transmission to the share) demanding payment of the amount due within such twenty eight clear day period and stating that if the notice is not complied with the shares may be sold.
- 17.4 On a Sale or Flotation or on any sale of such shares under Article 17.3, each member whose shares are subject to a lien as provided in these Articles shall be deemed by these Articles irrevocably to appoint the Company as his attorney and authorised on his behalf to make such arrangements as are necessary to procure that any such amounts payable by him as contemplated by this Article are directly paid to the Company out of any proceeds of sale which are payable for the shares under the arrangements. The Company shall only exercise its rights as attorney under this Article 17.4 if exercised with Investor Consent.
- 17.5 The purchaser or transferee will not be bound to see to the application of the purchase monies in respect of any sale of shares under the powers of the Company conferred by this Article 17. The title of the transferee to the shares will not be affected by any irregularity in or invalidity of the proceedings connected with the sale or transfer. Any such instrument or shall be effective as if it had been executed or exercised by the holder of the shares to which it relates.
- 17.6 The net proceeds of any sale of shares subject to the Company's lien under these Articles (after payment of the costs and expenses of sale) shall be applied in or towards satisfaction of the amount then due to the Company in respect of the shares. Any balance shall be paid to the original holder of, or the person entitled (but for such sale) by transmission to, the shares on surrender to the Company for cancellation of the certificate for those shares (or an indemnity

in such form as the Board may require where it is missing or destroyed) and (in all cases) subject to the Company having a lien on such balance on the same basis as applied to the shares for any amount not presently payable as existed on such shares before the sale.

## **18. PARTLY PAID SHARES AND FORFEITURE**

- 18.1 The powers of the Board under this Article may only be exercised with Investor Consent.
- 18.2 Subject to their terms of issue, the Board may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal amount of the shares or by way of premium) and not payable on a date fixed by or in accordance with the terms of issue, and each member shall (subject to the Company serving upon him at least 14 clear days' notice specifying when and where payment is to be made) pay to the Company as required by the notice the amount called on his shares.
- 18.3 A call may be made payable by instalments. A call may be revoked or postponed, in whole or in part, as the Board may decide. A person upon whom a call is made shall remain liable for all calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.
- 18.4 A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.
- 18.5 The joint holders of a share shall be jointly and severally liable to pay all calls in respect of the share.
- 18.6 If a call remains unpaid after it has become due and payable, the person from whom it is due and payable shall pay interest on the amount unpaid from the day it is due and payable to the time of actual payment at such rate, not exceeding four per cent. per annum above the base lending rate of Barclays Bank plc at the relevant time, as the Board may decide, and all expenses that have been incurred by the Company by reason of that non-payment, but the Board shall be at liberty in any case or cases to waive payment of the interest or expenses wholly or in part.
- 18.7 Any amount which becomes payable in respect of a share on allotment or on any other date fixed by or in accordance with the terms of issue, whether in respect of the nominal amount of the share or by way of premium or as an instalment of a call, shall be deemed to be a call and, if it is not paid, all the provisions of these articles shall apply as if the sum had become due and payable by virtue of a call.
- 18.8 Subject to their terms of issue, the Board may on the issue of shares differentiate between the allottees or holders as to the amount of calls to be paid and the times of payment.
- 18.9 The Board may, if it thinks fit, receive from any member who is willing to advance them all or any part of the moneys uncalled and unpaid upon any shares held by him and on all or any of the moneys so advanced the Company may (until those moneys would, but for the advance, become presently payable) pay interest at such rate, not exceeding (unless the Company by ordinary resolution or Investor Majority shall otherwise direct) the maximum annual percentage specified in Article 18.6.
- 18.10 If any call or instalment of a call remains unpaid on any share after the day appointed for payment, the Board or any Investor Director may serve a notice on the holder requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and any expenses incurred by the Company by reason of that non-payment.

- 18.11 The notice shall name a further day (not being less than twenty eight clear days from the date of the notice) on or before which, and the place where, the payment required by the notice is to be made and shall state that in the event of non-payment on or before the day and at the place appointed, the shares in respect of which the call has been made or instalment is payable will be liable to be forfeited. The Board may accept the surrender of any share liable to be forfeited and, in that event, references in these articles to forfeiture shall include surrender.
- 18.12 If the notice is not complied with, any share in respect of which it was given may, at any time before payment of all calls or instalments and interest and expenses due in respect of it has been made, be forfeited by a resolution of the Board or written notice from an Investor Director to that effect and the forfeiture shall include all dividends declared and other moneys payable in respect of the forfeited shares and not paid before the forfeiture.
- 18.13 When any share has been forfeited, notice of the forfeiture shall be served upon the person who was before forfeiture the holder of the share but no forfeiture shall be invalidated by any omission or neglect to give notice.
- 18.14 Until cancelled in accordance with the requirements of the Companies Acts, a forfeited share shall be deemed to be the property of the Company and may be sold or otherwise disposed of either to the person who was, before forfeiture, the holder or to any other person upon such terms and in such manner as the Board shall decide. The Board or an Investor Majority may for the purposes of the disposal authorise some person to execute an instrument of transfer to the designated transferee. The Company may receive the consideration (if any) given for the share on its disposal. At any time before a sale or disposition the forfeiture may be cancelled by the Board on such terms as the Board may decide or as shall be required by an Investor Majority.
- 18.15 A person whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the Company for cancellation the certificate for the forfeited shares but shall remain liable to pay to the Company all moneys which at the date of the forfeiture were payable by him to the Company in respect of those shares with interest at the rate of 15 per cent. per annum (or such lower rate as the Board may decide) from the date of forfeiture until payment, and the Company may enforce payment without being under any obligation to make any allowance for the value of the shares forfeited or for any consideration received on their disposal.
- 18.16 A statutory declaration that the declarant is a director of the Company or the secretary and that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share. The declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the share and the person to whom the share is sold or otherwise disposed of shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or disposal.

## **19. NOMINATION OF PERSONS TO ENJOY MEMBERS' RIGHTS**

- 19.1 To the extent permitted by section 145 of the 2006 Act when in force and subject to the other provisions of this Article 19, any registered member of the Company may, by giving notice as required by Article 19.3, nominate another person or persons as being entitled to enjoy or exercise all or any rights of the member (in that capacity) in relation to the Company and such of the shares of that member as shall be specified in the notice (being all of his shares for the time being unless otherwise so specified) and which (unless the notice shall prescribe to the contrary) shall be deemed to include the matters prescribed in section 145(3) of the 2006 Act.

- 19.2 Once a notice has been given under Article 19.1 and subject to its terms, anything required or authorised by any provision of the Companies Acts and/or these Articles to be done by or in relation to the member shall instead be done or, (as the case may be) may instead be done, by or in relation to the nominated person (or each of them) as if he were a member of the Company. Unless otherwise agreed by Investor Consent:
- (A) the notice may only be withdrawn or modified by a further notice given as required by Article 19.3 by the member who gave the original notice; and
  - (B) the notice shall be deemed to be of no further effect on registration of a transfer of the shares to which it relates, so far as affecting those shares and any related membership rights.
- 19.3 Any notice given under Article 19.1 or Article 19.2(A) must be given to the Company and the Investors in writing and (unless otherwise agreed by Investor Consent) will take effect thirty days after it is received or deemed received by the Company and will not affect any actions or steps taken in reliance on any arrangements in force prior to the time it comes into effect.
- 19.4 No nomination under this Article may be made or come into effect unless it has been made with prior Investor Consent.
- 19.5 A nomination made in accordance with this Article shall not constitute or be construed as constituting a transfer or proposed transfer of the shares for the purposes of these Articles. However, no person in favour of whom the nomination is made may transfer encumber or otherwise dispose of any rights so conferred upon him and if any such transfer or encumbrance or disposition is made or purported to be made it shall be void and of no effect.
- 19.6 In addition and without prejudice to Article 25.8, the Directors or any Investor Director shall be at liberty by notice in writing to the registered holder of the shares concerned and to the person nominated to enjoy rights in respect of them under this Article to disenfranchise any shares in respect of which any such rights are purportedly the subject of a transfer or encumbrance or disposition in breach of this Article until such time as the Directors (acting reasonably) are satisfied that the provisions of this Article relating to those shares have been complied with.

## **20. TRANSMISSION**

- 20.1 If a member dies, the survivor or survivors, where he was a joint holder, and his personal representatives, where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to his shares; but nothing contained in these Articles shall release the estate of a deceased holder from any liability in respect of any share held by him solely or jointly with other persons.
- 20.2 Where the entitlement of a person to a share in consequence of the death or bankruptcy of a member or of any other event giving rise to its transmission by operation of law is proved to the satisfaction of the Board, the Board shall within two months after proof cause the entitlement of that person to be noted in the Register.
- 20.3 Any transmittee may, subject as provided elsewhere in these Articles, elect either to become the holder of the share or to have some person nominated by him registered as the holder. If he elects to be registered himself he shall give notice to the Company to that effect. If he elects to have another person registered, he shall transfer title to the share to that person. In addition and without prejudice to Article 25.6, the Board may at any time require the transmittee to elect either to be registered himself or to transfer the share and if the requirements are not complied with within 60 days of being issued the Board may (and will if

so required by an Investor Majority) withhold payment of all dividends and other moneys payable in respect of the share until the requirements have been complied with. All the provisions of these Articles relating to the transfer of, and registration of transfers of, shares shall apply to the notice or transfer as if the death or bankruptcy of the member or other event giving rise to the transmission had not occurred and the notice or transfer was given or executed by the member.

- 20.4 Where a person becomes entitled by transmission to a share, the rights of the holder in relation to that share shall cease, but the transmittee may give a good discharge for any dividends or other moneys payable in respect of the share and shall have the same rights in relation to the share as he would have had if he were the holder of it save that, until he becomes the holder, he shall not be entitled in respect of the share (except with the authority of the Board and an Investor Consent) to attend or vote at any general meeting of the Company or at any separate general meeting of the holders of any class of shares in the Company or to exercise any other right conferred by membership in relation to general meetings or shareholder resolutions.
- 20.5 If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the transmittee before the transmittee's name has been entered in the Register in respect of the shares.

## **21. TRANSFERS - GENERAL**

- 21.1 No shares or any interest in them shall be transferred and the Directors shall not register any transfer of shares in the Company other than a Permitted Transfer and, subject only to Article 23, the Directors shall be obliged to register a Permitted Transfer.
- 21.2 Subject to Articles 19.5 and 21.3, for the purposes of the provisions of these Articles relating to transfer of shares, a transfer of shares includes a renunciation of any allotment of shares or of any Subscription Rights and any other disposition of any interest in any share (or its income or capital or other rights) whether legal beneficial or otherwise (including the entry into any option or other agreement (conditionally or otherwise) for its possible sale or transfer or grant of any security over it) and whether or not for consideration or by written disposition or otherwise.
- 21.3 Where any Investor Shares are held by a partnership which is a private equity or similar fund or by a general partner or nominee on behalf of such a partnership, any change in ownership of the underlying partnership interests (through transfer or issue of new partnership interests or otherwise) shall not constitute a transfer of those Investor Shares or any of them or any interest in them for the purposes of these Articles.
- 21.4 Any transfer or purported transfer of any share or of any interest in a share made otherwise than in accordance with these Articles shall be void and of no effect whatsoever. In addition the Directors shall be at liberty by notice in writing to the registered holders thereof to disenfranchise any shares which are the subject of a transfer not made in accordance with these Articles until such time as the Directors (acting reasonably) are satisfied that the provisions of these Articles relating to transfer of shares have been complied with.
- 21.5 The instrument of transfer of a share shall be executed by or on behalf of the transferor and (in the case of a partly paid share) the transferee, and the transferor shall be deemed to remain the holder of the share concerned until the name of the transferee is entered in the Register in respect of it.
- 21.6 No fee shall be charged by the Company for registering any transfer, document or instruction relating to or affecting the title to any share or for making any other entry in the Register.

- 21.7 Where any shares are sold or transferred under the terms of these Articles, then (except to the extent otherwise agreed in writing by the transferee) the transferor shall be deemed hereby to undertake to the transferee that he or it has full power capacity and authority to make the sale or transfer and that the shares concerned are sold or transferred with full title guarantee and free from all charges liens and encumbrances.
- 21.8 If the Board refuses to register a transfer or renunciation pursuant to these Articles, it shall, within two months after the date on which the transfer or renunciation was delivered to the Company, send notice of the refusal to the transferee or renouncee and comply with the provisions of section 771 of the 2006 Act (when in force) as regards the giving of reasons for the refusal and related information.
- 21.9 An instrument of transfer or renunciation which the Board refuses to register shall (except in the case of suspected fraud) be returned to the person delivering it. All instruments of transfer which are registered may, subject to these Articles, be retained by the Company.

## 22. EMPLOYEE SHARE PROVISIONS

- 22.1 If any PAYE or income tax and/or employer's secondary class 1 and employee's primary class 1 national insurance or other social security contributions (or similar or substituted tax liability in any part of the world) and/or related interest penalties, fines, costs and expenses (together "**employee related tax liability**") becomes payable by the Company and/or any subsidiary of the Company by reference to any shares and/or other securities acquired or held or disposed of by any member (even if the employee or director or former employee or director of the Company or other relevant Group member by reference to which the relevant employee related tax liability arises or arose is a person other than that member) including (without limitation) by reason of any election made in respect of any of those shares and/or securities under Part 7 of The Income Tax (Earnings and Pensions) Act 2003 ("**ITEPA**") then (except to the extent that such contribution may not lawfully be demanded) the member concerned shall be liable on demand by the Company or any Investor Director and without right of reimbursement from the Group, to make payment to the Company of such amount as on an after tax basis will meet the employee related tax liability concerned and the Company shall have a lien as referred to in Article 17 (even though the shares concerned are fully paid), as security for any such amount payable, over any shares in the Company held by that member and over any proceeds of their sale or other disposal.
- 22.2 The following provisions of this Article 22 shall apply as regards Restricted Securities, except to the extent otherwise agreed by the Board or by Investor Consent.
- 22.3 For the purposes of these Articles "**Restricted Securities**" shall mean restricted securities or interests in restricted securities as defined in Part 7 of ITEPA in the Company or any member of the Group (and "**Restricted Security**" shall be construed accordingly) and other words and expressions defined in that Part 7 shall bear the same meaning except where clearly inconsistent with the context.
- 22.4 No Restricted Security or interest in a Restricted Security shall be transferred or otherwise disposed of or allotted or issued to any person in circumstances where as a result that person and the Company or another member of the Group could make an election in respect of them under section 431(1) ITEPA (an "**Up Front Election**"), unless the Board and the Investor Directors are satisfied that such election will be made in the manner and by the latest time provided by sections 431(4) and (5) ITEPA.
- 22.5 If any chargeable event shall occur in relation to any Restricted Securities in circumstances where section 426 of ITEPA applies and an election could be made in respect of them under section 430(1) of ITEPA, then (unless otherwise agreed by the Directors with Investor

Consent) that election (an "**Ongoing Election**") shall be made in the manner and within the time limits prescribed in sections 430(2) and (3) ITEPA.

- 22.6 Each member who through employment by or holding of any office with any member of the Group becomes entitled to make an Up Front Election or Ongoing Election or who is an associated person of a person so entitled shall and shall procure that any such associated person shall duly join with his employer or engaging member of the Group in duly making that election in the manner and within the time limits provided in sections 431(4) and (5) or sections 430(2) and (3) ITEPA as appropriate and under these Articles such member irrevocably and as security for his due performance of such obligation appoints the Secretary for the time being of the Company as his attorney for the purposes of signing and making any such election on his behalf.
- 22.7 Each member shall duly provide to the Company and relevant employer member of the Group such information as it shall require or need for the purposes of fulfilling its obligations as a responsible person in relation to that member and/or his associated persons and/or any Restricted Securities or interest in a Restricted Security from time to time held or owned or formerly held or owned or proposed to be acquired by him and/or any such associated person and in particular and without limitation shall notify the Company of any reportable event and/or chargeable event relevant to them without delay after it occurs.
- 22.8 The Company shall procure that any Up Front Elections or Ongoing Elections required to be signed and made by it and/or any other member of the Group as required by this Article are duly made as so required and in the manner and by the latest time provided in sections 431(4) and (5) or sections 430(2) and (3) ITEPA as appropriate.
- 22.9 Neither the provisions of this Article nor any failure to comply with the same shall give rise to any right of action or compensation on the part of any member or other person who may suffer or incur any tax liability or greater tax liability as a result.

### **23. SPECIAL TRANSFER RESTRICTIONS**

- 23.1 No transfer of Ordinary Shares or any interest in them shall be made or registered (except by an Investor) without Investor Consent except:
- (A) pursuant to acceptance of an offer made and completed under and in accordance with Article 26.1 or Article 26.3; or
  - (B) by way of Permitted Family Transfer to the extent expressly permitted by the Subscription Agreement; or
  - (C) where required and made in accordance with Article 25; or
  - (D) in accordance with Article 24.9.
- 23.2 No transfer of any shares or any interest in them shall be made or registered, without Investor Consent:
- (A) in breach of the Subscription Agreement or any deed of adherence to that agreement; or
  - (B) in favour of a Competitor or any nominee of a Competitor; or
  - (C) in breach of Article 22.

- 23.3 The Directors may in their absolute discretion and shall if required by any Investor Consent, and (to the extent permitted by the Companies Acts) without assigning any reason, decline to register any transfer of any share:
- (A) which is not fully paid, except where it is an Investor Share being transferred to a Permitted Investor Transferee or where the share is being transferred under Article 26; or
  - (B) over which the Company has a lien unless the sums the subject of the lien will be discharged in full to the satisfaction of the Board on or before that registration is made; or
  - (C) to more than four transferees; or
  - (D) covered by a transfer comprising shares of more than one class; or
  - (E) to a minor; or
  - (F) to a person who or which is insolvent or bankrupt; or
  - (G) to a person suffering from mental disorder; or
  - (H) which is not duly stamped (if required); or
  - (I) which is not delivered for registration to the Registered Office or such other place as the Board may decide and have notified to the members on not less than 14 clear days notice, accompanied by the requisite supporting documents referred to in Article 23.4.
- 23.4 The supporting documents referred to in Article 23.3 are (i) the certificate for the shares to which the transfer relates (except in the case of a transfer of a share, for which a certificate has not been issued or by a person in respect of whom the Company is not required by the Companies Acts to complete and have ready for delivery a share certificate, and except in the case of a renunciation) or (at the absolute discretion of the Board) such indemnity as the Board may require in the case where any required certificate is not available; and (ii) any other evidence as the Board or Investor Director may reasonably require to prove the title to such share of the transferor or person renouncing and the due execution by him of the transfer or renunciation or, if the transfer or renunciation is executed by some other person on his behalf, the authority of that person to do so.

## **24. EXPRESSLY PERMITTED TRANSFERS**

24.1 The provisions of this Article 24 are subject to the restrictions in Article 23.

24.2 Any share or interest therein may be transferred to any other person:

- (A) in the case of any shares which are not 'A' Preferred Shares, with the prior written consent of the Board and Investor Consent and then subject always to Articles 26 and 27; or
- (B) in the case of any 'A' Preferred Shares, with Investor Consent (in relation to which the proposing transferor shall be entitled to participate) and, during the IMI Consent Period only, the prior written consent of the holder(s) of a majority of the 'A' Ordinary Shares and then subject always to Articles 26 and 27.



- 24.3 Without prejudice to Article 2.4, any share may be transferred to a person to be held as bare nominee and any shares held by a member as bare nominee may be transferred to any other person or persons provided, in either such case, that the transferor and transferee certify to the Company and the Directors (including any Investor Director) are satisfied that no beneficial interest in those shares passed by reason of the transfer.
- 24.4 Subject to Article 24.5, the following transfers of shares shall be permitted with Investor Consent and constitute Permitted Family Transfers for the purposes of these Articles:
- (A) a transfer of shares by their absolute beneficial owner, being an individual ("**the Original Member**") or his personal or other legal representatives, to a Privileged Relation of his or to trustees to be held on Family Trusts of his;
  - (B) a transfer of any shares transferred under Article 24.4(A) and/or any Related Shares of them:
    - (1) to the Original Member or any Privileged Relation of his; or
    - (2) by the trustees of the Family Trust concerned to new or continuing trustees of that Family Trust;
  - (C) a transfer of any shares held on the Adoption Date and/or subsequently acquired by the trustees of a Family Trust of an Approved Beneficiary and/or any Related Shares of them:
    - (1) to the Approved Beneficiary or any Privileged Relation of his; or
    - (2) to new or continuing trustees of that Family Trust.
- 24.5 If a member holds shares as a result of an earlier transfer under Article 24.4 that member may only transfer those shares and/or any Related Shares of them under Article 24.4 to a person to whom the member who originally transferred him the shares could have transferred them under Article 24.4.
- 24.6 Any Investor Shares or any interest in them may be transferred or otherwise disposed of to a Permitted Investor Transferee and each person holding shares as a result of any such Permitted Transfer shall also be an Investor for the purposes of these Articles.
- 24.7 If shares or an interest in them are held as a result of an earlier transfer under Article 24.6, those shares and/or any Related Shares of them and/or any interest in them may only be transferred under Article 24.6 to a person to whom the person who originally transferred the shares or interest could have transferred them under Article 24.6.
- 24.8 Any shares may be transferred to the trustees of an Employees Trust or by the trustees of an Employees Trust to any beneficiary under that trust and the trustees of an Employee Trust may grant options in favour of any such beneficiaries, so long as the transfer or option is effected or granted in accordance with the terms of the trust and has been approved by Investor Consent.
- 24.9 Any 'A' Ordinary Shares or any interest in them may be transferred or otherwise disposed of:
- (A) to any member of the IMI Group at any time provided that if subsequently that transferee ceases to be a member of the IMI Group it shall immediately upon such cessation transfer the relevant shares or interests therein to a member of the IMI Group;

- (B) if Second Completion (as defined in the Subscription Agreement) has not occurred before the second anniversary of Completion (as defined in the Subscription Agreement) at any time between that second anniversary and the date of Second Completion without the requirement for prior Investor Consent but otherwise subject to the provisions of these Articles.

## **25. MANDATORY TRANSFERS**

- 25.1 Subject to Articles 25.2 and 25.3 if a person becomes a Leaver (other than a Good Leaver) or is given or gives notice to terminate his employment or engagement in circumstances where he will as a result become a Leaver:
  - (A) he and each Relevant Member of his shall, if and to the extent required by the Directors or an Investor Majority by notice in writing given to him (or his personal representative, as appropriate) at any time and from time to time during the period of eighteen months following his Leaving Date, give a Mandatory Transfer Notice or Notices in respect of all or any of his or their Relevant Shares;
  - (B) he shall, if he subsequently becomes registered or unconditionally entitled to be registered as the holder of shares in the Company pursuant to a right or opportunity made available to him prior to his becoming a Leaver, be deemed (unless otherwise agreed by all the Directors with Investor Consent) to have served a Mandatory Transfer Notice in respect of all those shares, upon becoming so registered or entitled.
- 25.2 The provisions of this Article 25 shall not apply in respect of the 4,500, 3,000 and 2,500 'B' Ordinary Shares (or any shares derived from such shares or any consolidation, sub-division, reorganisation, restructure or similar event) respectively registered in the names of Martin Johnson, David Yeomans and Clive Buckberry on the Adoption Date. In addition, the Company may from time to time agree in writing, with Investor Consent, to exclude any one or more particular individuals and/or any of his or their Relevant Members from the provisions of Article 25.1, whether generally or in respect of a designated proportion of his or their Relevant Shares.
- 25.3 If a Mandatory Transfer of shares may be required of a Leaver or Relevant Member of a Leaver under Article 25.1 in circumstances where the Transfer Value of all of the shares concerned will not, by reason of the provisions of these Articles, exceed the aggregate amount paid up on them and that aggregate amount does not exceed £500, then during any period in which such a Mandatory Transfer Notice may be required under Article 25.1, the Board may (with Investor Consent) and will if so required by Investor Majority, serve written notice on the holder(s) of the shares concerned to re-designate those shares (or those of them as the Board shall so decide or be required) as Deferred Shares instead of such shares being included in a Mandatory Transfer Notice under Article 25.1. Any such re-designation shall take effect upon the giving of that notice and as if effected by and with the full sanction of a special resolution. The holders of the shares so re-designated shall promptly and in any event within ten days of that notice surrender to the Company the certificates for their shares so re-designated.
- 25.4 If a Family Trust ceases for any reason to be a Family Trust any shares held by that trust shall be transferred (either directly or upon trust) to the Original Member or Approved Beneficiary whose Family Trust it is or to Privileged Relation(s) of that Original Member or Approved Beneficiary within twenty one days of that event failing which the trustees shall be deemed to have given a Mandatory Transfer Notice (in respect of all those shares held by the trustees) at such later time as the Directors of the Company or an Investor Majority shall notify it in writing.

- 25.5 If any person holding shares as a bare nominee as contemplated by Article 24.3 ceases to be such a nominee and shall fail within twenty-one days of such event to transfer all the shares concerned to the original beneficial owner then that person shall be deemed to have given a Mandatory Transfer Notice in respect of those shares at such later time as the Directors of the Company or an Investor Majority shall notify him in writing.
- 25.6 A transmittee in relation to shares of a member shall at any time within eighteen months of becoming so entitled, if called upon in writing by the Directors or an Investor Majority so to do, give a Mandatory Transfer Notice in respect of all shares then registered in the name of the relevant member unless the transmittee is, or shall (within twenty-one days of becoming so entitled) transfer such shares to, a person to whom shares may be transferred pursuant to Article 24.
- 25.7 If shares held by an Investor ("**the Transferring Investor**") or an interest in them are transferred or otherwise disposed of under Article 24.6 to a Permitted Investor Transferee and the transferee subsequently ceases to be a person to whom the Transferring Investor could (if it was still a member) transfer shares under Article 24.6, that transferee (or Transferring Investor to the extent it remains the registered holder of the shares concerned) shall (to the extent it continues to hold them) within twenty-one days of written request of the Directors or any Investor Director transfer or procure the transfer of the relevant shares and any Related Shares of them (or the relevant interest in them) to the Transferring Investor (to hold in its own right) or to a continuing Permitted Investor Transferee of that Transferring Investor. If the requested transfer is not made, a Mandatory Transfer Notice will be deemed to be given by the transferee, in respect of the shares and Related Shares concerned, at the end of the twenty-one day period referred to above.
- 25.8 If the Directors become aware that any rights in respect of any shares which have been conferred upon a person nominated under Article 19 have been the subject of a purported transfer or encumbrance or disposition in breach of that Article they may with Investor Consent (and will if so required in writing by an Investor Majority) require, by written notice, the holder of the shares concerned to give a Mandatory Transfer Notice in respect of all or any of those shares either immediately or within such period as shall be specified in that notice.
- 25.9 If the Directors become aware that any shares are held by or for a Competitor they may with Investor Consent (and will if so required in writing by an Investor Majority) require, by written notice, the holder of the shares concerned to give a Mandatory Transfer Notice in respect of all or any of those shares either immediately or within such period as shall be specified in that notice.
- 25.10 For the purpose of ensuring that a transfer of shares is in accordance with the provisions of these Articles or that no circumstances have arisen under which a Transfer Notice is required to be given under these Articles, the Directors may (and shall if required by a Investor Majority) from time to time require any member or past member (including any one or more of joint holders of shares) or the legal personal representatives or the trustee in bankruptcy of any member or any person named as a transferee in any instrument of transfer lodged for registration, to furnish to the Company such information and evidence as the Directors and/or an Investor Majority may reasonably think fit regarding any matter which they or an Investor Majority may reasonably deem relevant for such purpose.
- 25.11 If any information or evidence requested under Article 25.10 is not provided to the reasonable satisfaction of the Directors or an Investor Majority requesting the same, within fourteen days after that request, the Directors may (and will if required by an Investor Majority) refuse to register the transfer in question or (in case no transfer is in question) require by notice in writing that a Mandatory Transfer Notice is given in respect of the shares concerned. If the

information or evidence discloses that in the reasonable opinion of the Directors a Transfer Notice ought to have been given in respect of any shares the Directors may (and will if required by an Investor Majority) by notice in writing require that a Mandatory Transfer Notice is given pursuant to these Articles in respect of the shares concerned.

- 25.12 Where under the provisions of these Articles a Mandatory Transfer Notice is required to be given in respect of any shares but it is not given within a period of fourteen days of demand for it being made or within any other period specified it shall, be deemed to have been given on the fourteenth day after the demand is made or at the end of the relevant specified period, as appropriate.

## **26. TAG ALONG AND DRAG ALONG**

- 26.1 Subject to Article 26.6, no sale or transfer of any shares (the "**Specified Shares**") shall be made which would result if made and registered (when taken together with all other proposed contemporaneous sales or transfers of shares in the Company) in a person or persons obtaining a Controlling Interest in the Company unless the proposed transferee or transferees or his or their nominees has or have made a Qualifying Offer, as provided below.

- 26.2 No sale or transfer of any:

- (A) Investor Shares; or
- (B) 'A' Ordinary Shares; or
- (C) 'A' Preferred Shares or Investment Grade Shares in issue from time to time held by someone who is not an Investor but who is also a holder of 'A' Ordinary Shares ("**Relevant Other Tag Shares**"),

(the "**Specified Tag Shares**") shall be made in circumstances where no offer is required under Article 26.1 in relation to that sale or transfer, unless the proposed transferee or transferees or his or their nominees has or have made a Qualifying Offer, as provided below, to each of the other holders of Investor Shares and 'A' Ordinary Shares ("**relevant Tag Shareholders**") to purchase the same proportion (as nearly as may be, rounding up fractions of a shares to the nearest whole number of shares) of the Investor Shares, 'A' Ordinary Shares and/or Relevant Other Tag Shares held by each such holder as the proportion the Specified Tag Shares represent of the total number of Investor Shares and/or 'A' Ordinary Shares and/or Relevant Other Tag Shares (as applicable) held by the proposed transferor immediately prior to the proposed transfer. For these purposes, references to "Investor Shares" shall include references to 'B' Ordinary Shares arising after conversion from 'A' Preferred Shares where such 'B' Ordinary Shares derive from shares falling within the definition of Investor Shares..

- 26.3 If any Qualifying Offer to acquire all of the shares in the Company is approved in writing for the purposes of this Article 26.3 by:

- (A) where the Investor Exit Value Threshold is achieved on the sale, an Investor Majority;
- (B) where the Investor Exit Value Threshold is not achieved on the sale, an Enhanced Investor Majority;
- (C) in any event during the IMI Consent Period (but not thereafter), the holder(s) of a majority of the 'A' Ordinary Shares; and

- (D) without prejudice to the above, where any Investor or person who would be a Permitted Investor Transferee of an Investor, directly or indirectly makes a Qualifying Offer for the purpose of this Article 26.3, an Enhanced Investor Majority and the holder(s) of a majority of the voting rights attaching to the 'A' Ordinary Shares,

(the shareholders represented thereby being the "accepting shareholders") then the holders of the other shares in the Company (including those who become such holders through exercise of Subscription Rights, even if after the date the offer is made or any Sale pursuant to it is completed) shall be deemed under these Articles and as security for the due performance of their obligations under these Articles irrevocably to appoint such person as shall be appointed for this purpose by an Investor Majority as their attorney for the purposes of receiving and accepting and executing any documents and attending to such other things on their part as may be required under the terms of the offer and also receiving as agent or trustee on their behalf (without obligation to earn or pay interest on it) any consideration payable under the terms of the offer. The attorney shall have power to sign and vote on and deliver any resolutions approving any financial assistance involved in the context of the sale of shares under the offer and also to appoint the purchaser or transferee of shares under the offer as the attorney of their holder for the purposes of exercising the voting rights attaching to them pending their registration in the name of the transferee.

26.4 A Qualifying Offer for the purposes of these Articles shall be in writing and:

- (A) Must be a transaction at arm's length in good faith;
- (B) constitute an offer by the offeror to purchase, in the case of an offer required under Article 26.1, all of the shares in the Company then in issue and all shares to be issued on the exercise of any outstanding Subscription Rights or in the case of an offer under Article 26.2 the shares required under its terms, but excluding (to the extent the offeror so elects) any such shares already held or owned by the offeror and/or persons connected or acting in concert with the offeror;
- (C) be unconditional or subject to a condition that if its conditions are not satisfied (or waived by Investor Consent) the proposed sale or transfer of the Specified Shares or Specified Tag Shares (as the case may be) will not proceed;
- (D) be open for acceptance for at least fourteen days from its date, which shall be specified in the offer;
- (E) be made at the Specified Price, as defined below; and
- (F) include a commensurate cash alternative for any part of the Specified Price that would otherwise not have been payable in cash provided that where Article 26.3 applies the offer need only include a cash alternative which is sufficient to cover the tax liability of any member who will crystallise a liability to tax as a result of the sale of shares pursuant to such offer (the amount of which shall be calculated by the Company with Investor Consent in each case, acting reasonably).

26.5 For the purpose of this Article (but without prejudice to Article 4.3) the expression the "Specified Price":

- (A) means in the case of any shares and subject as provided below, a price per share which is at least equal to the price which would be payable in respect of that share on the basis of the price offered for the Specified Shares or the Specified Tag Shares assuming (if it is not the case) that a Sale were to take place on the basis of the offer

received and in any event after applying the provisions of Article 4.3 to the aggregate proceeds arising on such Sale; and

- (B) shall include an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holder or holders of the Specified Shares which having regard to the substance of the transaction as a whole can reasonably be regarded as in addition to the price paid or payable for the Specified Shares.

- 26.6 Articles 26.1 and 26.2 shall not apply (except if and to the extent expressly therein provided) to any sale or transfer of shares under any of Articles 24.3 to 24.9 inclusive or pursuant to Article 26.3.
- 26.7 Article 27 shall not apply to any transfer of shares made under Article 26.3 in circumstances where the holders of all the shares in the Company who receive the offer mentioned in that Article accept or are under that Article deemed to accept that offer.
- 26.8 If there is a disagreement between the Company and/or any of its members as to the calculation of the Specified Price or the amount of any cash alternative for the purposes of this Article the disagreement shall, if not resolved within fourteen days of it arising, be referred for Determination by a Determiner and Article 46 shall apply.

## 27. THIRD PARTY TRANSFERS

- 27.1 Subject to Articles 23, 24 and 26, no shares or any interest in them shall be transferred or disposed of whether by way of sale or otherwise except in accordance with the following provisions of this Article 27.
- 27.2 Every holder of shares or person entitled to be registered in respect of a share or shares of the Company who intends to transfer or dispose of any share or shares registered in his name and/or to which he is so entitled or any interest in them (the "**Proposed Transferor**") shall give notice in writing to the Directors of that intention (a "**Transfer Notice**").
- 27.3 A Transfer Notice shall specify the number and class of shares which (or the interest in which) the Proposed Transferor intends to transfer and where a Transfer Notice is given or deemed given in respect of shares of more than one class a separate Transfer Notice shall be deemed to have been given in respect of each such class of share.
- 27.4 A Voluntary Transfer Notice may provide as a condition (a "**Total Transfer Condition**") that (unless all the shares specified or deemed comprised in it are sold to persons found by the Company pursuant to this Article) none shall be sold, and except as provided below, a Transfer Notice once given or deemed to be given shall not be revocable without the written consent of the Board including a majority of Investor Directors (if any) in office at the time.
- 27.5 A Transfer Notice shall constitute the Company the agent of the Proposed Transferor to sell all the shares specified or deemed comprised in it (the "**Offered Shares**") in accordance with the provisions of this Article.
- 27.6 Upon the expiry of seven days after determination of the Transfer Value of the Offered Shares as provided below and, provided the Proposed Transferor shall not have withdrawn the Transfer Notice as permitted in Article 27.18, the Directors shall forthwith by notice in writing inform:
  - (A) where the Offered Shares are 'A' Preferred Shares or 'A' Ordinary Shares or other Investment Grade Shares, each of the holders of 'A' Preferred Shares, 'A' Ordinary

Shares and Investment Grade Shares (other than the Proposed Transferor) on the basis that such shares are offered for sale amongst the holders of all such 'A' Preferred Shares, 'A' Ordinary Shares and Investment Grade Shares pro rata according to their aggregated holdings (treating all such shares on a single class of share for such purpose but on the assumption that the 'A' Preferred Shares had been full converted pursuant to Article 5);

- (B) where the Offered Shares are 'B' Ordinary Shares, each of the members (other than the Proposed Transferor), on the basis that such shares are offered by way of priority to the other holders of 'B' Ordinary Shares pro rata to their holdings of such shares and, to the extent not taken up, to the holders of the remaining shares pro rata on the basis described in Article 27.6(A),

(together "Offerees") of the number of and the price (being the Transfer Value) of the Offered Shares and invite each member to whom that notice is given to apply in writing to the Company within twenty one days of the date of despatch of the notice (which shall be specified in the notice) for such maximum number of the Offered Shares (being all or any of them) as he shall specify in that application.

27.7 The Directors shall, within seven days after the earliest of

- (A) the end of the twenty one day period referred to in Article 27.6; and
- (B) the date on which responses have been received by the Directors from all Offerees to the invitation made to them under Article 27.6 and an Investor Majority has confirmed whether or not it desires the Company to buy-back any such shares pursuant to Article 27.20,

notify the Proposed Transferor of the number of Offered Shares (if any) for which they have found a purchaser or purchasers under Article 27.6 and/or , if applicable, if the Company is willing itself to acquire any such shares where it is entitled to do so under Article 27.20 and, if the Directors have found such a purchaser or purchasers in respect of some only of the Offered Shares and the Transfer Notice properly contained a Total Transfer Condition, the Proposed Transferor shall be entitled to withdraw the Transfer Notice (in whole but not in part) within five days of such notification.

27.8 During the three months following the end of the period of seven days referred to in Article 27.7 the Proposed Transferor (whether or not the Transfer Notice has been withdrawn under that paragraph) may (subject to Article 23) transfer to any person or persons at any price per share (not being less than their Transfer Value referred to in Article 27.6) any share not allocated in accordance with the provisions of this Article, except that if he has withdrawn the Transfer Notice under Article 27.7, he may not sell only some of the Offered Shares except with Investor Consent.

27.9 If within the period of twenty-one days referred to in Article 27.6 applications are found for all or (except where the Transfer Notice is withdrawn under Article 27.7) any of the Offered Shares, the Directors shall allocate the Offered Shares (or so many of them as shall be applied for under the offer arrangements) in the priorities mentioned in Articles 27.6(A) and 27.6(B)

PROVIDED THAT no applicant shall be obliged to take more than the maximum number of Offered Shares previously applied for by him and that all requisite adjustments shall be made if any applicant allocated Offered Shares fails to complete the purchase of the same when required in accordance with this Article.

- 27.10 The Directors shall forthwith give notice in writing of the allocations of Offered Shares made pursuant to Article 27.9 (an "**Allocation Notice**") to the Proposed Transferor and to the persons to whom Offered Shares have been allocated and (provided that the aggregate number of shares so allocated coincides with the number of shares notified to the Proposed Transferor pursuant to Article 27.7) the Proposed Transferor shall thereupon be bound to transfer the shares allocated upon payment of their Transfer Value. An Allocation Notice shall state the names and address of the purchasers and the number of shares agreed to be purchased by them respectively and the purchases shall be completed at such place and such time as shall be specified by the Directors in the Notice being not less than seven days nor more than twenty eight days after the date of that Notice.
- 27.11 If the Proposed Transferor is obliged but defaults in accepting payment of the purchase price for any Offered Share or, as the case may be, in transferring the same, the Directors or any Investor Director may receive such purchase money and may nominate some person to execute an instrument of transfer of the share in the name and on behalf of the Proposed Transferor and when the instrument has been duly stamped the Directors shall cause the name of the transferee to be entered in the Register of Members as the holder of the share and where applicable shall hold the purchase money in trust without interest for the Proposed Transferor. The receipt of the Directors or any Investor Director for the purchase money shall be a good discharge to the purchaser (who shall not be bound to see to its application) and after his name has been entered in the Register of Members in purported exercise of those powers the validity of the proceedings shall not be questioned by any person.
- 27.12 Subject to Article 27.13, where a Voluntary Transfer Notice is given by an Investor the Transfer Value shall be such price per share as the Proposed Transferor shall specify in such Transfer Notice or, if no such price is specified, the Transfer Value agreed or determined under Article 27.16.
- 27.13 Where a Transfer Notice is given pursuant to acceptance of an offer made under Article 26 to which this Article 27 applies, the Transfer Value shall be the Specified Price of the Offered Shares concerned.
- 27.14 Where a Voluntary Transfer Notice is given by a holder of 'A' Ordinary Shares pursuant to Article 24.9(B), the Transfer Value shall be such price per share as the Proposed Transferor shall specify in such Transfer Notice of, if no such price is specified, the Transfer Value agreed or determined under Article 27.16.
- 27.15 Where a Mandatory Transfer Notice is given pursuant to Article 25.1 (or when it could have been so required):
- (A) by a Bad Leaver or by a Relevant Member of a Bad Leaver, the Transfer Value of the Offered Shares concerned shall be the lesser of:
    - (1) the acquisition cost of such shares or the nominal amount of such shares together with any premium paid up on them if higher; and
    - (2) the Fair Value of such shares; or
  - (B) by an Intermediary Leaver or by a Relevant Member of an Intermediary Leaver, the Transfer Value of the Offered Shares concerned shall be the Adjusted Fair Value or, if higher and agreed to by Investor Consent, their Fair Value. For these purposes, the "**Adjusted Fair Value**" shall mean such amount as would have been the Fair Value had the Sale assumed to have taken place for the purpose of Article 27.16(A) been at a price equal to the value attributed to the entire issued share capital of the company on a post-money received basis for the purpose of the most recent equity fundraising



effected by the Company prior to the date on which the relevant person became a Leaver together with an annual uplift equal to 10% per annum calculated on a daily basis.

27.16 Subject to Articles 27.12, 27.13 and 27.14, the Transfer Value per share of any shares to be transferred pursuant to the provisions of these Articles shall be such sum as may be agreed or (as provided below) deemed agreed between the Proposed Transferor and the Directors (with Investor Consent or the written consent of any Investor Director then in office) within twenty-eight days of the service or deemed service upon the Company of a Transfer Notice in which the Offered Shares are comprised or, in default of such agreement or deemed agreement, such sum as shall be Determined by a Determiner as being in his opinion the fair value thereof on the Relevant Date (as defined below) (the "**Fair Value**") on the following basis:

- (A) assuming a Sale as between a willing vendor and a willing purchaser of the whole of the issued shares of the Company in the open market;
- (B) by attributing to each class of shares such proportion of the sum calculated above as would be attributed on a Sale; and
- (C) by determining the Transfer Value per share of the Offered Shares by dividing the total value so determined of the issued shares of the same class as (and including) the Offered Shares by the number of shares of that class then in issue.

For these purposes, if the Directors shall (with Investor Consent or the consent of an Investor Director as to the amount concerned) notify a Proposed Transferor in writing of the amount which they consider should be the Fair Value of the Offered Shares and the Proposed Transferor shall fail before 5 pm London time on the twenty eighth day after the date of that notification to notify the Directors in writing received at the Registered Office that he disputes that amount (giving reasonable details of the grounds for such dispute), the Fair Value of the Offered Shares shall on the expiry of that time period be deemed to have been agreed at the amount so notified by the Directors.

27.17 For the purposes of Article 27.16 and any Determination of the Transfer Value, the "**Relevant Date**" shall mean:

- (A) in the case of a Voluntary Transfer Notice, the date on which it was given; or
- (B) the Leaving Date of the relevant Leaver, where a Mandatory Transfer Notice is given by a Leaver or a Relevant Member of a Leaver pursuant to Article 25.1 or when it could have been so required; and
- (C) in the case of any other Mandatory Transfer Notice, the date on which it was given or (if earlier) first required to be given under these Articles.

27.18 In the case of a Voluntary Transfer Notice where the Transfer Value is required to be Determined, the Proposed Transferor shall have the right (at any time before the expiry of seven days after issue of the report by the Determiner as to the Transfer Value of the Offered Shares and even if the Determiner has not been appointed at the time) to withdraw the Transfer Notice by giving notice of that withdrawal to the Directors in writing and if he does so he shall be responsible for the fees and expenses of the Determiner to the extent incurred before the date the Transfer Notice was withdrawn.

27.19 Upon receipt of a written application from any member holding shares in the Company, and subject to payment by him of the related fees and expenses, the Directors shall request the Auditors to state the sum which in their opinion is the Fair Value of the share or shares the

subject of that application and such statement shall be confirmed in writing by the Auditors (acting as experts and not as arbitrators). Any member holding shares in the capital of the Company shall be entitled at any time to make an application to the Directors in pursuance of this Article without that application constituting a notice of his intention to transfer shares within the meaning of these Articles.

27.20 In the event that the Offered Shares the subject of any Transfer Notice are 'B' Ordinary Shares then:

- (A) to the extent that a purchaser has not been found for all of the 'B' Ordinary Shares pursuant to the provisions of Article 27.6 (but not otherwise), the Company shall be entitled to buy-back such shares at the Enhanced Transfer Value (as defined below), which right shall be exercisable only by an Investor Majority giving notice in writing to the Company within the twenty one day period referred to in Article 27.6 (after expiry of which period, unless exercised before, such right shall itself expire). The right of an Investor Majority to require such buy-back to take place shall be exercisable only if the Investor Majority is reasonably of the opinion that the Company will lawfully be able to buy-back such shares and if such exercise notice is so served:
  - (1) a copy thereof shall be promptly served by the Company on all other members of the Company;
  - (2) the Company and the members shall (to the extent lawful) do everything within their ability and powers (including the passing of shareholder resolutions) to effect such buy-back as soon as reasonably practicable; and
  - (3) subject to Article 27.7, the holder of the 'B' Ordinary Shares the subject of the Transfer Notice shall be bound to sell the relevant shares to the Company and to use reasonable endeavours (subject to compliance with all applicable laws) to perfect such buy-back as soon as reasonably practicable.

For these purposes, the "Enhanced Transfer Value" shall be the applicable Transfer Value, together with such additional amount as is necessary in order to ensure that the proceeds of sale after tax in the hands of the transferor in respect of shares bought-back under this Article 27.20 are equal to the proceeds after tax which the transferor would have received had another member acquired such shares under the pre-emption procedures in Article 27 (it being acknowledged at the Adoption Date that the tax treatment of effecting a buy-back of shares may, in the hands of the transferor, be more disadvantageous than a sale of the relevant shares to another party),

- (B) the provisions of Article 27.11 shall apply (with appropriate modifications) in relation to any default by the holder of 'B' Ordinary Shares in perfecting the buy-back of the same pursuant to this Article 27.20

## **28. GENERAL MEETINGS: CONVENING AND QUORUM**

28.1 All general meetings of the Company shall:

- (A) be held within the United Kingdom or in such other jurisdiction as may be agreed by Investor Consent, but without prejudice to Article 28.7; and
- (B) not be convened on shorter notice than the minimum notice required by the Companies Acts.

- 28.2 Without limiting any other powers of the Board or any of the members to convene or require the convening of a general meeting, a general meeting may be convened by, or a proposed written shareholder resolution may be circulated by, an Investor Majority in the same way as if it is to be convened or circulated by the Board and with the its authority. The Company shall be provided with a copy of the notice convening the meeting or of that proposed written resolution at the same time as it is sent to the members entitled to receive the same.
- 28.3 The accidental omission to give any notice of a meeting or the accidental omission to send any document relating to any meeting to, or the non-receipt of any such notice or document by, any person entitled to receive the notice or document, shall not invalidate the proceedings at that meeting.
- 28.4 No business (other than the appointment of the chairman) shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and at all times throughout the meeting.
- 28.5 If within thirty minutes (or such longer time as the chairman of the meeting may agree) of the time appointed for a general meeting, a quorum is not present, or if during a meeting a quorum ceases to be present, the meeting shall be adjourned to such other day and at such other time and place as the chairman (or in default, the Board) may decide provided that (unless otherwise agreed by Investor Consent) if the meeting is adjourned for 14 days or more, not less than 7 clear days' notice in writing is given of the adjourned meeting to all persons entitled to attend it.
- 28.6 Two members present in person or by proxy (or, being a corporation, by representative) shall be a quorum provided that:
- (A) subject to Article 28.8, one of those members must be a holder of 'A' Preferred Shares present in person or by proxy or corporate representative;
  - (B) if and for so long as, the Company has only one member, that member present in person or by proxy shall be a quorum at any general meeting of the Company or of the holders of any class of shares; and
  - (C) if he is the only person present, a member (or his proxy or corporate representative) may only be counted in the quorum once, notwithstanding that he may also be acting as a proxy or corporate representative for another member or members.
- 28.7 A person (whether being a shareholder or his proxy or corporate representative) may attend and shall be treated as being in attendance at a general meeting if (even though he is not in the same place as other attendees) he is in a position (where is he is entitled to speak at the meeting) to communicate to all those attending the meeting any information or opinions he has on the business of the meeting and (being entitled to vote at the meeting) he is able to vote, during the meeting, on the resolutions put to the meeting and his vote can be taken into account, in determining whether or not such resolutions are passed, at the same time as the votes of the other persons attending the meeting.
- 28.8 If at an adjourned meeting a quorum for the purposes of Article 28.6 is not present within half an hour from the time appointed for the meeting the meeting shall be dissolved, unless the meeting was adjourned for fourteen days or more (or such lesser period as may be agreed by Investor Consent) and at least seven clear days prior written notice of such adjourned meeting is given, in which case the quorum at any such adjourned meeting shall be any two members present in person or by proxy (or, being a corporation, by representative).

- 28.9 The chairman (if any) of the Board or, in his absence, the deputy chairman (if any) shall preside as chairman at every general meeting. If there is no chairman or deputy chairman, or if at any meeting neither the chairman nor any deputy chairman is present within five minutes after the time appointed for the commencement of the meeting, or if neither the chairman nor any deputy chairman is willing to act as chairman, the directors present shall by a majority in number choose one of their number to act, or if one director only is present he shall preside as chairman if willing to act. If no director is present, or if each of the directors present declines to take the chair, the persons present and entitled to vote shall appoint one of their number to be chairman.
- 28.10 Each director shall be entitled to attend and speak at any general meeting of the Company, whether or not he is a shareholder. The chairman or any director may invite any person to attend and speak at any general meeting of the Company where he considers that this will assist in the deliberations of the meeting.
- 28.11 The chairman may at any time with the consent of any meeting at which a quorum is present (and shall if so directed by such a meeting) adjourn the meeting either sine die or to another time or place. When a meeting is adjourned sine die the time and place for the adjourned meeting shall be fixed by the Board.
- 28.12 No business shall be transacted at any adjourned meeting except business which might properly have been transacted at the meeting had the adjournment not taken place.
- 28.13 When a meeting is adjourned for one month or more, or without a date being fixed, at least seven days notice of the adjourned meeting shall be given specifying the place, the day and time of the adjourned meeting and the general nature of the business to be transacted. Except where these Articles otherwise require, it shall not be necessary to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting.

## **29. GENERAL MEETINGS: PROCEEDINGS**

- 29.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before, or on the declaration of the result of, the show of hands) demanded by the chairman or by any member entitled to vote who is present in person or by proxy. On a show of hands or poll votes may be given either personally or by corporate representative or by proxy.
- 29.2 Unless a poll is demanded as provided in Article 29.1, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the Minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- 29.3 If a poll is properly demanded it shall be taken in such manner as the chairman shall direct. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. A poll shall be taken forthwith after it has been properly demanded. A demand for a poll may be withdrawn. A member entitled to more than one vote need not, if he votes, use all his votes or cast all of the votes in the same way.
- 29.4 In the case of joint holders of a share the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

- 29.5 A member in respect of whom an order has been made by any competent court or official on the ground that he is or may be suffering from mental disorder or is otherwise incapable of managing his affairs may vote at any general meeting of the Company or at any separate general meeting of the holders of any class of shares in the Company and may exercise any other right conferred by membership in relation to general meetings by or through any person authorised in those circumstances to do so on his behalf (and that person may vote on a poll by proxy), provided that evidence to the satisfaction of the Board of the authority of the person claiming to exercise the right to vote or such other right has been delivered at the Registered Office (or at such other place as may be specified in accordance with these Articles for the delivery of instruments appointing a proxy) not later than the last time at which an instrument of proxy should have been delivered in order to be valid for use at that meeting or on the holding of that poll.
- 29.6 If any objection shall be raised to the qualification of any voter, or any votes have been counted which ought not to have been counted or which might have been rejected, or any votes are not counted which ought to have been counted, the objection or error shall not vitiate the decision of the meeting or adjourned meeting on any resolution unless it is raised or pointed out at the meeting or, as the case may be, the adjourned meeting at which the vote objected to is given or tendered or at which the error occurs.

### **30. PROXIES AND CORPORATE REPRESENTATIVES**

- 30.1 The appointment of a proxy shall be in any usual form or in any other form which the Board may approve and, in the case of an instrument in writing, shall be executed by or on behalf of the appointor. In the case of an instrument in writing, a corporation may execute a form of proxy either under its common seal (or in any other manner permitted by law and having the same effect as if executed under seal) or under the hand of a duly authorised officer, attorney or other person. A member may appoint more than one proxy to attend on the same occasion, but only one proxy may be appointed in respect of any one share. The appointment of a proxy shall not preclude a member from attending and voting at the meeting or at any adjournment of it. A form of proxy shall, unless it provides to the contrary, be valid for any adjournment of the meeting to which it relates.
- 30.2 The appointment of a proxy and any authority under which it is executed or a copy of the authority certified notarially or in some other way approved by the Board may:
- (A) in the case of an instrument in writing be deposited at the Registered Office or at such other place in the United Kingdom as is specified in the notice convening the meeting, or in any instrument of proxy sent out by the Company in relation to the meeting, not less than forty eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
  - (B) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications:
    - (1) in the notice convening the meeting; or
    - (2) in any instrument of proxy sent out by the Company in relation to the meeting; or
    - (3) in any invitation contained in an electronic communication to appoint a proxy issued by the Company in relation to the meeting

be received at that address not less than forty eight hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote;

- (C) in the case of a poll taken more than 48 hours after it was demanded, be deposited or received at the place referred to in paragraph (A) or (B) (as appropriate) of this Article after the poll has been demanded and not less than twenty four hours before the time appointed for taking the poll; or
- (D) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting to the chairman of the meeting, the Secretary or any Director.

Conditionally upon and with effect from section 327(3) of the 2006 Act coming into force, in calculating the periods mentioned in sub-paragraphs (A) to (D) above, no account shall be taken of any part of a day which is not a working day for the purposes of section 324(3) of the 2006 Act.

- 30.3 An appointment of proxy which is not deposited, delivered or received in a manner permitted under Article 30.2 shall be invalid unless the chairman of the meeting or an Investor Majority, in its absolute discretion in relation to any such appointment, waives any such requirement and decides to treat that appointment as valid. The appointment of a proxy will not be valid after twelve months from its date or the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve months from that date.
- 30.4 When two or more valid but differing appointments of proxy are delivered or received in respect of the same share for use at the same meeting and in respect of the same matter, the one which is last validly delivered or received (regardless of its date or of the date of its execution) shall be treated as replacing and revoking the other or others as regards that share. If the Company is unable to determine which appointment was last validly delivered or received, none of them shall be treated as valid in respect of that share.
- 30.5 An appointment of proxy shall be deemed (unless the contrary is stated in it) to confer authority to demand or join in demanding a poll and to vote, on a poll, on a resolution or a motion or an amendment of a resolution put to, or other business which may properly come before, the meeting or meetings for which it is given or any adjournment of any such meeting, as the proxy thinks fit. The appointment shall not confer any further right to speak at the meeting, except with the permission of the chairman of the meeting.
- 30.6 The Board may at the expense of the Company send forms of appointment of proxy to the members by post, by electronic communication or otherwise (with or without provision for their return by pre-paid post) for use at any general meeting or at any separate meeting of the holders of any class of shares, either blank or nominating as proxy in the alternative any one or more of the Directors or any other person. If for the purpose of any meeting invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the Company's expense, they shall be issued to all (and not to some only) of the members entitled to be sent notice of the meeting and to vote at it. The accidental omission to send such a form of appointment or to give such an invitation to, or the non-receipt of such form of appointment by, any member entitled to attend and vote at a meeting shall not invalidate the proceedings at that meeting.
- 30.7 A body corporate which is a member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or at any separate meeting of the holders of any class of shares. Any person so

authorised shall be entitled to exercise the same powers on behalf of the corporation (in respect of that part of the corporation's holdings to which the authority relates) as the corporation could exercise if it were an individual member. The body corporate shall for the purposes of these Articles be deemed to be present in person at any such meeting if a person so authorised is present at it. All references in these Articles to attendance and voting in person shall be construed accordingly. A Director, the Secretary or some other person authorised for the purpose by the Secretary may require the representative to produce a certified copy of the resolution so authorising him or such other evidence of his authority reasonably satisfactory to such person before permitting him to exercise his powers.

- 30.8 A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous termination of the authority of the person voting or demanding a poll, unless notice of the termination was received by the Company at the Registered Office, or at such other place at which the instrument of proxy was duly deposited, or, where the appointment of proxy was contained in an electronic communication, at the address at which that appointment was duly received, at least one hour before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll not taken on the same day as the meeting or adjourned meeting) at least one hour before the time appointed for taking the poll.

- 30.9 In this Article "**address**", in relation to documents in electronic form, includes any number or address used for the supply of documents in electronic form.

### **31. WRITTEN SHAREHOLDER RESOLUTIONS**

- 31.1 Shareholder resolutions may be passed in writing as provided in Chapter 2 of Part 13 of the 2006 Act.
- 31.2 For the purposes of Article 31.1 a resolution in writing may consist of several documents in the same form each signed by one or more members. In the case of a corporation the resolution may be signed on its behalf by a director or by its duly appointed or duly authorised representative.

### **32. APPOINTMENT AND REMOVAL OF DIRECTORS**

- 32.1 Subject to the Companies Acts and unless and until the Company by special resolution shall otherwise determine, there shall be a maximum of six Directors and there shall be no minimum number of Directors.
- 32.2 Subject to the class rights of the Investor Shares, a Director may be appointed:
- (A) by ordinary resolution; or
  - (B) by resolution of the Board; or
  - (C) under Article 32.3 or Article 33.
- 32.3 Subject to such action being taken with Investor Consent, the holders for the time being of a Majority of the issued equity share capital of the Company entitled at the time to vote at general meetings may at any time and from time to time by written notice given to the Company at the Registered Office or to any Investor Director (such notice to take effect on delivery) appoint any person as a director and/or secretary of the Company and/or remove any person as a director and/or secretary of the Company, howsoever appointed.
- 32.4 The office of a Director shall be vacated if:

- (A) he ceases to be a Director by virtue of any provision of the Companies Acts or he becomes prohibited by law from being a Director; or
- (B) he becomes bankrupt or insolvent and the Board or an Investor Majority notifies him in writing that he should leave his office; or
- (C) he is suffering from mental disorder and the Board or an Investor Majority notifies him in writing that his office be vacated; or
- (D) (not being precluded from so doing by the terms of any contract with the Company) he resigns the office of Director by notice in writing to the Company or he becomes required so to resign under the terms of any contract made between him and the Company or a member of the Group and he shall fail to do so when so required; or
- (E) he shall for more than six consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the Directors resolve (with any Investor Consent required under these Articles) that his office is vacated (but without prejudice to any right he may have to damages by reason of that removal); or
- (F) he is removed from office (with any Investor Consent required under these Articles) pursuant to any provision of the Companies Acts or these Articles or (in addition to any power of removal by shareholder resolution conferred by the Companies Acts) by ordinary resolution.

32.5 A Director need not hold any shares nor retire by rotation or by reason of having reached any particular age.

### 33. INVESTOR DIRECTORS AND OBSERVERS

33.1 Each of the persons identified as an "Appointor" in the table below shall be entitled to appoint the number of Directors and Observers (as defined in Article 33.6) to the Company specified below and to remove from office or tenure any person so appointed (and subject to removal) to appoint another person in his place:

Appointor	Director Appointment Rights	Observer Appointment Rights
NBGI Representative	Single Director	Single Observer
Seroba Kernel Representative	Single Director	Single Observer
Wellington Partner Representative	Single Director	Single Observer
BTV Representative	None	Single Observer
Majority owner of 'A' Ordinary Shares (for so long as a member of the IMI Group)	None	Single Observer



Any person so appointed as a Director shall be an Investor Director for the purposes of these Articles

33.2 During any Default Period:

- (A) the right to appoint and remove Directors under Article 33.1 may be exercised by Enhanced Investor Consent (but not otherwise) in respect of any number of directors and the removal rights may be exercised in respect of any Director (other than an Investor Director) howsoever appointed; and/or
- (B) an Enhanced Investor Majority may by notice to the Company or any director or the secretary of it declare that upon receipt of that notice the Investor Directors thereafter in office shall when voting collectively and unanimously have that number of votes in relation to resolutions of the Board which exceed by one the number of votes in aggregate of the other Directors, including any casting vote of the Chairman (if any).

33.3 Any appointment or removal of a director under this Article shall be by written notice signed by the relevant appointor(s) given to any officer of the Company (not being the director the subject of the notice) or to the Company at the Registered Office and shall take effect on and from the date on which that notice is so given. Any officer receiving such a notice shall promptly supply a copy of it to the Company.

33.4 An Investor Director shall be entitled to be a member of any committee of the Board and also to be appointed to the boards of such of the other members of the Group as he shall require.

33.5 For so long as the right to appoint an Investor Director under this Article subsists, upon a poll being taken in connection with a resolution of the Company in General Meeting to remove an Investor Director or to restrict or delete this Article 33, the members entitled to appoint the same shall be entitled to exercise such total number of votes in respect of their holdings of 'A' Preferred Shares as shall equal twice the total number of votes cast on that resolution by all other shareholders of the Company.

33.6 For so long as the right to appoint an Investor Director under this Article subsists the holders of the 'A' Preferred Shares entitled to make such appointment may in the same manner as provided in this Article nominate an observer to fulfil the role of such Investor Director in lieu of and, separately (as indicated in Article 33.1) in addition to such Investor Director (with the effect that if an Appointor has not appointed an Investor Director he may appoint up to two Observers). In addition, the holders of the 'A' Ordinary Shares shall be entitled to appoint and remove a single observer (in the same fashion as an Investor representative would be entitled to appoint an observer) on the basis specified in Article 33.1. Any person appointed as an observer pursuant to this Article 33 shall be an "Observer".

33.7 An Observer shall be entitled to all the rights (other than to vote at meetings of the Board) of:

- (A) in the case of any Observer appointed by an Investor representative pursuant to this Article 33, an Investor Director; and
- (B) in the case of any Observer appointed by the holders of 'A' Ordinary Shares pursuant to this Article 33, any director of the Company,

but in no case shall any Observer by virtue of that nomination become a director or alternate director of the Company.

- 33.8 An Investor Majority shall be entitled to nominate the Chairman of the Board and to remove him from the position in the same manner as an Appointor is entitled to appoint and remove an Investor Director.

#### **34. ALTERNATE DIRECTORS**

- 34.1 Each Director (other than an alternate Director) shall have the power at any time to appoint as an alternate Director either another Director or any other person approved for that purpose (except in the case of an appointment of an alternate by an Investor Director, which shall not need that approval) by a resolution of the Directors (such approval not to be unreasonably withheld), and, at any time, to terminate such appointment. Every appointment and removal of an alternate Director shall be in writing signed by the appointor and (subject to any approval required) shall (unless all the Directors agree otherwise) only take effect upon receipt of that written appointment or removal at the Registered Office.
- 34.2 An alternate Director so appointed shall not be entitled in that capacity to receive any remuneration from the Company except only such part (if any) of the remuneration otherwise payable to his appointor as his appointor may by notice in writing to the Company from time to time direct, but shall otherwise be subject to the provisions of these Articles with respect to Directors. An alternate Director shall during his appointment be an officer of the Company and shall not be deemed to be an agent of his appointor.
- 34.3 An alternate Director shall (subject to his giving to the Company an address at which notices may be served upon him) be entitled to receive notices of all meetings of the Directors and of any committee of the Directors of which his appointor is a member and to attend and to vote as a Director at any such meeting at which his appointor is not personally present and generally in the absence of his appointor to perform and exercise all functions, rights, powers and duties as a Director of his appointor and to receive notice of all General Meetings.
- 34.4 The appointment of an alternate Director shall automatically determine on the happening of any event which if he were a Director would cause him to vacate such office or if his appointor shall cease for any reason to be a Director.
- 34.5 A Director or any other person may act as alternate Director to represent more than one Director and an alternate Director shall be entitled at meetings of the Directors or any committee of the Directors 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.

#### **35. DIRECTORS POWERS**

- 35.1 Subject to the Companies Acts, the Company's memorandum of association and these Articles and to any directions given by special resolution of the Company, the business of the Company shall be managed by the Board, which may exercise all the powers of the Company whether relating to the management of the business or not. No alteration of the memorandum of association or of these Articles nor any such direction shall invalidate any prior act of the Board which would have been valid if that alteration had not been made or such direction had not been given. The provisions in these Articles giving specific powers to the Board shall not limit the general powers given by this Article.
- 35.2 The shareholders may by special resolution direct the Board to take, or refrain from taking, specified action. No such special resolution shall invalidate anything which the Board has already done.

- 35.3 If the number of Directors is less than the minimum prescribed in accordance with these Articles, the remaining Director or Directors shall act only for the purposes of appointing an additional Director or Directors to make up such minimum or of convening a general meeting of the Company for the purpose of making that appointment. If there are no Director or Directors able or willing to act, any two members or any Investor may summon a general meeting for the purpose of appointing Directors.

## **36. DELEGATION OF DIRECTORS DUTIES**

- 36.1 The Board may by power of attorney or otherwise, appoint any person or body of persons whether nominated directly or indirectly by the Board to be the agent of the Company upon such terms (including terms as to remuneration) as it may decide and may delegate to any person so appointed any of its powers, authorities and discretions (with power to sub-delegate). The Board may remove any person appointed under this Article and may revoke or vary the delegation but no person dealing in good faith and without notice of the revocation or variation shall be affected by it. The power to delegate contained in this Article shall be effective in relation to the powers, authorities and discretions of the Board generally and shall not be limited by the fact that in certain articles, but not in others, express reference is made to particular powers, authorities or discretions being exercised by the Board or by a committee authorised by the Board.
- 36.2 The Board may entrust to and confer upon any Director any of its powers, authorities and discretions (with power to sub-delegate) upon such terms and conditions and with such restrictions as it thinks fit, and either collaterally with, or to the exclusion of, its own powers, authorities and discretions and may from time to time revoke or vary all or any of them but no person dealing in good faith and without notice of the revocation or variation shall be affected by it. The power to delegate contained in this Article shall be effective in relation to the powers, authorities and discretions of the Board generally and shall not be limited by the fact that in certain articles, but not in others, express reference is made to particular powers, authorities or discretions being exercised by the Board or by a committee authorised by the Board.
- 36.3 The Board may delegate any of its powers, authorities and discretions (including, without limitation, those relating to the payment of monies or other remuneration to, and the conferring of benefits on, a Director) for such time and on such terms and conditions as it shall think fit to a committee consisting of one or more Directors and (if thought fit) one or more other persons. The Board may grant to the committee the power to sub-delegate, and may retain or exclude the right of the Board to exercise the delegated powers, authorities or discretions collaterally with the committee. The Board may at any time revoke the delegation or alter its terms and conditions or discharge the committee in whole or in part. Where a provision of the Articles refers to the exercise of a power, authority or discretion by the Board and that power, authority or discretion has been delegated by the Board to a committee, the provision shall be construed as permitting the exercise of the power, authority or discretion by the committee.
- 36.4 The Board's power under these Articles to delegate to a committee includes (without limitation) the power to delegate the determination of any fee, remuneration or other benefit to be paid or provided to any Director and is not limited by the fact that in some Articles but not others express reference is made to particular powers being exercised by the Board or by a committee.
- 36.5 Any committee so formed shall, in the exercise of the powers, authorities and discretions so delegated, conform to any regulations which may be imposed on it by the Board. The meetings and proceedings of any committee shall be governed by the provisions contained in

these articles for regulating the meetings and proceedings of the Board so far as the same are applicable.

### **37. DIRECTORS MEETINGS**

- 37.1 The quorum necessary for the transaction of business of the Directors shall be three, at least two of whom shall (if he is in office or unless he otherwise agrees in writing) be Investor Directors or in any case his alternate, subject to Article 37.2.
- 37.2 If not less than fourteen days prior notice of any proposed meeting of Directors has been given in writing to each Director or his alternate setting out in reasonable detail the matters proposed to be considered and at the proposed meeting no Investor Director or alternate thereof is present as required by Article 37.1, any two Directors present in person or by alternate shall constitute a quorum.
- 37.3 Subject to Article 37.1, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit provided that (unless otherwise agreed by all the Directors at the time as regards the meeting concerned and without prejudice to Article 37.4) all meetings of the Directors shall be held within the United Kingdom. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
- 37.4 Save in the case of an emergency and unless all the Directors (or their duly appointed alternates) shall agree to the holding of a meeting by shorter notice, at least seven days' notice of every meeting of Directors shall be given to each Director and Observer.
- 37.5 Notice of a Board meeting shall be deemed to be duly given to a Director if it is given to him personally or by word of mouth or sent in writing to his last known address within the United Kingdom or any other address within the United Kingdom given to the Company by him for that purpose or given by electronic communications to an address for the time being notified to the Company by the Director. It shall not be necessary to give notice of a Board meeting to a Director who is absent from the United Kingdom unless the Director has notified the Company in writing of an address in the United Kingdom or an address for electronic communications at which notice of such meetings is to be given to him when he is absent from the United Kingdom. A Director may waive the requirement that notice of any Board meeting be given to him, either prospectively or retrospectively. In this Article "address", in relation to documents in electronic form, includes any number or address used for the supply of documents in electronic form.
- 37.6 Any Director enabled to participate in the proceedings of a meeting by means of a communication device (including a telephone) which allows all of the Directors present at the meeting (whether in person or by means of such type of communication device) to hear at all times the other Directors present at the meeting shall be deemed to be present at the meeting and shall be counted when reckoning a quorum. The 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.
- 37.7 Subject to Article 33.2(B), at any meeting of the Directors each Director (or his alternate Director if the Director himself is not present) present at the meeting shall be entitled to one vote. In the case of an equality of votes at any meeting the Chairman of such meeting shall not be entitled to a second or casting vote.
- 37.8 A resolution in writing signed by the requisite Directors shall be as effective for all purposes as a resolution passed at a meeting of the Directors duly convened and held, and may consist of several documents in the like form, each signed by one or more of the Directors, but need

not be signed by an alternate director if signed by his appointor or vice versa. For these purposes, the requisite Directors shall be:

- (A) all of the Directors entitled to vote on the resolution concerned; or
- (B) subject to Article 37.9, that number or Directors entitled to vote on the resolution concerned as would, at a meeting of the Board duly convened and held, hold sufficient votes to pass that resolution.

37.9 No resolution shall be effective for the purposes of Article 37.8(B) unless it is signed by each Investor Director then in office (or his alternate).

37.10 If a resolution is to be passed under Article 37.8(B) then (to the extent reasonably practicable) the Directors passing the same shall use all reasonable endeavours to inform the other Directors entitled to vote on it of the nature of the resolution and, in any event, the Company will promptly provide the other Directors with a copy of the resolution as passed.

37.11 All acts done by the Board or by any committee or by any person acting as a director or member of a committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any member of the Board or committee or person so acting or that they or any of them were disqualified from holding office or had vacated office or were not entitled to vote, be as valid as if each such member or person had been properly appointed and was qualified and had continued to be a director or member of the committee and had been entitled to vote.

### **38. DIRECTORS' INTERESTS**

38.1 Subject to the provisions of the Companies Acts and to the other provisions of these Articles, no Director or proposed or intending Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any office or place of profit or as vendor, purchaser or in any other manner whatever, nor shall any contract in which any Director is in any way interested be liable to be avoided, nor shall any director who is so interested be liable to account to the Company or the members for any remuneration, profit or other benefit realised by the contract by reason of the Director holding that office or of the fiduciary relationship so established.

38.2 A Director may hold any other office or place of profit with the Company (except that of auditor) in conjunction with his office of director for such period (subject to the provisions of the Companies Acts) and upon such other terms as the Board may decide, and may be paid such extra remuneration for so doing (whether by way of salary, commission, participation in profits or otherwise) as the Board (or any committee authorised by the Board) may decide, and either in addition to or in lieu of any remuneration provided for by or pursuant to any other Article.

38.3 A Director may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested or as regards which it has any power of appointment, and shall not be liable to account to the Company or the members for any remuneration, profit or other benefit received by him as a director or officer of or from his interest in the other company. The Board may also cause any voting power conferred by the shares in any other company held or owned by the Company or any power of appointment to be exercised in such manner in all respects as it thinks fit, including the exercise of the voting power or power of appointment in favour of the appointment of the directors or any of them as directors or officers of the other company, or in favour of the payment of remuneration to the directors or officers of the other company.

- 38.4 A Director may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm may be entitled to remuneration for professional services as if he were not a Director.
- 38.5 Subject to the provisions of the Companies Acts and to Article 38.16, a Director may vote on and be counted in the quorum in relation to any resolution of the Board in respect of any contract in which he has an interest.
- 38.6 Whilst section 317 of the 1985 Act is in force, a Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract with the Company shall declare the nature of his interest at the meeting of the Board at which the question of entering into the contract is first taken into consideration, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested. For the purposes of this Article 38.6, a general notice to the Board by a Director to the effect that (a) he is a member of a specified company or firm and/or is to be regarded as interested in any contract which may after the date of the notice be made with any company or firm or other person or (b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him, shall be deemed to be a sufficient declaration of interest under this Article in relation to any such contract; provided that no such notice shall be effective unless either it is given at a meeting of the Board or the Director takes reasonable steps to secure that it is brought up and read at the next Board meeting after it is given.
- 38.7 A Director who is in any way (directly or indirectly) interested in a proposed transaction or arrangement with the Company shall declare the nature of his interest to the other Directors (i) at a meeting of the Directors; or (ii) by a notice in writing in accordance with section 184 of the 2006 Act; or (iii) by a general notice in accordance with section 185 of the 2006 Act prior to that transaction or arrangement being entered into by the Company (where section 177 of the 2006 Act applies) or as soon as required by section 182 of the 2006 Act, where that section applies. If a declaration of interest under this Article proves to be, or becomes, inaccurate or incomplete, a further declaration must be made. This Article 38.7 does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question. For this purpose a Director shall be deemed to be aware of matters of which he ought reasonably to be aware. A Director need not declare an interest in the circumstances set out in section 177(6) or section 182(6) of the 2006 Act, as applicable.
- 38.8 For the purposes of these Articles and subject to the Companies Acts, and unless his appointors shall by written notice to the Company prescribe that this Article 38.8 is not to apply to the Director concerned, each Investor Director shall be deemed by these Articles generally to have disclosed that he is to be regarded as interested in any contracts between and/or situations involving the Company or any member of the Group on the one hand and any Investor and/or any Investor Affiliate (as defined in Article 38.13) on the other.
- 38.9 References in this Article to:
- (A) a contract include references to any proposed contract and to any transaction or arrangement whether or not constituting a contract;
  - (B) any contract with or situation involving the Company shall include also any contract with or situation involving any of its subsidiaries or subsidiary undertakings for the time being;
  - (C) an interest of a Director shall include any interest of any person who is connected with him for the purposes of section 346 of the 1985 Act or sections 252 to 255

(inclusive) of the 2006 Act, whichever is/are in force when the interest is being considered, to the extent the Director is aware of the interest of that connected person; and

- (D) an interest of an alternate Director shall also include the interest of his appointor, to the extent the alternate Director is aware of that interest.

38.10 Subject to the provisions of the Companies Acts, the Company may, by Investor Consent or by ordinary resolution passed with Investor Consent, suspend or relax the provisions of this Article to any extent or ratify any contract not properly authorised by reason of a contravention of this Article. Neither a Director nor any member connected with him for the purposes of section 239 of the 2006 Act shall vote on any resolution of the Company relating to the ratification of any action by him amounting to negligence, default, breach of duty or breach of trust in relation to the Company.

38.11 Subject to Article 38.12, the Directors are empowered under these Articles, for the purposes of section 175 of the 2006 Act, to authorise any Conflict Situation that may arise and to amend or vary any such authorisation so given. Any such authorisation, amendment or revocation shall be given by resolution of the Directors made in accordance with these Articles and, in the case of such authorisation, that section. The Directors may give any such authorisation subject to such terms as they shall consider appropriate and reasonable in the circumstances.

38.12 Investor Consent shall be required before the Company or any member of the Group shall:

- (A) through its directors, authorise for the purposes of section 175 of the 2006 Act or otherwise any situation or matter in which any director (other than an Investor Director) has, or can have, a direct or indirect interest which conflicts, or may possibly conflict, with the interests of the Company;

- (B) amend or vary any authorisation referred to in Article 38.11

38.13 For the purposes of sections 175 and 180(4) of the 2006 Act and for all other purposes, it is acknowledged that an Investor Director may be or become subject to a Conflict Situation or Conflict Situations as a result of his also being or having been or being party to an agreement or arrangement or understanding or circumstances under which he may become an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or a direct or indirect investor in and/or otherwise commercially involved with or economically interested in any of the following:

- (A) an Investor; and/or

- (B) any Investor Affiliate, which for these purposes means any Person who or which, as regards any Investor or any other Investor Affiliate of that Investor:

- (1) is a member for the time being of its Investor Group or an associated company; and/or
- (2) is an investment manager or investment adviser to or of it and/or another Investor Affiliate; and/or
- (3) is a Person in which the Investor and/or another Investor Affiliate may have or acquire a direct or indirect economic interest, including without limitation any portfolio company investee; and/or

- (4) controls or is controlled, managed, advised (in an investment adviser capacity) or promoted by the Investor and/or such an Investor Affiliate; and/or
- (5) a trustee, manager, beneficiary, shareholder, partner, unitholder or other financier or any participant in or of it and/or that Investor Affiliate, and/or
- (C) any carried interest or similar incentive arrangement associated with any Person or arrangement referred to in paragraph (A) and/or (B) of this Article,

where for these purposes "**Person**" shall mean any individual, body corporate, fund, trust, partnership or other entity whether or not having separate legal status.

- 38.14 An Investor Director's duties to the Company arising from his holding office as director shall not be breached or infringed as a result of any Conflict Situation envisaged by Article 38.13 having arisen or existing in relation to him and he shall not be held accountable to the Company for any benefit he directly or indirectly derives from his involvement with any person or entity referred to in Article 38.13 (a "**Relevant Conflict Person**") provided that if any Investor Director shall as a result of any such Conflict Situation be interested in the activities of a Relevant Conflict Person whose commercial activities are or are reasonably likely to become directly competitive with those of the Company and/or any of its subsidiaries and of which he is a director (or equivalent office holder), he shall as soon as reasonably practicable disclose the same to the Board and he shall not be authorised by anything in these articles to disclose any confidential information belonging or relating to Company and/or any of its subsidiaries to any such person or any of its directors, officers or associated companies.
- 38.15 Any Investor Director the subject of a Conflict Situation envisaged by Article 38.13 shall be entitled to:
- (A) receive notice (including any relevant board papers) of, attend, count in the quorum towards and vote at board meetings relating in any way to, and deal generally with, matters concerning, connected with or arising from the Conflict Situation concerned; and
  - (B) keep confidential and not disclose to the Company any information which comes into his possession as a result of such Conflict Situation where such information is confidential as regards any third party.
- 38.16 The Director in question and any other interested Director shall not vote or be counted in the quorum on any resolution of the Board in accordance with Article 38.11.
- 38.17 The provisions of this Article are without prejudice to the requirements of Article 10.

### **39. FEES, REMUNERATION, EXPENSES AND PENSIONS**

- 39.1 Each of the non executive Directors may be paid a fee at such rate as may from time to time be determined by the Board or as is prescribed by the Subscription Agreement.
- 39.2 Each Director may be paid his reasonable travelling, hotel and incidental expenses of attending and returning from meetings of the Board or committees of the Board or general meetings of the Company or any other meeting which as a Director he is entitled to attend and shall be paid all other costs and expenses properly and reasonably incurred by him in the conduct of the Company's business or in the discharge of his duties as a Director.



- 39.3 The Board or any committee authorised by the Board may exercise all the powers of the Company to provide benefits, either by the payment of gratuities or pensions or by insurance or in any other manner whether similar or not, for any director or former director or the relations, or dependants of, or persons connected to, any director or former director. No director or former director shall be accountable to the Company or the members for any benefit provided pursuant to this article and the receipt of any such benefit shall not disqualify any person from being or becoming a director of the Company.
- 39.4 The Board may exercise any power conferred by the Companies Acts to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the Company or that subsidiary.
- 39.5 The rights conferred by this Article are subject to Article 10, to the extent applicable.

#### **40. BORROWING POWERS OF DIRECTORS**

- 40.1 Subject as otherwise provided in these Articles, the Directors may exercise all the powers of the Company to borrow money, whether in excess of the nominal amount of the share capital of the Company for the time being issued or not, and to mortgage or charge its undertaking, property and uncalled capital, in whole or any part, and, subject to the provisions of these Articles and of the Companies Acts, to issue debentures, debenture stocks and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.
- 40.2 Except with Investor Consent:
- (A) the Directors shall restrict the borrowings of the Company and exercise all rights exercisable by the Company in relation to other members of the Group (other than borrowings between the Company and/or any of its wholly owned subsidiaries) so as to secure (so far as by that exercise they can secure) that, no money shall be borrowed if the aggregate principal amount outstanding of all borrowings by the Group then exceeds or would as a result of that borrowing exceed £100,000 or such greater amount as shall be approved from time to time by Investor Consent;
  - (B) the Company shall not and shall procure that no other member of the Group shall create issue or enter into or allow to subsist or arise any mortgage or charge or other encumbrance whatsoever over any of its assets or undertaking or give any other form of security except:
    - (1) pursuant to the terms of the Facilities referred to in the Subscription Agreement; or
    - (2) the encumbrances clearly disclosed in the Disclosure Letter to the Subscription Agreement as already being in force at the time of its Completion; or
    - (3) liens arising in the ordinary course of business securing monies not yet due for payment and fully provided for; and
  - (C) the Company shall not and shall procure that no other member of the Group shall vary or agree to any material variation in the extent or terms of its borrowings and similar facilities or the extent or terms of any security given in respect of them or open or vary the mandate applicable to any bank account.

- 40.3 In this Article the expression "**borrowings**" shall include any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent, incurred in respect of (i) money borrowed or raised, (ii) any bond, note, loan stock, debenture or similar instrument, (iii) acceptance or documentary credit facilities, (iv) foreign exchange options, (v) rental payments under leases and hire purchase agreements and instalments under conditional sale agreements (in all cases whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or of financing the acquisition or use of the asset concerned, (vi) guarantees, indemnities, bonds, standby letters of credit or other instruments issued in connection with the performance of contracts and or in respect of the indebtedness of any other person (vii) invoice discounting, factoring or similar facilities and (viii) the amount paid up on any share capital of any subsidiary of the Company (other than equity share capital) not for the time being owned by the Company or any subsidiary thereof.
- 40.4 No debt incurred or security given in respect of monies borrowed or to be taken into account as monies borrowed in excess of the limit prescribed by this Article shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was exceeded as a result but no lender or other person dealing with the Company shall be concerned to see or inquire whether that limit is observed.
- 41. DIVIDENDS AND OTHER PAYMENTS**
- 41.1 Subject to the provisions of the Companies Acts and to Article 10 and the rights attaching to any classes of share, the Company may:
- (A) pay such dividends as appear to the Board to be justified by the financial position of the Company and may pay any dividend payable at a fixed rate at intervals settled by the Board whenever the financial position of the Company, in the opinion of the Board, justifies its payment;
  - (B) by ordinary resolution from time to time declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the Board.
- 41.2 Except in so far as the rights attaching to, or the terms of issue of, any share otherwise provide:
- (A) all dividends shall be declared and paid on the Equity Shares as a class only according to the amounts paid up (excluding any premium) on the share in respect of which the dividend is paid, but no amount paid up on a share in advance of calls shall be treated for the purposes of this article as paid up on the share;
  - (B) all dividends shall be apportioned and paid pro rata according to the amounts paid up (excluding any premium) on the share during any portion or portions of the period in respect of which the dividend is paid; and
  - (C) with prior Investor Consent, dividends may be declared or paid in any currency other than Sterling and the Board may decide the basis of conversion for any currency conversions that may be required and how any costs involved are to be met.
- 41.3 With prior Investor Consent, the Board may deduct from any dividend or other moneys payable to a member by the Company on or in respect of any shares all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in respect of

shares of the Company. Sums so deducted can be used to pay amounts owing to the Company in respect of the shares.

- 41.4 Subject to the rights attaching to, or the terms of issue of, any shares, no dividend or other moneys payable by the Company on or in respect of any share shall bear interest against the Company.
- 41.5 Any dividend or other sum payable in cash by the Company in respect of a share may be paid by cheque, warrant or similar financial instrument delivered to or sent by post addressed to the holder at his registered address or, in the case of joint holders, addressed to the holder whose name stands first in the register in respect of the shares at his address as appearing in the Register or addressed to such person and at such address as the holder or joint holders may in writing direct. Every cheque, warrant or similar financial instrument shall, unless the holder or joint holders otherwise direct, be made payable to the holder or, in the case of joint holders, to the holder whose name stands first on the register in respect of the shares, and shall be sent at his or their risk and payment of the cheque, warrant or similar financial instrument by the financial institution on which it is drawn shall constitute a good discharge to the Company. In addition, any dividend or other sum may be paid by any bank or other funds transfer system or such other means and to or through such person as the holder or joint holders may in writing direct, and the Company shall have no responsibility for any sums lost or delayed in the course of payment by any such system or other means or where it has acted on any such directions. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable or property distributable on or in respect of the shares held by them. Where a person is entitled by transmission to a share, any dividend or other sum payable by the Company in respect of the share may be paid as if he were a holder of the share and his address noted in the Register were his registered address and where two or more persons are so entitled, any one of them may give effectual receipts for any dividends or other moneys payable or property distributable on or in respect of the shares.
- 41.6 The Company may cease to send any cheque, warrant or similar financial instrument through the post or to employ any other means of payment for any dividend payable on any shares in the Company which is normally paid in that manner on those shares if in respect of at least two consecutive dividends payable on those shares the cheques, warrants or similar financial instruments have been returned undelivered or remain uncashed during or at the end of the period for which the same are valid or that means of payment has failed. In addition, the Company may cease to send any cheque, warrant or similar financial instrument through the post or may cease to employ any other means of payment if, in respect of one dividend payable on those shares, the cheque, warrant or similar financial instrument has been returned undelivered or remains uncashed during or at the end of the period for which the same is valid or that means of payment has failed and reasonable enquiries have failed to establish any new address or account of the holder. Subject to the provisions of these Articles, the Company must recommence sending cheques, warrants or similar financial instruments or employing such other means in respect of dividends payable on those shares if the holder or person entitled by transmission requests that commencement in writing.
- 41.7 All dividends or other sums payable on or in respect of any shares which remain unclaimed may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. Any dividend or other sum unclaimed after a period of 12 years from the date when it was declared or became due for payment shall be forfeited and shall revert to the Company and the payment by the Board of any unclaimed dividend or other sum payable on or in respect of a share into a separate account shall not constitute the Company a trustee in respect of it.
- 41.8 Any shareholder resolution declaring a dividend may, upon the recommendation of the Board and with Investor Consent, direct that it shall be satisfied wholly or partly by the distribution

of assets, and in particular of paid up shares or debentures of any other company, and where any difficulty arises in regard to the distribution the Board may settle it as it thinks expedient, and in particular may authorise any person to sell and transfer any fractions or may ignore fractions altogether, and may fix the value for distribution purposes of any assets to be distributed and may determine that cash shall be paid to any members on the basis of the value so fixed in order to secure equality of distribution and may vest any assets to be distributed in trustees as may seem expedient to the Board.

- 41.9 If the Company commences liquidation, the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Companies Acts divide among the members in kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and, for that purpose, set such values as he deems fair upon any property to be divided and determine how the division shall be carried out as between the members or different classes of members, or vest the whole or any part of the assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but no member shall be compelled to accept any shares or other assets upon which there is any liability.
- 41.10 Any person entitled to receive a dividend or other distribution from the Company in respect of any shares may waive their right to receive the same, in whole or in part, by written notice to the Company. No such a waiver shall be effective in respect of any share held by more than one holder or to which more than one person is entitled unless it is signed by all of the holders of that share or persons so entitled, as the case may be.

## **42. CAPITALISATION OF PROFITS AND RESERVES**

- 42.1 The Board may, with the authority of an ordinary resolution and subject to Article 42.2:
- (A) subject to this Article, resolve to capitalise any undivided profits of the Company not required for paying any preferential dividend (whether or not available for distribution) or any sum standing to the credit of any reserve or fund of the Company (including any share premium account, capital redemption reserve and profit and loss account), whether or not available for distribution;
  - (B) appropriate the sum resolved to be capitalised to the holders of Equity Shares in proportion to the nominal amounts of the shares (whether or not fully paid) held by them respectively which would entitle them to participate in a distribution of that sum if the shares were fully paid and the sum were then distributable and were distributed by way of dividend and apply that sum on their behalf either in or towards paying up the amounts, if any, unpaid on any shares held by them respectively, or in paying up in full unissued shares or debentures of the Company of a nominal amount equal to that sum, and allot the shares or debentures credited as fully paid to those holders of Equity Shares or as the Board may direct, in those proportions, or partly in one way and partly in the other, but so that the share premium account, the capital redemption reserve and any profits or reserves which are not available for distribution may, for the purposes of this Article, only be applied in paying up unissued shares to be allotted to members credited as fully paid;
  - (C) resolve that any shares so allotted to any member in respect of a holding by him of any partly paid shares shall, so long as those shares remain partly paid, rank for dividend only to the extent that those partly paid shares rank for dividend;
  - (D) make such provision by the issue of fractional certificates (or by ignoring fractions or by accruing the benefit of fractions to the Company rather than to the holders

concerned) or by payment in cash or otherwise as the Board may determine in the case of shares or debentures becoming distributable in fractions;

(E) authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for either (i) the allotment to them respectively, credited as fully paid, of any further shares or debentures to which they are entitled upon that capitalisation; or (ii) the payment up by the Company on behalf of those members of their respective proportions of the reserves or profits resolved to be capitalised in or towards settlement of the amounts or any part of the amounts remaining unpaid on their existing shares; and so that any such agreement shall be binding on all those members; and

(F) generally do all acts and things required to give effect to that resolution.

42.2 The Board only exercise any powers under Article 42.1 with and in accordance with the terms of an Investor Consent.

#### **43. INFORMATION RIGHTS OF MEMBERS**

43.1 No member shall by virtue of that capacity have any right of inspecting any accounting record or other documents or records of the Company unless he is authorised to do so by statute, by order of the court, by the Board or by an ordinary resolution.

43.2 Nothing in Article 43.1 shall restrict the rights of the Investors or any of them or the holders of the 'A' Ordinary Shares to receive or have access to information under the terms of the Subscription Agreement or any provision of these Articles and/or the Companies Acts.

#### **44. NOTICES**

44.1 Any notice to be given to or by any person pursuant to these Articles (other than a notice calling a meeting of the Directors) shall be in writing or ((where that person has agreed or is deemed by the 2006 Act to have agreed) to communications being made to him in electronic form and (where permitted) has not withdrawn that agreement) shall be given in electronic form to an address for the time being notified (or deemed notified by a provision of the 2006 Act) for that purpose to the person giving the notice.

44.2 A notice or other document may be given by the Company to any member either personally or by sending it by post in a pre-paid envelope addressed to that member at his registered address or by leaving it at that address or (where permitted under Article 44.1) by giving it in electronic form to an address for the time being notified (or deemed notified by a provision of the 2006 Act) to the Company by the member, or by any other means authorised in writing by the member concerned.

44.3 A notice or other document may be given to the Company by sending it by post in a pre-paid envelope addressed to it at the Registered Office or by leaving it at that address or ( where permitted by Article 44.1) by giving it in electronic form to an address for the time being notified by the Company specified or deemed agreed by the Company as provided in Part 3 of Schedule 5 of the 2006 Act.

44.4 In the case of joint holders of a share, all notices and documents shall be given to the person whose name stands first in the Register in respect of that share. Notice so given shall be sufficient notice to all the joint holders.

44.5 If a member (or, in the case of joint holders, the person first named in the Register) has a registered address outside the United Kingdom but has given to the Company an address in

the United Kingdom at which notices may be given to him or has an address to which notices may be sent in electronic form, he shall be entitled to have notices or documents given to him at that address. Otherwise no such member (including any such joint holder) shall be entitled to receive any notice or other document from the Company.

- 44.6 Any notice or other document to be given to a member may be given by reference to the Register as it stands at any time within the period of 21 days before the day that the notice is given. No change in the Register after that time shall invalidate the giving of that notice or document or require the Company to give that item to any other person.
- 44.7 If on three consecutive occasions notices or other documents have been sent through the post to any member at his registered address or his address for the service of notices but have been returned undelivered, such member shall not be entitled to receive notices or other documents from the Company until he shall have communicated with the Company and supplied in writing a new registered address or address within the United Kingdom for the service of notices.
- 44.8 If on three consecutive occasions notices or other documents have been sent in electronic form to an address for the time being notified (or deemed notified by a provision of the 2006 Act) to the Company by the member and the Company becomes aware that there has been a failure of transmission, the Company shall revert to giving notices and other documents to the member by post or by any other means authorised in writing by the member concerned. That member shall not be entitled to receive notices or other documents from the Company in electronic form until he shall have communicated with the Company and supplied in writing a new address to which notices or other documents may be sent in electronic form.
- 44.9 The Company may send or supply notices, documents or other information to members by making those notices, documents and other information available on a website subject to and provided in compliance with Schedule 5 of the 2006 Act.
- 44.10 A notice or other document addressed to a member at his registered address or address for giving notice in the United Kingdom shall be, if sent by post, deemed to have been given at the time 24 hours after posting if pre-paid as first class post and at the time 48 hours after posting if pre-paid as second class post. In proving that notice has been given it shall be sufficient to prove that the envelope containing the notice or document was properly addressed, pre-paid and posted.
- 44.11 A notice or other document address to a member at an address to which notices may be sent using electronic communications shall be, if sent by electronic communications, deemed to have been given at the expiration of 24 hours after the time it was sent. Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given.
- 44.12 A notice or document not sent by post but left at a registered address or address for giving notice in the United Kingdom shall be deemed to be given at the time it is left.
- 44.13 If by reason of the suspension or curtailment of postal services in the United Kingdom the Company is unable effectively to convene a general meeting by notices sent through the post, any such meeting may be convened by notice advertised once in at least one national newspaper published in the country in which the Company's registered office is located. The Company shall send a copy of the notice to members by post if at least seven clear days before the meeting the posting of notices to addresses throughout the United Kingdom again becomes practicable. Any notice given by advertisement in accordance with this Article shall be deemed to have been served at noon on the day on which the advertisement first appears.

- 44.14 A member present either in person or by proxy, or in the case of a corporate member by a duly authorised representative, at any meeting of the Company or of the holders of any class of shares shall be deemed to have received due notice of that meeting and, where required, of the purposes for which it was called.
- 44.15 A person who becomes entitled to a share by transfer, transmission or otherwise shall be bound by any notice in respect of that share (other than a notice given by the Company under section 793 of the 2006 Act) which, before his name is entered in the Register of Members, has been given to the person from whom he derives his title.
- 44.16 A notice or other document may be given by the Company to a transmittee by sending or delivering it in any manner authorised by these Articles for the giving of notice to a member, addressed to that person by name, or by the title of representative of the deceased or trustee of the bankrupt or by any similar or equivalent description, at the address, if any, in the United Kingdom or to the address to which notices may be sent in electronic form supplied (or deemed supplied by a provision of the 2006 Act) for that purpose by the person claiming to be so entitled. Until such an address has been supplied, a notice or other document may be given in any manner in which it might have been given if the event giving rise to the transmission had not occurred. The giving of notice in accordance with this Article shall be sufficient notice to all other persons interested in the share.
- 44.17 In this Article, "**address**", in relation to documents in electronic form, includes any number or address used for the supply of documents in electronic form.

#### **45. DATA PROTECTION**

- 45.1 Each of the members and Directors (from time to time) consents to the processing of his personal data by the Company, its members and Directors (each a "**Recipient**") for the purpose of due diligence exercises, compliance with applicable laws, regulations and procedures and the exchange of information amongst themselves, provided effected consistently with any restrictions contained in the Subscription Agreement. A Recipient may process that personal data either electronically or manually. The personal data which may be processed for those purposes under this Article shall include any information which may have a bearing on the prudence or commercial merits of investing, or disposing of any shares or other investment or security in the Company. Subject to any confidentiality undertakings given to them by a Recipient and to any restrictions imposed in the Subscription Agreement, each of the Members and Directors (from time to time) consent to the transfer of that personal data to persons acting on behalf of any Recipient and to the offices of any Recipient both within and outside the European Economic Area for the purposes stated above, where it is necessary or desirable to do so.

#### **46. DETERMINATION PROVISIONS**

- 46.1 If a matter is to be Determined or referred to a Determiner for Determination as provided in these Articles, the following provisions of this Article shall apply.
- 46.2 The Determiner shall be such person as shall be agreed in writing between the Relevant Parties (as defined below) within five business days of the obligation or entitlement to refer the matter for Determination arising, failing which such independent chartered accountant or independent valuer as shall be nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales on application by any such Relevant Party.
- 46.3 For the purposes of these Articles the Relevant Parties shall be:

- (A) in the case where the Determination is to be made for the purposes of Article 26.8 (*Tag Along and Drag Along; Specified Price and/or cash alternative*), the parties to the disagreement concerned; or
  - (B) the Proposed Transferor (or holder of the relevant shares) and the Company, in any other case where the matter to be Determined involves the determination of the Fair Value or Transfer Value of any shares; or
  - (C) in the case of any of Articles 6.1(D), 8.4 or 8.10, the Company and an Investor Majority; or
  - (D) in the case of Article 8.3(A) the Company and the Exercising Investor concerned
- 46.4 The terms of engagement of a Determiner (including without limitation his fees and costs and any limitations on liability) shall be such reasonable commercial terms as shall be agreed between the Determiner and the Lead Appointor (as defined below), consistently with the following provisions of this Article 46:
- (A) the Determiner shall act as an expert and not as an arbitrator;
  - (B) the Determiner shall be instructed to issue his determination in writing and address and supply it to the Relevant Parties;
  - (C) the Determiner shall be instructed to take account of such representations as may be made by the Relevant Parties as he shall see fit, and each of the Relevant Parties shall be entitled to make such representations separately but shall do so as expeditiously as reasonably possible; and
  - (D) the Determiner shall be instructed to make his determination as expeditiously as is reasonably possible.
- 46.5 The terms of engagement need only be signed between the Determiner and the Lead Appointor but shall bind all of the Relevant Parties.
- 46.6 The Lead Appointor shall be:
- (A) in the case where the Determination is to be made for the purposes of Article 26.8 (*Tag Along and Drag Along; Specified Price and/or cash alternative*), the holders of a Majority of the Investor Shares held by the Relevant Parties (or such person as may be nominated in writing for such purposes by such a Majority) or (if there are no Relevant Parties holding Investor Shares) the Company as agent for the Relevant Parties; or
  - (B) in the case where the Determination is to be made for the purposes of Articles 6.1(D), 8.4 or 8.10, such person as is appointed by an Investor Majority for the purpose; or
  - (C) the Company, acting with the consent of an Investor Majority, in any other case where the matter to be Determined involves the determination of the Fair Value or Transfer Value of any shares or is to be Determined for the purposes of Article 8.3(A).
- 46.7 The Lead Appointor shall in that capacity act as it shall see fit in its absolute discretion, and (absent its proven fraud or wilful default) shall not in that capacity be under any liability to any of the Relevant Parties or any other person.



- 46.8 Nothing shall oblige a Lead Appointor to enforce any terms of engagement or other rights against a Determiner unless it shall first have been indemnified and secured to its reasonable satisfaction against any costs, expenses and other liability that may be thereby involved, after taking account of any due proportion of those costs, expenses and liability that should be borne by it having regard to its financial interest in the matter being Determined.
- 46.9 If the Lead Appointor is nominated under Article 46.5, the members and Company shall be deemed hereby irrevocably to appoint the relevant Investor Majority as their attorney to enter into any documentation required to agree on their behalf directly with the Lead Appointor in the terms specified in Articles 46.7 and 46.8.
- 46.10 Each of the Company and other Relevant Parties shall, promptly after request, supply the Determiner with such information as he may from time to time reasonably require for the purposes of making his Determination.
- 46.11 The Determination of a Determiner which shall be in writing and (in the absence of manifest error on its face) shall be final and binding for the purposes of the relevant provisions of these Articles.
- 46.12 Except as expressly provided to the contrary in these Articles, the fees and expenses of the Determiner shall be borne as the Determiner shall direct or, in the absence of such a direction, by the Company, where the dispute is as to the Transfer Value of any of Offered Shares or in any other case where the Company is a party to the dispute or, where the Company is not party to the dispute and/or it is not lawful for the Company to bear such costs, between the other Relevant Parties pro rata to the number of Equity Shares held by them respectively.
- 46.13 The Company and other Relevant Parties shall use all reasonable endeavours to procure that any Determination required is obtained with due expedition.

#### **47. INDEMNITY**

- 47.1 Subject to and to the fullest extent permitted by the Companies Acts, but without prejudice to any indemnity to which he may be otherwise entitled:
- (A) every present and former Director and other officer of the Company (not being its auditor) and alternate Director shall be entitled to be indemnified out of the assets of the Company against all costs and liabilities incurred by him in relation to any proceedings (whether civil or criminal) which relate to anything done or omitted or alleged to have been done or omitted by him as a Director or alternate present and former Director save that no present and former Director or officer or alternate Director shall be entitled to be indemnified:
- (1) for any liability incurred by him to the Company or any associated company of the Company (as defined by section 309(A)(6) of the 1985 Act or section 256 of the 2006 Act, whichever is in force at the time, for these purposes);
  - (2) for any fine imposed in criminal proceedings which have become final;
  - (3) for any sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature howsoever arising;
  - (4) for any costs for which he has become liable in defending any criminal proceedings in which he is convicted and that conviction has become final;

- (5) for any costs for which he has become liable in defending any civil proceedings brought by the Company or an associated company in which a final judgment has been given against him; and
  - (6) for any costs for which he has become liable in connection with any application under sections 144(3) or (4) or 727 of the 1985 Act or sections 661(3) or (4) or 1157 of the 2006 Act in which the court refuses to grant him relief and that refusal has become final.
- (B) every present and former Director and other officer (not being its auditor) and alternate Director shall be entitled to have funds provided to him by the Company to meet expenditure incurred or to be incurred in any proceedings (whether civil or criminal) brought by any party which relate to anything done or omitted or alleged to have been done or omitted by him as a Director or officer or alternate Director, provided that he will be obliged to repay those amounts no later than:
- (1) if he is convicted in proceedings, the date when the conviction becomes final;
  - (2) if judgment is given against him in proceedings, the date when the judgment becomes final; or
  - (3) if the court refuses to grant him relief on any application under sections 144(3) or (4) or 727 of the 1985 Act or sections 661(3) or (4) or 1157 of the 2006 Act, the date when the refusal becomes final.
- 47.2 Conditionally upon and with effect from section 235 of the 2006 Act coming into force, every Director and alternate Director shall be entitled to be indemnified out of the assets of the Company against all costs and liabilities incurred by him in relation to any of the Company's activities as trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act) save that no Director or alternate Director shall be entitled to be indemnified (i) for any fine imposed in criminal proceedings which have become final; or (ii) for any sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature howsoever arising; or (iii) for any costs for which he has become liable in defending any criminal proceedings in which he is convicted and that conviction has become final.
- 47.3 The Company may purchase and maintain for any Director, Secretary or other officer of the Company 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 or which he may be guilty in relation to the Company.

## THE SCHEDULE

### (Definitions and Interpretation)

1. The regulations contained in Table A as prescribed under the 1985 Act, or in any equivalent table prescribed under any former enactment, or any relevant model articles prescribed in accordance with section 20 of the 2006 Act, do not apply to the Company.
2. In these Articles of Association (including this Schedule) ("**these Articles**") unless the context otherwise requires:

"**A' Preferred Shares**" means 'A' Preferred Shares of £1 each in the capital of the Company;

"**A' Ordinary Shares**" means 'A' Ordinary Shares of £1 each in the capital of the Company;

"**Accounts**" means audited accounts of the Company or (as the case may be) audited consolidated accounts of the Group;

"**1985 Act**" means the Companies Act 1985;

"**2006 Act**" means the Companies Act 2006;

"**Adoption Date**" means the date of the passing of the resolution adopting these Articles;

"**Approved Beneficiary**" means any person who, in relation to a Family Trust, is approved as an Approved Beneficiary from time to time by the Board with Investor Consent or is otherwise stated by the Subscription Agreement to be an Approved Beneficiary;

"**Article 12.9 Allotment**" shall have the meaning given to that expression in Article 12.9;

"**associated company**" means, in relation to a company, a subsidiary or subsidiary undertaking or holding company for the time being of that company or a subsidiary or subsidiary undertaking for the time being of such a holding company;

"**Auditors**" means the auditors for the time being of the Company;

"**B' Ordinary Shares**" means 'B' Ordinary Shares of £1 each in the capital of the Company;

"**Bad Leaver**" means any Leaver who:

- (a) before or at any time within the twelve months after becoming a Leaver joins or agrees to join (in any capacity) a Competitor. For the avoidance of doubt, any person who upon becoming a Leaver is categorised as a Good Leaver or Intermediary Leaver but subsequently joins or agrees to join (in any capacity) a Competitor before any transfer of his shares has been registered following his having been required to or having been deemed to serve a Mandatory Transfer Notice in relation thereto shall be recategorised as a Bad Leaver and the provision of Article 25 (Mandatory Transfers) (in conjunction with Article 27 (Third Party Transfers)) shall be given effect to (by repeating the process for offering the shares for sale, if necessary, provided no transfer of the same has been registered beforehand) on the basis of his being a Bad Leaver and not a Good Leaver or an Intermediary Leaver; or
- (b) becomes a Leaver as a result of his employment or engagement by and/or appointment as a director of any Group Company being terminated for any of the following reasons or where any of the following circumstances apply:

- (i) he has been convicted or pleaded guilty to a charge involving any criminal offence (other than a road traffic offence for which no custodian sentence may be imposed); or
- (ii) he is declared bankrupt (or the equivalent in any relevant jurisdiction); or
- (iii) any member of the Group is entitled under his service or consultancy agreement or at law to dismiss him or terminate his engagement summarily (that is to say, without any period of notice as required by his service or consultancy agreement); or
- (iv) he is debarred or prohibited by law from holding the office of director (or equivalent office) of any company in any country; or
- (v) he has, in accordance with generally recognised good human resources practice, received appropriate formal warnings following a disciplinary or performance management process and has failed to meet the standards of conduct or performance reasonably required by the Company after being given a reasonable opportunity to improve;

**"Board"** means the board of directors for the time being of the Company or any duly constituted and authorised committee of that board;

**"BTV Representative"** shall have the meaning given to that term in the definition of Investor Majority;

**"business day"** means a day (not being a Saturday or Sunday) on which banks generally are open for business in London;

**"clear days"** means in relation to the period of a notice, that period excluding the day when the notice is given or deemed given and the day for which it is given or on which it is to take effect;

**"Companies Acts"** means the Companies Acts (as defined in section 2 of the 2006 Act) insofar as they apply to the Company;

**"Competitor"** means any person (other than an Investor) who, in the opinion of the Board (including a majority of the Investor Directors in office at the time) or an Investor Majority, carries on or is interested, directly or indirectly, in any business which competes, directly or indirectly, with any business carried on by the Group or who is connected with or an associated company of such a person;

**"Conflict Situation"** means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company including (without limitation) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the Company could take advantage of the property, information or opportunity);

**"Controlling Interest"** means an interest (within the meaning of sections 820 to 824 (inclusive) of the 2006 Act) in shares which (disregarding the impact of any Default Period) confer in the aggregate more than fifty per cent of the total voting rights conferred by all the shares in the equity share capital of the Company for the time being in issue and conferring the right to vote at all General Meetings;

**"Default Period"** means any period in which, except with Investor Consent:

- (a) the Company or any member of the Group (other than a dormant subsidiary) is insolvent; or
- (b) an event of default (by whatever name called) is outstanding for the purposes of any other borrowings or financial facilities of the Group and has not been remedied or any other event has occurred or circumstances subsist which (with the giving of notice, passing of time or otherwise) would be such an event of default; or
- (c) any of the special rights or privileges attaching to any Investor Shares in these Articles and/or the terms of any Investor Consent shall have been breached and (if remediable) not remedied within fourteen days of the breach to the satisfaction of an Investor Majority; or
- (d) the Company or any other party (not being an Investor) to the Subscription Agreement is in material breach of any of its or his obligations assumed under or pursuant to the Subscription Agreement and (if remediable) shall have failed within fourteen days of the breach to remedy the same to the satisfaction of an Investor Majority,

or which is after the date falling ten weeks after the second anniversary of the date of the Subscription Agreement unless the Milestone has been Achieved (each as defined in the Subscription Agreement) before then;

**"Default Remedy Scenario"** shall have the meaning given to that term in Article 12.9;

**"Deferred Shares"** means deferred shares having the rights and restrictions set out in Article 14;

**"Determiner"** means the accountant or umpire or other person appointed as provided in these Articles to make a determination of a value or any matter in dispute or on which there is disagreement;

**"Employees Trust"** means any trust established by the Company or another member of the Group (with any consent required under Article 10) to acquire and hold shares in the capital of the Company for the benefit of employees and/or former employees of the Group and/or their dependants;

**"Enhanced Investor Consent"** means the written consent of an Enhanced Investor Majority;

**"Enhanced Investor Majority"** means an Investor Majority where the persons constituting such majority include all of the NBGI Representative, the Seroba Kernel Representative and the Wellington Partners Representative (as such terms are defined in the definition of "Investor Majority");

**"Enhancement Notice"** means a notice in writing given to the Company or any Director or the secretary of the Company:

- (a) to confirm that the enhanced voting rights of the 'A' Preferred Shares in Article 9.2 or Article 9.3 shall apply; and/or
- (b) that Article 33.2(B) shall apply;

**"Equity Shares"** means Ordinary Shares and 'A' Preferred Shares and references to **"Equity Share Capital"** shall be construed accordingly;

**"Exempted Shares"** means any 'A' Preferred Shares which are allotted and issued to a person who, immediately before such allotment and issue, was a member of the Company but was not an Investor for the purposes of these Articles;

**"Exit"** means the first to occur of a Sale or Flotation;

**"Fair Value"** means the fair value of any shares in the Company determined as provided in Article 27.16;

**"Family Trust"** means in relation to any Original Member or Approved Beneficiary a trust (whether arising under a settlement inter vivos or a testamentary disposition by whomsoever made or on intestacy) under which:

- (a) no immediate beneficial interest in the shares in question is for the time being vested in any person other than the Original Member or Approved Beneficiary or Privileged Relations of his; and
- (b) no power of control over the voting powers conferred by those shares is for the time being exercisable by or subject to the consent of any person other than the trustees as trustees or the Original Member or Approved Beneficiary or Privileged Relations of his

and so that for this purpose a person shall be considered to be beneficially interested in a share if that share or its income is or may become liable to be transferred or paid or applied or appointed to or for the benefit of that person or any voting or other rights attaching to it are or may become liable to be exercisable by or as directed by that person pursuant to the terms of the relevant trusts or in consequence of any exercise of a power or discretion conferred by them on any person or persons;

**"Financial Year"** means a financial year or other period in respect of which the Company prepares its Accounts in accordance with the relevant provisions of the Companies Acts;

**"Flotation"** means the effective admission of any part of the equity share capital of the Company to the Official List of the UK Listing Authority and trading on The London Stock Exchange or (subject to Investor Consent) the grant of effective permission by The London Stock Exchange for dealings to take place in that share capital on AIM or the commencement of dealings in the same on any other recognised investment exchange (as defined in Part XVIII of the Financial Services and Markets Act 2000) (whichever is the earlier);

**"Flotation Exit Value"** means, in the event of a Flotation, the aggregate market value of all the ordinary shares of the Company (which for these purposes shall include all Equity Shares) allotted or in issue immediately after the time of Flotation:

- (a) assuming that there have been exercised in full all rights of any person (whether or not yet exercisable) to call for the allotment or issue of equity share capital of the Company and that any conversions of Equity Shares required under Article 5 and this Article 6 have taken place;
- (b) excluding any new shares which are to be or have been newly subscribed in order to raise additional capital as part of the Flotation

determined by reference to the price at which the ordinary shares the subject of the Flotation are to be issued or (as appropriate) placed or, in the case of an offer for sale by tender, by reference to the applicable striking price, as part of the Flotation arrangements;

**"Good Leaver"** means a Leaver who:

- (a) becomes a Leaver because
  - (i) he dies; or
  - (ii) he retires with the consent of his employer; or
  - (iii) he is dismissed or resigns because he has suffered a physical or mental deterioration which, in the opinion of an Investor Majority is sufficiently serious to prevent him from duly performing his normal duties as a Relevant Executive and is not caused by abuse of alcohol or drugs; or
  - (iv) he is dismissed or his engagement is terminated in circumstances where his dismissal or termination does not render him a Bad Leaver; or
- (b) does not fall within any of the above categories but nevertheless the Board, with Investor Consent, designates him as a Good Leaver for the purposes of these Articles;

**"Group"** means the Company and its subsidiaries and subsidiary undertakings for the time being;

**"Group Reorganisation"** means any arrangement (by scheme of arrangement, share exchange, under section 110 of the Insolvency Act 1986 or otherwise) under which the shares in the Company are acquired by a new body corporate in terms that the shareholders of the body corporate and their respective shareholdings and percentage equity interests in that new body corporate after that acquisition are the same or substantially the same as they were immediately prior to that acquisition, disregarding any changes in such shareholdings consequent on the exercise of options and similar entitlements under employee and similar share incentive arrangements operated by the Group or any of its members at the time of the acquisition;

**"IMI Group"** means IMI plc and any of its subsidiaries from time to time;

**"IMI Consent Period"** means the period commencing on Completion (as defined in the Subscription Period) and ending on the earlier of:

- (a) the date falling 24 months after the date of Completion; and
- (b) the Second Completion Date (as defined in the Subscription Agreement);

**"Indebtedness"** means any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent, incurred in respect of (a) money borrowed or raised, (b) any bond, note, loan stock, debenture or similar instrument, (c) acceptance or documentary credit facilities, (d) foreign exchange options, (e) rental and periodic payments, under leases and hire purchase agreements and instalments under conditional sale agreements (in all cases whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or of financing the acquisition or use of the asset concerned, (f) payments in the nature of finance charges or repurchase amounts and debt indemnity under factoring and invoice discounting arrangements and (g) guarantees, indemnities, bonds, standby letters of credit or other instruments issued in

connection with the performance of contracts and or in respect of the indebtedness of any other person;

**"Intermediary Leaver"** means any Leaver who voluntarily resigns or terminates his employment or engagement other than as a result of constructive dismissal (where such constructive dismissal has been acknowledged or confirmed by an employment tribunal or court of competent jurisdiction) or whom the Board, with Investor Consent, designates as an Intermediary Leaver for the purposes of these Articles;

**"Investment Grade Shares"** means any shares in the Company bearing rights which are prioritised to those attaching to the Ordinary Shares and reasonably considered by the Investors (acting by an Investor Majority and as confirmed by written notice to the Company) to have features designed to attract investment by venture capital or similar professional investors;

**"Investor"** means any person being an allottee of Investor Shares (including, for the avoidance of doubt, those allottees of such shares who subscribe for them on completion of the Subscription Agreement) and/or any person who becomes an Investor pursuant to Article 24.6 and who in any such case from time to time holds shares in the Company;

**"Investor Consent"** means the written consent of an Investor Majority;

**"Investor Directors"** means any director appointed pursuant to Article 33 and references to an Investor Director shall be construed accordingly;

**"Investor Exit Value"** means, in relation to all Investor Shares sold by the Investors in a Sale, cash proceeds arising from such sale which are at least equal to the aggregate Issue Price of the shares subscribed for and from which the shares so sold were derived (taking into account the conversion provisions of Articles 5 and 6);

**"Investor Group"** means, in relation to any corporate Investor, that Investor and its associated companies from time to time;

**"Investor Majority"** shall mean three or more of the NBGI Representative, the Seroba Kernel Representative, the Wellington Partners Representative and the BTV Representative provided that the persons constituting such majority include at least two of the NBGI Representative, the Seroba Kernel Representative and the Wellington Partners Representative. For these purposes:

- (a) the **"NBGI Representative"** shall be the holder(s) at the relevant time of a majority of the 'A' Preferred Shares originally subscribed by NBGI pursuant to the Subscription Agreement to the extent then in issue and to the extent the same have not been converted into 'B' Ordinary Shares pursuant to these Articles or any person nominated from time to time by such holder(s) (by written notice to the Company);
- (b) the **"Seroba Kernel Representative"** shall be the holder(s) at the relevant time of a majority of the 'A' Preferred Shares comprised in Seroba Kernel's Subscription Commitment to the extent then in issue and to the extent the same have not been converted into 'B' Ordinary Shares pursuant to these Articles or any person nominated from time to time by such holder(s) (by written notice to the Company);
- (c) the **"Wellington Partners Representative"** shall be the holder(s) at the relevant time of a majority of the 'A' Preferred Shares comprised in Wellington Partners Investors Subscription Commitment to the extent then in issue and to the extent the same have not been converted into 'B' Ordinary Shares pursuant to these Articles or any person



nominated from time to time by such holder(s) (by written notice to the Company);  
and

- (d) the **"BTV Representative"** shall be the holder(s) at the relevant time of a majority of the 'A' Preferred Shares comprised in the BTV Investors' Subscription Commitment to the extent then in issue and to the extent the same have not been converted into 'B' Ordinary Shares pursuant to these Articles or any person nominated from time to time by such holder(s) (by written notice to the Company);

**"Investor Shares"** means, subject to Article 26.2, 'A' Preferred Shares other than Exempted Shares and any other shares in the Company which with Investor Consent are designated as Investor Shares by Special Resolution;

**"Issue Price"** means, in relation to any share, the amount paid up or credited as paid up on it;

**"Leaver"** means any person who ceases or (as the case may be) will cease (through having given or been given notice) to be a Relevant Executive in circumstances where he does not or (as the case may be) will not continue immediately afterwards to be a Relevant Executive;

**"Leaving Date"** means the date on which the Leaver concerned became a Leaver or, where he was given or gave notice to terminate his employment or engagement, the date when that notice was given, if earlier;

**"Majority"** means as regards members of a class or classes of shares, a majority by reference to the number of shares of that class or classes held and not by reference to the number of members holding shares of that class or classes;

**"Management Accounts"** means management accounts of the Company or (as the case may be) Group prepared in accordance with the requirements of the Subscription Agreement;

**"Mandatory Transfer"** means any transfer of shares required pursuant to Article 25 or which is given by any person at a time when he could be required under Article 25 to make such a transfer;

**"Mandatory Transfer Notice"** means a Transfer Notice given or deemed to be given pursuant to Article 25 or given by a person at a time when he could be required under Article 25 to give such a Transfer Notice;

**"NBGI Representative"** shall have the meaning given to that term in the definition of Investor Majority;

**"New Shares"** new shares in the equity share capital of the Company;

**"Observer"** shall have the meaning given to that term in Article 33.6;

**"Ordinary Shares"** means 'A' Ordinary Shares and/or 'B' Ordinary Shares, as applicable;

**"Original Member"** means an Original Member as defined in Article 24.4;

**"Permitted Family Transfer"** means a Permitted Family Transfer as defined in Article 24.4 and references to a **"Permitted Family Transferee"** shall be construed accordingly;

**"Permitted Investor Transferee"** means in relation to any holder of Investor Shares or any interest in them (such holder being treated for these purposes as an Investor):

- (a) any member for the time being of its Investor Group;

- (b) any body corporate controlled by that Investor or another member of its Investor Group or any investment manager or adviser that Investor and/or member or which immediately following the transfer of Investor Shares concerned will be such a body corporate;
- (c) any investment fund or trust or partnership controlled or managed or advised (in an investment adviser capacity) or promoted by (i) that Investor or (ii) another member of its Investor Group or (iii) any investment manager or advisor of that Investor and/or any such group member;
- (d) any trustee or manager or beneficiary or shareholder or partner or unitholder or other participant in or of that Investor or any investment fund or trust or partnership referred to in paragraph (c) above;
- (e) any directors or employees of that Investor or a member of its Investor Group or any trust or carried interest or similar partnership in which they or any of them participate; or
- (f) a nominee or custodian for any of the above;

**"Permitted Option"** means any Subscription Right granted after the Adoption Date with Investor Consent;

**"Permitted Share Issue"** means any issue or commitment to issue new shares:

- (a) under any employee share scheme or employee incentivisation arrangements (whether applicable to any particular individual(s) or generally) which have been approved by Investor Consent on the basis that they shall be treated as Permitted Share Issues (including any issued on exercise of a Permitted Option); or
- (b) upon conversion of any 'A' Preferred Shares and/or any 'A' Ordinary Shares; or
- (c) pursuant to clause 8.2;
- (d) issued as a result of a bonus issue of shares or on a sub-division or other re-organisation which in any case has been approved by Investor Majority;
- (e) issued in a further funding which the Investors are offered the opportunity to participate as specified in clause 3.9 of the Subscription Agreement;
- (f) which an Investor Majority have expressly agreed in writing should be excluded from the provisions of Article 8;

**"Permitted Transfer"** means a transfer of shares permitted by Articles 21 to 27 (inclusive);

**"Privileged Relation"** means in relation to an individual member or deceased or former individual member, the husband or wife or the widower or widow of that member and all the lineal descendants in direct line of that member and a husband or wife or widower or widow of any of the above persons and for these purposes a step-child or adopted child or illegitimate child of any person shall be deemed to be his or her lineal descendant;

**"Proposed Transferor"** means a Proposed Transferor as defined in Article 27.2;

**"Register"** means the register of members of the Company required to be maintained by the Companies Acts;

**"Registered Office"** means the registered office of the Company for the time being;

**"Related Shares"** means in relation to any shares, any shares issued in respect of those shares by way of capitalisation or bonus issue or acquired in exercise of any right or option granted or arising by virtue of them;

**"Relevant Executive"** means a director or employee of, or a consultant to, the Company or any member of the Group;

**"Relevant Member"** means, in relation to a particular Relevant Executive or Leaver, and unless an Investor Consent provides otherwise, that Relevant Executive or Leaver and any member to whom that Relevant Executive or Leaver (or his personal representatives) has made or at the relevant time could if he held shares in the Company make a Permitted Family Transfer (assuming for these purposes that any restrictions on such a transfer in the Subscription Agreement or relevant to Mandatory Transfer Notices do not apply);

**"Relevant Parties"** has the meaning given in Article 46;

**"Relevant Shares"** means any shares in the Company for the time being held by a Relevant Member and/or in respect of which a Relevant Member is unconditionally entitled to be registered as the holder;

**"Restricted Securities"** shall have the meaning given in Article 22.3;

**"Sale"** means (subject as provided below) the sale or transfer of any Equity Shares constituting at least ninety per cent of the issued equity share capital of the Company to a single purchaser or to one or more purchasers as part of a single transaction, or the acquisition (whether or not as part of a single transaction) of Equity Shares constituting such an interest by any person or group of persons who are connected persons of each other or who are acting in concert and who did not previously hold such an interest but excluding, unless otherwise agreed by Investor Consent (i) any sale or transfer of shares or interest in them as part of a Group Reorganisation and (ii) any sale or transfer of shares or an interest in them to, or acquisition (by subscription or otherwise) of shares or an interest in them by, any Investor(s) or persons or entities who in relation to any Investor fall within any of categories (a) (b) and (c) of the definition of Permitted Investor Transferee;

**"Secretary"** means any secretary for the time being of the Company;

**"Senior Executive"** means a Relevant Executive who is entitled (or who through any commitment to be entered into by any member of the Group, will become entitled), contingently or otherwise, to receive remuneration (including for this purpose all amounts paid by way of commission or bonus or under any profit sharing bonus or incentive scheme or by way of pensions contribution) in excess of £80,000 per annum or such increased amount as may from time to time have been approved by Investor Consent;

**"Seroba Kernel Representative"** shall have the meaning given to that term in the definition of Investor Majority;

**"shareholder resolution"** means any resolution passed by shareholders entitled to vote on it and which is effective for the purposes of the Companies Acts (as in force at the time) and these Articles;

**"Subscription Agreement"** means the Subscription Agreement entered into on or about the Adoption Date between, inter alios, the Company and certain of its members relating to the subscription of Investor Shares, as from time to time amended supplemented or novated;

**"Subscription Rights"** means any rights (whether under options, warrants, on conversion of any indebtedness or otherwise) to call for the allotment or issue of shares in the Company;

**"Transfer Notice"** means a Voluntary Transfer Notice or a Mandatory Transfer Notice, as the case may be;

**"Transfer Value"** means the value attributable to the shares comprised in any Transfer Notice determined as provided in Article 27;

**"transmittee"** means a person entitled to a share by reason of the death or the bankruptcy of the holder of the share or otherwise by operation of law;

**"Voluntary Transfer"** means any transfer of shares other than a Mandatory Transfer;

**"Voluntary Transfer Notice"** means a Transfer Notice other than a Mandatory Transfer Notice;

**"Wellington Partners Representative"** shall have the meaning given to that term in the definition of Investor Majority.

3. In these Articles references to:

- (A) **"attorney"** shall include separately and in addition "agent" or "agency" as the context may admit and also shall be deemed to include (unless the context otherwise admits) a power for the attorney or agent to delegate his authority as he shall see fit;
- (B) **"document"** includes, unless otherwise specified, any document sent or supplied in electronic form;
- (C) **"electronic form"** and **"hard copy form"** have the meanings respectively given in section 1168 of the 2006 Act;
- (D) a document being **"executed"** include references to its being executed under hand or under seal or as a deed or by any other method and **"execution"** shall be construed accordingly;
- (E) an **"instrument"** means a document in hard copy form; and
- (F) **"writing"** or **"written"** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

4. In these Articles, any reference to a matter to be **"Determined"** or to be referred for **"Determination"**, shall mean that the matter is to be determined by a Determiner as provided in Article 46.

5. In these Articles words denoting the singular number include the plural number and vice versa, words denoting the masculine gender include the feminine gender and words denoting persons include any individual, firm, partnership, unincorporated association, company, corporation or other body corporate.

6. Where the context so admits, words or expressions contained in these Articles bear the same meaning as in the Companies Acts as in force and operative on the Adoption Date except that when a provision of the 2006 Act comes into force, the defined words and expressions for its purposes (as in force on the Adoption Date) shall come into effect for the purposes of these

Articles in replacement for any different definition of the same word or expression in the 1985 Act and so that (without limitation):

- (A) when those sections come into force, the expressions "**ordinary resolution**" and "**special resolution**" shall have the meanings respectively given in section 283 of the 2006 Act as in force on the Adoption Date;
  - (B) when those sections come into force so far as applicable to the subject matter of any provision of these Articles, the expressions "**subsidiary**" and "**subsidiary undertaking**" shall have the meaning given in sections 1159 and 1162 of the 2006 Act, as read in conjunction with section 1161 of that Act, as in each case in force on the Adoption Date; and
  - (C) references in these Articles to a "**dormant subsidiary**" of the Company are references to any subsidiary of the Company which at the relevant time is dormant for the purposes of Section 249AA (1)(a) or (b) of the 1985 Act as in force on the Adoption Date or (where those provisions are in force on the Adoption Date or come into force subsequently) section 480 (1)(a) or (b) of the 2006 Act as in force on the Adoption Date.
- 7. Except where expressly stated references in these Articles to any provision of any enactment or of any subordinate legislation (as defined by Section 21(1) of the Interpretation Act 1978) include any modification or re-enactment of that provision for the time being in force.
  - 8. For the purposes of these Articles a person will be "insolvent" or "bankrupt" if at the time in question (i) any expropriation, attachment, sequestration, distress or execution affects any material asset or assets of that person and has not been discharged; or (ii) the person is unable or admits inability to pay his or its debts as they fall due, suspends making payments on any of his or its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with or has arrangements in force with one or more of his or its creditors with a view to rescheduling any of its indebtedness or (iii) any resolution to wind-up, administration application or notice of an intention to, or a notice to, appoint an administrator or receiver is outstanding in relation that person or a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer has been appointed in respect of that person or any of its material assets or (iv) any analogous procedure or step is taken in any jurisdiction and is still outstanding. For these purposes materiality shall be as reasonably determined by the Board.
  - 9. For the purposes of these Articles a person will be suffering from a "mental disorder" if an order is made by any court of competent jurisdiction on the ground (however formulated) of mental disorder for his detention or for the appointment of a guardian or receiver or other person to exercise powers with respect to his property or affairs or he is admitted to hospital in pursuance of an application for admission for treatment under any legislation relating to mental health.
  - 10. References in these Articles to a "connected person" of any person and "control" shall mean any connected person of that person and control for the purposes of sections 993 to 995 (inclusive) of the Income Tax Act 2007 as in force on the Adoption Date and references to "acting in concert" shall be construed in accordance with the City Code on Take-overs and Mergers published by the Panel on Take-overs and Mergers as in force on the Adoption Date.
  - 11. Unless the context otherwise requires, references in these Articles to (i) a "share" are to a share in the capital of the Company and (ii) a "member" or "holder" in relation to a share are to the person(s) whose name(s) are entered in the register of members of the Company as the holder of that share and references to a "shareholder" shall be construed accordingly.

12. Where a holder of 'A' Preferred Shares is a limited partnership or a nominee on behalf of a limited partnership, the consent or direction of the general partner for the time being of that partnership or of the investment manager for the time being of such a partnership shall be a good and sufficient consent or direction on its behalf for the purposes of these Articles.
13. Except where expressly stated, references to the amount "paid up" on a share shall include (without prejudice to section 738 of the 1985 Act or, when in force, section 583 of the 2006 Act) all amounts credited as paid up on the share including any premium and "fully paid" means, in relation to a share, that the nominal value and any premium to be paid to the Company (or as it shall direct) in respect of that share have been so paid.
14. The headings in these Articles are inserted for convenience only and shall not affect their construction.