

WE HEREBY CERTIFY THAT THIS DOCUMENT  
IS A TRUE COPY OF THE ORIGINAL  
Signed Swinburne Maddison  
SWINBURNE, MADDISON  
DATED THE 24 DAY OF September 09

Company number 6995899

PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTIONS

of

Tower Newco Limited (Company)

FRIDAY



A26 \*AW55BDKO\* 25/09/2009 271  
COMPANIES HOUSE

Circulation Date: 21 August 2009

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that:

- the resolutions numbered 1 to 3 below are passed as special resolutions (**together Special Resolutions**); and
- the resolutions numbered 4 and 5 below are passed as ordinary resolutions (**together Ordinary Resolutions**).

SPECIAL RESOLUTIONS

"FOR INFORMATION ONLY"		For	Against
1. That the Company name shall be changed from 'Tower Newco Limited' to 'Tower Regeneration Limited'.	<del>Not a special resolution</del>	X	
2. That the articles of association in the form annexed hereto (the <b>Articles</b> ) shall be and are hereby adopted as the articles of association of the Company in substitution for and to the entire exclusion of the existing articles of association.		X	
3. That Steven MacQuarrie shall be appointed as secretary for the Company.		X	

ORDINARY RESOLUTIONS

	For	Against
4. That the authorised share capital of the Company be increased from £100 consisting of 100 ordinary shares of £1 each to £100,000 by the creation of an additional 50,000 A shares of £1 each and 49,900 ordinary shares of £1 each such shares having the rights and being subject to the restriction set out within the Articles.	X	
5. That the registered office of the Company shall be changed from 'Venture House, Aykley Heads Business, Centre Durham	X	

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 05-10-2001 BY 60322 UCBAW

DH1 5TS' to 'Tower Colliery, Treherbert Road, Rhigos, Aberdare, Mid Glamorgan CF44 9UF'		
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## AGREEMENT

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

The undersigned, a person entitled to vote on the above resolutions on 21 August 2009, hereby irrevocably agrees to those resolutions as indicated above:

Signed by **Tower Colliery Limited**

Date

Signed by **Forward Sound Limited**

Date

26 August 2009



## NOTES

1. If you wish to vote in favour of a resolution please put an 'X' in the For box next to that resolution. If you wish to vote against a resolution please put an 'X' in the Against box next to that resolution or leave both boxes next to that resolution blank. Once you have indicated your voting intentions please sign and date this document and return it to the Company using one of the following methods:

- **By Hand:** delivering the signed copy to Tower Colliery, Treherbert Road, Rhigos, Aberdare, Mid Glamorgan CF44 9UF.
- **Post:** returning the signed copy by post to Tower Colliery, Treherbert Road, Rhigos, Aberdare, Mid Glamorgan CF44 9UF.
- **Fax:** faxing the signed copy to 01685 813792 marked "For the attention of Geoffrey Davies".

If there are no resolutions you agree with, you do not need to do anything: you will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to a resolution, you may not revoke your agreement.

3. Where, by 21 September 2009, insufficient agreement has been received for a resolution to pass, such resolution will lapse. If you agree to all or any of the resolutions, please ensure that your agreement reaches us before or during this date.

4. In the case of joint holders of shares, only the vote of the senior holder who votes will be counted by the Company. Seniority is determined by the order in which the names of the joint holders appear in the register of members.

5. If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.

WE HEREBY CERTIFY THAT THIS DOCUMENT  
IS A TRUE COPY OF THE ORIGINAL  
Signed Swinburne Maddison  
SWINBURNE, MADDISON  
DATED THE 24 DAY OF September 09

Company number 6995899

**PRIVATE COMPANY LIMITED BY SHARE**

**WRITTEN RESOLUTIONS**

of

**Tower Newco Limited (Company)**

... HOUSE

Circulation Date: 21 August 2009

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that:

- the resolutions numbered 1 to 3 below are passed as special resolutions (**together Special Resolutions**); and
- the resolutions numbered 4 and 5 below are passed as ordinary resolutions (**together Ordinary Resolutions**).

**SPECIAL RESOLUTIONS**

	For	Against
1. That the Company name shall be changed from 'Tower Newco Limited' to 'Tower Regeneration Limited'.	X	
2. That the articles of association in the form annexed hereto (the <b>Articles</b> ) shall be and are hereby adopted as the articles of association of the Company in substitution for and to the entire exclusion of the existing articles of association.	X	
3. That Steven MacQuarrie shall be appointed as secretary for the Company.	X	

**ORDINARY RESOLUTIONS**

	For	Against
4. That the authorised share capital of the Company be increased from £100 consisting of 100 ordinary shares of £1 each to £100,000 by the creation of an additional 50,000 A shares of £1 each and 49,900 ordinary shares of £1 each such shares having the rights and being subject to the restriction set out within the Articles.	X	

5. That the registered office of the Company shall be changed from 'Venture House, Aykley Heads Business, Centre Durham DH1 5TS' to 'Tower Colliery, Treherbert Road, Rhigos, Aberdare, Mid Glamorgan CF44 9UF'	X	
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## AGREEMENT

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

The undersigned, a person entitled to vote on the above resolutions on 21 August 2009, hereby irrevocably agrees to those resolutions as indicated above:

Signed by Tower Colliery Limited

Date 26/08/09

G.N. Davies (G.N. DAVIES)

Signed by Forward Sound Limited

Date

## NOTES

1. If you wish to vote in favour of a resolution please put an 'X' in the For box next to that resolution. If you wish to vote against a resolution please put an 'X' in the Against box next to that resolution or leave both boxes next to that resolution blank. Once you have indicated your voting intentions please sign and date this document and return it to the Company using one of the following methods:

- **By Hand:** delivering the signed copy to Tower Colliery, Treherbert Road, Rhigos, Aberdare, Mid Glamorgan CF44 9UF.
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- **Fax:** faxing the signed copy to 01685 813792 marked "For the attention of Geoffrey Davies".

If there are no resolutions you agree with, you do not need to do anything: you will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to a resolution, you may not revoke your agreement.

3. Where, by 21 September 2009, insufficient agreement has been received for a resolution to pass, such resolution will lapse. If you agree to all or any of the resolutions, please ensure that your agreement reaches us before or during this date.

4. In the case of joint holders of shares, only the vote of the senior holder who votes will be counted by the Company. Seniority is determined by the order in which the names of the joint holders appear in the register of members.

5. If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.

**THE COMPANIES ACTS 1985 AND 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**OF**

**TOWER NEWCO LIMITED**

**(Adopted by Written Special Resolution passed on August 2009)**

**1. INTERPRETATION**

1.1 In these Articles "Table A" means Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985/805) as amended by the Companies (Tables A to F) (Amendment) Regulations 2007 (SI 2007/2541) and the Companies (Tables A to F) (Amendment) (No 2) Regulations 2007 (SI 2007/2826), and as otherwise amended prior to the adoption of these Articles. Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in Table A shall have the same meanings in these Articles.

1.2 In these Articles, the following words have the following meanings:

**A Shares:** has the meaning given in article 3.1.

**The Act:** the provisions of the Companies Act 1985 and the Companies Act 2006 as amended and in force prior to adoption of these Articles;

**Board:** the board of directors of the Company as constituted from time to time.

**Business Day:** a day (other than a Saturday or Sunday) when banks in the City of London are open for business;

**Buyer:** has the meaning given in article 9.1.

**Chairman:** the chairman of the Board from time to time.

**Coaling Operations:** the recovery of residual incidental coal reserves by surface mining methods and commercial distribution of coal at and from the Property and such other land as may be agreed by the shareholders.

**Continuing Shareholder:** has the meaning given in article 7.6.

**Expert:** a person appointed in accordance with article 10.

**Fair Value:** means the value of any Shares determined in accordance with article 9.



**FS:** Forward Sound Limited (company number: 6723693).

**FS Shares:** the 50 Ordinary Shares and 35 A Shares allotted and issued to FS and all successors in title permitted under the terms of these Articles.

**FS Director:** any director appointed to the Company by holders of the FS Shares.

**FS Majority:** a majority of the FS Directors.

**Group:** in relation to a company (wherever incorporated), that company, any company of which it is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company; and each company in a Group is a member of the Group.

**Holding Company:** shall have the meaning prescribed with section 1159 and Schedule 6 of the Companies Act 2006.

**Land Development:** the commercial mixed use development and sale of all or part of the Property.

**Notice of Obligatory Transfer Event:** has the meaning given in article 9.1.

**Obligatory Transfer Event:** in relation to a shareholder, any event specified in article 8 that happens to that shareholder.

**Ordinary Shares:** has the meaning given in article 3.1.

**Property:** has the meaning set out within the Contract for Sale entered into on the date of adoption of these Articles between (1) Tower Colliery Limited (2) Tower Newco Limited and (3) Forward Sound Limited, being the land at Tower Colliery, Hirwaun, Aberdare .

**Seller:** has the meaning given in article 7.6 and 9.1.

**Shares:** the Ordinary Shares and the A Shares in the capital of the Company.

**Subsidiary:** in relation to a company wherever incorporated (a holding company) means a "subsidiary" as defined in section 1159 of the Companies Act 2006 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company.

**TC:** Tower Colliery Limited (company number 2997375).

**TC Majority:** a majority of the TC Directors.

**TC Shares:** the 50 Ordinary Shares and 65 A Shares allotted and issued to TC and all successors in title permitted under the terms of these Articles.

**TC Director:** any director appointed to the Company by holders of the TC Shares.

**Transfer Notice:** has the meaning given in article 7.6.

- 1.3 References in these Articles and in Table A to writing shall be construed as including references to any method of representing or reproducing words in a legible and non-transitory form.
- 1.4 References in these Articles to paragraphs and sub-paragraphs are to the paragraphs and sub-paragraphs of the Article and paragraph in which they appear.
- 1.5 Headings in these Articles are for convenience only and shall not affect the interpretation hereof.

## **2. ADOPTION OF TABLE A**

- 2.1 The Regulations contained in Table A as it relates to a private company limited by shares shall, except where they are modified or excluded by these Articles or are inconsistent herewith, apply to the Company and, subject to any such modifications, exclusions or inconsistencies, shall together with these Articles constitute the articles of association of the Company to the exclusion of any other regulations set out in any statute or in any statutory instrument or other subordinate legislation. A copy of Table A as it relates to a private company limited by shares is set out in the Schedule to these Articles.
- 2.2 Regulations 2, 8, 26, 40, 41, 54, 58, 60 to 62 (inclusive), 64 to 66 (inclusive), 76 to 79 (inclusive), 85, 86, 88 to 90 (inclusive), 94, 109, 110, 112, 115, 117 and 118 of Table A shall not apply to the Company.

## **3. SHARE CAPITAL**

- 3.1 The share capital of the Company at the date of adoption of these Articles is £100,000 divided into 50,000 Ordinary Shares of £1 each (**Ordinary Shares**) and 50,000 A Ordinary Shares of £1 each (**A Shares**).
- 3.2 The Ordinary Shares shall carry the following rights: -
- (a) The holders of the Ordinary Shares shall be entitled to a dividend thereon or distribution in respect thereof in respect of profits of the Company available for distribution resulting from or arising in respect of Land Development as shall be declared by the Board from time to time.
  - (b) The Ordinary Shares shall entitle their holders to receive notice of and to attend and vote at any general meeting of the Company. On a show of hands every holder of an Ordinary Share shall be entitled to one vote and on a poll any holder of an Ordinary Share who is present in person or by proxy shall have one vote for every Ordinary Share he or she holds.

- 3.3 The A Shares shall carry the following rights: -

- (a) The holders of the A Shares shall be entitled to a dividend thereon or distribution in respect thereof in respect of profits of the Company available for distribution resulting from or arising in respect of Coaling Operations as shall be declared by the Board from time to time.
- (b) The A Shares shall not entitle their holders to receive notice of or to attend and vote at any general meeting of the Company.

3.4 On a return of capital on liquidation, winding up or otherwise (except on a redemption or purchase by the Company of any Shares) the surplus assets of the Company remaining after the payment of its liabilities shall be applied as follows:

- (a) the holders of the Ordinary Shares shall be entitled to receive such surplus assets to the extent that they are derived from or arise as a result of Land Development (including, without limitation, to the extent that the same represent undistributed profits of the Company arising from Land Development or the sale price (or part thereof) in respect of any asset of the Company which is attributable to Land Development or future or potential Land Development); and
- (b) the holders of the A Shares shall be entitled to receive such surplus assets to the extent that they are derived from or arise as a result of Coaling Operations (including, without limitation, to the extent that the same represent undistributed profits of the Company arising from Coaling Operations or the sale price (or part thereof) in respect of any asset of the Company which is attributable to Coaling Operations or future or potential Coaling Operations).

3.5 If there is any dispute as to the source of the relevant profits or assets for the purposes of articles 3.2(a), 3.3(a) or 3.4 such dispute shall be referred to the Expert for determination.

#### **4. UNISSUED SHARES**

4.1 No shares in the Company nor any right to subscribe for or convert any security into shares in the Company shall at any time be allotted unless within one month before that allotment every shareholder for the time being has consented in writing to that allotment and its terms and to the identity of the proposed allottee.

4.2 Section 89(1) of the Companies Act 1985 shall not apply to an allotment of any equity security where the consent to that allotment of every shareholder has been obtained as required by these Articles and that allotment otherwise conforms to the requirements of these Articles.

**5. INITIAL AUTHORITY TO ISSUE RELEVANT SECURITIES**

- 5.1 The directors are authorised to exercise all powers of the Company to allot relevant securities, but only if the allotment otherwise conforms to the requirements of these Articles. The maximum nominal amount of relevant securities which may be allotted under this authority shall be the nominal amount of the unissued share capital at the date of adoption of these Articles or such other amount as may from time to time be authorised by the Company in general meeting.
- 5.2 The authority conferred on the directors by this Article shall remain in force for a period of five years from the date of adoption of these Articles but may be revoked, varied or renewed from time to time by the Company in general meeting in accordance with the Act.

**6. LIEN**

The Company shall have a first and paramount lien on every Share (whether or not it is a fully paid Share) for all monies (whether presently payable or not) called or payable at a fixed time in respect of that Share and the Company shall also have a first and paramount lien on all Shares (whether fully paid or not) standing registered in the name of any person for all monies presently payable by him or his estate to the Company, whether he shall be the sole registered holder thereof or shall be one of several joint holders; but the directors may at any time declare any Share to be wholly or in part exempt from the provisions of this article. The Company's lien, if any, on a Share shall extend to all dividends payable thereon. Regulation 8 of Table A shall not apply.

**7. TRANSFER OF SHARES**

- 7.1 All transfers of shares shall be effected by instrument in writing in any form for the time being authorised by the Stock Transfer Act 1963 (or any statutory modification or re-enactment thereof for the time being in force) or in any other form which the directors may approve.
- 7.2 No shareholder shall transfer, grant any security interest over, or otherwise dispose of or give any person any rights in or over any Share or interest in any Share in the Company unless it is permitted or required under these articles and carried out in accordance with the terms of these articles. If a shareholder transfers (or purports to transfer) any Shares other than in accordance with this article, it shall be deemed to have served a Transfer Notice.
- 7.3 A shareholder may transfer all of its Shares in the Company to a member of its Group provided that at the time of the transfer the transferor procures that the transferee

enters into a deed of adherence in such form as may be agreed between the shareholders in relation to any shareholders agreement between the shareholders and the transferor guarantees the obligations of the transferee under any such agreement.

- 7.4 If a transferee acquiring Shares pursuant to article 7.3 ceases to be a member of the transferor's Group, the transferee must, not later than the date five Business Days after the date on which it so ceases, transfer all (but not some only) of its Shares in the Company back to the transferor or to a member of the same Group as the transferor (which in either case is not in liquidation), failing which the Company may execute a transfer of the Shares on behalf of the transferee and register the transferor as the holder of such Shares.
- 7.5 A shareholder may transfer all of its Shares in the Company to any person for cash and not on deferred terms if the shareholder follows the steps in this article.
- 7.6 The shareholder wishing to transfer its Shares (in this article the **Seller**) shall give an irrevocable notice (**Transfer Notice**) to the other shareholder (**Continuing Shareholder**) of the details of the proposed transfer including:
- (a) if it wishes to sell its Shares to a third party, the name of the proposed transferee; and
  - (b) the price (in cash) at which it wishes to transfer its Shares.
- 7.7 The Continuing Shareholder may nominate a third party to acquire some or all of the Seller's Shares pursuant to this article 7 by serving the Seller with written notice of the details of the nominated third party.
- 7.8 If the Continuing Shareholder or any nominated third party gives notice to the Seller within 28 days of receiving the Transfer Notice (the first day being the day after it receives the Transfer Notice) that it wishes to buy all the Seller's Shares in the Company, the Continuing Shareholder or any person nominated in writing by the Continuing Shareholder shall have the right to do so at the price specified in the Transfer Notice.
- 7.9 The Continuing Shareholder or any nominated third party is bound to buy all the Seller's Shares when it gives notice to the Seller under article 7.8 that it wishes to do so. The sale and purchase of Shares shall take place on the terms set out in article 11.
- 7.10 If at the expiry of the period specified in article 7.8, the Continuing Shareholder or any nominated third party has not notified the Seller that it wants to buy the Shares, the Seller may transfer all its Shares in the Company to the buyer identified in the

Transfer Notice at a price not less than the price specified in that notice provided that it does so within 3 months of the expiry of the period specified in article 7.8.

- 7.11 Each shareholder undertakes (in respect of the Shares that it holds) to give, and to use its reasonable efforts to procure that shareholders in its Group give, the approvals required for the transfer of Shares under this article.
- 7.12 References in this article to Shares held by a shareholder in the Company are to all the Shares in the Company held by that shareholder or any member of its Group and not to some only of those Shares.
- 7.13 The directors shall forthwith register any duly stamped transfer made in accordance with this article 7 and shall not have any discretion to register any transfer of Shares which has not been made in compliance with this article 7.
- 7.14 To enable the directors to determine whether or not there has been a disposal of Shares (or any interest in Shares) in breach of this article 7, the FS Directors or the TC Directors (as the case may be) may from time to time require the other shareholder to provide the Company with such information and evidence as they may reasonably require to ensure compliance with this article 7.
- 7.15 The Seller shall procure that, in relation to the Shares being sold in the Company, any buyer of the Shares who is not already a shareholder and therefore a party to any shareholders agreement entered into by the shareholders, shall enter into a deed of adherence in respect of any such agreement.
- 7.16 Neither TC nor FS shall be entitled to transfer any Shares (other than in the circumstances referred to in article 7.3) until after the second anniversary of the date of adoption of these Articles.

#### **8. OBLIGATORY TRANSFER EVENT**

If anything mentioned in this article happens to a shareholder it is an Obligatory Transfer Event in respect of that shareholder and the provisions of article 9 apply:

- (a) the passing of a resolution for the liquidation of the shareholder or its Holding Company other than a solvent liquidation for the purpose of the reconstruction or amalgamation of all or part of the shareholder's Group (the structure of which has been previously approved by the other shareholder in writing) in which a new company assumes (and is capable of assuming) all the obligations of the shareholder or other company in the shareholder's Group;

- (b) the presentation at court by any competent person of a petition for the winding up of the shareholder or its Holding Company and which has not been withdrawn or dismissed within seven days of such presentation;
- (c) a Change of Control of the shareholder save in respect of FS where Control is obtained by either Hargreaves Services plc (Company Registration Number 04952865) or Evans & Reid Coal Company Limited (Company Registration Number 00180263);
- (d) the issue at court by any competent person of a notice of intention to appoint an administrator to the shareholder or its Holding Company, a notice of appointment of an administrator to the shareholder or its Holding Company or an application for an administration order in respect of the shareholder or its Holding Company;
- (e) any step is taken by any person to appoint a receiver, administrative receiver or manager in respect of the whole or a substantial part of the assets or undertaking of the shareholder or its Holding Company;
- (f) the shareholder or its Holding Company entering into a composition or arrangement with its creditors;
- (g) any chargor taking any step to enforcing any charge created over any Shares held by the shareholder in the Company;
- (h) the shareholder commits a material or persistent breach determined by a court of competent jurisdiction of any shareholders agreement entered into between the shareholders which if capable of remedy has not been so remedied within 20 Business Days of the other shareholder requiring such remedy; or
- (i) in the case of the Obligatory Transfer Events set out in sub-articles (a), (b), (d) or (e) above, any competent person takes any analogous step in any jurisdiction in which the relevant shareholder carries on business.

## 9. TRANSFER FOLLOWING OBLIGATORY TRANSFER EVENT

- 9.1 Where an Obligatory Transfer Event happens to a shareholder (in this article the **Seller**) it shall give notice of it to the other shareholder (in this article the **Buyer**) as soon as possible and, if it does not, it is deemed to have given such notice on the date on which the Buyer becomes aware of such Obligatory Transfer Event (**Notice of Obligatory Transfer Event**).
- 9.2 As soon as practicable after service, or deemed service, of the Notice of Obligatory Transfer Event, the parties shall appoint an Expert to determine the Fair Value of the Seller's Shares in the Company (**Sale Shares**).

- 9.3 The Buyer may nominate a third party to acquire some or all of the Sale Shares pursuant to this article 9 by serving written notice upon the Seller of details of the nominated third party.
- 9.4 The Buyer or any nominated third party has the right, within 15 days of receiving notification of the Fair Value determined by the Expert (the first day being the day after the Buyer receives the Fair Value notification) to serve a notice on the Seller to buy all of the Sale Shares at the Fair Value.
- 9.5 In this article the Fair Value of the Sale Shares shall be the value that the Expert certifies to be the fair market value in his opinion based on the following assumptions:
- (a) the value of the Shares in question is that proportion of the fair market value of the entire issued share capital of the Company that the Sale Shares bear to the then total issued share capital of the Company (with no premium or discount for the size of the Seller's shareholding or for the rights or restrictions applying to the Shares under this agreement or the Articles);
  - (b) the sale is between a willing buyer and a willing seller on the open market;
  - (c) the sale is taking place on the date that the Obligatory Transfer Event occurred;
  - (d) if the Company is then carrying on its Business as a going concern, on the assumption that it shall continue to do so;
  - (e) the Shares are sold free of all Encumbrances; and
  - (f) to take account of any other factors that the Expert reasonably believes should be taken into account.
- 9.6 If any problem arises in applying any of the assumptions set out in article 9.5, the Expert shall resolve the problem in whatever manner he shall, in his absolute discretion, think fit.
- 9.7 The Expert shall be requested to determine the Fair Value of the Sale Shares within 15 Business Days of his appointment and to notify the Buyer and/or any nominated third party and Seller in writing of his determination.
- 9.8 The service of a notice to buy under article 9.4 shall bind the parties to buy and sell the Shares, as the case may be, in accordance with article 11.
- 9.9 If at the end of the period specified in article 9.4 the Buyer or any nominated third party has not served a notice to buy the Sale Shares, the Buyer may elect by written notice served on the Seller for the Company to be wound up.



## **10. EXPERT**

- 10.1 An Expert is a person appointed in accordance with this article to resolve a matter under articles 3.2(a), 3.3(a), 3.4 and 9.
- 10.2 The parties shall endeavour to agree on the appointment of an independent Expert and to agree the terms of appointment with the Expert.
- 10.3 If the parties are unable to agree on an Expert or the terms of his appointment within seven days of either shareholder serving details of a suggested expert on the other, either shareholder shall then be entitled to request the then President of the Law Society in England and Wales to appoint an Expert who is an accountant of repute with experience in the area to which the matter referred to the Expert relates.
- 10.4 Subject to article 9.7, the Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.
- 10.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this article then:
- (a) either shareholder may apply to the then President of the Law Society in England and Wales to discharge the Expert and to appoint a replacement Expert with the required expertise; and
  - (b) this article applies in relation to the new Expert as if he were the first Expert appointed.
- 10.6 All matters under this article shall be conducted, and the Expert's decision shall be written, in the English language.
- 10.7 The parties are entitled to make submissions to the Expert and shall provide (or procure that others including the Company provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision, subject to the Expert agreeing to give such confidentiality undertakings as the parties may reasonably require.
- 10.8 To the extent not provided for by this article, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary,) instructing professional advisers to assist him in reaching his determination unless both parties are to direct otherwise in writing.
- 10.9 Each shareholder shall with reasonable promptness supply (and procure that others including the Company supply) each other with all information and give each other

access to all documentation and personnel as the other shareholder reasonably requires to make a submission under this article.

10.10 The Expert shall act as an expert and not as an arbitrator. The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.

10.11 Each shareholder shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties in such other proportions as the Expert shall direct.

## **11. COMPLETION OF THE SALE AND PURCHASE OF SHARES IN THE COMPANY**

11.1 This article applies only to transfers between the parties pursuant to article 7 (transfer of shares) and article 9 (transfer following obligatory transfer event).

11.2 The sale of Shares under this agreement shall be completed at the offices of Swinburne Maddison Solicitors on the Tenth Business Day:

- (a) after the Continuing Shareholder (having received a Transfer Notice) or any nominated third party gives notice to the Seller that it wishes to buy all the Seller's Shares under article 7.7; or
- (b) after service of a notice to buy under article 9.3.

11.3 At completion the shareholder selling the Shares shall:

- (a) transfer the Shares free from all Encumbrances by way of a duly completed share transfer form to the Buyer together with the relevant share certificate and such other documents as the Buyer may reasonably require to show good title to the Shares or enable it to be registered as the holder of the Shares;
- (b) deliver the resignations of any directors appointed by the selling shareholder to take effect at completion and acknowledging that they have no claims against the Company;
- (c) warrant that it has no right to require the Company to issue it with any share capital or other securities and that no Encumbrance affects any unissued shares or other securities of the Company;
- (d) warrant that it is the beneficial owner of the Shares being sold;
- (e) warrant that no commitment has been given to create an Encumbrance affecting the Shares being sold (or any unissued shares or other securities of the Company) and that no person has claimed any rights in respect thereof;

- (f) undertake to do all it can, at its own cost, to give the Buyer the full legal and beneficial title to the Shares; and
  - (g) provide the Company with a waiver in writing of any rights it may have to be issued with any share capital or other securities in the Company.
- 11.4 At completion the buying shareholder shall pay the purchase price by telegraphic transfer to the selling shareholder or its lawyers (who have been irrevocably authorised by the selling shareholder to receive it).
- 11.5 At or before completion the Company shall repay any loans made by the selling shareholder to the Company (together with any interest accrued thereon) and the parties shall use their best endeavours to procure that the selling shareholder is released from any guarantees, security arrangements and other obligations that it has given in respect of the Company and its business.
- 11.6 The parties shall procure the registration (subject to due stamping by the Buyer) of the transfer of Shares in the Company pursuant to this article and each of them consents to such transfer and registration pursuant to these Articles.
- 11.7 The Shares shall be sold with all rights that attach, or may in the future attach, to them (including the right to receive all dividends and distributions declared, made or paid on or after the events referred to in article 11.2(a), and article 11.2(b)).
- 11.8 The shareholder buying the Shares is not obliged to complete the purchase of any of the Shares being sold unless the purchase of all the Shares being sold is completed simultaneously.
- 11.9 If the shareholder selling the Shares fails to complete the transfer of Shares as required under this article, the Company:
  - (a) is irrevocably authorised to appoint any person to transfer the Shares on the selling shareholder's behalf and to do anything else that the shareholder buying the Shares may reasonably require to complete the sale; and
  - (b) may receive the purchase price in trust for the shareholder selling the Shares, giving a receipt that shall discharge the shareholder buying the Shares.

## **12. QUORUM AT GENERAL MEETINGS**

- 12.1 The quorum at any general meeting of the Company, or adjourned general meeting, shall be two persons present in person or by proxy, of whom one shall be a holder of FS Shares or a duly authorised representative of such holder and one shall be a holder of TC Shares or a duly authorised representative of such holder.

12.2 No business shall be transacted by any general meeting unless a quorum is present at the commencement of the meeting and also when that business is voted on.

12.3 If within five minutes (or such longer time as the persons present may all agree to wait) from the time appointed for any general meeting a quorum is not present, the meeting shall be dissolved.

### **13. VOTES**

13.1 At a general meeting, on a show of hands every member who is present in person or by proxy shall have one vote, unless the proxy is himself a member entitled to vote, and on a poll every member present in person or by proxy shall have one vote for each Ordinary Share of which he is the holder, except that in the case of any resolution for the removal from office of a director appointed by holders of either the FS Shares or the TC Shares proposed at a general meeting any holder of FS Shares or of TC Shares voting against such resolution (whether on a show of hands or a poll) shall be entitled to cast such number of votes as is necessary to defeat the resolution.

13.2 The Chairman shall not have a second or casting vote at any general meeting.

### **14. PROXIES**

14.1 An instrument appointing a proxy shall be in writing, executed by or on behalf of the appointor and in any common form or in such other form as the directors may approve, and the directors may at their discretion treat a faxed or other machine-made copy of an instrument in any such form as an original copy of the instrument. The instrument of proxy shall, unless the contrary is stated in it, be valid for any adjournment of the meeting as well as for the meeting to which it relates, and shall be deemed to include authority to vote as the proxy thinks fit on any amendment of a resolution put to the meeting for which it is given.

14.2 The instrument appointing a proxy and (if required by the directors) any authority under which it is executed or a copy of the authority (certified notarially or in any other manner approved by the directors) may:

- (a) be delivered to the registered office, or to some other place within the United Kingdom or to some person specified in the notice convening the meeting or in any instrument of proxy sent out 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; or

- (b) in case of a poll taken after the date of the meeting or adjourned meeting, before the time appointed for the taking of the poll, and an instrument of proxy which is not so delivered shall be invalid.

**15. DIRECTORS AND MANAGEMENT**

- 15.1 The Board has responsibility for the supervision and management of the Company and its business.
- 15.2 Subject as provided in these Articles, the directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 15.3 The number of directors shall not be less than six and no more than nine made up of an equal number of FS Directors and TC Directors together with the Chairman.
- 15.4 The post of Chairman shall be held by a TC Director or such other person as TC shall nominate in writing (other than the first Chairman who shall be Tyrone O'Sullivan). If the Chairman for the time being is unable to attend any meeting of the Board TC shall be entitled to appoint another director appointed by it to act as Chairman at the meeting.
- 15.5 Each of FS and TC shall be entitled in accordance with these Articles to appoint and maintain in office up to four persons to the Board and at any time to require the removal or substitution of any such director so appointed by it. Such appointment or removal shall be made by giving written notice to the Company at its registered office or at any meeting of the Board. The appointment or removal takes effect on the date on which the notice is received by the Company (at its registered office or at any meeting of the Board) or, if a later date is given in the notice, on that date.
- 15.6 The shareholder removing a director shall indemnify and keep indemnified the Company against any claim connected with the director's removal from office.
- 15.7 The parties intend there to be a meeting of directors at least once a month to be held on an alternating basis at FS's registered office and TC's registered office or at such location as the directors may determine from time to time (acting reasonably and having regard to the nature of the business to be conducted). Each shareholder shall use its reasonable endeavours to ensure that each meeting of the directors is quorate.
- 15.8 A director may, and at the request of a director, the secretary shall, call a meeting of directors.
- 15.9 The parties shall ensure that at least seven days' notice of a meeting of directors is given to all directors entitled to receive notice accompanied by:

- (a) an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting; and
  - (b) copies of any papers to be discussed at the meeting or the committee meeting.
- 15.10 A shorter period of notice of a meeting of directors may be given if at least three FS Directors and three TC Directors agree in writing.
- 15.11 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting of directors unless all the directors present agree in writing.
- 15.12 The quorum at any meeting of directors (including adjourned meetings) is three FS Directors (or their alternate(s)) and three TC Directors (or their alternate(s)).
- 15.13 No business shall be conducted at any meeting of the directors unless a quorum is present at the beginning of the meeting and at the time when there is to be voting on any business.
- 15.14 If a quorum is not present within 30 minutes after the time specified for a directors' meeting in the notice of the meeting then it shall be adjourned for 10 Business Days at the same time and place unless all the FS Directors and the TC Directors present agree to a shorter notice.
- 15.15 A meeting of directors shall be adjourned to another time or date at the request of all the FS Directors or all the TC Directors present at the meeting. No business may be conducted at a meeting after such a request has been made. No more than one such adjournment may be made in respect of a meeting.
- 15.16 Meetings of directors shall make decisions by passing resolutions. A resolution is passed (subject to clause 5.21) if an FS Majority and a TC Majority have voted in favour of it. If any resolution considered by the directors is not passed pursuant to this article 15.16 or article 5.20 dealing with the Chairman's casting vote, the resolution shall fail.
- 15.17 Except as provided by article 15.18, at a meeting of directors, each director has one vote. In the event that any director shall abstain from voting he shall be deemed (for the purposes of articles 5.16 and 5.20) to have voted against the relevant resolution.
- 15.18 An FS Director or a TC Director absent from a meeting may appoint any person (except an existing director representing the other shareholder) to act as his alternate at the meeting. For the purposes of the meeting the alternate director:

- (a) shall be the FS Director or TC Director by whom he is appointed and may vote in place of that FS Director or TC Director; and
- (b) where the person appointed as an alternate is already a director of the Company in his own right, shall also be a director (and may vote) in his own right.

15.19 If the parties are not represented at any meeting of the Board by an equal number of FS Directors and TC Directors (whether present in person or by alternate), then one of the directors so nominated by the shareholder which is represented by fewer directors shall be entitled at that meeting to such additional vote or votes as shall result in the directors so present representing each shareholder having in aggregate an equal number of votes (without taking into account the Chairman's casting vote).

15.20 In the event that such number of FS Directors as shall constitute at least a FS Majority has voted in favour of a resolution proposed at a meeting of the Board and such number of TC Directors as shall constitute at least a TC Majority has voted against such resolution (or vice versa) the Chairman shall have a second or casting vote in relation to such resolution at meetings of the Board. The Chairman shall not have a casting vote at meetings of the Company. The Chairman shall not otherwise be entitled to vote at meetings of the Board and shall not otherwise have a casting vote.

15.21 Upon any transfer of all Shares held by a shareholder (save where such transfer occurs under article 7.3) all directors appointed by that shareholder shall immediately cease to hold office and that shareholder shall indemnify the other shareholders and the Company in respect of any claim against the Company by any such director arising from such cessation whether for breach of contract, compensation for loss of office, redundancy, unfair dismissal or on any other account whatsoever.

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

16.1 Any director (other than an alternate director) may appoint any person (whether or not a director) to be an alternate director and may remove from office an alternate director appointed by him. In these Articles, where the context so permits, the term "FS Director" or "TC Director" shall include an alternate director appointed by an FS Director or a TC Director as the case may be. A person may be appointed an alternate director by more than one director.

16.2 An alternate director shall be entitled to receive notice of all meetings of the directors and of all meetings of committees of directors of which his appointor is a member, to attend and vote at such meetings at which the director appointing him is not personally present, and generally to perform all the functions of his appointor as a

director in his absence. An alternate director who is already a director of the Company in his own right, will also be a director (and may vote) in his own right.

- 16.3 An alternate director may be paid expenses and shall be entitled to be indemnified by the Company to the same extent as if he were a director but shall not be entitled to receive from the Company any fee in his capacity as an alternate director except such part (if any) of the remuneration otherwise payable to the director appointing him as an alternate director may by notice in writing to the Company from time to time direct.

**17. NOTICE OF BOARD MEETINGS**

- 17.1 Notice of a meeting of the directors shall be deemed to be properly given to a director if it is given to him personally or by word of mouth or sent in writing (including by e-mail) to him at his last known address or any other address given by him to the Company for this purpose, or by any other means authorised in writing by the director concerned.

- 17.2 A director may waive notice of any meeting either prospectively or retrospectively.

**18. COMMITTEE OF DIRECTORS**

- 18.1 A committee of the directors must include at least one FS Director and one TC Director. The provisions of article 15 shall apply equally to meetings of any committee of the directors as to meetings of the directors.

**19. PARTICIPATION IN MEETINGS**

- 19.1 All or any of the directors or members of any committee of the directors may participate in a meeting of the directors or that committee by means of a conference telephone or any communication equipment which allows all persons participating in the meeting to hear each other. A person so participating shall be deemed to be present in person at the meeting and shall be entitled to vote or be counted in a quorum; and accordingly, a meeting of the directors or committee of the directors may be held where each of those present or deemed to be present is in communication with the others only by telephone or other communication equipment as aforesaid. A meeting where those present or deemed to be present are in different locations shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting then is.



## 20. DIRECTORS' INTERESTS

- 20.1 For the purposes of section 175 of the Companies Act 2006, the members (and not the directors) shall have the power to authorise, by resolution and in accordance with the provisions of these Articles, any matter or situation proposed to them by a director which would, if not so authorised, involve a breach of duty by a director under section 175 of the Companies Act 2006 to avoid conflicts of interest (a **Conflict**). Any authorisation of a matter or situation under this Article may extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised.
- 20.2 The relevant director seeking authorisation of the Conflict (the **Interested Director**) must provide the members with such details as are necessary for the members to decide whether or not to authorise the Conflict, together with such additional information as may be requested by the members.
- 20.3 Any authorisation by the members of a Conflict may (whether at the time of giving the authorisation or subsequently):
- (a) provide that the Interested Director be excluded from the receipt of documents and information, the participation in discussions and/or the making of decisions (whether at meetings of the directors or otherwise) related to the Conflict;
  - (b) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the members think fit;
  - (c) provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and
  - (d) permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters.
- 20.4 The Interested Director will be obliged to conduct himself in accordance with any terms imposed by the members in relation to the Conflict.
- 20.5 The members may revoke or vary such authorisation at any time but this will not affect anything done by the Interested Director prior to such revocation or variation in accordance with the terms of such authorisation.

- 20.6 A director, notwithstanding his office, may be a director or other officer of, employed by, or otherwise interested (including by the holding of shares) in, the shareholder who appointed him as a director of the Company, or any other member of such shareholder's Group, and no authorisation under article 20.1 shall be necessary in respect of any such interest.
- 20.7 Any FS Director or TC Director shall be entitled from time to time to disclose to the holders of the FS Shares or (as the case may be) the holders of the TC Shares such information concerning the business and affairs of the Company as he shall at his discretion see fit, subject only to the condition that if there be more than one FS shareholder or (as the case may be) TC shareholder, the director concerned shall ensure that each of the shareholders receives the same information on an equal footing.
- 20.8 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the members in accordance with this Article (subject in each case to any terms and conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 20.9 A director who is in any way, whether directly or indirectly, interested in a proposed transaction or arrangement with the Company shall declare the nature and extent of his interest to the other directors before the Company enters into the transaction or arrangement in accordance with the Act.
- 20.10 A director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other directors as soon as is reasonably practicable in accordance with the Act, unless the interest has already been declared under article 20.9
- 20.11 Subject, where applicable, to the disclosures required under article 20.9 and article 20.10, and to any terms and conditions imposed by the members in accordance with article 20.3, a director shall be entitled to vote in respect of any proposed or existing transaction or arrangement with the Company in which he is interested and if he shall do so his vote shall be counted and he shall be taken into account in ascertaining whether a quorum is present.
- 20.12 A director need not declare an interest under article 20.9 or article 20.10 as the case may be:

- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- (b) of which the director is not aware, although for this purpose a director is treated as being aware of matters of which he ought reasonably to be aware;
- (c) if, or to the extent that, the other directors are already aware of it, and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware; or
- (d) if, or to the extent that, it concerns the terms of his service contract that have been, or are to be, considered at a board meeting.

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

### **21.1 The office of director shall be vacated if:**

- (a) he ceases to be a director by virtue of any provision of the Act or the 2006 Act or he becomes prohibited by law from being a director;
- (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) he is, or may be, suffering from mental disorder and he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or in Scotland an application for admission under the Mental Health (Scotland) Act 1980; or
- (d) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver curator bonis or other person to exercise powers with respect to his property or affairs; or
- (e) he resigns his office by notice in writing to the Company; or
- (f) he is removed from office under Section 168 of the 2006 Act; or
- (g) he shall for more than six consecutive months have been absent without permission of the directors from meetings of the directors held during that period and the directors resolve that his office be vacated.

## **22. INDEMNITY**

- 22.1** Subject to the Act, but without prejudice to any indemnity to which a director may otherwise be entitled, each director or other officer of the Company (other than any person (whether an officer or not) engaged by the Company as auditor) shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties, or in relation thereto

including any liability incurred by him in defending any civil or criminal proceedings, in which judgement is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's affairs.

- 22.2 The Company may buy and maintain insurance against any liability falling upon its directors or other officers which arises out of their respective duties to the Company, or in relation to its affairs.

**23. NOTICES: TIME OF SERVICE**

- 23.1 Any notice or other document may be served on or delivered to any member by the Company either personally, or by sending it by pre-paid registered post (reputable international overnight courier in the case of an address for service outside the United Kingdom) addressed to the member at his registered address or by fax to a number provided by the member for this purpose, or by leaving it at his registered address addressed to the member, or by any other means authorised in writing by the member concerned.

- 23.2 In the case of joint holders of a share, service or delivery of any notice or other document on or to one of the joint holders shall for all purposes be deemed a sufficient service on or delivery to all the joint holders.

- 23.3 Any notice or other document shall be deemed served:

- (a) if given personally, when delivered; or
- (b) if sent by registered post, two Business Days after posting to an address in the United Kingdom or five Business Days after posting to an address outside the United Kingdom if sent by reputable international overnight courier addressed to the relevant shareholder provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending shareholder receives a confirmation of delivery from the courier service provider; or
- (c) if sent by fax, when despatched.

In proving such service or delivery, it shall be sufficient to prove that the notice or document was delivered to the address given for notice, or properly addressed, stamped and put in the post or, in the case of a fax, that such fax was duly despatched to a current fax number of the addressee.

- 23.4 Any requirement in these Articles or in Table A for any notice, resolution or other document to be signed by or on behalf of any person shall be deemed satisfied where a notice, resolution or other document is received with the signature of the relevant person reproduced thereon by means of facsimile copy if such signature is confirmed by receipt of the notice, resolution or document bearing the original signature in manuscript within 14 days of receipt of the reproduction.