

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY SHARES**

**NEW ARTICLES OF ASSOCIATION**

**OF**

**NXTLVL EDUCATION LTD**

(Adopted by a special resolution passed on 21 April 2023)



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**1. Introduction**

- 1.1 The model articles for private companies limited by shares contained or incorporated in Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these articles (the "Model Articles") shall apply to the Company, save insofar as they are varied or excluded by, or are inconsistent with, the following Articles.
- 1.2 In these Articles and the Model Articles any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force.
- 1.3 In these Articles:
- (a) article headings are used for convenience only and shall not affect the construction or interpretation of these Articles;
  - (b) words denoting the singular include the plural and vice versa and reference to one gender includes the other gender and neuter and vice versa;
  - (c) Model Articles 8(2), 9(4), 10(3), 11(2), 13, 14, 17(2), 17(3), 19, 21, 26(5), 27, 28, 29, 30(5) to 30(7) (inclusive), 44(4), 51, 52 and 53 shall not apply to the Company;
  - (d) reference to "**electronic address**" has the same meaning as in section 333 of the Act;
  - (e) references to "**electronic form**", "**electronic means**" and "**hard copy form**" have the same meanings as in section 1168 of the Act;
  - (f) reference to the "**holders**" of Shares or a class of Share shall exclude the Company holding Treasury Shares from time to time, unless stated otherwise; and
  - (g) reference to "**issued Shares**" of any class shall exclude any Shares of that class held as Treasury Shares from time to time, unless stated otherwise.
- 1.4 Where there is reference to Pre-Seed Shares under these Articles, this reference shall be treated, where appropriate in the context, on an as converted basis if the Conversion Ratio has been adjusted.

**2. Definitions**

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

**"Act"** means the Companies Act 2006 (as amended from time to time);

**"Acting in Concert"** has the meaning given to it in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time);

**"Actions"** shall have the meaning given in Article 6.3;

**"Arrears"** means in relation to any Share, all arrears of any dividend or other sums payable in respect of that Share, whether or not earned or declared and irrespective of whether or not the Company has had at any time sufficient Available Profits to pay such dividend or sums.

**"Asset Sale"** means the disposal by the Company of all or substantially all of its undertaking and assets (where disposal may include, without limitation, the grant by the Company of an exclusive licence of intellectual property not entered into in the ordinary course of business);

**"Associate"** in relation to any person means:

- (a) any person who is an associate of that person and the question of whether a person is an associate of another is to be determined in accordance with section 435 of the Insolvency Act 1986 and (whether or not an associate as so determined);
- (b) any Member of the same Group;
- (c) any Member of the same Fund Group;

**"Auditors"** means the auditors of the Company from time to time;

**"Available Profits"** means profits available for distribution within the meaning of part 23 of the Act;

**"Bad Leaver"** means a Founder who:

- (a) ceases to be an Employee in circumstances where a Group Company is validly entitled to terminate his employment or engagement without notice in accordance with his Contract (whether as a result of fraud, gross misconduct or otherwise); or
- (b) the Board (excluding the Founder) unanimously determines in its absolute discretion (acting reasonably) is carrying on or concerned, engaged or interested directly or indirectly (in any capacity whatsoever) in any trade or business competing with (or intending to compete with) the trade or business of a Group Company.

**"Board"** means the board of Directors and any committee of the board constituted for the purpose of taking any action or decision contemplated by these Articles;

**"Business Day"** means a day on which English clearing banks are ordinarily open for the transaction of normal banking business in the City of London (other than a Saturday or Sunday);

**"Civil Partner"** means in relation to a Shareholder, a civil partner (as defined in the Civil Partnership Act 2004 or any other law applicable to such Shareholder as per conflict of laws principles) of the Shareholder;

**"Company"** means Nxtlvi Education Ltd, a company incorporated and registered under the laws of England and Wales, whose Company Number is 13982612;

**"Company's Lien"** has the meaning given in Article 33.1;

**"Conditions"** has the meaning given in Article 9.1;

**"Contract"** means:

- (a) in relation to a Director or Employee who is a consultant to a Group Company, his consultancy agreement with the Group Company;
- (b) in relation to a Director or Employee who is an employee of a Group Company, his contract of employment with the Group Company; and
- (c) in relation to a Director who is not an employee of or consultant to a Group Company, his letter of appointment.

**"Controlling Interest"** means an interest in shares giving to the holder or holders control of the Company within the meaning of section 1124 of the CTA 2010;

**"Conversion Date"** has the meanings given in Article 9.1, Article 9.2 and Article 9.4(as applicable);

**"Conversion Ratio"** has the meaning given in Article 9.5;

**"CTA 2010"** means the Corporation Tax Act 2010;

**"Date of Adoption"** means the date on which these Articles were adopted;

**"Deferred Conversion Date"** means the date that the Founder's Relevant Shares convert into Deferred Shares pursuant to Article 18.1;

**"Deferred Shares"** means deferred shares of £0.10 each in the capital of the Company from time to time;

**"Director(s)"** means a director or directors of the Company from time to time;

**"Effective Termination Date"** means the date on which an Employee's employment or consultancy terminates;

**"Eligible Director"** means a Director who would be entitled to vote on a matter had it been proposed as a resolution at a meeting of the Directors;

**"Employee"** means an individual (other than an Investor) who is employed by or who provides consultancy services to (whether directly or indirectly, including via a personal service company), the Company or any member of the Group;

**"Encumbrance"** means any mortgage, charge, security, interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including without limitation any retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law);

**"Equity Securities"** has the meaning given in sections 560(1) to (3) inclusive of the Act and for the avoidance of doubt an allotment of Equity Securities includes a transfer of

shares which immediately before such transfer were held by the Company as Treasury Shares;

**"Equity Shares"** means the Pre-Seed Shares and the Ordinary Shares;

**"Exit"** means a Share Sale, an Asset Sale or an IPO;

**"Expert Valuer"** is as determined in accordance with Article 16.2;

**"Fair Value"** is as determined in accordance with Article 16;

**"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; and so that for this purpose a person shall be considered to be beneficially interested in a share if such share or the income thereof is liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are exercisable by or as directed by such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons;

**"Financial Year"** has the meaning set out in section 390 of the Act;

**"Founder"** means, for so long as they or any of their Permitted Transferees, hold Equity Shares, Michalis Gkontas, Alexandros Xydias, Konstantinos Papazafeiropoulos and any other person designated a "Founder" by the Board (acting with Investor Consent) in writing from time to time;

**"Fractional Holders"** has the meaning given in Article 9.9;

**"Fund Manager"** means a person whose principal business is to make, manage or advise upon investments in securities;

**"Group"** means the Company and its Subsidiary Undertaking(s) (if any) from time to time and **"Group Company"** shall be construed accordingly;

**"Incentivisation Arrangements"** means any employee share scheme or employee benefits trust or share ownership plan, share option or shadow share option scheme, or other profit sharing, bonus or incentive scheme for employees, directors and/or consultants of the Company and/or any other member of the Group approved in writing by the Board (acting with Investor Consent) from time to time;

**"Incentivisation Pool"** means such maximum number of Ordinary Shares as the Board (acting with Investor Consent) has agreed in writing may be made available under any Incentivisation Arrangements;

**"Investor"** means a holder of Pre-Seed Shares;

**"Investor Majority"** means the holder(s) for the time being of a majority of the Pre-Seed Shares in issue, which must include the Lead Investor;

**"Investor Consent"** means the prior written consent of the Lead Investor;

**"IPO"** means the admission of all or any of the Shares or securities representing those shares (including without limitation depositary interests, American depositary receipts, American depositary shares and/or other instruments) on NASDAQ or on the Official List

of the United Kingdom Listing Authority or on the AIM Market operated by the London Stock Exchange Plc or any other recognised investment exchange recognised overseas investment exchange or designated investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000);

**"ITEPA"** means Income Tax (Earnings and Pensions) Act 2003;

**"Issue Price"** means the price at which the relevant Share is issued, including any premium;

**"Lead Investor"** means Lateralus Ventures P.C. for so long as it or any of its Permitted Transferees hold Equity Shares;

**"Leaver's Percentage"** means, in relation to and for the purposes of determining the number of Ordinary Shares that are required (pursuant to Article 18) to be converted into Deferred Shares or to be transferred as a result of the Founder ceasing to be an Employee within the Relevant Period, the Leaver's Percentage shall be the percentage (rounded up to the nearest two decimal places) calculated using the formula below:

$$100 - ((1/48 \times 100) \times NM)$$

where NM = number of full calendar months from the Vesting Start Date to the Effective Termination Date such that the Leaver's Percentage shall be zero on the first day of the 49<sup>th</sup> month after the Vesting Start Date and thereafter;

**"Lien Enforcement Notice"** has the meaning given in Article 33.3;

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

- (a) any participant or partner in or member of any such Investment Fund or the holders of any unit trust which is a participant or partner in or member of any Investment Fund;
- (b) any Investment Fund managed or advised by that Fund Manager;
- (c) any Parent Undertaking or Subsidiary Undertaking of that Fund Manager, or any Subsidiary Undertaking of any Parent Undertaking of that Fund Manager; or
- (d) any trustee, nominee or custodian of such Investment Fund and vice versa;

**"Member of the same Group"** means as regards any company, a company which is from time to time a Parent Undertaking or a Subsidiary Undertaking of that company or a Subsidiary Undertaking of any such Parent Undertaking;

**"NASDAQ"** means the NASDAQ Stock Market of the NASDAQ OMX Group Inc.;

**"New Securities"** means any shares or other securities convertible into, or carrying the right to subscribe for, those shares issued by the Company after the Date of Adoption (other than shares or securities issued as a result of the events set out in Article 12.6) excluding for the avoidance of doubt any Treasury Shares transferred by the Company after the Date of Adoption;

**"Offer"** has the meaning set out in Article 19.2;

**"Offer Period"** has the meaning set out in Article 19.3



**"Ordinary Shareholders"** means the holders from time to time of the Ordinary Shares (but excludes the Company holding Treasury Shares);

**"Ordinary Shares"** means the ordinary shares of £0.10 each in the capital of the Company from time to time;

**"Original Shareholder"** has the meaning set out in Article 14.1;

**"Permitted Transfer"** means a transfer of Shares in accordance with Article 14;

**"Permitted Transferee"** means:

- (a) in relation to a Shareholder who is an individual, any of his Privileged Relations;
- (b) in relation to a Founder, any other Founder;
- (c) in relation to an Investor:
  - (i) to any other Investor;
  - (ii) Member of the same Group as that Investor;
  - (iii) to any Member of the same Fund Group as that Investor; or
  - (iv) to any trustee, nominee or custodian of that Investor.

**"Preference Amount"** means £140.00 per Pre-Seed Share together with a sum equal to any Arrears;

**"Pre-Seed Shares"** means the preferred ordinary shares of £0.10 each in the capital of the Company from time to time designated as "Pre-Seed Shares";

**"Priority Rights"** means the rights to purchase Shares stipulated in Article 15.6;

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

**"Proceeds of Sale"** means the consideration payable (including any deferred and/or contingent consideration) whether in cash or otherwise to those Shareholders selling Shares under a Share Sale less any fees, costs and expenses payable in respect of such Share Sale as approved in writing by the Board (acting with Investor Consent);

**"Proposed Purchaser"** means a proposed purchaser approved by the Board (acting with Investor Consent) who at the relevant time has made an offer on arm's length terms;

**"Proposed Sale Date"** has the meaning given in Article 19.3;

**"Proposed Sale Notice"** has the meaning given in Article 19.3;

**"Proposed Sale Shares"** has the meaning given in Article 19.3;

**"Proposed Seller"** means any person proposing to transfer any shares in the capital of the Company;

**"Proposed Transfer"** has the meaning given in Article 19.1;

**"Qualifying IPO"** means an IPO approved in writing by the Board (acting with Investor Consent);

**"Qualifying Person"** has the meaning given in section 318(3) of the Act;

**"Realisation Price"** means the value of each Ordinary Share (excluding Treasury Shares) in issue immediately prior to an IPO, determined by reference to the price per share at which Ordinary Shares are to be offered for sale, placed or otherwise marketed pursuant to such IPO;

**"Relevant Agreements"** means:

- (a) the Articles;
- (b) the Shareholders' Agreement; and
- (c) in relation to a Director or an Employee, his Contract;

**"Relevant Interest"** has the meaning set out in Article 29.4;

**"Relevant Period"** means the period of 48 calendar months commencing on the Vesting Start Date;

**"Relevant Shares"** in relation to a Founder, means all Ordinary Shares held by the Founder and any of his Permitted Transferees;

**"Sale Shares"** has the meaning set out in Article 15.2(a);

**"Seller"** has the meaning set out in Article 15.2;

**"Shareholder"** means any holder of any Shares (but excludes the Company holding Treasury Shares);

**"Shareholder Majority"** means the holder(s) of at least seventy five percent. (75%) of the Equity Shares in issue from time to time (excluding Restricted Shares and Treasury Shares);

**"Shareholders' Agreement"** means any shareholders' agreement in force between the Shareholders and the Company (as the same may have been varied, supplemented, adhered to or superseded in accordance with its terms for the time being);

**"Shares"** means the Deferred Shares, the Ordinary Shares and the Pre-Seed Shares from time to time;

**"Share Exchange"** has the meaning given in Article 22.1;

**"Share Sale"** means the sale of (or the grant of a right to acquire or to dispose of) any of the shares in the capital of the Company (in one transaction or as a series of transactions) which will result in the purchaser of those shares (or grantee of that right) and persons Acting in Concert with him together acquiring a Controlling Interest in the Company, except a Share Exchange;

**"Subsidiary", "Subsidiary Undertaking" and "Parent Undertaking"** have the respective meanings set out in sections 1159 and 1162 of the Act;

**"Transfer Notice"** shall have the meaning given in Article 15.2;

**"Transfer Price"** shall have the meaning given in Article 15.2;

**"Treasury Shares"** means shares in the capital of the Company held by the Company as treasury shares from time to time within the meaning set out in section 724(5) of the Act;

**"Trustees"** in relation to a Shareholder means the trustee or the trustees of a Family Trust; and

**"Unvested Shares"** in relation to a Founder, means the Founder's Relevant Shares which, if the Founder ceased to be an Employee, may convert into Deferred Shares pursuant to Article 18;

**"Vesting Start Date"** means 1 January 2023 or, in relation to any additional person designated as a "Founder" by the Board (acting with Investor Consent), such date as agreed in writing by the Board (acting with Investor Consent) and the relevant Founder.

### **3. Share capital**

- 3.1 In these Articles, unless the context requires otherwise, references to shares of a particular class shall include shares allotted and/or issued after the Date of Adoption and ranking pari passu in all respects (or in all respects except only as to the date from which those shares rank for dividend) with the shares of the relevant class then in issue.
- 3.2 Except as otherwise provided in these Articles, the Pre-Seed Shares and the Ordinary Shares shall rank pari passu in all respects but shall constitute separate classes of shares.
- 3.3 The words "and the directors may determine the terms, conditions and manner of redemption of any such shares" shall be deleted from article 22.2 of the Model Articles.
- 3.4 Subject to the Act, the Company may, with Investor Consent, purchase its own Shares to the extent permitted by section 692(1ZA) of the Act.
- 3.5 Paragraph (c) of article 24.2 of the Model Articles shall be amended by the replacement of the words "that the shares are fully paid; and" with the words "the amount paid up on them; and".
- 3.6 In article 25(2) of the Model Articles, the words "payment of a reasonable fee as the directors decide" in paragraph (c) shall be deleted and replaced by the words "payment of the expenses reasonably incurred by the Company in investigating evidence as the directors may determine".
- 3.7 For the avoidance of doubt, the Company shall not exercise any right in respect of any Treasury Shares, including without limitation any right to:
  - (a) receive notice of or to attend or vote at any general meeting of the Company;
  - (b) receive or vote on any proposed written resolution; and
  - (c) receive a dividend or other distribution,save as otherwise permitted by section 726(4) of the Act.

### **4. Dividends**

- 4.1 In respect of any Financial Year, the Company's Available Profits will be applied as set out in this Article 4.

- 4.2 Any Available Profits which the Company may determine, with Investor Consent, to distribute in respect of any Financial Year, will be distributed among the holders of the Equity Shares (pari passu as if the Equity Shares constituted one class of share) pro rata to their respective holdings of Equity Shares (on an as converted basis).
- 4.3 Subject to the Act and these Articles, the Board may, with Investor Consent, pay interim dividends if justified by the Available Profits in respect of the relevant period.
- 4.4 Every dividend shall accrue on a daily basis assuming a 365 day year. All dividends are expressed net and shall be paid in cash.
- 4.5 On an IPO, if the Company has insufficient Available Profits for distribution to pay any Arrears, the Company shall, by way of special dividend and in lieu of the accrued dividends the Company is prohibited from paying, allot to each holder of Shares by way of capitalisation of reserves such number of Ordinary Shares (disregarding any fraction of a share) as shall have an aggregate Realisation Price equal to the unpaid dividend.
- 4.6 If there are nil paid or partly paid share(s), any holder of such share(s) shall only be entitled, in case of any dividend, to be paid an amount equal to the amount of the dividend multiplied by the percentage of the amount that is paid up (if any) on such share(s) during any portion or portions of the period in respect of which a dividend is paid.
- 4.7 A capitalised sum which was appropriated from profits available for distribution may be applied in or towards paying up any sums unpaid on existing Shares held by the persons entitled to such capitalised sum.
- 4.8 If:
- (a) a Share is subject to the Company's Lien; and
  - (b) the Directors are entitled to issue a Lien Enforcement Notice in respect of it,
- the Board (acting with Investor Consent) may, instead of issuing a Lien Enforcement Notice, deduct from any dividend or other sum payable in respect of the Share any sum of money which is payable to the Company by the holder of that Share to the extent that they are entitled to require payment under a Lien Enforcement Notice. Money so deducted shall be used to pay any of the sums payable in respect of that Share and/or used to discharge any other indebtedness owing from the holder of that Share to the Company (as the Board may decide). The Company shall notify the distribution recipient in writing of:
- (i) the fact and sum of any such deduction;
  - (ii) any non-payment of a dividend or other sum payable in respect of a Share resulting from any such deduction; and
  - (iii) how the money deducted has been applied.
- 4.9 Article 31.1 of the Model Articles shall be amended by:
- (a) the replacement of the words "either in writing or as the directors may otherwise decide" at the end of paragraphs (a), (b) and (c) of that article 31.1 with the words "in writing"; and
  - (b) the replacement of the words "either in writing or by such other means as the directors decide" from the end of paragraph (d) of that article 31.1 with the words "in writing".

## **5. Liquidation preference**

- 5.1 On a distribution of assets on a liquidation or a return of capital (other than a conversion, redemption or purchase of Shares) the surplus assets of the Company remaining after payment of its liabilities shall be applied (to the extent that the Company is lawfully permitted to do so):
- (a) first, in paying to each of the holders of the Pre-Seed Shares, in priority to any other classes of Shares, an amount per share held equal to the Preference Amount (provided that if there are insufficient surplus assets to pay the amounts per share equal to the Preference Amount, the remaining surplus assets shall be distributed to the holders of the Pre-Seed Shares pro rata to their respective holdings of Pre-Seed Shares);
  - (b) second, in paying to the holders of the Deferred Shares, if any, a total of £0.01 for the entire class of Deferred Shares (which payment shall be deemed satisfied by payment to any one holder of Deferred Shares); and
  - (c) the balance of the surplus assets (if any) shall be distributed among the holders of the Ordinary Shares pro rata to the number of Ordinary Shares held.
- 5.2 Notwithstanding Article 5.1 above, for purposes of determining the amount each holder of Pre-Seed Shares is entitled to receive pursuant to Article 5.1, each such holder shall be deemed to have converted (regardless of whether such holder actually converted) such holder's Pre-Seed Shares into Ordinary Shares immediately prior to the event giving rise to the distribution under Article 5.1 if, as a result of an actual conversion, such holder would receive (as determined in good faith by the Board (acting with Investor Consent)), in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such Pre-Seed Shares. For the avoidance of doubt, the liquidation preference is non-participating and the holders of Pre-Seed Shares shall only be entitled to receive a distribution per share held under Article 5.1(a) or Article 5.1(c) (on an as converted basis), and not under more than one such provision.

## **6. Exit provisions**

- 6.1 On a Share Sale the Proceeds of Sale shall be distributed in the order of priority set out in Article 5 and the Directors shall not register any transfer of Shares if the Proceeds of Sale are not so distributed save in respect of any Shares not sold in connection with that Share Sale provided that if the Proceeds of Sale are not settled in their entirety upon completion of the Share Sale:
- (a) the Directors shall not be prohibited from registering the transfer of the relevant Shares so long as the Proceeds of Sale that are settled have been distributed in the order of priority set out in Article 5; and
  - (b) the Shareholders shall take any action required by the Lead Investor or an Investor Majority to ensure that the Proceeds of Sale in their entirety are distributed in the order of priority set out in Article 5.

In the event that the Proceeds of Sale are distributed on more than one occasion (for any deferred or contingent consideration or otherwise), the consideration so distributed on any further occasion shall be paid by continuing the distribution from the previous distribution of consideration in the order of priority set out in Article 5.

- 6.2 On an Asset Sale the surplus assets of the Company remaining after payment of its liabilities shall be distributed (to the extent that the Company is lawfully permitted to do so) in the order of priority set out in Article 5 provided always that if it is not lawful for the

Company to distribute its surplus assets in accordance with the provisions of these Articles, the Shareholders shall take any action required by the Lead Investor or an Investor Majority (including, but without prejudice to the generality of this Article 6.2, actions that may be necessary to put the Company into voluntary liquidation) so that Article 5 applies.

- 6.3 In the event of an Exit approved in writing by the Board (acting with Investor Consent) in accordance with the terms of these Articles (the "**Proposed Exit**"), all Shareholders shall consent to, vote for, raise no objections to and waive any applicable rights in connection with the Proposed Exit ("**Actions**"). The Shareholders shall be required to take all Actions with respect to the Proposed Exit as are required by the Board to facilitate the Proposed Exit. If any Shareholder fails to comply with the provisions of this Article, the Company shall be constituted the agent of each defaulting Shareholder for taking the Actions as are necessary to effect the Proposed Exit and the Directors may authorise an officer or member to execute and deliver on behalf of such defaulting Shareholder the necessary documents and the Company may receive any purchase money due to the defaulting Shareholder in trust for each of the defaulting Shareholders.

## **7. Votes in general meeting and written resolutions**

- 7.1 The Pre-Seed Shares shall confer on each Pre-Seed Shareholder the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive and vote (on an as converted basis) on proposed written resolutions of the Company.
- 7.2 The Ordinary Shares shall confer on each Ordinary Shareholder the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive and vote on proposed written resolutions of the Company.
- 7.3 The Deferred Shares (if any) shall not entitle the holders of them to receive notice of, to attend, to speak or to vote at any general meeting of the Company not to receive or vote on, or otherwise constitute an eligible member for the purpose of, proposed written resolutions of the Company.
- 7.4 Where Shares confer a right to vote, on a show of hands each holder of such shares who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy shall have one vote and on a poll each such holder so present shall have one vote for each Share held by him.
- 7.5 No voting rights attached to a share which is nil paid or partly paid may be exercised:
- (a) at any general meeting, at any adjournment of it or at any poll called at or in relation to it; or
  - (b) on any proposed written resolution,

unless all of the amounts payable to the Company in respect of that share have been paid.

## **8. Consolidation of Shares**

- 8.1 Whenever as a result of a consolidation of Shares any Shareholders would become entitled to fractions of a Share, the Directors may, on behalf of those Shareholders, sell the Shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the Company) and distribute the net proceeds of sale in due proportion among those Shareholders, and the Directors may authorise any person to execute an instrument of transfer of the Shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to

see to the application of the purchase money nor shall his title to the Shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

- 8.2 When the Company sub-divides or consolidates all or any of its Shares, the Company may, subject to the Act and to these Articles, by ordinary resolution determine that, as between the Shares resulting from the sub-division or consolidation, any of them may have any preference or advantage or be subject to any restriction as compared with the others.

## 9. Conversion of Pre-Seed Shares

- 9.1 Any holder of Pre-Seed Shares shall be entitled, by notice in writing to the Company, to require conversion into Ordinary Shares of all of the fully paid Pre-Seed Shares held by them at any time and those Pre-Seed Shares shall convert automatically on the date of such notice (the "**Conversion Date**"), provided that the holder may in such notice, state that conversion of its Pre-Seed Shares into Ordinary Shares is conditional upon the occurrence of one or more events (the "**Conditions**").
- 9.2 All of the fully paid Pre-Seed Shares shall automatically convert into Ordinary Shares, either:
- (a) on the date of written notice given by an Investor Majority (which date shall be treated as the Conversion Date); or
  - (b) immediately upon the occurrence of a Qualifying IPO.
- 9.3 In the case of (i) Articles 9.1 and 9.2(a) not more than five Business Days after the Conversion Date or (ii) in the case of Article 9.2(b), at least five Business Days prior to the occurrence of the Qualifying IPO, each holder of the relevant Pre-Seed Shares shall deliver the certificate (or an indemnity for lost certificate in a form acceptable to the Board) in respect of the Pre-Seed Shares being converted to the Company at its registered office for the time being.
- 9.4 Where conversion is mandatory on the occurrence of a Qualifying IPO, that conversion will be effective only immediately prior to and conditional upon such Qualifying IPO (and "**Conversion Date**" shall be construed accordingly) and, if such Qualifying IPO does not become effective or does not take place, such conversion shall be deemed not to have occurred. In the event of a conversion under Article 9.1, if the Conditions have not been satisfied or waived by the relevant holder by the Conversion Date such conversion shall be deemed not to have occurred.
- 9.5 On the Conversion Date, the relevant Pre-Seed Shares shall without further authority than is contained in these Articles stand converted into Ordinary Shares on the basis of one Ordinary Share for each Pre-Seed Share held (the "**Conversion Ratio**"), and the Ordinary Shares resulting from that conversion shall in all other respects rank pari passu with the existing issued Ordinary Shares.
- 9.6 The Company shall on the Conversion Date enter the holder of the converted Pre-Seed Shares on the register of members of the Company as the holder of the appropriate number of Ordinary Shares and, subject to the relevant holder delivering its certificate(s) (or an indemnity for lost certificate in a form acceptable to the Board) in respect of the Pre-Seed Shares in accordance with this Article, the Company shall within 10 Business Days of the Conversion Date issue a share certificate to such holder of Pre-Seed Shares shown in the register of members, free of charge, a definitive certificate for the appropriate number of fully paid Ordinary Shares.
- 9.7 On the Conversion Date (or as soon afterwards as it is possible to calculate the amount payable), the Company will, if it has sufficient Available Profits, pay to holders of those

Pre-Seed Shares falling to be converted a dividend equal to all Arrears and accruals of dividends in relation to those Pre-Seed Shares to be calculated on a daily basis down to and including the day immediately preceding the Conversion Date. If the Company has insufficient Available Profits to pay all such Arrears and accruals of dividends in full then it will pay the same to the extent that it is lawfully able to do so and any Arrears and accruals of dividends that remain outstanding shall continue to be at debt due from and immediately payable by the Company.

9.8 The Conversion Ratio shall from time to time be adjusted in accordance with the provisions of this Article:

- (a) if Pre-Seed Shares remain capable of being converted into new Ordinary Shares and there is a consolidation and/or sub-division of Ordinary Shares, the Conversion Ratio shall be adjusted by an amount, which in the opinion of the Board (acting with Investor Consent) is fair and reasonable, to maintain the right to convert so as to ensure that the relevant Pre-Seed Shareholder is in no better or worse position as a result of such consolidation or sub-division, such adjustment to become effective immediately after such consolidation or sub-division;
- (b) if Pre-Seed Shares remain capable of being converted into Ordinary Shares, on an allotment of fully-paid Ordinary Shares pursuant to a capitalisation of profits or reserves to holders of Ordinary Shares the Conversion Ratio shall be adjusted by an amount, which in the opinion of the Board is fair and reasonable, to maintain the right to convert so as to ensure that the relevant Pre-Seed Shareholder is in no better or worse position as a result of such capitalisation of profits or reserves, such adjustment to become effective as at the record date for such issue.

9.9 If any Pre-Seed Shareholder becomes entitled to fractions of an Ordinary Share as a result of conversion ("**Fractional Holders**"), the Directors may (in their absolute discretion) deal with these fractions as they think fit on behalf of the Fractional Holders. In particular, the Directors may aggregate and sell the fractions to a person for the best price reasonably obtainable and distribute the net proceeds of sale in due proportions among the Fractional Holders or may ignore fractions or accrue the benefit of such fractions to the Company rather than the Fractional Holder. For the purposes of completing any such sale of fractions, the chairman of the Company or, failing him, the secretary will be deemed to have been appointed the Fractional Holder's agent for the purpose of the sale.

9.10 If a doubt or dispute arises concerning an adjustment of the Conversion Ratio in accordance with Article 9.8, or if so requested by the Lead Investor or an Investor Majority, the Board shall refer the matter to the Auditors for determination who shall make available to all Shareholders their report and whose certificate as to the amount of the adjustment is, in the absence of manifest error, conclusive and binding on all concerned and their costs shall be met by the Company.

## 10. Deferred Shares

10.1 Subject to the Act, any Deferred Shares may be redeemed by the Company at any time at its option for one penny for all the Deferred Shares registered in the name of any holder(s) without obtaining the sanction of the holder(s).

10.2 The allotment or issue of Deferred Shares or the conversion or re-designation of shares into Deferred Shares shall be deemed to confer irrevocable authority on the Company at any time after their allotment, issue, conversion or re-designation, without obtaining the sanction of such holder(s), to:



- (a) appoint any person to execute any transfer (or any agreement to transfer) such Deferred Shares to such person(s) as the Company may determine (as nominee or custodian thereof or otherwise); and/or
- (b) give, on behalf of such holder, consent to the cancellation of such Deferred Shares; and/or
- (c) purchase such Deferred Shares in accordance with the Act,

in any such case (i) for a price being not more than an aggregate sum of one penny for all the Deferred Shares registered in the name of such holder(s) and (ii) with the Company having authority pending such transfer, cancellation and/or purchase to retain the certificates (if any) in respect thereof.

- 10.3 No Deferred Share may be transferred without the prior consent of the Board (acting with Investor Consent).

## 11. Variation of rights

Whenever the share capital of the Company is divided into different classes of shares, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding-up) with the consent in writing of the holders of more than seventy-five per cent (75%) in nominal value of the issued shares of that class.

## 12. Allotment of new shares or other securities: pre-emption

- 12.1 Sections 561(1) and 562(1) to (5) (inclusive) of the Act do not apply to an allotment of Equity Securities made by the Company.
- 12.2 Until completion of a Qualified IPO or a Share Sale, unless otherwise agreed by special resolution, if the Company proposes to allot any New Securities those New Securities shall not be allotted to any person unless the Company has in the first instance offered them to the holders of the Equity Shares (the “**Subscribers**”) on the same terms and at the same price as those New Securities are being offered to other persons on a pro rata basis to their respective holdings of Equity Shares. The offer shall be in writing, be open for acceptance from the date of the offer to the date 15 Business Days after the date of the offer (inclusive) (the “**Subscription Period**”) and give details of the number and subscription price of the New Securities.
- 12.3 If, at the end of the Subscription Period, the number of New Securities applied for is equal to the number of New Securities, the New Securities shall be allotted to the Subscribers in accordance with their applications.
- 12.4 If, at the end of the Subscription Period, the number of New Securities applied for is less than the number of New Securities, the New Securities shall be allotted to the Subscribers in accordance with their applications and any remaining New Securities shall be offered to any other person as the Board (acting with Investor Consent) may determine at the same price and on the same terms as the offer to the Subscribers.
- 12.5 Subject to the requirements of Articles 12.2 to 12.4(inclusive) and to the provisions of section 551 of the Act, any New Securities shall be at the disposal of the Board (acting with Investor Consent) who may allot, grant options over or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper.
- 12.6 The provisions of Articles 12.2 to 12.4 (inclusive) shall not apply to:

- (a) Ordinary Shares and options to subscribe for Ordinary Shares issued or granted out of the Incentivisation Pool under any Incentivisation Arrangements;
- (b) New Securities issued or granted in order for the Company to comply with its obligations under these Articles or in accordance with the terms of the Shareholders' Agreement;
- (c) New Securities issued:
  - (i) to banks, equipment lessors or other financial institutions pursuant to a debt financing or equipment leasing transaction;
  - (ii) in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships; or
  - (iii) in consideration of the acquisition by the Company of any company or business;
  - (iv) as a result of a bonus issue of shares, subdivision, special dividend or similar event; or
  - (v) in connection with a Qualified IPO,

in each case which has been approved in writing by the Board (acting with Investor Consent).

12.7 Any New Securities offered under this Article 12 to an Investment Fund may be accepted in full or part only by a Member of the same Fund Group as that Investment Fund in accordance with the terms of this Article 12.

12.8 No Shares shall be allotted (nor any Treasury Shares be transferred) to any Employee, Director, prospective Employee or prospective director of the Company, who in the opinion of the Board is subject to taxation in the United Kingdom, unless such person has entered into a joint section 431 ITEPA election with the Company if so required by the Company.

### **13. Transfers of Shares – general**

13.1 In Articles 13 to 22 inclusive, reference to the transfer of a Share includes the transfer or assignment of a beneficial or other interest in that Share or the creation of a trust or Encumbrance over that Share and reference to a Share includes a beneficial or other interest in a Share.

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

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

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

13.5 Until completion of a Qualified IPO or a Share Sale, except as required under Article 17 (Compulsory Transfers) or Article 18 (Departing Founder) no Unvested Shares held by

the Founder shall be sold or transferred without the prior written approval of the Board (acting with Investor Consent).

13.6 The Board may refuse to register a transfer if:

- (a) it is a transfer of a Share to a bankrupt, a minor or a person of unsound mind;
- (b) the transfer is to an Employee, Director or prospective Employee or prospective director of the Company, who in the opinion of the Board is subject to taxation in the United Kingdom, and such person has not entered into a joint section 431 ITEPA election with the Company;
- (c) it is a transfer of a Share which is not fully paid:
  - (i) to a person of whom the Board (acting with Investor Consent) do not approve; or
  - (ii) on which Share the Company has a lien;
- (d) the transfer is not lodged at the registered office or at such other place as the Directors may appoint;
- (e) the transfer is not accompanied by the certificate for the Shares to which it relates (or an indemnity for lost certificate in a form reasonably acceptable to the Board) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;
- (f) the transfer is in respect of more than one class of Shares;
- (g) the transfer is in favour of more than four transferees;
- (h) these Articles otherwise provide that such transfer shall not be registered.

If the Board refuses to register a transfer, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

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

13.8 To enable the Board to determine whether or not there has been any disposal of shares in the capital of the Company (or any interest in shares in the capital of the Company) in breach of these Articles the Board (acting with Investor Consent) may, require any holder or the legal personal representatives of any deceased holder or any person named as transferee in any transfer lodged for registration or any other person who the Board may reasonably believe to have information relevant to that purpose, to furnish to the Company that information and evidence the Board may request regarding any matter which they deem relevant to that purpose, including (but not limited to) the names, addresses and interests of all persons respectively having interests in the shares in the capital of the Company from time to time registered in the holder's name. If the

information or evidence is not provided to enable the Board to determine to its reasonable satisfaction that no breach has occurred, or where as a result of the information and evidence the Board is reasonably satisfied that a breach has occurred, the Board shall immediately notify the holder of such shares in the capital of the Company in writing of that fact and the following shall, with Investor Consent, occur:

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

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

13.9 In any case where the Board (acting with Investor Consent) requires a Transfer Notice to be given in respect of any Shares, if a Transfer Notice is not duly given within a period of 10 Business Days of demand being made, a Transfer Notice shall be deemed to have been given at the expiration of that period.

13.10 If a Transfer Notice is required to be given by the Board (acting with Investor Consent) or is deemed to have been given under these Articles, the Transfer Notice, unless otherwise specified in the Articles, will be treated as having specified that:

- (a) the Transfer Price for the Sale Shares will be as agreed between the Board (any director who is a Seller or with whom the Seller is connected (within the meaning of section 252 of the Act) not voting) and the Seller, or, failing agreement within five Business Days after the date on which the Board becomes aware that a Transfer Notice has been deemed to have been given, will be the Fair Value of the Sale Shares;
- (b) it does not include a Minimum Transfer Condition (as defined in Article 15.2(d)); and
- (c) the Seller wishes to transfer all of the Shares held by it.

13.11 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:

- (a) the transferor; and
- (b) (if any of the shares is partly or nil paid) the transferee.

#### 14. Permitted Transfers

- 14.1 Subject to Article 14.2, a Shareholder (who is not a Permitted Transferee) (the "**Original Shareholder**") may transfer all or any of his or its Shares to a Permitted Transferee without restriction as to price or otherwise under this Article 14.1.
- 14.2 No transfer of Shares may be made by the Founder pursuant to this Article 14 unless the Board (acting with Investor Consent) is satisfied that:
  - (a) the Shares are not Unvested;
  - (b) the proposed transfer will not result in the Founder's Permitted Transferees holding in aggregate fifty per cent (50%) or more of all Equity Shares held by the Founder or his Permitted Transferee; and
  - (c) the Founder will retain all voting rights attaching to such Shares.
- 14.3 Shares previously transferred as permitted by Article 14.1 may be transferred by the transferee to any other Permitted Transferee of the Original Shareholder without restriction as to price or otherwise.
- 14.4 Where under the provision of a deceased Shareholder's will or laws as to intestacy, the persons legally or beneficially entitled to any Shares, whether immediately or contingently, are Permitted Transferees of the deceased Shareholder, the legal representative of the deceased Shareholder may transfer any Share to those Permitted Transferees, in each case without restriction as to price or otherwise.
- 14.5 If a Permitted Transferee who was a Member of the same Group as the Original Shareholder ceases to be a Member of the same Group as the Original Shareholder, the Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the Shares held by it to the Original Shareholder or a Member of the same Group as the Original Shareholder (which in either case is not in liquidation) without restriction as to price or otherwise failing which it will be deemed to have given a Transfer Notice in respect of those Shares.
- 14.6 If a Permitted Transferee who was a Member of the same Fund Group as the Original Shareholder ceases to be a Member of the same Fund Group, the Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the Shares held by it to the Original Shareholder or a Member of the same Fund Group as the Original Shareholder (which in either case is not in liquidation) without restriction as to price or otherwise failing which it will be deemed to give a Transfer Notice in respect of such Shares.
- 14.7 Trustees may (i) transfer Shares to the Original Shareholder or to another Permitted Transferee of the Original Shareholder or (ii) transfer Shares to the new or remaining trustees upon a change of Trustees without restrictions as to price or otherwise.
- 14.8 No transfer of Shares may be made to Trustees unless the Board (acting with Investor Consent) is satisfied:
  - (a) with the terms of the trust instrument and in particular with the powers of the trustees;
  - (b) with the identity of the proposed trustees;
  - (c) the proposed transfer will not result in twenty five per cent (25%) or more of the aggregate of the Company's equity share capital being held by trustees of that and any other trusts; and

- (d) that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.
- 14.9 If a Permitted Transferee who is a spouse or Civil Partner of the Original Shareholder ceases to be a spouse or Civil Partner of the Original Shareholder whether by reason of divorce or otherwise he must, within five Business Days of so ceasing either:
  - (a) execute and deliver to the Company a transfer of the Shares held by him to the Original Shareholder (or, to any Permitted Transferee of the Original Shareholder) for such consideration as may be agreed between them; or
  - (b) give a Transfer Notice to the Company in accordance with Article 15.2,
 failing which he shall be deemed to have given a Transfer Notice.
- 14.10 On the liquidation, administration or administrative receivership of a Permitted Transferee (other than a joint holder) its liquidator, administrator or administrative receiver must within five Business Days after the date of the appointment of the liquidator, administrator or the administrative receiver execute and deliver to the Company a transfer of the Shares held by the Permitted Transferee without restriction as to price or otherwise. The transfer shall be to the Original Shareholder (if not in liquidation) or, if so directed by the Original Shareholder, to any Permitted Transferee of the Original Shareholder. If the transfer is not executed and delivered within five Business Days of such period or if the Original Shareholder is in liquidation, administration or administrative receivership, liquidator, administrator or administrative receiver will be deemed to have given a Transfer Notice
- 14.11 On the death (subject to Article 14.4) or bankruptcy of a Permitted Transferee (other than a joint holder) his personal representatives or trustee in bankruptcy must within five Business Days after the date of the grant of probate or the making of the bankruptcy order execute and deliver to the Company a transfer of the Shares held by the Permitted Transferee without restriction as to price or otherwise. The transfer shall be to the Original Shareholder if still living (and not bankrupt) or, if so directed by the Original Shareholder, to any Permitted Transferee of the Original Shareholder. If the transfer is not executed and delivered within five Business Days of such period or if the Original Shareholder has died or is bankrupt, the personal representative or trustee in bankruptcy will be deemed to have given a Transfer Notice.
- 14.12 The Company shall only be permitted to sell or transfer any Shares held as Treasury Shares to any person with Investor Consent.
- 14.13 A transfer of any Shares approved in writing by the Board (acting with Investor Consent) may be made without restriction as to price or otherwise and with any such conditions as may be imposed and each such transfer shall be registered by the Directors.
- 15. Transfers of Shares subject to pre-emption rights**
  - 15.1 Until completion of a Qualified IPO or a Share Sale, save where the provisions of Articles 14, 18, 20, 21 and 22 apply, any transfer of Equity Shares by a Shareholder shall be subject to the pre-emption rights contained in this Article 15.
  - 15.2 A Shareholder who wishes to transfer Equity Shares (a "**Seller**") shall, except as otherwise provided in these Articles, before transferring or agreeing to transfer any Ordinary Shares give notice in writing (a "**Transfer Notice**") to the Company specifying:
    - (a) the number of Equity Shares which he wishes to transfer (the "**Sale Shares**");

- (b) if he wishes to sell the Sale Shares to a third party, the name of the proposed transferee;
- (c) the price at which he wishes to transfer the Sale Shares; and
- (d) whether the Transfer Notice is conditional on all or a specific number of the Sale Shares being sold to Shareholders (a "**Minimum Transfer Condition**").

If no cash price is specified by the Seller, the price at which the Sale Shares are to be transferred (the "**Transfer Price**") must be agreed by the Board (acting with Investor Consent). In addition, if the price is not specified in cash, an equivalent cash value price must be agreed between the Seller and the Board (acting with Investor Consent). In both cases, the price will be deemed to be the Fair Value of the Sale Shares if no price is agreed within five Business Days of the Company receiving the Transfer Notice.

15.3 Except with the consent of the Board (acting with Investor Consent), no Transfer Notice once given or deemed to have been given under these Articles may be withdrawn.

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

15.5 As soon as practicable following the later of:

- (a) receipt of a Transfer Notice; and
- (b) in the case where the Transfer Price has not been agreed, the determination of the Transfer Price under Article 16,

the Board shall offer the Sale Shares for sale in the manner set out in Articles 15.6 and 15.7. Each offer must be in writing and give details of the number and Transfer Price of the Sale Shares offered.

15.6 *Priority for offer of Sale Shares*

The Sale Shares shall be offered in the following order of priority:

- (a) first, to the Company; and
- (b) second, to the holders of Equity Shares,

in each case on the basis set out in Article 15.7.

15.7 *Transfers: Offer*

- (a) The Board shall offer the Sale Shares pursuant to the Priority Rights to the Company or the Shareholders as applicable) other than the Seller (each an "**Offeree**") inviting them to apply in writing within the period from the date of the offer to the date 15 Business Days after the offer (inclusive) (the "**Offer Period**") for the maximum number of Sale Shares they wish to buy. The Offer Period for the Shareholders shall only commence at the end of the Offer Period for the Company. The Offer Period for the Company may be waived by the resolution of the Board (acting with Investor Consent).
- (b) If the Sale Shares are subject to a Minimum Transfer Condition then any allocation made under this Article 15.7 will be conditional on the fulfilment of the Minimum Transfer Condition.

- (c) If, at the end of the Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the Board shall allocate the Sale Shares to each Offeree who has applied for Sale Shares:
  - (i) if the Offeree is the Company, by allocating to the Company the maximum number of Sale Shares which it has stated it is willing to buy;
  - (ii) if the Offeree is a Shareholder, by allocating to the Shareholder in the proportion (fractional entitlements being rounded to the nearest whole number) which his existing holding of Equity Shares bears to the total number of Equity Shares held by those Offerees who have applied for Sale Shares but no allocation shall be made to a Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy.
- (d) If, at the end of the Offer Period, the number of Sale Shares applied for is less than the number of Sale Shares, the Board shall allocate the Sale Shares to the Offerees in accordance with their applications and the balance will be dealt with in accordance with Article 15.8(e).

#### 15.8 *Completion of transfer of Sale Shares*

- (a) If the Transfer Notice includes a Minimum Transfer Condition and the total number of Shares applied for does not meet the Minimum Transfer Condition the Board shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under Article 15.7 stating the condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect.
- (b) If:
  - (i) the Transfer Notice does not include a Minimum Transfer Condition; or
  - (ii) the Transfer Notice does include a Minimum Transfer Condition and allocations have been made in respect of all or the minimum required number of the Sale Shares,

the Board shall, when no further offers are required to be made under Article 15.7, give written notice of allocation (an "**Allocation Notice**") to the Seller and each Offeree to whom Sale Shares have been allocated (an "**Applicant**") specifying the number of Sale Shares allocated to each Applicant and the place and time (being not less than 10 Business Days nor more than 20 Business Days after the date of the Allocation Notice) for completion of the transfer of the Sale Shares.

- (c) Upon service of an Allocation Notice, the Seller must, against payment of the Transfer Price, transfer the Sale Shares in accordance with the requirements specified in it.
- (d) If the Seller fails to comply with the provisions of Article 15.8(c):
  - (i) any one of the Directors, or some other person nominated by a resolution of the Board (acting with Investor Consent) or by notice in writing by the Lead Investor or an Investor Majority, may on behalf of the Seller:
    - (A) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;



- (B) receive the Transfer Price and give a good discharge for it; and
    - (C) (subject to the transfer being duly stamped) enter the Applicants in the register of Shareholders as the holders of the Shares purchased by them (or, if the Applicant is the Company and the Sale Shares are to be cancelled, update the register accordingly); and
  - (ii) the Company shall pay the Transfer Price into a separate bank account in the Company's name on trust (but without interest) or otherwise hold the Transfer Price on trust for the Seller until he has delivered to the Company his certificate or certificates for the relevant Shares (or an indemnity for lost certificate in a form acceptable to the Board).
  - (e) If an Allocation Notice does not relate to all the Sale Shares then, subject to Article 15.8(f), the Seller may, within eight weeks after service of the Allocation Notice, transfer the unallocated Sale Shares to any person at a price at least equal to the Transfer Price.
  - (f) The right of the Seller to transfer Shares under Article 15.8(e) only applies with the prior written consent of the Board (such consent not to be unreasonably withheld). Without prejudice to the Board's general right (acting reasonably) to refuse consent, it shall be reasonable for the Board to withhold consent if the Board (acting with Investor Consent) is of the opinion on reasonable grounds that:
    - (i) the transferee is a person (or a nominee for a person) who the Board (acting with Investor Consent) determine in their absolute discretion is a competitor with (or an Associate of a competitor with) the business of the Company or with a Subsidiary Undertaking of the Company;
    - (ii) the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee; or
    - (iii) the Seller has failed or refused to provide promptly information available to it or him and reasonably requested by the Board for the purpose of enabling it to form the opinion mentioned above.
- 15.9 Any Sale Shares offered under this Article 15 to an Investment Fund may be accepted in full or part only by a Member of the same Fund Group as that Investment Fund in accordance with the terms of this Article 15.

## 16. Valuation of Shares

- 16.1 If no Transfer Price can be agreed between the Seller and the Board (acting with Investor Consent) in accordance with provisions of Articles 13.10, 15.2 or otherwise then, on the date of failing agreement, the Board shall either:
- (a) appoint an expert valuer in accordance with Article 16.2 (the "**Expert Valuer**") to certify the Fair Value of the Sale Shares; or
  - (b) (if the Fair Value has been certified by an Expert Valuer within the preceding 12 weeks and the Board (acting with Investor Consent) agrees it should apply) specify that the Fair Value of the Sale Shares will be calculated by dividing any Fair Value so certified by the number of Sale Shares to which it related and multiplying such Fair Value by the number of Sale Shares the subject of the Transfer Notice.

- 16.2 Unless otherwise agreed by the Board (acting with Investor Consent) and the Seller, the Expert Valuer will be an independent firm of Chartered Accountants to be agreed between the Board (acting with Investor Consent) and the Seller or failing agreement not later than the date 10 Business Days after the date of service of the Transfer Notice to be nominated by the then President of the Institute of Chartered Accountants in England and Wales on the application of either party.
- 16.3 The "**Fair Value**" of the Sale Shares shall be determined by the Expert Valuer on the following assumptions and bases:
- (a) valuing the Sale Shares as on an arm's-length sale between a willing seller and a willing buyer;
  - (b) if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
  - (c) that the Sale Shares are capable of being transferred without restriction;
  - (d) valuing the Sale Shares as a rateable proportion of the total value of all the issued Shares (excluding any Shares held as Treasury Shares) without any premium or discount being attributable to the percentage of the issued share capital of the Company which they represent but taking account of the rights attaching to the Sale Shares; and
  - (e) reflect any other factors which the Expert Valuer reasonably believes should be taken into account.
- 16.4 If any difficulty arises in applying any of these assumptions or bases then the Expert Valuer shall resolve that difficulty in whatever manner they shall in their absolute discretion think fit.
- 16.5 The Expert Valuer shall be requested to determine the Fair Value within 20 Business Days of their appointment and to notify the Board of their determination.
- 16.6 The Expert Valuer shall act as experts and not as arbitrators and their determination shall be final and binding on the parties (in the absence of fraud or manifest error).
- 16.7 The Board will give the Expert Valuer access to all accounting records or other relevant documents of the Company subject to them agreeing to such confidentiality provisions as the Board may reasonably impose.
- 16.8 The Expert Valuer shall deliver their certificate to the Company. As soon as the Company receives the certificate it shall deliver a copy of it to the Seller. Unless the Sale Shares are to be sold under a Transfer Notice, which is deemed to have been served, the Seller may by notice in writing to the Company within five Business Days of the service on him of the copy certificate, cancel the Company's authority to sell the Sale Shares.
- 16.9 The cost of obtaining the certificate shall be paid by the Company unless:
- (a) the Seller cancels the Company's authority to sell; or
  - (b) the Sale Price certified by the Expert Valuer is less than the price (if any) offered by the directors to the Seller for the Sale Share before Expert Valuer was instructed,

in which case the Seller shall bear the cost.

## **17. Compulsory transfers – general**

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

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

- 17.3 If a Shareholder which is a company, either suffers or resolves for the appointment of a liquidator, administrator or administrative receiver over it or any material part of its assets (other than as part of a bona fide restructuring or reorganisation), the relevant Shareholder (and all its Permitted Transferees) shall be deemed to have given a Transfer Notice in respect of all the Shares held by the relevant Shareholder and its Permitted Transferees save to the extent that the Board (acting with Investor Consent) may otherwise determine.
- 17.4 If there is a change in control (as control is defined in section 1124 of the CTA 2010) of any Shareholder which is a company, it shall be bound at any time, if and when required in writing by the Board (acting with Investor Consent) to do so, to give (or procure the giving in the case of a nominee) a Transfer Notice in respect of all the Shares registered in its and their names and their respective nominees' names save that, in the case of the Permitted Transferee, it shall first be permitted to transfer those Shares back to the Original Shareholder from whom it received its Shares or to any other Permitted Transferee before being required to serve a Transfer Notice. This Article 17.4 shall not apply to a Shareholder that is an Investor.
- 17.5 If a Shareholder is in material breach of a Relevant Agreement and, where such breach is remediable, fails to remedy the breach within 15 Business Days of receiving notice to remedy the same from the Board (acting with Investor Consent), the relevant Shareholder (and all its Permitted Transferees) shall be deemed to have given a Transfer Notice in respect of all the Shares held by the relevant Shareholder and its Permitted Transferees save to the extent the Board (acting with Investor Consent) may otherwise determine.

## **18. Departing Founder**

### *Deferred Shares*

- 18.1 Unless the Board (acting with Investor Consent) determines that this Article 18.1 shall not apply (in whole or part) and subject to Article 18.3, if at any time during the Relevant Period a Founder ceases to be an Employee the Leaver's Percentage of such Founder's Relevant Shares shall automatically convert into Deferred Shares (on the basis of one Deferred Share for each Relevant Share held) on the Effective Termination Date (rounded down to the nearest whole share), save that if such Founder ceases to be an

Employee within 12 months from the Date of Adoption all of such Founder's Relevant Shares shall so convert.

- 18.2 Upon such conversion into Deferred Shares, the Company shall be entitled to enter the holder of the Deferred Shares on the register of members of the Company as the holder of the appropriate number of Deferred Shares as from the Deferred Conversion Date. Upon the Deferred Conversion Date, the Founder and/or his Permitted Transferee(s) (as applicable) shall deliver to the Company at its registered office the shares certificate(s) (to the extent not already in the possession of the Company) (or an indemnity for lost certificate in a form acceptable to the Board) for the Relevant Shares so converting and upon such delivery there shall be issued to him share certificate(s) for the number of Deferred Shares resulting from the relevant conversion and any remaining Relevant Shares.

*Deemed Transfer*

- 18.3 The Board (acting with Investor Consent) shall be entitled to determine that, in the alternative to Article 18.1, if the Founder ceases to be an Employee during the Relevant Period, a Transfer Notice shall be deemed to be given in respect of all of the Founder's Unvested Shares which were to convert into Deferred Shares under Article 18.1 on the Effective Termination Date. In such circumstances the Transfer Price shall be the lower of Fair Value and the original subscription price paid for the Relevant Shares.

*Suspension of voting rights*

- 18.4 All voting rights attached to Relevant Shares held by the Founder or by any Permitted Transferee of the Founder (the "**Restricted Member**"), if any, shall at the time he becomes a Bad Leaver be suspended (unless the Board (acting with Investor Consent) notifies him otherwise).
- 18.5 Any Relevant Shares whose voting rights are suspended pursuant to Article 18.4 ("**Restricted Shares**") shall not confer on the holders of Restricted Shares the right to receive a notice of, attend or vote (either in person or by proxy at) general meetings of the Company or to vote on any proposed written resolution. Voting rights suspended pursuant to Article 18.4 shall be automatically restored immediately prior to an IPO. If a Restricted Member transfers any Restricted Shares in accordance with these Articles all voting rights attached to the Restricted Shares so transferred shall upon completion of the transfer (as evidenced by the transferee's name being entered in the Company's register of members) automatically be restored.

**19. Mandatory Offer on a Change of Control**

- 19.1 Until completion of a Qualified IPO or a Share Sale, except in the case of Permitted Transfers and transfers pursuant to Articles 17 and 22 after going through the pre-emption procedure in Article 15, the provisions of Article 19.2 will apply if one or more Proposed Sellers propose to transfer in one or a series of related transactions any Equity Shares (the "**Proposed Transfer**") which would, if put into effect, result in any Proposed Purchaser (and Associates of his or persons Acting in Concert with him) acquiring a Controlling Interest in the Company.
- 19.2 A Proposed Seller must, before making a Proposed Transfer procure the making by the Proposed Purchaser of an offer (the "**Offer**") to the other Shareholders to acquire all of the Equity Shares for a consideration per share the value of which is at least equal to the Specified Price (as defined in Article 19.7).
- 19.3 The Offer must be given by written notice (a "**Proposed Sale Notice**") at least 10 Business Days (the "**Offer Period**") prior to the proposed sale date ("**Proposed Sale Date**"). The Proposed Sale Notice must set out, to the extent not described in any

accompanying documents, the identity of the Proposed Purchaser, the purchase price and other terms and conditions of payment, the Proposed Sale Date and the number of Shares proposed to be purchased by the Proposed Purchaser (the "**Proposed Sale Shares**").

- 19.4 If any other holder of Equity Shares is not given the rights accorded him by this Article, the Proposed Sellers will not be entitled to complete their sale and the Company will not register any transfer intended to carry that sale into effect.
- 19.5 If the Offer is accepted by any Shareholder (an "**Accepting Shareholder**") within the Offer Period, the completion of the Proposed Transfer will be conditional upon the completion of the purchase of all the Shares held by Accepting Shareholders.
- 19.6 The Proposed Transfer is subject to the pre-emption provisions of Article 15 but the purchase of the Accepting Shareholders' shares shall not be subject to Article 15.
- 19.7 For the purpose of this Article:
- (a) the expression "**Specified Price**" shall mean in respect of each Share a sum in cash equal to the highest price per Share offered or paid by the Proposed Purchaser:
- (i) in the Proposed Transfer; or
- (ii) in any related or previous transaction by the Proposed Purchaser or any person Acting in Concert with the Proposed Purchaser in the 12 months preceding the date of the Proposed Transfer,

plus an amount equal to the Relevant Sum, as defined in Article 19.7(b), of any other consideration (in cash or otherwise) paid or payable by the Proposed Purchaser or any other person Acting in Concert with the Proposed Purchaser, which having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Shares (the "**Supplemental Consideration**") provided that the total consideration paid by the Proposed Purchaser in respect of the Proposed Transfer is distributed to the Proposed Seller and the Accepting Shareholders in accordance with the provisions of Articles 5 and 6;

- (b) **Relevant Sum** =  $C \div A$

where: A = number of Equity Shares being sold in connection with the relevant Proposed Transfer; and

C = the Supplemental Consideration.

## 20. Co-Sale right

- 20.1 Until completion of a Qualified IPO or a Share Sale, no transfer (other than a Permitted Transfer) of any Equity Shares may be made or validly registered by the Founder unless the Founder (a "**Selling Shareholder**") shall have observed the following procedures of this Article.
- 20.2 After the Selling Shareholder has gone through the pre-emption process set out in Article 15, the Selling Shareholder shall give to each Investor (an "**Equity Holder**") not less than 15 Business Days' notice in advance of the proposed sale (a "**Co-Sale Notice**"). The Co-Sale Notice shall specify:
- (a) the identity of the proposed purchaser (the "**Buyer**");

- (b) the price per share which the Buyer is proposing to pay;
- (c) the manner in which the consideration is to be paid;
- (d) the number and class of Shares which the Selling Shareholder proposes to sell; and
- (e) the address where the counter-notice should be sent.

For the purposes of this Article 20, it is acknowledged that Shares of different classes will be transferable at different prices, such price per class of Share being a sum equal to that to which they would be entitled if the consideration payable by the Buyer to the Selling Shareholder were used to determine the valuation of the entire issued share capital of the Company and such valuation was then allocated as between the Shares in accordance with Articles 5 and 6.

- 20.3 Each Equity Holder shall be entitled within 15 Business Days after receipt of the Co-Sale Notice, to notify the Selling Shareholder that they wish to sell a certain number of Equity Shares held by them at the proposed sale price, by sending a counter-notice which shall specify the number of Equity Shares which such Equity Holder wishes to sell. The maximum number of shares which an Equity Holder can sell under this procedure shall be:

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

where:

- X is the number of Equity Shares held by the Equity Holder;
- Y is the total number of Equity Shares held by all Investors who have notified the Selling Shareholder of their wish to sell Equity Shares in accordance with this Article 20 (including the Equity Holder);
- Z is the number of Equity Shares the Selling Shareholder proposes to sell.

Any Equity Holder who does not send a counter-notice within such 15 Business Day period shall be deemed to have specified that they wish to sell no shares.

- 20.4 Following the expiry of 15 Business Days from the date the Equity Holders receive the Co-Sale Notice, the Selling Shareholder shall be entitled to sell to the Buyer on the terms notified to the Equity Holders a number of shares not exceeding the number specified in the Co-Sale Notice less any shares which Equity Holders have indicated they wish to sell, provided that at the same time the Buyer (or another person) purchases from the Equity Holders the number of shares they have respectively indicated they wish to sell on terms no less favourable than those obtained by the Selling Shareholder from the Buyer.
- 20.5 No sale by the Selling Shareholder shall be made pursuant to any Co-Sale Notice more than three months after service of that Co-Sale Notice.
- 20.6 Sales made in accordance with this Article 20 shall not be subject to Article 15.

## 21. Drag-along

- 21.1 If a Shareholder Majority (the "**Selling Shareholders**") wish to transfer all their interest in their Shares (the "**Sellers' Shares**") to a Proposed Purchaser, the Selling

Shareholders shall have the option (the "**Drag Along Option**") to compel each other holder of Shares (each a "**Called Shareholder**" and together the "**Called Shareholders**") to sell and transfer all their Shares to the Proposed Purchaser or as the Proposed Purchaser shall direct (the "**Drag Purchaser**") in accordance with the provisions of this Article 21.

21.2 The Selling Shareholders may exercise the Drag Along Option by giving a written notice to that effect (a "**Drag Along Notice**") to the Company which the Company shall forthwith copy to the Called Shareholders at any time before the transfer of the Sellers' Shares to the Drag Purchaser. A Drag Along Notice shall specify that:

- (a) the Called Shareholders are required to transfer all of their Shares (the "**Called Shares**") under this Article 21;
- (b) the person to whom they are to be transferred;
- (c) the consideration for which the Called Shares are to be transferred (calculated in accordance with this Article);
- (d) the proposed date of transfer, and
- (e) the form of any sale agreement or form of acceptance or any other document of similar effect that the Called Shareholders are required to sign in connection with such sale (the "**Sale Agreement**"),

(and, in the case of paragraphs (b) to (d) above, whether actually specified or to be determined in accordance with a mechanism described in the Drag Along Notice). A Called Shareholder shall not be required to agree to any other terms contained in the Drag Along Notice or Sale Agreement except those specifically provided for in this Article.

21.3 Drag Along Notices shall be irrevocable but will lapse if for any reason there is not a sale of the Sellers' Shares by the Selling Shareholders to the Drag Purchaser within 60 Business Days after the date of service of the Drag Along Notice on the Called Shareholders. The Selling Shareholders shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice.

21.4 The consideration (in cash or otherwise) for which the Called Shareholders shall be obliged to sell each of the Called Shares shall be that to which they would be entitled if the total consideration proposed to be paid by the Drag Purchaser were distributed to the holders of the Called Shares and the Sellers' Shares in accordance with the provisions of Articles 5 and 6 (the "**Drag Consideration**").

21.5 In respect of a transaction that is the subject of a Drag-Along Notice and with respect to any Drag Documents, no Investor shall be bound by the Drag-Along Notice or Drag Documents unless:

- (a) any warranties to be made by such Investor in connection therewith are limited to authority, ownership and the ability to convey title;
- (b) such Investor shall not be liable for the inaccuracy of any representation or warranty made by any other person, other than the Company (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any Shareholder of any identical representations, warranties and covenants provided by all Shareholders);

- (c) the liability of such Investor is several and not joint with any other person (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any Shareholder of any identical representations, warranties and covenants provided by all Shareholders), and is pro rata in proportion to, and does not exceed, the amount of consideration received by such Investor in connection with such proposed transaction;
  - (d) liability is limited to such Investor's applicable share (determined based on the respective proceeds payable to each Shareholder in connection with such proposed transaction) of a negotiated aggregate indemnification amount that applies equally to all Shareholders but that in no event exceeds the amount of consideration otherwise received by such Investor in connection with such proposed transaction, except with respect to claims related to fraud by such Investor, the liability for which need not be limited as to such Investor;
  - (e) upon consummation of the proposed transaction, each holder of each class of the Company's issued share capital will receive the same form of consideration for its Shares of such class as is received by other holders in respect of their Shares of the same class;
  - (f) such Investor shall not be required to give any release of claims other than a release given in its capacity as a Shareholder or an employee of the Company; and
  - (g) such Investor and its affiliates shall not be subject to any non-competition, non-investment, non-solicitation or similar provisions.
- 21.6 Within three Business Days of the Company copying the Drag Along Notice to the Called Shareholders (or such later date as may be specified in the Drag Along Notice) (the "**Drag Completion Date**"), each Called Shareholder shall deliver:
- (a) duly executed stock transfer form(s) for its Shares in favour of the Drag Purchaser;
  - (b) the relevant share certificate(s) (or a duly executed indemnity for lost certificate in a form acceptable to the Board) to the Company; and
  - (c) duly executed Sale Agreement, if applicable, in the form specified in the Drag Along Notice or as otherwise specified by the Company,
- (together the "**Drag Documents**").
- 21.7 On the Drag Completion Date, the Company shall pay each Called Shareholder, on behalf of the Drag Purchaser, the Drag Consideration that is due to the extent the Drag Purchaser has paid such consideration to the Company. The Company's receipt of the Drag Consideration shall be a good discharge to the Drag Purchaser. The Company shall hold the Drag Consideration in trust for each of the Called Shareholders without any obligation to pay interest.
- 21.8 To the extent that the Drag Purchaser has not, on the Drag Completion Date, paid the Drag Consideration that is due to the Company, the Called Shareholders shall be entitled to the immediate return of the Drag Documents for the relevant Shares and the Called Shareholders shall have no further rights or obligations under this Article 21 in respect of their Shares.
- 21.9 If a Called Shareholder fails to deliver the Drag Documents for its Shares to the Company by the Drag Completion Date, the Company and each Director shall be constituted the



agent of such defaulting Called Shareholder to take such actions and enter into any Drag Document or such other agreements or documents as are necessary to effect the transfer of the Called Shareholder's Shares pursuant to this Article 21 and the Directors shall, if requested by the Drag Purchaser, authorise any Director to transfer the Called Shareholder's Shares on the Called Shareholder's behalf to the Drag Purchaser to the extent the Drag Purchaser has, by the Drag Completion Date, paid the Drag Consideration to the Company for the Called Shareholder's Shares offered to him. The Board shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Called Shareholder shall surrender his share certificate for his Shares (or suitable executed indemnity) to the Company. On surrender, he shall be entitled to the Drag Consideration due to him.

- 21.10 Any transfer of Shares to a Drag Purchaser pursuant to a sale in respect of which a Drag Along Notice has been duly served shall not be subject to the provisions of Article 15.
- 21.11 On any person, following the issue of a Drag Along Notice, becoming a Shareholder pursuant to the exercise of a pre-existing option or warrant to acquire shares in the Company or pursuant to the conversion of any convertible security of the Company (a **"New Shareholder"**), a Drag Along Notice shall be deemed to have been served on the New Shareholder on the same terms as the previous Drag Along Notice who shall then be bound to sell and transfer all Shares so acquired to the Drag Purchaser and the provisions of this Article shall apply with the necessary changes to the New Shareholder except that completion of the sale of the Shares shall take place immediately on the Drag Along Notice being deemed served on the New Shareholder.

## 22. New Holding Company

- 22.1 This Article 22 applies where it is proposed by the Board (acting with Investor Consent) and a Shareholder Majority that the entire issued share capital of the Company be acquired by way of share exchange (the **"Share Exchange"**) by a newly incorporated company with no previous trading history (a **"New Holding Company"**), such that immediately subsequent to such acquisition:
- (a) the number and class of shares comprised in the issued share capital of the New Holding Company, the identity of the shareholders of the New Holding Company and the number and class of shares held by each such person would be the same (save for the fact that such shares are issued by a different company) as the issued share capital of the Company, the identity of the shareholders of the Company and the number and class of shares held by each such person immediately prior to such acquisition;
  - (b) the rights attaching to each class of share comprised in the New Holding Company are the same (save for the fact that such shares are issued by a different company) as those rights attaching to the like class of share comprised in the share capital of the Company immediately prior to such acquisition; and
  - (c) the articles of association and the shareholders' agreement of the New Holding Company are the same (save for the fact that they apply in respect of a different company and such amendments as may be necessary to give effect to Article 22.1(b)) as these Articles and the Shareholders Agreement immediately prior to such acquisition.
- 22.2 Each Shareholder shall execute such documentation as the Board (acting with Investor Consent) may determine to be reasonably necessary or desirable to give effect to, or otherwise facilitate, such Share Exchange, which may include a share exchange agreement pursuant to which each Shareholder transfers its entire shareholding in the Company in consideration of the issue of shares in the New Holding Company, stock transfer forms giving effect to such transfer of shares, a novation of this agreement

pursuant to which the New Holding Company assumes the rights and obligations of the Company and each other party assumes the same obligations as they each have in this agreement but so that every reference therein to the Company is a reference to the New Holding Company and such further documentation as may be necessary or desirable (if so determined by the Board) concerning the analogous treatment of Relevant Securities in the Company (other than Shares) (for example, the exchange of options granted by the Company for replacement options granted by the New Holding Company).

- 22.3 For the avoidance of doubt, no transfer of shares pursuant to this Article 22 shall trigger the rights in Articles 6, 15, 18 or 20.

## **23. General meetings**

- 23.1 If the Directors are required by the Shareholders under section 303 of the Act to call a general meeting, the Directors shall convene the meeting for a date not later than 28 days after the date on which the Directors became subject to the requirement under section 303 of the Act.
- 23.2 The provisions of section 318 of the Act shall apply to the Company, save that if a quorum is not present at any meeting adjourned for the reason referred to in article 41 of the Model Articles, then, provided that the Qualifying Person present holds or represents the holder of at least 25 per cent in nominal value of the Equity Shares (excluding Treasury Shares), any resolution agreed to by such Qualifying Person shall be as valid and effectual as if it had been passed unanimously at a general meeting of the Company duly convened and held.
- 23.3 If any two or more Shareholders (or Qualifying Persons representing two or more Shareholders) attend the meeting in different locations, the meeting shall be treated as being held at the location specified in the notice of the meeting, save that if no one is present at that location so specified, the meeting shall be deemed to take place where the largest number of Qualifying Persons is assembled or, if no such group can be identified, at the location of the chairman.
- 23.4 If a demand for a poll is withdrawn under article 44(3) of the Model Articles, the demand shall not be taken to have invalidated the result of a show of hands declared before the demand was made and the meeting shall continue as if the demand had not been made.
- 23.5 Polls must be taken in such manner as the chairman directs. A poll demanded on the election of a chairman or on a question of adjournment must be held immediately. A poll demanded on any other question must be held either immediately or at such time and place as the chairman directs not being more than 14 days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded.
- 23.6 No notice need be given of a poll not held immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
- 23.7 If the poll is to be held more than 48 hours after it was demanded the Shareholders shall be entitled to deliver Proxy Notices in respect of the poll at any time up to 24 hours before the time appointed for taking that poll. In calculating that period, no account shall be taken of any part of a day that is not a working day.

## **24. Proxies**

- 24.1 Paragraph (c) of article 45(1) of the Model Articles shall be deleted and replaced by the words: "is signed by or on behalf of the shareholder appointing the proxy and

accompanied by any the authority under which it is signed (or a certified copy of such authority or a copy of such authority in some other way approved by the directors)".

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

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

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

## **25. Directors' borrowing powers**

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

## **26. Number of Directors**

Unless and until the Company shall otherwise determine by ordinary resolution, the number of Directors shall not be subject to any maximum, but shall not be less than two.

## **27. Removal of Directors**

27.1 A person ceases to be a Director as soon as:

- (a) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
- (b) a bankruptcy order (or order relating to individual insolvency proceedings in a jurisdiction other than England and Wales which has an effect similar to that of bankruptcy) is made against that person and the other Directors (acting by majority) serve notice on that person requiring him to resign as a Director;
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts and the other Directors (acting by majority) serve notice on that person requiring him to resign as a Director;
- (d) 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 and the other Directors (acting by majority) serve notice on that person requiring him to resign as a Director;

- (e) that person is convicted of a criminal offence (other than a minor motoring offence or series of offences not resulting in disqualification) and the other Directors (acting by majority) serve notice on that person requiring him to resign as a Director;
- (f) that person fails, without the permission of the Directors, to participate in the decision-making processes of the Directors for a period exceeding three consecutive months and the other Directors (acting by majority) serve notice on that person requiring him to resign as a Director;
- (g) that person is in material breach of a Relevant Agreement and, where such breach is remediable, fails to remedy the breach within 15 Business Days of receiving notice to remedy the same from the other Directors (acting by majority), and the other Directors (acting by majority) serve notice on that person requiring him to resign as a Director;
- (h) the other Directors (acting unanimously and with Investor Consent) serve notice on that person requiring him to resign as a Director, provided always that this Article 27.1(h) shall only apply if the Company has more than two Directors; or
- (i) notification is received by the Company from that person that he is resigning from office, and such resignation has taken effect in accordance with its terms.

27.2 Without prejudice to the provisions of section 168 of the Act, the Company may, with Investor Consent, by ordinary resolution (whether at a general meeting or in writing and without special notice) remove any Director from his office.

## **28. Proceedings of Directors**

- 28.1 The quorum for Directors' meetings shall be two Directors. If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place. If a quorum is not present at any such adjourned meeting within half an hour from the time appointed, then the meeting shall proceed.
- 28.2 If all the Directors participating in a meeting of the Directors are not physically in the same place, the meeting shall be deemed to take place where the largest group of participants in number is assembled. In the absence of a majority the location of the chairman shall be deemed to be the place of the meeting.
- 28.3 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company at any time before or after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.
- 28.4 Provided (if these Articles so require) that he has declared to the Directors, in accordance with the provisions of these Articles, the nature and extent of his interest (and subject to any restrictions on voting or counting in a quorum imposed by the Directors in authorising a Relevant Interest), a Director may vote at a meeting of the Directors or of a committee of the Directors on any resolution concerning a matter in which he has an interest, whether a direct or an indirect interest, or in relation to which he has a duty and shall also be counted in reckoning whether a quorum is present at such a meeting.

- 28.5 Questions arising at any meeting of the Directors shall be decided by a majority of votes. In the case of any equality of votes, the chairman (but not any other Director chairing a meeting) shall have a second or casting vote.
- 28.6 A decision of the Directors may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing (including confirmation given by electronic means). Reference in article 7.1 of the Model Articles to article 8 of the Model Articles shall be deemed to include a reference to this article also.

## **29. Directors' interests**

### *Specific interests of a Director*

- 29.1 Subject to the provisions of the Act and provided (if these Articles so require) that he has declared to the Directors in accordance with the provisions of these Articles, the nature and extent of his interest, a Director may (save as to the extent not permitted by law from time to time), notwithstanding his office, have an interest of the following kind:
- (a) where a Director (or a person connected with him) is party to or in any way directly or indirectly interested in, or has any duty in respect of, any existing or proposed contract, arrangement or transaction with the Company or any other undertaking in which the Company is in any way interested;
  - (b) where a Director (or a person connected with him) is a director, employee or other officer of, or a party to any contract, arrangement or transaction with, or in any way interested in, any body corporate promoted by the Company or in which the Company is in any way interested;
  - (c) where a Director (or a person connected with him) is a shareholder in the Company or a shareholder in, employee, director, member or other officer of, or consultant to, a Parent Undertaking of, or a Subsidiary Undertaking of a Parent Undertaking of, the Company;
  - (d) where a Director (or a person connected with him) holds and is remunerated in respect of any office or place of profit (other than the office of auditor) in respect of the Company or body corporate in which the Company is in any way interested;
  - (e) where a Director is given a guarantee, or is to be given a guarantee, in respect of an obligation incurred by or on behalf of the Company or any body corporate in which the Company is in any way interested;
  - (f) where a Director (or a person connected with him or of which he is a member or employee) acts (or any body corporate promoted by the Company or in which the Company is in any way interested of which he is a director, employee or other officer may act) in a professional capacity for the Company or any body corporate promoted by the Company or in which the Company is in any way interested (other than as auditor) whether or not he or it is remunerated for this;
  - (g) an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - (h) any other interest authorised by ordinary resolution.

*Interests of which a Director is not aware*

- 29.2 For the purposes of this Article 29, an interest of which a Director is not aware and of which it is unreasonable to expect him to be aware shall not be treated as an interest of his.

*Accountability of any benefit and validity of a contract*

- 29.3 In any situation permitted by this Article 29 (save as otherwise agreed by him) a Director shall not by reason of his office be accountable to the Company for any benefit which he derives from that situation and no such contract, arrangement or transaction shall be avoided on the grounds of any such interest or benefit.

*Terms and conditions of Board authorisation*

- 29.4 Subject to Article 29.6, any authority given in accordance with section 175(5)(a) of the Act in respect of a Director ("**Interested Director**") who has proposed that the Directors authorise his interest ("**Relevant Interest**") pursuant to that section may, for the avoidance of doubt:

- (a) be given on such terms and subject to such conditions or limitations as may be imposed by the authorising Directors as they see fit from time to time, including, without limitation:
  - (i) restricting the Interested Director from voting on any resolution put to a meeting of the Directors or of a committee of the Directors in relation to the Relevant Interest;
  - (ii) restricting the Interested Director from being counted in the quorum at a meeting of the Directors or of a committee of the Directors where such Relevant Interest is to be discussed; or
  - (iii) restricting the application of the provisions in Articles 30.7 and 30.8, so far as is permitted by law, in respect of such Interested Director;
- (b) be withdrawn, or varied at any time by the Directors entitled to authorise the Relevant Interest as they see fit from time to time; and

subject to Article 29.6, an Interested Director must act in accordance with any such terms, conditions or limitations imposed by the authorising Directors pursuant to section 175(5)(a) of the Act and this Article 29.

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

- 29.5 Subject to Article 29.8 (and without prejudice to any equitable principle or rule of law which may excuse or release the Director from disclosing information, in circumstances where disclosure may otherwise be required under this Article 29), if a Director, otherwise than by virtue of his position as director, receives information in respect of which he owes a duty of confidentiality to a person other than the Company, he shall not be required:
- (a) to disclose such information to the Company or to any Director, or to any officer or employee of the Company; or
  - (b) otherwise to use or apply such confidential information for the purpose of or in connection with the performance of his duties as a Director.

- 29.6 Where such duty of confidentiality arises out of a situation in which a Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company, Article 29.7 shall apply only if the conflict arises out of a matter which falls within Article 29.1 or has been authorised under section 175(5)(a) of the Act.

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

- 29.7 Where a Director has an interest which can reasonably be regarded as likely to give rise to a conflict of interest, the Director shall take such additional steps as may be necessary or desirable for the purpose of managing such conflict of interest, including compliance with any procedures laid down from time to time by the Directors for the purpose of managing conflicts of interest generally and/or any specific procedures approved by the Directors for the purpose of or in connection with the situation or matter in question, including without limitation:
- (a) absenting himself from any discussions, whether in meetings of the Directors or otherwise, at which the relevant situation or matter falls to be considered; and
  - (b) excluding himself from documents or information made available to the Directors generally in relation to such situation or matter and/or arranging for such documents or information to be reviewed by a professional adviser to ascertain the extent to which it might be appropriate for him to have access to such documents or information.

*Requirement of a Director to declare an interest*

- 29.8 Subject to section 182 of the Act, a Director shall declare the nature and extent of any interest permitted by Article 29.1 at a meeting of the Directors, or by general notice in accordance with section 184 (notice in writing) or section 185 (general notice) of the Act or in such other manner as the Directors may determine, except that no declaration of interest shall be required by a Director in relation to an interest:
- (a) falling under Article 29.1(g);
  - (b) if, or to the extent that, the other Directors are already aware of such interest (and for this purpose the other Directors are treated as aware of anything of which they ought reasonably to be aware); or
  - (c) if, or to the extent that, it concerns the terms of his service contract (as defined by section 227 of the Act) that have been or are to be considered by a meeting of the Directors, or by a committee of Directors appointed for the purpose under these Articles.

*Shareholder approval*

- 29.9 Subject to section 239 of the Act, the Company may by ordinary resolution ratify any contract, transaction or arrangement, or other proposal, not properly authorised by reason of a contravention of any provisions of this Article 29.
- 29.10 For the purposes of this Article 29:
- (a) a conflict of interest includes a conflict of interest and duty and a conflict of duties;
  - (b) the provisions of section 252 of the Act shall determine whether a person is connected with a Director;
  - (c) a general notice to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or

arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified.

### **30. Notices**

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

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

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

Notices shall be given and documents supplied in accordance with the procedures set out in the Act, except to the extent that a contrary provision is set out in this Article 30.

#### *Notices in hard copy form*

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

- (a) to the Company or any other company at its registered office; or
- (b) to the address notified to or by the Company for that purpose; or
- (c) in the case of an intended recipient who is a member or his legal personal representative or trustee in bankruptcy, to such member's address as shown in the Company's register of members; or
- (d) in the case of an intended recipient who is a Director, to his address as shown in the register of Directors; or
- (e) to any other address to which any provision of the Companies Acts (as defined in the Act) authorises the document or information to be sent or supplied; or
- (f) where the Company is the sender, if the Company is unable to obtain an address falling within one of the addresses referred to in (a) to (e) above, to the intended recipient's last address known to the Company.

30.3 Any notice or other document in hard copy form given or supplied under these Articles shall be deemed to have been served and be effective:

- (a) if delivered, at the time of delivery;
- (b) if posted, on receipt or 48 hours after the time it was posted, whichever occurs first.

#### *Notices in electronic form*

30.4 Subject to the provisions of the Act, any notice or other document in electronic form given or supplied under these Articles may:



- (a) if sent by email (provided that an address for email has been notified to or by the Company for that purpose), be sent by the relevant form of communication to that address;
- (b) if delivered or sent by first class post (airmail if overseas) in an electronic form (such as sending a disk by post), be so delivered or sent as if in hard copy form under Article 30.2; or
- (c) be sent by such other electronic means (as defined in section 1168 of the Act) and to such address(es) as the Company may specify:
  - (i) on its website from time to time; or
  - (ii) by notice (in hard copy or electronic form) to all members of the Company from time to time.

30.5 Any notice or other document in electronic form given or supplied under these Articles shall be deemed to have been served and be effective:

- (a) if sent by email (where an address for email has been notified to or by the Company for that purpose), on receipt or at 9.00 am on the next Business Day after the time it was sent, whichever occurs first;
- (b) if posted in an electronic form, on receipt or at 9.00 am on the second Business Day after posting, whichever occurs first;
- (c) if delivered in an electronic form, at the time of delivery; and
- (d) if sent by any other electronic means as referred to in Article 30.4(c), at the time such delivery is deemed to occur under the Act.

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

*Notice by means of a website*

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

*General*

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

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

### 31. Indemnities and insurance

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

- (a) every Director or other officer of the Company (excluding the Company's auditors) shall be entitled to be indemnified by the Company (and the Company shall also be able to indemnify directors of any associated company (as defined in section 256 of the Act)) out of the Company's assets against all liabilities incurred by him in the actual or purported execution or discharge of his duties or the exercise or purported exercise of his powers or otherwise in relation to or in connection with his duties, powers or office, provided that no Director or any associated company is indemnified by the Company against:
  - (i) any liability incurred by the director to the Company or any associated company; or
  - (ii) any liability incurred by the director to pay a fine imposed in criminal proceedings or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirements of a regulatory nature; or
  - (iii) any liability incurred by the director:
    - (A) in defending any criminal proceedings in which he is convicted;
    - (B) in defending civil proceedings brought by the Company or any associated company in which final judgment (within the meaning set out in section 234 of the Act) is given against him; or
    - (C) in connection with any application under sections 661(3) or 661(4) or 1157 of the Act (as the case may be) for which the court refuses to grant him relief,

save that, in respect of a provision indemnifying a director of a company (whether or not the Company) that is a trustee of an occupational pension scheme (as that term is used in section 235 of the Act) against liability incurred in connection with that company's activities as trustee of the scheme, the Company shall also be able to indemnify any such director without the restrictions in Articles 31.1(a)(i), 31.1(a)(iii)(B) and 31.1(a)(iii)(C) applying;

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

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

**32. Secretary**

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

**33. Lien**

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

33.2 The Company's Lien over a Share:

- (a) shall take priority over any third party's interest in that Share; and
- (b) 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.

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.

33.3 Subject to the provisions of this Article 33, if:

- (a) a notice complying with Article 33.4 (a "**Lien Enforcement Notice**") has been given by the Company in respect of a Share; and
  - (b) the person to whom the notice was given has failed to comply with it,
- the Company shall be entitled to sell that Share in such manner as the Directors decide.

33.4 A Lien Enforcement Notice:

- (a) may only be given by the Company in respect of a Share which is subject to the Company's Lien, in respect of which a sum is payable and the due date for payment of that sum has passed;
- (b) must specify the Share concerned;
- (c) must require payment of the sum payable within 14 days of the notice;
- (d) must be addressed either to the holder of the Share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise; and
- (e) must state the Company's intention to sell the Share if the notice is not complied with.

33.5 Where any Share is sold pursuant to this Article 33:

- (a) the Directors may authorise any person to execute an instrument of transfer of the Share to the purchaser or a person nominated by the purchaser; and

- (b) the transferee shall not be bound to see to the application of the consideration, and the transferee's title shall not be affected by any irregularity in or invalidity of the process leading to the sale.
- 33.6 The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied:
  - (a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the Lien Enforcement Notice;
  - (b) secondly, to the person entitled to the Share at the date of the sale, but only after the certificate for the Share sold has been surrendered to the Company for cancellation or an indemnity for lost certificate in a form acceptable to the Board has been given for any lost certificate, and subject to a lien equivalent to the Company's Lien for any money payable (whether or not it is presently payable) as existing upon the Share before the sale in respect of all Shares registered in the name of that person (whether as the sole registered holder or as one of several joint holders) after the date of the Lien Enforcement Notice.
- 33.7 A statutory declaration by a Director or the company secretary that the declarant is a Director or the company secretary and that a Share has been sold to satisfy the Company's Lien on a specified date:
  - (a) shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share; and
  - (b) subject to compliance with any other formalities of transfer required by these Articles or by law, shall constitute a good title to the Share.
- 34. Call Notices**
- 34.1 Subject to these Articles and the terms on which Shares are allotted, the Directors may send a notice (a "**Call Notice**") to a Shareholder who has not fully paid for that Shareholder's Share(s) requiring the Shareholder to pay the Company a specified sum of money (a "**call**") which is payable to the Company by that Shareholder when the Directors decide to send the Call Notice.
- 34.2 A Call Notice:
  - (a) may not require a Shareholder to pay a call which exceeds the total sum unpaid on that Shareholder's Shares (whether as to the Share's nominal value or any sum payable to the Company by way of premium);
  - (b) shall state when and how any call to which it relates it is to be paid; and
  - (c) may permit or require the call to be paid by instalments.
- 34.3 A Shareholder shall comply with the requirements of a Call Notice, but no Shareholder shall be obliged to pay any call before 14 days have passed since the notice was sent.
- 34.4 Before the Company has received any call due under a Call Notice the Directors may:
  - (a) revoke it wholly or in part; or
  - (b) specify a later time for payment than is specified in the Call Notice, by a further notice in writing to the Shareholder in respect of whose Shares the call is made.

- 34.5 Liability to pay a call shall not be extinguished or transferred by transferring the Shares in respect of which it is required to be paid. Joint holders of a Share shall be jointly and severally liable to pay all calls in respect of that Share.
- 34.6 Subject to the terms on which Shares are allotted, the Directors may, when issuing Shares, provide that Call Notices sent to the holders of those Shares may require them to:
- (a) pay calls which are not the same; or
  - (b) pay calls at different times.
- 34.7 A Call Notice need not be issued in respect of sums which are specified, in the terms on which a Share is issued, as being payable to the Company in respect of that Share (whether in respect of nominal value or premium):
- (a) on allotment;
  - (b) on the occurrence of a particular event; or
  - (c) on a date fixed by or in accordance with the terms of issue.
- 34.8 If the due date for payment of such a sum as referred to in Article 34.7 has passed and it has not been paid, the holder of the Share concerned shall be treated in all respects as having failed to comply with a Call Notice in respect of that sum, and shall be liable to the same consequences as regards the payment of interest and forfeiture.
- 34.9 If a person is liable to pay a call and fails to do so by the Call Payment Date (as defined below):
- (a) the Directors may issue a notice of intended forfeiture to that person; and
  - (b) until the call is paid, that person shall be required to pay the Company interest on the call from the Call Payment Date at the Relevant Rate (as defined below).
- 34.10 For the purposes of Article 34.9:
- (a) the "**Call Payment Date**" shall be the time when the call notice states that a call is payable, unless the Directors give a notice specifying a later date, in which case the "**Call Payment Date**" is that later date;
  - (b) the "**Relevant Rate**" shall be:
    - (i) the rate fixed by the terms on which the Share in respect of which the call is due was allotted;
    - (ii) such other rate as was fixed in the Call Notice which required payment of the call, or has otherwise been determined by the Directors; or
    - (iii) if no rate is fixed in either of these ways, five per cent. a year,

provided that the Relevant Rate shall not exceed by more than five percentage points the base lending rate most recently set by the Monetary Policy Committee of the Bank of England in connection with its responsibilities under Part 2 of the Bank of England Act 1998(a).
- 34.11 The Directors may waive any obligation to pay interest on a call wholly or in part.

- 34.12 The Directors may accept full payment of any unpaid sum in respect of a Share despite payment not being called under a Call Notice.

**35. Forfeiture of Shares**

- 35.1 A notice of intended forfeiture:

- (a) may be sent in respect of any Share for which there is an unpaid sum in respect of which a call has not been paid as required by a Call Notice;
- (b) shall be sent to the holder of that Share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise;
- (c) shall require payment of the call and any accrued interest and all expenses that may have been incurred by the Company by reason of such non-payment by a date which is not fewer than 14 days after the date of the notice;
- (d) shall state how the payment is to be made; and
- (e) shall state that if the notice is not complied with, the Shares in respect of which the call is payable will be liable to be forfeited.

- 35.2 If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, then the Directors may decide that any Share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited Shares and not paid before the forfeiture.

- 35.3 Subject to these Articles, the forfeiture of a Share extinguishes:

- (a) all interests in that Share, and all claims and demands against the Company in respect of it; and
- (b) all other rights and liabilities incidental to the Share as between the person whose Share it was prior to the forfeiture and the Company.

- 35.4 Any Share which is forfeited in accordance with these Articles:

- (a) shall be deemed to have been forfeited when the Directors decide that it is forfeited;
- (b) shall be deemed to be the property of the Company; and
- (c) may be sold, re-allotted or otherwise disposed of as the Directors think fit.

- 35.5 If a person's Shares have been forfeited then:

- (a) the Company shall send that person notice that forfeiture has occurred and record it in the register of members;
- (b) that person shall cease to be a Shareholder in respect of those Shares;
- (c) that person shall surrender the certificate for the Shares forfeited to the Company for cancellation;
- (d) that person shall remain liable to the Company for all sums payable by that person under the Articles at the date of forfeiture in respect of those Shares, including any interest (whether accrued before or after the date of forfeiture); and

- (e) the Directors shall be entitled to waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the Shares at the time of forfeiture or for any consideration received on their disposal.
- 35.6 At any time before the Company disposes of a forfeited Share, the Directors shall be entitled to decide to cancel the forfeiture on payment of all calls and interest and expenses due in respect of it and on such other terms as they think fit.
- 35.7 If a forfeited Share is to be disposed of by being transferred, the Company shall be entitled to receive the consideration for the transfer and the Directors shall be entitled to authorise any person to execute the instrument of transfer.
- 35.8 A statutory declaration by a Director or the company secretary that the declarant is a Director or the company secretary and that a Share has been forfeited on a specified date:
  - (a) shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share; and
  - (b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the Share.
- 35.9 A person to whom a forfeited Share is transferred shall not be bound to see to the application of the consideration (if any) nor shall that person's title to the Share be affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the Share.
- 35.10 If the Company sells a forfeited Share, the person who held it prior to its forfeiture shall be entitled to receive the proceeds of such sale from the Company, net of any commission, and excluding any sum which:
  - (a) was, or would have become, payable; and
  - (b) had not, when that Share was forfeited, been paid by that person in respect of that Share,but no interest shall be payable to such a person in respect of such proceeds and the Company shall not be required to account for any money earned on such proceeds.

### **36. Surrender of Shares**

- 36.1 A Shareholder shall be entitled to surrender any Share:
  - (a) in respect of which the Directors issue a notice of intended forfeiture;
  - (b) which the Directors forfeit; or
  - (c) which has been forfeited.The Directors shall be entitled to accept the surrender of any such Share.
- 36.2 The effect of surrender on a Share shall be the same as the effect of forfeiture on that Share.
- 36.3 The Company shall be entitled to deal with a Share which has been surrendered in the same way as a Share which has been forfeited.

**37. Authority to capitalise and appropriation of capitalised sums**

37.1 The Board may, if authorised to do so by an ordinary resolution (with Investor Consent):

- (a) decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and
- (b) appropriate any sum which they so decide to capitalise (a "**Capitalised Sum**") to such Shareholders and in such proportions as the Board may in their absolute discretion deem appropriate (the "**Shareholders Entitled**").

Article 35 of the Model Articles shall not apply to the Company.

37.2 Capitalised Sums may be applied on behalf of such Shareholders and in such proportions as the Board may (in its absolute discretion) deem appropriate.

37.3 Any Capitalised Sum may be applied in paying up new Shares up to the nominal amount (or such amount as is unpaid) equal to the Capitalised Sum, which are then allotted credited as fully paid to the Shareholders Entitled or as they may direct.

37.4 A Capitalised Sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the Company which are allotted credited as fully paid to the Shareholders Entitled or as they may direct.

37.5 Subject to the Articles the Board may:

- (a) apply Capitalised Sums in accordance with Articles 37.3 and 37.4 partly in one way and partly another;
- (b) make such arrangements as they think fit to deal with Shares or debentures becoming distributable in fractions under this Article 37; and
- (c) authorise any person to enter into an agreement with the Company on behalf of all of the Shareholders Entitled which is binding on them in respect of the allotment of Shares or debentures under this Article 37.