


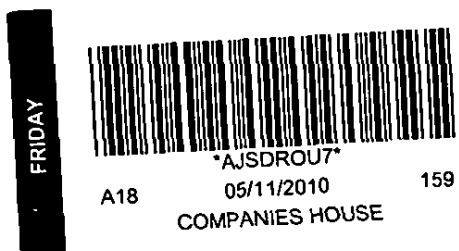
THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES  
**PRINT OF RESOLUTIONS OF THE SHAREHOLDERS**  
OF  
**JUST-EAT GROUP HOLDINGS LIMITED**  
(the "Company")

On 12th October 2010, the Company's shareholders duly passed resolutions 1 and 2 below as special resolutions

SPECIAL RESOLUTIONS

- 1 THAT the regulations set out in the document attached hereto at Schedule 1 were adopted as the articles of association of the Company in substitution for and in replacement of the Company's existing articles of association
- 2 THAT the provisions of article 11.3 of the Company's articles of association did not apply to the allotment of shares in the Company or the grant of rights to subscribe for or to convert any security into shares in the Company, pursuant to, and on the terms of, the deed constituting £1,000,000 nominal 12% convertible redeemable loan notes 2010 executed by the Company on or around the date of the special resolutions

  
Mike Wroe  
Company Secretary



**DATED 12 OCTOBER 2010**

**THE COMPANIES ACT 1985-2006**

**COMPANY LIMITED BY SHARES**

**NEW**

**ARTICLES OF ASSOCIATION**

**Of**

**JUST-EAT GROUP HOLDINGS LIMITED**

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**(Adopted by a written resolution passed on 12 OCTOBER 2010)**

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**Bird & Bird LLP  
15 Fetter Lane  
London EC4A 1JP**

**Tel: 020 7415 6000**

**Ref: CFC/CXB/JUEAT/0006**

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**THE COMPANIES ACT 1985 - 2006**

**COMPANY LIMITED BY SHARES**

**NEW**

**ARTICLES OF ASSOCIATION**

**Of**

**JUST-EAT GROUP HOLDINGS LIMITED**

(Adopted by a written resolution passed on 12 OCTOBER 2010)

**1 INTRODUCTION**

1.1 The Regulations contained or incorporated in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended by

- (a) The Companies (Tables A to F) Amendment Regulations 1985,
- (b) Schedule 1 to the Companies Act 1985 (Electronic Communications) Order 2000 (SI 2000/3373), and
- (c) The Companies (Tables A to F) (Amendment) Regulations 2007 (SI 2007/2541), and
- (d) The Companies (Tables A to F) (Amendment) (No. 2) Regulations 2007 (SI 2007/2826),

("Table A") shall apply to the Company, save insofar as they are varied or excluded by, or are inconsistent with, the following Articles

1.2 In Regulation 1 of Table A, the words "and in articles of association adopting the same" shall be inserted after the word "**Regulations**" in the last paragraph of that Regulation and the sentence "Any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force" shall be inserted at the end of that Regulation

1.3 In these Articles

- (a) article headings are use for convenience only and shall not affect the construction or interpretation of these Articles,
- (b) words denoting the singular include the plural and vice versa and reference to one gender includes the other gender and neuter and vice versa, and
- (c) Regulations 8, 29, 30, 31, 54, 62, 76, 77, 82, 85, 86, 94 to 98 (inclusive), 99, 111, 112, 115 and 118 of Table A shall not apply to the Company

## 2 DEFINITIONS

In these Articles the following words and expressions shall have the following meanings

<b>"2006 Act"</b>	means the Companies Act 2006 (as amended from time to time),
<b>"Accounts"</b>	means the audited balance sheet and profit and loss account of the Company or, if at the relevant time the Company has any Subsidiary Undertaking(s), a consolidation of the audited balance sheets and profit and loss accounts of the Company and its Subsidiary Undertaking(s), for each Financial Year;
<b>"Act"</b>	means the Companies Act 1985 (as amended from time to time),
<b>"Acting in Concert"</b>	has the meaning given to it in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time),
<b>"Anti-Dilution Shares"</b>	shall have the meaning given in Article 9 1,
<b>"Arrears"</b>	means in relation to any Share, all arrears of any dividend or other sums payable in respect of that Share, together with all interest and other amounts payable on that Share,
<b>"Asset Sale"</b>	means the disposal (whether by way of transfer, licence or otherwise) by the Company of all or substantially all of its undertaking and assets including the disposal of all or substantially all of its Subsidiaries,
<b>"Associate"</b>	<p>in relation to any person means</p> <ul style="list-style-type: none"><li>(a) any person who is an associate of that person and the question of whether a person is an associate of another is to be determined in accordance with section 435 of the Insolvency Act 1986 and (whether or not an associate as so determined);</li><li>(b) any Member of the same Group,</li><li>(c) any Member of the same Fund Group,</li></ul>

<b>"Auditors"</b>	means the auditors of the Company from time to time,
<b>"Available Profits"</b>	means profits available for distribution within the meaning of part VII or part 23 of the 2006 Act (as applicable);
<b>"B Ordinary Participating Amount"</b>	means £18,250,000, such figure to include any amount paid to Shareholders in respect of Qualifying Payments,
<b>"B Ordinary Shares"</b>	means the B ordinary shares of £0 0001 each in the capital of the Company,
<b>"B Ordinary Shareholders"</b>	means the holders from time to time of the B Ordinary Shares;
<b>"Bad Leaver"</b>	means an Employee whose employment has been terminated by the Company or any Group Company for Gross Misconduct,
<b>"Board"</b>	means the board of Directors and any committee of the board constituted for the purpose of taking any action or decision contemplated by these Articles;
<b>"Bonus Issue" or "Reorganisation"</b>	means any return of capital, bonus issue of shares or other securities of the Company by way of capitalisation of profits or reserves (other than a capitalisation issue in substitution for or as an alternative to a cash dividend which is made available to the Series A Shareholders) or any consolidation or sub-division or any repurchase or redemption of shares (other than Series A Shares) or any variation in the subscription price or conversion rate applicable to any other outstanding shares of the Company in each case other than shares issued as a result of the events set out in Article 11 7;
<b>"Business Day"</b>	means a day on which English clearing banks are ordinarily open for the transaction of normal banking business in the City of London (other than a Saturday or Sunday);
<b>"Civil Partner"</b>	means in relation to a Shareholder, a civil partner (as defined in the Civil Partnerships Act 2004) of the Shareholder,

<b>"Company"</b>	means Just-Eat Group Holdings Limited,
<b>"Connected Person"</b>	means: <ul style="list-style-type: none"> <li>(a) in relation to an individual, that individual's spouse, children, step-children, adopted children, parents and siblings;</li> <li>(b) in relation to a trustee of a trust, a settlor of that trust, or a person who would otherwise be connected with such a person;</li> <li>(c) in relation to a company. another company controlled by the same person or persons connected with him or a person who has control of the Company on his own or together with persons connected with him and for the purposes of this definition. the term "control shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities by contract or otherwise;</li> </ul>
<b>"Controlling Interest"</b>	means an interest in shares giving to the holder or holders control of the Company within the meaning of section 840 of ICTA;
<b>"Conversion Date"</b>	has the meaning given in Article 8.1;
<b>"Date of Adoption"</b>	means 10 July 2009,
<b>"Deferred Shares"</b>	means any shares in the capital of the Company of £0.0001 each arising on conversion of B Ordinary Shares pursuant to Article 8.3, having the rights and restrictions set out in Article 8.5;
<b>"Director(s)"</b>	means a director or directors of the Company from time to time;
<b>"Effective Termination Date"</b>	means the date on which the Employee's employment or consultancy terminates;
<b>"electronic address"</b>	has the same meaning as in section 33 of the 2006 Act;
<b>"electronic form"</b>	

<b>and "electronic means"</b>	have the same meaning as in section 1168 of the 2006 Act,
<b>"Employee"</b>	means an individual who is employed by or who provides consultancy services to, the Company or any member of the Group other than Carsten Mikkelsen or Jesper Buch;
<b>"Employee Share Option Plan(s)"</b>	means the employee share option plan(s) established by the Company, the terms of which have been approved in writing by an Investor Majority and, for so long as it is a Qualifying Shareholder, SM Trust;
<b>"Employee Shares"</b>	<p>in relation to an Employee means all Ordinary Shares and/or B Ordinary Shares in the Company held by:</p> <ul style="list-style-type: none"> <li>(a) the Employee in question; and</li> <li>(b) by any Permitted Transferee of that Employee other than those Ordinary Shares held by those persons that an Investor Majority declares itself satisfied in writing were not acquired directly or indirectly from the Employee or by reason of his/her relationship with the Employee,</li> </ul> <p>other than the 8,663<sup>1</sup> Ordinary Shares and/or B Ordinary Shares referred to in the schedule of the Employee Share Option Plan;</p>
<b>"Encumbrance"</b>	means any mortgage, charge, security, interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including without limitation any retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law);

<sup>1</sup> Each of the 8,663 Ordinary Shares and/or B Ordinary Shares referred to in the schedule of the Employee Share Option Plan was subdivided into 100 Ordinary Shares and/or B Ordinary Shares of £0 0001 par value each by resolution of the Company's shareholders passed on 6 July 2010



**"Exempt Change of Control"**

means a Share Sale where the Proceeds of Sale received by each of the Series A Shareholders is in excess of:

- (a) in respect of a Share Sale prior to the first anniversary of the Date of Adoption, an amount per Series A Share held equal to 150 per cent of the Preference Amount;
- (b) in respect of a Share Sale on or after the first anniversary of the Date of Adoption but prior to the second anniversary of the Date of Adoption, an amount per Series A Share held equal to 200 per cent. of the Preference Amount; and
- (c) in respect of a Share Sale on or after the second anniversary of the Date of Adoption, an amount per Series A Share held equal to 250 per cent. of the Preference Amount,

**"Exercising Investor"**

means any Investor who exercises its rights to acquire Anti-Dilution Shares in accordance with Article 9.1;

**"Exit"**

means a Share Sale or an Asset Sale;

**"Expert Valuer"**

is as determined in accordance with Article 16.2;

**"Family Trust"**

means a trust (whether arising under a settlement or testamentary disposition or an intestacy) under which no immediate beneficial interest in the Shares in question is for the time being vested (and so that for this purpose a person shall be considered to be beneficially interested in a Share if such Share or the income thereof is, or may become, liable to be transferred, or paid, or applied, or appointed to, or for the benefit of, such person or any voting or other rights attaching thereto are, or may become, liable to be exercisable by, or as directed by, such person pursuant to the terms of the relevant trusts or in consequence of an exercise of power or discretion conferred thereby on any person or persons) in any person other than a member or a Connected Person of a member or of the former member who transferred the Shares to the settlement or (as the case may be) under whose testamentary disposition or intestacy the Shares were vested and

	that no power or control over the voting powers conferred by such Shares is for the time being exercisable by, or subject to the consent of, any person other than the trustees as trustees;
<b>"Fair Value"</b>	is as determined in accordance with Article 16.3;
<b>"Financial Institution"</b>	any Financial Services Authority registered financial investor (or a financial investor registered with the equivalent body or authority in the country of the relevant financial investor's principal place of business),
<b>"Financial Year" and "Financial Period"</b>	means an accounting reference period (as defined by the 2006 Act) of the Company;
<b>"Fund Manager"</b>	means a person whose principal business is to make, manage or advise upon investments in securities;
<b>"Gross Misconduct"</b>	means on the part of an Employee, any act by him of serious dishonesty, serious breach of contract, incompetence or any wilful neglect of duty; any serious act of insubordination; conduct which in the reasonable opinion of the Board brings him or the Company or any Group Company into disrepute; or, his commitment (in the reasonable belief of the Board) of a criminal offence;
<b>"Group"</b>	means the Company and its Subsidiary Undertaking(s) (If any) from time to time and "Group Company" shall be construed accordingly,
<b>"hard copy form"</b>	has the same meaning as in section 1168 of the 2006 Act;
<b>"Holding Company"</b>	means a newly formed holding company, pursuant to which the membership, pro rata shareholdings and classes of shares comprised in such holding company matches that of the Company immediately prior to such transfer;
<b>"ICTA"</b>	means the Income and Corporation Taxes Act 1988;
<b>"Index"</b>	means any of Index Ventures V (Jersey), L.P, Index Ventures V Parallel Entrepreneur Fund (Jersey), L P and Yucca Partners LP Jersey Branch and their Permitted Transferees,

<b>"Institutional Investor"</b>	means a fund, partnership, body corporate, trust or other person or entity whose principal business is to make investments or a person whose business is to make, manage or advise upon investments for any of the foregoing;
<b>"Investment Agreement"</b>	means the investment agreement dated on or around the Date of Adoption between, inter alia, the Company and the Investors;
<b>"Investors"</b>	means Index, Venrex and their respective Permitted Transferees,
<b>"Investor Director Consent"</b>	means the prior written consent of the Investor Director or, if Index has not appointed an Investor Director, the prior written consent of Index;
<b>"Investor Director"</b>	means such director of the Company nominated by Index under Article 27 1;
<b>"Investor Majority"</b>	means the holders of at least 50 per cent. of the total number of Series A Shares in issue;
<b>"Investor Majority Consent"</b>	means the prior written consent of the Investor Majority;
<b>"IPO"</b>	means the admission of all or any of the Shares or securities representing those shares (including without limitation American depositary receipts, American depositary shares and/or other instruments) to or the grant of permission by any like authority for the same to be traded or quoted on Nasdaq or on the Official List of the United Kingdom Listing Authority or on the AIM Market operated by the London Stock Exchange Plc or any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000);
<b>"IPO Price"</b>	means the subscription price per share (including any premium) in respect of new Ordinary Shares issued at the time of the IPO,
<b>"Investor Redemption Notice"</b>	has the meaning given in Article 6.5;
<b>"ITEPA"</b>	means Income Tax (Earnings and Pensions) Act 2003,
<b>"Loan Note Instrument"</b>	means the deed constituting £1,000,000 nominal 12% convertible redeemable loan notes 2010,

made by the Company and dated on or around  
\_\_\_ October 2010;

**"a Member of the same  
Fund Group"**

means if the Shareholder is a fund, partnership, company, syndicate or other entity whose business is managed by a Fund Manager (an "Investment Fund") or a nominee of that person:

- (a) any participant or partner in or member of any such Investment Fund or the holders of any unit trust which is a participant or partner in or member of any Investment Fund (but only in connection with the dissolution of investment Fund or any distribution of assets of the Investment Fund pursuant to the operation of the Investment Fund in the ordinary course of business);
- (b) any Investment Fund managed by that Fund Manager;
- (c) any Parent Undertaking or Subsidiary Undertaking of that Fund Manager, or any Subsidiary Undertaking of any Parent Undertaking of that Fund Manager; or
- (d) any trustee, nominee or custodian of such Investment Fund and vice versa;

**"a Member of the same Group"**

means as regards any company, a company which is from time to time a Parent Undertaking or a Subsidiary Undertaking of that company or a Subsidiary Undertaking of any such Parent Undertaking; "Nasdaq" means the Nasdaq National Stock Market of the Nasdaq Stock Market Inc.;

**"New Securities"**

means any shares or other securities convertible into, or carrying the right to subscribe for those shares, issued by the Company after the Date of Adoption (other than shares or securities issued as a result of the events set out in Article 11.7);

**"Ordinary Shareholders"**

means the holders from time to time of the Ordinary Shares;

**"Ordinary Shares"**

means the ordinary shares of £0.0001 each in the capital of the Company,

<b>"Permitted Transfer"</b>	means a transfer of Shares in accordance with Article 14,
<b>"Permitted Transferee"</b>	means: <ul style="list-style-type: none"> <li>(a) in relation to a Shareholder who is an individual, any of his Privileged Relations;</li> <li>(b) in relation to a Shareholder which is an undertaking (as defined in section 1161(1) of the 2006 Act) means any Member of the same Group;</li> <li>(c) in relation to a Shareholder which is an Investment Fund means any Member of the same Fund Group;</li> <li>(d) in relation to a Shareholder, subject to Article 14.5, the trustees of a Family Trust of that Shareholder or to some other Connected Person of his;</li> <li>(e) where Shares are held by trustees of a Family Trust, a Company in which they hold the whole of the share capital and which they control (a "Qualifying Company") or, where there is any change of trustees, subject to Article 14.5, the new or remaining trustees of the Family Trust concerned;</li> <li>(f) where Shares are held by trustees of a Family Trust, any person who has an immediate beneficial interest under the Family Trust or to a Connected Person of that beneficiary;</li> <li>(g) where Shares are held by a nominee or trustee, means any beneficial owner of such Shares or to another nominee or trustee of the same beneficial owner; and</li> <li>(h) in relation to an Investor: <ul style="list-style-type: none"> <li>(i) to any Member of the same Group;</li> <li>(ii) to any Member of the same Fund Group;</li> </ul> </li> </ul>

- (ii) to any other Investor,
- (iv) to any Financial Institution or Institutional Investor; or
- (v) to any nominee of an Investor;
- (i) in relation to any of Index Ventures V (Jersey), L.P, Index Ventures V Parallel Entrepreneur Fund (Jersey), L.P and Yucca Partners LP Jersey Branch to each other,
- (j) where there is a claim for breach of warranty under the Investment Agreement, any Investor whose loss is satisfied in whole or in part by the transfer of Shares to it pursuant to such Investment Agreement,

**"Preference Amount"**

means the Starting Price per share together with a sum equal to any Arrears and any dividends accrued down to the relevant date of payment in respect of each Series A Share held;

**"Pre-New Money Valuation"**

means the result of multiplying the total number of Ordinary Shares in issue and any Shares subject to options granted under any Employee Share Option Plan immediately after the IPO (but excluding any new Ordinary Shares issued upon the IPO) by the subscription price per share (including any premium) in respect of new Ordinary Shares issued at the time of the IPO;

**"Priority Rights"**

means the rights of Shareholders to purchase Shares contained in a Transfer Notice in the priority stipulated in Article 15.5 or Article 18.2 (as the case may be);

**"Privileged Relation"**

in relation to a Shareholder who is an individual member or deceased or former member means a spouse, Civil Partner, child or grandchild (including step or adopted or illegitimate child and their issue);

**"Proceeds of Sale"**

means the consideration payable (including any deferred consideration) whether in cash or otherwise to those Shareholders selling Shares under a Share Sale,

<b>"Proposed Purchaser"</b>	means a proposed purchaser who at the relevant time has made an offer on arm's length terms;
<b>"Proposed Seller"</b>	means any person proposing to transfer any shares in the capital of the Company,
<b>"Qualifying IPO"</b>	means the legal completion of a fully underwritten IPO in which the net aggregate subscription amount in respect of new Ordinary Shares (subject to appropriate adjustment following any Bonus Issue or Reorganisation) issued at the time of the IPO is not less than £40,000,000 at an issue price per Ordinary Share of at least four times the Starting Price;
<b>"Qualifying Payments"</b>	means in respect of the Shares, all distributions made (whether of income or capital);
<b>"Qualifying Shareholder"</b>	means SM Trust provided (i) it holds at least 30 per cent. of the total number of Shares in issue and subject to option (whether granted or part of the unallocated option pool from time to time), warrant or convertible security provided that, in respect of the exercise of its right under Article 27.2 (director appointment right) the relevant percentage shall be 25 per cent.; and (ii) it has not in the reasonable opinion of the Board (acting for these purposes without the SM Trust Director) either (a) carried on or been concerned, engaged or interested directly or indirectly in any capacity in any trade or business competing with the business earned on by any Group Company from time to time, or (b) acted otherwise than in the best interests of the Group Companies;
<b>"Realisation Price"</b>	means the value of each Ordinary Share in issue immediately prior to an IPO, determined by reference to the price per share at which Ordinary Shares are to be offered for sale, place or otherwise marketed pursuant to such IPO;
<b>"Relevant Interest"</b>	has the meaning set out in Article 30.5,
<b>"Sale Shares"</b>	has the meaning set out in Article 15.2(a) of these Articles;
<b>"Seller"</b>	has the meaning set out in Article 15.2 of these Articles,

<b>"Series A Shares"</b>	means the series A preferred convertible redeemable shares of £0 0001 each in the capital of the Company;
<b>"Series A Shareholders"</b>	means the holders of the Series A Shares;
<b>"Shareholder"</b>	means any holder of any Shares;
<b>"Shares"</b>	means the Ordinary Shares, B Ordinary Shares, the Series A Shares and any Deferred Shares from time to time,
<b>"Share Sale"</b>	means the sale of (or the grant of a right to acquire or to dispose of) any of the shares in the capital of the Company (in one transaction or as a series of transactions) which will result in the purchaser of those shares (or grantee of that right) and persons Acting in Concert with him together acquiring a Controlling Interest in the Company, except where following completion of the sale the shareholders and the proportion of shares held by each of them are the same as the shareholders and their shareholdings in the Company immediately prior to the sale;
<b>"SM Trust"</b>	means STM Fidecs Trust Company Limited as trustee of the Sara Marron Discretionary Settlement;
<b>"SM Trust Director"</b>	means the Director appointed by SM Trust pursuant to Article 27.2;
<b>"Starting Price"</b>	means £2.1288 (if applicable, adjusted as referred to in Article 9 3);
<b>"Subsidiary", "Subsidiary Undertaking" and "Parent Undertaking"</b>	have the meanings set out in the 2006 Act provided that, when the expressions "Subsidiary" and "Subsidiary Undertaking" are use in connection with the Company they shall also include all body corporate in the capital of which the Company directly or indirectly owns shares carrying 50 per cent. of the voting rights,
<b>"Transfer Notice"</b>	shall have the meaning given in Article 15.2;
<b>"Transfer Price"</b>	shall have the meaning given in Article 15.2(c); and



**"Venrex"**

means any of Venrex Limited Partnership, Venrex IV Limited Partnership and their Permitted Transferees.

### **3. SHARE CAPITAL**

- 3.1 The authorised share capital of the Company is £20,194.68 divided into 7,000,000 Series A Shares, 13,000,000 Ordinary Shares and 1,946,800 B Ordinary Shares.
- 3.2 In these Articles, unless the context requires otherwise, references to shares of a particular class shall include shares created and/or issued after the Date of Adoption and ranking pari passu in all respect (or in all respects except only as to the date from which those shares rank for dividend) with the shares of the relevant class then in issue.
- 3.3 Except as otherwise provided in these Articles, the Series A Shares, the Ordinary Shares and the B Ordinary Shares shall rank pari passu in all respects but shall constitute separate classes of shares.

### **4. DIVIDENDS**

- 4.1 The Company will not distribute any Available Profits in respect of any Financial Year except with Investor Majority Consent and, for so long as it is a Qualifying Shareholder, the written consent of SM Trust. Any Available Profits which the Company may determine to distribute in respect of any Financial Year will be distributed among the Series A Shareholders, the Ordinary Shareholders and to the extent that the aggregate amount of Qualifying Payments, both paid to date and for the current Financial Year, exceed the B Ordinary Shares Participating Amount, and the B Ordinary Shareholders (pari passu as if the Shares constituted one class of share) pro rata to their respective holdings of Shares and shall accrue on a daily basis assuming a 365 day year.
- 4.2 Subject to the 2006 Act and these Articles, the Board may, provided Investor Majority Consent and, for so long as it is a Qualifying Shareholder, the written consent of SM Trust is given, pay interim dividends if justified by the Available Profits in respect of the relevant period.

### **5. LIQUIDATION PREFERENCE**

On a distribution of assets on a liquidation or a return of capital (other than a conversion, redemption or purchase of Shares) the surplus assets of the Company remaining after payment of its liabilities shall be applied (to the extent that the Company is lawfully permitted to do so):

- (a) first in paying to each of the Series A Shareholders, in priority to any other classes of Shares, an amount per Series A Share held equal to the Preference Amount (provided that if there are insufficient surplus assets to pay the amounts per share equal to the Preference Amount, the remaining surplus assets shall be distributed to the Series A Shareholders pro rata to their respective holdings of Series A Shares);

- (b) secondly surplus assets remaining after the payment to the Series A Shareholders in (a) above as have a value equal to the B Ordinary Participating Amount shall be distributed among the Series A Shareholders and Ordinary Shareholders pro rata (as if the Series A Shares and Ordinary Shares constituted one and the same class) to the number of Series A Shares and Ordinary Shares held (provided that if the remaining surplus assets are less than the B Ordinary Participating Amount, the remaining surplus assets shall be distributed to the Series A Shareholders and Ordinary Shareholders pro-rata to their respective holdings of shares as if the shares constituted one and the same class); and
- (c) finally the balance of the surplus assets (if any) shall be distributed among the Series A Shareholders, the Ordinary Shareholders and the B Ordinary Shareholders pro rata (as if the Shares constituted one and the same class) to the number of Shares held.

## 6. EXIT PROVISIONS

- 6.1 On a Share Sale the Proceeds of Sale shall be distributed in the order of priority set out in Article 5 and the Directors shall not register any transfer of Shares if the Proceeds of Sale are not so distributed save in respect of any Shares not sold in connection with that Share Sale provided that if the Proceeds of Sale are not settled in their entirety upon completion of the Share Sale:
  - (a) the Directors shall not be prohibited from registering the transfer of the relevant Shares so long as the Proceeds of Sale that are settled have been distributed in the order of priority set out in Article 5; and
  - (b) the Shareholders shall take any action required by the Investors to ensure that the Proceeds of Sale in their entirety are distributed in the order of priority set out in Article 5.
- 6.2 On an Asset Sale the surplus assets of the Company remaining after payment of its liabilities shall be distributed (to the extent that the Company is lawfully permitted to do so) in the order of priority set out in Article 5 provided always that if it is not lawful for the Company to distribute its surplus assets in accordance with the provisions of these Articles, the Shareholders shall take any action required by the Investors (including, but without prejudice to the generality of this Article 6.2, actions that may be necessary to put the Company into voluntary liquidation so that Article 5 applies).
- 6.3 Subject to the Act and/or the 2006 Act, a Series A Shareholder may require the Company by notice in writing (an "**Investor Redemption Notice**") to redeem all or any of its Series A Shares at any time after the fifth anniversary of the Date of Adoption and, if any Investor Redemption Notice is served, the relevant Series A Shares will immediately become due for redemption on the date of such notice.
- 6.4 On each date on which any Series A Shares are to be redeemed, the Company shall redeem the number of Series A Shares set out in the Investor Redemption Notice which have not at that date been converted into Ordinary Shares or become subject to conversion into Ordinary Shares and the relevant holder of Series A Shares shall

deliver to the Company at its registered office the certificate(s) for the Series A Shares to be redeemed (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate(s)) and on such delivery the Company shall pay each holder of Series A Shares (or, in the case of joint holders, to the holder of Series A Shares whose name stands first in the register of Shareholders in respect of those Series A Shares) the greater of:

- (a) Preference Amount; and
- (b) the Starting Price together with interest thereon at the rate of 8 per cent. per annum accruing on a daily basis assuming 365 day year and compounding to the end of each calendar month,

for each Series A Share being redeemed and to be paid in two equal instalments on the date of redemption and on the first anniversary of the date of redemption.

- 6.5 The Company shall, in the case of a redemption in full cancel the share certificate of the holder of Series A Shares concerned. and, in the case of a redemption of part of the holding of Series A Shares included in a certificate either (a) note the amount and date of redemption on the original certificate or (b) cancel the original certificate and without charge issue a new certificate to the holder for the balance of the Series A Shares not redeemed on that occasion.
- 6.6 If on any due date for redemption of Series A Shares the Company is prohibited by law from redeeming all or any of the Series A Shares then due to be redeemed, it shall on the due date redeem that number of the Series A Shares as it may then lawfully redeem, and if there is more than one holder whose Series A Shares are due to be redeemed then the Series A Shares shall be redeemed in proportion as nearly as may be to their existing holdings of Series A Shares and the Company shall redeem the balance of those shares as soon as practical after it is not so prohibited and. for so long as the prohibition remains and any Series A Shares have not been redeemed (and notwithstanding any other provisions of these Articles) the Company shall not pay any dividend or otherwise make any distribution of capital or otherwise (except in the ordinary course of business) decrease its profits available for distribution. If the Company fails to make any partial redemption of Series A Shares on any due date for redemption, then subsequent redemptions of Series A Shares shall be deemed to be of those Series A Shares which first become due for redemption.

## **7. VOTE IN GENERAL MEETING**

- 7.1 Series A Shares shall confer on each Series A Shareholder the right to receive notice of and to attend, speak and vote at all general meetings of the Company.
- 7.2 The Ordinary Shares shall confer on each Ordinary Shareholder the right to receive notice of and to attend, speak and vote at all general meetings of the Company
- 7.3 The B Ordinary Shareholders shall not be entitled to receive notice of or to attend, or speak, or vote at any general meetings of the Company (other than at a separate class meeting of the B Ordinary Shareholders)

- 7.4 Where Shares confer a right to vote, on a show of hands each holder of such shares who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy shall have one vote and on a poll each such holder so present shall have one vote for each Share held by him.

## 8. **CONVERSION OF SHARES**

- 8.1 An Investor Majority shall be entitled by notice in writing to the Company, to require conversion into Ordinary Shares of all (but not some only) of the Series A Shares at any time and the Series A Shares shall convert automatically on the date specified in such notice (the "**Conversion Date**"). The Investor Majority may in such notice, state that conversion of the Series A Shares into Ordinary Shares is conditional upon the occurrence of particular events (the "**Conditions**")
- 8.2 All of the Series A Shares shall automatically convert into Ordinary Shares immediately upon the occurrence of a Qualifying IPO.
- 8.3 Immediately upon the occurrence of an IPO, all of the B Ordinary Shares shall convert into such number of Ordinary Shares and, if necessary, Deferred Shares or the Company shall issue to each B Ordinary Shareholder a number of Ordinary Shares such that the value of the Ordinary Shares of the IPO Price held by that B Ordinary Shareholder attributable to such conversions and issues shall represent the same proportion of the Pre-New Money Valuation which that B Ordinary Shareholder would have been entitled to receive on a Share Sale where the Proceeds of Sale were equal to the Pre-New Money Valuation for that IPO.
- 8.4 Any additional Ordinary Shares which are required to be issued to the B Ordinary Shareholders pursuant to Article 8.3 shall be paid up by the automatic capitalisation of any amount standing to the credit of the share premium account or any other available reserve of the Company as determined by the Directors and those additional Ordinary Shares shall be issued at par fully paid. The capitalisation shall be automatic and shall not require any action on the part of the Shareholders and the Directors shall allot the Ordinary Shares arising on the capitalisation to the B Ordinary Shareholders entitled to them in accordance with this Article 8.4. If the Company is not legally permitted to carry out the capitalisation the B Ordinary Shareholders shall be entitled to subscribe in cash at par for that number of additional Ordinary Shares as would otherwise have been issued pursuant to Article 8.3. To the extent that there is insufficient share capital to effect the said issue the Directors shall procure (so far as they are able) that the Company's share capital is increased to the extent necessary to permit the issue required and all Shareholders shall vote in favour of the necessary resolutions to effect the increase.
- 8.5 Any Deferred Shares which arise on conversion of the B Ordinary Shares under Article 8.3 shall have the following rights.

- 8.5.1 The Deferred Shares shall not be entitled to any dividend or distribution, whether pursuant to these Articles or otherwise. As permitted by section 567 of the 2006 Act. Sections 561 and 562 of the 2006 Act shall apply as if the Deferred shares were not ordinary shares within the meaning of section 560(1) of the 2006 Act.
- 8.5.2 The Deferred Shares shall not entitle the holders of such Deferred Shares to receive notice of or to attend or vote at any general meeting of the Company by virtue of their holdings of any such Deferred Shares.
- 8.5.3 Subject to provisions of the Companies Act, the Company shall be entitled to repurchase the Deferred Shares for a sum of £1 in aggregate payable to each holder of such Deferred Shares.
- 8.5.4 The Deferred Shares are not transferable.
- 8.5.5 The holder of each Deferred Share has the right to receive, after all share capital (including premium) on the Shares (other than the Deferred Shares) then in issue has been paid, £1 for each £100,000,000 of capital returned.
- 8.6 In the case of (i) Article 8.1. at least five Business Days after the Conversion Date or (ii) in the cases of Article 8.2 and 8.3, at least five Business Days prior to the occurrence of the IPO, each Series A Shareholder or B Ordinary Shareholder (as appropriate) shall deliver the certificate (or an indemnity in a form reasonably satisfactory to the Board in respect of any lost certificate(s)) in respect of its Series A Shares and/or B Ordinary Shares (as appropriate) being converted to the Company at its registered office for the time being.
- 8.7 Where conversion is mandatory on the occurrence of an IPO pursuant to Articles 8.2 or 8.3 above, that conversion will be effective only immediately prior to such IPO (and "**Conversion Date**" shall be construed accordingly) and, if such IPO does not become effective or does not take place, such conversion shall be deemed not to have occurred. In the event of a conversion under Article 8.1, if the Conditions have not been satisfied or waived in writing by the relevant holder by the Conversion Date such conversion shall be deemed not to have occurred.
- 8.8 On the Conversion Date, the relevant Series A Shares shall without further authority than is contained in these Articles stand converted into Ordinary Shares on the basis of one Ordinary Share for each Series A Share held and the Ordinary Shares resulting from that conversion shall in all other respects rank *pari passu* with the existing issued Ordinary Shares.
- 8.9 The Company shall on the Conversion Date enter the holder of the converted Series A Shares on the register of Shareholders of the Company as the holder of the appropriate number of Ordinary Shares and, subject to the relevant holder delivering its certificate(s) (or indemnity) in respect of the Series A Shares in accordance with this Article, the Company shall within 10 Business Days of the Conversion Date forward to such holder of Series A Shares by post to his address shown in the register of Shareholders, free of charge, a definitive certificate for the appropriate number of fully paid Ordinary Shares.

- 8 10 If the Ordinary Shares or the Series A Shares are consolidated or subdivided then the number of Ordinary Shares arising from the conversion of Series A Shares shall be reduce or increased accordingly and if any doubt arises as to the number of these shares, and the Company and the holders of Series A Shares cannot agree, it shall be referred to the Auditors whose determination shall, in the absence of manifest error, be final and binding on the Company and each of its Shareholders. The apportionment of costs of such referral shall be determined by the Auditors.

## 9. ANTI-DILUTION PROTECTION

- 9.1 Subject to Article 9.4, if New Securities are issued by the Company at a price per New Security which equates to less than 90 per cent of the Starting Price (a "Qualifying Issue") (which in the event that the New Security is not issued for cash shall be a price certified by the Auditors acting as expert and not as arbitrators as being in their opinion the current cash value of the new consideration for the allotment of the New Securities) then the Company shall, unless and to the extent that any of the holders of Series A Shares shall have specifically waived their rights under this Article in writing, offer (such offer, unless waived, to remain open for acceptance for not less than 15 Business Days) to each holder of Series A Shares (the "Exercising Investor") the right to receive a number of new Series A Shares determined by applying the following formula (and rounding the product, N, down to the nearest whole share), subject to adjustment as certified in accordance with Article 9.3 (the "Anti-Dilution Shares"):

$$N = \left( \left( \frac{SIP}{WA} \right) \times z \right) - z$$

Where:

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

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

SIP = Starting Price

ESC = the number of Shares in issue plus the aggregate number of shares in respect of which options to subscribe have been granted, or which are represented by convertible securities (including but not limited to warrants) in each case immediately prior to the Qualifying Issue

QISP = the lowest per share price at which the New Securities are to be issued pursuant to the Qualifying Issue (which in the event that that New Security is not issued for cash shall be the sum certified by the Auditors acting as experts and not arbitrators as being in their opinion the current cash value of the non cash consideration for the allotment of the New Security)

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

Z = the number of Series A Shares held by the Exercising Investor prior to the Qualifying Issue.

9.2 The Anti-Dilution Shares shall.

- (a) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or the Exercising Investors shall agree otherwise, in which event the Exercising Investors shall be entitled to subscribe for the Anti-Dilution Shares in cash at par (being the par value approved in advance by the Investor Director) and the entitlement of such Exercising Investors to Anti-Dilution Shares shall be increased by adjustment to the formula set out in Article 9.1 so that the Exercising Investors shall be in no worse position than if they had not so subscribed at par. In the event of any dispute between the Company and any Exercising Investor as to the effect of Article 9.1 or this Article 9.2. the matter shall be referred (at the cost of the Company) to the Auditors for certification of the number of Anti-Dilution Shares to be issued. The Auditor's certification of the matter shall in the absence of manifest error be final and binding on the Company and the Exercising Investor;
- (b) subject to the payment of any cash payable pursuant to Article 9.2(a) (if applicable), be issued, credited fully paid up in cash and shall rank pari passu in all respects with the existing Series A Shares, within five Business Days of the expiry of the offer being made by the Company to the Exercising Investor and pursuant to Article 9.2(a);
- (c) be Series A Shares save that the amount to which the holder thereof is entitled to receive under Article 5(a) (but not, for the avoidance of doubt, Article 5(b)) shall be limited to an amount per Share held equal to the par value of such Shares together with a sum equal to any Arrears and any dividends accrued down to the relevant date of payment.

9.3 In the event of any Bonus Issue or Reorganisation, the Starting Price shall also be subject to adjustment on such basis as may be agreed in writing by the Company with the Investor Majority within 10 Business Days after any Bonus Issue or Reorganisation. If the Company and the Investor Majority cannot agree such adjustment it shall be referred to the Auditors whose determination shall, in the absence of manifest error, be final and binding on the Company and each of its Shareholders. The costs of the Auditors shall be borne by the Company.

9.4 The provisions of Articles 9.1 to 9.3 inclusive shall not apply to the issue of any New Securities in the form of loan notes issued pursuant to the terms of the Loan Note Instrument, but shall apply to any issue of any New Securities in the form of Shares arising on the conversion of loan notes pursuant to the Loan Note Instrument.

## 10. VARIATION OF RIGHTS

10.1 Whenever the share capital of the Company is divided into different classes of shares, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding-up)

with the consent in writing of the holders of more than 75 per cent in nominal value of the issued shares of that class save that in respect of the Series A Shares the prior written consent of the Investor Majority shall also be required.

- 10.2 The creation of a new class of shares which has preferential rights to one or more existing classes of shares shall not constitute a variation of the rights of those existing classes of shares.

**11. ALLOTMENT OF NEW SHARES OR OTHER SECURITIES: PRE-EMPTION**

- 11.1 Subject to the remaining provisions of this Article 11, the Directors are generally and unconditionally authorised for the purpose of section 80 of the Act and/or section 551 of the 2006 Act to exercise any power of the Company to:

- (a) offer, allot or grant rights to subscribe for;
- (b) convert securities into, or
- (c) otherwise deal in, or dispose of,

any Shares or any other relevant securities in the Company to any persons, at any times and subject to any terms and conditions as the Directors think proper, provided that:

- (1) this authority shall be limited to a maximum nominal amount of Shares equal to the amount of the authorised but unissued share capital of the Company set out in Article 3.1,
  - (2) this authority shall only apply insofar as the Company in general meeting has not waived or revoked it; and
  - (3) this authority may only be exercised for a period of five years commencing upon the Date of Adoption, save that the Directors may make an offer or agreement which would or might require relevant securities to be allotted after the expiry of such authority (and the Directors may allot relevant securities in pursuance of an offer or agreement as if such authority had not expired).
- 11.2 In accordance with section 91(1) of the Act and section 567(1) of the 2006 Act, sections 89(1) and 90(1) to (6) (inclusive) of the Act and sections 561(1) and 562(1) to (5) (inclusive) of the 2006 Act do not apply to an allotment of equity securities made by the Company
- 11.3 Unless otherwise agreed by special resolution passed in general meeting or as a written resolution passed in accordance with part 13 of the 2006 Act, by Investor Majority Consent and, for so long as it is a Qualifying Shareholder, by SM Trust, if the Company propose to allot any New Securities those New Securities shall not be allotted to any person unless the Company has in the first instance offered them to the Series A Shareholders (excluding SM Trust if it is no longer a Qualifying Shareholder) in their capacity as such on the same terms and at the same price as those New Securities are being offered to other persons on a pari passu and pro rata



basis to the number of Shares held by those holders (as nearly as may be without involving fractions). The offer:

- (a) shall be in writing, give details of the number and subscription price of the New Securities; and
  - (b) may stipulate that any Series A Shareholder who wishes to subscribe for a number of New Securities in excess of the proportion to which each is entitled shall in their acceptance state the number of excess New Securities ("**Excess Securities**") for which they wish to subscribe.
- 11.4 Any New Securities not accepted by Shareholders pursuant to the offer made to them in accordance with Article 11.3 shall be used for satisfying any requests for Excess Securities made pursuant to Article 11.3 and in the event that there are insufficient Excess Securities to satisfy such requests, the Excess Securities shall be allotted to the applicants on a pro rata basis to the number of Shares held by the applicants immediately prior to the offer made to Shareholders in accordance with Article 11.3 (as nearly as may be without involving fractions or increasing the number allotted to any Shareholder beyond that applied for by him) and after that allotment, any Excess Securities remaining shall be offered, subject to Article 11.5, to any other person as the Directors may determine at the same price and on the same terms as the offer to the Shareholders
- 11.5 Subject to Articles 11.3 and 11.4 and to the provisions of section 80 of the Act and/or section 551 of the 2006 Act, any New Securities shall be at the disposal of the Board who may allot, grant options over or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper.
- 11.6 The provisions of Articles 11.3 to 11.5 shall not apply to:
- (a) options to subscribe for Ordinary Shares and/or B Ordinary Shares under the Employee Share Option Plan(s);
  - (b) New Securities issued or granted in order for the Company to comply with its obligations under these Articles including, but not limited to the Anti-Dilution Shares, and issued in accordance with Article 6.3;
  - (c) New Securities issued in consideration of the acquisition by the Company of any company or business which has been approved in writing by the Investor Majority; and
  - (d) Shares issued to the Investors in accordance with the terms of the Investment Agreement.
- 11.7 No Shares shall be allotted to any Employee, Director, prospective employee or director unless such person has, where applicable, entered into a joint section 431 ITEPA election with the Company for the full disapplication of Chapter 2 of Part 7 of ITEPA.

## 12 LIEN

The Company shall have a first and paramount lien on every Share not fully paid for all and any indebtedness of any holder of it to the Company (whether a sole holder or one of two or more joint holders), whether or not that indebtedness or liability is in respect of the Shares concerned and whether or not it is presently payable

## 13. TRANSFERS OF SHARES - GENERAL

13.1 In Articles 15 to 23 inclusive, reference to the transfer of a Share includes the transfer or assignment of a beneficial or other interest in that Share or the creation of a trust or encumbrance over that Share and reference to a Share includes a beneficial or other interest in a Share.

13.2 No Share may be transferred unless the transfer is made in accordance with these Articles.

13.3 If a Shareholder transfers or purports to transfer a Share otherwise than in accordance with these Articles he will be deemed immediately to have served a Transfer Notice in respect of all Shares held by him.

13.4 Any transfer of a Share by way of sale which is required to be made under Articles 15 to 21 (inclusive) will be deemed to include a warranty that the transferor sells with full title guarantee.

13.5 Unless express provision is made in these Articles to the contrary, no Ordinary Shares shall be transferred to a competitor of any Group Company or to any Associate of a competitor of any Group Company.

13.6 In addition to the provisions of Regulation 24 of Table A, the Directors may refuse to register a transfer if:

- (a) it is a transfer of a share to a bankrupt, a minor or a person of unsound mind;
- (b) the transfer is to an Employee, Director or prospective employee or director and such person has to the extent applicable not entered in a joint section 431 ITEPA election with the Company for the full disapplication of Chapter 2 of Part 7 of ITEPA,

and Regulation 24 of Table A shall be modified accordingly.

13.7 The Directors may, as a condition to the registration of any transfer of shares in the Company (whether pursuant to a Permitted Transfer or otherwise). require the transferee to execute and deliver to the Company a deed agreeing to be bound by the terms of any shareholders' agreement or similar document in force between some or all of the shareholders and the Company in any form as the Directors may reasonably require (but not so as to oblige the transferee to have any obligations or liabilities greater than those of the proposed transferor under any such agreement or other document) and if any condition is imposed in accordance with this Article 13.7 the

transfer may not be registered unless that deed has been executed and delivered to the Company's registered office by the transferee

13.8 To enable the Directors to determine whether or not there has been any disposal of shares in the capital of the Company (or any interest in shares in the capital of the Company) in breach of these Articles the Directors may require any holder or the legal personal representatives of any deceased holder or any person named as transferee in any transfer lodged for registration or any other person who the Directors may reasonably believe to have information relevant to that purpose, to furnish to the Company that information and evidence the Directors may request regarding any matter which they deem relevant to that purpose, including (but not limited to) the names, addresses and interests of all persons respectively having interests in the shares in the capital of the Company from time to time registered in the holders name. If the information or evidence is not provided to enable the Directors to determine to their reasonable satisfaction that no breach has occurred, or where as a result of the information and evidence the Directors are reasonably satisfied that a breach has occurred, the Directors shall immediately notify the holder of such shares in the capital of the Company in writing of that fact and the following shall occur:

- (a) the relevant shares shall cease to confer upon the holder of them (including any proxy appointed by the holder) any rights:
  - (i) to vote (whether on a show of hands or on a poll and whether exercisable at a general meeting of the Company or at any separate meeting of the class in question) provided that such rights shall not cease if as a result of such cessation the Company shall become a Subsidiary of an Investor, or
  - (ii) to receive dividends or other distributions otherwise attaching to those Shares or to any further Shares issued in respect of those shares: and
- (b) the holder may be required at any time following receipt of the notice to transfer some or all of its Shares to any person(s) at the price that the Directors may require by notice in writing to that holder.

The rights referred to in (a) above may be reinstated by the Board and shall in any event be reinstated upon the completion of any transfer referred to in (b) above.

13.9 In any case where the Board requires a Transfer Notice to be given in respect of any Shares in accordance with these Articles, if a Transfer Notice is not duly given within a period of 10 Business Days of demand being made, a Transfer Notice shall be deemed to have been given at the expiration of that period. If a Transfer Notice is required to be given or is deemed to have been given under these Articles, the Transfer Notice will be treated as having specified that:

- (a) the Transfer Price for the Sale Shares will be as agreed between the Board (any director with whom the Seller is connected (within the meaning of section 252 of the 2006 Act) not voting) and the Seller or, failing agreement within five Business Days after the date on which the Board

becomes aware that a Transfer Notice has been deemed to have been given, will be the Fair Value of the Sale Shares;

(b) it does not include a Minimum Transfer Condition (as defined in Article 15.2(d)); and

(c) the Seller wishes to transfer all of the Shares held by it

13.10 Subject to Article 14.1, any transfer of Shares held by a Shareholder other than Index shall require the prior written consent of an Investor Majority not to be unreasonably withheld or delayed.

#### 14. PERMITTED TRANSFERS

14.1 Subject to Article 13.5, a Shareholder (the "**Original Shareholder**") may transfer all or any of his or its Shares to a Permitted Transferee without restriction as to price or otherwise provided that any transfer of Shares by SM Trust under paragraph (f) or (g) of the definition of "**Permitted Transferee**" in Article 2 shall require the prior written consent of the Investor Majority, such consent not to be unreasonably withheld or delayed.

14.2 Where under the provision of a deceased Shareholder's will or laws as to intestacy, the persons legally or beneficially entitled to any Shares, whether immediately or contingently, are Permitted Transferees of the deceased Shareholder, the legal representative of the deceased Shareholder may transfer any Share to those Permitted Transferees, in each case without restriction as to price or otherwise. Shares previously transferred as permitted by this Article 14.2 may be transferred by the transferee to any other Permitted Transferee of the Original Shareholder without restriction as to price or otherwise.

14.3 If a Permitted Transferee who was a Member of the same Group as the Original Shareholder ceases to be a Member of the same Group as the Original Shareholder, the Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the Shares held by it to the Original Shareholder or a Member of the same Group as the Original Shareholder (which in either case is not in liquidation) without restriction as to price or otherwise failing which it will be deemed to have given a Transfer Notice in respect of those Shares.

14.4 If a Permitted Transferee who was a Member of the same Fund Group as the Original Shareholder ceases to be a Member of the same Fund Group, the Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the Shares held by it to the Original Shareholder or a Member of the same Fund Group as the Original Shareholder (which in either case is not in liquidation) without restriction as to price or otherwise failing which it will be deemed to give a Transfer Notice in respect of such Shares.

14.5 No transfer of Shares may be made to trustees of a Family Trust unless the Board is satisfied:

(a) with the terms of the trust instrument and in particular with the powers of the trustees;

- (b) with the identity of the proposed trustees;
  - (c) the proposed transfer will not result in 50% or more of the aggregate of the Company's equity share capital being held by trustees of that and any other trusts; and
  - (d) that no cost incur in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.
- 14.6 If a Qualifying Company ceases to be a Qualifying Company it must within five Business Days of so ceasing, transfer the Shares held by it to the trustees or to another Qualifying Company (any may do so without restriction as to price or otherwise) failing which it will be deemed to have given a Transfer Notice in respect of such Shares
- 14.7 If a Permitted Transferee who is a spouse or Civil Partner of the Original Shareholder ceases to be a spouse or Civil Partner of the Original Shareholder whether by reason of divorce or otherwise he must, within 15 Business Days of so ceasing either:
- (a) execute and deliver to the Company a transfer of the Shares held by him to the Original Shareholder (or, to any Permitted Transferee of the Original Shareholder) for such consideration as may be agreed between them; or
  - (b) give a Transfer Notice to the Company in accordance with Article 15.2, failing which he shall be deemed to have given a Transfer Notice.
- 14.8 On the death (subject to Article 14.2), bankruptcy, liquidation, administrator or administrative receivership of a Permitted Transferee (other than a joint holder) his personal representatives or trustee in bankruptcy, or its liquidator, administrator or administrative receiver must within five Business Days after the date of the grant of probate, the making of the bankruptcy order or the appointment of the liquidator, administrator or the administrative receiver execute and deliver to the Company a transfer of the Shares held by the Permitted Transferee without restriction as to price or otherwise. The transfer shall be to the Original Shareholder if still living (and not bankrupt or in liquidation) or, if so directed by the Original Shareholder, to any Permitted Transferee of the Original Shareholder. If the transfer is not executed and delivered within five Business Days of such period or if the Original Shareholder has died or is bankrupt or is in liquidation, administration or administrative receivership, the personal representative or trustee in bankruptcy or liquidator, administrator or administrative receiver will be deemed to have given a Transfer Notice.
- 14.9 Any Shares may at any time be transferred where there is a sale of the entire issued share capital of the Company to a Holding Company, which has been approved by a majority of the Board and Investor Director Consent

## **15 TRANSFERS OF SHARES SUBJECT TO PRE-EMPTION RIGHTS**

- 15.1 Save where the provisions of Articles 14, 19, 20 and 21 apply, any transfer of Shares by a Shareholder shall be subject to the pre-emption rights contained in this Article 15

15.2 A Shareholder who wishes to transfer any Shares (a "Seller") shall, except as otherwise provided in these Articles, before transferring or agreeing to transfer any Shares give notice in writing (a "Transfer Notice") to the Company specifying:

- (a) the number of Shares which he wishes to transfer (the "Sale Share");
- (b) if he wishes to sell the Sale Shares to a third part, the name of the proposed transferee;
- (c) the price (in cash) at which he wishes to transfer the Sale Shares (which will be deemed to be Fair Value of the Sale Shares if no cash price is agreed between the Seller and the Board (including the affirmative vote of the Investor Director) (the "Transfer Price"); and
- (d) whether the Transfer Notice is conditional on all or a specific number of the Sale Shares being sold to Shareholders (a "Minimum Transfer Condition")

15.3 Except with the written consent of the Investor Director, no Transfer Notice once given or deemed to have been given under these Articles may be withdrawn.

15.4 A Transfer Notice constitutes the Company the agent of the Seller for the sale of the Sale Shares at the Transfer Price

15.5 As soon as practicable following the later of:

- (a) receipt of a Transfer Notice; and
- (b) in the case where the Transfer Price has not been specified or the Transfer Notice is deemed to have been served, the determination of the Transfer Price under Article 16,

the Board shall offer the Sale Shares for sale to the Series A Shareholders in the manner set out in Articles 15.6. Each offer must be in writing and give details of the number and Transfer Price of the Sale Shares offered.

15.6 *Offer to Series A Shareholders*

- (a) The Board shall offer the Sale Shares pursuant to all Series A Shareholders specified in the offer other than the Seller (the "Continuing Shareholders") inviting them to apply in writing within the period from the date of the offer to the date 15 Business Days after the offer (inclusive) (the "First Offer Period") for the maximum number of Sale Shares they wish to buy.
- (b) If the Sale Shares are subject to a Minimum Transfer Condition then any allocation made under Articles 15.7 and 15.8 will be conditional on the fulfilment of the Minimum Transfer Condition.
- (c) If, at the end of the First Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the Board shall allocate the Sale Shares to each Continuing Shareholder in the proportion

(fractional entitlements being rounded to the nearest whole number) which his existing holding of Share bears to the total number of Shares held by those Continuing Shareholders who have applied for Sale Shares but no allocation shall be made to a Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy

- (d) If not all Sale Shares are allocated in accordance with Article 15.6(c) but there are applications for Sale Shares that have not been satisfied those Sale Shares shall be allocated to the relevant applicant(s) in accordance with the procedure set out in Article 15.6(c)
- (e) If, at the end of the First Offer Period, the number of Sale Shares applied for is less than the number of Sale Shares, the Board shall allocate the Sale Shares to the Continuing Shareholders in accordance with their applications and the balance (the "**Surplus Shares**") will be dealt with in accordance with Article 15.7(e).

#### 15.7 *Completion of transfer of Sale Shares*

- (a) If the Transfer Notice includes a Minimum Transfer Condition and the total number of Shares applied for is less than the number of Sale Shares the Board shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under Articles 15.6 stating the condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect.

- (b) If:

- (i) the Transfer Notice does not include a Minimum Transfer Condition, or
- (ii) allocations have been made in respect of all the Sale Shares.

the Board shall, when no further offers are required to be made under Articles 15.6, give written notice of allocation (an "**Allocation Notice**") to the Seller and each Shareholder to whom Sale Shares have been allocated (an "**Applicant**") specifying the number of Sale Shares allocated to each Applicant and the place and time (being not less than 10 Business Days nor more than 20 Business Days after the date of the Allocation Notice) for completion of the transfer of the Sale Shares

- (c) Upon service of an Allocation Notice, the Seller must, against payment of the Transfer Price, transfer the Sale Shares in accordance with the requirements specified in it
- (d) If the Seller fails to comply with the provisions of Article 15.7(c):
  - (i) the Chairman of the Company or, failing him, one of the directors, or some other person nominated by a resolution of the Board, may on behalf of the Seller:

- (A) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;
  - (B) receive the Transfer Price and give a good discharge for it, and
  - (C) (subject to the transfer being duly stamped) enter the Applicants in the register of Shareholders as the holders of the Share purchased by them, and
- (ii) the Company shall pay the Transfer Price into a separate bank account in the Company's name on trust (but without interest) for the Seller until he has delivered to the Company his certificate or certificates for the relevant Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate).
- (e) If an Allocation Notice does not relate to all the Sale Shares then, subject to Article 15.7(f), the Seller may, within eight weeks after service of the Allocation Notice, transfer the Surplus Shares to any person at a price at least equal to the Transfer Price provided that the sale of the Surplus Shares shall continue to be subject to any Minimum Transfer Conditions.
- (f) The right of the Seller to transfer Shares under Article 15.7(e) does not apply if the Board (acting with the affirmative vote of the Investor Director) is of the opinion on reasonable grounds that:
  - (i) the transferee is a person (or a nominee for a person) who is a competitor with (or an Associate of a competitor with) the business of the Company or of a Subsidiary,
  - (ii) the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee; or
  - (iii) the Seller has failed or refused to provide promptly information available to it or him and reasonably requested by the Board for the purpose of enabling it to form the opinion mentioned above.

#### 15.8 *Waiver of restrictions*

The restrictions imposed by this Article may be waived in relation to any proposed transfer of Shares with Investor Director Consent and the consent of Shareholders who, but for the waiver, would or might have been entitled to have such shares offered to them in accordance with this Article.

### 16. **VALUATION OF SHARES**

- 16.1 If a Transfer Notice does not specify a Transfer Price or, subject to Article 13.9, if a Transfer Notice is deemed to have been served then, upon service of the Transfer Notice or, in the case of the deemed service of a Transfer Notice, on the date on



which the Board first has actual knowledge of the facts giving rise to such deemed service, the Board shall either:

- (a) appoint expert valuers in accordance with Article 16.2 (the "**Expert Valuers**") to certify the Fair Value of the Sale Shares; or (if the Fair Value has been certified by Expert Valuers within the preceding 12 weeks);
- (b) specify that the Fair Value of the Sale Shares will be calculated by dividing any Fair Value so certified by the number of Sale Shares to which it related and multiplying such Fair Value by the number of Sale Shares the subject of the Transfer Notice.

16.2 The Expert Valuers will be either:

- (a) the Auditors, or if so specified in the relevant Transfer Notice,
- (b) an independent firm of Chartered Accountants to be agree between the Board and the Seller or failing agreement not later than the date 10 Business Days after the date of service of the Transfer Notice to be appointed by the then President of the Institute of Chartered Accountants in England and Wales on the application of either part

16.3 The "**Fair Value**" of the Sale Shares shall be determined by the Exert Valuer on the following assumptions and base:

- (a) valuing the Sale Shares as on an arm's-length sale between a willing seller and a willing buyer;
- (b) if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
- (c) that the Sale Shares are capable of being transferred without restriction;
- (d) valuing the Sale Shares as a rateable proportion of the total value of all the issued Shares without any premium or discount being attributable to the percentage of the issued share capital of the Company which they represent; and
- (e) reflect any other factors which the Expert Valuers reasonably believe should be taken into account.

16.4 If any difficult arises in applying any of these assumptions or bases then the Expert Valuers shall resolve that difficulty in whatever manner they shall in their absolute discretion think fit.

16.5 The Expert Valuers shall be requested to determine the Fair Value within 20 Business Days of their appointment and to notify the Board of their determination.

16.6 The Expert Valuers shall act as experts and not as arbitrators and their determination shall be final and binding on the parties (in the absence of fraud or manifest error)

- 16.7 The Board will give the Expert Valuers access to all accounting records or other relevant documents of the Company subject to them agreeing such confidentiality provisions as the Board may reasonably impose.
- 16.8 The Expert Valuers shall deliver their certificate to the Company. As soon as the Company receives the certificate it shall deliver a copy of it to the Seller. Unless the Share are to be sold under a Transfer Notice which is deemed to have been served, the Seller may by notice in writing to the Company within five Business Days of the service on him of the copy certificate, cancel the Company's authority to sell the Sale Shares.
- 16.9 The cost of obtaining the certificate shall be paid by the Company unless:
- (a) the Seller cancels the Company's authority to sell; or
  - (b) the sale is pursuant to a Transfer Notice which is deemed to have been served, and the Fair Value certified by the Expert Valuers is less than the price (if any) offered by the directors to the Seller for the Sale Share before Expert Valuers was instructed,

in which case the Seller shall bear the cost.

## **17. COMPULSORY TRANSFERS - GENERAL**

- 17.1 A person entitled to a Share in consequence of the bankruptcy of a Shareholder shall be deemed to have given a Transfer Notice in respect of that Share at a time determined by the Directors.
- 17.2 If a Share remains registered in the name of a deceased Shareholder for longer than one year after the date of his death the Directors may require the legal personal representatives of that deceased Shareholder either:
- (a) to effect a Permitted Transfer of such Shares (including for this purpose an election to be registered in respect of the Permitted Transfer); or
  - (b) to show to the satisfaction of the Directors that a Permitted Transfer will be effected before or promptly upon the completion of the administration of the estate of the deceased Shareholder.

If either requirement in this Article 17.2 shall not be fulfilled to the satisfaction of the Directors a Transfer Notice shall be deemed to have been given in respect of each such Share save to the extent that the Directors may otherwise determine.

- 17.3 If a Shareholder which is a company or a Permitted Transferee of that Shareholder (holding Shares as a result of a Permitted Transfer), either suffers or resolves for the appointment of a liquidator, administrator or administrative receiver over it or any material part of its assets, the relevant Shareholder or Permitted Transferee shall be deemed to have given a Transfer Notice in respect of all the shares held by the relevant Shareholder and/or such Permitted Transferee save to the extent that, and at a time, the Directors may determine.

17.4 If there is a change in control (as control is defined in section 840 of ICTA) of any Shareholder which is a company, it shall be bound at any time, if and when required in writing by the Directors to do so, to give (or procure the giving in the case of a nominee) a Transfer Notice in respect of all the Shares roistered in its and their names and their respective nominees' names save that, in the case of the Permitted Transferee, it shall first be permitted to transfer those Shares back to the Original Shareholder from whom it received its Shares or to any other Permitted Transferee before being required to serve a Transfer Notice This clause shall not apply to a member that is an Investor or, for so long as it is a trustee of the Sara Marron Discretionary Settlement, to SM Trust

## 18. **COMPULSORY TRANSFER-EMPLOYEES**

18.1 If any Employee becomes a Bad Leaver, the relevant Employee shall be deemed to have given a Transfer Notice in respect of all the Employee Shares on the Effective Termination Date In such circumstances the Transfer Price shall be the lower of the amount paid up (including premium) on such Shares and their Fair Value

18.2 For the purposes of this Article, the Priority Rights shall be such that the Employee Shares are offered in the following order of priority:

- (a) to a person or persons nominated by the Board with Investor Director Consent to take the departing Employee's place conditionally upon them commencing employment with the Company; and/or
- (b) to any of the existing Employees (other than the departing Employee); and/or
- (c) to any other person or persons approved by the Board and Investor Director Consent (other than the departing Employee); and/or
- (d) to the Company (subject always to the provisions of the Act and/or the 2006 Act).

18.3 All voting rights attached to Employee Shares held by an Employee (the "**Restrict Member**"), if any, shall at the time he ceases to be an Employee be suspended unless the Board notify him otherwise.

18.4 Any Employee Shares whose voting rights are suspended pursuant to Article 18.3 ("**Restricted Shares**") shall confer on the holders of Restricted Shares the right to receive a notice of and attend all general meetings of the Company but shall have no right to vote either in person or by proxy. Voting rights suspended pursuant to Article 18.3 shall be automatically restored immediately prior to an IPO. If a Restricted Member transfers any Restricted Shares in the Company in accordance with these Articles all voting rights attached to the Restricted Shares so transferred shall upon completion of the transfer (as evidence by the transferee's name being entered in the Company's register of shareholders) automatically be restored

## 19. MANDATORY OFFER ON A CHANGE OF CONTROL

- 19.1 Except in the case of Permitted Transfers and transfers pursuant to Articles 17 and 18, after going through the pre-emption procedure in Article 15, the provisions of Article 19.2 will apply if one or more Proposed Sellers propose to transfer in one or a series of related transactions any Shares (the "**Proposed Transfer**") which would, if put into effect, result in any Proposed Purchaser (and Associates of his or persons Acting in Concert with him) acquiring a Controlling Interest in the Company.
- 19.2 A Proposed Seller must, before making a Proposed Transfer procure the making by the Proposed Purchaser of an offer (the "**Offer**") to the other Shareholders to acquire all of the Company's Shares for a consideration per share the value of which is at least equal to the Specified Price (as defined in Article 19.7) (the "**Offer Consideration**").
- 19.3 The Offer must be given by written notice (a "**Proposed Sale Notice**") at least 10 Business Days (the "**Offer Period**") prior to the proposed sale date ("**Proposed Sale Date**"). The Proposed Sale Notice must set out, to the extent not described in any accompanying documents, the identity of the Proposed Purchaser, the purchase price and other terms and conditions of payment, the Proposed Sale Date and the number of Shares proposed to be purchased by the Proposed Purchaser (the "**Proposed Sale Shares**").
- 19.4 If any other holder of Shares is not given the rights accorded him by this Article, the Proposed Sellers will not be entitled to complete their sale and the Company will not register any transfer intended to carry that sale into effect.
- 19.5 If the Offer is accepted by any Shareholder (an "**Accepting Shareholder**") within the Offer Period, the completion of the Proposed Transfer will be conditional upon the completion of the purchase of all the Shares held by Accepting Shareholders.
- 19.6 The Proposed Transfer is subject to the pre-emption provisions of Article 15 but the purchase of the Accepting Shareholders' shares shall not be subject to Article 15.
- 19.7 For the purpose of this Article:
- (a) the expression "**transfer**" and "**purchaser**" shall include the renunciation of a renounceable letter of allotment and the renounce under any such letter of allotment respectively; and
  - (b) the expression "**Specified Price**" shall mean in respect of each Share a sum equal to that to which they would be entitled if the total consideration proposed to be paid by the Proposed Purchaser were distributed to the Proposed Seller(s) and Accepting Shareholders in accordance with the provisions of Article 5.

## 20. CO-SALE RIGHT

- 20.1 Except in the case of Permitted Transfer and transfers pursuant to Articles 17, 18 and 19 after going through the pre-emption procedure in Article 15, the provisions of this Article 20 will apply if one or more Proposed Sellers propose to transfer in one or a series of related transactions any Ordinary Shares

20.2 The Proposed Seller shall give to each holder of Series A Shares not less than 15 Business Days' notice in advance of the proposed sale (a "Co-Sale Notice") The Co-Sale Notice shall specify:

- (a) the identity of the proposed purchaser (the "**Buyer**"),
- (b) the price per share which the Buyer is proposing to pay;
- (c) the manner in which the consideration is to be paid;
- (d) the number of Ordinary Shares which the Proposed Seller proposes to sell;  
and
- (e) the address where the counter-notice should be sent.

20.3 Each Series A Shareholder shall be entitled within five Business Days after receipt of the Co-Sale Notice, to notify the Proposed Seller that they wish to sell a certain number of Series A Shares held by them at the proposed sale price, by sending a counter-notice to the Proposed Seller. The maximum number of shares which a Series A Shareholder can sell under this procedure shall be:

$$\left(\frac{X}{Y}\right) \times Z$$

where:

X is the number of Series A Shares held by the Series A Shareholder,

Y is the total number of Series A Shares;

Z is the number of Ordinary Shares the Proposed Seller proposes to sell.

Any Series A Shareholder who does not send a counter-notice within such five Business Day period shall be deemed to have specified that they wish to sell no shares.

20.4 Following the expiry of five Business Days from the date the Series A Shareholders receive the Co-Sale Notice, the Proposed Seller shall be entitled to sell to the Buyer on the terms notified to the Series A Shareholders a number of shares not exceeding the number specified in the CoSale Notice less any shares which Series A Shareholders have indicated they wish to sell, provided that at the same time the Buyer (or another person) purchases from the Series A Shareholders the number of shares they have respectively indicated they wish to sell on terms no less favourable than those obtained by the Proposed Seller from the Buyer.

20.5 No sale by the Proposed Seller shall be made pursuant to any Co-Sale Notice more than three months after service of that Co-Sale Notice.

20 6 Sales made by Series A Shareholders in accordance with this Article 20 shall not be subject to Article 15

## 21. DRAG-ALONG

### 21.1 If either:

- (a) the Investor Majority and, provided it is a Qualifying Shareholder, SM Trust; or
- (b) in respect of a Exempt Change of Control only, holders of a majority of the Ordinary Shares and, provided it is a Qualifying Shareholder, SM Trust.

(the "**Selling Shareholders**") wish to transfer all their interest in Shares (the "**Sellers' Shares**") to a Proposed Purchaser, the Selling Shareholders shall have the option (the "**Drag Along Option**") to require all the other holders of Shares (the "**Called Shareholders**") to sell and transfer all their Shares to the Proposed Purchaser or as the Proposed Purchaser shall direct in accordance with the provisions of this Article.

- 21.2 The Selling Shareholders may exercise the Drag Along Option by giving a written notice to that effect (a "**Drag Along Notice**") to the Company which the Company shall forthwith copy to the Called Shareholders at any time before the transfer of the Sellers' Shares to the Proposed Purchaser. A Drag Along Notice shall specify that the Called Shareholders are required to transfer all their Shares (the "**Called Shares**") under this Article, the person to whom they are to be transferred, the consideration for which the Called Shares are to be transferred (calculated in accordance with this Article) (the "**Called Shares Consideration**") and the proposed date of transfer.
- 21.3 Drag Along Notices shall be irrevocable but will lapse if for any reason there is not a sale of the Sellers' Shares by the Selling Shareholders to the Proposed Purchaser within 40 Business Days after the date of service of the Drag Along Notice. The Selling Shareholders shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice
- 21.4 The Called Shares Consideration (in cash or otherwise) for which the Called Shareholders shall be obliged to sell each of the Called Shares shall be that to which they would be entitled if the total consideration proposed to be paid by the Proposed Purchaser were distributed to the holders of the Called Shares and the Sellers' Shares in accordance with the provisions of Article 5.
- 21.5 No Drag Along Notice may require a Called Shareholder to agree to any terms except those specifically provided for in this Article.
- 21.6 Within five Business Days of the Selling Shareholders serving a Drag Along Notice on the Called Shareholders, the Called Shareholders shall deliver stock transfer forms for their Shares in favour of the Proposed Purchaser or as the Proposed Purchaser shall direct, together with the relevant share certificate(s) (or a suitable indemnity in lieu thereof) to the Company. On the expiration of that five Business Day period the Company shall pay the Called Shareholders, on behalf of the Proposed Purchaser, the amounts they are due pursuant to Article 21.4 to the extent the Proposed Purchaser has put the Company in the requisite funds. The Company's receipt for the amounts due pursuant to Article 21.4 shall be a good discharge to the Purchaser. The Company

shall hold the amounts due to the Called Shareholders pursuant to Article 21.4 in trust for the Called Shareholders without any obligation to pay interest.

- 21.7 To the extent that the Proposed Purchaser has not, on the expiration of such five Business Day period, put the Company in funds to pay the amounts due pursuant to Article 21.4, the Called Shareholders shall be entitled to the return of the stock transfer forms and share certificate (or suitable indemnity) for the relevant Shares and the Called Shareholders shall have no further rights or obligations under this Article 21 in respect of their Shares
- 21.8 If a Called Shareholder fails to deliver stock transfer forms and share certificates (or suitable indemnity) for its Shares to the Company upon the expiration of that five Business Day period, the Directors shall, if requested by the Proposed Purchaser, authorise any Director to transfer the Called Shareholder's Shares on the Called Shareholder's behalf to the Proposed Purchaser (or its nominee(s)) to the extent the Proposed Purchaser has, at the expiration of that five Business Day period, put the Company in funds to pay the amounts due pursuant to Article 21.4 for the Called Shareholders Shares offered to him. The Board shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Called Shareholder shall surrender his share certificate for his Shares (or provide a suitable indemnity to the Company. On surrender, he shall be entitled to the amount due to him pursuant to Article 21.4.
- 21.9 Any transfer of Shares to a Proposed Purchaser (or as they may direct) pursuant to a sale in respect of which a Drag Along Notice has been duly served shall not be subject to the provisions of Article 15.
- 21.10 If any new shares ("New Shares") are issued to any person, following the issue of a Drag Along Notice, pursuant to the exercise of an option to acquire shares in the Company or pursuant to the conversion of any convertible security of the Company (a "New Shareholder"), a Drag Along Notice shall be deemed to have been served on the New Shareholder in respect of that issue of New Shares on the same terms as the previous Drag Along Notice and the New Shareholder shall then be bound to sell and transfer all such New Shares so acquired to the Proposed Purchaser or as the Proposed Purchaser may direct and the provisions of this Article shall apply with the necessary changes to the New Shareholder except that completion of the sale of the New Shares shall take place immediately on the Drag Along Notice being deemed served on the New Shareholder.

## **22. GENERAL MEETINGS AND WRITTEN RESOLUTIONS**

- 22.1 In Regulation 37 of Table A there shall be substituted for the words "in accordance with the provisions of the Act" the words "for a date not later than twenty-eight days after the date on which the directors become subject to the requirement under section 303 of the 2006 Act".
- 22.2 A proposed written resolution of the Shareholders shall lapse if it is not passed before the expiry of a period of 60 days commencing on the circulation date (as defined in section 290 of the 2006 Act).
- 22.3

- (a) A written resolution of the members (or any class of members) of the Company may be passed in accordance with the provisions of the 2006 Act
- (b) Without prejudice to article 22 3(a), a matter which has the unanimous assent of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall, to the extent permitted by law, be as effectual as if it had been passed at a general meeting duly convened and held.

## **23. PROXIES**

The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the Directors may:

- (a) be sent or supplied in hard copy form, or (subject to any conditions and limitations which the Board may specify) in electronic form, to the registered office of the Company or to such other address (including electronic address) as may be specified for this purpose in the notice convening the meeting or in any instrument of proxy or any invitation to appoint a proxy sent or supplied by the Company in relation to the meeting at any time before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote;
- (b) be delivered at the meeting or adjourned meeting at which the person named in the instrument proposes to vote to the Chairman or to the Secretary or to any Director; or
- (c) in the case of a poll, be delivered at the meeting at which the poll was demanded to the Chairman or to the Secretary or to any Director, or at the time and place at which the poll is held to the Chairman or to the secretary or to any Director or scrutineer,

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

## **24. DIRECTORS' BORROWING POWERS**

The Directors may exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures, debenture stock and other securities as security for any debt, liability or obligation of the Company or of any third party

## **25. ALTERNATE DIRECTORS**

Notwithstanding any provision of these Articles to the contrary, any person appointed as a director may appoint any person as he thinks fit to be his, her or its alternate Director and the appointment of an alternate Director shall not require approval by a resolution of the Directors, and in its application to the Company Regulation 65 of Table A shall be modified accordingly



## **26. NUMBER OF DIRECTORS**

Unless and until the Company in general meeting shall otherwise determine the number of Directors shall be not less than two.

## **27. APPOINTMENT OF DIRECTORS**

27.1 Index, for as long as it or its Permitted Transferees is a member, shall be entitled to nominate one person to act as a Director of the Company by notice in writing addressed to the Company from time to time and the other holders of Shares shall not vote their Shares so as to remove that Director from office. Index shall be entitled to remove their nominated Director so appointed at any time by notice in writing to the Company served at its registered office and appoint another person to act in his place.

27.2 For so long as SM Trust is a Qualifying Shareholder it shall be entitled to nominate one person to act as a Director of the Company by notice in writing addressed to the Company from time to time and, for so long as SM Trust is a Qualifying Shareholder, the other holders of Shares shall not vote their Shares so as to remove that Director from office. SM Trust shall be entitled to remove their nominated Director so appointed at any time by notice in writing to the Company served at its registered office and, for so long as it is a Qualifying Shareholder, appoint another person to act in his place. If SM Trust ceases to be a Qualifying Shareholder the SM Trust Director shall (and SM Trust shall procure that the SM Trust Director shall), if so directed by the Investor Majority, resign as a Director of all Group Companies.

27.3 An appointment or removal of a Director under Article 27.1 or 27.2 will take effect at and from the time when the notice is received at the registered office of the Company or produce to a meeting of the directors of the Company.

27.4 Each Director appointed under Article 27.1 or 27.2 shall be entitled at his request to be appointed to the board of directors of any Subsidiary, to any committee of the Board established from time to time and to any committee of the board of directors of any Subsidiary established from time to time.

27.5 Index, for as long as it or its Permitted Transferee is a member, shall be entitled to appoint one person to act as an observer to the Board. The observer shall be entitled to attend and speak at all meetings of the Board and receive copies of all board papers as if he were a Director but shall not be entitled to vote on any resolutions proposed at a board meeting.

27.6 In its application to the Company, Regulation 78 of Table A shall be modified by the deletion of the words "and may also determine the rotation in which any additional Directors are to retire".

27.7 In its application to the Company, Regulation 84 of Table A shall be modified by the deletion of the third and final sentences.

## **28. DISQUALIFICATION OF DIRECTORS**

In addition to that provided in Regulation 81 of Table A, the office of a Director shall also be vacated if:

- (a) he is convicted of a criminal offence (other than a minor motoring offence) and the Directors resolve that his, her or its office be vacated;
- (b) in the case of Directors other than the Investor Director and, for so long as SM Trust is Qualifying Shareholder, the SM Trust Director, if a majority of his co Directors serve notice on him in writing, removing him from office.

## **29. PROCEEDINGS OF DIRECTORS**

29.1 To be quorate, any meeting of the Board must include the Investor Director (save that where a Relevant Interest of the Investor Director is being authorised by other Directors in accordance with section 175(5)(a) of the 2006 Act, the Investor Director and any other interested Director shall not be included for the purpose of such authorisation but the meeting shall be quorate). If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or at such time and place as determined by the Directors present at such meeting. If a quorum is not present at any such adjourned meeting within half an hour from the time appointed, then the meeting shall proceed.

29.2 In its application to the Company Regulation 89 of Table A shall be modified

- (a) by the deletion of the words "may be fixed by the Directors and unless so fixed at any other number" in the first sentence; and
- (b) by the addition of the following as the final sentence:

"In the event that a meeting of the Directors is attended by a Director who is acting as alternate for one or more other Directors, the Director or Directors for whom he is the alternate shall be counted in the quorum despite their absence, and if on that basis there is a quorum the meeting may be held despite the fact (if it is the case) that only one Director is physically present."

29.3 Any Director who participates in the proceedings of a meeting by means of a communication device (including a telephone) which allows all the other Directors present at that meeting (whether in person or by alternate or by means of that type of communication device) to hear at all times that Director and that Director to hear at all times all other Directors present at the meeting (whether in person or by alternate or by means of that type of communication device) shall be deemed to be present at the meeting and shall be counted when reckoning a quorum. A meeting held by these means shall be deemed to take place where the largest group of participators in number is assembled. In the absence of a majority the location of the chairman shall be deemed to be the place of the meeting.

29.4 Provided (if these Articles so require) that he has declared to the Directors, in accordance with the provisions of these Articles, the nature and extent of his interest (and subject to any restrictions on voting or counting in a quorum imposed by the Directors in authorising a Relevant Interest (as defined in Article 30.5), a Director may vote at a meeting of the Directors or of a committee of the Directors on any

resolution concerning a matter in which he has an interest, whether a direct or an indirect interest, or in relation to which he has a duty and shall also be counted in reckoning whether a quorum is present at such a meeting

- 29.5 Questions arising at any meeting of the Directors shall be decided by a majority of votes. In the case of any equality of votes, the chairman shall not have a second or casting vote

## 30. **DIRECTORS' INTERESTS<sup>2</sup>**

### 30 1 *Specific interests of a Director*

Subject to the provisions of the 2006 Act and provided (if these Articles so require) that he has declared to the Directors in accordance with the provisions of these Articles, the nature and extent of his interest, a Director may (save as to the extent not permitted by law from time to time), notwithstanding his office, have an interest of the following kind:

- (a) where a Director (or a person connected with him) is part to or in any way directly or indirectly interested in, or has any duty in respect of, any existing or propose contract, arrangement or transaction with the Company or any other undertaking in which the Company is in any way interested;
- (b) where a Director (or a person connected with him) is a director, employee or other officer of, or a part to any contract, arrangement or transaction with, or in any way interested in, any body corporate promoted by the Company or in which the Company is in any way interested;
- (c) where a Director (or a person connected with him) is a shareholder in the Company or a shareholder in, employee, director, member or other officer of, or consultant to, a Parent Undertaking of, or a Subsidiary Undertaking of a Parent Undertaking of, the Company;
- (d) where a Director (or a person connected with him) holds and is remunerated in respect of any office or place of profit (other than the office of auditor) in respect of the Company or body corporate in which the Company is in any way interested;
- (e) where a Director is given a guarantee, or is to be given a guarantee, in respect of an obligation incurred by or on behalf of the Company or any body corporate in which the Company is in any way interested;
- (f) where a Director (or a person connected with him or of which he is a member or employee) acts (or any body corporate promoted by the Company or in which the Company is in any way interested of which he is a director, employee or other officer may act) in a professional capacity for the Company or any body corporate promoted by the Company or in

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<sup>2</sup> By ordinary resolution on 10 July 2009, the members of the Company resolved for the purpose of paragraph 47(3)(b) of schedule 4 to the Companies Act 2006 (Commencement No. 5 Transitional Provisions and Savings) Order 2007, that authorisation of conflicts of interests may be given by Directors in accordance with section 175(5)(a) of the 2006 Act at any time following the date of that resolution

which the Company is in any way interested (other than as auditor) whether or not he or it is remunerated for this,

- (g) an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- (h) any other interest authorised by ordinary resolution.

### 30.2 *Interests of an Investor Director*

In addition to the provisions of Article 30 1, subject to the provisions of the 2006 Act and provided (if these Articles so require) that he has declared to the Directors in accordance with the provisions of these Articles, the nature and extent of his interest, the Investor Director may (save as to the extent not permitted by law from time to time), notwithstanding his office, have an interest arising from any duty he may owe to, or interest he may have as an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or direct or indirect investor (including without limitation by virtue of a carried interest, remuneration or incentive arrangements or the holding of securities) in:

- (a) a Fund Manager;
- (b) any of the funds advised or managed by a Fund Manager from time to time, or
- (c) another body corporate or firm in which a Fund Manager or any fund advised by such Fund Manager has directly or indirectly invested, including without limitation any portfolio companies.

### 30.3 *Interests of which a Director is not aware*

For the purpose of this Article 30, an interest of which a Director is not aware and of which it is unreasonable to expect him to be aware shall not be treated as an interest of his.

### 30.4 *Accountability of any benefit and validity of a contract*

In any situation permitted by this Article 30 (save as otherwise agreed by him) a Director shall not by reason of his office be accountable to the Company for any benefit which he derives from that situation and no such contract, arrangement or transaction shall be avoided on the grounds of any such interest or benefit.

### 30 5 *Terms and conditions of Board authorisation*

Subject to Article 30.6, any authority given in accordance with section 175(5)(a) of the 2006 Act in respect of a Director ("**Interested Director**") who has proposed that the Directors authorise his interest ("**Relevant Interest**") pursuant to that section may, for the avoidance of doubt:

- (a) be given on such terms and subject to such conditions or limitations as may be imposed by the authorising Directors as they see fit from time to time, including, without limitation:

- (i) restricting the Interested Director from voting on any resolution put to a meeting of the Directors or of a committee of the Directors in relation to the Relevant Interest;
  - (ii) restricting the Interested Director from being counted in the quorum at a meeting of the Directors or of a committee of the Directors where such Relevant Interest is to be discussed; or
  - (iii) restricting the application of the provisions in Articles 30.7 and 30.8, so far as is permitted by law, in respect of such Interested Director;
- (b) be withdrawn, or varied at any time by the Directors entitled to authorise the Relevant Situation as they see fit from time to time; and

subject to Article 30.6, an Interested Director must act in accordance with any such terms, conditions or limitations imposed by the authorising Directors pursuant to section 175(5)(a) of the 2006 Act and this Article 30.

### 30.6 *Terms and conditions of Board authorisation for the Investor Director*

Notwithstanding the other provisions of this Article 30, it shall not (save with the consent in writing of the Investor Director) be made a condition of any authorisation of a matter in relation to the Investor Director in accordance with section 175(5)(a) of the 2006 Act. that he shall be restricted from voting or counting in the quorum at any meeting of, or of any committee of the Directors or that he shall be required to disclose, use or apply confidential information as contemplated in Article 30.8.

### 30.7 *Director's duty of confidentiality to a person other than the Company*

Subject to Article 30.8 (and without prejudice to any equitable principle or rule of law which may excuse or release the Director from disclosing information, in circumstance where disclosure may otherwise be required under this Article 30), if a Director, otherwise than by virtue of his position as director, receives information in respect of which he owes a duty of confidentiality to a person other than the Company, he shall not be required:

- (a) to disclose such information to the Company or to any Director, or to any officer or employee of the Company; or
- (b) otherwise to use or apply such confidential information for the purpose of or in connection with the performance of his duties as a Director.

30.8 Where such duty of confidentiality arises out of a situation in which a Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company, Article 30.7 shall apply only if the conflict arises out of a matter which falls within Article 30.1 or Article 30.2 or has been authorised under section 175(5)(a) of the 2006 Act.

### 30.9 *Additional steps to be taken by a Director to manage a conflict of interest*

Where a Director has an interest which can reasonably be regarded as likely to give rise to a conflict of interest, the Director may take such additional steps as may be necessary or desirable for the purpose of managing such conflict of interest, including compliance with any procedures laid down from time to time by the Directors for the purpose of managing conflicts of interest generally and/or any specific procedures approved by the Directors for the purpose of or in connection with the situation or matter in question, including without limitation:

- (a) absenting himself from any discussions, whether in meetings of the Directors or otherwise, at which the relevant situation or matter falls to be considered; and
- (b) excluding himself from documents or information made available to the Directors generally in relation to such situation or matter and/or arranging for such documents or information to be reviewed by a professional adviser to ascertain the extent to which it might be appropriate for him to have access to such documents or information.

#### 30.10 *Requirement of a Director to declare an interest*

Subject to section 182 of the 2006 Act, a Director shall declare the nature and extent of any interest permitted by Article 30.1 or Article 30.2 at a meeting of the Directors, or by general notice in accordance with section 184 (notice in writing) or section 185 (general notice) of the 2006 Act or in such other manner as the Directors may determine, except that no declaration of interest shall be required by a Director in relation to an interest:

- (a) falling under Article 30.1(g);
- (b) if, or to the extent that, the other Directors are already aware of such interest (and for this purpose the other Directors are treated as aware of anything of which they ought reasonably to be aware); or
- (c) if, or to the extent that, it concerns the terms of his service contract (as defined by section 227 of the 2006 Act) that have been or are to be considered by a meeting of the Directors, or by a committee of Directors appointed for the purpose under these Articles.

#### 30.11 *Shareholder approval*

Subject to section 239 of the 2006 Act, the Company may by ordinary resolution ratify any contract, transaction or arrangement, or other proposal, not properly authorised by reason of a contravention of any provisions of this Article 30.

#### 30.12 For the purposes of this Article 30:

- (a) a conflict of interest includes a conflict of interest and duty and a conflict of duties,
- (b) the provisions of section 252 of the 2006 Act shall determine whether a person is connected with a Director;

- (c) a general notice to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified.

### **31. EXECUTION OF DOCUMENTS**

In its application to the Company, Regulation 101 of Table A shall be modified by the addition of the following sentence:

"Any instrument expressed to be executed by the Company and signed by one director (in the presence of a witness who attests the signature), two Directors, or by one Director and the Secretary, by the authority of the Directors or of a committee authorised by the Directors shall (to the extent permitted by the Act or the 2006 Act) have effect as if executed under seal."

### **32. DIVIDENDS**

In Regulation 103 of Table A the words from "If the share capital is divided" to the end of the third sentence of the Regulation shall be deleted.

### **33. NOTICES**

- 33.1 Subject to the requirements set out in the 2006 Act, any notice given or document sent or supplied to or by any person under these Articles, or otherwise sent by the Company under the Act or the 2006 Act, may be given, sent or supplied:

- (a) in hard copy form,
- (b) in electronic form; or
- (c) (by the Company) by means of a website (other than notices calling a meeting of Directors),

or partly by one of these means and partly by another of these means.

Notices shall be given and documents supplied in accordance with the procedures set out in the 2006 Act, except to the extent that a contrary provision is set out in this Article 35

*Notices in hard copy form*

- 33.2 Any notice or other document in hard copy form given or supplied under these Articles may be delivered or sent by first class post (airmail if overseas):

- (a) to the Company or any other company at its registered office; or
- (b) to the address notified to or by the Company for that purpose; or

- (c) in the case of an intended recipient who is a member or his legal personal representative or trustee in bankruptcy, to such member's address as shown in the Company's register of members; or
  - (d) in the case of an intended recipient who is a Director or alternate, to his address as shown in the register of Directors; or
  - (e) to any other address to which any provision of the Companies Acts (as defined in the 2006 Act) authorises the document or information to be sent or supplied; or
  - (f) where the Company is the sender, if the Company is unable to obtain an address falling within one of the addresses referred to in (a) to (e) above, to the intended recipients last address known to the Company.
- 33.3 Any notice or other document in hard copy form given or supplied under these Articles shall be deemed to have been served and be effective:
- (a) if delivered, at the time of delivery;
  - (b) if posted, on receipt or 48 hours after the time it was posted, whichever occurs first.

*Notices in electronic form*

- 33.4 Subject to the provisions of the 2006 Act, any notice or other document in electronic form given or supplied under these Articles may:
- (a) if sent by fax or email (provided that a fax number or an address for email has been notified to or by the Company for that purpose), be sent by the relevant form of communication to that address;
  - (b) if delivered or sent by first class post (airmail if overseas) in an electronic form (such as sending a disk by post), be so delivered or sent as if in hard copy form under Article 33 2; or
  - (c) be sent by such other electronic means (as defined in section 1168 of the 2006 Act) and to such addressees) as the Company may specify:
    - (i) on its website from time to time, or
    - (ii) by notice (in hard copy or electronic form) to all members of the Company from time to time.
- 33.5 Any notice or other document in electronic form given or supplied under these Articles shall be deemed to have been served and be effective
- (a) if sent by facsimile or email (where a fax number or an address for email has been notified to or by the Company for that purpose), on receipt or 48 hours after the time it was sent, whichever occurs first;



- (b) if posted in an electronic form, on receipt or 48 hours after the time it was posted, whichever occurs first;
- (c) if delivered in an electronic form, at the time of delivery; and
- (d) if sent by any other electronic means as referred to in Article 33.4(c), at the time such delivery is deemed to occur under the 2006 Act.

33.6 Where the Company is able to show that any notice or other document given or sent under these Articles by electronic means was properly addressed with the electronic address supplied by the intended recipient, the giving or sending of that notice or other document shall be effective notwithstanding any receipt by the Company at any time of notice either that such method of communication has failed or of the intended recipient's non-receipt.

*Notice by means of a website*

33.7 Subject to the provisions of the 2006 Act, any notice or other document or information to be given, sent or supplied by the Company to Shareholders under these Articles may be given, sent or supplied by the Company by making it available on the Company's website.

*General*

33.8 In the case of joint holders of a share all notices shall be given to the joint holder whose name stands first in the register of members of the Company in respect of the joint holding (the "**Ordinary Holder**"). Notice so given shall constitute notice to all the joint holders.

33.9 Anything agreed or specified by the Primary Holder in relation to the service, sending or supply of notices, documents or other information shall be treated as the agreement or specification of all the joint holders in their capacity as such (whether for the purposes of the 2006 Act or otherwise).

33.10 Regulations 111, 112 and 115 of Table A shall be deleted.

## 34. **INDEMNITIES AND INSURANCE**

34.1 Subject to the provisions of and so far as may be permitted by, the 2006 Act:

- (a) without prejudice to any indemnity to which a Director or officer of the Company may otherwise be entitled, every Director or other officer of the Company (excluding the Company's auditors) shall be entitled to be indemnified by the Company (and the Company shall also be able to indemnify directors of any associated company (as defined in section 256 of the 2006 Act)) out of the Company's assets against all liabilities incurred by him in the actual or purported execution or discharge of his duties or the exercise or purported exercise of his powers or otherwise in relation to or in connection with his duties, powers or office, provided that no director of the Company or any associated company is indemnified by the Company against

- (i) any liability incurred by the director to the Company or any associated company; or
- (ii) any liability incurred by the director to pay a fine imposed in criminal proceedings or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirements of a regulatory nature; or
- (iii) any liability incurred by the director:
  - (A) in defending any criminal proceedings in which he is convicted;
  - (B) in defending civil proceedings brought by the Company or any associated company in which final judgment (within the meaning set out in section 234 of the 2006 Act) is given against him; or
  - (C) in connection with any application under sections 144(3) or 144(4) or 727 of the Act or sections 661(3) or 661(4) or 1157 of the 2006 Act (as the case may be) for which the court refuse to grant him relief,

save that, in respect of a provision indemnifying a director of a company (whether or not the Company) that is a trustee of an occupational pension scheme (as that term is used in section 235 of the 2006 Act) against liability incurred in connection with that company's activities as trustee of the scheme, the Company shall also be able to indemnify any such director without the restrictions in Articles 34.1(a)(i), 34.1(a)(ii)(B) and 34.1(a)(iii)(C) applying;

- (b) the Directors may exercise all the powers of the Company to purchase and maintain insurance for any such Director or other officer against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company, or any associated company including (if he is a director of a company which is a trustee of an occupational pension scheme) in connection with that company's activities as trustee of an occupational pension scheme.

34.2 The Company shall (at the cost of the Company) effect and maintain for each Director policies of insurance insuring each Director against risks in relation to his office as each director may reasonably specify including without limitation, any liability which by virtue of any rule of law may attach to him in respect of any negligence, default of duty or breach of trust of which he may be guilty in relation to the Company.

## 35 DATA PROTECTION

Each of the shareholders and directors of the Company (from time to time) consent to the processing of their personal data by the Company, its shareholders and directors (each a "Recipient") for the purpose of due diligence exercises, compliance with

applicable laws, regulations and procedures and the exchange of information among themselves. A Recipient may process the personal data either electronically or manually. The personal data which may be processed under this Article shall include any information which may have a bearing on the prudence or commercial merits of investing, or disposing of any shares (or other investment or security) in the Company. Other than as required by law, court order or other regulatory authority, that personal data may not be disclosed by a Recipient or any other person except to a Member of the same Group ("**Recipient Group Companies**") and to employees, directors and professional advisers of that Recipient or the Recipient Group Companies and funds managed by any of the Recipient Group Companies. Each of the Company's shareholders and directors (from time to time) consent to the transfer of relevant personal data to persons acting on behalf of the Recipient and to the offices of any Recipient both within and outside the European Economic Area for the purposes stated above, where it is necessary or desirable to do so.

36. **SECRETARY**

Subject to the provisions of the Act and/or the 2006 Act, the Directors may appoint a secretary for such term, at such remuneration and upon such conditions as they may think fit, and any secretary so appointed may be removed by them.