

COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

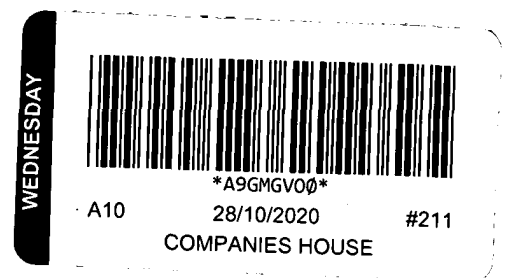
ARTICLES OF ASSOCIATION

(as adopted on 9 February 2017 and as amended on 26 October 2020)

of

SECURE GENERATION LIMITED

(Company Number 09564647)



THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

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(adopted by a written resolution on 9 February 2017 and as amended on ²⁶ October 2020)

-of-

SECURE GENERATION LIMITED

(Company Number 09564647)

(the "Company")

1. INTRODUCTION

- 1.1 The model articles of association for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended at the date of the adoption of these articles (the **Model Articles**) shall apply to the Company save in so far as they are excluded or modified by these Articles.
- 1.2 Notwithstanding that the Company is a private company, certain articles contained in the model articles of association for public companies contained in Schedule 3 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended at the date of the adoption of these articles (the **Model PLC Articles**) shall apply to the Company, but only where expressly incorporated into these articles.

2. DEFINITIONS

- 2.1 Where the expressions 'equity share capital', 'equity securities', 'holding company' and 'subsidiary' are used in these Articles they have the meanings given to them by the Act.
- 2.2 Unless the context otherwise requires:
 - 2.2.1 words denoting the singular shall include the plural and vice versa;
 - 2.2.2 words denoting a gender shall include all genders; and
 - 2.2.3 references to persons shall include bodies corporate, corporations and firms.
- 2.3 The 'ejusdem generis' (of the same kind) rule will not apply to the interpretation of these Articles. Accordingly, 'include' and 'including' will be read without limitation.
- 2.4 Without prejudice to any other definitions contained elsewhere in these Articles, the following words and expressions shall in these Articles have the following meanings:

"Act"	the Companies Act 2006 and every statutory modification or re-enactment thereof for the time being in force, as amended;
"Acceptance Period"	the period during which an offer made under Article 12.7 is open for acceptance;
"Agreed Terms"	the form signed or initialled by a Director on behalf of the Company and by TPIM on behalf of the EIS Investors;
"Auditors"	the auditors for the time being of the Company (if any), or (if there are none), such firm of Chartered Accountants as the Directors acting reasonably may nominate;
"Bad Leaver"	<p>means any person who was, but has ceased to be, an officer or employee of the Company (so that he is no longer either an officer or an employee of the Company) as a result of:</p> <ul style="list-style-type: none">(a) his voluntary resignation from his office or employment within the period of 36 months following the date of the adoption of these Articles; or(b) his removal from office or dismissal for any act of fraud, gross negligence, misconduct or dishonesty;
"Beneficial Owner"	a beneficial owner of any Shares held by a nominee;
"Business Days"	a day (other than a Saturday or Sunday) on which banks generally are open in London for a full range of business;
"Called Shareholders"	as defined in Article 17.1;
"CHP Agreements"	the CHP (Energy Supply) Agreement with Flavourfresh Salads Limited, the Construction Management Agreement with Cogenesco Limited, the O&M Contract with Cogenesco Limited, the Lease for Energy Centre with Flavourfresh Salads Limited, the Grid Connection Offer with Electricity North West Limited, the Structure Installation Contract with Certhon Build B.V. and the Supply Contract for CHP Turbine with AB Energy (UK) Ltd (all dated on or around the date of adoption of these Articles);
"Civil Partner"	means in relation to a Member, a civil partner (as defined in the Civil Partnerships Act 2004) of the Member;
"Conflict Situation"	a situation in which a Director has, or can have, a direct or indirect interest that conflicts, or may possibly conflict, with the interests of the Company, including in relation to the exploitation of any property, information or opportunity and regardless of whether the Company

	could take advantage of the property, information or opportunity itself;
"Connected"	as defined by Section 993 of the Tax Act; provided however that any determination of fact as to whether two or more persons are acting together shall, in the absence of any ruling by HM Revenue & Customs, be made by the tax advisers appointed by the Investor Director (or, if none is appointed, TPIM) acting as experts and not as arbitrators and whose certificate or certificates from time to time shall be final and binding on the Company and all shareholders of the Company;
"Deed of Adherence"	a deed of adherence to the terms of the Investment Agreement in such form as may be reasonably approved by the Investor Director or, if none has been appointed, by the Company and TPIM;
"Deferred Shareholders"	the holders for the time being of the issued Deferred Shares;
"Deferred Shares"	the deferred shares of 0.1p (one tenth of one penny) each in the capital of the Company and having the rights (and being subject to the restrictions) described thereto as set out on these Articles;
"Director's Service Contract"	any contract, agreement or other terms of service between a Director and the Company from time to time;
"Director Member"	a Member who is also an officer of a Group Company;
"Directors"	the directors for the time being of the Company or (as the context shall require) any of them (each a "Director") acting as the board of directors of the Company;
"Drag Along Price"	as defined in Article 17.1;
"Drag Along Right"	as defined in Article 17.1;
"EIS Investors"	as defined in the Investment Agreement and their successors in title;
"EIS Legislation"	Chapter 5 of the Tax Act and section 416 of ICTA;
"equity share capital", "subsidiary" and "holding company"	shall have the meanings set out in Sections 548, 1159 and 1162 of the Act;
"Excess Shares"	as defined in Article 12.9.1;
"Excluded Person"	(i) any Member (or other person entitled to a share in the manner set out in Article 13.1) whom the Directors are entitled under Article 13.1 or Article 5 to require to give a Transfer Notice (but only

throughout such time as the Directors are entitled to require him to give a Transfer Notice);

- (ii) any Member or other person who has been required to give a Transfer Notice under Article 13.1 or Article 15 (whether or not that requirement has been complied with);

“Family Trusts”

means, as regards any particular individual Member or deceased or former individual Member, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the Shares in question is for the time being vested in any person other than the individual and/or Privileged Relations of that individual;

“Group Company”

the Company, its holding company (if any) and any company which is for the time being a subsidiary of the Company or its holding company;

“Investment Agreement”

the investment agreement in the Agreed Terms to be entered into on the date hereof between (1) the EIS Investors, (2) TP Nominees Limited, (3) Cogenesco Limited, (4) Triple Point LLP, (5) Triple Point Investment Management Limited, (6) Terry Wylie and (7) the Company, as amended from time to time;

“Investor Affiliate”

each and any company, fund or partnership which is advised or the assets of which are managed or advised (whether solely or jointly with others) from time to time by the same investment manager or investment advisor as an Investor;

“Investor Director”

persons appointed as directors of the Company pursuant to Article 23.1;

“Investor Majority”

EIS Investors holding a majority of the Ordinary Shares from time to time in issue;

“Issue Price”

in respect of any Share, the aggregate amount paid up (or credited as paid up) in respect of the nominal value thereof and any share premium thereon;

“Listing”

- (i) the admission of all or any of the shares in the capital of the Company (or any part thereof) to the Official List of the UK Listing Authority and the admission of all or any of such shares to trading on the main market of the London Stock Exchange plc; or
- (ii) the same being admitted to trading on the Alternative Investment Market; or

- (iii) the same being admitted to trading on any recognised investment exchange as defined by Section 285 of the Financial Services and Markets Act 2000; or
 - (iv) the same being admitted to trading on the New York or American Stock Exchange or the NASDAQ National market in the United States of America; or
 - (v) the same being admitted to trading on such other stock exchange as the Investor Director or, if none has been appointed, the EIS Investors may agree with the Board;
- “Mandatory Transfer Date”** (i) in respect of a Director Member, the date of cessation of full time service (under Article 13.2); or
- (j) in the case of Terry Wylie, the date on which a liability for breach of any of the Warranties is agreed or determined under Article 13.3;
- “Member”** a holder for the time being of issued Shares;
- “Model Articles”** has the meaning given in Article 1.1;
- “Model PLC Articles”** has the meaning given in Article 1.2;
- “Offer”** either:
- (i) an offer to purchase all the Shares other than those already held by the Offeror and/or any persons acting in concert with him (as defined in the City Code on Take-overs and Mergers); or
 - (ii) the entering into of one or more agreements which will result in any persons who are acting in concert (as defined above) acquiring all the Shares, which agreements are unconditional or subject only to conditions in the sole control of any or all of the persons who are acting in concert;
- in each case being an offer or agreement which is approved in writing by the Investor Director or, if none has been appointed, by an Investor Majority, as being an offer or an agreement to which Articles 17 and 17 do not apply;
- “Offeror”** as defined in Article 17.1;
- “Ordinary Shares”** the ordinary shares of 0.1p (one tenth of one penny) each in the capital of the Company and having the rights ascribed thereto as set out in these Articles;

"Ordinary Shareholders"	the holders for the time being of the issued Ordinary Shares;
"Permitted Transferee"	<p>(a) in relation to a Member who is an individual, any of his Privileged Relations or Trustees;</p> <p>(b) in relation to an Investor:</p> <ul style="list-style-type: none"> (i) a venture capital trust, venture capitalist, investment trust, investment company, limited partnership or such like entity; (ii) another Investor; (iii) an acquirer of an Investor; (iv) the fund manager/adviser to an Investor; (v) an employee, member or partner of TPIM; and/or <p>(c) In relation to a Deferred Shareholder:</p> <ul style="list-style-type: none"> (i) its holding company (if any); and (ii) any company which is, for the time being, a subsidiary of it or of its holding company.
"Prescribed Price"	the price per Sale Share agreed or determined pursuant to Article 12.4 or, determined pursuant to Article 12.5 or as the case may be, the price per Sale Share specified by the Investor Director (or, if none has been appointed, by an Investor Majority);
"Proposing Transferee"	as defined in Article 16.1;
"Proposing Transferor"	a Member proposing to transfer or dispose of Shares or any interest therein;
"Privileged Relation"	in relation to a Member who is an individual member or deceased or former Member, means a spouse, Civil Partner, child or grandchild (including step or adopted or illegitimate child and their issue);
"Purchaser"	a Member willing to purchase Shares comprised in a Transfer Notice;
"Relevant Company"	as defined in Article 27.5;
"Relevant Transaction"	as defined in Article 16.1;
"Sale"	completion of the transaction(s) by which an Offer has arisen;
"Sale Shares"	all Shares comprised in a Transfer Notice;

“Shares” or “shares”	shares in the capital of the Company;
“Specified Total Return”	a Total Return to each of the Ordinary Shareholders of £1.10 if such Total Return is achieved within the Total Return Period, such figure to increase at the rate of 5p for each successive period of 12 calendar months after the expiry the Total Return Period (and pro rata in the event that the calculation is applied for any period of less than 12 calendar months) after the expiry of the Total Return Period;
“Tax Act”	the Income Tax Act 2007, as amended;
“Total Return”	the total return (whether such return takes the form of a distribution of any of the profits of the Company, a return of assets on a liquidation or capital reduction or similar or proceeds on a Sale or Listing) received by each of the EIS Investors in respect of his total investment in the Company divided by the amount of his total investment in the Company or which he would receive, assuming that the distribution proposed to be made were to be distributed in accordance with, as relevant Article 4.1.1, Article 4.2.1 or Article 4.2.2 (but disregarding Article 4.2.3), the amount in question to be expressed in pounds;
“Total Return Period”	the period of 42 months after the Trade Date;
“TPIM”	Triple Point Investment Management LLP, a limited liability partnership in England and Wales under number OC321250;
“Trade Date”	the date on which the Company first carries on a qualifying trade within the meaning of section 291(2) of the Tax Act;
“Transfer Notice”	a written notice served by a Member on the Company, in accordance with Article 12 or deemed to have been served pursuant to Articles 13 and 14;
“Trustees”	in relation to a Member means the trustee or the trustees of a Family Trust;
“Vendors”	as defined in Article 17.1; and
“Warranties”	as defined in the Investment Agreement.

- 2.5 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which, and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.

- 2.6 Any reference in these Articles to any provision of any statute or to any other legislative provision shall be deemed to include a reference to any statutory or other legislative modification or re-enactment of that provision from time to time in force.
- 2.7 In these Articles, where the context so permits, words importing the singular number shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neuter and vice versa and words importing persons shall include bodies corporate, unincorporated associations and partnerships.
- 2.8 The headings to each of the Articles are inserted for ease of reference only and shall not affect the construction or interpretation of these Articles.
- 2.9 A reference in these Articles to an "Article" followed by a particular number is a reference to the relevant article of these Articles bearing that number. A reference in these Articles to a "Model Article" followed by a particular number is a reference to the relevant article of the Model Articles bearing that number. A reference in these articles to a "Model PLC Article" followed by a particular number is a reference to the relevant article of the Model PLC Articles bearing that number.
- 2.10 A reference in these Articles to any transfer of any share shall mean the transfer of either or both of the legal and beneficial ownership in such share and/or the grant of an option to acquire either or both of such legal and beneficial ownership, and the following shall be deemed (but without limitation) to be a transfer of a share:
- 2.11 any direction by way of renunciation, nomination or otherwise by a person entitled to an allotment of shares to the effect that such shares or any of them be allotted to some other person; and
- 2.12 any sale or other disposition of any legal or equitable interest (including without limitation any voting right attached thereto) in any share.
- 2.13 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- 2.14 In the event of any conflict between these Articles and the Investment Agreement, the Investment Agreement shall prevail unless otherwise expressly stated in the alternative.
- 3. SHARE CAPITAL**
- 3.1 The issued share capital of the Company following completion of the subscription for Deferred Shares contemplated by the Investment Agreement comprised Ordinary Shares and Deferred Shares.
- 3.2 In these Articles, unless the context requires otherwise, references to Shares shall include Shares of those respective classes created and/or issued on or after the date of adoption of these Articles.
- 3.3 There shall be no maximum amount of shares that may be allotted or issued by the Company.
- 3.4 The liability of the Members is limited.

4. SHARE RIGHTS

The Shares shall have, and be subject to, the following rights and restrictions:

4.1 *Income*

- 4.1.1 The distribution of any profits of the Company shall require the prior approval of the Ordinary Shareholders by special resolution.
- 4.1.2 Subject to the provisions of Article 5.1 the profits of the Company which the Company may so resolve to distribute shall be distributed amongst the Ordinary Shareholders *pari passu* and the amount payable shall be calculated by reference and in proportion to the amounts paid up or credited as paid up in relation to the nominal value only of the Ordinary Shares held by each of them respectively.
- 4.1.3 No dividend shall be payable on the Shares unless the Investor Director (or, if none has been appointed, an Investor Majority) consents in writing, such consent not to be unreasonably withheld or delayed.
- 4.1.4 Model Article 30 to Model Article 35 (inclusive) shall be subject to this Article 4.1 and, in the event of any inconsistency, the provisions of this Article 4.1 shall prevail

4.2 *Capital*

- 4.2.1 Subject to the provisions of Article 5.1, on a return of assets on a liquidation or capital reduction or similar, the assets of the Company remaining after the payment of its liabilities shall be distributed amongst the Ordinary Shareholders *pari passu* and the amount payable shall be calculated by reference and in proportion to the nominal value only of such Shares held by each of them respectively (as a proportion of the aggregate nominal value of all Shares in the Company).
- 4.2.2 The proceeds of any Sale of the Company shall be distributed amongst the Ordinary Shareholders in the same priority as set out in Article 4.2.1, as if the proceeds of such Sale represented all of the assets of the Company available for distribution to the holders. For the avoidance of doubt, in the event of a Sale, this Article 4.2.2 shall apply notwithstanding anything to the contrary in the terms of such Sale (unless all the holders of the Shares immediately prior to the Sale have agreed in writing to the contrary expressly for the purposes of this provision), whether in the agreements for Sale or otherwise.
- 4.2.3 If the effect of the application of Article 4.2.1 and/or Article 4.2.2 is to give the Ordinary Shareholders a Total Return of an amount equal to or greater than the Specified Total Return which applies as at the date on which such Total Return is achieved and none of the CHP Agreements has been terminated before then, then a proportion of the proceeds of the Sale which is equal to the Margin shall be distributed between the Ordinary Shareholders and the Deferred Shareholders (between the members of each relevant class in proportion to the amounts paid up or credited as paid up in relation to the nominal value only of such shares held by them respectively) in the Specified Proportions.
- 4.2.4 For the purposes of Article 4 2 3:

"Margin" shall mean the sum equal to the aggregate of any proceeds of a sale in excess of the amount necessary to give each of the Ordinary Shareholders a Total Return of an amount equal to the Specified Total Return;

"Specified Proportions" shall mean that 70% of the Margin shall be distributed to the Deferred Shareholders and 30% thereof shall be distributed to the Ordinary Shareholders.

4.3 *Voting*

Subject to the special rights or restrictions as to voting attached to any Shares:

- 4.3.1 on a show of hands, every Member who (being an individual) is present in person or (being a corporation) is present by a representative shall have one vote;
- 4.3.2 on a poll, every Member who is present in person or by a proxy or (being a corporation) by a representative shall have one vote for every Share of which he is the holder.

5. **DEFERRED SHARES**

5.1 The Deferred Shares shall:

- 5.1.1 in respect of each financial year of the Company, carry the right to receive a fixed preferential dividend from the revenue profits of the Company which are available for distribution and which the Directors determine to distribute by way of dividend in priority to any dividend payable on the Ordinary Shares at the rate of 1p per annum, to be paid (in aggregate) amongst the Deferred Shareholders as a class, but confer no other right to a dividend;
- 5.1.2 not confer any right to receive notice of, or to attend or vote at, general meetings; and
- 5.1.3 on a winding-up, confer a preferential right to be paid out of the assets of the Company available for distribution an amount equal to 1p in aggregate for all of the Deferred Shares prior to the surplus being distributed to the Ordinary Shareholders, but do not confer any other right to participate in any surplus assets of the Company.

5.2 The Company shall not be obliged to

- 5.2.1 issue share certificates in respect of the Deferred Shares, or
- 5.2.2 give any prior notice to the Deferred Shareholders that such shares are to be purchased in accordance with Article 5.4, or
- 5.2.3 account to any Deferred Shareholder for the purchase monies in respect of such shares

5.3 The Deferred Shares may not be transferred other than with the consent of an Investor Majority, other than pursuant to Article 5.4.

5.4 If the Ordinary Shareholders have not received a Total Return by the end of the Total Return Period which is at least equal to the Specified Total Return or if any of the CHP

Agreements has been terminated, then the Company shall thereafter be entitled to purchase all of the Deferred Shares for an aggregate consideration of 1p if directed to do so in writing by an Investor Majority, or the Deferred Shares shall be transferred to a person or entity nominated by an Investor Majority in writing. For the purposes of this Article 5.4, the Directors may authorise any person to execute on behalf of and as agent for the Deferred Shareholders any documents necessary to effect the purchase or transfer and may deliver it on their behalf.

6. ISSUE OF NEW SHARES

- 6.1 Subject to Article 6.4, any new Shares (other than Deferred Shares) from time to time created shall, before they are issued to any third party, be offered to the Ordinary Shareholders in proportion to the number of Shares held by them and any new Deferred Shares from time to time created shall, before they are issued to any third party, be offered to the Deferred Shareholders in proportion to the number of the Deferred Shares held by them.
- 6.2 The offer shall be made by notice in writing and shall specify the number and class of Shares offered and the price per share (which shall be the same price per share) and stating a time (not being less than thirty days or greater than forty-two days) within which the offer, if not accepted, will be deemed to be declined. After the expiration of such time, or on the receipt of a communication from the person to whom the offer is made that he declines to accept the Shares offered or any of them, the Directors shall offer the Shares declined in like manner *pari passu* and on a pro-rata basis to the Ordinary Shareholders who have agreed to subscribe for all the Shares offered to them and shall repeat such offer until all of the Shares have been issued or an offer is wholly declined. If the Shares comprised in such further offers are declined or deemed (by the lapse of such offer) to be declined the further offers shall be withdrawn.
- 6.3 The provisions of Articles 6.1 and 6.2 shall not apply to the issue of Shares pursuant to the Investment Agreement and may in any event be disapplied in relation to any class of Shares by special resolution passed by the Members whether in general meeting or otherwise.
- 6.4 Subject to this Article 6 and to the provisions of Sections 549 and 551 of the Act, the Shares shall be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper, provided that no Shares shall be issued at a discount and that:
 - 6.4.1 no Shares to which Articles 6.1 and 6.2 apply shall be issued more than three months after the expiry of the period for acceptance of the last offer of such Shares made under Article 6.1 unless the procedure set out in Article 6.2 is repeated in respect of such Shares (and so that the time limit set out in this Article 6.4.1 shall apply equally to any repetition of that procedure); and
 - 6.4.2 no Shares shall be issued at a price less than that at which they were offered to the Ordinary Shareholders in accordance with Article 6.2 and if the Directors are proposing to issue such Shares wholly or partly for a non-cash consideration the cash equivalent of such consideration for the purposes of this sub-paragraph shall be as reasonably determined by the Auditors who shall act as experts and not as arbitrators and whose determination shall be final and binding on the Company and each of the Members (for the avoidance of doubt, this Article 6.4 shall not apply to the issue of Shares pursuant to the Investment Agreement); and

- 6.4.3 no Shares shall be allotted to any person who is not already a party to the Investment Agreement unless that person has first executed and delivered to the Company a Deed of Adherence.
- 6.5 The provisions of Sections 561(1), 562(1) to (6) and 568(3) of the Act shall not apply to the Company.
- 6.6 Model Article 22 shall be amended by the deletion of the words "*and the directors may determine the terms, conditions and manner of redemption of any such shares*" and replacing them with the words "*and the terms, conditions and manner of redemption shall be set out in the articles.*"
- 7. **VARIATION OF CLASS RIGHTS**
- 7.1 Whenever the capital of the Company is divided into different classes of Shares the special rights attached to any class may be varied or abrogated, either whilst the Company is a going concern or during or in contemplation of a winding-up:
 - 7.1.1 with the consent in writing of the holders of at least three-fourths of the issued Shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of that class, but not otherwise; and
 - 7.1.2 save in respect of the Deferred Shares, the necessary quorum shall be at least two persons holding or representing by proxy at least one-third in nominal amount of the issued Shares of the class, but so that at any adjourned meeting of such holders at which such a quorum is not present the holder or holders present shall be a quorum; and
 - 7.1.3 in respect of the Deferred Shares the necessary quorum shall be one persons holding, or representing by proxy, more than 50% in nominal amount of the issued Deferred Shares; and
 - 7.1.4 the holders of Shares of the class in question shall on a poll have one vote in respect of every share of the class held by them respectively.
- 7.2 Without prejudice to the generality of this Article, it is a term of issue of the Ordinary Shares that the following events shall be deemed to be an attempted variation of the rights attaching to such Shares and shall therefore require class consent in accordance with Article 7.1 (while the allotment and issue of any further Deferred Shares and the events referred to in Articles 7.2.8 shall each also be deemed to be an attempted variation of the rights attaching to the Deferred Shares and so shall require the consent of the Deferred Shareholders):
 - 7.2.1 any alteration or variation of any of the rights attached to any of the Shares for the time being in the capital of the Company;
 - 7.2.2 any resolution to wind-up the Company or any subsidiary of the Company or the convening of a meeting of the members of the Company for this purpose;
 - 7.2.3 any increase in the issued capital of the Company other than the issue of Shares pursuant to the Investment Agreement;
 - 7.2.4 any reduction (other than pursuant to a sub-division or consolidation) of the authorised or issued share capital of the Company;

- 7.2.5 the grant by the Company of a right to subscribe for or to convert securities into shares in the capital of the Company, save for grants of rights to subscribe for Shares pursuant to the Investment Agreement;
- 7.2.6 the application by way of capitalisation of any sum in or towards paying up any debenture or debenture stock of the Company;
- 7.2.7 the redemption of any Shares or the entering into of a contract by the Company to purchase any Shares;
- 7.2.8 any alteration of the Company's articles of association;
- 7.2.9 the passing of any special resolution;
- 7.2.10 the calling of a meeting of the Company to effect or approve any matter which would by virtue of this Article 7.2 be a variation of such class rights;
- 7.2.11 re-registration of the Company as a public company;
- 7.2.12 the subscription for or other acquisition of shares in any company, the acquisition of all or substantially all of the assets of any other company or of any unincorporated business, the disposal of any share in any other company, the disposal of the Company's undertaking and assets or any substantial part thereof or the making of any capital investment in any partnership or the disposal of any such interest; or
- 7.2.13 any act or transaction committed or proposed to be committed by a Director within the terms of Article 21.7.

8. LIEN

- 8.1 The Company shall have a first and paramount lien on every share (whether or not fully paid) for all and any indebtedness of any holder thereof to the Company (whether a sole holder or one of two or more joint holders) in respect of the Shares concerned.
- 8.2 The Company's lien over a Share takes priority over any third party's interest in that Share and extends to any dividend or other money payable by the Company in respect of that Share, and (if the lien is enforced and the share is sold by the Company) the proceeds of sale of that Share.
- 8.3 The Directors may at any time decide that a Share which is or would otherwise be subject to the Company's lien shall not be subject to it, either wholly or in part.
- 8.4 Model PLC Article 53 shall apply to the Company and shall govern the enforcement of the Company's lien, save that:
 - 8.4.1 in Model PLC Article 53(2)(c), the word "*clear*" shall be inserted between the words "*14*" and "*days*"; and
 - 8.4.2 in Model PLC Article 53(4)(b), the words "*a suitable indemnity*" shall be deleted and replaced by the words "*an indemnity in a form reasonably satisfactory to the Directors*" and the words "*over the shares before the sale for any money payable in respect of the shares*" shall be deleted and replaced by the words "*for any money payable (whether payable immediately or at some time in the future) as existed upon the shares before the sale in*"

respect of all shares registered in the name of such person (whether as the sole registered holder or as one of several joint holders)".

9. REGISTRATION OF TRANSFERS

9.1 The Directors shall be required (subject only to Model Article 26 (save that Model Article 26(5) shall not apply to the Company) and Article 9.2) to register promptly any transfer of Shares made in accordance with the provisions of these Articles provided, in all cases where the transferee is not an existing Member, that a Deed of Adherence duly executed by all relevant parties is laid before the meeting at which the transfer is to be approved, but shall not register any transfer of Shares otherwise.

9.2 The Directors may refuse to register a transfer unless:

9.2.1 it is lodged at the office or at such other place as the Directors may appoint and is accompanied by the certificate for the shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;

9.2.2 it is in respect of only one class of share; and

9.2.3 it is in favour of not more than four transferees.

9.3 In addition to the circumstances set out in Model Article 26, the Directors may refuse to register a transfer of a share to a bankrupt, a minor or a person of unsound mind.

10. TRANSFERS PURSUANT TO OFFERS MADE UPON A CHANGE OF CONTROL OR PURSUANT TO DRAG ALONG RIGHTS

Subject to the provisions of Article 9, any Share may at any time be transferred by any Member pursuant to acceptance of any offer made to that Member under the requirements of Article 16 (*Tag Along*) or as contemplated by Article 17 (*Drag Along*).

11. PERMITTED TRANSFERS

11.1 Any Shares may be transferred to a Beneficial Owner by the nominee of such the Beneficial Owner or by the Beneficial Owner to a person shown to the reasonable satisfaction of the Directors to be a nominee for the Beneficial Owner only. Where any person to whom any Shares have been transferred as a nominee ceases to hold such Shares as nominee for the Beneficial Owner only he shall forthwith transfer such Shares to the Beneficial Owner or to another person shown to the reasonable satisfaction of the Directors to be a nominee for the Beneficial Owner only and in default of doing so he shall be deemed to have given a Transfer Notice in respect of all such Shares.

11.2 Subject to the provisions of Article 9, a Member (the **Original Member**) may transfer all or any of his or its Shares to a Permitted Transferee without restriction as to price or otherwise.

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

to any other Permitted Transferee of the Original Member without restriction as to price or otherwise.

- 11.4 Trustees may (i) transfer Shares to a company in which they hold the whole of the share capital and which they control (a **Qualifying Company**) or (ii) transfer Shares to the Original Member or to another Permitted Transferee of the Original Member or (iii) transfer Shares to the new or remaining trustees upon a change of Trustees without restrictions as to price or otherwise.
- 11.5 No transfer of Shares may be made to Trustees unless the Board is satisfied:
 - 11.5.1 with the terms of the trust instrument and in particular with the powers of the trustees;
 - 11.5.2 with the identity of the proposed trustees;
 - 11.5.3 the proposed transfer will not result in 50% or more of the aggregate of the Company's equity share capital being held by trustees of that and any other trusts; and
 - 11.5.4 that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.
- 11.6 If a company to which a Share has been transferred under article 11.5, ceases to be a Qualifying Company it must within five Business Days of so ceasing, transfer the Shares held by it to the Trustees or to a Qualifying Company (any may do so without restriction as to price or otherwise) failing which it will be deemed to have given a Transfer Notice in respect of such Shares.
- 11.7 If a Permitted Transferee who is a spouse or Civil Partner of the Original Member ceases to be a spouse or Civil Partner of the Original Member whether by reason of divorce or otherwise he must, within 15 Business Days of so ceasing either:
 - 11.7.1 execute and deliver to the Company a transfer of the Shares held by him to the Original Member (or, to any Permitted Transferee of the Original Member) for such consideration as may be agreed between them; or
 - 11.7.2 give a Transfer Notice to the Company in accordance with clause **Error! Reference source not found.**,
 - 11.7.3 failing which he shall be deemed to have given a Transfer Notice.
- 11.8 On the death (subject to article 11.3), bankruptcy, liquidation, administrator or administrative receivership of a Permitted Transferee (other than a joint holder) his personal representatives or trustee in bankruptcy, or its liquidator, administrator or administrative receiver must within five Business Days after the date of the grant of probate, the making of the bankruptcy order or the appointment of the liquidator, administrator or the administrative receiver execute and deliver to the Company a transfer of the Shares held by the Permitted Transferee without restriction as to price or otherwise. The transfer shall be to the Original Member if still living (and not bankrupt or in liquidation) or, if so directed by the Original Member, to any Permitted Transferee of the Original Member. If the transfer is not executed and delivered within five Business Days of such period or if the Original Member has died or is bankrupt or is in liquidation, the personal representative or trustee in bankruptcy or liquidator will be deemed to have given a Transfer Notice.

- 11.9 A transfer of any Shares approved by the Investor Director may be made without restriction as to price or otherwise and each transfer shall be registered by the Directors.

12. PRE-EMPTION RIGHTS

- 12.1 The right to transfer Shares or any interest therein shall (subject to and without prejudice to the provisions of Articles 10 and 11) be subject to the following restrictions, save that such restrictions shall not apply to any transfer of Shares pursuant to the acceptance of an offer made pursuant to Article 16 or to the proposed sale pursuant to Article 17 of the Shares for the time being in issue where the Vendors (as defined in Article 17) exercise the Drag Along Right pursuant to Article 17.

Transfer Notice

- 12.2 Before transferring or disposing of any Shares (or any interest in any Shares) the Proposing Transferor shall serve a notice on the Company specifying the number and class of Shares in question and the proposed price for such Shares ("Transfer Notice"), and the Transfer Notice shall constitute the Company as his agent for the sale of those Shares at the Prescribed Price to any Ordinary Shareholder or Ordinary Shareholders. Except as provided in this Article, a Transfer Notice once given or deemed to be given shall not be revocable except with the consent of the Directors.
- 12.3 A Transfer Notice may comprise Shares of more than one class and shall, if the Proposing Transferor has received any offer to purchase any Shares (whether or not an offer capable of becoming legally binding upon acceptance) within the period of three months prior to service of the Transfer Notice, give the name of such offer or, the number and class of Shares concerned and the price offered in respect of each such Share. A Transfer Notice may not be given by an Excluded Person unless required by the Directors under Article 13.1 or Article 15.

Prescribed Price

- 12.4 The Directors will endeavour to agree the Prescribed Price with the Proposing Transferor. If the Directors fail to agree the Prescribed Price with the Proposing Transferor within 14 days of receipt of the Transfer Notice by the Company or, as applicable, a Transfer Notice having been deemed to have been served, the Directors shall request the Auditors (acting as experts and not as arbitrators) to determine and certify the Prescribed Price. The Auditors shall be appointed by the Company on such terms and conditions as the Company (acting reasonably) may agree with the Auditors.
- 12.5 The Auditors shall (acting as experts and not arbitrators) within 14 days of such a request certify to the Company the Prescribed Price, being the value of each Sale Share (or, where appropriate of each Sale Share of each class) calculated on the following basis:
- 12.5.1 by determining the sum which a willing purchaser would offer to a willing vendor for all the issued Shares; and then
- 12.5.2 by dividing the resultant figure between the classes of Shares by applying the provisions of Article 4.2.2 as if that sum were the proceeds of a Sale;
- 12.6 The Auditors' determination and certificate as to the Prescribed Price shall be final and binding.

Offer to Ordinary Shareholders

- 12.7 Within 21 days following receipt of the Transfer Notice or (where relevant) the date on which the Transfer Notice is deemed to have been given or where the Prescribed Price is certified by the Auditors the date of certification of the Prescribed Price, the Company shall offer the Sale Shares to each Ordinary Shareholder (other than the Proposing Transferor and any Excluded Person) in accordance with the provisions of Articles 12.8 and 12.9 for purchase at the Prescribed Price. All offers shall be made by notice in writing and state a time (being between 30 and 42 days inclusive following the date of such notice) within which the offer must be accepted or, in default, will be deemed to have been declined. A copy of such offer shall at the same time be sent by the Company to the Proposing Transferor.
- 12.8 The Company shall offer the Sale Shares to the Ordinary Shareholders pro rata in proportion to the number of the Ordinary Shares held by them and, where the share capital of the Company is divided into separate classes, the Ordinary Shares shall be treated as if they constituted one class of share.
- 12.9 The Sale Shares shall be offered on the following basis:
- 12.9.1 any Ordinary Shareholder to whom the Sale Shares are offered may accept all or some only of the Sale Shares offered to him, and shall be invited to indicate whether, if he accepts all such Sale Shares, he wishes to purchase any Sale Shares which other Ordinary Shareholders decline to accept ("**Excess Shares**") and, if so, the maximum number of Excess Shares which he wishes to purchase;
 - 12.9.2 any Excess Shares shall be allocated between the Ordinary Shareholders who have indicated that they wish to purchase Excess Shares pro rata to the proportion of the voting rights represented by the total number of Shares held by those Ordinary Shareholders but so that no Member shall be required or entitled to receive more than the maximum number indicated by him pursuant to Article 12.9.1;
 - 12.9.3 subject to the provisions of this Article and Article 12.8, the Purchasers shall be bound to purchase the Sale Shares properly allocated to them under the provisions of this Article 12.9 at the Prescribed Price.
- 12.10 Not later than 7 days following the expiration of the Acceptance Period the Company shall give written notice to the Proposing Transferor stating:
- 12.10.1 if it is the case, that no Member (or any person as is referred to in this Article) has sought to purchase any of the Sale Shares; or otherwise
 - 12.10.2 the number of Sale Shares which Ordinary Shareholders have sought to purchase, giving the name and address of each Purchaser and the number of Sale Shares to be purchased by him.

Revocation

- 12.11 If within the Acceptance Period, Purchasers have been found for some only of the Sale Shares or if no Purchaser has been found for any of the Sale Shares, the Proposing Transferor may within 7 days of service on him of notice under Article 12.10 revoke his Transfer Notice by written notice to the Company.

Transfer

- 12.12 If the Proposing Transferor is given notice under Article 12.10.2 (and subject to his not revoking his Transfer Notice in accordance with Article 12.11) he shall be bound on payment of the Prescribed Price to transfer the Sale Shares in question to the respective Purchasers. The sales and purchases shall be completed at the registered office of the Company during normal business hours on the first business day after the expiry of 14 days following the date of service of notice by the Company under Article 12.10.
- 12.13 If a Proposing Transferor fails to transfer any Sale Shares to a Purchaser after becoming bound to do so, the Directors may authorise any person to execute on behalf of and as attorney for the Proposing Transferor any necessary instruments of transfer and shall register the Purchaser as the holder of the relevant Sale Shares. The Company's receipt of the purchase money shall be a good discharge to the Purchaser and the Company shall thereafter hold the purchase money on trust for the Proposing Transferor. After the name of the Purchaser has been entered in the Register of Members in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.

Third Party Sales

- 12.14 If the Company fails before the end of the Acceptance Period to find a Purchaser or Purchasers for any of the Sale Shares, the Proposing Transferor may (subject to Articles 9 and 12.16) sell all or any of the Sale Shares to any third party/parties.
- 12.15 If before the end of the Acceptance Period the Company finds a Purchaser or Purchasers for some (but not all) of the Sale Shares and serves notice accordingly under Article 12.10 the Proposing Transferor may (subject to Articles 9 and 12.16) sell all or any of the Sale Shares for which no Purchaser has been found to any third party/parties unless he revokes his Transfer Notice pursuant to Article 12.11 in which case he may sell all (but not some only) of the Sale Shares to any third party/parties.

Restrictions on Sales

- 12.16 The right of the Proposing Transferor to sell Sale Shares pursuant to Article 12.14 or Article 12.15 shall be subject to the following restrictions:
- 12.16.1 Sale Shares may not be sold after the expiry of three months after the date on which notice is given by the Company under Article 12.10;
 - 12.16.2 Sale Shares must be sold on a bona fide sale at a price not less than the Prescribed Price and without any deduction, rebate or allowance whatsoever to the Purchaser;
 - 12.16.3 the provisions of Article 15 (if applicable); and
 - 12.16.4 no Shares may be transferred, or disposed of, pursuant to this Article by any person who is an Excluded Person unless the Directors resolve to approve such transfer or disposal.
- 12.17 The costs of the Auditors shall be borne as the Auditors may direct.
- 12.18 The restrictions imposed by this Article 12 may be waived in relation to any proposed transfer of Shares with the consent of all Ordinary Shareholders who, but for such

waiver, would or might have been entitled to have such Shares offered to them in accordance with Article 12.9.

12.19 For the purposes of Article 12.16.2 and calculating whether or not a price to be paid for the Sale Shares is more or less than the Prescribed Price, then the cash value of any non-cash consideration shall be that agreed between the Proposing Transferor and the Company, or if the Proposing Transferor and the Company fail to agree such cash value within 15 business days following the earlier of any request by the Proposing Transferor to so value any non-cash consideration and the submission to the Company of the relevant stock transfer form(s) relating to a transfer of the Sale Shares for non-cash consideration, the cash value shall be the amount certified as such as at the date of the earlier of the request for valuation and the purported transfer of the Sale Shares at the request of the Directors, by the Auditors (acting as experts and not arbitrators). Their certificate shall be final and binding.

12.20 If the Auditors are unwilling or unable to act to certify the Prescribed Price in accordance with the provisions of this Article 12 or if the Investor Director (or, if none is appointed, by an Investor Majority) so specify in writing, then the Prescribed Price shall instead be certified by an independent firm of chartered accountants appointed by the Directors with the approval of the Investor Director (or, if none is appointed, by an Investor Majority) and references in this Article 12 to the Auditors shall be deemed to be references to such firm of chartered accountants.

13. **MANDATORY TRANSFERS**

13.1 A Member who has acquired any Share or a person entitled to any share in consequence of the bankruptcy, receivership or liquidation of a Member shall be bound if required in writing to do so by the Directors not later than 90 days after the Directors receive notice from the person concerned that he has become so entitled, to give a Transfer Notice in respect of all the Shares then registered in the name of the Member in bankruptcy, receivership, or liquidation, within 2 weeks of receipt of the relevant request.

13.2 If any Director Member ceases to be such an officer of the Company or its subsidiaries (so that he is no longer such an officer of the Company) then he shall be deemed to have given a Transfer Notice as at the Mandatory Transfer Date in respect of all of the Shares registered in the name of the Director Member as at the Mandatory Transfer Date. The Prescribed Price for the Shares in question shall be the price agreed or certified by the Auditors in accordance with Article 12.4 unless the Director Member is a Bad Leaver, in which case the Prescribed Price shall be the nominal value of such Shares and, subject to Article 13.4, the provisions of Articles 12.5 to 12.7 and 12.12 to 12.19 (inclusive) shall apply, save to the extent of any reference to Article 12.11.

13.3 If any person has committed a material breach of any of the Warranties in the Investment Agreement or a material breach of any of the other provisions of the Investment Agreement where such breach has had (or is reasonably likely to have) a materially adverse effect on the business of the Company and has not been remedied within 14 days of such breach occurring, then he (and any person or company Connected to him and/or any person to whom he has directly or indirectly transferred Shares pursuant to Article 11) shall be deemed to have given a Transfer Notice as at the date of the fact of his breach being agreed by the Investor Director (or, if none is appointed, by an Investor Majority) or determined by a court of competent jurisdiction in respect of all of the Shares registered in his name (and in the name of any person or company connected to him and/or any person to whom he has directly or indirectly transferred Shares pursuant to Article 11) as at that date. The Prescribed Price for the

Shares in question shall be the nominal value of such Shares and, subject to Article 13.5, the provisions of Articles 12.5 to 12.7 and 12.12 to 12.19 (inclusive) shall apply, save to the extent of any reference to Article 12.11.

13.4 If a Transfer Notice is deemed to have been given pursuant to Articles 13.1 to 13.3 the Shares subject to the deemed Transfer Notice shall then be offered in accordance with the provisions of Article 12.7.

13.5 As from the Mandatory Transfer Date (but if Article 13.2 applies, only if the Director Member concerned is a Bad Leaver), the balance of his shareholding (i.e. the Shares then held by him in respect of which he is not deemed to have given a Transfer Notice) shall, notwithstanding any other provision of these Articles, cease to confer on him or any subsequent holder of such Shares the right to attend or to vote at general meetings.

14. **EVIDENCE OF COMPLIANCE**

In any case where the Directors may require a Transfer Notice to be given and it is not duly given within a period of two weeks of notice being given requiring the Transfer Notice to be given, a Transfer Notice in respect of the Shares in question shall be deemed to have been given at the expiration of that period. Any Transfer Notice deemed to have been given or required to be given under any provision of these Articles shall not be capable of revocation and (notwithstanding any of the provisions of these Articles) shall extend not just to the Shares registered in the name of the Member concerned but to any person Connected to him and/or to whom he has directly or indirectly transferred Shares pursuant to Article 11.

15. **EVIDENCE OF AUTHORISATION**

For the purpose of ensuring that a transfer of Shares is duly authorised under these Articles or that no circumstances have arisen requiring a Transfer Notice to be given, the Directors may require any Member or the personal representatives or trustee in bankruptcy, receiver or liquidator of any Member or any person named as transferee in any instrument of transfer lodged for registration to provide to the Company such information as the Directors reasonably think fit regarding any matter which they consider relevant. If such information is not provided to the reasonable satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled to refuse to register the transfer in question or (in case no transfer is in question) to require by notice in writing that a Transfer Notice be given in respect of the Shares concerned. If the information discloses (in the reasonable opinion of the Directors) that a Transfer Notice ought to have been given in respect of any Shares the Directors may by notice in writing require that a Transfer Notice be given in respect of the Shares concerned.

16. **TAG ALONG**

16.1 Notwithstanding the provisions of Article 12 no sale or transfer of the legal or beneficial interest in any Shares (the "**Relevant Transaction**") (other than one made pursuant to Article 10) may be made or validly registered if as a result of such sale or transfer a Relevant Interest is obtained by a person (or persons acting in concert) where such person(s) did not have a Relevant Interest immediately prior to the Relevant Transaction, unless the Proposing Transferor shall have procured (and, to the extent that it is accepted, completes) a written offer complying with the provisions of Article 16.3 to have been made by the proposed transferee (or any person or persons acting in concert with it) (the "**Proposing Transferee**") to the holders of all the other issued Shares to acquire their entire holding of Shares.

16.2 For the purpose of this Article 16:

- 16.2.1 the expression a “**Relevant Interest**” shall mean an interest in 50% or more of the Ordinary Shares in issue for the time being;
- 16.2.2 the expressions “**transfer**” and “**transferee**” shall include respectively the renunciation of a renounceable letter of allotment and the renouncee under any such letter of allotment; and
- 16.2.3 the expression “**acting in concert**” shall bear the meaning ascribed to it in the City Code on Take-overs and Mergers (as amended from time to time).

16.3 The offer referred to in Article 16.1 above shall be on terms that:

- 16.3.1 it will be open for acceptance in England and Wales for a period of at least 28 days following the making of the offer;
- 16.3.2 each Member to whom it is made shall be entitled to receive for each of the Shares held by him a sum per share equal to the Specified Price (as defined in Article 16.4 below);
- 16.3.3 the purchase of any Shares in respect of which such offer is accepted shall be completed at the same time as the Relevant Transaction,

and otherwise on the same terms for all Ordinary Shareholders (and for this purpose any offer which provides for any warranties or indemnities (other than warranties as to title and capacity) or restrictive covenants from some, but not all, Ordinary Shareholders shall be deemed to comply with this Article 16.3).

16.4 The expression the “**Specified Price**” shall mean:

- 16.4.1 a price per share which shall be determined by valuing the entire issued share capital of the Company (the “**Sale Value**”) by reference to the aggregate of:
 - 16.4.1.1 the amount offered or paid or payable by the Proposing Transferee or Transferees or his or their nominees respectively for each of the Shares comprised in the Relevant Interest to the holder or holders thereof or, if higher, the highest amount paid or payable for an Ordinary Share in any related or previous transaction within the 12 months preceding the offer by the same purchaser or any person acting in concert with the Proposing Transferee; and
 - 16.4.1.2 an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holder or holders of the Shares comprised in the Relevant Interest 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 Relevant Interest (and, for the avoidance of doubt and without prejudice to the generality of the foregoing, any additional consideration which is linked to future profits, turnover or some other measure of the future performance of the Company shall be regarded as consideration

which is an addition to the price paid or payable for the Relevant Interest); and

16.4.2 by dividing the resultant figure by applying the provisions of Article 4.2.2 as if the Sale Value were the proceeds of a Sale.

16.5 Any disagreement as to the calculation of the Specified Price which each Member is entitled to receive in respect of each share held by him for the purposes of this Article shall be referred to the Auditors (acting as experts and not arbitrators) whose decision shall be final and binding (in the absence of manifest error) and the costs of the Auditors shall be borne by the relevant Member.

17. **DRAG ALONG**

17.1 If:

17.1.1 provided that the Ordinary Shareholders have by then achieved the Specified Total Return which is applicable as at the date at which such Total Return is achieved (or would achieve such Specified Total Return following the sale of their entire holdings of Ordinary Shares in accordance with the provisions of this Article 17.1), at any time after the end of the Total Return Period, one or more Members holding between them not less than 74% of the Deferred Shares, or

17.1.2 provided that the Ordinary Shareholders have not achieved the Specified Total Return by the end of the Total Return Period, at any time after the end of the Total Return Period, one or more Ordinary Shareholders holding between them not less than 70% of the Ordinary Shares for the time being in issue

(in each case, the "**Vendors**") propose to sell the legal or beneficial interest in their entire holdings of Shares to any person or one or more such persons acting in concert at arm's length (the "**Offeror**"), then the Vendors shall have the right to require the holders of all other issued Shares in the Company (the "**Called Shareholders**") to sell and transfer their entire holdings of Shares to the Offeror (or as the Offeror shall direct) in accordance with this Article 17 (the "**Drag Along Right**") at a price (the "**Drag Along Price**") to be determined in accordance with Article 16.4 and otherwise on the terms specified in Articles 17.2 to 17.8 (as if the Vendors' proposed sale was a Relevant Transaction),

17.2 The Drag Along Right shall be exercised by the Vendors serving written notice to that effect (a "**Drag Along Notice**") on the Called Shareholders at any time before the transfer of the Vendors' Shares to the Offeror.

17.3 A Drag Along Notice shall specify the identity of the Offeror, the Drag Along Price and that the Called Shareholders are, or will in accordance with this Article 17 be required to sell and transfer all their Shares to the Offeror on or about the date specified in the Drag Along Notice (which shall be not less than 1 day after the date of the Drag Along Notice or (if no such date is specified in the Drag Along Notice) on or about such date as the Vendors may subsequently specify by notice in writing to the Called Shareholders (which shall be not less than 1 day after the date of the Drag Along Notice)).

17.4 A Drag Along Notice once given shall be irrevocable but shall lapse (and the obligations thereunder shall lapse) in the event that for any reason the Vendors do not transfer

their entire holdings of Shares to the Offeror or the Offeror's nominee not later than the date specified in the Drag Along Notice as the date for completion of the sale and purchase of Shares pursuant to exercise of the Drag Along Right.

- 17.5 Subject to Article 17.4, each of the Called Shareholders shall be bound to sell his entire holding of Shares and to transfer such Shares in accordance with the provisions of the Drag Along Notice.
- 17.6 If any Called Shareholder fails to complete the sale of any of his Shares pursuant to the Drag Along Notice or otherwise fails to take any action required of him under the terms of the Drag Along Right, the Directors (or any of them) may authorise any person to undertake on his behalf any action required under the terms of the Drag Along Right. In particular (but without limitation) the Directors shall have the same rights as given to them under Article 12.13.
- 17.7 Upon any person, following the giving of a Drag Along Notice becoming a Member pursuant to the exercise of a pre-existing option to subscribe for or otherwise acquire Shares in the Company (a "New Member"), a Drag Along Notice shall be deemed to have been given to the New Member forthwith on the same terms as the previous Drag Along Notice and the New Member shall thereupon be bound to sell and transfer all such Shares acquired by him to the Offeror or as the Offeror may direct and the provisions of this Article shall apply mutatis mutandis to the New Member save that completion of the sale of such Shares shall take place forthwith upon the Drag Along Notice being deemed to have been given to the New Member. The provisions of this Article 17.7 shall apply mutatis mutandis to any then existing Member who acquires additional Shares, pursuant to the exercise of a pre-existing option to subscribe for or otherwise acquire Shares, following the giving of a Drag Along Notice.
- 17.8 If the Vendors exercise the Drag Along Right, it shall not be necessary for them first to have given Transfer Notices pursuant to Article 12 nor to have complied with the provisions of Article 16.

18. PROCEEDINGS AT GENERAL MEETINGS

- 18.1 Save as herein otherwise provided at any general meeting, two Ordinary Shareholders present in person or by proxy (or, being a corporation, by representative) shall be a quorum.
- 18.2 If a quorum is not present within half an hour from the time appointed for a general meeting or ceases to be present the general meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine.
- 18.3 If at any adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting shall be dissolved, unless the meeting was adjourned for 13 days or more and due notice in such regard was given to the Ordinary Shareholders within 5 days of the adjournment whereupon the quorum at any such adjourned meeting shall be any two Ordinary Shareholders present in person or by proxy (or, being a corporation, by representative). Model Article 41(5) shall be varied accordingly.
- 18.4 In the case of any equality of votes at a general meeting, whether on a show of hands or on a poll, the chairman of the meeting shall not be entitled to a second or casting vote.

19. ALTERNATE DIRECTORS

- 19.1 Any Director (other than an alternate director) (the “**appointor**”) may appoint as an alternate any other Director, or any other person approved by resolution of the Directors, to exercise that Director's powers, and carry out that Director's responsibilities, in relation to the taking of decisions by the Directors, in the absence of the alternate's appointor.
- 19.2 A person may act as an alternate director for one or more Directors.
- 19.3 Any appointment or removal of an alternate director must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the Directors. The notice must identify the proposed alternate, and in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the Director giving the notice.
- 19.4 An alternate director has the same rights, in relation to any Directors' meeting or Directors' written resolution, as the alternate's appointor. No meeting of the Directors will be invalid because notice thereof or of any business to be transacted at that meeting was not given to any alternate director if his appointor attends such meeting.
- 19.5 Except as the Articles specify otherwise, alternate directors are deemed for all purposes to be Directors, are liable for their own acts and omissions, are subject to the same restrictions as their appointors and are not deemed to be agents of or for their appointors.
- 19.6 A person who is an alternate director but not a Director may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and may sign a written resolution (but only if it is not signed or to be signed by that person's appointor). No alternate may be counted as more than one Director for such purposes.
- 19.7 An alternate director shall cease to be an alternate director immediately upon:
- 19.7.1 the alternate director's appointor ceasing to be a Director;
 - 19.7.2 the alternate director's appointor revoking his or her appointment;
 - 19.7.3 the happening of any event which, if the alternate director were a Director, would cause him or her to be required to vacate such office.
- 19.8 An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company.
- 19.9 The Company may pay any reasonable expenses which alternate directors properly incur and Model Article 20 shall be amended by the addition of the words “(including alternate directors)” immediately following the words “reasonable expenses which the directors.”

20. APPOINTMENT AND RETIREMENT OF DIRECTORS

- 20.1 The number of Directors shall not be less than two.

- 20.2 Model Article 17(1) shall not apply to the Company. Any person who is willing to act as a Director of the Company, and is permitted by law to do so, may, subject to approval by the Investor Director:

20.2.1 be appointed to be a Director by ordinary resolution; or

20.2.2 be appointed to be a Director by a decision of the Directors,

either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of directors.

21. PROCEEDINGS OF THE DIRECTORS

- 21.1 Model Article 5(1) shall be amended by the insertion of the words “as they resolve to do, subject to approval by the Investor Director” in place of the words “as they think fit” and Model Article 5(1)(c) shall be amended by the insertion of the words “(including collaterally with or to the exclusion of their own powers)” at the end of that Model Article.

- 21.2 Model Article 9(1) shall be amended by the insertion of the words “(which, for the avoidance of doubt, shall include any Investor Director)” after the words “Any director may call a directors’ meeting”.

- 21.3 Subject to Article 21.8 the quorum necessary for the transaction of business of the Directors shall be two, one of whom shall be the Investor Director (or his alternate) if at the time of the meeting an Investor Director has been appointed. Model Article 11(2) shall not apply to the Company.

- 21.4 Reasonable notice must be given of Directors’ meetings. Model Article 9(3) shall be amended accordingly. Directors may waive their entitlement to notice of a Directors’ meeting at any time and in Model Article 9(4)) the words “not more than 7 days after the date on which the meeting is held” shall be deleted and replaced with the words “at any time”.

- 21.5 At any meeting of the Directors each Director (or his alternate director) present at the meeting shall be entitled to one vote.

- 21.6 In the case of an equality of votes at any meeting of the Directors the chairman of such meeting shall not be entitled to a second (or casting) vote. Model Article 13 shall not apply to the Company.

- 21.7 Model Article 8 shall not apply to the company. A decision of the Directors is taken in accordance with Model Article 8 (as referred to in Model Article 7(1)) when a resolution in writing is signed by each Director or to which each Director has otherwise indicated agreement in writing (and such resolution may consist of several documents in the like form each signed by one or more Directors). The Directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every decision taken by a sole director in accordance with this Article 21.7.

- 21.8 Subject to the provisions of the Act, and to Article 7 and provided that he has disclosed to the Directors the nature and extent of any interest of his, a Director notwithstanding his office:

21.8.1 may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;

- 21.8.2 may be a director or other officer of or employed by or be a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested;
 - 21.8.3 may or any firm or company of which he is a member or director may act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;
 - 21.8.4 shall not by reason of his office be accountable to the Company for any benefit which he derives from such office, or service or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
 - 21.8.5 shall be entitled to vote on any resolution and (whether or not he shall vote) be counted in the quorum on any matter referred to in any of Articles 21.8.1 to 21.8.4 (inclusive) or on any resolution which in any way concerns or relates to a matter in which he has, directly or indirectly, any kind of interest whatsoever and if he shall vote on any resolution as aforesaid his vote shall be counted.
- 21.9 For the purposes of Article 21.8:
- 21.9.1 a general notice to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified;
 - 21.9.2 an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
 - 21.9.3 an interest of a person who is Connected with a Director shall be treated as an interest of the Director and in relation to an alternate Director an interest of his appointor shall be treated as an interest of the alternate Director without prejudice to any interest which the alternate Director has otherwise.
- 21.10 Model Article 14 shall not apply to the Company. Save as otherwise specified in these Articles or the Act and subject to any limitations, conditions or terms attaching to any authorisation given by the Directors for the purposes of section 175(4)(b) of the Act, a Director may vote on, and be counted in the quorum in relation to, any resolution relating to a matter in which he has, or can have:
- 21.10.1 a direct or indirect interest or duty which conflicts, or possibly may conflict, with the interests of the Company; and
 - 21.10.2 a conflict of interest arising in relation to an existing or a proposed transaction or arrangement with the Company.
- 21.11 If a Conflict Situation arises, the Directors may authorise it for the purposes of Section 175(4)(b) of the Act by a resolution of the Directors made in accordance with that section and these Articles. At the time of the authorisation, or at any time afterwards, the Directors may impose any limitations or conditions or grant the authority subject to

such terms as (in each case) they consider appropriate and reasonable in all circumstances. Any authorisation may be revoked or varied at any time at the discretion of the Directors.

21.12 It is recognised that an Investor Director:

- 21.12.1 may be an employee, consultant, director, member or other officer of the Investor or of an Investor Affiliate;
- 21.12.2 may be taken to have, through previous or existing dealings, a commercial relationship with the Investor or with an Investor Affiliate;
- 21.12.3 may be a director or other officer of, or be employed by, or otherwise involved in the business of other entities in which the Investor or an Investor Affiliate has or may have an interest from time to time; and
- 21.12.4 shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such other directorship, membership, office, employment, relationship or his involvement with the Investor, with an Investor Affiliate or with any entity referred to in Article 21.12.3,

and he shall not be in breach of the duties he owes to the Company as a result of any Conflict Situation which arises from the relationships contemplated by this Article, including (without limitation) in relation to proposals for financing or otherwise promoting the business of (whether in competition with the Company or not) any such other entity.

21.13 In the circumstances contemplated by Article 21.11 and notwithstanding any other provision of these Articles, each Director affected shall:

- 21.13.1 be entitled to receive any papers or other documents in relation to, or concerning, matters to which the Conflict Situation relates;
- 21.13.2 not be excluded from those parts of meetings of the Directors or meetings of a committee of the Directors at which matters to which the Conflict Situation relates are discussed;
- 21.13.3 be entitled to vote (and form a part of the quorum) at any such meeting.

21.14 Any information which a Director obtains, other than in his capacity as a Director of the Company, which is confidential in relation to an entity referred to in Article 21.12 need not be disclosed or used for the benefit of the Company where such disclosure or use would constitute a breach of confidence.

21.15 Any Director including an alternate Director may participate in a meeting of the Directors or a committee of the Directors of which he is a member by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in a meeting in this manner shall be deemed to constitute presence in person at such meeting and, subject to these Articles and the Act, he shall be entitled to vote and be counted in a quorum accordingly. 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.

22. No alteration of these Articles invalidates anything which the Directors have done which would have been valid had that alteration not been made.

23. **THE INVESTOR DIRECTOR**

23.1 Notwithstanding any other provisions of these Articles, for so long as the EIS Investors hold any Shares or Shares in the capital of the Company they shall have the right to appoint one person as a Director of the Company and to remove from office any person so appointed and (subject to such removal) to appoint another person in his place.

23.2 An Investor Director shall not be required to hold any Shares.

23.3 Any appointment or removal of an Investor Director shall be by notice in writing to the Company signed by all of the EIS Investors which will take effect on delivery at the registered office of the Company or at any meeting of the board of Directors.

23.4 On any resolution to remove the Investor Director the Shares held by the EIS Investors who appointed such director shall together carry at least one vote in excess of 75% of the votes exercisable in respect of that resolution at the general meeting at which such resolution is to be proposed and if any such director is removed pursuant to Section 168 of the Act the EIS Investors who appointed such director may reappoint him or any other person as an Investor Director, after reasonable consultation with the EIS Investors.

23.5 Notwithstanding any other provisions of these Articles, for so long as the EIS Investors or any of them hold any Shares in the Company, they shall have the right to appoint one or two persons as an observer at board meetings of the Company and to remove from office any person so appointed and (subject to such removal) to appoint another person in his place.

23.6 Such observer shall be entitled to receive the same information concerning the business and affairs of the Company, as the directors of the Company receive, and at the same time, but shall not be entitled to vote at meetings of the directors and shall not be counted towards the quorum.

23.7 Any appointment or removal of such observer shall be by notice in writing to the Company signed by all of the EIS Investors which will take effect on delivery at the registered office of the Company or at any meeting of the board of Directors.

23.8 The EIS Investors may appoint one Investor Director and one observer but shall not be entitled to appoint more than two persons either as an Investor Director and/or such observer(s) in aggregate at any one time.

24. **STEP IN RIGHTS**

24.1 If:

24.1.1 there is a material breach of the Warranties; or

24.1.2 any one or combination of the Directors (excluding the Investor Director), or the Company are in breach of any of their obligations in the Investment Agreement, or, in the case of the Directors only, of their service agreements, (which in any case, if capable of remedy has not been remedied within 25 days of the Directors receiving notice to remedy the same from the Investor Director) the consequences of which may be (in the reasonable opinion of

the Investor Director) to the material detriment of the Company or the interests of the EIS Investors or any of them as shareholders of the Company (including the status of their investments as qualifying holdings within the meaning of Part 4 of the Tax Act); or

- 24.1.3 there is a material breach by any of the Directors (excluding the Investor Director) or by any holder of Deferred Shares, of these Articles in force from time to time or (in the case of Cogenesco Limited) of any of the CHP Agreements,

and the Investor Director has given written notice to the Directors that the provisions of this Article 24 should have effect until such times as written notice is given by the Investor Director that the provisions of this Article 24 shall cease to have effect in relation to the matter in question (which will be given as soon as the relevant circumstances(s) prompting the giving of the notice is/are no longer applicable), the Investor Director alone shall count as a quorum at any meeting of Directors and shall be entitled at any meeting of Directors to cast such number of votes which exceeds the votes cast for a resolution to which the Investor Director are opposed or which exceeds the votes cast against a resolution which the Investor Director has proposed.

25. **DIRECTORS' BORROWING POWERS**

- 25.1 Subject as hereinafter provided, and as set out in the Investment Agreement, the Directors may exercise all the powers of the Company (whether express or implied) of borrowing or securing the payment of money, of guaranteeing the payment of money and the fulfilment of obligations and the performance of contracts, and of mortgaging or charging the undertaking, property, assets and uncalled capital of the Company and (subject to Sections 549 and 551 of the Act) of issuing debentures.
- 25.2 Except with the prior sanction of the Investor Director or, if none has been appointed, an Investor Majority no mortgage or charge shall be created on any part of the undertaking, property, assets or uncalled capital of the Company or any subsidiary of the Company except for the purpose of securing money borrowed from bankers together with interest thereon and costs and expenses relating thereto and save for any financing arrangements which are contemplated by the Investment Agreement.

26. **NOTICES**

- 26.1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- 26.1.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five business days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five business days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
- 26.1.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
- 26.1.3 if properly addressed and sent or supplied by electronic means, 24 hours after the document or information was sent or supplied; and

- 26.1.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this Article, no account shall be taken of any part of a day that is not a business day.

- 26.2 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Act.
- 26.3 Where a notice is sent by facsimile a transmission report showing that the facsimile was transmitted in full to the correct number shall be conclusive evidence that the notice was given and the notice shall be deemed to have been given at the time of transmission.
- 26.4 Where notice is given by email, if it can be shown that the notice sent was properly addressed with the electronic address supplied by the intended recipient, unless the giver of that notice received notice either that such method of communication has failed or of the intended recipient's non-receipt.

27. **INDEMNITY AND INSURANCE**

- 27.1 Subject to the Act and so far as may be permitted by law, but without prejudice to any indemnity to which a Director may otherwise be entitled, every Director or other officer or auditor of the Company shall be entitled to be indemnified out of the assets of the Company against any and all costs, charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties or in relation thereto or in relation to the Relevant Company's activities as trustee of an occupational pension scheme (as defined in Section 235(6) of the Act) including in each case without limitation any liability incurred by him in defending any proceedings, whether civil, regulatory or criminal ("**Proceedings**"), in which judgment 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 relief is granted to him by the court, from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company. Model Article 52 (save for Model Articles 52(2) and 53) shall not apply to the Company.
- 27.2 In addition to Article 27.1 and in accordance with the Act the Company may pay the defence costs of every Director of the Company in relation to Proceedings brought against him by third parties and deal with the outcome of such Proceedings in the following ways subject to such exclusions as the board of Directors may from time to time determine:
- 27.2.1 If judgment is given in the Director's favour, the Director will not be required to repay the defence costs to the Company; and
- 27.2.2 If judgment is given against the Director in the Proceedings the payments made in advance by the Company will be considered a loan to the Director and will be repayable by the Director subject to the following provisions:
- 27.2.2.1 in civil proceedings the Company may, at its discretion, waive the loan in relation to defence costs. In addition, the Company may indemnify the Director against any liabilities incurred; and

27.2.2.2 in regulatory proceedings the Company may at its discretion, waive the loan in relation to defence costs.

- 27.3 The provisions contained in Articles 27.1 and 27.2 will continue to apply even after the Director ceases to be a Director of the Company unless the Director's service is terminated in accordance with the summary termination provisions in his Director's Service Contract or letter of appointment.
- 27.4 Without prejudice to Article 27.1, the Directors may effect and maintain insurance for or for the benefit of any persons who are or were at any time Directors, officers or employees of any Relevant Company or who are or were at any time trustees of any pension fund or employees' share scheme in which employees of any Relevant Company are or were at any time interested including without limitation insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution of their duties and/or in the actual or purported exercise of their powers and/or otherwise in relation to their duties, powers or offices in relation to any Relevant Company or any such pension fund or employees' share scheme.
- 27.5 **"Relevant Company"** means the Company, any holding company or parent undertaking (as defined in section 1159 and section 1162 of the Act) from time to time of the Company or in which the Company or any such holding company or parent undertaking or any of the predecessors of the Company or of any such holding company or parent undertaking has or had at any time any interest, whether direct or indirect, or which is or was at any time in any way allied to or associated with the Company or any subsidiary or subsidiary undertaking (as defined in section 1159 and section 1162 of the Act) of the Company or of such other company or undertaking.