

THE COMPANIES ACT 2006

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PRIVATE COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

- OF -

PERFORMANCE54 GROUP LIMITED

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# THE COMPANIES ACT 2006

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## PRIVATE COMPANY LIMITED BY SHARES

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### ARTICLES OF ASSOCIATION

- of -

#### PERFORMANCE54 GROUP LIMITED (the “Company”)

(Adopted by special resolution dated 8 February 2021)

#### 1. APPLICATION OF MODEL ARTICLES

- 1.1** The model articles of association for private companies contained in Schedule 1 to The Companies (Model Articles) Regulations 2008 (called “**Model Articles**” in these Articles) shall apply to the Company save insofar as they are varied or excluded by, or are inconsistent with, the following Articles.
- 1.2** Model Articles 48, 52 to 62 inclusive, 65(2), 69 and 73 contained in Schedule 3 to The Companies (Model Articles) Regulations 2008 (called “**Public Company Model Articles**” in these Articles) shall also apply to the Company save insofar as they are varied or excluded by, or are inconsistent with, the following Articles.

#### 2. DEFINITIONS AND INTERPRETATION

- 2.1** In these Articles the following words and expressions shall have the following meanings:

**A Return:** an amount equal to 2 times the sum of (i) £4,969,904, being an amount equal to the A Shareholders’ initial investment and (ii) any further amount(s) invested by the A Shareholders in the Company or in any other member of the Group (whether by way of subscription for or transfer of further shares (whether equity or non-equity) or by way of loan or otherwise);

**A Shareholders:** the members from time to time holding A Shares;

**A Shares:** A ordinary shares of £1.00 each in the capital of the Company;

**Act:** the Companies Act 2006;

**Agency Agreement:** the master services agreement entered into by Performance54 Limited and Golf Saudi on or around the date of adoption of these Articles, including the statements of work entered into on or around the date of adoption of these Articles;

**Articles:** these articles of association;

Bankrupt: a person who:

- (a) petitions for his own bankruptcy or is declared bankrupt;
- (b) applies for an interim order under the Insolvency Act 1986;
- (c) makes a proposal for the adoption of a voluntary arrangement under the Insolvency Act 1986;
- (d) seeks a compromise of his debts with his creditors or any substantial part of his creditors; or
- (e) takes any action or proceeding in any jurisdiction that has an effect equivalent or similar to any of the actions mentioned in (a) to (d) (inclusive);

B Shareholders: the members from time to time holding B Shares;

B Shares: B ordinary shares of £1.00 each in the capital of the Company;

B Transfer: as defined in Article 30.1;

B Transfer Notice: as defined in Article 30.1;

B Transfer Offer Date: as defined in Article 30.2;

Business Day: a day on which banks are open for all normal classes of banking business in London and Riyadh;

C Shares: C ordinary shares of £1.00 each in the capital of the Company;

C Shareholders: the members from time to time holding C Shares;

certificate: a paper certificate evidencing a person's title to specified shares or other securities;

chairperson: as defined in Article 8.1;

clear days: in relation to a period of a notice means that period excluding the day when the notice is deemed to be received (or, if earlier, received) and the day of the meeting;

Commencement Date: the date of the adoption of these Articles;

company: includes any body corporate;

Company Notice: as defined in Article 33.2;

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, but excluding a situation which could not reasonably be regarded as likely to give rise to a conflict of interest;

Controlling Interest: means shares (or the right to exercise the votes attaching to shares) which confer in aggregate 50 per cent or more of the total voting rights conferred by:

- (a) all the shares for the relevant time being in issue; or

(b) all the shares for the relevant time being in issue and conferring the right to vote at all general meetings;

**Cost:** in respect of a share, the acquisition cost of such share on the first occasion on which that share was acquired (whether by way of transfer or subscription) by the relevant member (or his Permitted Transferee as the case may be);

**Excess Issue Shares:** as defined in Article 20.5;

**Excess Transfer Shares:** as defined in Article 29.3;

**Executive Committee:** means the executive committee established with power delegated by the board of directors to operate the day to day affairs and the overall direction and management of the Group;

**Family Members:** in relation to any person, the spouse or civil partner, parents and every child and remoter descendant of that person (including stepchildren and adopted children);

**Family Trust:** in relation to any person, a trust established by that person in relation to which only such person and/or Family Members of that person are capable of being beneficiaries thereof;

**Final Transfer Offer Date:** as defined in Article 29.3.2;

**First Round Transfer:** as defined in Article 29.1;

**First Round Transfer Notice:** as defined in Article 29.1;

**Group:** the Company and its subsidiary undertakings and “member of the Group” shall be construed accordingly;

**Group Company:** any company for the time being in the Group;

**GS Notice:** as defined in Article 33.1;

**hard copy:** as defined in s.1168 of the Act;

**holding company:** as defined in s.1159 of the Act;

**Investor:** any person from time to time that holds A Shares (whether legally or beneficially) who has agreed to be bound by the Shareholders’ Agreement as an “Investor” (as defined in the Shareholders’ Agreement);

**Investor Approval:** means the prior written consent or approval of Investors who hold not less than one half of the total number of A Shares then in issue;

**Investor Director:** a director from time to time appointed as an Investor Director pursuant to Article 14.1;

**Investor’s Group:** means, in relation to an Investor, that Investor and its subsidiary undertakings or, as the case may be, that Investor, any parent undertaking, whether direct or indirect, of that Investor (which in respect of Sanabil, will include the Public Investment Fund of Saudi Arabia) and any other subsidiary undertaking of any such parent undertaking from time to time and references to member or members of the or an Investor Group will be construed accordingly;

Issue Acceptor: as defined in Article 20.5;

Issue Closing Date: the date specified as such in the Issue Offer Notice;

Issue Excess Acceptor Proportion: in respect of an Issue Excess Acceptor, the proportion A/B, where:

A = the number of A Shares and B Shares held by such Issue Excess Acceptor at the time the first relevant Issue Offer Notice is sent by the Company; and

B = the total number of A Shares and B Shares held by all Issue Excess Acceptors at the time the first relevant Issue Offer Notice is sent by the Company;

Issue Excess Acceptors: as defined in Article 20.6;

Issue Offer: as defined in Article 20.3;

Issue Offeree: as defined in Article 20.3;

Issue Offer Notice: as defined in Article 20.3;

Issue Offer Price: as defined in Article 20.3;

Legislation: as defined in Article 2.5.2;

Manager: any person from time to time who holds B Shares (whether legally or beneficially) who has agreed to be bound by the Shareholders' Agreement as a "Manager" (as defined in the Shareholders' Agreement);

Manager Approval: means (i) for the purpose of Article 16.1.7, the prior written consent or approval of Managers who hold not less than one half of the total number of B Shares then in issue; and (ii) for any other purpose, the prior written consent or approval of at least one Manager;

Manager Director: a director from time to time appointed as a Manager Director pursuant to Article 15.1;

member: a person who is the holder of a share;

New Issue Shares: as defined in Article 20.3;

paid: in relation to a share, means paid or credited as paid (as to its nominal value or any premium on it);

parent undertaking means a parent undertaking within the meaning of s.1162 of the Act;

partly paid: in relation to a share, means that part of that share's nominal value or any premium at which it was issued has not been paid to the Company;

Patient: a person who lacks capacity as defined in s.2 Mental Capacity Act 2005;

Prescribed Terms: as defined in Article 26.1, Article 29.1, Article 30.1 (as the context required);

Permitted Transferee: as defined in Article 25.1.1;



proxy notification address: as defined in Article 45.1;

ROFO: as defined in Article 26.1;

ROFO Notice: as defined in Article 26.1;

ROFO Offer Date: as defined in Article 26.2;

ROFO Shares: as defined in Article 26.1;

Second Round Transfer: as defined in Article 29.3;

Second Round Transfer Member: as defined in Article 29.3;

Second Round Transfer Notice: as defined in Article 29.3;

Share Option Plan means the share option plan of the Company from time-to-time;

Shareholder Proportion: in respect of an Issue Offeree, the proportion A/B, where:

A = the number of A Shares and B Shares held by such Issue Offeree at the time the first relevant Issue Offer Notice is sent by the Company; and

B= the total number of A Shares and B Shares held by all Issue Offerees at the time the first relevant Issue Offer Notice is sent by the Company;

**Shareholders' Agreement:** the shareholders' agreement dated on or around the date of these Articles and made between: (1) the Company; (2) those persons described in it as the Managers; and (3) the person described in it as the Investor;

shares: shares of any class in the Company;

Specified Shares: as defined in Article 31.1;

subsidiary undertaking: as defined in s.1162 of the Act;

Transfer B Shares: as defined in Article 30.1;

Transfer Offeree Proportion: in respect of an offeree of shares, the sum of the number of A Shares, B shares and C Shares held by it/him divided by the total number of A Shares, B Shares and C Shares in issue at the time the relevant transfer notice is received by the Company;

Transfer Shares: as defined in Article 29.1;

Transferring A Member: as defined in Article 29.1;

Transferring B Member: as defined in Article 26.1 or Article 30.1 (as the context requires); and

Valuer: as defined in Article 33.3.

- 2.2** The Model Articles shall apply as if in Model Article 1 the definitions accompanying the terms “chairman”, “paid” and “shares” were deleted and replaced with the definitions of those terms set out in Article 2.1.

**2.3** In these Articles:

**2.3.1** the term “transfer” shall include:

- (a) a sale or disposal of any legal, equitable or other interest in a security and the creation of any charge, mortgage or other encumbrance over any interest in a security, whether or not by the member registered as the holder of that security; and
- (b) any renunciation or other direction by a person entitled to an allotment, issue or transfer of a security that such security be allotted, issued or transferred to another person,

**2.3.2** any reference to an “interest” in the context of any transfer of a security shall include any interest in a security as defined by s.820 of the Act (as if any references in that section to a “share” were references to a “security”) and shall also include any interest, economic participation or right derived from or relating to a security (including through any derivative, participation or swap arrangement);

**2.3.3** any notice, consent, approval or other document or information, including the appointment of a proxy, required to be given in writing may be given in writing in hard copy form or electronic form, save where expressly provided otherwise in these Articles;

**2.3.4** except to the extent expressly provided otherwise in these Articles, any consent or approval required from a person is at the absolute discretion of that person;

**2.3.5** use of the singular includes the plural and vice versa (unless the context requires otherwise);

**2.3.6** reference to the consent of an Investor Director shall, if no Investor Director is appointed, be deemed to be references to Investor Approval;

**2.3.7** any reference to any other document is a reference to that other document as amended, varied, supplemented, restated, adhered to or novated (in each case, other than in breach of the provisions of these Articles or such other document) at any time; and

**2.3.8** 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.

**2.4** Save as expressly provided otherwise in these Articles, words or expressions contained in the Model Articles, those Public Company Model Articles referred to in Article 1.2 and these Articles bear the same meaning as in the Act as in force from time to time. The last paragraph of Model Article 1 shall not apply.

**2.5** In the Model Articles, those Public Company Model Articles referred to in Article 1.2 and these Articles, save as expressly provided otherwise in these Articles:

**2.5.1** any reference to any statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, whether before, on, or after the Commencement Date;

**2.5.2** any reference to any legislation including to any statute, statutory provision or subordinate legislation (“Legislation”) includes a reference to that Legislation as from time to time amended or re-enacted, whether before, on, or after the Commencement Date,

except, in the case of each of Articles 2.5.1 and 2.5.2, to the extent that any amendment or re-enactment coming into force, or Legislation made, on or after the Commencement Date would create or increase a liability of any member or the Company.

**2.6** In the Model Articles, those Public Company Model Articles referred to in Article 1.2 and these Articles, save as expressly provided otherwise in these Articles, any reference to re-enactment includes consolidation and rewriting, in each case whether with or without modification.

**2.7** Where pursuant to these Articles any Investor Director gives or withholds any consent pursuant to an express right or power of an Investor Director, that Investor Director shall not be acting in his capacity as a director of any member of the Group and accordingly shall not owe any statutory or fiduciary duties to any member of the Group or the shareholders of any member of the Group in respect of the relevant decision.

### **3. COMPANY NAME**

The name of the Company may be changed by:

**3.1** special resolution of the members; or

**3.2** a decision of the directors; or

**3.3** otherwise in accordance with the Act.

### **4. DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

**4.1** The general rule about decision-making by directors is that any decision of the directors must be either a majority (by number of eligible votes) decision at a meeting or a decision taken in accordance with Article 5.

**4.2** Model Article 7 shall not apply.

### **5. UNANIMOUS DECISIONS**

**5.1** A decision of the directors is taken in accordance with this Article when all eligible directors indicate to each other by any means that they share a common view on a matter.

**5.2** Such a decision may take the form of a resolution in writing, of which each eligible director has signed one or more copies or to which each eligible director has otherwise indicated agreement in writing.

**5.3** References in this Article 5 to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting (but exclude in respect of the authorisation of a Conflict Situation, the director subject to that Conflict Situation).

**5.4** A decision may not be taken in accordance with this Article if the eligible directors would not have formed a quorum at such a meeting.

**5.5** Model Article 8 shall not apply.

### **6. PARTICIPATION IN DIRECTORS' MEETINGS**

**6.1** Subject to these Articles, directors participate in a directors' meeting, or part of a directors' meeting, when:

**6.1.1** the meeting has been called and takes place in accordance with these Articles; and

6.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

6.2 In determining whether directors) are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

6.3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is. In default of such a decision, the meeting shall be treated as being held where the majority of the directors are located or, if there is no such majority, where the chairperson is located.

6.4 Model Article 10 shall not apply.

## **7. QUORUM FOR DIRECTORS' MEETINGS**

7.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

7.2 Unless otherwise stated in these Articles, the quorum for directors' meetings shall be two directors, one of whom shall be an Investor Director, and one of whom shall be a Manager Director.

7.3 For the purposes of any directors' meeting, (or part of a meeting) at which it is proposed to authorise a Conflict Situation in respect of one or more directors, if there is only one director in office other than the director or directors subject to the Conflict Situation, the quorum for such meeting (or part of a meeting) shall be one director.

7.4 If a quorum is not present within 30 minutes of the time specified for the relevant meeting in the notice of the meeting then the meeting shall be adjourned for two Business Days at the same time and place. If a quorum is not present at any such adjourned meeting within 30 minutes of the time specified, then those directors present will constitute a quorum.

7.5 Model Article 11 shall not apply.

## **8. CHAIRING OF DIRECTORS' MEETINGS**

8.1 The Investors shall have the right from time to time (at its absolute discretion) to appoint any one of their Investor Directors as chairperson of the Company (the "Chairperson") and to remove from such position any person so appointed and to appoint another person in his place. The Chairperson shall not be removed except with Investor Approval.

8.2 The chairperson shall chair each directors' meeting at which he is present. If there is no director holding that office, or if the chairperson is unwilling to chair the directors' meeting or is not participating in the meeting within ten minutes after the time at which it was to start, a participating Investor Director must appoint one of themselves to chair it.

8.3 Model Article 12 shall not apply.

## **9. CASTING VOTE**

In the case of an equality of votes, the chairperson shall have a second or casting vote. Model Article 13 shall not apply.

## **10. VOTING AT DIRECTORS' MEETINGS**

**10.1** Subject to these Articles, all resolutions of the board shall be decided by a majority of votes cast in favour.

**10.2** Each director present and entitled to participate at a board meeting (or any committee of a board) shall have one vote in relation to each matter to be considered at that meeting, save that if

- (a) the Investors or the Managers (as the case may be) have not appointed all of the Investor Directors or Manager Directors (as the case may be) which they are entitled to appoint in accordance with the provisions of Article 14.1 or 15.1 (as relevant); and/or
- (b) some but not all of the Investor Directors or Manager Directors appointed by the Investors or Manager (as the case may be) are present at the board meeting (or of the committee of such board),

those Investor Directors or Manager Directors (as the case may be) appointed by the Investors or Manager (as relevant) who are present at that meeting of the board (or of the committee of the board) shall be entitled to cast, between them, in aggregate a number of votes equal to the maximum number of Investor Directors or Manager Directors (as relevant) which the Investors or Manager (as the case may be) is entitled to appoint in accordance with the provisions of Article 14.1 or 15.1 (as relevant).

## **11. EXERCISE OF DIRECTORS' DUTIES**

**11.1** If a Conflict Situation arises, the directors may authorise it for the purposes of s.175(4)(b) of the Act by a decision 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 which (in each case) they consider appropriate and reasonable in all the circumstances. Any authorisation may be revoked or varied at any time in the discretion of the directors.

**11.2** It is recognised that an Investor Director:

- 11.2.1** may be an employee, consultant, director, member or other officer of an Investor or of an Investor Affiliate;
- 11.2.2** may be taken to have, through previous or existing dealings, a commercial relationship with, or an economic interest in, an Investor or with, or in, an Investor Affiliate; and
- 11.2.3** may be a director or other officer of, or be employed by, or otherwise be involved, or have an economic interest, in the business of other entities in which an Investor or an Investor Affiliate has or may have a direct or indirect interest from time to time.

It is also recognised that any Investor or Investor Affiliate may have an interest in, or be involved in, the business of other entities which conflicts, or may possibly conflict, with the Company from time to time.

**11.3** An Investor Director shall not, by reason of his office:

- 11.3.1** be in breach of the duties he owes to the Company, including his duties to exercise independent judgement and to avoid a Conflict Situation, as a result of matters arising from the relationships contemplated by Article 11.2 and, including in relation to proposals for financing or otherwise

promoting the business of (whether in competition with the Company or not) any such other entity; nor

11.3.2 (notwithstanding his duty not to accept benefits from third parties) be accountable to the Company for any benefit which he derives from any other directorship, membership, office, employment, relationship or his involvement with any Investor, with an Investor Affiliate or with any entity referred to in Article 11.2.

**11.4** In the circumstances contemplated by Articles 11.2 and 11.3 and notwithstanding any other provision of these Articles, each director affected shall:

11.4.1 be entitled to receive any papers or other documents in relation to, or concerning, matters to which the Conflict Situation relates;

11.4.2 not be excluded from those parts of directors' meetings or meetings of any committee of the directors at which matters to which the Conflict Situation relates are considered;

11.4.3 be entitled to vote (and form a part of the quorum) at any such meeting; and

11.4.4 be entitled to give or withhold consent or give any approval required by these Articles or otherwise on behalf of the Investor who has appointed him,

and any information which he obtains, other than in his capacity as a director or employee of the Company, which is confidential in relation to an entity referred to in Article 11.2, need not be disclosed or used for the benefit of the Company where such disclosure or use would constitute a breach of confidence.

**11.5** Model Article 14 shall not apply.

## **12. DIRECTORS VOTING AND COUNTING IN THE QUORUM**

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 s.175(4)(b) of the Act, a director may vote on, and be counted in the quorum in relation to any decision of the directors relating to a matter in which he has, or can have, a direct or indirect interest or duty, including:

**12.1** an interest or duty which conflicts, or possibly may conflict, with the interests of the Company; and

**12.2** an interest arising in relation to an existing or a proposed transaction or arrangement with the Company.

## **13. APPOINTING DIRECTORS**

**13.1** Subject to these Articles, any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director:

13.1.1 by ordinary resolution; and

13.1.2 by a decision of the directors.

**13.2** Model Article 17 shall not apply.

#### **14. INVESTOR DIRECTORS**

- 14.1** The Investors shall have the right from time to time to appoint up to three Directors (the “Investor Directors”) and to remove from office any person so appointed and to appoint another person in his place. The Investors shall also be entitled to require that any such Investor Director(s) be appointed as a director of each other Group Company and be appointed to (a) any committee or sub-committee of or established by the Board (or any committee thereof), save in respect of the Executive Committee; and (b) any committee or sub-committee of or established by the board of any other Group Company. Each Investor Director shall not be entitled to any remuneration or salary, save that the Company (and/or other Group Company, if relevant) shall reimburse each such director for all out of pocket expenses reasonably incurred by him in connection with his attendance at any board meeting.
- 14.2** Any such appointment or removal as referred to in article 14.1 shall be by way of an Investor Approval which shall be given to the Company and/or the relevant Group Company.

#### **15. MANAGER DIRECTORS**

- 15.1** The Managers shall have the right from time to time to appoint up to three Directors (the “Manager Directors”) and to remove from office any person so appointed and to appoint another person in his place. The Managers shall also be entitled to require that any such Manager Director(s) be appointed as a director of each other Group Company.
- 15.2** Any such appointment or removal as referred to in article 15.1 shall be by way of a Manager Approval which shall be given to the Company and/or the relevant Group Company.

#### **16. TERMINATION OF DIRECTOR’S APPOINTMENT**

- 16.1** A person ceases to be a director as soon as:
- 16.1.1** that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;
  - 16.1.2** that person becomes a Bankrupt;
  - 16.1.3** a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months or that person otherwise becomes a Patient;
  - 16.1.4** by reason of that person’s mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
  - 16.1.5** notification is received by the Company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms;
  - 16.1.6** in respect of an Investor Director, Investor Approval is received by the Company notifying that such person has ceased to be a director;
  - 16.1.7** in respect of a Manager Director, Manager Approval is received by the Company notifying that such person has ceased to be a director;
  - 16.1.8** notification is received by the Company of the removal of the director from office in accordance with Articles 14 or 16.2.

**16.2** In addition and without prejudice to the provisions of s.168 of the Act, the Company may by ordinary resolution remove any director before the expiration of his period of office and may by ordinary resolution appoint another director in his place.

**16.3** Model Article 18 shall not apply.

**17. DIRECTORS' REMUNERATION AND OTHER BENEFITS**

**17.1** A director may undertake any services for the Company that the directors decide.

**17.2** Each Investor Director shall not be entitled to any remuneration or salary, save that the Company (and/or other Group Company, if relevant) shall reimburse each such director for all out of pocket expenses reasonably incurred by him in connection with his attendance at any board meeting.

**17.3** Model Article 19 shall not apply.

**18. SHARE CAPITAL**

The share capital of the Company at the Commencement Date is divided into, A Shares, B Shares and C Shares.

**19. SHARE RIGHTS**

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

**19.1 Income**

Amounts distributed (in cash or in specie) by the Company in or in respect of any financial year shall be distributed *pari passu* amongst the A Shareholders and the B Shareholders in proportion to the numbers of A Shares and B Shares held by them respectively and as if the A Shares and the B Shares were of the same class. For the avoidance of doubt, no amounts shall be distributed to the C Shareholders.

**19.2 Capital**

On a return of capital on liquidation or otherwise, the surplus assets of the Company remaining after payment of its liabilities shall be distributed *pari passu* amongst the A Shareholders, the B Shareholders and the C Shareholders in proportion to the numbers of A Shares, B Shares and C Shares held by them respectively and as if the A Shares, the B Shares and the C Shares were of the same class.

**19.3 Voting**

**19.3.1 On a vote:**

- (a) on a show of hands, every A Shareholder or B Shareholder who (being an individual) is present in person or (not being an individual) is present by an authorised representative shall have one vote and every proxy duly appointed by one or more A Shareholders or B Shareholders (or, where more than one proxy has been duly appointed by the same member, all the proxies appointed by that member taken together) shall have one vote, save that a proxy shall have one vote for and one vote against the resolution if:



- (i) the proxy has been duly appointed by more than one A Shareholder or B Shareholder entitled to vote on the resolution; and
    - (ii) the proxy has been instructed by one or more of those A Shareholders or B Shareholders to vote for the resolution and by one or more other of those A Shareholders or B Shareholders to vote against it;
  - (b) on a poll, every A Shareholder or B Shareholder who (being an individual) is present in person or by one or more duly appointed proxies or (not being an individual) by an authorised representative or by one or more duly appointed proxies shall have one vote for every A Share or B Share of which he is the holder; and
  - (c) on a written resolution every A Shareholder or B Shareholder shall have one vote for every A Share or B Share of which he is the holder.
- 19.3.2 The C Shareholders shall be entitled to receive notice of, and attend, all general or other meetings of the Company and shall be entitled to receive copies of all resolutions proposed as written resolutions but shall not be entitled to vote at any such meeting or to agree to any proposed written resolution in respect of the C Shares held by them.
- 20. ISSUE OF NEW SHARES**
- 20.1** The Company has the power to allot and issue shares and to grant rights to subscribe for, or to convert any security into, shares pursuant to those rights.
- 20.2** Model Article 22(2) shall not apply.
- 20.3** If the Company proposes to offer shares for subscription in cash (“New Issue Shares”), no such New Issue Shares shall be issued unless each A Shareholder and each B Shareholder (each such person, an “Issue Offeree”) has first been given not less than 20 Business Days written notice (the “Issue Offer Notice”) to subscribe for their Shareholder Proportion of such New Issue Shares (the “Issue Offer”). The Issue Offer shall specify the price per New Issue Share (the “Issue Offer Price”).
- 20.4** Any acceptance by an Issue Offeree of an offer of New Issue Shares pursuant to the Issue Offer must be made in writing and received by the Company on or prior to the Issue Closing Date, failing which an Issue Offeree shall be deemed to have declined the Issue Offer. On the Issue Closing Date, each acceptance by an Issue Offeree to acquire New Issue Shares shall become irrevocable.
- 20.5** Any Issue Offeree who accepts all the New Issue Shares offered to him (an “Issue Acceptor”) shall be entitled to indicate in his acceptance of the Issue Offer whether he would accept New Issue Shares not accepted by other Issue Offerees (“Excess Issue Shares”) and if so the maximum number he would accept.
- 20.6** If there are any Excess Issue Shares, they shall be allocated between the Issue Acceptors who have indicated that they wish to accept Excess Issue Shares (“Issue Excess Acceptors”) on the basis of their respective acceptance indications, or, if the number of Excess Issue Shares is insufficient for all the Issue Excess Acceptors to be allocated all the Excess Issue Shares they have so indicated they would accept, the Excess Issue Shares shall be allocated between the Issue Excess Acceptors in their respective Issue Excess Acceptor Proportions, provided that no Issue Acceptor shall be allocated more Excess Issue Shares than it indicated it would accept.

**20.7** Within five Business Days of the Issue Closing Date, the Company shall notify the result of the Issue Offer to each Issue Offeree who has accepted the Issue Offer, specifying:

20.7.1 the number of the New Issue Shares (and Excess Issue Shares, as applicable) which such Issue Offeree has successfully subscribed for at the Issue Offer Price; and

20.7.2 the place and time, being between 2 and 10 Business Days after the date of such notice, on which the subscription is to be completed (subject to the relevant subscription monies being received by the Company) and the account details for the transfer of the required subscription monies.

**20.8** If any difficulties (such as fractional entitlements) shall arise in the allocation or apportionment of any shares or other securities pursuant to this Article 20, such difficulties shall be determined by the directors.

**20.9** Articles 20.3 to 20.8 shall not apply to share issues under the Share Option Plan.

## **21. PURCHASE OF OWN SHARES**

**21.1** With the prior written consent of an Investor Director and a Manager Director, the Company may purchase its own shares in accordance with the provisions of the Act.

**21.2** The Company may finance the purchase of its own shares in any way permitted by the Act including by way of cash reserves up to the limits provided by the Act.

## **22. VARIATION OF CLASS RIGHTS**

**22.1** Whenever the capital of the Company is divided into different classes of shares, the rights attached to a class may be varied or abrogated either whilst the Company is a going concern, or during or in contemplation of a winding up, with the consent in writing of the holders of at least 75 per cent 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.

**22.2** The rights attached to any class of shares shall not (unless otherwise provided by the rights attached to the shares of that class) be deemed to be varied by the creation or issue of further shares ranking in some or all respects *pari passu* with, behind or in priority to those shares or by the purchase or redemption by the Company of any of its own shares.

## **23. SHARE CERTIFICATES**

Model Article 24 shall be modified by the deletion of Model Article 24(2) and its replacement with the following:

“Every certificate must specify: (a) in respect of how many shares, of what class, it is issued; (b) the nominal value of those shares; (c) the amount paid up on them; and (d) any distinguishing numbers assigned to them.”

## **24. SHARE TRANSFERS**

**24.1** Shares may be transferred only in accordance with the provisions of this Article and Articles 25 to 32 (inclusive) (to the extent applicable) and any other transfer shall be void.

**24.2** Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of:

- 24.2.1 the transferor; and
- 24.2.2 (if any of the shares is partly paid) the transferee.
- 24.3** No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- 24.4** The Company may retain any instrument of transfer which is registered.
- 24.5** The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
- 24.6** Subject only to Article 24.7, the directors shall register any transfer of shares made in accordance with the provisions of Articles 25 to 32 (to the extent applicable) within 21 days of the following being lodged at the Company's registered office or such other place as the directors have appointed:
  - 24.6.1 the duly stamped instrument of transfer; and
  - 24.6.2 the certificate(s) for the shares to which the transfer relates or an indemnity in lieu of such certificate(s) in a form reasonably satisfactory to the directors.
- 24.7** The directors may refuse to register the transfer of a share if:
  - 24.7.1 the share is not fully paid;
  - 24.7.2 the transfer is not lodged at the Company's registered office or such other place as the directors have appointed;
  - 24.7.3 the transfer is not accompanied by the certificate(s) for the shares to which it relates (or an indemnity in lieu of such certificate(s) in a form reasonably satisfactory to the directors), or such other evidence as the directors may reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf;
  - 24.7.4 the transfer is in respect of more than one class of share;
  - 24.7.5 the transfer is in favour of more than four transferees; or
  - 24.7.6 the transfer is in favour of a person under the age of 18, a Bankrupt or a Patient.
- 24.8** If the directors refuse to register the transfer of a share, they shall:
  - 24.8.1 send to the transferee notice of refusal, together with the reasons for the refusal, as soon as reasonably practicable and in any event within two months of the date on which the instrument of transfer was lodged with the Company; and
  - 24.8.2 return the instrument of transfer to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.
- 24.9** Model Article 26 shall not apply.
- 24.10** The powers of attorney and agency given in these Articles are irrevocable and unconditional, bind the successors and assignees of the grantors and are made as security interests to secure the interests of the relevant persons.

## **25. PERMITTED TRANSFERS**

### **25.1 Permitted transfers**

#### **25.1.1 Subject to the provisions of Article 24:**

- (a) any A Share may at any time be transferred by an A Shareholder to any member of their respective Investor Groups.
- (b) any B Shareholder or C Shareholder may at any time transfer their B Shares and/or C Shares to:
  - (i) their Family Members aged 18 or more and to whom they are transferring the entire legal and beneficial interest in such share; and
  - (ii) trustees of a Family Trust of such member to whom the member is transferring the entire legal and beneficial interest in such shares,

(each such transferee being a “Permitted Transferee”).

#### **25.1.2 Where shares have been transferred to trustees of a Family Trust of a member, or have been issued to trustees of a Family Trust of a member, the trustees and their successors may transfer all or any of such shares as follows:**

- (a) on any change of trustees, the relevant shares may be transferred to the trustees from time to time of the Family Trust concerned; or
- (b) pursuant to the terms of such Family Trust or in consequence of the exercise of any power or discretion vested in the trustees or any other person, all or any of the relevant shares may be transferred to the trustees from time to time of any other Family Trust of the same member or to any Family Member of the relevant member or deceased or former member who has become entitled to the shares proposed to be transferred and is aged 18 or more.

#### **25.1.3 Where shares have been transferred under Article 25.1.1 (whether directly or by a series of such transfers) from a member (the Transferor) to one of its/his Permitted Transferees as the Transferor (the Transferee) and subsequent to such transfer the Transferee ceases to be a Permitted Transferee of the Transferor then the Transferee will immediately transfer all the shares held by it to the Transferor or to another person that is a Permitted Transferee of the Transferor, for such consideration as they agree.**

## **26. RIGHT OF FIRST OFFER ON TRANSFERS OF 75% OR MORE OF B SHARES**

### **26.1 If one or more B Shareholders (each, a “Transferring B Member”) wish to transfer, directly or indirectly, 75% or more of the B Shares in issue at that time to any third party other than a Permitted Transferee, then, subject to having complied with Article 30, such Transferring B Member shall deliver a notice (a “ROFO Notice”) to each A Shareholder and the Company of such intent to sell (the “ROFO”). The ROFO Notice must state (i) the number of B Shares the Transferring B Member wishes to Transfer pursuant to such notice (the “ROFO Shares”); and (ii) all the terms and consideration offered per ROFO Share (the “Prescribed Terms”). Each A Shareholder, directly or through one or more of its Permitted Transferees, shall have the right to purchase the ROFO Shares in accordance with this Article 26.1. Notwithstanding anything to the contrary in these Articles, prior to delivering any ROFO Notice under this Article 26.1, the B Shareholders shall be permitted to solicit (but shall not accept) offers from third parties**

or conduct customary limited market sounding (including underwriters) to solicit any offers or obtain information about the market value.

**26.2** The A Shareholders may make an irrevocable offer to buy all of the ROFO Shares as equals, as nearly as possible, their Transfer Offeree Proportion of on the Prescribed Terms. Such offer shall be made in writing to the Company within 28 days of receiving the ROFO Notice (the “ROFO Offer Date”), failing which such member shall be deemed to have declined to purchase any ROFO Shares.

**26.3** The ROFO shall be subject to the additional following terms:

**26.3.1** the Company shall be the agent of the Transferring B Member for the sale of the ROFO Shares on the terms set out in the ROFO Notice; and

**26.3.2** the ROFO Shares are to be sold free from all encumbrances and together with all rights attaching to them.

**26.4** If by the ROFO Offer Date, the Company has received offers for all of the ROFO Shares, then within (5) five Business Days after the ROFO Offer Date, the Company shall provide notice of the offers received to the Transferring B Member and those A Shareholders who offered to buy ROFO Shares and the Company shall notify each A Shareholder in writing of the names and addresses of the A Shareholders who are to purchase ROFO Shares and the number of ROFO Shares to be bought by each. Such notice shall state a place and time, between fifteen (15) and twenty (20) Business Days after the date of the notice (or fifteen (15) Business Days following any required approvals), on which the sale and purchase of the ROFO Shares is to be completed and the Transferring B Member shall be obligated to transfer such ROFO Shares on the Prescribed Terms for each such ROFO Share free from encumbrances and together with all rights attaching to them.

**26.5** If by the ROFO Offer Date, the Company has not received offers for all of the ROFO Shares, then the Company will promptly notify the Transferring B Member who may treat any offers received from A Shareholders as null and void and may within the next three months of the ROFO Offer Date transfer all of ROFO Shares to any person other than the members on the Prescribed Terms (including the same price per share) and otherwise on terms no more favourable to such person than those specified in the ROFO Notice; provided that no less than ten (10) Business Days prior to the consummation of such transfer, the Transferring B Member shall provide to the Company and the A Shareholders the relevant agreement and any other evidence reasonably requested by the Company or any A Shareholder evidencing that such transfer shall be consummated on terms no more favourable than those specified in the ROFO Notice.

**27. DRAG-ALONG RIGHT FOLLOWING THE ROFO – MINIMUM “A SHARE” RETURN**

If the Transferring B Member transfers his ROFO Shares to a person other than an A Shareholder pursuant to Article 26.5, the Transferring B Member will have the option to require the A Shareholders by notice in writing to transfer all of their Shares to the same person on no less favourable terms as the Transferring B Member if, as a result of such transfer, the A Shareholders will achieve at least the A Return wholly in cash, payable in full upon completion of the transfer. For the avoidance of doubt, the option granted pursuant to this Article 27 shall not be exercisable unless an amount equal to, or higher than the A Return is payable to the A Shareholders as set out in this Article 27.

**28. TAG-ALONG RIGHTS FOLLOWING THE ROFO**

**28.1** If the Transferring B Member transfers his ROFO Shares to a person other than an A Shareholder pursuant to Article 26.5, and the drag-along option under Article 27 is not exercisable or exercisable but not exercised by the Transferring B Member, then the A Shareholders will have the option to require the Transferring B Member by notice in writing to procure that the proposed transferee will make an offer to buy all of their Shares on the terms set out in Article 28.2 (unless, in the case of a particular offeree's shares, less favourable terms are agreed to in writing by that offeree) and the offer is or becomes wholly unconditional.

**28.2** The terms of the proposed transferee's offer shall be as follows:

**28.2.1** the offer shall be open for acceptance for at least 14 Business Days and may be accepted in whole or in part; and

**28.2.2** the offer shall be on the same terms as the terms applicable to the transfer of the ROFO Shares.

**28.3** The offer may be subject a condition the satisfaction of which is dependent upon the number and/or percentage of Shares in respect of which the offer is accepted.

**29. PRE-EMPTION ON ANY TRANSFER OF A SHARES**

**29.1** If an A Shareholder (a "Transferring A Member") wishes to transfer, directly or indirectly, all or a portion of their A Shares to any person other than a Permitted Transferee, then such Transferring A Member shall deliver a notice (the "First Round Transfer Notice") to each other member and the Company of such intent to sell (the "First Round Transfer"). The First Round Transfer Notice must state (i) the number of A Shares the Transferring A Member wishes to transfer pursuant to such notice (the "Transfer Shares") and (ii) all the terms and consideration offered per Transfer Shares (the "Prescribed Terms"). Each other member, directly or through one or more of their Permitted Transferees, shall have the right to purchase the Transfer Shares in accordance with this Article 29.1. Notwithstanding anything to the contrary in these Articles, prior to delivering any Transfer Notice under this this Article 29.1, the A Shareholders shall be permitted to solicit (but shall not accept) offers from third parties or conduct customary limited market sounding (including underwriters) to solicit any offers or obtain information about the market value.

**29.2** In the First Round Transfer, each of the other members is entitled to make an irrevocable offer to buy some or all such proportion of the Transfer Shares as equals, as nearly as possible, its Transfer Offeree Proportion on the Prescribed Terms. Such offer shall be made in writing to the Company within 28 days of receiving the First Round Transfer Notice, failing which such members shall be deemed to have declined to purchase any Transfer Shares.

**29.3** If after 28 days of receiving the First Round Transfer Notice, the number of Transfer Shares offered to be purchased is less than the total number of the Transfer Shares to be sold (such remaining Transfer Shares to be sold, the "Excess Transfer Shares"), the Transferring A Member shall deliver a notice (the "Second Round Transfer Notice") to each member who has made an irrevocable offer to purchase its pro-rata share of the Transfer Shares in full in the First Round Transfer (the "Second Round Transfer Member") and the Company of such continued intent to sell (the "Second Round Transfer"). The Second Round Transfer shall be subject to the additional following terms:

**29.3.1** the Second Round Transfer must state the (i) the number of Excess Transfer Shares, (ii) all the terms and conditions offered per Excess Transfer Shares and (iii) the Prescribed Terms;

- 29.3.2 the Second Round Transfer Member shall be entitled to make an offer to buy any portion of or all of the Excess Transfer Shares, at the Prescribed Price; such offer shall be made in writing to the Company within ten (10) days (the “Final Transfer Offer Date”) after receiving the Second Round Transfer Notice, failing which such Second Round Transfer Member shall be deemed to have declined to purchase any Second Round Transfer Shares; and
- 29.3.3 if the Company receives offers for a number of A Shares in excess of the number of Excess Transfer Shares, each Second Round Transfer Member who offered to buy Excess Transfer Shares shall be deemed (so far as practicable and without exceeding the number of A Shares which each such member shall have offered to purchase) to have offered to purchase the portion of Excess Transfer Shares such member offered to buy which equals, as nearly as possible, its proportionate share thereof (determined by reference to each Second Round Members Transfer Offeree Proportion).
- 29.4** The First Round Transfer and the Second Round Transfer shall be subject to the additional following terms:
- 29.4.1 the Company shall be the agent of the Transferring A Member for the sale of the Transfer Shares on the terms set out in each respective Transfer Notice; and
- 29.4.2 the Transfer Shares are to be sold free from all encumbrances and together with all rights attaching to them.
- 29.5** If by the Final Transfer Offer Date, the Company has received offers for all (or more than all) of the Transfer Shares, then within (5) five Business Days after the Final Transfer Offer Date, the Company shall provide notice of the offers received to the Transferring A Member and those members who offered to buy Transfer Shares and the Company shall notify each member in writing of the names and addresses of the members who are to purchase Transfer Shares and the number of Transfer Shares to be bought by each. Such notice shall state a place and time, between fifteen (15) and twenty (20) Business Days after the date of the notice (or fifteen (15) Business Days following any required approvals), on which the sale and purchase of the Transfer Shares is to be completed and the Transferring A Member shall be obligated to Transfer such Transfer Shares at the Prescribed Price for each such Transfer Shares free from encumbrances and together with all rights attaching to them.
- 29.6** If by the Final Transfer Offer Date, the Company has not received offers for all (or more than all) of the Transfer Shares, then the Company will promptly notify the Transferring A Member who may treat any offers received from other members as null and void and may within the next three months of the Final Transfer Offer Date transfer at least the amount of the Transfer Shares accepted by the other members to any person other than the members on terms materially no more favourable to such person than those specified in the Transfer Notice.
- 29.7** If the Transferring A Member transfers his Transfer Shares to a third party pursuant to Article 29.6, the other members will have the option to require by notice in writing to the Transferring A Member which must be served within two Business Days following the Final Transfer Offer Date to procure that the proposed transferee makes an offer to buy up to such number of shares held by the member that is proportional to the number of shares that the Transferring A Member is transferring to the proposed transferee on the same terms and conditions (including as to form and timing of consideration) as is being offered to the Transferring A Member.
- 30. PRE-EMPTION ON ANY TRANSFER OF B SHARES**
- 30.1** If one or more B Shareholders (each, a “Transferring B Member”) wish to transfer, directly or indirectly, any B Shares to a third party other than (i) to a Permitted Transferee or (ii)

pursuant to Articles 26, 31 or 32, then such Transferring B Member shall first deliver a notice (the “B Transfer Notice”) to each Manager and the Company of such intent to sell (the “B Transfer”). The B Transfer Notice must state (i) the number of B Shares the Transferring B Member wishes to transfer pursuant to such notice (the “Transfer B Shares”); and (ii) all the terms and consideration offered per Transfer B Share (the “Prescribed Terms”). Each Manager shall have the right to purchase the Transfer B Shares in such proportions as relative to their holding of the other B Shares then in issue.

**30.2** The Managers may make an irrevocable offer to buy all or some of the Transfer B Shares as offered to them on the Prescribed Terms. Such offer shall be made in writing to the Company within 28 days of receiving the B Transfer Notice (the “B Transfer Offer Date”), failing which such Manager shall be deemed to have declined to purchase any Transfer B Shares.

**30.3** The B Transfer shall be subject to the additional following terms:

**30.3.1** the Company shall be the agent of the Transferring B Member for the sale of the Transfer B Shares on the terms set out in the B Transfer Notice; and

**30.3.2** the Transfer B Shares are to be sold free from all encumbrances and together with all rights attaching to them.

**30.4** If by the B Transfer Offer Date, the Company has received offers for all of the Transfer B Shares, then within (5) five Business Days after the B Transfer Offer Date, the Company shall provide notice of the offers received to the Transferring B Member and those Managers who offered to buy Transfer B Shares and the Company shall notify each other Manager in writing of the names and addresses of those Managers who are to purchase Transfer B Shares and the number of Transfer B Shares to be bought by each. Such notice shall state a place and time, between fifteen (15) and twenty (20) Business Days after the date of the notice, on which the sale and purchase of the Transfer B Shares is to be completed and the Transferring B Member shall be obligated to transfer such Transfer B Shares at the Prescribed Price for each such Transfer B Share free from encumbrances and together with all rights attaching to them.

**30.5** If by the B Transfer Offer Date, the Company has not received offers for all of the Transfer B Shares, then the Company will promptly notify the Transferring B Member who shall have the option to (i) accept all or none of the offers received from the Managers and (ii) offer any Transfer B Shares not acquired by the Managers to the other members in accordance with Article 26 (to the extent applicable).

### **31. TAG-ALONG RIGHTS ON SALE OF A CONTROLLING INTEREST**

**31.1** Subject to Article 31.5, this Article 31 applies when a transfer (other than a transfer to a Permitted Transferee) of Shares (the “Specified Shares”) would, if registered, result in a person, or such person and any other person(s) who in relation to him is a connected person (as defined in ss.1122-1123 Corporation Tax Act 2010) holding a Controlling Interest in the Company.

**31.2** No transfer to which this Article 31 applies may be registered unless the proposed transferee has made an offer to buy all of the issued Shares (including or excluding the Specified Shares, and including any shares issuable on the exercise of any then outstanding subscription or conversion rights) on the terms set out in Articles 31.3 (unless, in the case of a particular offeree’s shares, less favourable terms are agreed to in writing by that offeree) and the offer is or becomes wholly unconditional.

**31.3** The terms of the proposed transferee’s offer shall be as follows:



- 31.3.1 the offer shall be open for acceptance for at least 14 Business Days and may be accepted in whole or in part; and
- 31.3.2 the offer shall be on the same terms as the terms applicable to the transfer of the Specified Shares.
- 31.4** The offer may be subject to a condition the satisfaction of which is dependent upon the number and/or percentage of Shares in respect of which the offer is accepted.
- 31.5** The provisions of this Article 31 shall not apply where the provisions of Article 26, Article 28 or Article 30 are proposed to be operated and are subsequently actually operated.
- 32. TAG-ALONG RIGHTS ON SALE OF A MAJORITY OF THE B SHARES**
- 32.1** This Article 32 applies when a transfer (other than a transfer to a Permitted Transferee) of B Shares (the “B Tag Specified Shares”) would, if registered, (i) result in a person, or such person and any other person(s) who in relation to him is a connected person (as defined in ss.1122-1123 Corporation Tax Act 2010) holding a majority of the B Shares in issue at that time; and (ii) not trigger the minimum right of first refusal threshold under Article 26.
- 32.2** No transfer to which this Article 32 applies may be registered unless the proposed transferee has made an offer to buy all of the A Shares in issue at that time on the terms set out in Article 32.3 (unless, in the case of a particular offeree’s shares, less favourable terms are agreed to in writing by that offeree) and the offer is or becomes wholly unconditional.
- 32.3** The terms of the proposed transferee’s offer shall be as follows:
- 32.3.1 the offer shall be open for acceptance for at least 14 Business Days and may be accepted in whole or in part; and
- 32.3.2 the offer shall be on the same terms as the terms applicable to the transfer of the B Tag Specified Shares.
- 32.4** The offer may be subject to a condition the satisfaction of which is dependent upon the number and/or percentage of Shares in respect of which the offer is accepted.
- 33. MANDATORY TRANSFER OF A SHARES**
- 33.1** In the event that Saudi Golf terminates the Agency Agreement pursuant to Clause 13.1 or Clause 13.4 thereof, the A Shareholders may at any time within one month following such termination, in their sole discretion, direct the Company by notice in writing (the “GS Notice”) to (and upon such direction, the Company shall as soon as reasonably practicable) acquire, or cause to be acquired, all of its Shares then held by it and any of its Permitted Transferees at a price equal to the higher of (i) market value (as determined in accordance with Article 33.3) and (ii) Cost.
- 33.2** In the event that Performance54 Limited (or successor or assignee thereof) terminates the Agency Agreement pursuant to Clause 13.1 thereof, the Managers may at any time within one month following such termination, in their sole discretion, direct the A Shareholders by notice in writing (the “Company Notice”) to (and upon such direction, the A Shareholders shall as soon as reasonably practicable) sell all of their Shares then held by them and any of their Permitted Transferees to such persons as directed by the Managers at a price equal to the lower of (i) market value (as determined in accordance with Article 33.3) and (ii) Cost.

**33.3** The A Shareholders and the Managers shall use all reasonable endeavours to agree the market value of the A Shares within 10 Business Days of the date of the GS Notice or the Company Notice (as the case may be) and failing such agreement, the Company shall promptly appoint a firm of independent accountants of international repute (not being the auditors of the Company) (the “Valuer”) to determine the market value. The Valuer shall act as expert and not as an arbitrator.

**33.4** The Valuer shall calculate the market value of the A Shares which is in the opinion of the Valuer derived from the amount which a willing purchaser would offer to a willing seller at arm’s length for the A Shares (i) in relation to a sale pursuant to a GS Notice, immediately before the event which gave rise to the right to terminate the Agency Agreement and (ii) ) in relation to a sale pursuant to a Company Notice, immediately after the termination of the Agency Agreement.

**33.5** If a Valuer is appointed:

**33.5.1** the Company shall procure that the Valuer is given all such assistance and access to all such information in its possession or control as the Valuer may reasonably require in order to determine the market value; and

**33.5.2** the fees of the Valuer shall, to the extent permitted by applicable law, shall be paid by the Company.

**33.5.3** The determination of the market value by the Valuer shall, in the absence of fraud or manifest error, be final and binding on the Company and the A Shareholders.

#### **34. PROCEDURE FOR DISPOSING OF FRACTIONS OF SHARES**

Public Company Model Article 69(2)(b) shall apply as if the words “in the case of a certificated share,” were deleted.

#### **35. DIVIDENDS AND DISTRIBUTIONS**

The provisions of Articles 36, 37 and 39 are subject to Article 19.1.

#### **36. PROCEDURE FOR DECLARING DIVIDENDS**

**36.1** Subject to the Act and the Company’s working capital requirements as determined by the board, the directors shall recommend that the Company declares and pays dividends in accordance with the following terms:

Group EBITDA for relevant financial year	Dividend amount
£500,000 or less	Zero
£500,000 - £1,000,000	30% of EBITDA paid as a dividend
£1,000,001 or more	50% of EBITDA paid as a dividend

**36.2** Any dividends declared shall be paid as follows:

**36.2.1** 25% of such dividend amount shall be paid as an interim dividend on 31 January of each year (or if the 31 January falls on a day that is not a Business Day, the next Business Day);

36.2.2 25% of such dividend amount shall be paid as an interim dividend on 30 June of each year (or if the 30 June falls on a day that is not a Business Day, the next Business Day); and

36.2.3 50% of such dividend amount shall be paid as an interim dividend on 30 September of each year (or if the 30 September falls on a day that is not a Business Day, the next Business Day).

**36.3** No dividend may be declared or paid unless it is in accordance with members' respective rights. Unless the directors' resolve, or the rights attached to the shares, specify otherwise, a dividend or distribution must be paid or made by reference to each member's holding of shares on the date of the resolution or decision to declare, make or pay it.

**36.4** Model Article 30 shall not apply.

## **37. CALCULATION OF DIVIDENDS**

**37.1** Except as otherwise provided by these Articles or the rights attached to shares, all dividends must be:

37.1.1 declared and paid according to the amounts paid up (as to nominal value) on the shares on which the dividend is paid; and

37.1.2 apportioned and paid proportionately to the amounts paid up (as to nominal value) on the shares during any portion or portions of the period in respect of which the dividend is paid.

**37.2** If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.

**37.3** For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

## **38. NO INTEREST ON DISTRIBUTIONS**

The Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by the rights attached to the share. Model Article 32 shall not apply.

## **39. NON-CASH DISTRIBUTIONS**

Model Article 34(1) shall apply as if the words "Subject to the terms of issue of the share in question" were deleted and replaced with the words "Subject to the rights attaching to the share in question".

## **40. AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS**

Model Article 36(4) shall apply as if the words:

"(a) in or towards paying up any amounts unpaid on existing shares held by the persons entitled or (b)"

were inserted before the words "in paying up new debentures of the Company".

## **41. MEMBERS CAN CALL GENERAL MEETING IF NOT ENOUGH DIRECTORS**

If:

**41.1** the Company has only one director or no directors;

- 41.2** the director (if any) is not an Investor Director; and
- 41.3** the director (if any) is unable or unwilling to appoint sufficient directors to make up a quorum or to call a general meeting to do so,
- then two or more members may call a general meeting (or instruct the company secretary (if any) to do so) for the purpose of appointing one or more directors.
- 42. ADJOURNMENT**
- Model Article 41(5) shall apply as if the words “(that is, excluding the day of the adjourned meeting and the day on which the notice is given)” were deleted.
- 43. NO VOTING OF SHARES ON WHICH MONEY OWED TO COMPANY**
- Unless all amounts payable to the Company in respect of a particular share have been paid:
- 43.1** no voting rights attached to that share may be exercised at any general meeting, at any adjournment of it, or on any poll called at or in relation to it; and
- 43.2** the holder of that share does not constitute an eligible member in relation to any written resolution proposed to the holders of any shares.
- 44. POLL VOTES**
- Model Article 44 shall apply as if:
- 44.1** Model Articles 44(1)(a) and 44(2)(b) were deleted; and
- 44.2** the words “immediately and in such manner” in Model Article 44(4) were deleted and replaced by the words “when, where and in such manner”.
- 45. DELIVERY OF PROXY NOTICES**
- 45.1** Any notice of a general meeting must specify the address or addresses (“proxy notification address”) at which the Company or its agents will receive proxy notices relating to that meeting, or any adjournment of it, delivered in hard copy or electronic form.
- 45.2** A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person.
- 45.3** Subject to Articles 45.4 and 45.5, a proxy notice must be delivered to a proxy notification address not less than 24 hours before the general meeting or adjourned meeting to which it relates.
- 45.4** In the case of a poll taken more than 48 hours after it is demanded, the notice must be delivered to a proxy notification address not less than 24 hours before the time appointed for the taking of the poll.
- 45.5** In the case of a poll not taken during the meeting but taken not more than 48 hours after it was demanded, the proxy notice must be delivered:
- 45.5.1** in accordance with Article 45.3; or

- 45.5.2 at the meeting at which the poll was demanded to the chairperson of the meeting, company secretary (if any) or any director.
- 45.6 The directors may, in their sole discretion, determine from time to time that in calculating the periods referred to in Articles 45.3 and 45.4 no account shall be taken of any part of a day that is not a working day.
- 45.7 A proxy notice which is not delivered in accordance with the applicable provisions of Articles 44.3, 44.4 and 44.5 shall be invalid unless the directors, in their sole discretion, accept the proxy notice at any time before the relevant meeting or time appointed for the taking of the relevant poll.
- 45.8 An appointment under a proxy notice may be revoked by delivering to a proxy notification address a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 45.9 A notice revoking a proxy appointment only takes effect if it is delivered before:
- 45.9.1 the start of the meeting or adjourned meeting to which it relates; or
- 45.9.2 (in the case of a poll not taken on the same day as the meeting or adjourned meeting) the time appointed for taking the poll to which it relates.
- 45.10 If a proxy notice is not signed by the person appointing the proxy, it must be accompanied by written evidence, satisfactory to the directors, of the authority of the person who signed it to do so on the appointor's behalf.
- 45.11 If more than one proxy notice relating to the same share is delivered for the purposes of the same meeting, the proxy notice last delivered validly pursuant to these Articles shall prevail in conferring authority on the person named in the notice to attend the meeting and vote. A proxy notice in electronic form found by the Company to contain a computer virus shall not be accepted by the Company and shall be invalid.
- 45.12 Model Article 46 shall not apply.

46. **CLASS MEETINGS**

Section 334 of the Act and the provisions of these Articles relating to general meetings shall, with necessary modifications, apply to separate meetings of the holders of any class of shares, but so that any holder of shares of the class in question present in person or by proxy may demand a poll.

47. **WRITTEN RESOLUTIONS**

A proposed written resolution shall lapse if it is not passed before the end of the period of 28 days beginning with the circulation date (as determined in accordance with the Act).

48. **COMPANY'S LIEN AND CALL NOTICES**

- 48.1 Public Company Model Article 52(3) shall apply as if the words "with the consent of an Investor Director" were inserted after the words "may at any time decide".
- 48.2 Public Company Model Article 53(1)(a) shall apply as if the words "(a "lien enforcement notice")" were inserted before the words "has been given in respect of a share".

**48.3** Public Company Model Article 53(4)(b) shall apply as if the words “a suitable indemnity” were deleted and replaced with the words “an indemnity in lieu of the certificate in a form reasonably satisfactory to the directors”.

**48.4** Public Company Model Article 56(1) shall apply as if the words “on which a share is issued” were deleted and replaced with the words “on which a share is allotted” and Public Company Model Article 56(1)(c) shall apply as if the words “terms of issue” were deleted and replaced with the words “terms of allotment”.

## **49. FORFEITURE**

**49.1** Public Company Model Article 58 shall apply as if existing paragraphs 58(d) and (e) were re-designated as paragraphs 58(e) and (f) respectively and as if a new paragraph 58(d) were inserted as follows:

“may require payment of all costs and expenses that may have been suffered or incurred by the Company by reason of such non-payment by a date which is not less than 14 days after the date of the notice”.

**49.2** Public Company Model Article 60(3)(d) shall apply as if the words “and any costs and expenses required by the Company to be paid pursuant to the Articles” were inserted after the words “(whether accrued before or after the date of forfeiture)”.

**49.3** Public Company Model Article 60(4) shall apply as if the words “and costs and expenses (if any)” were inserted after the words “all calls and interest”.

## **50. COMMUNICATIONS**

**50.1** The company communications provisions (as defined in the Act) shall also apply to any document or information not otherwise authorised or required to be sent or supplied by or to a company under the Companies Acts but to be sent or supplied pursuant to these Articles:

50.1.1 by or to the Company; or

50.1.2 by or to the directors acting on behalf of the Company.

**50.2** The provisions of s.1168 of the Act (hard copy and electronic form and related expressions) shall apply to the Company as if the words “and the Articles” were inserted after the words “the Companies Acts” in ss.1168(1) and 1168(7).

**50.3** Section 1147 of the Act shall apply to any document or information to be sent or supplied by the Company to its members under the Companies Acts or pursuant to these Articles as if:

50.3.1 in s.1147(2) the words “or by airmail (whether in hard copy or electronic form) to an address outside the United Kingdom” were inserted after the words “in the United Kingdom”;

50.3.2 in s.1147(3) the words “48 hours after it was sent” were deleted and replaced with the words “when sent, notwithstanding that the Company may be aware of the failure in delivery of such document or information.”;

50.3.3 a new s.1147(4)(A) were inserted as follows:

“Where the document or information is sent or supplied by hand (whether in hard copy or electronic form) and the Company is able to show that it was properly addressed and sent at the

cost of the Company, it is deemed to have been received by the intended recipient when delivered.”;

50.3.4 s.1147(5) were deleted.

**50.4** Proof that a document or information sent by electronic means was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the document or information was properly addressed as required by s.1147(3) of the Act and that the document or information was sent or supplied.

**50.5** In the case of members who are joint holders of shares, anything to be agreed or specified by the holder may be agreed or specified by the holder whose name appears first in the register of members. Sched 5, Part 6, para 16(2) of the Act shall apply accordingly.

**50.6** Model Article 48 shall not apply.

## **51. FAILURE TO NOTIFY CONTACT DETAILS**

**51.1** If the Company sends at least two consecutive documents or pieces of information to a member over a period of not less than 12 months and:

51.1.1 each of them is returned undelivered; or

51.1.2 the Company receives notification that none of them has been delivered,

that member ceases to be entitled to receive documents or information from the Company.

**51.2** A member who has ceased to be entitled to receive documents or information from the Company shall become entitled to receive documents or information again by sending the Company:

51.2.1 a new address to be recorded in the register of members; or

51.2.2 if the member has agreed that the Company should use a means of communication other than sending things to such an address, the information that the Company needs to use that means of communication effectively.

## **52. DESTRUCTION OF DOCUMENTS**

**52.1** The Company is entitled to destroy:

52.1.1 all instruments of transfer of shares which have been registered, and all other documents on the basis of which any entries are made in the register of members, from six years after the date of registration;

52.1.2 all notifications of change of address, from two years after they have been recorded; and

52.1.3 all share certificates which have been cancelled from one year after the date of the cancellation.

**52.2** If the Company destroys a document in good faith, in accordance with these Articles, and without notice of any claim to which that document may be relevant, it is conclusively presumed in favour of the Company that:

52.2.1 entries in the register purporting to have been made on the basis of an instrument of transfer or other document so destroyed were duly and properly made;

- 52.2.2 any instrument of transfer so destroyed was a valid and effective instrument duly and properly registered;
- 52.2.3 any share certificate so destroyed was a valid and effective certificate duly and properly cancelled; and
- 52.2.4 any other document so destroyed was a valid and effective document in accordance with its recorded particulars in the books or records of the Company.

**52.3** This Article 52 does not impose on the Company any liability which it would not otherwise have if it destroys any document before the time at which this Article 52 permits it to do so.

**52.4** In this Article 52, references to the destruction of any document include a reference to its being disposed of in any manner.

## **53. COMPANY SEALS**

Model Article 49(4)(b) shall not apply.

## **54. NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS**

**54.1** Except as provided by law or authorised by the directors or an ordinary resolution of the Company, or pursuant to any shareholders' agreement or other legally binding obligation entered into by the Company with that member from time to time, no person is entitled to inspect any of the Company's accounting or other records or documents merely by virtue of being a member.

**54.2** Model Article 50 shall not apply.

## **55. PROVISION FOR EMPLOYEES ON CESSATION OR TRANSFER OF BUSINESS**

**55.1** The directors may, with the consent of an Investor Director and subject to Article 55.2, exercise the power to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the Company or that subsidiary.

**55.2** Any exercise by the directors of the power to make provision of the kind referred to in Article 55.1 (including, without prejudice to the provisions of Article 17, remuneration) for the benefit of directors, former directors or shadow directors employed or formerly employed by the Company or any of its subsidiaries must be approved by an ordinary resolution of the Company before any payment to or for the benefit of any such person is made.

**55.3** Model Article 51 shall not apply.

## **56. INDEMNITIES AND FUNDING OF DEFENCE PROCEEDINGS**

**56.1** This Article 56 shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the Act. It does not allow for or provide (to any extent) an indemnity which is more extensive than is permitted by the Act and any such indemnity is limited accordingly. This Article 56 is also without prejudice to any indemnity to which any person may otherwise be entitled.

**56.2** The Company:

56.2.1 may indemnify every person who is a director; and



- 56.2.2 may indemnify any other person who is an officer (other than an auditor) of the Company; and
- 56.2.3 may indemnify any person who is a director or other officer (other than an auditor) of any associated company of the Company,

in each case out of the assets of the Company from and against any loss, liability or expense suffered or incurred by him in relation to the Company.

- 56.3** The Company may indemnify any person who is a director of a company that is a trustee of an occupational pension scheme (as defined in s.235(6) of the Act) out of the assets of the Company from and against any loss, liability or expense suffered or incurred by him in connection with such company's activities as trustee of the scheme.

- 56.4** The directors may, subject to the provisions of the Act and with the prior written consent of an Investor Director, exercise the powers conferred on them by ss.205 and 206 of the Act to:

- 56.4.1 provide funds to meet expenditure incurred or to be incurred in defending any proceedings, investigation or action referred to in those sections or in connection with an application for relief referred to in s.205 of the Act; or

- 56.4.2 take any action to enable such expenditure not to be incurred.

- 56.5** Model Article 52 shall not apply.

## **57. INSURANCE**

- 57.1** The directors may purchase and maintain insurance at the expense of the Company for the benefit of any person who is or was at any time a director or other officer (other than an auditor) of the Company or of any associated company (as defined in s.256 of the Act) of the Company or a trustee of any pension fund or employee benefits trust for the benefit of any employee of the Company.

- 57.2** Model Article 53 shall not apply.