

**THE COMPANIES ACT 2006**

**WRITTEN RESOLUTION**

- of -

**TYROLESE (747) LIMITED**  
(the Company)

TUESDAY



A40

\*A231MPV5\*

26/02/2013

#199

COMPANIES HOUSE

Circulated on 5<sup>th</sup> February 2013

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006 (CA 2006), the directors of the Company propose that resolutions 2 to 4 below are passed as special resolutions (the **Special Resolutions**) and that resolutions 1 and 5 are passed as ordinary resolutions (the **Ordinary Resolutions**) (together, the **Resolutions**)

**Ordinary Resolution**

**1. Sub-division and re-designation of the subscriber share**

That the one issued ordinary share of £1 00 in the capital of the Company be and is hereby sub-divided into 100 ordinary shares of £0 01 in the capital of the Company

**Special Resolutions**

**2. Adoption of new articles of association**

That the regulations contained in the document attached to these Resolutions and for the purposes of identification signed by the director of the Company be and are hereby approved and adopted as the new articles of association of the Company (the **Articles**) in substitution for and to the exclusion of the existing articles of association of the Company

**3. Section 569 CA 2006 to disapply pre-emption rights**

Sections 561, 562 and 563 CA 2006 shall not apply to an allotment of any share or grant of any options over the Company's shares

**4. Re-classification of shares**

That subject to the passing of resolution (1) above each of 100 issued Ordinary Shares of £0 01 each in the capital of the Company be and are hereby re-designated as A Ordinary Shares of £0 01 each ranking pari passu in all respects with the all other A Ordinary Shares of £0 01 each in the capital of the Company and having the rights and privileges and being subject to the restrictions contained in the Articles

### Ordinary Resolution

#### 5. Section 551 CA 2006 authority to allot shares

Subject to the provisions of the Articles, any director of the Company be and hereby is generally and unconditionally authorised to exercise any powers of the Company to

- (a) offer or allot shares,
- (b) grant rights to subscribe for or to convert any security into shares (the **Rights**),
- (c) otherwise deal in, or dispose of shares or Rights,

up to a maximum of 825,000 A ordinary shares of £0.01 each, 675,000 B ordinary shares of £0.01 each and 1,868,579 preference shares of £1.00 each with such rights or restrictions as they may determine and at any time or times during the period of five years from the date of these Resolutions

Please read the notes at the end of this document before you signify your agreement to the Resolutions

The undersigned, being the sole shareholder of the Company entitled to vote on the Resolutions on 5<sup>th</sup> February 2013 hereby irrevocably agrees to the Resolutions



For and on behalf of Tyrolese (751) Limited

on 5<sup>th</sup> February 2013

**Notes**

1. If you agree to the Resolutions, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company at its registered office
2. If you do not agree to the Resolutions, you do not need to do anything you will not be deemed to agree if you fail to reply
3. Your agreement once signified, cannot be revoked
4. Unless, by the date 28 days from date of these Resolutions, sufficient agreement has been received for the Resolutions to be passed, they will lapse
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

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**THE COMPANIES ACT 2006**

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**PRIVATE COMPANY LIMITED BY SHARES**

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**MEMORANDUM**

**and**

**ARTICLES OF ASSOCIATION**

**- of -**

**TYROLESE (747) LIMITED**

**(A Private Company adopting the Model Articles with modifications)**

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**Incorporated the 29<sup>th</sup> day of November 2012**

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**THE COMPANIES ACT 2006**

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**PRIVATE COMPANY LIMITED BY SHARES**

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**MEMORANDUM OF ASSOCIATION**

**- of -**

**TYROLESE (747) LIMITED**

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- 1 The name of the Company is "Tyrolese (747) Limited"
- 2 The registered office of the Company is to be situated in England and Wales

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to take at least one share

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NAME OF SUBSCRIBER

Signature of Subscriber

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TYROLESE (DIRECTORS) LIMITED

Number of Shares taken by the  
Subscriber . ONE

Director  
Tyrolese (Directors) Limited

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DATED this 29 day of November 2012

THE COMPANIES ACT 2006

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PRIVATE COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

- of -

TYROLESE (747) LIMITED

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**1. Preliminary**

1.1 In these Articles

- (a) "Model Articles" means Schedule 1 of Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended by any statute or subordinate legislation coming into force prior to the adoption of these Articles
- (b) unless expressly stated to the contrary, words and phrases used shall have the meanings ascribed to them in or by virtue of the Model Articles.
- (c) a reference to a "Paragraph" is to a Paragraph in the Model Articles
- (d) a reference to an "Article" is to a provision of these Articles.
- (e) references to "the Act" are to the Companies Act 2006
- (f) a reference to any particular provision of the Act is a reference to it as it is in force from time to time, taking account of any statutory modification or re-enactment of such provision for the time being in force.
- (g) a reference to "A Ordinary Shares" means the "A" Ordinary Shares of £0.01 each in the capital of the Company each with the rights attached as detailed in Article 2
- (h) a reference to the "A Shareholder" means the holder of A Ordinary Shares from time to time.

- (i) a reference to "A Director" means a director appointed by the A Shareholder pursuant to these Articles
- (j) a reference to "B Ordinary Shares" means the "B" Ordinary Shares of £0.01 each in the capital of the Company each with the rights attached as detailed in Article 2
- (k) a reference to the "B Shareholder" means the holder of B Ordinary Shares from time to time.
- (l) a reference to "B Director" means a director appointed by the B Shareholder pursuant to these Articles
- (m) a reference to the "Board" means the board of directors of the Company from time to time or such number of directors who together constitute a quorum at a validly convened meeting of the board of directors
- (n) a reference to "Business Day" shall mean a day (other than a Saturday or Sunday) on which banks are normally open for the transaction of normal banking business
- (o) a reference to "Confidential Information" is a reference to information as defined in Article 15.14
- (p) a reference to "Group" means the Company and any company which is a subsidiary undertaking of the Company from time to time and references to "Group Company" and "members of the Group" shall be construed accordingly
- (q) a reference to "Group Company Interest" is a reference to an interest as defined in Article 15.11.
- (r) the expressions "holding company", "subsidiary" and "subsidiary undertakings" shall have the same meanings as given to them in the Act
- (s) the expression "Affiliate" means in relation to any company any holding company, subsidiary or subsidiary undertaking of such company or any subsidiary or subsidiary undertaking of such company but excluding, in relation to any Member and any Affiliate of any Member, the Company and any other Group Company.
- (t) a reference to the "Investment Agreement" means the investment agreement entered into by the Members for the time being on or around the date of adoption of these Articles



- (u) a reference to "Executive Director" shall have the same meaning as set out in the Investment Agreement
  - (v) the expressions "Member" or "Shareholder" means any registered holder of a Share and "Shares" means the Ordinary Shares and the Preference Shares, and "Share" means any one share of any such class.
  - (w) a reference to "Ordinary Shares" means the A Ordinary Shares and B Ordinary Shares
  - (x) a reference to the "Preference Shares" means the cumulative redeemable preference shares of £1 each in the capital of the Company each with the rights attached as detailed in Article 2.
  - (y) a reference to a "Redemption Tranche" means 373,715 Preference Shares.
  - (z) a reference to "Net Asset Value" is defined in Article 11.
  - (aa) a reference to "Valuers" means any independent firm of accountants as agreed by all Shareholders or, failing such agreement within 5 Business Days of the decision to appoint the Valuers in accordance with Article 7.5, Article 8 9 or Article 10 2, such firm of accountants nominated by the President of the Institute of Chartered Accountants of England and Wales on application of one of the Shareholders
  - (bb) a reference to a "Shareholder Director Interest" is a reference to an interest as defined in Article 15 12(b)
  - (cc) a reference to a "Situational Conflict" means a direct or indirect interest of a Director which conflicts or may potentially conflict with the interests of the Company (other than a Transactional Conflict or in circumstances which cannot reasonably be regarded as likely to give rise to a conflict of interest) For these purposes a conflict of interest shall include a conflict of interest and duty and a conflict of duties.
  - (dd) a reference to a "Transactional Conflict" means a direct or indirect conflict of interest of a Director which arises in relation to an existing or proposed transaction or arrangement with the Company
- 1 2 The Model Articles shall, except where they are excluded or modified by these Articles, apply to the Company and, together with these Articles, shall constitute the articles of association of the Company
- 1 3 The provisions of Paragraphs 6(2), 9(1), 9(2), 11(2), 12(1), 12(3), 14(1)-(4), 17, 18, 22(2), 26(1), 26(5), 41(1), 52 and 53 inclusive of the Model Articles shall not apply to the Company

- 1 4 Paragraph 20 of the Model Articles shall be amended by
- 1 4.1 the replacement of the word "may" with the word "shall", and
- 1 4 2 the insertion of the words "and the Secretary (if one)" before the words "properly incur"
- 1 5 The Company is a private company and accordingly no shares in or debentures of the Company shall be offered to the public (whether for cash or otherwise) and the Company shall not allot or agree to allot (whether for cash or otherwise) any shares in or debentures of the Company with a view to all or any of those shares or debentures being offered to the public

## 2. Shares

### 2 1 Capital and Class

- 2 1 1 The A Ordinary Shares, the B Ordinary Shares and the Preference Shares shall each constitute separate classes of Shares and shall carry the respective rights and privileges set out in these Articles but shall otherwise rank pari passu.

### 2 2 Voting

- 2.2 1 On a show of hands, every holder of Ordinary Shares who is present in person or by a representative or by proxy shall have one vote, and on a poll every holder of Ordinary Shares who is present in person or by a representative or by proxy shall have one vote, for every Ordinary Share of which he is the holder
- 2 2 2 The holders of the Preference Shares shall not be entitled to receive notice of, or attend and vote at, any general meeting of the Company unless the business of the meeting includes a resolution for any one of the following matters
- (a) a resolution to wind-up or dissolve the Company; or
  - (b) a resolution to make any repayment or reduction of share capital or a resolution to vary or abrogate any of the class rights attached to the Preference Shares whether by amendment to the Articles of Association or otherwise,

whereupon the holders shall be entitled to receive notice of and attend and vote on those resolutions proposed at the meeting and on no others, and the Preference Shares shall, with regard to the resolutions mentioned above, rank pari passu as to voting rights with the Ordinary Shares

## 2 3 Income

- 2 3.1 Subject to the remainder of this Article 2 3.1 the holders of the Preference Shares shall be entitled to receive a cumulative preferential cash dividend (the "Preferential Dividend") equal to 10 per cent per annum on the amounts paid up and not redeemed on the Preference Shares (including any premium) which dividend shall accrue on a daily basis and subject to the Act shall be payable (notwithstanding the requirements of any Paragraph and whether or not there has been a recommendation of the directors or resolution of the Company in respect thereof) quarterly (in arrears) on 31 March, 30 June, 30 September and 31 December in each year (each a "Preferential Dividend Payment Date") (and the first payment shall be made on 31 March 2013 in respect of the period commencing on the date of the issue of the Preference Shares down to and including such date) only if, in the opinion of the board of directors, the profits of the Company in any given financial year justify the payment of such dividend. On the occurrence of a Redemption Default (as defined in Article 2 5.1) the amount of the Preferential Dividend on the amount outstanding under Article 2 5 1 shall accrue at an amount equal to 15 per cent per annum ("Default Dividend Amount") while it is outstanding. On the occurrence of a Preferential Dividend Default (as defined in Article 2 5 2) the Shortfall Amount shall accrue an additional dividend amount equal to 5 per cent per annum (the "Additional Dividend Amount") while it is outstanding.
- 2.3 2 The Preferential Dividend shall be paid amongst the holders of the Preference Shares and before the payment of a dividend (if any) to the holders of the Ordinary Shares
- 2.3.3 If any (or any part of any) Preferential Dividend is not paid on or before the required time for payment under Article 2 3 1 (whether because the Company is prohibited from making such payment under the Act or the directors are of the opinion that the profits of the Company do not justify payment or otherwise) the amount so accrued and not paid shall be accounted as an accrual and shall be payable in priority to any later Preferential Dividend or dividend on Ordinary Shares
- 2 3 4 The holders of the Ordinary Shares shall be entitled, subject to the payment of the Preferential Dividend, to receive a cash dividend in an amount to be determined by the Directors (in their absolute discretion) from time to time
- 2 3 5 The Company shall procure (so far as it is able) that each subsidiary of the Company shall from time to time declare and pay to the Company such dividends as are available to it for lawful distribution so as to permit, when required, lawful and prompt payment by the Company of the Preferential Dividends

## 2 4 Winding-Up or Return of Capital

- 2 4 1 If, on a winding-up of the Company or other return of capital (except on a redemption or purchase of shares in accordance with these Articles) there remains after the payment of all debts and liabilities of the Company, surplus assets for distribution amongst the Members, such surplus assets shall be applied in the following order of priority

- (a) first in paying to each holder of the Preference Shares in respect of each Preference Share of which he is the holder the amounts paid up on such Shares together with a sum equal to the accrued but unpaid Preferential Dividend (calculated pro-rata down to the date of repayment) and all unpaid arrears, deficiencies and accruals of dividend or other distribution in respect of such Shares,
- (b) if there shall be insufficient surplus assets to repay in full to the holders of the Preference Shares the amounts due under Article 2 4 1(a), the surplus assets shall be distributed to the holders of the Preference Shares pro-rata to the number of Shares held by them;
- (c) if, after the payment in full of the amounts specified in Article 2 4 1(a), there remain surplus assets available for distribution amongst the Members, the surplus assets will be distributed to the holders of the Ordinary Shares pro-rata to the number of Ordinary Shares held by them

## 2 5 Conversion of the Preference Shares

- 2.5.1 If the Company fails at any one time to make a redemption of the whole or part of any Redemption Tranche under Article 4 2 (which has not otherwise been redeemed on or before the relevant Redemption Date pursuant to Article 4 1) and which results in an amount equal to the whole of one Redemption Tranche remaining outstanding this shall be deemed to be a "**Redemption Default**". On the occurrence of a Redemption Default the Company will have three months (the "**Redemption Cure Period**") in which to remedy the Redemption Default. If the Redemption Default remains unremedied after the end of the Redemption Cure Period the holder of the Preference Shares may within 60 days of the end of the Redemption Cure Period convert the number of Preference Shares which have not been so redeemed as a result of the Redemption Default and the Default Dividend Amount into B Ordinary Shares. The rate of conversion shall be at a price per B Ordinary Share equal to the Conversion Price (in the case of fractional entitlements, rounded down to the nearest whole Share).
- 2.5.2 If the Company fails to pay Preferential Dividends of an amount which in aggregate is equal to the aggregate amount of the last four Preferential Dividend payments that are due under Article 2 3 1 (the "**Shortfall Amount**") this shall be deemed to be a "**Preferential Dividend Default**". On the occurrence of a Preferential Dividend Default the Company will have three months (the "**Preferential Dividend Cure Period**") in which to remedy such default and in the event that the Company fails to do so on or before the end of the Preferential Dividend Cure Period the holder of the Preference Shares may then within 60 days of the end of the Preferential Dividend Cure Period convert the amount of the unpaid Shortfall Amount and the Additional Dividend Amount into B Ordinary Shares. The rate of conversion shall be at a price per B Ordinary Share equal to the Conversion Price (in the case of fractional entitlements, rounded down to the nearest whole Share)

- 2 5 3 The conversion shall be effected by notice in writing given to the Company signed by the relevant holder(s) of the Preference Shares. In the case of conversion under Article 2 5.1 the conversion shall take effect immediately upon such notice is received by the Company (unless such notice states that conversion is to be effective when any conditions specified in the notice have been fulfilled in which case conversion shall take effect when such conditions have been fulfilled) and forthwith after conversion takes effect the holders of the resulting B Ordinary Shares shall send to the Company the certificates in respect of their holding of Preference Shares and the Company shall issue to such holder a certificate for the B Ordinary Shares resulting from the conversion. In the case of conversion under Article 2 5 2, the Company shall issue and allot to the holder of the Preference Shares such number of B Ordinary Shares as are required to be issued pursuant to that Article 2 5 2, together with a share certificate in respect of those shares (and shall register the holder of the Preference Shares as the holder of such shares in the Company's Register of Members), within 10 days of its receipt of the notice from the relevant holder(s) of the Preference Shares and the Members shall authorise, for the purposes of Sections 549 and 551 of the Act, the allotment of such number of B Ordinary Shares to the holder(s) of the Preference Shares.
- 2.5.4 The Conversion Price per B Ordinary Share shall be £1
- 2 5 5 The B Ordinary Shares resulting from the conversion shall rank from the date of conversion *pari passu* in all respects with the other B Ordinary Shares in the capital of the Company.
- 2 6 Redemption
- 2 6 1 The Ordinary Shares carry no rights of redemption.
- 2.6 2 The Preference Shares may be redeemed in accordance with Article 4
- 2 7 Directors Authority to Allot and Disapplication of Pre-emption Rights
- 2 7 1 Subject to the provisions of the Investment Agreement, the directors are generally and unconditionally authorised for the purposes of Sections 549 and 551 of the Act to allot and dispose of or grant options over the Company's Shares to such persons (including the directors), on such terms and in such manner as they think fit, up to a maximum of 825,000 A Ordinary Shares, 675,000 B Ordinary Shares and 1,868,579 Preference Shares, at any time or times during the period of five years from the date of adoption of these articles of association.
- 2 7 2 Except where otherwise agreed by the Board and the Members under the Investment Agreement, any new Shares shall first be offered to the Members in proportion to the number of Ordinary Shares held by them respectively. Sections 561, 562 and 563 of the Act shall not apply to the Company.

**3. Redeemable Shares**

Subject to the provisions of the Act

- 3.1 the Company may issue Shares which are to be redeemed or are liable to be redeemed (i) in accordance with Article 4 or (ii) otherwise at the option of the Company or the holder thereof on such terms and in such manner as the Company before the issue of the Shares may by special resolution determine,
- 3.2 any redeemable Shares issued by the Company may be redeemed out of distributable profits of the Company, out of the proceeds of a fresh issue of Shares made for the purposes of the redemption and/or out of the capital of the Company; and
- 3.3 any premium payable on redemption must be paid out of distributable profits of the Company or otherwise in accordance with such of the applicable provisions of the Act

**4. Redemption of Preference Shares**

- 4.1 Subject to the provisions of the Act the Company may redeem at any time all or some of the Preference Shares, upon giving the holders of the Preference Shares not less than 30 days written notice (being a "Redemption Notice" for the purposes of these Articles)
- 4.2 Subject to the provisions of the Act, if the Company has not already redeemed such number of Preference Shares under Article 4.1, the Company shall redeem the aggregate number of Preference Shares set out in column (1) of the table below on or before the date set out in column (2) of the table below (the "Redemption Date")

| <b>Column (1)<br/>Number of Preference Shares</b> | <b>Column (2)<br/>Redemption Date</b>            |
|---|--|
| 373,715   | 1 <sup>st</sup> anniversary of the date of issue |
| 747,430   | 2 <sup>nd</sup> anniversary of the date of issue |
| 1,121,145   | 3 <sup>rd</sup> anniversary of the date of issue |
| 1,494,860   | 4 <sup>th</sup> anniversary of the date of issue |
| 1,868,579   | 5 <sup>th</sup> anniversary of the date of issue |

- 4 3 If, before the fifth anniversary of the date of issue of the Preference Shares, the provisions of Articles 9 or 10 shall apply and, in pursuance of the same, any Buyer (as defined in Article 9) makes any Approved Offer (as also defined in Article 9) to purchase Shares conditional on the redemption of the Preference Shares (or any of them)) any holder of Preference Shares shall be entitled, upon giving the Company not less than 7 days written notice requiring the Company to redeem all or any number of the Preference Shares then held by him, the number of Preference Shares then held by him required to be redeemed pursuant to any Approved Offer
- 4 4 Upon (i) expiry of a Redemption Notice period under article 4 1, (ii) the applicable Redemption Date under article 4.2 or (iii) the date of the Approved Offer (and immediately prior to the Approved Offer) under article 4 3 the Company shall, to the extent such Preference Shares have not otherwise been converted to B Ordinary Shares under Article 2 5 1, redeem the relevant number of Preference Shares (provided the same is permitted in accordance with Article 3) by the payment by the Company to the relevant holder of the Preference Shares of a sum equal to the aggregate of (i) all amounts paid up (including premium) plus (ii) all unpaid arrears, deficiencies or accruals of any Preferential Dividends or other dividend or distribution (whether earned or declared or not) (if any) in each case in respect of the Preference Shares to be redeemed and, where relevant, down to and including the date of redemption
- 4 5 If the Company is permitted by Article 3 to redeem only some of the Preference Shares which would otherwise fall to be redeemed at any time, the Company shall only redeem such number of such Shares that it can so redeem at that time Unless the relevant holder otherwise elects by prior written notice to the Company, the Company shall redeem, as soon thereafter as it may do so, all the remaining Preference Shares so to be redeemed and pending such redemption, shall not make any payment to the holders of any other class of Shares (whether in respect of dividend, the purchase of shares, any put or call option or otherwise) but without prejudice to the accrual of such dividend(s) or any consequence under these Articles of the late payment of the same
- 4 6 Upon receipt of the amount referred to in Article 4 4, the relevant holders of Preference Shares shall deliver to the Company for cancellation the certificate(s) for those Shares or an indemnity in a form reasonably satisfactory to the Company in respect of any missing share certificate(s). If any share certificate delivered to the Company includes any Shares not redeemable at that time, the Company shall forthwith issue without charge to the holder at the same time a fresh certificate for the balance of the Preference Shares not redeemed Any redemption of Preference Shares shall take place at the registered office of the Company
- 4 7 If any Member whose Preference Shares are liable to be redeemed under this Article 4 fails to deliver to the Company the documents referred to in Article 4.6 the Company shall retain the redemption monies payable to that Member on trust for that Member (but without obligation to invest or earn or pay interest in respect of the same) until it receives such documents The Company shall then pay such redemption monies to the relevant Member upon receipt of such documents

## **5. Lien**

The Company shall have a first and paramount lien upon every Share registered in the name of any Member, either alone or jointly with any other person, for his or his estate's debts, liabilities and engagements, whether solely or jointly with any other person, to or with the Company, whether the period for the payment, fulfilment or discharge thereof shall have actually arrived or not. Such lien shall extend to all dividends from time to time declared or other moneys payable in respect of every such Share, but the directors may at any time declare any Share to be exempt, wholly or partially, from the provisions of this Article 5

## **6. Transfer Of Shares**

6.1 The instrument of transfer of any Share shall be in a form approved by the directors and shall be executed by or on behalf of the transferor, and the transferor shall be deemed to remain the holder of the Share until the name of the transferee is entered in the register of Members in respect thereof

6.2 The directors may refuse to register any transfer of any Share save in the case of a transfer properly made in accordance with Article 6.3, and if they do so refuse the instrument of Transfer must be returned to the transferee with a notice of refusal unless they suspect the transfer may be fraudulent

6.3 No Member shall sell, transfer, assign, pledge, charge or otherwise dispose of any Share or any interest in any Share except.

- (a) with the prior written unanimous consent of the Ordinary Shareholders, or
- (b) at any time after 31 January 2018 in accordance with Article 7, or
- (c) in accordance with Article 8, or
- (d) in accordance with Articles 9 and 10

## **7. Voluntary Transfers**

7.1 Except as expressly permitted under Article 6.3(a) or Article 8, any Member who wishes to transfer any Share ("Selling Shareholder") shall serve notice in writing ("Transfer Notice") on the Company of his wish to make that transfer

7.2 In the Transfer Notice the Selling Shareholder shall specify.

7.2.1 the number of Shares which he wishes to transfer ("Sale Shares");



- 7.2.2 the identity of the person (if any) to whom the Selling Shareholder wishes to transfer the Sale Shares (the "Proposed Transferee"),
- 7.2.3 the price per share at which the Selling Shareholder wishes to transfer the Sale Shares which may in respect of Ordinary Shares comprised in the Sale Shares be a price determined by Net Asset Value if the Selling Shareholder so elects in the Transfer Notice ("Proposed Price"); and
- 7.2.4 any other terms relating to the transfer of the Sale Shares
- 7.3 Each Transfer Notice shall constitute the Company as the agent of the Selling Shareholder for the sale of the Sale Shares on the terms of this Article 7
- 7.4 The Sale Shares shall be offered for purchase in accordance with this Article 7 at, in the case of the Ordinary Shares comprised in the Sale Shares, the Proposed Price and in the case of the Preference Shares comprised in the Sale Shares, their nominal value ("Sale Price")
- 7.5 If the Selling Shareholder so elects within the Transfer Notice, the Net Asset Value per Ordinary Share shall be determined by the Valuer in accordance with Article 11 as at the date of service of the Transfer Notice (in which case for the purposes of these Articles the Sale Price shall be deemed to have been determined on the date of the receipt by the Company of the Valuer's report) In the event the Selling Shareholder is not willing to accept the Sale Price as determined by the Valuer he shall be entitled to withdraw the Transfer Notice by serving written notice on the Company within 5 Business Days of receipt by him of the determination of the Sale Price from the Valuer failing which he shall be deemed to have accepted the Sale Price determined by the Valuers as the Sale Price for the Ordinary Shares comprised in the Sale Shares
- 7.6 The Board shall give a notice to all Members, within 5 Business Days of receipt of the Transfer Notice or, if the Selling Shareholder has elected that the Sale Price be determined under Article 7.5 the date on which notice to withdraw the Transfer Notice should have been received, from the Selling Shareholder, offering the Members the Sale Shares to be purchased at the Sale Price ("Offer Notice")
- 7.7 An Offer Notice shall expire 40 Business Days after its service and shall
- 7.7.1 specify the Sale Price,
- 7.7.2 contain the other information set out in the Transfer Notice, and
- 7.7.3 invite the relevant offerees to apply in writing, before expiry of the Offer Notice, to purchase such numbers of Sale Shares as specified by them in their application
- 7.8 After the expiry date of the Offer Notice, (or, if earlier, after valid applications being received from all the Shareholders in accordance with Article 7.7), the Board shall

allocate the Sale Shares in priority and in accordance with the applications received, subject to the other provisions of these Articles and the Model Articles, save that:

- 7 8 1 if applications are received for only some of the Sale Shares the Selling Shareholder shall not be required to transfer any of the Sale Shares and the provisions of Article 7 11 shall apply;
- 7.8.2 if there are applications for more than the number of Sale Shares available, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Sale Shares than the maximum number applied for by him) to the number of Ordinary Shares held by them respectively, and
- 7 8 3 if it is not possible to allocate any of the Sale Shares without involving fractions, they shall be allocated amongst the applicants of each class in such manner as the Board shall think fit
- 7 9 Within 5 Business Days of the expiry date of the Offer Notice, the Board shall give notice in writing ("Sale Notice") to the Selling Shareholder and to each person to whom Sale Shares have been allocated (each a "Buying Shareholder") specifying the name and address of each Buying Shareholder, the number of Sale Shares agreed to be purchased by him and the total price payable for them
- 7 10 Completion of the sale and purchase of the Sale Shares pursuant to a Sale Notice shall take place at the registered office of the Company at the time specified in the Sale Notice (which shall be no later than the tenth Business Day after the date of the Sale Notice) when the Selling Shareholder shall, upon payment to him by a Buying Shareholder of the Sale Price in respect of the Sale Shares allocated to that Buying Shareholder, transfer those Sale Shares and deliver the relevant share certificates to that Buying Shareholder
- 7 11 If all of the Sale Shares are not allocated after the expiry date of the Offer Notice then (subject to Article 9) those Sale Shares may be sold by the Selling Shareholder at any time within the period of six months from the expiry date of the Offer Notice to a third party provided that such sale is at a price which is not less than the Sale Price and that such third-party is approved by the Shareholders (such approval not to be unreasonably withheld or delayed).
- 7 12 If a Selling Shareholder fails for any reason (including death) to transfer any Sale Shares when required pursuant to Article 7 10
- 7 12.1 the Board may authorise any person (who shall be deemed to be irrevocably appointed as the attorney of that Selling Shareholder for the purpose) to execute the necessary transfer of such Sale Shares and deliver it on the Selling Shareholder's behalf,

- 7 12 2 the Company may receive the purchase money for such Sale Shares from the Buying Shareholder and shall upon receipt (subject, if necessary, to the transfer being duly stamped) register the Buying Shareholder as the holder of such Sale Shares,
- 7.12 3 the Company shall hold such purchase money in a separate bank account on trust for the Selling Shareholder but shall not be bound to earn or pay interest on any money so held;
- 7 12 4 the Company's receipt for such purchase money shall be a good discharge to the Buying Shareholder who shall not be bound to see to the application of it, and
- 7.12.5 after the name of the Buying Shareholder has been entered in the register of Members in purported exercise of the power conferred by this Article 7 12, the validity of the proceedings shall not be questioned by any person.

## **8. Permitted Transfers and Mandatory Transfers**

8 1 A Member ("Original Transferor") shall be entitled to transfer any Share (or any interest therein)

(a) to his Privileged Relations or to the trustee(s) of a Family Trust (and any such Privileged Relations or trustee(s) shall be entitled to transfer any Share (or any interest therein) to the Original Transferor or, at the written direction of the Original Transferor, to any other of his Privileged Relations or to any other person or persons shown to the reasonable satisfaction of the Board to be the trustee(s) for the time being (on a change of trustee) of the Family Trust in question),

(b) to an Affiliate of the Original Transferor,

and in the event of the death of any Member who would otherwise have been entitled to take the benefit of this Article 8 1, his personal representative(s) shall be entitled to make any such transfers to any persons as would have been permitted by that deceased Member.

### **8.2 Where Shares are held**

(a) by a trustee or trustees of a Family Trust, or

(b) by one or more Privileged Relations of the Original Transferor,

and any such person ceases (otherwise than on the death of the Original Transferor) to be

- (c) in the case of (a) above, a trustee of the Family Trust of the beneficial owner of the Shares; or
- (d) in the case of (b) above, a Privileged Relation of the Original Transferor,

such person will on or before the cessation transfer such Shares to a transferee permitted (as the case may be) under Article 8 1 or to the Original Transferor.

8 3 Where Shares are held by any company pursuant to Article 8 1(b) and the Permitted Transferee ceases to be an Affiliate of the Original Transferor that Permitted Transferee shall on or before cessation transfer such Shares to the Original Transferor (or any other Permitted Transferee nominated in writing by him)

8.4 If a Member fails or refuses to execute and deliver any transfer in respect of any Shares in accordance with Article 8.2 or Article 8 3, the directors may (and will if requested by the Original Transferor) authorise any director or any other person to execute and deliver the necessary transfer(s) on the defaulting Member's behalf. The directors will authorise the registration of the transfer, and of the transferee as the holder of the Shares so transferred, once appropriate stamp duty (if any) has been paid. After registration, the title of the transferee as the registered holder of such Shares will not be affected by any irregularity in or invalidity of such proceedings, which will not be questioned by any Member.

8.5 For the purposes of this Article 8:

- (a) "Family Trust" means a trust (whether arising under a settlement, declaration of trust, testamentary disposition or on an intestacy) under which the only persons being (or capable of being) beneficiaries are the individual beneficial owner of the Shares held in trust and/or his Privileged Relations, and no power of control over the voting powers conferred by such Shares is exercisable at any time by or subject to the consent of any person other than the trustees as trustees or such individual beneficial owner or his Privileged Relations,
- (b) "Privileged Relation" means in relation to any Member, the Member's spouse or civil partner for the time being, parent, and all lineal descendants of that Member (including for this purpose any step-child, adopted child or illegitimate child of the Member or his lineal descendants) or any person who for the time being is married to or is the civil partner of any such lineal descendant, and
- (c) "Permitted Transferee(s)" means any person to whom Shares may be transferred pursuant to Article 8 1

8 6 The matters specified in Article 8 7 shall be deemed to be a mandatory transfer event (the "**Mandatory Transfer Event**") in relation to that Member in breach or, where the Member is a company, in relation to its ultimate holding company

8 7 The following shall be deemed to be Mandatory Transfer Events

8 7 1 In relation to a Member which is a company

- (a) an order is made or an effective resolution is passed for the dissolution or liquidation (voluntary or otherwise) of the Member, other than a genuine solvent reconstruction on amalgamation in which the new company assumes (and is capable of assuming) all the obligation of the Member,
- (b) the Member ceasing to be controlled (as defined by section 416 of the Income and Taxes Act 1988) by the person(s) who controlled such Member at the date of the adoption of these Articles of Association;
- (c) an order is made by a court of competent jurisdiction or a resolution is passed for the administration of the Member or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Member or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986),
- (d) a receiver or administrator or similar official is appointed in respect of the whole or a substantial part of the undertaking and assets of the Member,
- (e) any distress or execution is levied upon or enforced against all or a substantial part of the assets or property of the Member and is not fully paid out or discharged within 30 days;
- (f) the Member is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986,
- (g) a proposal is made for a voluntary arrangement on composition between the Member and any of its creditors,
- (h) the institution of any process that could lead to the Member being dissolved and its assets being distributed among its creditors, shareholders or other contributories, or
- (i) in the case of the Mandatory Transfer Event set out in Article 8 7 1(a)-(h) (inclusive), any competent person takes any analogous step in any jurisdiction in which the relevant Member carries on business,

8 7.2 In relation to a Member who is an individual

- (a) the presentation of a petition for the bankruptcy of the Member;

- (b) an application for an interim order is made for the purposes of a proposed individual voluntary arrangement with the Member's creditors,
- (c) the Member dying, or
- (d) the Member becoming a patient for the purposes of the Mental Health Act 1983 (or, in Scotland, the Mental Health (Scotland) Act 1960) or an order being made by a court of competent jurisdiction for the Member's detention or the appointment of a receiver for the Member in each case by reason of the Member's mental disorder,

8 7 3 A Member committing (whether by act or omission) any material breach of the Investment Agreement or these Articles of Association which breach is incapable of remedy or, if capable of remedy, remains unremedied after a period of 20 Business Days from the service by another Member of a written notice specifying the breach complained of and stating that this Article 8 7 3 will be invoked if such breach is not remedied.

8 8 Where a Mandatory Transfer Event happens in relation to a Member it must notify the Company of it as soon as reasonably practicable and, if it does not, it shall be deemed to have given notice of it on the date on which the Company becomes aware of the Mandatory Transfer Event

8.9 Upon the Company becoming aware of a Mandatory Transfer Event the provisions of Article 7 shall apply and the Member in default shall be deemed to have served a Transfer Notice in respect of all of the Shares they hold and in determining the Sale Price the Net Asset Value as at the date of the Mandatory Transfer Event shall be applied

## 9. Tag-Along

9 1 In the event that the provisions of Article 7.11 apply and in the event that any other Shareholder so notifies the Selling Shareholder within 5 Business Days of the provisions of Article 7 11 becoming effective, no transfer of Shares by a Selling Shareholder will be made or registered unless:

9 1 1 A Tag Approved Offer is made by the proposed transferee(s) ("Buyer") or, at the Buyer's written request, by the Company as agent for the Buyer, and

9 1 2 The Buyer has complied in all respects with the terms of the Tag Approved Offer at the time of completion of the sale and purchase of Shares pursuant to it

9.2 For the purposes of this Article 9 and Article 10

9.2.1 "Approved Offer" means a bona fide offer made by a third party who is not a Shareholder to acquire Shares on an arm's length basis which is in writing and served on all Members

9.2.2 "Tag Approved Offer" means an Approved Offer, offering to purchase either (i) the number of Shares from the Selling Shareholder and the other Shareholders who accept the Tag Approved Offer (the "Tag-Along Shareholders") equal to the number of Sale Shares but in each of their Tag-Along Proportions (as defined below) or (ii) if the Selling Shareholder is proposing to sell its entire holding of Ordinary Shares all of the Shares held by the Selling Shareholder and the Tag-Along Shareholders (including any Shares which may be allotted pursuant to the exercise or conversion of options, rights to subscribe for or securities convertible into Shares in existence at the date of such offer) which

- (a) is stipulated to be open for acceptance for at least 21 days;
- (b) offers the same or equivalent consideration for the Sale Shares
- (c) includes an undertaking by or on behalf of the Buyer that, no other consideration (whether in cash or otherwise) is to be received or receivable by any Member which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Shares to be sold by such Member, and that neither the Buyer nor any person acting by agreement or understanding with it has otherwise entered into more favourable terms or has agreed more favourable terms with any other Member for the purchase of Shares of the same class, and
- (d) is on terms that the sale and purchase of all Shares in respect of which the offer is accepted will be completed at the same time

9.2.3 "Tag-Along Proportions" means, in the case of each of the Selling Shareholder and Tag-Along Shareholders, the proportion that each of their Ordinary Share holding comprises in the total number of Ordinary Shares held by the Selling Shareholder and Tag-Along Shareholders

## **10. Drag Along**

10.1 Subject to the pre-emption procedure in Article 7 above, whenever a Drag Along Offer (as defined below) is made (i) prior to 31 January 2021 the holders of 50% or more of the nominal value of all Ordinary Shares then in issue and (ii) after 31 January 2021 any Shareholder shall have the right ("Drag Along Right") to require (in the manner set out in Article 10.2) all of the other holders of Shares ("Other Shareholders") to accept the Drag Along Offer in full and transfer their Shares to the Buyer with full title guarantee.

- 10 2 The Drag Along Right may be exercised by the service of notice to that effect on the Other Shareholders (the "Drag Along Notice") at the same time as, or within 7 days following the making of the Drag Along Offer. On receipt of the Drag Along Notice, the Other Shareholder(s) may, within 7 days, elect that the Company appoint the Valuers to ascertain Net Asset Value. If the Other Shareholder(s) do not elect for Net Asset Value to be determined, the Drag Along Right will be exercisable after the period of 7 days from the date of issue of the Drag Along Notice. If the Other Shareholder(s) do elect for the Net Asset Value to be determined, the Drag Along Right will be exercisable after the period of 7 days from receipt of the Net Asset Value report from the Valuers subject to the condition set out in Article 10 5(c) having been satisfied.
- 10 3 On the exercise of the Drag Along Right in accordance with Article 10 2, each of the Other Shareholders will be bound to accept the Drag Along Offer in respect of its entire holding of Shares and to comply with the obligations assumed by virtue of such acceptance.
- 10 4 If any of the Other Shareholders fails to accept the Drag Along Offer or, having accepted such offer, fails to complete the sale of any of its Shares pursuant to the Drag Along Offer, or otherwise fails to take any action required of it under the terms of the Drag Along Offer, any person nominated by the directors or any holder of Shares who had exercised the Drag Along Right (or any persons so authorised by such holders) may accept the offer on behalf of the Other Shareholder in question, or undertake any action required under the terms of the Drag Along Offer on the part of the Other Shareholder in question. In particular, such person may execute the necessary transfer(s) on that Other Shareholder's behalf, and against
- (a) receipt by the Company (on trust for such Other Shareholder) of the consideration payable for the relevant Shares (the receipt being a good discharge to the Buyer, who will not be bound to see the application of it), and
  - (b) compliance by the Buyer and, where relevant, the Company with all other terms of the Drag Along Offer,
- deliver such transfer(s) to the Buyer (or its nominee). The directors will then authorise registration of the transfer(s) and of the Buyer (or its nominee) as the holder of the Shares so transferred. After registration, the title of the Buyer (or its nominee) as registered holder of such Shares will not be affected by any irregularity in, or invalidity of such proceedings, which will not be questioned by any person. The Other Shareholder, will in such a case be bound to deliver up its certificate for its or his Shares to the Company, an appropriate indemnity for his lost certificate or a statutory declaration of loss (as appropriate) whereupon the Other Shareholder will be entitled to receive the purchase price for such Shares.
- 10 5 For the purposes of this Article 10 "Drag Along Offer" means an Approved Offer offering to purchase all of the Shares held by the Members (including any Shares which may be allotted pursuant to the exercise or conversion of options, rights to



subscribe for or securities convertible into Shares in existence at the date of such offer) which

- (a) is open for acceptance for at least 21 days,
- (b) offers the same or equivalent consideration for each class of Share (excluding the Preference Shares) (whether in cash, securities or otherwise in any combination) (the "Offer Consideration"),
- (c) the Offer Consideration is at least equal to the Net Asset Value for the Shares as at the date the Approved Offer is made, if the Other Shareholder(s) exercises its election under Article 10 2,
- (d) includes an undertaking by or on behalf of the Buyer that, subject to compliance by the Buyer with Article 10 5(e), no other consideration (whether in cash or otherwise) is to be received or receivable by any Member which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Shares to be sold by such Member, and that neither the Buyer nor any person acting by agreement or understanding with it has otherwise entered into more favourable terms or has agreed more favourable terms with any other Member for the purchase of Shares of the same class;
- (e) in the case of the Preference Shares, includes a provision for the payment of all arrears, deficiencies and accruals of the Preferential Dividend and a price for each Preference Share which is not less than the amount credited as paid up on each Preference Share, and
- (f) is on terms that the sale and purchase of all Shares in respect of which the offer is made will be completed at the same time

## **11. Net Asset Value**

- 11 1 If instructed to report on their opinion of Net Asset Value under Article 7 5, Article 8 9 or Article 10 2 the Valuers shall
  - 11 1 1 act as expert and not as arbitrator and their written determination shall be final and binding on the Members (except in the case of manifest error), and
  - 11 1 2 calculate the net asset value of the Group (being the aggregate amount of the assets (but excluding any value for goodwill) of the Group less the aggregate amount of the liabilities of the Group) on the relevant date under Article 7.5, Article 8 9 or Article 10 2 respectively (the "Net Asset Value"). For the purposes of this Article, the net

asset value of all assets and liabilities shall be calculated in accordance with the accounting policies used in the preparation of the Annual Accounts

- 11 2 The Company will use its reasonable endeavours to procure that the Valuers deliver their written opinion of the Net Asset Value to the Board and to the Shareholders within 28 days of being requested to do so.
- 11 3 The Valuers' fees for reporting on their opinion of the Net Asset Value shall be paid:
  - 11 3 1 in the case of Article 7 5 as to one half by the Selling Shareholder and as to the other half by the Buying Shareholders pro rata to the number of Sale Shares purchased by them in the case of a sale made pursuant to Article 7 8, unless none of the Sale Shares are purchased pursuant to Article 7 when the Selling Shareholder shall pay all the Valuers' fees,
  - 11 3 2 in the case of Article 8 2 by the Selling Shareholder, and
  - 11.3.3 in the case of Article 10.2 by the Company
- 11 4 For the purposes of this Article 11, "Annual Accounts" means the audited consolidated accounts for the Group comprising the audited balance sheet and audited profit and loss account for the financial year of the Group immediately prior to the date on which the determination is required to be made under this Article 11.

## **12. General Meetings**

- 12 1 Every notice convening a general meeting shall comply with the provisions of Section 325 of the Act as to giving information to Members in regard to their right to appoint proxies and all notices of a general meeting shall also be sent to the directors and the auditor of the Company for the time being
- 12 2 If at a general meeting of the Company a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall be dissolved
- 12 3 One Member having the right to vote at the meeting may demand a poll and Paragraph 46 shall be modified accordingly
- 12 4 A Member shall be deemed to be present at a meeting of the Members and to form part of the quorum of that meeting if he participates by telephone or video conferencing facilities and can hear and be heard by the other Members present (or deemed to be present) at the meeting provided that no decision shall be implemented unless and until confirmation of that decision shall have been exchanged between the Members present or deemed to be present at that meeting

- 12 5 If a resolution in writing is described as an ordinary resolution, special resolution or any other type of resolution it shall have effect accordingly.

**13. Variation of Rights**

Notwithstanding any other provision in these Articles, the rights attaching to any class of shares may be varied by a special resolution of the Company in general meeting or by a written resolution (and for the avoidance of doubt the voting rights in relation to any such resolution shall be as set out in these Articles) provided that such variation does not adversely affect the economic rights as set out in these Articles attaching to any class of such shares

**14. Directors**

- 14 1 The number of directors shall not be less than two and not more than six.

- 14 2 A director shall not require any Shareholding qualification.

**15. Powers and Proceedings of Directors**

General

- 15 1 A Director may, and the secretary at the request of a Director or Shareholder shall, call a meeting of the Directors

- 15 2 Save in the case of emergency or where at least one A Director and one B Director agrees to a shorter period of notice, at least seven days' notice of a meeting of the Directors shall be given to all Directors entitled to receive notice accompanied by

- 15 2.1 an agenda specifying in reasonable detail the matters to be raised at the meeting (and so that no resolution may be passed at any meeting of the Directors in relation to any matter which is not so specified unless this is agreed to by at least one A Director and one B Director), and

- 15 2.2 copies of any papers to be discussed at the meeting

- 15 3 The quorum of any meeting of the directors (including adjourned meetings) shall be 2 directors of which one shall be an A Director and one shall be an B Director, save that

- 15 3 1 if the quorum is not present within 30 minutes of the time specified for a meeting of the Directors in the notice of the meeting it shall be adjourned for seven Business Days and Paragraph 11(1) shall be amended accordingly;
- 15 3.2 in the event of a meeting not being quorate due to the absence of a B Director then the quorum required at any reconvened meeting shall be at least two directors neither of whom need be a B Director, or
- 15 3 3 in the event that all of the A Directors or B Directors have ceased to be Directors for whatever reason then the quorum shall be at least two Directors neither of whom needs to be an A Director or B Director (as the case may be)
- 15 4 Meetings of the Directors will make decisions by passing resolutions A resolution is passed if more votes are cast for it than against it
- 15 5 At any meeting of the Directors, the A Directors present shall have in aggregate three votes between them (and irrespective of the fact that less than three A Directors are appointed at any time) to be apportioned equally between the A Directors who are so present and the B Directors present shall have in aggregate three votes between them (and irrespective of the fact that less than three B Directors are appointed at any time) to be apportioned equally between the B Director who are so present Paragraph 7(1) shall be amended accordingly
- 15.6 Subject to the provisions of the Act and the Articles, the business of the Company shall be managed by the directors who may exercise all the powers of the Company No alteration of the Memorandum or Articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given The powers given by this Article shall not be limited by any special power given to the directors by these Articles or by the Model Articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors
- 15 7 Any director may validly participate in a meeting of the Board through the medium of conference telephone or similar form of communication equipment provided that all persons participating in the meeting are able to hear and speak to each other throughout such meeting A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote Subject to the Act, all business transacted in such manner by the Board or a committee of the Board shall for the purpose of these Articles be deemed to be validly and effectively transacted at a meeting of the Board or a committee of the Board notwithstanding that a quorum of directors is not physically present in the same place Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the Chairman of the meeting then is
- 15.8 The Shareholder who holds from time to time more than 50% of the voting rights of the issued Ordinary Shares shall be entitled to appoint one of the Directors to hold a second or casting vote in the event of an equality of votes at a meeting of the

Directors (the "**Voting Director**"), to revoke such appointment for any reason whatsoever and to appoint another Director as the Voting Director. In the event that each of the Shareholders holds 50% of the voting rights of the issued Ordinary Shares at any time, the A Shareholder shall continue to be entitled to appoint the Voting Director, to revoke such appointment for any reason whatsoever and to appoint another Director as the Voting Director

#### Directors' Conflicts of Interest – Board Approval

- 15 9 If a situation arises or exists in which a Director has or could have a Situational Conflict, the director concerned, or any other Director, may propose to the Board that such Situational Conflict be authorised, such proposal to be made in writing and delivered to the other directors or made orally at a meeting of the Board, in each case setting out particulars of the relevant situation. Subject to the Act, the directors may authorise such Situational Conflict and the continuing performance by the relevant director of his duties as a director of the Company on such terms as they may think fit.
- 15 10 The relevant director shall not be counted in the quorum at the relevant meeting of the directors to authorise such Situational Conflict nor be entitled to vote on the resolution authorising such situation

#### Directors' Situational Conflicts – Pre-Approval for all Directors

- 15 11 Subject to compliance by him with his duties as a director under Part X of the Act (other than the duty in section 175(1) of the Act which is the subject of this Article 15 11), a director (including the chairman of the Company (if any) and any other non-executive director) may, at any time, be a director or other officer of, employed by or hold shares or other securities (whether directly or indirectly) in, or otherwise be interested, whether directly or indirectly, in any other Group Company (a "Group Company Interest") and notwithstanding his office or the existence of an actual or potential conflict between any Group Company Interest and the interests of the Company which would fall within the ambit of that section 175(1), the relevant director shall:
- (a) be entitled to attend any meeting or part of a meeting of the directors or a committee of the directors at which any matter which may be relevant to the Group Company Interest may be discussed, and to vote on any resolution of the directors or a committee thereof relating to such matter, and any board papers relating to such matter shall be provided to the relevant director at the same time as the other directors (save that a director may not vote on any resolution in respect of matters relating to his employment with the Company or other Group Company),
  - (b) not be obliged to account to the Company for any remuneration or other benefits received by him in consequence of any Group Company Interest; and

- (c) not be obliged to disclose to the Company or use for the benefit of the Company any confidential information received by him by virtue of his Group Company Interest and otherwise than by virtue of his position as a director, if to do so would breach any duty of confidentiality to any other Group Company or third party

Directors' Situational Conflicts – Pre-Approval for Directors

15 12 Subject to compliance by him with his duties as a director under Part X of the Act (other than the duty in section 175(1) of the Act to the extent that it is the subject of this Article 15 12), a director may, at any time be a director or other officer of, employed by, hold shares or other securities in, or otherwise be interested, whether directly or indirectly, in.

- (a) any entity which, directly or indirectly, holds shares in the Company (a "Relevant Investor") and as such the director may, on behalf of the Relevant Investor, give or withhold any consent or give any direction required of any Relevant Investor or Relevant Investors pursuant to the terms of any subscription, investment or shareholders' agreement relating to the Company, or of any similar agreement or document ancillary to such an agreement, or
- (b) any other company in which a director or Relevant Investor also holds shares or other securities or is otherwise interested, whether directly or indirectly, (in either case a "Shareholder Director Interest")

15 13 Notwithstanding his office or the existence of an actual or potential conflict between any Shareholder Director Interest (as described in Article 15.12(b) above) and the interests of the Company which would fall within the ambit of section 175(1) of the Act the director shall.

- (a) be entitled to attend any meeting or part of a meeting of the directors or a committee of the directors at which any matter which may be relevant to the Shareholder Director Interest may be discussed, and to vote on a resolution of the directors or a committee thereof relating to such matter, and any board papers relating to such matter shall be provided to the relevant director at the same time as other directors,
- (b) not be obliged to account to the Company for any remuneration or other benefits received by him in consequence of any interest,
- (c) be entitled to consult freely about the Group and its affairs with, and to disclose, for investment appraisal purposes, Confidential Information to, any investor in the Group or any other person on whose behalf it is investing in the Group, and to the Group's auditors, lenders and proposed lenders (or with and to any of its or their professional advisers);

- (d) not be obliged to disclose to the Company or use for the benefit of the Company any other confidential information received by him by virtue of his interest and otherwise than by virtue of his position as a director, if to do so would breach any duty of confidentiality to a third party

15.14 For the purposes of Article 15 13, the expression "Confidential Information" shall mean all information (whether oral or recorded in any medium) relating to any Group Company's business, financial or other affairs (including future plans of any Group Company) which is treated by a Group Company as confidential (or is marked or is by its nature confidential).

#### Directors' Situational Conflicts – Disclosure of Interests

15 15 Any director who has a Group Company Interest and any director who has a Shareholder Director Interest shall, as soon as reasonably practicable following the relevant interest arising, disclose to the Board the existence of such interest and the nature and extent of such Interest so far as the relevant director or other director is able at the time the disclosure is made provided that no such disclosure is required to be made of any matter in respect of which the relevant director or other director owes any duty of confidentiality to any third party. A disclosure made to the Board under this Article 15 15 may be made either at a meeting of the Board or by notice in writing to the Company marked for the attention of the directors

#### Directors' Situational Conflicts – Shareholder Approval

15 16 Notwithstanding the provisions of Articles 15 9, 15 11 and 15.12, the holders of not less than 75% of the Ordinary Shares from time to time may, at any time, by notice in writing to the Company, authorise, on such terms as they shall think fit and shall specify in the notice

- (a) any Situational Conflict which has been notified to the Board by any director under Article 15 11,
- (b) any Situational Conflict which has been notified to the Board by the chairman of the Company (if any) under Article 15 9 and which arises by virtue of his appointment or proposed appointment as a director or other officer of, and/or his holding of shares or other securities (whether directly or indirectly) in, any company other than a Group Company (a "Chairman's Interest"), or
- (c) any Group Company Interest or Shareholder Director Interest which has been disclosed to the Board under Article 15 15, (whether or not the matter has already been considered under, or deemed to fall within, Article 15 9, 15 11 or 15 12, as the case may be) Upon such consent being given, the provisions of Articles 15 11(a), (b) or (c) (in the case of a Group Company Interest) and the provisions of Articles 15.13(a), (b), (c) and (d) (in the case of an Shareholder Director Interest) shall apply.

15.17 No contract entered into shall be liable to be avoided by virtue of

- (a) any director having an interest of the type referred to in Article 15.9 where the relevant Situational Conflict has been approved as provided by that Article or which is authorised pursuant to Article 15.16;
- (b) the chairman of the Company (if any) having a Chairman's Interest which has been approved by the Board under Article 15.9 or which is authorised pursuant to Article 15.16,
- (c) any director having a Group Company Interest which falls within Article 15.9 or which is authorised pursuant to Article 15.16, or
- (d) any director having a Shareholder Director Interest which falls within Article 15.12 or which is authorised pursuant to Article 15.16

**Directors' conflicts of interest – Transactional Conflicts**

15.18 The provisions of Articles 15.9 to 15.17 shall not apply to Transactional Conflicts but the following provisions of this Article 15.18 and Article 15.19 shall so apply. Any director may be interested in an existing or proposed transaction or arrangement with the Company provided that he complies with the Act.

15.19 Without prejudice to the obligation of each director to declare an interest in accordance with the Act, a director may vote at a meeting of the Board on any resolution concerning a matter in which he has an interest, whether direct or indirect, which relates to a transaction or arrangement with the Company, or in relation to which he has a duty. Having so declared any such interest or duty he may have, the director shall be counted in the quorum present when any such resolution is under consideration and if he votes on such resolution his vote shall be counted.

**16. Appointment and Removal of Directors and Company Secretary**

16.1 The A Shareholder shall be entitled at any time to appoint up to three Directors and the secretary of the Company, to remove each such person for any reason whatsoever and to appoint another person in his place upon such person ceasing to be a Director or the secretary of the Company for whatever reason. If any Executive Director who is appointed as a Director (other than, subject to Article 16.9, Malcolm Elster) ceases to be an employee of the Group then he will resign as a Director of the Company and any other Group Company of which he is a director and the A Shareholder may appoint a replacement Director.

16.2 A director appointed by the A Shareholder shall not be removed except by the A Shareholder.



- 16 3 The B Shareholder shall be entitled at any time to appoint up to three Directors and to appoint one of those Directors to act as the Chairman of the Directors to remove each such person for any reason whatsoever and to appoint another person in his place upon such person ceasing to be a Director for whatever reason
- 16.4 A director appointed by the B Shareholder shall not be removed except by the B Shareholder.
- 16 5 Any such appointment or removal under articles 16 1 to 16 4 shall be effected by notice in writing to the Company signed by the Member or Members making the same or in the case of a Member being a company signed by any director thereof or by any person so authorised by resolution of the directors or of any other governing body thereof
- 16 6 Any such appointment or removal shall take effect when the notice effecting the same is delivered to the registered office of the Company or to the Secretary or is produced at a meeting of the directors, and any such removal shall be without prejudice to any claim which a director so removed may have under any contract between him and the Company.
- 16 7 The A Shareholder removing a director shall indemnify and keep indemnified the other Shareholders against any claim associated with that director's removal from office.
- 16.8 The B Shareholder removing a director shall indemnify and keep indemnified the other Shareholders against any claim associated with that director's removal from office
- 16 9 The office of a director shall be vacated
- (a) if he resigns his office by notice in writing to the Company, or
  - (b) if he becomes bankrupt or makes any arrangement or composition with his creditors generally, or
  - (c) if he becomes prohibited from being a director by law or by reason of any order made under the Company Directors Disqualification Act 1986, or
  - (d) if he ceases to be a director by virtue of any provision of the Act, or
  - (e) if he is, or may be, suffering from mental disorder and either (i) he is admitted to hospital in pursuance of an application for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health Act (Scotland) 1960, or (ii) an order is made by a court having jurisdiction 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

(f) if he is otherwise duly removed from office

16.10 No director shall vacate his office or be ineligible for re-election, nor shall any person be ineligible for appointment as a director, by reason only of his attaining or having attained any particular age.

16.11 The directors shall not be subject to retirement from office by rotation

## **17. Notices And Communications**

17.1 Notices to be given pursuant to these Articles (other than a notice calling a meeting of directors) shall be given in writing unless these Articles expressly provide otherwise

17.2 The Company may validly send or supply any document (including any notice or Share certificate) or information to a Member

- (a) by delivering it by hand to the address recorded for the Member in the register of Members,
- (b) by sending it by post or courier in an envelope (with postage or delivery paid) to the address recorded for the Member in the register of Members,
- (c) by fax (except for Share certificates) to a fax number notified by the Member in writing,
- (d) by electronic mail (except a Share certificate) to an email address notified by the Member in writing, or
- (e) by means of a website (except a Share certificate) the address of which shall be notified to the Member in writing,

in accordance with and subject to the "company communications provisions" of the Act, but this Article 17.2 does not affect any other provision in any relevant legislation or these Articles requiring notices or documents to be delivered in a particular way

17.3 In the case of joint holders of a Share, notices shall be given to the joint holder whose name stands first in the in the register of Members in respect of the joint holding and notice so given shall be sufficient notice to all the joint holders

17.4 A Member whose registered address for the purposes of Articles 17.2(a) or 17.2(b) above is not within the United Kingdom and who gives to the Company an address within the United Kingdom (a UK Address) at which notices may be given to him or

notifies the Company of a fax number or email address to which notices may be sent in electronic form or who agrees or is deemed to agree to notice being given to him by means of a website, shall be entitled to have notices given to him at that UK Address, fax number, email address or by means of such website, but otherwise no such Member shall be entitled to receive any notice from the Company

17.5 A Member present, either in person or by proxy or, being a corporation, by its representative, at any meeting of the Company or of holders of any class of Shares in the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

17.6 If a document or information (whether in hard copy form or electronic form) is delivered by hand, it is deemed to have been received by the intended recipient at the time it is handed to or left for the Member

17.7 If a document or information (whether in hard copy form or electronic form) is sent by post or courier, to an address in the United Kingdom, it is deemed to have been received by the intended recipient

(a) 48 hours after it was posted, if first class post was used, or

(b) 72 hours after it was posted or given to the courier, if first class post was not used,

provided that it was properly addressed and either put into the post system or given to the courier with postage or delivery paid

17.8 If a document (other than a Share certificate) or information is sent by fax or electronic mail, it is deemed to have been received by the intended recipient at the time it was sent provided that it was sent to the correct fax number or email address

17.9 If a document (other than a Share certificate) or information is sent by means of a website, it is deemed to have been received by the intended recipient when it was first made available on the website, or if later, when the recipient received (or is deemed to have received) information that it was available on the website

## **18. Indemnity And Insurance**

18.1 Subject to the provisions of, and so far as may be permitted by and consistent with Sections 234–238 of the Act to the extent relevant, each director and officer of the Company shall be indemnified out of the Company's assets against all liabilities incurred by him to a person other than the Company or an associated company in connection with 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, but, for the avoidance of doubt such indemnity shall not cover any liability of a director which is mentioned in Section 234(3) of the Act

- 18 2 To the extent permitted by the Act (and in accordance with Section 233 of the Act in the case of directors), the Company may buy and maintain insurance against any liability falling upon its directors and other officers and auditors