

Company No: 06909044

**THE COMPANIES ACT 2006  
COMPANY LIMITED BY SHARES  
RESOLUTIONS IN WRITING**

of

**OPTIONS GROUP HOLDINGS LIMITED**

("Company")

Passed the 2<sup>nd</sup> day of July 2009

By a written resolution agreed to in accordance with Chapter 2 of Part 13 of the Companies Act 2006 by or on behalf of the required number of the members of the Company who, at the date of circulating the resolution, were entitled to vote on the resolution the following resolutions of the Company were duly passed:

**ORDINARY RESOLUTIONS**

5. THAT, the 50,010,400 ordinary shares of £0.01 each in the capital of the Company be redesignated into 50,010,400 C ordinary shares of £0.01 having the rights and being subject to the restrictions set out in the Articles of Association of the Company as proposed to be amended by the resolution numbered 4 below.
6. THAT, the authorised share capital of the Company be and is hereby increased from £500,104 to £500,113.50 by the creation of 700 new A ordinary shares of £0.01 each and the creation of 250 new B ordinary shares of £0.01 each having the rights and being subject to the restrictions set out in the Articles of Association of the Company as proposed to be amended by the resolution numbered 4 below.
7. THAT, pursuant to the provisions of section 80 of the Companies Act 1985, the Directors be and are hereby generally and unconditionally authorised to exercise all the powers of the Company to allot relevant securities free of the requirement of the consent of shareholders up to a maximum of £9.50 in aggregate nominal value, representing 700 A ordinary shares of £0.01 each and 250 B ordinary shares of £0.01 each.

**SPECIAL RESOLUTION**

8. THAT, the Articles of Association set out in the document produced to this meeting and signed by the Chairman of the meeting for the purposes of identification be and are hereby approved and adopted as the Articles of Association of the Company in substitution for and to the exclusion of all existing Articles of Association of the Company.

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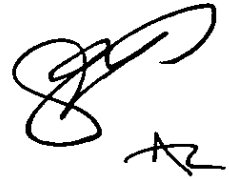
Signed

  
Director/Secretary

Dated

2 July 2009

SRG



DATED 2 July 2009 2009

**OPTIONS GROUP HOLDINGS LIMITED**

**ARTICLES OF ASSOCIATION**

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**COMPANIES ACT 1985**  
**COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**OPTIONS GROUP HOLDINGS LIMITED**

(adopted by Special Resolution of the Company

passed on 2 July 2009)

**1. TABLE A**

Except as excluded or varied in these Articles, Table A (as defined below) will apply to the Company and will be deemed to form part of these Articles.

**2. DEFINITIONS AND INTERPRETATION**

2.1 In these Articles the following words and expressions will have the following meanings:

"1985 Act" means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force;

"2006 Act" means the Companies Act 2006 including any statutory modification or re-enactment thereof for the time being in force;

"Accounting Period" means an accounting reference period of the Company beginning on 1 April and ending on the following 31 March, or such other date as is notified to the Registrar of Companies from time to time;

"Accounts" means the audited consolidated accounts of the Group;

"Acquisition Documents" has the meaning given in the Investment Agreement;

"Act" has the meaning given to it in Table A;

**"Acting in Concert"** has the meaning given to it in the City Code on Takeovers and Mergers;

**"Allocation Notice"** has the meaning given in Article 13.13;

**"A Ordinary Share"** means an A Ordinary share of £0.01 in the capital of the Company;

**"A Ordinary Shareholder"** means a registered holder of any A Ordinary Shares;

**"Approved Offer"** has the meaning given in Article 16.2.1;

**"Associate"** means in relation to BCI(No.2)L or Globe (or either of them):

- (a) any person who, in relation to BCI(No.2)L and/or Globe, is a Connected Person;
- (b) any person who, in relation to the Bank, is a Connected Person; and
- (c) any nominee or trustee for such person;

**"Auditors"** means the Company's incumbent auditors;

**"Bad Leaver"** means a Relevant Individual who ceases to be an employee and/or director and/or Consultant of the Company or any member of the Group and who is not a Good Leaver;

**"Bank"** has the meaning given in the Investment Agreement;

**"Bank Documents"** has the meaning given in the Investment Agreement;

**"BCI(No.2)L"** means Barclays Converted Investments (No.2) Limited a company registered in England and Wales with number 05535473 whose registered office is at 1 Churchill Place, London E14 5HP;

**"Board"** means the incumbent board of Directors including the Investor Director and/or the Independent Director (if any);

**"B Ordinary Share"** means a B Ordinary share of £0.01 in the capital of the Company;

**"B Ordinary Shareholder"** means a registered holder of any B Ordinary Shares;

**"Business Day"** means a day (which for these purposes ends at 5.30pm) on which banks are open for commercial business in the City of London other than a Saturday or Sunday;

**"Business Targets"** has the meaning given in the Investment Agreement;

**"Buyer"** has the meaning give in Article 16.1.1;

**"C Ordinary Share"** means a C Ordinary share of £0.01 in the capital of the Company;

**"C Ordinary Shareholder"** means a registered holder of any C Ordinary shares;

**"Cessation Date"** means the date on which a Relevant Individual ceases to be an employee or director or Consultant of any Group Member for any reason;

**"Chairman"** means the Chairman as defined in the Investment Agreement;

**"Co-Investment Scheme"** means a scheme under which certain officers, employees or partners of an Investor or an Associate of an Investor are entitled (as individuals or through a body corporate or any other vehicle) to acquire shares;

**"Commencement Date"** means the date on which these Articles are adopted;

**"Compromise Agreement"** has the meaning given to it in the Investment Agreement;

**"Compulsory Sale Notice"** means a notice served on a Compulsory Seller pursuant to Article 15.2;

**"Compulsory Seller"** and **"Compulsory Sellers"** have the meanings given in Article 15.2;

**"Connected Person"** has the meaning given in section 839 of the Income and Corporation Taxes Act 1988;

**"Consultant"** means a consultant to any Group Member and/or any person whose services are procured by a consultant of any Group Member in the performance of that consultant's duties;



**"Controlling Interest"** in relation to a person means the ownership by that person and his or its Connected Persons of Shares carrying the right to more than 50 per cent of the total number of votes which may be cast on a poll at a general meeting of the Company;

**"Credited as Paid Up"** means amounts paid up or credited as paid up on a Share including any premium;

**"Deferred Share"** means a deferred share of £0.01 in the capital of the Company;

**"Directors"** means the Company's incumbent directors;

**"Drag Along Right"** has the meaning given in Article 17.1;

**"Electronic Communication"** means any communication:

- (a) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data and entirely transmitted, conveyed and received by wire, by radio, by optical or by other electromagnetic means; or
- (b) sent or supplied by other means but while in electronic form;

**"Emoluments"** means emoluments of every description including, without limitation, salaries, fees, bonuses, commissions, profit shares under any incentive scheme, pension contributions payable, benefits in kind as quantified for income tax purposes and any amounts referred to in schedule 5 part 1 paragraph 1 (1) of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008 No. 410);

**"Employee Benefit Trust"** means any trust which may be established for the benefit of the employees (which may include past employees) of the Company and/or any other member of the Group, and which satisfies the definition of an "employees' share scheme" set out in section 743 of the 1985 Act;

**"Equity Shareholder"** means a registered holder of any Equity Shares;

**"Equity Shares"** means the issued A Ordinary Shares, B Ordinary Shares and C Ordinary Shares at any time, and all shares derived from them (and any of them)

whether by conversion, consolidation or sub-division or by way of rights or bonus issue or otherwise in issue;

**"Executives"** means the Executives as defined in the Investment Agreement, or any of them;

**"Exit"** means a Listing, a Share Sale or a Liquidation;

**"Extra Shares"** has the meaning given in Article 13.10;

**"Guarantee"** means the personal guarantee given by the Private Shareholder to the Bank;

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

**"Globe"** means Globe Nominees Limited a company registered in England and Wales with number 03911777 whose registered office is at 1 Churchill Place, London E14 5HP;

**"Good Leaver"** means a Relevant Individual:

- (a) who ceases to be an employee and/or director and/or Consultant of any Group Member as a result of his death or permanent incapacity due to ill-health which, in the opinion of the Investors, is sufficiently serious to prevent him from carrying out his normal duties; or
- (b) who is dismissed from his employment by any Group Member in circumstances which have resulted in a successful claim against (or the compromise of a claim by) the relevant Group Member for wrongful dismissal; or
- (c) who does not fall within categories (a) or (b) above, but is determined by BCI(No.2)L in its absolute discretion to be a Good Leaver;

**"Group"** means the Company and its subsidiaries (as defined by section 736 of the 1985 Act) from time to time and references to a **"member of the Group"** or a **"Group Member"** will be construed accordingly;

**"Independent Director"** means a director appointed as such pursuant to Article 36.1;

**"Index Linked"** means in relation to any figure that such figure shall be increased (but not decreased) by a percentage thereof equal to the percentage increase (if any) in the General Index of Retail Prices (All Items) published by the Office for National Statistics (or its equivalent, if replaced) from the commencement to the end of the period since when such figure was last adjusted;

**"Institutional Investor"** means any financial institution designated by HM Revenue & Customs as a bank pursuant to section 840(A) of the Income and Corporation Taxes Act 1988, or any member of the British Venture Capital and Private Equity Association and the vehicles through which they invest;

**"Interest"** has the meaning given in Article 2.4.4.1;

**"Investment Agreement"** means the investment agreement dated on the Commencement Date and made between (1) the Company (2) the Executives (3) the Private Shareholder (4) BCI(No.2)L and (5) Globe;

**"Investor Associate"** means in relation to the Investors (or either of them):

- (a) each other;
- (b) any Investor Connected Person of the Investors (or either of them);
- (c) any Institutional Investor;
- (d) any Co-Investment Scheme;
- (e) any undertaking which holds or is to hold shares for any Co-Investment Scheme;
- (f) any officer, employee or partner entitled to the shares under any Co-Investment Scheme;
- (g) any portfolio company of the Investors (or either of them) or any Investor Associate; and
- (h) any acquirer of the whole or substantially the whole of either of the Investors' or any Investor Associates' portfolio of companies;

**"Investor Director"** means a director appointed as such pursuant to Article 36.1;

**"Investors"** means BCI(No.2)L and Globe;

**"Letters of Appointment"** has the meaning given in the Investment Agreement;

**"Liquidation"** means the passing of a resolution for the winding-up of any Group Member (as appropriate);

**"Liquidation Date"** means the date of completion of a Liquidation;

**"Listing"** means:

- (a) the admission of all or any of the Equity Shares to trading on a market for listed securities operated by a recognised investment exchange (as that term is defined in FSMA), together with the admission of such Shares to the Official List of the UK Listing Authority; or
- (b) the admission of such Shares to trading on the Alternative Investment Market of the London Stock Exchange plc; or
- (c) if the Investors in their absolute discretion so determine the admission of such Shares to, or to trading on, any other market wherever situated together, if necessary, with the admission of such Shares to listing on any official or otherwise prescribed list maintained by a competent or otherwise prescribed listing authority,

and **"Listed"** will be construed accordingly;

**"Listing Date"** means the date on which all or any of the Equity Shares are Listed (subject only (where relevant) to any announcement required in accordance with the rules of the relevant stock exchange or listing authority);

**"Market Value"** has the meaning given in Article 14 in relation to voluntary share transfers, and in Article 15.5 in relation to compulsory share transfers;

**"Member"** means a registered holder of any Share as recorded in the Company's register of members;

**"Observer"** means a person appointed as such pursuant to Article 36.4;

**"Other Shareholders"** has the meaning given in Article 17.1;

**"Private Shareholder"** has the meaning given in the Investment Agreement;

**"Proportionate Entitlement"** has the meaning given in Article 13.10;

**"Proposed Transferee"** means a person to whom a Seller proposes to transfer Sale Shares;

**"PRs"** means the legal personal representatives of a deceased Member;

**"Reinstatement Notice"** has the meaning given in Article 8.4;

**"Relevant Accounting Period"** has the meaning given in Article 5.1;

**"Relevant Individual"** means an employee or director or Consultant of any Group Member;

**"Remuneration Committee"** has the meaning given in the Investment Agreement;

**"Review Date"** has the meaning given in Article 8.4;

**"Sale Date"** means the date of completion of a Share Sale;

**"Sale Shares"** means Shares or any interest in or arising from any Shares (an option or other like right to acquire any Shares (whether by subscription or otherwise) being deemed to be an interest in a Share for this purpose) which a Seller wishes or is required or deemed to transfer;

**"Seller"** means any Member who wishes to transfer any Sale Shares;

**"Service Agreements"** has the meaning given in the Investment Agreement;

**"Share"** means a share in the capital of the Company of whatever class;

**"Share Sale"** means the completion of any transaction or series of transactions whereby any person or Connected Persons or group of persons Acting in Concert purchases or otherwise acquires or obtains all of the Equity Shares;

**"Share Targets"** has the meaning given in the Investment Agreement;

**"Table A"** means Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 805) as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1985 No. 1052), the Companies Act 1985

(Electronic Communications) Order 2000 (SI 2000 No. 3373), the Companies (Tables A to F) (Amendment) Regulations 2007 (SI 2007 No. 2541) and the Companies (Tables A to F) (Amendment) (No.2) Regulations 2007 (SI 2007 No. 2826);

**"Total Transfer Condition"** means a condition in a Transfer Notice stipulating that such Transfer Notice is conditional upon all and not some only of the Sale Shares specified in it being sold;

**"Trustee"** has the meaning given in the Investment Agreement;

**"Transfer Notice"** means a notice in writing by a Seller of his wish to transfer any Shares;

**"Transfer Price"** has the meaning given in Article 13.4;

**"UK Listing Authority"** means the Financial Services Authority acting in its capacity as the competent authority for the purposes of Part VI of FSMA including, where the context so permits, any committee, employee, officer or servant to whom any function of the UK Listing Authority may for the time being be delegated.

2.2 Words and phrases which are defined or referred to in or for the purposes of the Act (excluding any statutory modification of that meaning not in force when these Articles become binding on the Company) or Table A have the same meanings in these Articles unless a contrary intention appears.

2.3 If there is any conflict or inconsistency between any provision of Table A and any provision of these Articles the latter shall prevail.

2.4 In these Articles, unless a contrary intention appears:

2.4.1 words which refer to the singular number include the plural number and vice versa, words which refer to one gender include all genders, and words which refer to persons include bodies corporate and unincorporated associations;

2.4.2 reference to a statute or a statutory provision includes reference to:

2.4.2.1 the statute or statutory provision as modified or re-enacted or both from time to time; and

- 2.4.2.2 any subordinate legislation made under the statutory provision (as modified or re-enacted as set out above);
  - 2.4.3 reference to a Regulation is to a regulation of Table A, and reference to an Article is to a provision of these Articles;
  - 2.4.4 reference to a **"transfer"** of Shares or any similar expression will be deemed to include (without limitation):
    - 2.4.4.1 any sale or other disposition of the legal or equitable interest in a Share (including any voting right attached to a Share) (**"Interest"**);
    - 2.4.4.2 the creation of any mortgage, charge, pledge or other encumbrance over any Interest;
    - 2.4.4.3 any direction by a Member entitled to an allotment or issue of Shares that a Share be allotted or issued to some person other than himself; and
    - 2.4.4.4 any grant of an option to acquire either or both of the legal and equitable ownership of any Share by any Member entitled to any such Share; and
  - 2.4.5 reference to "written" or "in writing" includes any method of representing or reproducing words in a legible form.
- 2.5 Unless it is specifically stated otherwise, any dispute as to value, or as to calculations or adjustments to be made, or as to amount, whether to or in respect of the amount of dividend by reference to management accounts, Market Value of Sale Shares under Article 14 or Article 15.5 or otherwise pursuant to these Articles, will be referred immediately to the Auditors for final determination unless any Member objects by notice in writing to the Company to the Auditor making such final determination. If any such Member objects or if the Auditors decline to act in respect of any such referral, the matter will be determined by an independent firm of chartered accountants agreed for the purpose by the parties concerned or, in default of agreement within five Business Days after the Auditors have declined to act, appointed by the incumbent President of the Institute of Chartered Accountants in England and Wales. The Auditors or independent accountants (as the case may be)

will act as expert and not as arbitrator and their costs will be borne as directed by the Article in question or, if the Article is silent on the point, as directed by the Auditors/independent accountants. In the absence of any such direction, such costs will be borne equally between parties concerned. The written certificate of the Auditors/independent accountants (as the case may be) will be conclusive and binding on the Company and the Members (except in the case of fraud or manifest error).

- 2.6 Any consent, notice, agreement, approval or direction, or the exercise of a discretion required to or which may be given by the A Ordinary Shareholders and/or the Investors and/or the Investor Director pursuant to these Articles may be given by BCI(No.2)L.
- 2.7 The headings in these Articles are included for convenience only and do not affect the meaning of these Articles.
- 2.8 Where, for any purpose, an ordinary resolution of the Company is required, a special resolution is also effective for that purpose.

### **3. SHARE CAPITAL**

The authorised share capital of the Company at the date of adoption of these Articles is £500,113.50 divided into:

- 3.1 700 A Ordinary Shares;
- 3.2 250 B Ordinary Shares; and
- 3.3 50,010,400 C Ordinary Shares.

### **4. SHARE RIGHTS**

Regulation 2 will not apply to the Company. The rights and restrictions attaching to the A Ordinary Shares, B Ordinary Shares and C Ordinary Shares and the rights and restrictions attaching to any Deferred Shares into which C Ordinary Shares may be converted pursuant to Article 7 are set out in full in these Articles.



## 5. SHARE RIGHTS - INCOME

5.1 Any profits which the Company determines to distribute in respect of any Accounting Period will be paid to the holders of the A Ordinary Shares and the holders of the B Ordinary Shares (as if one class) pro rata as nearly as possible to their respective holdings of such Shares.

5.2 The C Ordinary Shares will carry no rights to participate in any dividend.

## 6. SHARE RIGHTS - RETURN OF CAPITAL

6.1 On a return of capital of the Company on an Exit (other than a redemption of Shares or the purchase by the Company of its own Shares), the surplus assets and retained profits of the Company after payment of all liabilities (including any arrears and accruals of unpaid dividend payable to the holders of the A Ordinary Shares and to the holders of the B Ordinary Shares) and available for distribution among the Members ("**Surplus Assets and Retained Profits**") will, subject to Article 6.2, be distributed among the holders of the Equity Shares in the following proportions:

Class of Share	Proportion of Surplus Assets and Retained Profits
A Ordinary Shares	70%
B Ordinary Shares	25%
C Ordinary Shares	5%

6.2 In circumstances where there are no C Ordinary Shares in issue at the time of a return of capital of the Company on an Exit (other than a redemption of Shares or the purchase by the Company of its own Shares) the Surplus Assets and Retained Profits will be distributed among the holders of the Equity Shares in the following proportions:

Class of Share	Proportion of Surplus Assets and Retained Profits

A Ordinary Shares	70%
B Ordinary Shares	30%

- 6.3 Any return on a particular class of Shares will be made amongst their holders pro-rata as nearly as possible to their respective holdings of Shares of that class.

## **7. SHARE RIGHTS - CONVERSION OF C ORDINARY SHARES**

- 7.1 In the event that (i) in the sole opinion of BCI(No.2)L there has been a material breach of the Compromise Agreement by the Private Shareholder or (ii) the Bank makes a call on the Guarantee then adjustments will be made to the equity share capital of the Company by way of a conversion of C Ordinary Shares as follows:

7.1.1 all of the C Ordinary Shares in issue shall automatically and without resolution of the Directors or Members convert into Deferred Shares;

7.1.2 conversion shall be on a one for one basis.

- 7.2 The Deferred Shares will carry no rights:

7.2.1 to participate in any dividend; or

7.2.2 to a return of capital; or

7.2.3 entitling their holders to receive notice of, attend, speak at or vote at any general meeting of the Company.

- 7.3 Unless the Investors otherwise direct in writing, all of the Deferred Shares resulting from the conversion pursuant to Article 7.1 shall be purchased by the Company as soon as it is lawful for the Company to purchase them for the aggregate sum of £1.00.

## **8. SHARE RIGHTS - VOTING**

- 8.1 The voting rights of Members set out in Article 24 are subject to:

8.1.1 the following provisions of this Article 7; and

8.1.2 Article 15.6.

## ***Investor protection rights***

### **8.2 If:**

- 8.2.1 there has been a breach of the terms of these Articles or the Investment Agreement by the Company or by the Executives or by the Chairman which, in the opinion of the Investors, has or might reasonably be considered likely to have a material and adverse effect on the A Ordinary Shareholders' investment in the Company; or
- 8.2.2 any act, omission or event has occurred which constitutes or may constitute (with the passage of time or the giving of notice) an event of default under any documents entered into between any Group Member and its bankers; or
- 8.2.3 any of the facilities provided pursuant to the terms of any documents entered into between any Group Member and its bankers expires and is not renewed with the consent of the Investors; or
- 8.2.4 the Company has not paid for any reason other than bank error any dividend payable on the A Ordinary Shares within 7 days of a due date for payment and such dividend has not subsequently been paid; or
- 8.2.5 there has been proposed by the Board a Liquidation; or
- 8.2.6 the Company is in breach of any of the financial covenants set out in the Appendix to these Articles,

and the Investors have served notice in writing on the Company that they wish the rights set out in Article 8.3 and/or Article 35.2 to apply then, with effect from such notice, Article 8.3 and/or Article 35.2 (as appropriate) will apply.

- 8.3 For so long as the circumstances comprising an event set out in Article 8.2 continue to subsist (unless the Investors otherwise notify the Company in writing), the number of votes attaching to the A Ordinary Shares at any such general meeting will represent 95% of the voting rights attaching to all Shares after the application of this Article.
- 8.4 With effect from 31 March 2010 ("**Review Date**") the provisions of Article 8.5 will cease to have effect unless the Investors have on or before such date served notice in

writing on the Company that they wish the provisions of Article 8.5 to continue to apply ("**Reinstatement Notice**"). If the Investors have served a Reinstatement Notice then with effect from the Review Date, the provisions of Article 8.5 will continue to apply during the subsequent Accounting Period but shall cease to apply on the anniversary of the Review Date unless the Investors have on or before such date served a Reinstatement Notice. Thereafter the provisions of Article 8.5 shall cease to apply on the subsequent 12 month anniversary of the Review Date unless the Investors have on or before such date served a Reinstatement Notice.

- 8.5 Subject to Articles 8.3 and 8.4 (which, if applicable, will override the provisions of this Article 8.5) and notwithstanding the number of A Ordinary Shares in issue, for so long as the Investors (or any Associate of the Investors) hold any A Ordinary Shares, the A Ordinary Shares as a class shall confer on the A Ordinary Shareholders the entitlement to cast at any general meeting of the Company such percentage of all votes capable of being cast at that general meeting as is equal to the lower of:

- 8.6 49.99%; and

8.6.1 such percentage as is equal to the proportion which the aggregate number of A Ordinary Shares in issue held by the Investors (or any Associate of the Investors) bears to the aggregate number of Equity Shares in issue,

provided that the restriction on voting rights set out in this Article 8.5 shall not apply immediately prior to (or after) a Share Sale or Listing.

- 8.7 The C Ordinary Shares will carry no rights entitling their holders to receive notice of, attend, speak at or vote at any general meeting of the Company.

## **9. VARIATION OF SHARE RIGHTS**

- 9.1 The rights attached to any class of Shares may, in each case, be altered or abrogated (whether there has been a Liquidation or not) only with the prior consent of the A Ordinary Shareholders given in accordance with Article 9.2.

- 9.2 The consent of the A Ordinary Shareholders may be given by:

9.2.1 a special resolution passed at a separate general meeting of the A Ordinary Shareholders;

- 9.2.2 a written resolution in any form signed by or on behalf of the holders of not less than 75% in nominal value of the issued A Ordinary Shares.
- 9.3 Without prejudice to the general effect of Article 9.1, the following will be deemed to constitute a variation of the rights attached to the A Ordinary Shares:
- 9.3.1 any variation of the rights attaching to any class of Shares or a variation of the Acquisition Documents, the Investment Agreement, the Service Agreements, the Letters of Appointment or any documents entered into between any Group Member and its bankers;
  - 9.3.2 except for the purposes of purchasing any of the Deferred Shares in accordance with these Articles, the convening of a meeting to consider the passing of any resolution to reduce the Company's share capital or any amount standing to the credit of its share premium account or capital redemption reserve fund, or to reduce any uncalled liability in respect of partly paid Shares;
  - 9.3.3 the convening of a meeting to consider the passing of any resolution to alter the memorandum or articles of association of any Group Member;
  - 9.3.4 the payment of any distribution or return of a capital nature to any Member other than to the A Ordinary Shareholders in accordance with these Articles;
  - 9.3.5 the capitalisation of any undistributed profits (whether or not the same are available for distribution, and including profits standing to the credit of any reserve) or of any sums standing to the credit of any Group Member's share premium account or capital redemption reserve fund;
  - 9.3.6 the payment of any distribution or return of an income nature to any Member otherwise than in accordance with these Articles;
  - 9.3.7 any variation of the authorised or issued share capital of any Group Member;
  - 9.3.8 the making of any payment to any person for giving up their right to any share capital or its cancellation or extinguishment;

- 9.3.9 the creation or grant of any option or other right to subscribe for, convert into or issue any shares or other securities in the capital of any Group Member; or
- 9.3.10 the taking of any steps to commence a Liquidation in respect of or to dissolve any Group Member unless a registered insolvency practitioner shall have advised the directors of the company in writing that a Liquidation is required by reason of that company having become insolvent.

## **10. ISSUE AND ALLOTMENT OF NEW SHARES**

- 10.1 Subject to Article 10.3, and unless the Company by special resolution directs otherwise, any new Shares will be offered by the Directors for subscription to the holders of the Equity Shares (other than the holders of C Ordinary Shares) in such proportions as equal (as nearly as possible) the proportion of Equity Shares held by them respectively at that time. For the purpose of this Article, the Equity Shares (other than the C Ordinary Shares) will be treated as one class of Share.
- 10.2 The offer will be made by notice specifying the number and class of Shares offered, the price per Share, and a time (being not less than 14 days) within which the offer, if not accepted, will be deemed to be declined. At the end of that period or, if earlier, on the receipt of an indication from the person(s) to whom such notice is given that he/they decline(s) to accept some or all of the Shares so offered, the Directors will offer the declined Shares in the same proportions to the holders of Equity Shares (other than the holders of C Ordinary Shares) who have accepted all the Shares initially offered to them. This further offer will be made in the same manner as the original offer but may, at the discretion of the Directors, be limited to a period of seven days after which it will (to the extent that any Shares remain unaccepted) be deemed to have been withdrawn.
- 10.3 Any Shares not taken up at the end of the procedure set out in Articles 10.1 and 10.2 may be offered by the Directors to a third party (to be approved by the Investors), and, subject to these Articles, the provisions of section 80 of the 1985 Act and to the prior approval of the Investors, such Shares will 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 as they think fit. However:

- 10.3.1 no Shares will be issued at a discount;
  - 10.3.2 no Shares will be issued more than three months after the end of the period for acceptance of the last offer of such Shares under Articles 10.1 and 10.2 unless the procedure set out in those Articles is repeated in respect of such Shares; and
  - 10.3.3 no Shares will be issued on terms which are more favourable than those on which they were offered to the Members.
- 10.4 The provisions of sections 89(1) and 90(1) to (6) of the 1985 Act will not apply to the Company.
- 10.5 If, due to any inequality between the number of new Shares to be issued and the number of Shares held by Members entitled to have the offer of new Shares made to them, any difficulty arises in the apportionment of any such new Shares amongst the Members, such difficulties will be determined by the Board with the consent of the Investors.

## **11. TRANSFERS OF SHARES - PROHIBITED TRANSFERS**

### ***General prohibitions***

- 11.1 The Directors will not register any transfer of Shares:
- 11.1.1 to any person who, in the opinion of the Investors is carrying on business directly or indirectly in competition with the Company or any member of the Group, except this restriction will not apply to:
    - 11.1.1.1 any transfer required by and in accordance with Article 15;  
or
    - 11.1.1.2 any transfer of Shares pursuant to Articles 16 and 17; or
    - 11.1.1.3 any transfer of shares by or to the Investors (or either of them) (or any Associate of the Investors); or
    - 11.1.1.4 any transfer of Shares pursuant to Article 12.1; or

- 11.1.2 to any person who does not have legal capacity to hold such Shares or otherwise to comply fully with the provisions of these Articles; or
- 11.1.3 from any holder of C Ordinary Shares without the prior written consent of the Investors.

***Prohibition unless in accordance with those Articles***

- 11.2 Subject to Article 11.1, the Directors will not register a transfer of Shares unless:
  - 11.2.1 the transfer is permitted by Article 12, or has been made in accordance with Article 13; and
  - 11.2.2 the proposed transferee has entered into a deed of adherence to, and in the form required by the Investment Agreement.
- 11.3 For the purpose of ensuring that:
  - 11.3.1 a transfer of Shares is permitted under these Articles; or
  - 11.3.2 no circumstances have arisen whereby a Transfer Notice is required to be or ought to have been given,

the Board may, and will if so requested by the Investors, require any Member or the PRs to procure that any person whom the Board and/or the Investors reasonably believe(s) to have information relevant to such purpose provides the Company with such information and evidence as the Board and/or the Investors think fit regarding any matter which they may deem relevant for such purposes. Pending the provision of such information the Board will be entitled to refuse to register any relevant transfer.

- 11.4 Regulations 24, 25 and 26 will not apply to the Company.

**12. PERMITTED TRANSFERS**

- 12.1 The Investors (or either of them) may transfer any Shares without restriction at any time to:
  - 12.1.1 each other;
  - 12.1.2 an Associate of the Investors (or either of them);



- 12.1.3 an Institutional Investor;
- 12.1.4 a Co-Investment Scheme;
- 12.1.5 in the case of a Co-Investment Scheme which holds Shares through another undertaking:
  - 12.1.5.1 to any other undertaking which holds or is to hold the Shares for the Co-Investment Scheme; and/or
  - 12.1.5.2 to any officer, employee or partner entitled to the Shares under the Co-Investment Scheme;
- 12.1.6 an acquiror of the whole or substantially the whole of the Investors' portfolio of companies.
- 12.2 Where any B Ordinary Shares or C Ordinary Shares are or should be the subject of a Transfer Notice, no transfers of any such Shares shall be permitted pursuant to this Article 12.
- 12.3 Subject to Articles 11 and 12.2, and to Articles 12.4 to 12.5 (inclusive), any B Ordinary Share or C Ordinary Share may be transferred:
  - 12.3.1 when required by, and in accordance with, Article 15; or
  - 12.3.2 to a Buyer in acceptance of an Approved Offer pursuant to Article 16 or Article 17; or
  - 12.3.3 to the Investors (or either of them) pursuant to clause 4.7 of the Investment Agreement; or
  - 12.3.4 if held by an Employee Benefit Trust, to any beneficiary of that trust or to any replacement trustees or into the joint name of the existing and any new or additional trustees;
  - 12.3.5 when required by the Investors (or either of them).
- 12.4 A Ordinary Shares will, if so required by the Investors by notice served on the Company, immediately and without resolution of the Directors or the Members be converted into C Ordinary Shares upon being held (whether by virtue of a new issue

or transfer of such A Ordinary Shares or otherwise) by any person who is not a holder of any other A Ordinary Shares.

- 12.5 No transfers of any Shares shall be permitted pursuant to this Article 12 except with the prior written consent of the Investors.

### **13. PRE-EMPTION**

#### ***Transfer notices***

- 13.1 Except in the case of a transfer pursuant to Article 12, and subject to the prohibitions on transfers set out in Article 11, a Seller must give a Transfer Notice to the Company copied to the Investors.
- 13.2 Each Transfer Notice will (except as provided in Article 15) relate to one class of Shares only and will specify:
- 13.2.1 the number and class of Sale Shares;
  - 13.2.2 the identity of the Proposed Transferee(s) (if any);
  - 13.2.3 the price per Share at which the Seller wishes to transfer the Sale Shares; and
  - 13.2.4 whether or not the Transfer Notice is subject to a Total Transfer Condition. In the absence of any such stipulation it will be deemed not to be so conditional. No Total Transfer Condition will apply in respect of any Transfer Notice deemed to have been given pursuant to Article 15.
- 13.3 No Transfer Notice will be capable of variation or cancellation without the consent of the Board (subject to the approval of the Investors) unless the Auditors (or independent accountants) subsequently determine the Market Value of the Sale Shares to be less than the price specified in the Transfer Notice.

#### ***Transfer price***

- 13.4 The Transfer Notice will constitute the Company as the agent of the Seller for the transfer of all the legal title to, beneficial ownership of and all interests and rights attaching to the Sale Shares in accordance with this Article 13 at the following price ("**Transfer Price**");

- 13.4.1 the price which may be agreed between the Seller and the Board (subject to the approval of the Investors) as representing the Market Value of the Sale Shares or as being acceptable to the Seller and not more than the Market Value thereof within 10 Business Days after the date of service or deemed service of the Transfer Notice; or
- 13.4.2 in default of agreement under Article 13.4.1 the lower of:
  - 13.4.2.1 the price per Share specified in the Transfer Notice; and
  - 13.4.2.2 if the Investors elect within 15 Business Days after the date of service or deemed service of the Transfer Notice to instruct the Auditors for the purpose, the Market Value of the Sale Shares as at the date of service or deemed service of the Transfer Notice, and as determined in accordance with Articles 2.5 and 14.

***First offer to Company/Employee Benefit Trust***

- 13.5 The following provisions of this Article 13.5 will apply to any transfer of any Shares by any Member other than in accordance with Article 12.

- 13.5.1 Within 10 Business Days after the later of:
  - 13.5.1.1 the receipt by the Company of a Transfer Notice; and
  - 13.5.1.2 the determination of the Transfer Price,

the Investors may direct the Company (in its capacity as agent for the Seller) immediately to offer at the Transfer Price such number of Sale Shares as they may determine to:

  - 13.5.1.3 the Company pursuant to the provisions of Part V of the 1985 Act; and/or
  - 13.5.1.4 any person who will hold the Sale Shares for the benefit of existing or future employees including (without limitation), any Employee Benefit Trust of any Group Member or any professional trustee, in any such case to hold the Sale Shares upon the terms of a discretionary trust for the benefit of the

class of beneficiaries which includes (without limitation) employees and directors of any Group Member.

13.5.2 Subject to the provisions of Article 13.5.1, if any offeree of the Sale Shares pursuant to this Article 13.5 applies for any of them within 15 Business Days after the date of the offer, the Company will allocate to such offeree the number of Sale Shares applied for on the later of:

13.5.2.1 the fifteenth Business Day following receipt of the Transfer Notice; and

13.5.2.2 the date on which the Transfer Price is determined.

13.5.3 If all of the Sale Shares are so allocated, the provisions of Articles 13.6 to 13.11 will not apply. If none or some only of the Sale Shares are so allocated, the provisions of Articles 13.6 to 13.11 will have effect as if reference to Sale Shares was to those not allocated in accordance with this Article 13.5.

***Offer to Members and notice to the Investors***

13.6 Subject to Article 13.5, within 10 Business Days after its receipt of a Transfer Notice or, where later, on the determination of the Transfer Price, the Company (in its capacity as agent for the Seller) will give notice in writing to each of the Members holding the same class of Shares as the Sale Shares (other than the Seller, a Compulsory Seller and any other Member who has served or who is deemed to have served a Transfer Notice in respect of his entire holding of Shares pursuant to which the sale of such Shares has not then been concluded) offering the Sale Shares for sale at the Transfer Price in accordance with Article 13.4. The notice will specify that the Members will have a period of up to 20 Business Days from the date of such notice within which to apply for some or all of the Sale Shares.

13.7 If after the expiry of the offer period specified in Article 13.6 any Sale Shares remain unallocated the Company (in its capacity as agent for the Seller) will give notice in writing to each of the Members (other than the Seller, a Compulsory Seller, any other Member who has served or who it is deemed to have served a Transfer Notice in respect of his holding of Shares pursuant to which the sale of such Shares has not been concluded and any other Member to whom the Sale Shares were offered in

accordance with Article 13.6) offering the unallocated Sale Shares for sale at the Transfer Price in accordance with Article 13.4. The notice will specify that such Members will have a period of up to 20 Business Days from the date of such notice within which to apply for some or all of the unallocated Sale Shares.

- 13.8 Whenever the Sale Shares are B Ordinary Shares, all holders of B Ordinary Shares to whom the offer is made must, before making their applications for Sale Shares and in any event within 10 Business Days from the date of the notice given by the Company, notify the Investors in writing of whether they intend to accept the offer and, if so, the number of Sale Shares, including Extra Shares, for which they intend to apply.
- 13.9 Whenever the Sale Shares are C Ordinary Shares, all holders of C Ordinary Shares to whom the offer is made must, before making their applications for Sale Shares and in any event within 10 Business Days from the date of the notice given by the Company, notify the Investors in writing of whether they intend to accept the offer and, if so, the number of Sale Shares, including Extra Shares, for which they intend to apply.
- 13.10 It will be a term of any offer made in accordance with Article 13.6 or Article 13.7 that, if there is competition between Members for the Sale Shares or unallocated Sale Shares (as appropriate), such Sale Shares or unallocated Sale Shares (as appropriate) will be treated as offered among the Members in proportion (as nearly as possible) to their existing holdings of Shares ("**Proportionate Entitlement**"). However, the offer will also invite Members to indicate in their applications for Sale Shares or unallocated Sale Shares (as appropriate), whether they would be willing to buy Shares in excess of their Proportionate Entitlement should any such Shares be available and, if so, how many ("**Extra Shares**").

#### *Allocation of shares*

- 13.11 After the expiry of the offer period specified in Article 13.6, (or, if sooner, upon valid applications being received for all of the Sale Shares in accordance with that Article), or if Article 13.7 is applicable the offer period specified in Article 13.7, the Board will allocate the Sale Shares as follows:
- 13.11.1 if the total number of Sale Shares applied for (including Extra Shares) is equal to or less than the available number of Sale Shares, each offeree will be allocated the number applied for in accordance with his application (subject to Article 13.15); or

- 13.11.2 if the total number of Sale Shares applied for is greater than the available number of Sale Shares, each offeree will be allocated his Proportionate Entitlement, or, if less, the number of Sale Shares which he has applied for; and
  - 13.11.3 applications for Extra Shares will be allocated in accordance with such applications or, in the event of competition between Members, among those applying for Extra Shares in such proportions as equal (as nearly as possible) the proportions of all the Shares held by such offerees.
- 13.12 Allocations of Sale Shares made by the Company pursuant to this Article 13 will constitute the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them, provided that no person will be obliged to take more than the maximum number of Sale Shares which he has indicated to the Company he is willing to purchase.

***Completion of sale and purchase of Sale Shares***

- 13.13 The Company will immediately upon allocating any Sale Shares (whether pursuant to Article 13.5.2 or Article 13.11) give notice in writing ("**Allocation Notice**") to the Seller and to each person to whom Sale Shares have been allocated specifying:
- 13.13.1 the name and address of the person to whom Sale Shares have been so allocated;
  - 13.13.2 the number of Sale Shares so allocated;
  - 13.13.3 the aggregate price payable for them;
  - 13.13.4 any additional information required by Article 13.15.1 (if applicable); and
  - 13.13.5 (subject to Article 13.15.1) the place and time (being not later than five Business Days after the date of the Allocation Notice) at which the sale of the Sale Shares will be completed.
- 13.14 Subject to Article 13.15, completion of the sale and purchase of Sale Shares in accordance with the Allocation Notice will take place at the place and time specified in the Allocation Notice when the Seller will, upon payment of the due price, transfer

those Sale Shares specified in the Allocation Notice and deliver the relevant Share certificates to the persons to whom they have been allocated.

13.15 If the Transfer Notice included a Total Transfer Condition and the total number of Shares applied for is less than the number of Sale Shares:

13.15.1 the Allocation Notice will refer to such Total Transfer Condition and will contain a further offer, open for 28 days, to those persons to whom Sale Shares have been allocated to apply for further Sale Shares; and

13.15.2 completion of the transfer in accordance with the preceding paragraphs of this Article 13 will be conditional upon all such Sale Shares being so allocated.

***Default by the Seller***

13.16 Except in the case of an acquisition of Sale Shares by the Company, if the Seller fails by the due completion date to execute and deliver transfers in respect of any of the Sale Shares which he is due to transfer, the Board may (and will if requested by the Investors) authorise any Director to:

13.16.1 execute the necessary transfer(s) on the Seller's behalf; and

13.16.2 against receipt by the Company of the Transfer Price payable for the relevant Sale Shares (to be held on trust for the Seller without interest) (the receipt being a good discharge to the offeree who will not be bound to see to the application of it), deliver such transfer(s) to the relevant offeree(s).

The Board will authorise registration of the transfer(s), and of the offeree(s) as the holder(s) of the Sale Shares so transferred, once appropriate stamp duty has been paid. After registration, the title of such offeree(s) as registered holder(s) of such Sale Shares will not be affected by any irregularity in, or invalidity of such proceedings, which will not be questioned by any person.

13.17 In the case of an acquisition of Sale Shares by the Company, if the Seller fails by the due completion date to transfer and/or to deliver the certificates (or a suitable indemnity) in respect of any Sale Shares, the Board may (and will if requested by the Investors) authorise any Director to execute, complete and deliver the necessary

transfer and indemnity to the Company on the Seller's behalf. When that instrument has been duly stamped, the Company will ensure that such share capital is cancelled in accordance with the Act, and will hold the purchase monies on trust (without interest) for the Seller.

***Exhaustion of pre-emption rights***

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

- 13.18.1 the Board will refuse registration of any transfer to a Proposed Transferee who is a person to whom Shares may not be transferred by virtue of Articles 11.1.1 or 11.1.2;
- 13.18.2 if any such transfer would, if made and registered, result in the Proposed Transferee obtaining or increasing a Controlling Interest, the Board will refuse registration of such transfer until such time as an Approved Offer has been made and the provisions of Article 16 complied with;
- 13.18.3 any such transfer must be in good faith and the Board may require to be satisfied (in such manner as it (with the approval of the Investors) may reasonably think fit) that the Sale Shares are being sold at a price which is not less than the Transfer Price without any deduction, rebate or allowance whatsoever. If not so satisfied, the Board (subject to the approval of the Investors) may refuse to register the transfer; and
- 13.18.4 in the case of any deemed transfer process pursuant to Article 15, the Compulsory Seller will not be entitled to transfer any unsold Sale Shares to any third party.



## 14. VALUATION

### *Determination of "Market Value"*

If the Auditors (or, by virtue of Article 2.5, independent accountants) are required to determine Market Value pursuant to Article 13.4.2.2, the provisions set out below will apply.

14.1 Market Value will be determined by the Auditors or, as the case may be, independent accountants, first valuing the Company as a whole:

14.1.1 assuming, if the Company is then carrying on business as a going concern, that it will continue to do so;

14.1.2 assuming that the entire issued share capital of the Company is being sold as between a willing buyer and a willing seller by arm's-length private treaty for cash payable in full on completion;

14.1.3 taking account of any Shares which may be allotted pursuant to options which have been issued by the Company and which are still outstanding; and

14.1.4 taking account of any bona fide offer for the Company received from an unconnected third party within six months prior to the Transfer Notice being served or deemed to have been served.

14.2 Having valued the Company as a whole, the Auditors or, as the case may be, independent accountants will determine the Market Value of the Shares concerned:

14.2.1 having deducted from the value of the Company as a whole (if not already taken into account when so valuing the Company) any arrears, accruals or deficiencies of dividend on the A Ordinary Shares and the B Ordinary Shares;

14.2.2 disregarding whether the Shares concerned represent a majority or a minority interest.

14.3 The costs and expenses of the Auditors (or independent accountants) for reporting on their opinion of the Market Value will be borne as to one half by the Seller and as to other half by the purchasing Shareholders pro-rata to the number of Sale Shares purchased by them unless:

14.3.1 the Seller revokes the Transfer Notice under Article 13.3; or

14.3.2 none of the Sale Shares are purchased by Members pursuant to Article 13,

in which case the Seller will pay all such costs and expenses.

## **15. COMPULSORY TRANSFERS**

### ***Circumstances which trigger compulsory transfer***

15.1 This Article 15 applies when a Relevant Individual ceases for any reason (including death or bankruptcy) to be an employee and/or director or Consultant of any Group Member, save that the provisions of Articles 15.7 to 15.9 (inclusive) shall apply to the holder of any C Ordinary Shares.

### ***Compulsory pre-emption procedure***

15.2 The Board may (and will if requested by the Investors) serve notice ("**Compulsory Sale Notice**") on the Relevant Individual (or the PRs or the trustee in bankruptcy of any bankrupt Member), (each a "**Compulsory Seller**" and together "**Compulsory Sellers**") requiring each such person to offer for sale such number as the Investors may decide of the Shares registered in his or their name(s) or to which he is or they are or may become entitled whether as a result of his or their holding of Shares or otherwise.

15.3 The Shares which are the subject of the Compulsory Sale Notice will be offered for sale (other than to any Compulsory Seller or any other Member who has served or who is deemed to have served a Transfer Notice in respect of his entire holding of Shares which is still outstanding) in accordance with the provisions of Article 13, (which will apply as if set out in full in this Article except to the extent that they are varied by the following provisions of this Article 15) except that the Shares which are the subject of the Compulsory Sale Notice will be offered for sale first to the Investors and if not acquired by the Investors then in accordance with the provisions of Article 13 (which will apply as if set out in full in this Article 15 except to the extent that they are varied by the following provisions of this Article 15). The Investors may also determine in their absolute discretion to revoke any Transfer Notice previously given or deemed to have been given by the Compulsory Seller(s) which is still outstanding at the Cessation Date.

***Sale Price - Good Leaver/Bad Leaver***

15.4 The price for the Sale Shares will be:

15.4.1 if the Relevant Individual is a Bad Leaver the lower of:

15.4.1.1 the issue price (including any premium) of the Sale Shares (or, where any of the Sale Shares were acquired by a Compulsory Seller by way of transfer rather than allotment, the lower of the issue price (including any premium) and the amount paid by such Compulsory Seller on the transfer); and

15.4.1.2 the Market Value of the Sale Shares on the Cessation Date to be agreed or determined in accordance with Article 15.5;

15.4.2 if the Relevant Individual is a Good Leaver the price will be the Market Value of the Sale Shares on the Cessation Date, to be agreed or determined as aforesaid.

15.5 **"Market Value"** for the purposes of Article 15 will be:

15.5.1 the price agreed between the Compulsory Seller(s) and the Investors; or

15.5.2 if they fail to agree a price within 15 Business Days of the date of service of the Compulsory Sale Notice (or within such other timetable as may be determined by the Investors), the price determined by an independent firm of chartered accountants agreed or appointed as provided in Article 2.5 to be the Market Value of such Shares on the Cessation Date, according to the principles set out in Article 14, but having regard also to the effect on the Group of the Relevant Individual in question ceasing to be an employee or director or Consultant of any Group Member. The costs and expenses of the independent accountants for reporting on their opinion of the Market Value will be borne by the Compulsory Seller(s) except where the Market Value, determined as aforesaid, exceeds by 10% or more the price for such Sale Shares initially proposed by the Investors but not agreed by the Compulsory Seller(s), in which case such costs and expenses shall be borne by the Company.

***Suspension of voting rights during compulsory transfer procedure***

- 15.6 Unless the Investors direct otherwise in writing, any Shares held by a Compulsory Seller on the Cessation Date (and any Shares issued to a Compulsory Seller after such date by virtue of the exercise of any right or option granted or arising by virtue of his holding of the Sale Shares) will cease to confer the right to be entitled to receive notice of, attend, speak at and vote at any general meeting of the Company, or any meeting of the holders of any class of Shares with effect from the Cessation Date (or, where appropriate, the date of issue of such Shares, if later), and such Shares will not be counted in determining the total number of votes which may be cast at any such meeting, or for the purposes of a written resolution of any Members or class of Members. That right will be restored immediately upon the Company registering a transfer of the Sale Shares in accordance with this Article 15.

***Transmission of Shares***

- 15.7 Regulations 29 to 31 shall take effect subject to Articles 15.8 and 15.9.
- 15.8 Without prejudice to Articles 15.1 and 15.2 (the provisions of which, when operable, will override the provisions of this Article 15.8 and the provisions of Articles 15.7), a person entitled to a Share or Shares in consequence of the death, bankruptcy, receivership or liquidation of a Member or otherwise by operation of law shall be bound at any time, if called upon in writing to do so by the Directors with the consent of the Investors not later than 90 days after the Directors receive notice from the person concerned that he has become so entitled, to give a Transfer Notice (without specifying a Transfer Price) in respect of all of the Shares then registered in the name of the deceased or insolvent Member in accordance with the provisions of Article 13, which will apply as if set out in full in this Article.
- 15.9 If any such person fails to give a Transfer Notice in accordance with Article 15.8 within 10 Business Days after being called upon to do so:
- 15.9.1 the Board may (and will if requested by the Investors) authorise any Director to execute and deliver a transfer of the Shares concerned to a person appointed by the Directors as a nominee for the person entitled to the Shares; and

- 15.9.2 the Company may give a good receipt for the purchase price of such Shares, register the purchaser or purchasers as the holders of them and issue certificates for the same to such purchasers. After registration, the title of such purchaser or purchasers as registered holder(s) of such Shares will not be affected by any irregularity in, or invalidity of, such proceedings, which will not be questioned by any person. In any such case the person entitled to the Shares as a consequence of the death, insolvency or otherwise by operation of law will be bound to deliver up the certificates for the Shares concerned to the Company whereupon he will become entitled to receive the purchase price. In the meantime, the purchase price will be held by the Company on trust for such person without interest.

## 16. CHANGE OF CONTROL - TAG ALONG RIGHTS

- 16.1 No transfer of Shares which would result, if made and registered, in a person or persons (other than the Investors or an Associate of the Investors) Acting in Concert obtaining or increasing a Controlling Interest, will be made or registered unless:

16.1.1 an Approved Offer is made by the proposed transferee(s) ("**Buyer**") or, at the Buyer's written request, by the Company as agent for the Buyer; and

16.1.2 the Buyer complies in all respects with the terms of the Approved Offer at the time of completion of the sale and purchase of Shares pursuant to it.

- 16.2 For the purposes of this Article 16 and Article 17:

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

16.2.1.1 is stipulated to be open for acceptance for at least 15 Business Days;

- 16.2.1.2 offers consideration for each Equity Share on no less favourable terms, whether in cash, securities or otherwise in any combination, as that offered to the holders of the A Ordinary Shares;
- 16.2.1.3 includes an undertaking by or on behalf of the Buyer that, subject to compliance by the Buyer with Article 16.2.1.4, no other consideration, (whether in cash or otherwise) is to be received or receivable by any Member which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Shares to be sold by such Member, and that neither the Buyer nor any person acting by agreement or understanding with it has otherwise entered into more favourable terms or has agreed more favourable terms with any other Member for the purchase of Equity Shares;
- 16.2.1.4 in the case of the A Ordinary Shares, includes provision for the payment of all arrears and accruals of dividend owed to the holders of the A Ordinary Shares and a price for each A Ordinary Share which is not less than the amount Credited as Paid Up on each A Ordinary Share;
- 16.2.1.5 makes provision by the Company in accordance with these Articles of any Deferred Shares or, if the Company is unable to lawfully effect any such purchase, makes provision for the purchase of such Deferred Shares at the price at which they would have been purchased by the Company;
- 16.2.1.6 is on terms that the sale and purchase of Shares in respect of which the offer is accepted will be completed at the same time; and
- 16.2.1.7 is approved by the Investors.

## 17. CHANGE OF CONTROL - DRAG ALONG RIGHTS

- 17.1 Whenever an Approved Offer is made the holders of 75% of the A Ordinary Shares shall have the right ("**Drag Along Right**"), to require (in the manner set out in Article 17.2) all of the other holders of Equity Shares ("**Other Shareholders**") to accept the Approved Offer in full.
- 17.2 The Drag Along Right may be exercised by the service of notice to that effect on the Other Shareholders at the same time as, or within five Business Days following the making of the Approved Offer.
- 17.3 On the exercise of the Drag Along Right, each of the Other Shareholders will be bound to accept the Approved Offer in respect of its entire holding of Equity Shares and to comply with the obligations assumed by virtue of such acceptance.
- 17.4 If any of the Other Shareholders fails to accept the Approved Offer or, having accepted such offer, fails to complete the sale of any of its Equity Shares pursuant to the Approved Offer, or otherwise fails to take any action required of it under the terms of the Approved Offer, the Investors or any persons so authorised by the Board with the prior written consent of the Investors may accept the offer on behalf of the Other Shareholder in question, or undertake any action required under the terms of the Approved Offer on the part of the Other Shareholder in question. In particular, such person may execute the necessary transfer(s) on that Other Shareholder's behalf and against:
- 17.4.1 receipt by the Company (on trust for such Other Shareholder) of the consideration payable for the relevant Shares (the receipt being a good discharge to the Buyer, who will not be bound to see to the application of it); and
- 17.4.2 compliance by the Buyer and, where relevant, the Company with all other terms of the Approved Offer,

deliver such transfer(s) to the Buyer (or its nominee). The Board will then authorise registration of the transfer(s) and of the Buyer (or its nominee) as the holder of the Shares so transferred. After registration, the title of the Buyer (or its nominee) as registered holder of such Shares will not be affected by any irregularity in, or invalidity of such proceedings, which will not be questioned by any person. The

Other Shareholder, will in such a case be bound to deliver up its certificate for its or his Shares to the Company, or a statutory declaration of loss (as appropriate) whereupon the Other Shareholder will be entitled to receive the purchase price for such Shares.

## **18. ELECTRONIC COMMUNICATION**

Regulation 1 is modified by:

- 18.1 deleting the definition given of "electronic communication" and substituting in its place the definition given in these Articles; and
- 18.2 deleting the words "'communication" means the same as in the Electronic Communications Act 2000."

## **19. SHARE CERTIFICATES**

Regulation 6 is modified by adding after "Every certificate shall be sealed with the seal" the words "or executed in such other manner as the Directors authorise, having regard to the Act,".

## **20. LIEN**

- 20.1 Regulation 8 is modified by the deletion of the words "(not being a fully paid share)".
- 20.2 The lien conferred by Regulation 8 will apply to all Shares, whether fully paid or not, and to all Shares registered in the name of any person under a liability to the Company (whether actual or contingent), whether he is the sole registered holder of such Shares or one of two or more joint holders of such Shares.

## **21. GENERAL MEETINGS**

- 21.1 Regulation 37 is modified by the insertion of the words "or the Investor Director or Independent Director acting alone" after the second word of that Regulation.
- 21.2 A general meeting may consist of a conference between Members, some or all of whom are in different places if each Member who participates is able:
  - 21.2.1 to hear each of the other participating Members addressing the meeting;
  - and



21.2.2 if he so wishes, to address all of the other participating Members simultaneously,

whether directly, by conference telephone or by any other form of communications equipment (whether in use when these Articles are adopted or not) or by a combination of those methods.

21.3 A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of Members required to form a quorum. A meeting held in this way is deemed to take place at the place where the largest group of participating members is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates. A resolution put to the vote of a meeting will be decided by each Member indicating to the chairman (in such manner as the chairman may direct) whether the Member votes in favour of or against the resolution or abstains. References in this Article 21 to Members includes their duly appointed proxies and, in the case of corporate members, their duly authorised representatives.

## **22. PROCEEDINGS AT GENERAL MEETINGS**

22.1 Regulation 40 is modified so that the quorum for any general meeting (other than a separate class meeting) will include at least one Member present in person or by proxy from each class of Equity Shareholder (other than holders of C Ordinary Shares).

22.2 If any meeting is adjourned pursuant to Regulation 41 because a quorum is not present, and at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the shareholders present will form a quorum. Regulation 41 is modified accordingly.

22.3 Regulation 46 is modified so that a poll may be demanded by the chairman or by any Member present in person or by proxy and entitled to vote at the meeting.

22.4 A corporation which is a member of the Company may, by resolution of its directors or other governing body, authorise such a person or persons as it thinks fit to act as its representative or representatives at any meeting of the Company or at any meeting of any class of Members. The provisions of the Act shall apply to determine the powers that may be exercised at any such meeting by any person so authorised. The corporation shall, for the purposes of these Articles, be deemed to be present in

person at any such meeting if any person so authorised is present at it, and all references to attendance and voting in person shall be construed accordingly.

22.5 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman will not be entitled to a casting vote in addition to any other vote which he may have.

22.6 Regulation 51 is amended by replacing the first and second sentences with the following words: "A poll demanded will be taken immediately".

## **23. WRITTEN RESOLUTIONS**

A proposed written resolution lapses if it is not passed before the end of the period of 28 days beginning with the circulation date (as defined in section 290 of the 2006 Act). The "requisite percentage" of members who can require circulation of a written resolution and any accompanying statement under section 292 of the 2006 Act is five per cent.

## **24. VOTES OF MEMBERS**

24.1 Regulation 54 shall not apply to the Company.

24.2 Regulation 56 shall be modified by the deletion of the words "instruments of proxy, not less than 48 hours before the time appointed for holding" and substituting instead the words "forms of proxy, within the time limits prescribed by these articles for deposit of forms of proxy for use at" and by including the words "or poll" after the words "adjourned meeting".

24.3 Regulation 57 is modified by the inclusion after the word "shall" of the phrase ", unless the Directors otherwise determine,".

24.4 Regulation 59 is modified by including the words "and on a show of hands" after the words "On a poll" and by including the words ", provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him. When two or more valid but different forms of proxy or appointments of proxy by electronic means are delivered or received in respect of the same share for use at the same meeting, the one which is last validly delivered or received (regardless of its date or the date of its execution) shall be treated as replacing and revoking the other(s) as regards that share. If the Company is unable to determine which was last delivered or received, none of them shall be treated as valid in respect of that share.

Deposit or delivery of an appointment of proxy will not preclude a Member from attending and voting at the meeting or at any adjournment of the meeting" after the words "to attend on the same occasion".

- 24.5 Subject to Article 24.6 a form appointing a proxy shall be in writing in the usual form, or in such other form which the Directors may approve, and shall be executed by or on behalf of the appointor.
- 24.6 Subject to the Act, the Directors may resolve to allow a proxy to be appointed by an Electronic Communication subject to limitations, restrictions or conditions as the Directors think fit (including, without limitation, the ability to require such evidence as they consider appropriate to decide whether the appointment of a proxy in such manner is effective).
- 24.7 In order for the appointment of proxy to be valid:
  - 24.7.1 (in the case of an appointment of proxy by hard copy) the form of the proxy, together with the relevant documents, if any, must be:
    - 24.7.1.1 left at or sent by post to the office (or such other place within the United Kingdom as is specified in the notice convening the meeting and/or in any form of proxy or other accompanying document sent out by the Company in relation to the meeting) by the relevant time; or
    - 24.7.1.2 duly delivered in accordance with Article 24.9;
  - 24.7.2 (in case of an appointment of proxy by Electronic Communication) the communication appointing the proxy, together with the relevant evidence, must be received at the address by the relevant time.
- 24.8 For the purposes of Article 24.7:
  - 24.8.1 for the purpose of appointing a proxy by Electronic Communication the "address" means the number or address which has been specified by the Company for the purpose of receiving Electronic Communications appointing proxies;

24.8.2 **"relevant documents"** means either (i) the power of attorney or other authority relied on to sign the form of proxy, or (ii) a copy of such document certified as a true copy of the original by a notary or solicitor or certified in some other way approved by the Directors;

24.8.3 **"relevant evidence"** means any evidence required by the Directors in accordance with the provisions of Article 24.6; and

24.8.4 **"relevant time"** means 48 hours before the time appointed for the commencement of the meeting or adjourned meeting to which the proxy appointment relates.

24.9 If a meeting is adjourned for less than 48 hours, a form of proxy may also be delivered in hard copy form at the adjourned meeting to the chairman or to the secretary or to any Director.

24.10 Regulations 60 to 62 (inclusive) shall not apply to the Company.

## **25. NUMBER OF DIRECTORS**

Unless and until otherwise determined by ordinary resolution of the Company, the number of Directors (other than alternate directors) is not subject to any maximum and the minimum is one (except in circumstances where an Investor Director has been appointed in which case the minimum should be two not including the Investor Director or the Independent Director). Regulation 64 shall be modified accordingly.

## **26. ALTERNATE DIRECTORS**

26.1 Any Investor Director and any Independent Director may appoint any person willing to act, whether or not he is a director of the Company, to be an alternate director. Regulation 65 is modified so that any such appointment does not need to be approved by resolution of the Directors. In Regulation 67 the words "but, if" and the words which follow to the end of the Regulation are deleted.

26.2 Regulation 66 is modified so that an alternate director who is absent from the United Kingdom is entitled to receive notice of all meetings of Directors and of committees of Directors of which his appointor is a member. An alternate director may waive the requirement that notice be given to him of a meeting of Directors or of a committee of Directors of which his appointor is a member, either prospectively or retrospectively.

- 26.3 The first sentence of Regulation 66 is modified so that an alternate director will not be entitled as such to receive any remuneration from the Company although he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as his appointor may direct by notice in writing to the Company.
- 26.4 An alternate director will be entitled to be reimbursed by the Company such expenses as might properly be reimbursed to him if he were a Director.
- 26.5 An alternate director's appointment will determine if he resigns by written notice left at or sent to the registered office of the Company.
- 26.6 A Director, or any other person mentioned in Regulation 65, may act as an alternate director to represent more than one Director, and an alternate director will be entitled at any meeting of the Board to one vote for every Director whom he represents in addition to his own vote (if any) as a Director, but he will count as only one person for the purpose of determining whether a quorum is present.

## **27. DELEGATION OF DIRECTOR'S POWERS**

Regulation 72 is modified by the addition at the end of the Regulation of the following sentence: "Where a provision of these Articles refers to the exercise of a power, authority or discretion by the Directors and that power, authority or discretion has been delegated by the Directors to a committee, the provision must be construed as permitting the exercise of the power, authority or discretion by the committee."

## **28. APPOINTMENT AND RETIREMENT OF DIRECTORS**

- 28.1 A Director will not retire by rotation. Regulations 76 and 77 will not apply to the Company and reference in Regulations 67, 78 and 84 to retirement by rotation will be disregarded.
- 28.2 Regulation 81(e) will not apply to any Investor Director or any Independent Director.
- 28.3 The holder or holders of such number of Shares as give the right to a majority of votes at general meetings of the Company may, by giving notice on the Company, remove any Director from office and/or appoint any person to be a Director. The notice must be signed by or on behalf of such holder or holders (and may consist of several documents in similar form each signed by or on behalf of one or more holders) and must be left at or sent by post or fax to the registered office or such other

place designated by the Directors for the purpose. Such removal or appointment will take effect when the notice is received by the Company or on such later date (if any) as may be specified in the notice. This Article 28.3 will not apply to the appointment or removal of an Investor Director or an Independent Director. This Article 28.3 is not to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as Director or of any appointment terminating with that of Director.

## **29. DISQUALIFICATION AND REMOVAL OF DIRECTORS**

The office of a Director will be vacated if:

- 29.1 he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a director;
- 29.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally;
- 29.3 he becomes, in the opinion of all his co-Directors, incapable by reason of mental disorder of discharging his duties as Director;
- 29.4 he resigns his office by notice in writing to the Company;
- 29.5 (other than in the case of any Investor Director and any Independent Director) he has for more than six consecutive months been absent without permission of the Directors from meetings of Directors held during that period and his alternate director (if any) has not during that period attended any such meetings instead of him, and the Directors resolve that his office be vacated;
- 29.6 (other than in the case of any Investor Director and any Independent Director) he is removed from office by notice addressed to him at his last-known address and signed by all his co-Directors;
- 29.7 (other than in the case of any Investor Director and any Independent Director) he is removed from office by notice given by a member or members under Article 28.3; or
- 29.8 being an executive Director he ceases, for whatever reason, to be employed by any member of the Group.

### **30. REMUNERATION COMMITTEE**

Without prejudice to Regulation 72 there will be a Remuneration Committee which will operate in accordance with the Investment Agreement. Regulation 82 will not apply to the Company.

### **31. DIRECTORS' APPOINTMENTS**

31.1 Regulation 84 is modified by the addition of the words: "with the consent of the Investors" after the words "the directors" and before the words "may appoint" in the first sentence, and after the words "the directors" and before the word "determine" and after the words "as they" and before the words "think fit" in the second sentence.

### **32. DIRECTORS' INTERESTS**

32.1 For the purposes of section 175 of the 2006 Act:

32.1.1 a Director shall be authorised to hold office as a director or other officer of, be employed or engaged by, hold shares or other securities in, or otherwise be interested in, whether directly or indirectly, any Group Member; and

32.1.2 an Investor Director and an Independent Director shall be authorised to hold office as a director or other officer of, be employed or engaged by, hold shares or other securities in, or otherwise be interested in, whether directly or indirectly:

32.1.2.1 an Investor;

32.1.2.2 an Investor Associate;

32.1.2.3 any other company in which an Investor or Investor Associate also holds shares or other securities or is otherwise interested; and

32.1.2.4 any Group Member.

32.2 For the purposes of section 175 of the 2006 Act, where an office, employment, engagement or interest held by an Investor Director or an Independent Director in another entity has been authorised pursuant to Article 32.1.2 and his relationship with

that entity gives rise to an actual or potential conflict of interest, an Investor Director or an Independent Director shall be authorised to:

- 32.2.1 attend and vote at meetings of the directors of any Group Member (or any committee thereof) at which any matter relating to the actual or potential conflict of interest will or may be discussed and receive board papers or other documents relating thereto;
  - 32.2.2 receive confidential information and other documents and information relating to the Group, use and apply such information in performing his duties as a director, officer or employee of, or consultant to an Investor or Investor Associate and disclose that information to third parties in accordance with the Investment Agreement and these Articles;
  - 32.2.3 give or withhold consent or give any direction or approval under the Investment Agreement and these Articles on behalf of an Investor; and
  - 32.2.4 provided the circumstances comprising an event specified in Article 8.2 continue to subsist, exercise the rights conferred on him pursuant to Article 35.2.
- 32.3 For the purposes of section 175 of the 2006 Act, the Directors shall (with the prior written consent of the Investors) have the power to authorise any matter which would or might otherwise constitute or give rise to a breach of the duty of a director under that section to avoid a situation in which he has, or can have, an actual or potential conflict of interest, provided that authorisation of such a matter shall be effective only if:
- 32.3.1 any requirement as to the quorum at the meeting of the Directors at which the matter is considered is met without counting the Director in question and any other interested Director (together the "**Interested Directors**"); and
  - 32.3.2 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.
- 32.4 The following provisions of this Article 32.4 apply to any authorisation of a matter by the Directors (with the prior written consent of the Investors) pursuant to Article 32.3:



- 32.4.1 an authorisation may extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised;
- 32.4.2 an authorisation shall be subject to such conditions or limitations as the Directors may (and will if requested by the Investors) determine, whether at the time such authorisation is given or subsequently, and may be terminated by the Directors (with the prior written consent of the Investors) at any time; and
- 32.4.3 a Director shall comply with any obligations imposed on him by the Directors (with the prior written consent of the Investors) pursuant to any authorisation.
- 32.5 If a matter, office, employment, engagement or interest, has been authorised pursuant to Articles 32.1, 32.2 or 32.3, then the Director, Investor Director or Independent Director in question shall not be required to disclose to the Company any confidential information received by him (other than by virtue of his position as Director) relating to such matter, or such office, employment, engagement or interest, or use such information in relation to the Group's affairs if to do so would result in a breach of a duty or obligation of confidence owed by him in relation to or in connection with that matter, or that office, employment, engagement or interest.
- 32.6 A Director, Investor Director and Independent Director shall not be accountable to the Company or any Group Company for any remuneration or other benefit which he (or a person connected with him) derives from any office, employment, engagement or interest authorised in or pursuant to Articles 32.1, 32.2 or 32.3, nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the 2006 Act.
- 32.7 Regulation 85 is modified by the addition of the words: "and except in the case of any Investor Director and any Independent Director, to the consent of the Investors" after the words "provisions of the Act" and before the words ", and provided that he has disclosed" in the first sentence.
- 32.8 For the purposes of this Article 32, a conflict of interest includes a conflict of interest and duty and a conflict of duties, and interest includes both direct and indirect interests.

### **33. DIRECTOR'S GRATUITIES AND PENSIONS**

Regulation 87 is modified by the addition of the words: "with the consent of the Investors" after the words "The directors" and before the words "may provide benefits" in the first sentence.

### **34. BORROWING POWERS**

The Directors may exercise all the powers of the Company (whether express or implied) to borrow and/or secure the payment of money, to guarantee the payment of money, the fulfilment of obligations and the performance of contracts and to mortgage or charge the property, assets and uncalled capital of the Company, and (subject to section 80 of the 1985 Act) to issue debentures, debenture stock and all other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

### **35. PROCEEDINGS OF DIRECTORS**

35.1 In the case of an equality of votes, the chairman will not have a second or casting vote. Regulation 88 will be modified accordingly.

35.2 For so long as the circumstances comprising an event set out in Article 8.2 continue to subsist and the Investors have served a notice in writing to the Company that they wish the rights set out in this Article 35.2 to apply, no meeting of the Board shall be quorate unless the Investor Director (if appointed) is present in person, and at such meeting:

35.2.1 if the Investor Director votes at such meeting against any resolution put to that meeting, that resolution shall be deemed not to have been carried notwithstanding that the number of votes cast in its favour exceeds those cast against it and notwithstanding any of the provisions of these Articles or any regulation of Table A to the contrary; and

35.2.2 if the Investor Director votes at such meeting in favour of any resolution put to that meeting, that resolution shall be deemed to have been carried notwithstanding that the number of votes cast against such resolution exceeds those cast in its favour and notwithstanding any of the provisions of these Articles or any regulation of Table A to the contrary.

- 35.3 Regulation 88 is modified by the exclusion of the third sentence and the substitution for it of the following sentences: "Every Director will receive notice of a meeting, whether or not he is absent from the United Kingdom. A Director may waive the requirement that notice be given to him of a meeting of Directors or a committee of Directors, either prospectively or retrospectively" and by the addition of the word "not" between the words "shall" and "have" in the fifth sentence.
- 35.4 The quorum necessary for the transaction of business at any meeting of the Directors will be two of which one will be the Investor Director or the Independent Director (if appointed) (unless otherwise agreed in writing by the Investors) and the other will be one of the Executives and Regulation 89 will be modified accordingly. Save where any such meeting is inquorate in the circumstances set out in Article 35.2, if any meeting of the Directors is inquorate then it will be adjourned for the consideration of the same business until the same time and place the next following week when those Directors present will constitute a quorum. If the meeting is inquorate in the circumstances set out in Article 35.2, such adjourned meeting will not be quorate unless the Investor Director is present at such meeting.
- 35.5 The Independent Director shall act as chairman of the Company (unless otherwise directed by the Investors). Regulation 91 will not apply to the Company.
- 35.6 Any Director or alternate director may participate in a meeting of the Board or a committee of the Directors by means of conference telephone or similar communications equipment if all persons participating in the meeting can hear and speak to each other throughout the meeting, and any Director or member of a committee participating in a meeting in this manner is deemed to be present in person at such meeting and will be counted when reckoning a quorum.
- 35.7 Without prejudice to the obligation of any Director to disclose his interest in accordance with the 2006 Act, a Director may vote at a meeting of Directors or of a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty provided that he has first obtained the consent of the Investors (unless the director concerned is the Investor Director or the Independent Director, in which case no such consent will be required). The Director will be counted in the quorum present when any such resolution is under consideration and if he votes, his vote will be counted. Regulations 94 to 97 (inclusive) shall not apply to the Company.

### **36. INVESTOR DIRECTOR, INDEPENDENT DIRECTOR AND OBSERVERS**

- 36.1 Subject to Article 36.2, so long as the Investors or any of them hold any Shares the Investors will have the right at any time to appoint one person as a non-executive Director of the Company ("**Investor Director**"), and in addition the Investors will have the right to appoint one person as an independent Director of the Company ("**Independent Director**") but:
- 36.1.1 in each case not more than one person may hold such office at any one time;
  - 36.1.2 any such appointment must be effected by notice in writing to the Company by the Investors who may in a similar manner remove from office any Investor Director or Independent Director appointed pursuant to this Article, and appoint any person in place of any Investor Director or Independent Director so removed or who had died or otherwise vacated office as such;
  - 36.1.3 subject to section 168 of the 2006 Act, on any resolution to remove an Investor Director or an Independent Director, the A Ordinary Shares held by the Investors will together carry one vote in excess of 50% of all the other votes exercisable at the general meeting at which such resolution is to be proposed, and if any such Investor Director or Independent Director is removed pursuant to section 168 of the 2006 Act or otherwise, the Investors may reappoint him or any other person as an Investor Director or, as the case may be, Independent Director.
- 36.2 The Investors' right to appoint an Investor Director shall only be exercisable in circumstances where:
- 36.2.1 the number of directors is not less than two (not including the Independent Director); or
  - 36.2.2 the Investor has served notice in writing on the Company that it wishes the rights set out in Article 8.3 and/or 35.2 to apply.
- 36.3 Any Investor Director and any Independent Director will be entitled to be appointed to the board of directors of any member of the Group and to any committee of the board of any member of the Group.

- 36.4 So long as the Investors or any of them hold any Shares they will have the right at any time to appoint two persons to attend observe and speak at meetings of the Board (each an "**Observer**") and the provisions of Article 36.1.2 will apply as if they were set out in full in this Article, but with the word "Observer" substituted for "Investor Director". Any person so appointed will not be a Director but shall be entitled to receive notice of all meetings of Directors as if he were a Director.

### **37. DIVIDENDS**

Regulation 103 is modified by the addition of the following words: "with the consent of the Investors" after the words "the directors" in the first sentence.

### **38. NOTICES**

- 38.1 Any notice or other document 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 and shall be delivered in accordance with Article 38.2.

- 38.2 Any notice or other document may only be served on, or delivered to, any Member by the Company or by any other Member:

38.2.1 personally;

38.2.2 by sending it through the post in a prepaid envelope addressed to the Member at his registered address;

38.2.3 by delivery of it by hand to or leaving it at that address in an envelope addressed to the Member; or

38.2.4 except in the case of a share certificate and any notices or other documents to be served or delivered to or by any person pursuant to Articles 13 to 17 inclusive and only if an address has been specified by the Member for such purpose, by Electronic Communication.

- 38.3 Nothing in Article 38.2 shall affect any provision of the Act requiring offers, notices or documents to be served on or delivered to a Member in a particular way.

- 38.4 In the case of joint holders of a Share:
- 38.4.1 all notices and other documents shall be given to the person named first in the register in respect of the joint holding, and notice so given shall be sufficient notice to all joint holders, and
  - 38.4.2 any request for consent to the receipt of Electronic Communications shall be sent to the person named first in the register in respect of the joint holding and any express consent given by such holder to the receipt of communications in such manner shall bind all joint holders.
- 38.5 Any notice or other document may only be served on, or delivered to, the Company by anyone:
- 38.5.1 by sending it through the post in a prepaid envelope addressed to the Company or any officer of the Company at its registered office or such other place in the United Kingdom as may from time to time be specified by the Company;
  - 38.5.2 by delivering it by hand to its registered office or such other place in the United Kingdom as may from time to time be specified by the Company; or
  - 38.5.3 if an address has been specified by the Company for such purpose, by Electronic Communication.
- 38.6 Any notice or other document (other than any notice or other document given to the Company including, for the avoidance of doubt, the appointment of a proxy):
- 38.6.1 addressed to the recipient in the manner prescribed by these Articles shall, if sent by post, be deemed to have been served or delivered:
    - 38.6.1.1 (if prepaid as first class) 24 hours after it was posted; and
    - 38.6.1.2 (if prepaid as second class) 48 hours after it was posted;
    - 38.6.1.3 (if prepaid as airmail) 72 hours after it was posted,

38.6.1.4 and in proving such service, it shall be sufficient to prove that the envelope containing such notice or document was properly addressed, prepaid and posted;

38.6.2 not sent by post, but delivered by hand to or left at an address in accordance with these Articles, shall be deemed to have been served or delivered on the day it was so delivered or left;

38.6.3 sent by Electronic Communication shall be deemed to have been served or delivered:

38.6.3.1 in the case of a notice or other document sent in an electronic form but by a manner authorised by Articles 38.2.2 or 38.2.3, in accordance with the provisions of Articles 38.5.1 or 38.5.2 as appropriate;

38.6.3.2 otherwise, 24 hours after it was sent, and in proving such service it shall be sufficient to produce (in the case of a fax) a transaction report or log generated by a fax machine which evidences the fax transmission and (in other case) a confirmation setting out either the total number of recipients to whom or each recipient to whom the message was sent, as the case may be.

38.7 Regulations 111, 112 and 115 will not apply to the Company.

## **39. INDEMNITIES**

Subject to the provisions of the Act but without prejudice to any indemnity to which he may otherwise be entitled every Director alternate director secretary and other officer or employee of the Company will be indemnified out of the assets of the Company against any liability (other than any liability arising out of the Investment Agreement) sustained or incurred by him in defending any proceedings whether civil or criminal relating to his conduct as an officer or employee of the Company in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 144 of the 1985 Act or section 1157 of the 2006 Act in which relief is granted to him by the Court. Regulation 118 will not apply to the Company.

#### **40. AUDITORS**

The "requisite percentage" for the purposes of section 488(2) of the 2006 Act is five per cent.



## **APPENDIX**

### **Financial Covenants**

1. The Company shall procure that:

1.1 in respect of each Quarterly Period beginning with the Quarterly Period ending on 30 September 2009:

1.1.1 the EBITDA at the end of each Quarterly Period during the 12 month period ended 30 September 2010 shall not be less than 80% of the projected EBITDA as set out in the Business Plan (as defined in the Investment Agreement) in respect of each of the Quarterly Periods to which the Business Plan (as defined in the Investment Agreement) relates (and as from the end of the period to which the Business Plan (as defined in the Investment Agreement) relates as set out in the then annual budget/business plan of the Group adopted by the Board and approved by the Investors) or, in circumstances where an annual budget/business plan has not been properly adopted by the Board and approved by the Investors, the projected EBITDA to be used for the purposes of testing the financial covenant shall be the higher of the EBITDA as set out in the Business Plan (as defined in the Investment Agreement) in respect of the last Quarterly Period to which the Business Plan (as defined in the Investment Agreement) relates and the EBITDA in respect of the equivalent Quarterly Period during the previous accounting reference period; and

1.1.2 the EBITDA at the end of each Quarterly Period ended after 30 September 2010 shall not be less than 75% of the projected EBITDA as set out in the Business Plan (as defined in the Investment Agreement) in respect of each of the Quarterly Periods to which the Business Plan (as defined in the Investment Agreement) relates (and as from the end of the period to which the Business Plan (as defined in the Investment Agreement) relates as set out in the then annual budget/business plan of the Group adopted by the Board and approved by the Investors) or, in circumstances where an annual budget/business plan has not been properly adopted by the Board and approved by the Investors, the projected EBITDA to be used for the purposes of testing the financial covenant shall be the higher of the EBITDA as set out in the Business Plan (as defined in the Investment Agreement) in respect of

the last Quarterly Period to which the Business Plan (as defined in the Investment Agreement) relates and the EBITDA in respect of the equivalent Quarterly Period during the previous accounting reference period; and

1.2 in respect of each Quarterly Period beginning with the Quarterly Period ending on 30 September 2009:

1.2.1 the Cash Flow at the end of each Quarterly Period during the 12 month period ended 30 September 2010 shall not be less than 75% of the projected Cash Flow as set out in the Business Plan (as defined in the Investment Agreement) in respect of each of the Quarterly Periods to which the Business Plan (as defined in the Investment Agreement) relates (and as from the end of the period to which the Business Plan (as defined in the Investment Agreement) relates as set out in the then annual budget/business plan of the Group adopted by the Board and approved by the Investors) or, in circumstances where an annual budget/business plan has not been properly adopted by the Board and approved by the Investors, the projected Cash Flow to be used for the purposes of testing the financial covenant shall be the higher of the Cash Flow as set out in the Business Plan (as defined in the Investment Agreement) in respect of the last Quarterly Period to which the Business Plan (as defined in the Investment Agreement) relates and the Cash Flow in respect of the equivalent Quarterly Period during the previous accounting reference period; and

1.2.2 the Cash Flow at the end of each Quarterly Period ended after 30 September 2010 shall not be less than 75% of the projected Cash Flow as set out in the Business Plan (as defined in the Investment Agreement) in respect of each of the Quarterly Periods to which the Business Plan (as defined in the Investment Agreement) relates (and as from the end of the period to which the Business Plan (as defined in the Investment Agreement) relates as set out in the then annual budget/business plan of the Group adopted by the Board and approved by the Investors) or, in circumstances where an annual budget/business plan has not been properly adopted by the Board and approved by the Investors, the projected Cash Flow to be used for the purposes of testing the financial covenant shall be the higher of the Cash Flow as set out in the Business Plan (as defined in the Investment Agreement) in respect of the last Quarterly Period to which the Business Plan

(as defined in the Investment Agreement) relates and the Cash Flow in respect of the equivalent Quarterly Period during the previous accounting reference period.

## **2. Testing of financial covenants**

2.1 The financial covenants set out in paragraph 1 of this Appendix shall be tested by reference to:

2.1.1 the audited accounts of the Group for the relevant accounting reference period; and

2.1.2 the monthly management accounts of the Group for the relevant month or Quarterly Period (as appropriate).

2.2 The financial covenants set out in paragraph 1 of this Appendix shall be measured by reference to the relevant monthly management accounts and the relevant audited accounts ending on the last day of the relevant Quarterly Period.

## **3. Audited accounts to prevail**

If, in respect of any period, there is any discrepancy between the information set out in the monthly management accounts for such period and the information set out in the audited accounts for that period, the information in the audited accounts shall prevail (where appropriate information is available in such audited accounts).

## **4. Definitions**

4.1 For the purposes of this Appendix, the following definitions shall apply:

**"Cash Flow"** means, for any period, EBIT for such period:

- (i) plus any amount in respect of depreciation accounted for during such period and/or any amortisation of goodwill during such period;
- (ii) less capital expenditure and expenditure on investments during such period in each case net of:
  - (a) any disposal proceeds utilised to fund, in whole or in part, such expenditure; and

- (b) any hire purchase and/or lease finance raised to fund, in whole or in part, such expenditure;
- (iii) less any increase in debtors and in stock/work in progress (or plus any decrease in debtors and in stock/work in progress) during such period;
- (iv) plus any increase in creditors (or less any decrease in creditors) during such period (creditors to exclude any amounts owing pursuant to any of the documents entered into between any Group Member and its bankers);
- (v) less interest and corporation tax payable in respect of the period to which such accounts relate;

**"EBIT"** means, in respect of any period, the consolidated profit of the Group for such period, calculated in accordance with generally accepted accounting principles, as shown by the latest audited accounts of the Group or the latest available consolidated unaudited monthly management accounts of the Group:

- (i) before making any provision, debit or reserve or credit allowed for or in respect of any taxation levied upon or assessed by reference to profits earned or gains released;
- (ii) excluding any interest of whatsoever nature received or paid by any member of the Group during the period to which such accounts relate;
- (iii) excluding (to the extent included) profits or losses attributable to the disposal of capital assets or businesses during the period to which such accounts relate;
- (iv) excluding all transaction costs and transaction related costs, in each case charged to the consolidated profit and loss account in respect of the acquisition of shares in the capital of the Company by the Investors, the acquisition of shares in the capital of the Share Targets by the Company and the acquisition by the Company of the business and assets of the Business Targets (including, without limitation, the raising of debt and equity finance in respect thereof) during the period to which such accounts relate;

- (v) excluding items, credit, debit, provision or reserve for which would be regarded as exceptional or extraordinary items within the meaning of FRS 3 during the period to which such accounts relate;
- (vi) before dividends (whether paid, accrued or otherwise provided for) or other distributions to shareholders during the period to which such accounts relate;

**"EBITDA"** means, for any period, the EBIT for such period after adding back any amounts deducted in respect of depreciation charged and/or amortisation of goodwill (to the extent deducted in arriving out EBIT) during that period;

**"Quarterly Period"** means each of the respective period of three months ending on the last day of 30 June, 30 September, 31 December and 31 March in each year.