



Companies House  
— for the record —

# BR2

CHFP000

This form should be completed in black.

## Return by an overseas company subject to branch registration of an alteration to constitutional documents

(Pursuant to Schedule 21A, paragraph 7(1) of the Companies Act 1985)

Company number

FC026138

Company name

Priory Investments Holdings Limited

Branch number

BR008328

Branch name

Priory Investments Holdings Limited

### CONSTITUTIONAL DOCUMENTS

\* Delete as applicable

Note:- A company is only required to make a return in respect of a branch where the document altered is included amongst the material registered in respect of that branch.

On 

Day	Month	Year
2	6	10

 an alteration was made to the constitutional document(s) of the company

A copy of the new instrument is attached

~~A certified translation is also attached~~

RE-SCAN

Signed

  
\* Director / Secretary / Permanent representative

Date

10/06/06

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record.

The Secretary, Priory Investments Holdings Limited,

250 Bishopsgate, London EC2M 4AA

Tel 020 7678 1942

DX number

DX exchange



A40  
COMPANIES HOUSE

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02/02/2006

When you have completed and signed the form please send it to the Registrar of Companies at:

Companies House, Crown Way, Cardiff, CF14 3UZ

DX 33050 Cardiff

for branches registered in England and Wales

or

Companies House, 37 Castle Terrace, Edinburgh, EH1 2EB

DX 235 Edinburgh

for branches registered in Scotland

or LP - 4 Edinburgh 2

Form revised 10/03

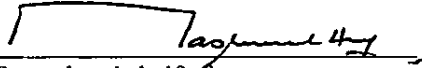
10-2-06 117

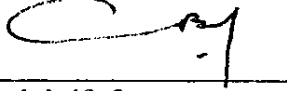
**PRIORY INVESTMENTS HOLDINGS LIMITED**  
(the "Company")

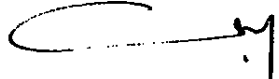
WRITTEN SPECIAL RESOLUTION OF THE HOLDERS OF ALL THE ISSUED A ORDINARY SHARES AND B ORDINARY SHARES IN THE CAPITAL OF THE COMPANY PASSED ON 26 OCTOBER 2005 AND SIGNED IN THE UNITED KINGDOM

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**IT IS HEREBY RESOLVED AS A SPECIAL RESOLUTION THAT** the Articles of Association of the Company be and are hereby amended and restated in the form attached hereto.

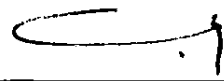
  
for and on behalf of  
**ABN AMRO European Investments S.a.r.l**  
(in its capacity as holder of 14,291,166 A  
Ordinary Shares in the capital of the Company)

X   
for and on behalf of  
**Chiltern Trust Company (Jersey) Limited**  
(in its capacity as holder of 700,000 A  
Ordinary Shares and 3,800,000 B Ordinary  
Shares in the capital of the Company)

X   
**Paul Greensmith**  
(in his capacity as holder of 200,000 B  
Ordinary Shares in the capital of the Company)

We hereby consent to the above.

X   
for and on behalf of  
**Chiltern Trust Company (Jersey) Limited**  
(in its capacity as holder of 4,500,000 Non  
Voting B Ordinary Shares and 9,200,000  
Preference Shares in the Capital of the Company)

X   
**Paul Greensmith**  
(in his capacity as holder of 300,000 Non  
Voting B Ordinary Shares and 1,500,000  
Preference Shares in the capital of the Company)

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The Companies Law (2004 Revision)

Company Limited By Shares

**AMENDED AND RESTATED**

**ARTICLES OF ASSOCIATION**

**OF**

**PRIORY INVESTMENTS HOLDINGS LIMITED**

Incorporated on 1 July 2005  
Adopted By Special Resolution  
passed on 26 October 2005

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**RE-SCAN**

**COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION**

**of**

**Priory Investments Holdings Limited (the "Company")**

**Adopted by Special Resolution passed on 26 October 2005**

FRIDAY

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\*AJUJU84C\*  
13/03/2009  
COMPANIES HOUSE

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**PRELIMINARY**

**1 Table A not to apply**

In these Articles Table A in the First Schedule to the Statute (as defined below) shall not apply to the Company.

**2 Interpretation**

In these Articles (if not inconsistent with the subject or context) the words and expressions set out in the first column below shall bear the meanings set opposite to them, respectively:

<b>"A Ordinary Shareholder"</b>	means a Member who holds A Ordinary Shares;
<b>"A Ordinary Shares"</b>	means the A Ordinary Shares of a par value of £1.00 each in the capital of the Company having the rights set out in these Articles;
<b>the "Act"</b>	means the Companies Act 1985 of the United Kingdom as amended by the Companies Act 1989 of the United Kingdom;
<b>"acting in concert"</b>	shall have the meaning set out in the City Code on Takeovers and Mergers of the United Kingdom, save that the parties to the Shareholders' Agreement shall not be deemed to be acting in concert solely by reason of their having executed and their acting in accordance with the Shareholders' Agreement;
<b>"Auditors"</b>	means the auditors of the Company, from time to time;
<b>"B Ordinary Shareholder"</b>	means a Member who holds B Ordinary Shares;
<b>"B Ordinary Shares"</b>	means the B Ordinary Shares of a par value of £1.00 each in the capital of the Company having the rights set out in these Articles;
<b>"Bank"</b>	means ABN AMRO Bank N.V. in its capacity as facility agent under the terms of the Facility Agreements;
<b>"Board"</b>	means the board of Directors of the Company or an authorised committee of the Board;
<b>"Business Day"</b>	means a day which is not a Saturday or Sunday or a bank or public

	holiday in England and Wales;
<b>"Cash Payments / Investment Commitment"</b>	means all sums actually paid in cash from time to time by the Investors to the Group in subscribing for shares and making loans including the amount advanced by the Investors on the Loan Notes (but excluding any amounts advanced pursuant to the Financing Documents);
<b>"Cash Receipts"</b>	means any cash receipts by the Investors from the Group from time to time including without limitation any cash redemptions of capital, the gross interest on the Loan Notes and other advances (if any) received in cash, any dividends received in cash (together with the associated tax credit), to the extent that any distribution <i>in specie</i> is converted into cash on or before the Conversion Date, the cash value at the time of such conversion together with the associated tax credit at the time of the distribution, the repayment in cash of any of the principal on the Loan Note and other advances (if any) on or before the Conversion Date, the proceeds of sale of any Loan Note in cash or other advances (if any) sold on or prior to the Conversion Date, any rolled up interest and arrears of dividend received in cash at the Conversion Date, the proceeds of sale of any equity in the capital of the Company by the Investors prior to the Conversion Date, the amount of the Equity Capitalisation of the Company attributable to the Investors at the Conversion Date (computed on the basis that the event triggering the Conversion Date has completed) and the amount of any cash or non-cash consideration received or potentially receivable by the Investors following the Conversion Date which will be valued at its market value at the date of receipt, which if the parties cannot agree any such value within 14 days will be determined by the Independent Expert in accordance with Article 43; but excluding any fees and payment of expenses received from the Group or any amounts repaid pursuant to the Financing Documents;
<b>"Connected Person"</b>	shall have the meaning given to that expression in Section 839 of the Income and Corporation Taxes Act 1988 of the United Kingdom;
<b>"Consultant"</b>	means any consultant appointed by a Group company;
<b>"Conversion Date"</b>	means: <ul style="list-style-type: none"> <li>(i) in relation to a Liquidation, the date of the Liquidation;</li> <li>(ii) in relation to a Listing, the date of the Listing; and</li> <li>(iii) in relation to a Sale, the date upon which an agreement for Sale is completed and the purchase price is paid or due to be paid;</li> </ul>
<b>"Deferred Share"</b>	means a Deferred Share of a par value of £1.00 in the capital of the Company arising out of the re-designation of Non Voting B Ordinary Shares pursuant to Article 10 and having the rights set out in Article 11;

<b>"Deferred Shareholder"</b>	means a Member who holds Deferred Shares;
<b>"Directors"</b>	means the directors for the time being of the Company or a quorum of such directors present at a meeting of the directors and <b>"Director"</b> shall mean any one of them;
<b>"EBT"</b>	means any employee share scheme of the Company and its subsidiary undertakings;
<b>"Equity Capitalisation"</b>	means: <ul style="list-style-type: none"> <li>(a) if the Conversion Date occurs by virtue of a Listing the aggregate value attributable to all of the Ordinary Shares at the date of such Listing (or shares deriving therefrom following any capital reorganisation effected immediately prior to the Listing) (the <b>"Relevant Shares"</b>) as determined by the financial adviser of the Company in relation to the Listing by reference to the Listing Price; or</li> <li>(b) if the Conversion Date occurs by virtue of a Sale, the aggregate consideration attributable to all of the Ordinary Shares whether payable on or following the Conversion Date. If some Ordinary Shares are already held by the relevant purchaser, so that the offer does not extend to all the Ordinary Shares, the value of the aggregate consideration shall be increased pro rata; or</li> <li>(c) if the Conversion Date occurs by virtue of a Liquidation, the aggregate amount which the holders of the Ordinary Shares receive whether payable on or following the Conversion Date in respect of their shareholdings on a Liquidation;</li> </ul>
<b>"Executives"</b>	means each of Chai Patel, Paul Greensmith, Stephen Bradshaw and Christopher Thompson;
<b>"Exit"</b>	means a Liquidation, Sale or Listing;
<b>"Facility Agreement"</b>	means the OpCo Facility Agreement and the PropCo Facility Agreement;
<b>"Family Trusts"</b>	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 whosoever 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 that individual Member and/or their Connected Persons; and so that for this purpose a person shall be considered to be beneficially interested if such Share or the income thereof is or may become 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 or may become liable to be 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;

**"Financing Documents"** means the Facility Agreement and the subordination agreement and any other financing documents to be entered into pursuant to the Facility Agreement by certain subsidiaries of the Company, as the same may be amended;

**"FRS"** means Financial Reporting Standards issued by the Accounting Standards Board (as amended or reissued from time to time);

**"Group"** means the Company and its subsidiaries and subsidiary undertakings;

**"Independent Expert"** means an umpire (acting as an expert and not as an arbitrator) nominated by the parties concerned or, in the case of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales;

**"Individual Permitted Transferee"** shall bear the meaning given to it in Article 39.1.1;

**"Investment Fund"** means any person, company, trust, limited partnership or fund holding shares for investment purposes;

**"Investors"** means the Lead Investor and any person to whom it shall have transferred any part of its shareholding in the Company (and for the avoidance of doubt any reference to Investors prior to any such transfer shall be to the Lead Investor);

**"Investor Director"** means a director appointed by the Lead Investor or a Nominated Investor pursuant to Article 82 and "Investor Directors" shall be construed accordingly;

**"IRR"** means the annual percentage rate by which the Cash Payments (expressed as negative numbers) and Cash Receipts (expressed as positive numbers) are discounted back (based on a daily computation) from the date of the Cash Payment or Cash Receipt to the date of completion to arrive at an aggregate net present value at the date of completion of nil;

**"Lead Investor"** means ABN AMRO European Investments S.a.r.l (for so long as it is a Shareholder) or, in the case of the transfer of a majority of its Shares (excluding for purposes of determining such majority any Shares transferred on a syndication pursuant to Article 39.1.8), to Permitted Transferees, such Permitted Transferees;

**"Lead Investor Director"** means a director appointed by the Lead Investor pursuant to Article 82.1 and "Lead Investor Directors" shall be construed accordingly;

**"Liquidation"** means the making of a winding-up order by the Court or the passing of a resolution by the members that the Company be wound up

	(other than for the purposes of a solvent reconstruction, amalgamation or merger of the Company);
<b>"Listing"</b>	means the admission of any of the Ordinary Shares or of the ordinary shares of a holding company of the Company to the Official List in the United Kingdom becoming effective, or the granting of permission for any of the Ordinary Shares or shares of a holding company to be dealt on another recognised investment exchange (as defined by section 285(1)(a) of the Financial Services and Markets Act 2000 of the United Kingdom) or the Alternative Investment Market, regulated by the London Stock Exchange;
<b>"Listing Price"</b>	means the price per Share at which any Ordinary Shares or ordinary shares of a holding company of the Company are sold, offered to be sold or offered as stated in any document required to be published in connection with a Listing (in the case of an offer for sale being the underwritten price or, in the case of an offer for sale by tender, the striking price under such offer and in the case of a placing the price at which such Ordinary Shares or ordinary shares of a holding company of the Company are sold under the placing);
<b>"Loan Note"</b>	means any loan note issued by the Company pursuant to the Loan Note Instruments;
<b>"Loan Note Instruments"</b>	means the instruments created by the Company on 13 July 2005 constituting the Loan Notes and dealing with matters relating, <i>inter alia</i> , to the issue and redemption of the Loan Notes, as amended or substituted from time to time;
<b>"London Stock Exchange"</b>	means the London Stock Exchange PLC;
<b>"Majority"</b>	means, as regards Members of a class or classes of Shares, a majority by reference to the number of Shares of such class or classes held and not by reference to the number of Members holding Shares of such class or classes;
<b>"Market Value"</b>	means the amount agreed between any seller of Shares and the Investors or, failing such agreement, the amount determined by an Independent Expert in accordance with Article 43;
<b>"Member"</b>	means a holder of Shares in the Company;
<b>"Member of the same Group"</b>	means, as regards any company, a company which is a holding company or a subsidiary or a subsidiary undertaking of that company or a subsidiary or a subsidiary undertaking of any such holding company;
<b>"MSS"</b>	a settlement dated 6 October 1998 and made between Dr Chaitanya Patel (as settlor) and the Alpine Trustees SA and amended by an instrument of retirement and appointment of trustees dated 26 February 1998 between Alpine Trustees S.A. and MSS (as the original trustee) and known as the Mustard Seed Settlement;



<b>"Nominated Investors"</b>	means up to three Investors (other than the Lead Investor) who have been nominated as "Nominated Investors" by the Lead Investor (such nomination to be made by serving notice in writing on the Company), provided that an Investor who has been so nominated shall automatically cease to be a Nominated Investor if it ceases to hold any Ordinary Shares in the Company;
<b>"Non Voting B Ordinary Shares"</b>	means the Non-Voting B Ordinary Shares of a par value of £1.00 each in the capital of the Company having the rights set out in these Articles;
<b>"Non Voting B Shareholders"</b>	means a Member who holds Non Voting B Ordinary Shares;
<b>"Official List"</b>	means the list maintained by the competent authority (as defined in the Financial Services and Markets Act 2000 of the United Kingdom) for the purpose of admitting securities to listing pursuant to Part VI of that Act;
<b>"OpCo Facility Agreement"</b>	means the £120,000,000 Capital Expenditure and Working Capital Facilities Agreement between, amongst others, Priory Securitisation Limited and the Bank dated 19 October 2005, as amended from time to time;
<b>"Ordinary Resolution"</b>	means a resolution passed by a simple majority of the Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution. In computing the majority when a poll is demanded regard shall be had to the number of votes to which each Member is entitled by the Articles;
<b>"Ordinary Shareholder"</b>	means a Member who holds Ordinary Shares;
<b>"Ordinary Shares"</b>	means the A Ordinary Shares, the B Ordinary Shares and the Non Voting B Ordinary Shares;
<b>"Original Member"</b>	means a Member to whom Relevant Shares were originally allotted and who is an individual;
<b>"Preference Shares"</b>	means the Preference Shares of a par value of £1 each in the capital of the Company having the rights set out in these Articles
<b>"Preference Shareholders"</b>	means the holders of Preference Shares;
<b>"PropCo Facility Agreement"</b>	means the £575,000,000 Credit Facility Agreement between, amongst others, Priory Finance Property LLP and the Bank dated 19 October 2005, as amended from time to time;
<b>"Register"</b>	means the register of Members of the Company;
<b>"Refinancing"</b>	means any transaction whereby all or part of the initial subscription price of the Loan Notes and Ordinary Shares subscribed by the Lead Investor on 5 July 2005 is repaid;

<b>"Relevant Executive"</b>	means a director or employee of, or a consultant to, the Company or any subsidiary of the Company;
<b>"Relevant Member"</b>	means a Member who is a Relevant Executive, or a Member who shall have acquired Shares directly or indirectly from a Relevant Executive pursuant to one or more permitted transfers under Article 39.1.1 (including where such Shares were subscribed by such Member and that Member would have been entitled to receive a permitted transfer from the Relevant Executive under Article 39.1.1);
<b>"Relevant Shares"</b>	means (so far as the same remain for the time being held by any Individual Permitted Transferee or by any Transferee Company) the Shares originally acquired by such person or Transferee Company and any additional Shares issued to such person or Transferee Company by way of capitalisation or acquired by such person or Transferee Company in exercise of any right or option granted or arising by virtue of the holding of such Shares or any of them or the membership thereby conferred;
<b>"Return of Investment Capital"</b>	means aggregate Cash Receipts expressed as a percentage of the Investment Commitment on completion of the Refinancing;
<b>"Sale"</b>	means the acquisition of Shares (whether through a single transaction or a series of transactions) representing not less than 50 per cent. of the Ordinary Shares by any person and any other person: <ul style="list-style-type: none"> <li>(i) who, in relation to him, is a Connected Person; or</li> <li>(ii) with whom he is acting in concert;</li> </ul> provided that a Sale shall not include any Permitted Transfer.
<b>"Shareholder"</b>	means a Member of the Company;
<b>"Shares"</b>	means the A Ordinary Shares, the B Ordinary Shares, the Non Voting B Ordinary Shares, the Preference Shares, the Deferred Shares and (1) any shares issued in exchange for those Shares or by way of conversion or reclassification and (2) any shares representing or deriving from those Shares as a result of an increase in, reorganisation or variation of the capital of the Company;
<b>"Special Resolution"</b>	has the same meaning as in the Statute, and includes a unanimous written resolution;
<b>"Statute"</b>	means the Companies Law (2004 Revision) of the Cayman Islands;
<b>"Shareholders' Agreement"</b>	means the agreement entered into on or about the date of adoption of these Articles restating the subscription and shareholders agreement dated 5 July 2005 (as amended on 23 September 2005) between (inter alia) the Executives, the Lead Investor and the Company, as amended or substituted from time to time;
<b>"Subscription Price"</b>	means, in relation to any Share, the amount paid up or credited as paid up thereon (including the full amount of any premium at which

such Share was issued whether or not such premium is applied for any purpose thereafter) or, if the share was transferred to the holder, the price at which the Share was so transferred;

**"Transferee Company"** means a company for the time being holding Shares in consequence, directly or indirectly, of a transfer or series of transfers of Shares between Members of the same Group; and

**"Voting Rights"** means the right to receive notice of, attend (in person or by proxy), speak (in person or by proxy) and vote (in person or by proxy) at General Meetings of the Company.

The expressions **"holding company"** and **"subsidiary"** and **"subsidiary undertaking"** shall have the same meanings in these Articles as their respective definitions in the Act.

The expression **"shareholders' meeting"** shall include both a General Meeting and a meeting of the holders of any class of Shares of the Company.

Words denoting the singular shall include the plural and vice versa. Words denoting the masculine shall include the feminine. Words denoting persons shall include bodies corporate and unincorporated associations.

References to any statute or statutory provision shall be construed as relating to any statutory modification or re-enactment thereof for the time being in force (whether coming into force before or after the adoption of these Articles).

Where for any purpose an Ordinary Resolution of the Company is required, a Special Resolution shall also be effective.

The expression **"address"** shall include, in relation to electronic communication, any number or address used for the purposes of such communication.

In these Articles Section 8 of the Electronic Transactions Law (2003 Revision) of the Cayman Islands shall not apply.

## **EXEMPTED COMPANY**

### **3 Exempted company**

The Company is an exempted company and accordingly any invitation to the public in the Cayman Islands to subscribe for any of its securities is prohibited.

## COMMENCEMENT OF BUSINESS

- 4 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.
- 5 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and establishment of the Company, including the expenses of registration.

## SHARE CAPITAL

### 6 Amount of share capital

The authorised share capital of the Company at the date of the adoption of these Articles is £46,900,000 divided into:

- 16,000,000 A Ordinary Shares of a par value of £1.00 each;
- 5,000,000 B Ordinary Shares of a par value of £1.00 each;
- 5,000,000 Non Voting B Ordinary Shares of a par value of £1.00;
- 15,900,000 Preference Shares of a par value of £1.00 each; and
- 5,000,000 Deferred Shares of a par value of £1.00 each.

## RIGHTS ATTACHING TO THE SHARES

### 7 Preference Shares

The rights attaching to the Preference Shares are set out below.

#### 7.1 Dividend

The Preference Shares shall not entitle the holders thereof to participate in any dividends.

#### 7.2 Return of capital

On a return of assets on a Liquidation, reduction of capital or otherwise (other than on a redemption or purchase of Shares), the assets of the Company available for distribution among the Shareholders shall be applied in paying to the Preference Shareholders, in priority to any payment to the holders of any other class of Shares:

- 7.2.1 the Subscription Price in respect of each Preference Share; and
- 7.2.2 A redemption premium (the "**Redemption Premium**") in respect of each Preference Share equal to the aggregate of:
  - (i) the figure set out in the following table as applying on the Relevant Date immediately preceding the Redemption Date; and
  - (ii) that proportion of the difference between the Applicable Premium on the Relevant Date immediately preceding the Redemption Date and the Applicable Premium on the Relevant Date immediately following the Redemption Date, based on the number of days elapsed and calculated on a straight line basis,

divided by 9,200,000.

Relevant Date	Applicable Premium
4-July-06	1,126,400
4-July-07	2,378,739
4-July-08	3,777,601
4-July-09	5,340,131
4-July-10	7,085,476
4-July-11	9,035,027
4-July-12	11,212,675
4-July -13	13,645,108
4-July-14	16,362,135
4-July-15	19,397,055

and such aggregate amount shall, subject to the Company having available profits or other monies which may be lawfully applied for such redemption, at that time become a debt due from and immediately payable by the Company to the holders of such Preference Shares ranking pari passu with all other unsecured debt of the Company.

### **7.3 Further participation**

The Preference Shares do not confer any further right of participation in the profits or assets of the Company.

### **7.4 Scheduled Redemption**

The Company shall redeem the Preference Shares on the date of the repayment in full of the last of the Loan Notes that remain in issue (a "Redemption Date").

### **7.5 Early redemption by Company**

The Company may redeem (with the written consent of a Majority of the Investors) some or all of the Preference Shares at any time by serving notice (the "Company Redemption Notice") on the Preference Shareholders specifying the number of Preference Shares to be redeemed and a date between 14 and 28 days later (a "Redemption Date") on which the redemption is to take place.

### **7.6 Redemption on Sale or Listing**

7.6.1 The Preference Shares shall be redeemed in full immediately before a Sale or Listing.

7.6.2 For the purpose of Article 7.6.1:

- (i) the Redemption Date on a Sale is the date of Sale; and
- (ii) the Redemption Date on a Listing is the day immediately before the Listing and the redemption money is to be paid immediately after the Listing.

### **7.7 Provisions applying to all redemptions**

- 7.7.1 When only some of the Preference Shares are being redeemed, the redemption shall take place as between the Preference Shareholders in proportion as nearly as possible to the holding of each Preference Shareholder of Preference Shares.
- 7.7.2 Subject to the Statute, on the relevant Redemption Date, the Company shall pay the following amount in cash in respect of each Preference Share to be redeemed:
- (i) the Subscription Price paid up on the Share; and
  - (ii) an amount of the Redemption Premium on the Share, as calculated in accordance with Article 7.2.2.

The amount payable in respect of all the Preference Shares to be redeemed comprises the "redemption money".

- 7.7.3 Subject to the Statute, on the Redemption Date, the redemption money shall become a debt due and payable by the Company to the Preference Shareholders, as long as the Company has sufficient profits and/or other lawfully available funds (including share premium) to pay the redemption money in full in respect of all the Preference Shares to be redeemed. If the Company does not have sufficient such profits and/or funds, the Company shall redeem as many of the Preference Shares as is permitted by Statute and shall redeem any remaining Preference Shares as soon as it is able to do so. If the Company is unable to pay the amounts due on redemption in full on a date fixed for redemption by reason of having insufficient available profits or not having other monies which may be lawfully applied for such redemption or otherwise fails to pay such amounts on such date, then interest shall accrue on the amount so unpaid at the rate of 12% per annum compounded on 4 July in each year in respect of the period from and including the due date down to and including the date of actual payment and shall be paid as soon thereafter as, and to the extent that, available profits or other monies that may lawfully be applied for such redemption have arisen.
- 7.7.4 Subject to the Statute, on the Redemption Date, the redemption money shall be paid to each Preference Shareholder in respect of those Preference Shares which are to be redeemed against receipt of the relevant share certificate or an indemnity in a form reasonably satisfactory to the Company in respect of a share certificate which cannot be produced. If a Preference Shareholder produces neither the share certificate nor an indemnity, the Company may retain his redemption money until delivery of the certificate or an indemnity.
- 7.7.5 The Company shall cancel share certificates in respect of redeemed Preference Shares and issue new certificates without charge in respect of any Preference Shares represented by those certificates that remain outstanding.

## **7.8 Voting**

Preference Shareholders are entitled to receive notice of and to attend and speak at General Meetings of the Company. Preference Shareholders may not vote in respect of Preference Shares at General Meetings of the Company.

## **7.9 Further Issues, Variation of Rights and other Restrictions**

**7.9.1** Save with the consent or sanction of the holder or holders of all of the Preference Shares the Company shall not:

(i) create or issue:

(a) any other preference shares ranking as regards participation in the profits or assets of the Company in some, all or any respects in priority to the Preference Shares; or

(b) any shares of any other class (or any securities convertible into any shares of any other class) ranking as regards participation in the profits or assets of the Company in some, all or any respects in priority to the Preference Shares; or

(ii) vary the rights attached to the Preference Shares.

**7.9.2** For the purposes of this Article 7.9 no consent or sanction of the holder or holders of Preference Shares shall be required in respect of any further issue of Preference Shares.

**7.9.3** For the purposes of this Article 7.9, an increase in authorised share capital shall not be deemed to be the creation of shares. The special rights attached to the Preference Shares shall not be deemed to be varied by the creation or issue of further shares ranking *pari passu* with or after the Preference Shares in all respects.

## **8 A Ordinary Shares and B Ordinary Shares**

The A Ordinary Shares and B Ordinary Shares shall entitle the holders thereof to the following rights (subject to the following restrictions):

### **8.1 Income**

Subject to the provisions of Article 126 and the Statute, dividends may be declared and paid to the holders of the Ordinary Shares pro rata to the nominal amount of the Ordinary Shares held by them and, for such purposes, the A Ordinary Shares, the B Ordinary Shares and the Non Voting B Ordinary Shares shall be treated as one class of Shares.

### **8.2 Voting**

**8.2.1** Subject to Article 8.2.2 the A Ordinary Shareholders and B Ordinary Shareholders shall be entitled to receive notice of, attend and speak at and vote at General Meetings of the Company. All resolutions shall be put to vote by way of a poll and on a poll:

(i) the A Ordinary Shareholders shall have in aggregate a number of votes equal to 84% of the aggregate number of votes able to be cast at General Meetings of the Company (and, for the purposes of calculating such aggregate number so able to be cast only, each A Ordinary Share and B Ordinary Share in issue shall be deemed to have one vote) and each A Ordinary Share shall carry a pro rata voting entitlement; and

(ii) the B Ordinary Shareholders shall have in aggregate a number of votes equal to 16% of the aggregate number of votes able to be cast at General Meetings of the Company (and, for the purposes of calculating such aggregate number so able to be cast only, each A Ordinary Share and B Ordinary Share in issue

shall be deemed to have one vote) and each B Ordinary Share shall carry a pro rata voting entitlement.

8.2.2 In the event that there is or continues to be, a breach by any member of the Group of the terms of the Financing Documents all A Ordinary Shareholders and B Ordinary Shareholders in each case who are not Investors shall not have the right to vote at any General Meeting of the Company in respect of any resolution to be passed by the Company for so long as such circumstances comprising such event continue to subsist.

### **8.3 Capital**

Subject to the rights of the Preference Shareholders on a return of capital on a Liquidation, reduction of capital or otherwise (other than on a redemption or purchase of Shares), the balance of any assets available for distribution among the Shareholders, subject to any special rights which may be attached to any other class of Shares, shall be distributed among the A Ordinary Shareholders, the B Ordinary Shareholders and the Non Voting B Ordinary Shareholders rateably according to the number of such Ordinary Shares held by them.

## **9 Rights of Non Voting B Ordinary Shares**

The Non-Voting B Ordinary Shares shall entitle the holders to the following rights (subject to the following restrictions):

### **9.1 Voting**

The holders of the Non-Voting B Ordinary Shares will not have the right to vote on any matter.

### **9.2 Other rights**

The Non Voting B Ordinary Shares shall otherwise rank in all respects *pari passu* with and have the same rights as the B Ordinary Shares.

## **10 Ratchet**

10.1 Immediately prior to the occurrence of an Exit giving rise to a Conversion Date, a number of Non Voting B Ordinary Shares (which, for the avoidance of doubt, may be zero) shall be re-designated as Deferred Shares, pro rata in respect of the holding of each Non-Voting B Ordinary Shareholder, rounded up as necessary to the nearest whole Share, as shall be determined in accordance with the principles set out in this Article 10.

10.2 The "Refinancing Ratchet Condition" is defined as a Refinancing having taken place in the period between 1 January 2007 and 31 December 2009.

10.3 The "Exit Ratchet Conditions" are defined as:

10.3.1 the IRR is greater than 20 per cent.; and

10.3.2 the Investors have received or shall be deemed to have received (on the basis that the Exit is completed) Cash Receipts equal to at least two times the Investment Commitment.

10.4 The "Catch-up Ratchet Condition" is defined as:

10.4.1 the Exit Ratchet Conditions having been met; and



10.4.2 the Investors not having received or being deemed not to have received a Return of Investment in excess of 100 per cent. pursuant to a Refinancing having taken place in the period between 1 January 2007 and 31 December 2009.

10.5 The total number of Non Voting B Ordinary Shares to be re-designated (which for the avoidance of doubt may be zero) shall be calculated in accordance with the following formula:

$(20\% \text{ minus the Refinancing Percentage minus the Exit Percentage minus the Catch-up Percentage}) / 20\% \times \text{total number of NonVoting B Ordinary Shares in issue on the Conversion Date}$

through the application of each of the following steps in order:

10.5.1 establish if the Refinancing Ratchet Condition has been satisfied. If it has, determine the Refinancing Percentage in accordance with the following formula:

**Refinancing Percentage** = Return of Investment Capital x 0.12, subject to a maximum of 12%.

If the Refinancing Ratchet Condition has not been satisfied, the Refinancing Percentage shall be zero.

10.5.2 establish if the Exit Ratchet Condition has been satisfied. If it has, determine the Exit Ratchet Percentage in accordance with the following table (the "Exit Percentage") :

**Exit Percentage Calculation**

Step	IRR	Exit Percentage
1	Less than 20%	0
2	20% or greater but less than 21%	2%
3	21% or greater but less than 22%	4%
4	22% or greater but less than 23%	6%
5	Greater than 23%	8%

10.5.3 establish if the Catch-up Ratchet Condition has been satisfied. If it has, determine the Catch-up Percentage in accordance with the following formula:

**Catch-up Percentage** =  $(12\% - \text{Refinancing Percentage}) / 12\% \times \text{Exit Percentage} \times 12/8$ .

If the Catch-up Ratchet Condition has not been satisfied, the Catch-up Percentage shall be zero.

10.6 Immediately prior to the re-designation, the Company shall require the Independent Expert to prepare a report setting out the aggregate number of NonVoting B Ordinary Shares to be re-designated as Deferred Shares and the relevant number for each NonVoting B Ordinary Shareholder based on such calculation. Such report shall be delivered to the Board and each Shareholder as soon as reasonably practicable prior to the meeting of the Company at which the share capital of the Company is reorganised prior to the approval of the Exit (the "Final Meeting"). If it is not possible to produce a final report at that time the Independent Expert

shall produce a draft report containing estimates prior to the Final Meeting and a final report as soon as practicable thereafter.

- 10.7** On the occurrence of the Exit any Deferred Shares shall either be transferred to a person nominated by the Board or (subject to the Statute) purchased by the Company for a sum of £0.01 for all Deferred Shares in issue.
- 10.8** Immediately after the occurrence of the Exit, the Company shall issue to the persons so entitled certificates for the Deferred Shares resulting from the re-designation and the certificates for the Shares falling to be re-designated shall be deemed invalid for all purposes and the relevant holders shall be bound to deliver the same to the Company for cancellation.

## **11 Deferred Shares**

- 11.1** The rights attached to and restrictions imposed on the Deferred Shares are as follows:

- 11.1.1 Income and capital**

- The Deferred Shares shall not confer on the holders thereof any entitlement to any participation in the profits or the assets of the Company.

- 11.1.2 Voting**

- The Deferred Shares shall not confer on the holders thereof any entitlement to receive notice of or to attend or vote at any General Meeting of the Company.

- 11.2** Re-designation of the NonVoting B Ordinary Shares as Deferred Shares in accordance with Article 10 shall be deemed to confer an irrevocable authority on the Company, at any time thereafter:

- 11.2.1** to appoint any person to execute (on behalf the relevant Deferred Shareholders) a transfer of such Shares and/or an agreement to transfer the same for no consideration to such person or persons as the Company may determine as custodian of such Shares; and/or

- 11.2.2** to purchase the same (in accordance with the provisions of the Statute) for not more than an aggregate sum (for all the Deferred Shares then in issue) of £0.01, without any requirement to obtain the consent or sanction of the holders thereof and, for the purposes of such purchase, to appoint a person to execute (on behalf of the relevant Deferred Shareholders) a contract for the sale to the Company of any Deferred Shares held by any such holders; and/or

- 11.2.3** pending such transfer and/or purchase, to retain the certificates for such Deferred Shares.

## **12 Increase of share capital**

- 12.1** Subject to Article 12.2, the Company may from time to time by Ordinary Resolution (and with the prior written consent of a Lead Investor Director) increase its capital by such sum to be divided into Shares of such amounts, and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe and, subject to the Statute, may by such resolution direct that new Shares or any of them will first be offered to all the holders for the time being of Shares of any class or classes in proportion to the number of such Shares held by them

respectively or may make any other provisions as to issue of the new Shares as shall be required by the Investors.

- 12.2** On any new issue of Shares all shareholders shall have the opportunity to participate in such issue pro-rata to their holdings of Shares.

### **13 Consolidation, subdivision and cancellation**

- 13.1** The Company may by Ordinary Resolution (and with the prior written consent of a Lead Investor Director):

**13.1.1** consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;

**13.1.2** cancel any Shares which, at the date of the passing of the resolution, have not been taken, or agreed to be taken, by any person and diminish the amount of its capital by the amount of the Shares so cancelled; and/or

**13.1.3** subdivide its Shares, or any of them, into Shares of a smaller amount than is fixed by the Memorandum of Association (subject to the Statute), and so that the resolution whereby any Share is subdivided may determine that, as between the holders of the Shares resulting from such subdivision, one or more of the Shares may, as compared with the others, have any such preferred, deferred or other special rights, or be subject to any such restrictions, as the Company has power to attach to unissued or new Shares.

- 13.2** Whenever as a result of a consolidation or subdivision of Shares any Members would become entitled to fractions of a Share, the Directors may, on behalf of those Members, sell the Shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the Statute, the Company) and distribute the net proceeds of sale in due proportion among those Members, and the Directors may authorise some person to transfer 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.

### **14 Redemption and Purchase of Shares**

- 14.1** Subject to the provisions of the Statute and Article 7, the Company may issue Shares that are to be redeemed or are liable to be redeemed at the option of the Shareholder or the Company. The redemption of such Shares shall be effected in such manner as the Company may, by Special Resolution, determine before the issue of the Shares.

- 14.2** Subject to the provisions of the Statute, the Company may (with the consent of a Lead Investor Director) purchase its own Shares (including any redeemable Shares) provided that the Shareholders shall have approved the manner of purchase by Ordinary Resolution.

- 14.3** The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

## **15 Reduction of capital**

Subject to the provisions of the Statute and the Articles, the Company may by Special Resolution reduce its share capital or any capital redemption reserve, share premium account or other undistributable reserve in any way.

## **SHARES**

## **16 Issue of Shares**

**16.1** All unissued Shares (including any redeemable Shares) shall be at the disposal of the Directors and they may offer, allot, issue, grant options over or otherwise dispose of them to such persons, at such times, and on such terms as they think proper.

**16.2** Save in respect of the first issue of Shares of any class, no Share of any class shall be issued otherwise than to Members holding Shares of the same class except with the prior written consent of a Lead Investor.

## **17 Rights attaching to Shares on issue**

Without prejudice to the special rights and restrictions conferred on the holders of any existing Shares or class of Shares for the time being issued, any Share in the Company may be issued with such preferred, deferred or other special rights, or subject to such restrictions, whether as regards dividend, return of capital, voting or otherwise, as the Company may from time to time by Ordinary Resolution determine (or, in the absence of any such determination, as the Directors may determine).

## **18 Commissions on issue of Shares**

The Company may exercise the powers of paying commissions conferred by the Statute to the full extent thereby permitted. The Company may also on any issue of Shares pay such brokerage as may be lawful.

## **19 Trust etc. interests not recognised**

Except as required by law, no person shall be recognised by the Company as holding any Share upon any trust, and the Company shall not be bound by or compelled in any way to recognise any equitable, contingent, future or partial interest in any Share, or any interest in any fractional part of a Share, or (except only as by these Articles or by law otherwise provided) any other right in respect of any Share, except an absolute right to the entirety thereof in the holder.

## **SHARE CERTIFICATES**

## **20 Issue of share certificates**

Every Member (except a person to whom the Company is not required by law or by the Articles to issue a certificate) whose name is entered in the Register shall upon the issue or transfer to him of such Shares be entitled without payment to a certificate therefore after allotment or after lodgement of the transfer.

**21 Form of share certificate**

Every share certificate shall be executed by the Company in such manner as the Directors may decide (which may include manual or facsimile signatures by one or more Directors) and shall specify the number and class of Shares to which it relates and the amount paid up thereon. No certificate shall be issued representing Shares of more than one class.

**22 Joint holders**

In the case of a Share held jointly by several persons, the Company shall not be bound to issue more than one certificate therefore and delivery of a certificate to one of the joint holders shall be sufficient delivery to all.

**23 Replacement of share certificates**

If a share certificate shall be damaged or defaced or alleged to have been lost, stolen or destroyed, a new certificate representing the same Shares may be issued to the holder upon request subject to delivery up of the old certificate or (if alleged to have been lost, stolen or destroyed) compliance with such conditions as to evidence and indemnity and the payment of any exceptional out-of-pocket expenses of the Company in connection with the request as the Directors may think fit.

**CALLS ON SHARES**

**24 Power to make calls**

The Directors may from time to time make calls upon the Members in respect of any moneys unpaid on their Shares (whether in respect of the nominal value or premium) subject to the terms of allotment of such Shares. A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed or as otherwise provided in such resolution and may be made payable by instalments.

**25 Liability for calls**

Each Member shall (subject to receiving at least 14 days' notice (or such shorter period as may be agreed between the Company and the relevant Member) specifying the time and place of payment) pay to the Company at the time and place specified the amount called on his Shares. The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof. A call may be wholly or partly revoked or postponed as the Directors may determine. A person upon whom a call is made shall remain liable for calls notwithstanding the subsequent transfer of the Shares in respect of which the call was made.

**26 Interest on overdue amounts**

If a sum called in respect of a Share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of it to the time of actual payment at such rate (not to exceed 15 per cent per annum) as the Directors determine but the Directors shall be at liberty in any case or cases to waive payment of such interest wholly or in part.

**27 Other sums due on shares**

Any sum (whether in respect of the nominal value or premium) payable in respect of a Share which becomes payable upon allotment or at any fixed date shall be deemed to be a call duly made and payable on the date on which by the terms of allotment the same becomes payable. In case of non-payment, all the relevant provisions of these Articles shall apply as if such sum had become payable by virtue of a call duly made and notified.

**28 Power to differentiate between holders**

The Directors may on the allotment of Shares differentiate between the holders as to the amount of calls to be paid and the times of payment.

**FORFEITURE AND LIEN**

**29 Notice on failure to pay a call**

If a Member fails to pay in full any call or instalment of a call on or before the due date for its payment, the Directors may give him at least 14 days' written notice requiring payment of the unpaid amount together with any interest which may have accrued and any expenses incurred by the Company by reason of such non-payment. The notice shall state that if it is not complied with the Shares on which the call has been made will be liable to be forfeited.

**30 Forfeiture for non-compliance**

If the notice is not complied with, any Share in respect of which it was given may be forfeited, before payment of all calls and interest due in respect thereof has been made, by a resolution of the Directors. The forfeiture shall include all dividends declared or other moneys payable in respect of the forfeited Share and not actually paid before forfeiture.

**31 Disposal of forfeited shares**

A forfeited Share shall become the property of the Company and may be sold, re-allotted or otherwise disposed of either to the person who was before such forfeiture or surrender the holder thereof or entitled thereto or to any other person upon such terms and in such manner as the Directors shall think fit and at any time before a sale, re-allotment or disposal the forfeiture or surrender may be cancelled on such terms as the Directors think fit. The Directors may, if necessary, authorise some person to transfer a forfeited or surrendered Share to any such other person as aforesaid.

**32 Holder to remain liable despite forfeiture**

A Member whose Shares have been forfeited shall cease to be a Member in respect of the Shares (and shall surrender to the Company for cancellation the certificate for such Shares) but shall remain liable to pay to the Company all moneys which at the date of forfeiture were presently payable by him to the Company in respect of the Shares with interest thereon at such rate as the Directors may determine from the date of forfeiture until payment and the Directors may at their absolute discretion enforce payment without any allowance for the value of the Shares at the time of forfeiture or for any consideration received on their disposal or waive payment in whole or in part.

**33 Lien on partly-paid shares**

The Company shall have a first and paramount lien on every Share which is not a fully-paid Share for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that Share and all expenses incurred by the Company by reason of the non-payment of the call. The Directors may waive any lien which has arisen and may resolve that any Share shall for some limited period be exempt wholly or partially from the provisions of this Article.

**34 Sale of shares subject to lien**

The Company may sell in such manner as the Directors think fit any Share on which the Company has a lien if some sum in respect of which the lien exists is presently payable and is not paid within 14 days after a written notice demanding payment and giving notice that the Share may be sold if the notice is not complied with has been given to the holder of the Share or the person entitled to it by reason of his death or bankruptcy or otherwise by operation of law.

**35 Proceeds of sale of shares subject to lien**

The net proceeds of such sale after payment of the costs of such sale shall be applied in or towards payment or satisfaction of the amount for which the lien exists so far as the same is then payable and any residue shall be paid to the person entitled to the Shares at the time of the sale upon surrender to the Company for cancellation of the certificate for the Shares sold and subject to a like lien for sums not presently payable as existed upon the Shares prior to the sale. For the purpose of giving effect to any such sale, the Directors may authorise some person to transfer the Shares sold to, or in accordance with the directions of, the purchaser.

**36 Evidence of forfeiture**

A statutory declaration by a Director or the Secretary of the Company that a Share has been duly forfeited or sold to satisfy a lien of the Company on a date stated in the declaration shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share. Such declaration shall constitute (subject to the relevant Share transfer being made, if required) a good title to the Share and the person to whom the Share is sold, re-allotted or disposed of shall not be bound to see to the application of the consideration (if any) nor shall his title to the Share be affected by any irregularity or invalidity in the proceedings relating to the forfeiture, surrender, sale, re-allotment or disposal of the Share.

## **VARIATION OF RIGHTS**

**37 Manner of variation of rights**

**37.1** Whenever the share capital of the Company is divided into different classes of Shares, the special rights attached to any class may be varied or abrogated either with:

**37.1.1** the written consent of the holders of three-quarters in nominal value of the Shares of the class; or

**37.1.2** the sanction of a Special Resolution passed at a separate meeting of the holders of the Shares of the class (but not otherwise),

and may be so varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding-up.

- 37.2** To every such separate meeting, all the provisions of these Articles relating to General Meetings and to the proceedings thereat shall *mutatis mutandis* apply, except that the necessary quorum shall be two persons (or, in circumstances where there is one holder of the Shares of any class, one person) at least holding or representing by proxy at least one-third in nominal value of the issued Shares of the class (but so that at any adjourned meeting any holder of Shares of the class present in person or by proxy shall be a quorum) and the presence of the Lead Investor shall not be required to constitute a quorum in respect of any class of Shares which is held by persons other than the Investors and that any holder of Shares of the class present in person or by proxy may demand a poll and that every such holder shall on a poll have one vote for every Share of the class held by him.
- 37.3** The foregoing provisions of this Article shall apply to the variation or abrogation of the special rights attached to some only of the Shares of any class as if each group of Shares of the class differently treated formed a separate class the special rights whereof are to be varied.

## **TRANSFER OF SHARES**

### **38 General**

No transfer of any Share in the capital of the Company shall be made or registered unless such transfer complies with the provisions of these Articles and the proposed transferee has entered into an agreement to be bound by the Shareholders' Agreement in the form required by that Agreement.

### **39 Permitted Transfers**

- 39.1** No Share may be transferred without the prior written consent of the Lead Investor Directors (and for the avoidance of doubt, all such Share transfers as are approved by the Lead Investor Directors shall be subject to Articles 40 to 43, as applicable) other than:

- 39.1.1** with the prior written consent of the Lead Investor Directors (not to be unreasonably withheld or delayed), by a Member who is an individual to:

- (i) his spouse;
- (ii) his adult children or adult step children; or
- (iii) to the trustee or trustees (the "**Trustees**") of a Family Trust,

(each an "**Individual Permitted Transferee**") and an Individual Permitted Transferee may transfer any of those Shares to any other Individual Permitted Transferee,

**Provided that:** in the event that the relevant Original Member ceases to be a Director or employee of the Company or a director or employee of any subsidiary of the Company, such Shares held by such Individual Permitted Transferee shall be subject to the provisions of Article 40, as if they constituted part of the holding of the Original Member;

- 39.1.2** by any Member which is a body corporate (the "**Original Corporate Member**"), which may transfer all or any of its Shares to any other body corporate which is, for the time



being, its subsidiary or holding company or another subsidiary of its holding company (each such body corporate being a **"Group Company"** and the transferee being the **"Corporate Permitted Transferee"**) but if the Corporate Permitted Transferee ceases to be a member of the group of the Original Corporate Member while it is a holder of Shares in the Company, it shall, within 21 days of so ceasing, transfer the Shares held by it to the Original Corporate Member or to any Group Company of the Original Corporate Member;

- 39.1.3 on and after Listing;
- 39.1.4 when required by or otherwise provided in Articles 40 to 42;
- 39.1.5 by any person entitled to Shares in consequence of the death or bankruptcy of an individual Member to any person or trustee to whom such individual Member, if not dead or bankrupt, would be permitted hereunder to transfer the same;
- 39.1.6 by a holder of Ordinary Shares which is an Investment Fund or by its trustee, custodian or nominee:
  - (i) to any trustee, nominee or custodian for such fund and vice versa;
  - (ii) to any unit holder, shareholder, partner, participant, manager or adviser (or an employee of such manager or adviser) in any such fund; or
  - (iii) to any other Investment Fund, or its trustee, nominee or custodian, managed or advised by the same manager or adviser as any such fund;
- 39.1.7 to a trustee, nominee, custodian or to a member of the same group but if the Corporate Permitted Transferee ceases to be a member of the group of the Original Corporate Member while it is a holder of Shares in the Company, it shall, within 21 days of so ceasing, transfer the Shares held by it to the Original Corporate Member or to any Group Company of the Original Corporate Member or to any of the persons referred to in sub-paragraphs (i), (ii) or (iii) of Article 39.1.6 above;
- 39.1.8 the Lead Investor may transfer all or any of its Shares pursuant to any syndication in accordance with Clause 17 of the Shareholders' Agreement;
- 39.1.9 any Investor receiving Shares pursuant to a Permitted Transfer under Article 39.1.8 may transfer such Shares to any other person with the prior written consent of the Lead Investor Directors; or
- 39.1.10 by the Lead Investor to any Investment Fund of which the Lead Investor or any affiliate of the Lead Investor is the general partner or manager or into which the Lead Investor or any affiliate of the Lead Investor has invested at least 30 per cent. of the capital raised by the Investment Fund,
- 39.1.11 by an EBT to any Group employee or by a Group employee to an EBT;
- 39.1.12 with the prior written consent of the Lead Investor Directors, by an EBT to any Consultant or by a Consultant to an EBT;
- 39.1.13 following notification to the Lead Investor Directors, by the MSS to:
  - (i) Chai Patel; or
  - (ii) Chai Patel's spouse; or

- (iii) Chai Patel's adult children or adult stepchildren; or
- (iv) to the trustee or trustees of any trust established by Chai Patel;

(each a **"MSS Permitted Transferee"**) and a MSS Permitted Transferee may transfer any of those Shares to any other MSS Permitted Transferee;

and each transfer made in accordance with the provisions of this Article 39 shall be a **"Permitted Transfer"** and each transferee shall be a **"Permitted Transferee"**.

- 39.2** Any person who is an Individual Permitted Transferee pursuant to Article 39.1.1 shall be deemed to have irrevocably appointed the Original Member as his proxy in respect of such Shares and no instrument of appointment shall be required to be deposited with the Company or any subsidiary of the Company.

#### **40 Compulsory transfer**

- 40.1** This Article 40 applies when an employee of the Company or any of its subsidiary undertakings or a Consultant (or a nominee of such employee or Consultant) who:

**40.1.1** is an Ordinary Shareholder or owns options over Ordinary Shares; and/or

**40.1.2** has made a Permitted Transfer pursuant to Article 39.1.1 to an Individual Permitted Transferee; and

**40.1.3** ceases for any reason to be (i) an employee of the Company or any of its subsidiary undertakings and does not at such time become or remain as an employee of any other member of the Group or (ii) a Consultant (the **"Departing Employee"**).

- 40.2** Within six months after the cessation of employment or consultancy, the Lead Investor Directors may serve notice (the **"Leaver Notice"**) requiring the Ordinary Shareholder (or his personal representatives in the case of his death or, as the case may be, his nominee) and/or any other Individual Permitted Transferee (the **"Compulsory Sellers"** and each a **"Compulsory Seller"**) to transfer in accordance with Articles 40.3 to 40.6 as applicable, some or all of the B Ordinary Shares and NonVoting B Shares held by the Compulsory Sellers (the **"Leaver Shares"**) to an EBT or, in the discretion of the Lead Investor, to one or more senior employees of the Company or any other member of the Group or one or more Consultants (the **"Offeree"**).

- 40.3** In the event that the Departing Employee is an Executive and if the employment or consultancy of the Departing Employee ceases for one of the reasons set out in Article 40.4 (as determined by the Lead Investor Directors) (a **"Bad Leaver"**), the Compulsory Seller(s) shall be required, if a relevant Leaver Notice shall be issued under Article 40.2, to transfer all of the B Ordinary Shares and NonVoting B Ordinary Shares held by the Compulsory Seller(s) and the transfer price shall be the price agreed between the Departing Employee and the Lead Investor as being the lower of the Subscription Price of the Leaver Shares and the Market Value of the Leaver Shares, or, if they do not agree a price within 14 days of the service of the Leaver Notice, such price as determined by the Auditors or the Independent Expert.

- 40.4** The reasons that employment or consultancy ceases for the purposes of Article 40.3 are:

**40.4.1** summary dismissal or termination for fraud or gross misconduct (other than a wrongful dismissal or unfair dismissal);

- 40.4.2 resignation other than constructive dismissal, retirement at the normal retirement age, for permanent ill-health or for permanent disability;
- 40.4.3 any other dismissals or termination for reasons other than pursuant to group reorganisations (other than a wrongful or unfair dismissal).
- 40.5 In the event that the Departing Employee is an Executive and has ceased employment or consultancy for any reason other than as set out in Article 40.4 (a "Good Leaver") then the Compulsory Seller(s) shall be required to transfer all of the Ordinary Shares held by the Compulsory Seller(s) and the Sale Price shall be the Market Value of such Shares. The Lead Investor may acting in good faith, by a Lead Investor Director direction, designate any person who would otherwise be a Bad Leaver or a Good Leaver in respect of all or part only of their Shares for the purposes of this Article 40.
- 40.6 If the Departing Employee is not an Executive, then the Compulsory Seller(s) shall be required to transfer all of the Ordinary Shares held by the Compulsory Seller(s) and the Sale Price shall be (unless otherwise determined by a Lead Investor Director) the Subscription Price of the Leaver Shares.
- 40.7 The Departing Employee (or his personal representatives, in the case of death or, as the case may be, his nominee) shall give the Company an irrevocable undertaking to apply the proceeds of sale in respect of the Sale Shares first towards the repayment of any amounts due from the Departing Employee to the Company or any of its subsidiaries.
- 40.8 The Compulsory Seller(s) shall offer the Leaver Shares to the Offeree, as defined in and identified pursuant to Article 40.2, free from all liens, charges and encumbrances and together with all rights attaching to them on the following terms of this Article.
- 40.9 Within seven days after the Transfer Price has been agreed or certified:
- 40.9.1 the Company shall confirm to or notify the Compulsory Seller(s) of the name and address of the Offeree and the number of Leaver Shares to be offered to the Offeree;
- 40.9.2 the Company shall notify the Offeree of the number of Leaver Shares on offer to him; and
- 40.9.3 the Company's notices shall specify the price per Share and state a date, between seven and 14 days later, on which the sale and purchase of the Leaver Shares is to be completed (the "Completion Date").
- 40.10 By the Completion Date, the Compulsory Seller(s) shall deliver stock transfer forms for the Leaver Shares, with the relevant share certificates, to the Company. On the Completion Date, the Company shall pay the Compulsory Seller(s), on behalf of the Offeree, the agreed or certified price for the Sale Shares to the extent the Offeree has put the Company in the requisite funds. The Company's receipt for the price shall be a good discharge to the Offeree. The Company shall hold the price in trust for the Compulsory Seller(s) without any obligation to pay interest.
- 40.11 If a Compulsory Seller fails to deliver stock transfer forms for Leaver Shares to the Company by the Completion Date, the Directors may (and shall, if requested by a Lead Investor Director) authorise any Director to transfer the Leaver Shares on behalf of the Compulsory Seller to the Offeree to the extent the Offeree has, by the Completion Date, put the Company in funds to pay the agreed or certified price for the Leaver Shares offered to him. The Directors shall then

authorise registration of the transfer once any appropriate stamp duty has been paid. The defaulting Compulsory Seller shall surrender his share certificate for the Leaver Shares to the Company. On surrender, he shall be entitled to the agreed or certified price for the Leaver Shares but shall not be entitled to any interest which may have been earned by the Company on the proceeds of sale.

**40.12** While Ordinary Shares are Leaver Shares by virtue of Article 40.2 they may not be transferred under Article 39.

**40.13** The Company shall procure that any Class B Loan Notes in issue or Preference Shares held by a Departing Employee whose shares are the subject of the provisions in this Article 40 shall be redeemed at the same time as the relevant Leavers Shares are acquired by the Offeree(s), in the case of a Bad Leaver at the lower of the subscription price of such Class B Loan Notes or Preference Shares and the Market Value thereof and in the case of a Good Leaver, at the Market Value thereof (as agreed between the Departing Employee and the Lead Investor, or, if they do not agree a price within 14 days of the Leaver Notice, such price as they may be determined by the Auditors or the Independent Expert).

#### **41 Drag along rights**

**41.1** If the Lead Investor proposes to transfer all of the A Ordinary Shares held by the Lead Investor to any person (together with persons acting in concert with such person) to a proposed purchaser(s) who has made an offer on bona fide, arm's length terms for such shares, (the "Proposed Purchaser(s)") and the Lead Investor procures that an offer is made by the Proposed Purchaser(s) to all the holders of the Shares for the consideration in Article 41.2, the Lead Investor may, by serving a compulsory purchase notice (a "Compulsory Purchase Notice") on each other Ordinary Shareholder ("Minority Shareholder"), require all the Minority Shareholders to sell all their Ordinary Shares to one or more persons identified by the member of the group of the Proposed Purchaser(s) at the consideration specified in Article 41.2.

**41.2** The consideration for each Share may take different forms but shall be the higher of:

**41.2.1** the highest consideration offered for the A Ordinary Shares whose proposed transfer has led to the offer; and

**41.2.2** the highest consideration paid by any member of the group of the Proposed Purchaser(s) for A Ordinary Shares in the 12 months up to the offer,

and in both cases, for the purposes of calculating the Transfer Price, account shall be taken of all consideration (in cash or otherwise) offered for such A Ordinary Shares 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 such A Ordinary Shares.

**41.3** The Shares subject to the Compulsory Purchase Notice shall be sold and purchased in accordance with the provisions of Articles 40.9 to 40.12 *mutatis mutandis* with:

**41.3.1** the "Completion Date" being the date which is 14 days after the service of the Compulsory Purchase Notice;

**41.3.2** "Leaver Shares" being the Ordinary Shares of the Minority Shareholder;

**41.3.3** "Compulsory Sellers" being the Minority Shareholders; and

41.3.4 "Offeree" being the persons identified as purchasers in the Compulsory Purchase Notice.

## **42 Tag along rights**

42.1 Other than pursuant to Article 39, 40 or 41, no sale or transfer for value of the legal or beneficial interest in Shares which would result, if made and registered, in a holder of Shares transferring 25% or more of the A Ordinary Shares to one or more third parties, whether in one transaction or a series of related transactions, shall be made or registered unless, before the transfer is lodged for registration, the transferor shall have first procured that an offer complying with the provisions of Article 42.2 has been made by the proposed transferee to the holders of the other Shares in the Company to acquire their entire holdings of Shares.

42.2 The offer referred to in Article 42.1 above shall:

42.2.1 be open for acceptance in England for a period of at least 20 days following the making of the offer;

42.2.2 be on terms that the purchase of any Shares in respect of which such offer is accepted shall be completed at the same time as the relevant transaction; and

42.2.3 be at the price specified in Article 41.2 (but, for the avoidance of doubt, the consideration offered may take different forms).

42.3 The Directors shall be entitled to refuse to register the transfer if the transferee(s) does/do not comply with the provisions of this Article 42 and notwithstanding any other provision in these Articles if a transferee acquires Shares without complying with this Article 42, if applicable, such Shares shall not carry any vote at any General Meeting of the Company and such Share transferee shall be deemed to grant any and all consents in respect of any matter which is consented to by the holders of a Majority of Shares of the same class (other than the transferee) until such time as an offer complying with this Article 42 is made by the transferee.

## **43 Valuation of Shares**

43.1 In the event that the Auditors or, if they are unwilling or unable to act, an Independent Expert are/is required to determine the Market Value at which Shares are to be transferred pursuant to these Articles, such price shall be the amount the Auditors or Independent Expert shall, on the application of the Directors (which application shall be made as soon as practicable following the time when it becomes apparent that a valuation pursuant to this Article 43 is required), certify in writing to be the price which, in their opinion, represents a fair value for such Shares as between a willing seller and a willing buyer as at the date the Leaver Notice is given. In making such determination, the Auditors or Independent Expert shall not take account of the fact that the Shares represent a majority or a minority interest in the Company nor the transfer restrictions which apply to the Shares under these Articles (and shall assume that the entire issued share capital of the Company is being sold). The fair value so determined shall be the "Market Value" of the Shares.

43.2 In so certifying, the Auditors or Independent Expert shall act as experts and not as arbitrators and their decision shall be conclusive and binding on the Company and upon all of its holders for the purposes of these Articles.

#### **44 Form of transfer**

Provided that all transfers of Shares are made in accordance with the provisions of these Articles, such transfers may be effected by written transfer in any usual or common form or in any other form acceptable to the Directors and may be under hand only. The instrument of transfer shall be signed by or on behalf of the transferor and (except in the case of fully-paid shares) by or on behalf of the transferee. The transferor shall remain the holder of the Shares concerned until the name of the transferee is entered in the Register in respect thereof. All instruments of transfer which are registered may be retained by the Company.

#### **45 Right to refuse registration**

**45.1** The Directors may decline to recognise any instrument of transfer relating to Shares unless it is in respect of only one class of Share and is lodged (duly stamped if required) at the registered office of the Company accompanied by the relevant share certificate(s) and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer (and, if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do).

**45.2** The Directors shall not refuse to register any transfer of a Share which is a Permitted Transfer under these Articles, but may in their absolute discretion and without assigning any reason therefore refuse to register any other transfer of Shares.

**45.3** If the Directors refuse to register an allotment or transfer of shares they shall within two months after the date on which the letter of allotment or instrument of transfer was lodged with the Company send to the allottee or transferee notice of the refusal.

#### **46 No fee on registration**

No fee will be charged by the Company in respect of the registration of any transfer or other document relating to or affecting the title to any Shares.

#### **47 Closure of Register**

The registration of transfers may be suspended at such times and for such periods (not exceeding 30 days in any year) as the Directors may from time to time determine.

### **TRANSMISSION OF SHARES**

#### **48 Persons entitled on death**

If a Member dies, the survivor(s) where he was a joint holder, and the executors or administrators of the deceased where he was a sole or only surviving holder, shall be the only persons recognised by the Company as having any title to his interest in the shares, but nothing in this Article shall release the estate of a deceased Member (whether sole or joint) from any liability in respect of any Share held by him.

#### **49 Election by persons entitled by transmission**

A person becoming entitled to a Share in consequence of the death or bankruptcy of a Member, being an individual or in consequence of the Liquidation of a Member (being a body

corporate) or otherwise by operation of law may upon supplying to the Company such evidence as the Directors may reasonably require to show his title to the Share either be registered himself as holder of the Share upon giving to the Company written notice to that effect or have some other person nominated by him registered as the transferee and upon his or that other person's agreeing to enter into an agreement to be bound by the Shareholders' Agreement in the form required by that Agreement. All these Articles relating to the right to transfer and the registration of transfers of Shares shall apply to the notice or transfer as if the notice or transfer were a transfer made by the Member registered as the holder of any such Share.

## **50 Rights of persons entitled by transmission**

Save as otherwise provided by or in accordance with these Articles, a person becoming entitled to a Share in consequence of the death or bankruptcy of a Member or otherwise by operation of law shall be entitled to the same dividends and other rights as those to which he would be entitled if he were the registered holder of the Share except that he shall not be entitled in respect of it (except with the authority of the Directors) to attend or vote at any Shareholders' meetings or separate meeting of the holders of any class of Shares until he shall have been registered as a Member in respect of the Share.

## **51 Untraced Members**

**51.1** The Company may sell the Shares of a Member or the Shares to which a person is entitled by means of transmission if and provided that:

**51.1.1** during a period of 12 years all warrants and cheques sent by the Company through the post in a pre-paid letter addressed to the Member at his registered address or to the person so entitled at the address (if any) shown in the Register as his address have remained uncashed; and

**51.1.2** the Company shall advertise both in a leading daily newspaper published in England and Wales and in a newspaper circulating in the area of the said address giving notice of its intention to sell the said Shares; and

**51.1.3** during such period of 12 years and the period of three months following such advertisements the Company has had no indication that such Member or person can be traced.

**51.2** To give effect to any such sale as is referred to in Article 51.1 the Company may appoint any person to execute as transferor an instrument of transfer of such Shares or any of them and such instrument of transfer shall be as effective as if it had been executed by the registered holder of or person entitled by transmission to such Shares. A statutory declaration in writing that the declarant is a Director or Secretary of the Company and that a Share has been duly sold by the Company in accordance with its powers under Article 51.1 on the date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the Share. The Company shall account to the Member or other person entitled to such Shares for the net proceeds of such sale and shall be deemed to be his debtor, and not a trustee for him in respect of the same. Any moneys not accounted for to the Member or other person entitled to such Shares shall be carried to a separate account and shall be a permanent debt of the Company. Moneys carried to such separate account may either be employed in the business of the Company or invested in such investments (other

than Shares of the Company or its holding company, if any) as the Directors may from time to time determine.

## **GENERAL MEETINGS**

### **52 Annual and Extraordinary General Meetings**

- 52.1** An Annual General Meeting shall be held once in every year, at such time (within a period of not more than 15 months after the holding of the last preceding Annual General Meeting) and place as may be determined by the Directors subject to Article 52.2. All other General Meetings shall be called Extraordinary General Meetings. All General Meetings shall be held within the United Kingdom.
- 52.2** All General Meetings shall be held between the hours of 9.30 a.m. and 6.00 p.m. on a Business Day and within 100 miles of the City of London, unless otherwise agreed by a Lead Investor Director.

### **53 Convening of General Meetings**

- 53.1** The Directors may call General Meetings, and they shall on a Members' requisition forthwith proceed to convene an Extraordinary General Meeting of the Company.
- 53.2** A Members' requisition is a requisition of Members of the Company holding at the date of deposit of the requisition not less than ten per cent. in par value of the capital of the Company which as at that date carries the right of voting at General Meetings of the Company.
- 53.3** The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the Company and may consist of several documents in like form each signed by one or more requisitionists.
- 53.4** If the Directors do not within twenty-one days from the date of the deposit of the requisition duly proceed to convene a General Meeting to be held within a further twenty-one days, the requisitionists, or any of them representing more than one-half of the total voting rights of all them, may themselves convene a General Meeting, but any meeting so convened shall not be held after the expiration of three months after the expiration of the said twenty-one days.
- 53.5** A General Meeting convened as aforesaid by requisitionists shall be convened in the same manner as nearly as possible as that in which general meetings are to be convened by Directors.

## **NOTICE OF GENERAL MEETINGS**

### **54 Notice of General Meetings**

- 54.1** An Annual General Meeting and any Extraordinary General Meeting at which it is proposed to pass a Special Resolution or a resolution appointing a person as a Director shall be called by at least 21 clear days' written notice and any other Extraordinary General Meeting by at least 14 clear days' written notice. A General Meeting may be called at shorter notice if it is so agreed:
- 54.1.1** in the case of an Annual General Meeting, by all the Members entitled to attend and vote thereat; and



54.1.2 in the case of an Extraordinary General Meeting, by a Majority in number of the Members having a right to attend and vote thereat, being a majority together holding not less than 95 per cent in nominal value of the Shares giving that right.

54.2 Notice of every General Meeting shall be given to all Members other than such as, under the provisions of these Articles or the terms of issue of the Shares they hold, are not entitled to receive such notices from the Company, to all persons entitled to a Share in consequence of the death or bankruptcy of a Member or Liquidation if the Member is a body corporate (provided the address of any such person has been given to the Company) and to the Directors.

## **55 Contents of notice of General Meetings**

Every notice calling a General Meeting shall specify the time and place of the meeting and the general nature of the business to be transacted at the meeting and if any resolution is to be proposed as a Special Resolution, the notice shall contain a statement to that effect. In the case of an Annual General Meeting, the notice shall also specify the meeting as such.

## **56 Accidental omission to give notice**

The accidental omission to give notice of a meeting or (in cases where instruments of proxy are sent out with the notice) to send such instrument of proxy to, or the non-receipt of such notice or such instrument of proxy by, any person entitled to receive such notice shall not invalidate the proceedings at that meeting.

# **PROCEEDINGS AT GENERAL MEETINGS**

## **57 Chairman**

The Chairman, failing whom another Director nominated by the Lead Investor Director shall preside as chairman at a General Meeting. If there is no such Chairman or Lead Investor Director, or if at any meeting neither is present within five minutes after the time appointed for holding the meeting and willing to act, the Directors present shall choose one of their number (or, if no Director is present or if all the Directors present decline to take the chair, the Members present and entitled to vote shall choose one of their number) to be chairman of the meeting. The chairman at any General Meeting shall be entitled to a second or casting vote.

## **58 Quorum**

Subject to these Articles, the quorum at any General Meeting shall be two or more Members present in person or by proxy, including one person being or representing the Lead Investor. No business other than the appointment of a chairman shall be transacted at any General Meeting unless a quorum is present.

## **59 Lack of quorum**

If within half an hour from the time appointed for a General Meeting a quorum is not present, or if during the meeting a quorum ceases to be present, the meeting shall be adjourned to the same day 14 days later at the same time and place. If at any adjourned meeting such a quorum is not present within half an hour from the time appointed for the adjourned meeting

any two members entitled to be counted in a quorum present in person or by proxy shall constitute a quorum.

## **60 Adjournment**

The chairman of any General Meeting at which a quorum is present may with the consent of the meeting (and shall if directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. When a meeting is adjourned for 14 days or more, at least seven days' notice of the adjourned meeting shall be given in like manner as in the case of the original meeting. In all other cases, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **POLLS**

### **61 Demand for poll**

**61.1** At any General Meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is required under the terms of any Shares in issue at that time or is (before, or on the declaration of the result of, the show of hands) demanded by:

**61.1.1** the chairman of the meeting; or

**61.1.2** any Member present in person or by proxy and entitled to vote.

**61.2** A demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman of the Meeting. A demand so withdrawn 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.

### **62 Procedure on a poll**

A poll shall be taken in such manner as the chairman may direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The chairman of the meeting may appoint scrutineers (who need not be Members) and fix a place and time for the purpose of declaring the result of the poll.

### **63 Voting on a poll**

On a poll, votes may be given either personally or by proxy and a person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

### **64 Timing of poll**

A poll demanded on the choice of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such subsequent time (not being more than 30 days from the date of the meeting) and place as the chairman of the meeting may direct. No notice need be given of a poll not taken immediately and in all other cases seven days' notice specifying the time and place at which the poll is to

be taken. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **ATTENDANCE BY TELEPHONE AND WRITTEN RESOLUTIONS**

##### **65 Attendance by telephone and written resolutions**

- 65.1** A person may participate at a General Meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time so long as all of the participants are present within the United Kingdom and such communication is initiated from within the United Kingdom. Participation by a person in a General Meeting in this manner is treated as presence in person at that meeting.
- 65.2** A written resolution signed in the United Kingdom by or on behalf of each Member who would have been entitled to vote upon it had it been proposed at a General Meeting or meeting of any class of Members at which he was present shall be as valid and effectual as a resolution duly passed at a General Meeting or meeting of any class of Members duly convened and held and may consist of several documents in the form each signed by one or more Members. In the case of a corporation, a written resolution may be signed on its behalf by a director or the secretary thereof or by its duly appointed attorney or duly authorised representative.

#### **VOTES OF MEMBERS**

##### **66 Votes attaching to shares**

Unless they are otherwise not entitled to vote under the provisions of these Articles or the terms of issue of the Shares they hold and subject to Article 8.2, on a show of hands, every Member who is present in person shall have one vote, and on a poll every Member who is present in person or by proxy shall have one vote for every Share of which he is the holder; provided that no Shares of any class shall confer any right to vote upon a resolution for the removal from office of an Investor Director appointed or deemed to have been appointed by holders of the Investors' A Ordinary Shares.

##### **67 Votes of joint holders**

In the case of joint holders of a Share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the Share.

##### **68 Restriction on voting in particular circumstances**

No Member shall (unless the Directors otherwise determine) be entitled in respect of any Share held by him to vote either personally or by proxy at a Shareholders' meeting or to exercise any other right conferred by membership in relation to Shareholders' meetings if any call or other sum presently payable by him to the Company in respect of that Share remains unpaid.

## **69 Voting by guardian**

Where in England or elsewhere, a guardian, receiver or other person (by whatever name called) has been appointed by any court claiming jurisdiction in that behalf to exercise powers with respect to the property or affairs of any Member on the ground (however formulated) of mental disorder, the Directors may in their absolute discretion, upon or subject to production of such evidence of the appointment as the Directors may require, permit such guardian, receiver or other person on behalf of such Member to vote in person or by proxy at any Shareholders' meeting or to exercise any other right conferred by membership in relation to Shareholders' meetings.

## **70 Validity and result of vote**

- 70.1** No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairman of the meeting whose decision shall be final and conclusive.
- 70.2** Unless a poll is taken, a declaration by the chairman of the meeting that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book, shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded for or against such resolution.

## **PROXIES AND CORPORATE REPRESENTATIVES**

### **71 Proxy need not be a Member**

A proxy need not be a Member.

### **72 Form of proxy**

The appointment of a proxy must be in writing in any usual or common form or in any other form which the Directors may approve and:

- (a) in the case of an individual must either be signed by the appointor or his attorney; and
- (b) in the case of a corporation must be either given under its common seal or be signed on its behalf by an attorney or a duly authorised officer of the corporation.

The signature on such appointment need not be witnessed. Where appointment of a proxy is signed on behalf of the appointor by an attorney, the power of attorney or a copy thereof certified notarially or in some other way approved by the Directors must (failing previous registration with the Company) be submitted to the Company, failing which the appointment may be treated as invalid.

### **73 Deposit of appointment of proxy**

The appointment of a proxy must be received at such address or one of such addresses (if any) as may be specified for that purpose in or by way of note to or in any document accompanying the notice convening the meeting (or, if no address is so specified, must be left at the registered office of the Company) not less than 48 hours before the time appointed for the holding of the meeting or adjourned meeting or (in the case of a poll taken otherwise than

at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used, and in default shall not be treated as valid. The appointment shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates. An appointment relating to more than one meeting (including any adjournment thereof) having once been so delivered for the purposes of any meeting shall not require again to be delivered for the purposes of any subsequent meeting to which it relates.

**74 Rights of proxy**

A proxy shall have the right to demand or join in demanding a poll but no further right to speak at the meeting, except with the permission of the chairman of the meeting.

**75 Revocation of proxy**

A vote cast or demand for a poll made by proxy shall not be invalidated by the previous death or insanity of the Member or by the revocation of the appointment of the proxy or of the authority under which the appointment was made unless written notice of such death, insanity or revocation shall have been received by the Company at its registered office at least one hour before the commencement of the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) the time appointed for the taking of the poll at which the vote is cast.

**76 Corporations acting by representatives**

Any corporation which is a Member may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any Shareholders' meeting. The person so authorised shall be entitled to exercise the same powers on behalf of such corporation as the corporation could exercise if it were an individual Member of the Company and such corporation shall for the purposes of these Articles be deemed to be present in person at any such meeting if a person so authorised is present thereat.

## **DIRECTORS**

**77 Number of Directors**

The number of Directors (other than alternate directors) shall be subject to a maximum number of 7 and the minimum number of Directors shall be two, one of which shall be a Lead Investor Director.

**78 Share qualification**

A Director shall not be required to hold any Shares of the Company by way of qualification. A Director who is not a Member shall nevertheless be entitled to attend and speak at Shareholders' meetings and at any separate meeting of the holders of any class of Shares in the Company.

**79 Directors' remuneration**

Any Director who holds any executive office, or who serves on any committee, or who otherwise performs services which in the opinion of the Directors are outside the scope of the

ordinary duties of a Director, may be paid such extra remuneration by way of salary, commission or otherwise or may receive such other benefits as the Directors may determine.

#### **80 Directors' expenses**

The Directors may be paid all such reasonable expenses as they may incur in attending and returning from meetings of the Directors or of any committee of the Directors or Shareholders' meetings or otherwise in connection with the business of the Company.

#### **81 Directors' pensions and other benefits**

The Directors shall have power to pay and agree to pay benefits, gratuities, pensions or other retirement, superannuation, death or disability benefits to (or to any person in respect of) any Director or ex-Director and for the purpose of providing any such gratuities, pensions or other benefits to contribute to any scheme or fund or to pay premiums.

### **APPOINTMENT AND REMOVAL OF DIRECTORS**

#### **82 Appointment of Directors**

**82.1** The Lead Investor may appoint and maintain in office up to three persons to be Directors one of whom shall be the non-executive Chairman and shall have a casting vote in the case of an equality of votes by the Board. The Lead Investor shall also be entitled to remove any Director(s) whom it has appointed and to appoint additional person(s) to fill any vacancies so created.

**82.2** Each of the Nominated Investors may appoint and maintain in office one person to be a Director. Each Nominated Investor shall also be entitled to remove any Director which it has appointed and to appoint an additional person to fill any vacancy so created. In addition the Investors shall be entitled to appoint persons as observers with rights to attend and speak at Board meetings but no rights to vote as provided in the Shareholders' Agreement.

**82.3** The Executives together may appoint and maintain in office one person to be a Director. The Executives shall also be entitled to remove any Director whom they have appointed and to appoint an additional person to fill any vacancy so created.

**82.4** In the event that at the date of a General Meeting of the Company, a Default Event (as defined in Clause 4.2 of the Shareholders' Agreement) subsists, the Investor Directors shall be entitled to call a meeting of the Board to remove all the other existing Directors ("**Outgoing Directors**") and replace the Outgoing Directors with directors nominated by the Investor Directors. The Investor Directors shall have 10 times more votes than the aggregate of votes cast by all the Outgoing Directors at any meeting of the Board called to approve these matters.

#### **83 Vacation of office**

**83.1** The office of a Director shall be vacated in any of the following events, namely:

**83.1.1** if he is removed from office pursuant to Article 82.1, 82.2 or 82.3 or as the result of the operation of Article 82.4;

**83.1.2** if he shall resign by notice to the Company;

- 83.1.3 if he shall become prohibited by law from acting as a Director;
  - 83.1.4 if he becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - 83.1.5 if in England or elsewhere an order shall be made by any court claiming jurisdiction in that behalf on the ground (however formulated) of mental disorder for his detention or for the appointment of a guardian or receiver or other person (by whatever name called) to exercise powers with respect to his property or affairs;
  - 83.1.6 if he shall be absent from meetings of the Directors for six consecutive months without leave and the Directors shall resolve that his office be vacated;
  - 83.1.7 if he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 of the United Kingdom, or in Scotland under the Mental Health (Scotland) Act 1960 of the United Kingdom; or
  - 83.1.8 save in relation to the Investor Directors, he is removed from office by notice in writing signed by all the other Directors (without prejudice to any claim for damages which he may have for breach of any contract between him and the Company) and, for this purpose, a set of like notices each signed by one or more of the Directors shall be as effective as a single notice signed by the requisite number of Directors.
- 83.2 The Directors shall not be subject to retirement by rotation.
- 83.3 Any such appointment or removal pursuant to Article 82 or 83 shall be in writing served on the Company and signed by the persons appointing or removing the Director and shall take effect on delivery at the Company's registered office or at any meeting of the Board or committee thereof. In the case of a corporation such document may be signed on its behalf by a director or the secretary thereof or by its duly appointed attorney or duly authorised representative.

## **ALTERNATE DIRECTORS**

### **84 Appointment of alternate Directors**

- 84.1 A Director may at any time appoint another Director to be his alternate Director and may at any time terminate such appointment. Any such appointment or termination of appointment shall be effected by notice in writing signed by the appointor and delivered to the Company or tendered at a meeting of Directors. The same person may be appointed as the alternate Director of more than one Director.
- 84.2 The appointment of an alternate Director shall determine on the happening of any event which if he were a Director would cause him to vacate such office or if the Director of whom he is the alternate ceases to be a Director.

### **85 Attendance and notice of meetings**

- 85.1 An alternate Director shall be entitled to receive notices of meetings of the Directors and of all committees of Directors of which his appointor is a member and shall be entitled to attend and vote and be counted in the quorum at any such meeting at which his appointor is not personally present and generally to perform all the functions of his appointor in his absence.

**85.2** If an alternate Director attends any such meeting in his capacity as Director and as an alternate for one or more other Directors, his right to vote at such meetings shall be cumulative but he shall count as only one for the purpose of determining whether a quorum is present.

**85.3** A resolution signed by an alternate Director need not also be signed by his appointor and, if it is signed by his appointor, it need not be signed by the alternate Director in that capacity.

**86 Alternate Directors' interests and remuneration**

An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent *mutatis mutandis* as if he were a Director but he shall not be entitled to receive from the Company in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to the Director of whom he is the alternate as such Director may by written notice to the Company from time to time direct.

**MEETINGS AND PROCEEDINGS OF DIRECTORS**

**87 Convening of meetings of Directors**

Subject to the provisions of these Articles, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their proceedings as they think fit. At any time any Lead Investor Director may summon a meeting of the Directors, on such reasonable notice as is practicable in the circumstances. Any Director may waive notice of any meeting and any such waiver may be retroactive.

**88 Notice of Directors' meetings**

**88.1** Unless there are exceptional circumstances or otherwise agreed in writing by a Lead Investor Director in any particular case, at least five clear days' written notice shall be given to each Director of every meeting of the Directors.

**88.2** Each such notice shall (i) be sent to the address notified from time to time by each Director to the Secretary at his address for the service of such notices (or if no address has been so supplied, to his last known address); (ii) contain an agenda specifying in reasonable detail the matters to be discussed at the relevant meeting; and (iii) be accompanied by any relevant papers for discussion at such meeting; and (iv) if sent to an address outside the United Kingdom, be sent by courier or facsimile transmission.

**89 Quorum**

**89.1** Subject to Article 89.2, the quorum at a meeting of Directors shall be any two Directors including at least one Lead Investor Director. If within half an hour of the time appointed for the holding of any meeting of the Directors a quorum shall not be present, the Director(s) present shall resolve to adjourn that meeting to a specified place and time (which shall not be earlier than three nor later than seven days after the date originally fixed for the meeting). The Company shall give notice to each Director who did not attend the first meeting requiring him either to attend the adjourned meeting of the Directors or to state in writing his views on the matters to be discussed at that meeting. If any Director having received such notice fails to



attend such adjourned meeting, the quorum necessary for the transaction of the business of the Directors shall be any one Lead Investor Director. An alternate Director shall be counted in the quorum in the same capacity as his appointor but so that not less than two individuals will constitute the quorum.

**89.2** If:

**89.2.1** the Lead Investor holds less than 50% of the aggregate number of votes able to be cast at General Meetings of the Company; and

**89.2.2** the Lead Investor Director has agreed in writing to hold a Directors' meeting (the "**Short Notice Meeting**") on less than five clear days' written notice pursuant to Article 88.1;

then the quorum at the Short Notice Meeting shall be any one Lead Investor Director and one Director other than a Lead Investor Director (who shall, if appointed to the Board at such time, be the Director appointed by the Executives pursuant to Article 82.3 unless such Director consents in writing to another Director attending and forming a quorum for the purposes of this Article 89.2). If within half an hour of the time appointed for the holding of any Short Notice Meeting a quorum shall not be present, the Director(s) present shall resolve to adjourn that meeting to a specified place and time (which shall not be earlier than three nor later than seven days after the date originally fixed for the meeting). The Company shall give notice to each Director who did not attend the first Short Notice Meeting requiring him either to attend the adjourned Short Notice Meeting or to state in writing his views on the matters to be discussed at that Short Notice Meeting. If any Director having received such notice fails to attend such adjourned meeting, the quorum necessary for the transaction of the business of the Directors shall be any one Lead Investor Director. An alternate Director shall be counted in the quorum in the same capacity as his appointor but so that not less than two individuals will constitute the quorum.

**90 Directors' resolutions**

**90.1** All business arising at any meeting of the Directors or of any committee of the Directors shall be determined only by resolution, which shall be passed if a majority of votes (taking into account, if relevant, any fractions of a vote pursuant to Article 90.3 below) are received in favour of that resolution.

**90.2** Subject to Article 90.3, each Director present at such a meeting shall be entitled to one vote on each resolution, other than in the event of equality of votes where the Chairman shall be entitled to a second or casting vote.

**90.3** If:

**90.3.1** the Lead Investor holds less than 50% of the aggregate number of votes able to be cast at General Meetings of the Company; and

**90.3.2** the Lead Investor Director has agreed in writing to hold a Short Notice Meeting;

then the Lead Investor Directors present at such a Short Notice Meeting shall together be deemed to have one fewer vote than the total held by the other Directors present at that Short Notice Meeting and each Lead Investor Director present shall be entitled to exercise the number of votes (which may be a fraction of one vote) equal to the total number of votes which the Lead Investor Directors present shall together be deemed to have divided by the number

of Lead Investor Directors present. For the avoidance of doubt, in the event of equality of votes at such a Short Notice Meeting the Chairman shall be entitled to a second or casting vote.

**91 Telephone Directors' meetings**

The Directors, and any committee of the Directors, shall be deemed to meet together if, being in separate locations, they are linked by conference telephone or other communication equipment which allows those participating to hear and speak to each other. A Director taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote or be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is.

**92 Chairman**

**92.1** Without prejudice to its rights under Article 82, the Lead Investor shall have the right to appoint the Chairman by written notice to the Company. If no Chairman shall have been appointed or if at any meeting of the Directors no Chairman shall be present within five minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting. The Chairman shall be entitled to a second or casting vote in the event of an equality of votes cast by directors.

**92.2** The appointment of any Director to the office of Chairman shall automatically determine if he ceases to be a Director but without prejudice to any claim for damages for breach of any contract of service between him and the Company.

**93 Number of Directors below minimum**

The continuing Directors may act notwithstanding any vacancies, but if and so long as the number of Directors is reduced below the minimum number fixed by or in accordance with these Articles, the continuing Directors or Director may act for the purpose of summoning General Meetings, but not for any other purpose.

**94 Written resolutions**

A written resolution signed by all the Directors entitled to vote thereon shall be as valid and effectual as a resolution duly passed at a meeting of the Directors and may consist of several documents in the like form each signed by one or more Directors.

**95 Validity of proceedings**

All acts done by any meeting of Directors, or of any committee of the Directors, or by any person acting as a Director or as a member of any such committee, shall as regards all persons dealing in good faith with the Company, notwithstanding that there was some defect in the appointment of any of the persons acting as aforesaid, or that any such persons were disqualified or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of the committee or sub-committee and had been entitled to vote.

**96 Minutes of meetings**

The Directors shall cause minutes to be made in books kept for the purpose of:

- 96.1 all appointments of officers made by the Directors; and
- 96.2 all proceedings at General Meetings, meetings of the holders of any class of Shares and meetings of Directors and of committees of Directors, including the names of the Directors present at each such meeting.

**COMMITTEES OF THE DIRECTORS**

**97 Appointment and constitution of committees**

- 97.1 The Directors may delegate any of their powers or discretions to committees. A committee of the Directors shall include a Lead Investor Director and another Investor Director and the quorum for a meeting of any such committee shall be as for meetings of Directors. The Directors may delegate any of their powers or discretions (including without prejudice to the generality of the foregoing all powers and discretions whose exercise involves or may involve the payment of remuneration to or the conferring of any other benefit on all or any of the Directors) to committees consisting of one or more Directors and (if thought fit) one or more other named persons or persons to be co-opted as hereinafter provided.
- 97.2 Insofar as any such power or discretion is delegated to a committee, any reference in these Articles to the exercise by the Directors of the power or discretion so delegated shall be read and construed as if it were a reference to the exercise thereof by such committee. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations which may from time to time be imposed by the Directors. Any such regulations may provide for or authorise the co-option to the committee of persons other than Directors and may provide for members who are not Directors to have voting rights as members of the committee but so that the number of members who are not Directors shall be less than one-half of the total number of members of the committee.

**98 Proceedings of committee meetings**

The meetings and proceedings of any such committee consisting of two or more persons shall be governed *mutatis mutandis* by the provisions of these Articles regulating the meetings and proceedings of the Directors, so far as the same are not superseded by any regulations made by the Directors under the last preceding Article.

**DIRECTORS' INTERESTS**

**99 Directors may have interests**

- 99.1 Subject to the Statute, and provided that he has disclosed to the Directors the nature and extent of any interest of his, a Director notwithstanding his office:
  - 99.1.1 may be a party to, or otherwise interested in, any contract, transaction or arrangement with the Company or in which the Company is otherwise interested;

- 99.1.2 may be a director or other officer of, or employed by, or a party to any contract, transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested; and
- 99.1.3 shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate or for such remuneration and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit.
- 99.2 On any matter in which a Director is in any way interested he may nevertheless vote and be taken into account for the purposes of a quorum and (save as otherwise agreed) may retain for his own absolute use and benefit all profits and advantages directly or indirectly accruing to him thereunder or in consequence thereof provided that the nature of the interest of any Director or alternate Director in any such matter shall be disclosed by him at or prior to its consideration and any vote thereon.
- 99.3 If a question arises at any time as to the materiality of a Director's interest or as to his entitlement to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question shall be referred to the chairman of the meeting and his ruling in relation to any Director other than himself shall be final and conclusive except in a case where the nature or extent of the interest of such Director has not been fairly disclosed.

## **100 Restrictions on voting**

Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employments with the Company or any body corporate in which the Company is interested, the proposals may be divided and considered in relation to each Director separately and in such case each of the Directors concerned shall be entitled to vote (and be counted in the quorum) in respect of each resolution except that concerning his own appointment.

## **101 Directors' interests - general**

### **101.1 For the purposes of these Articles:**

101.1.1 a general notice given 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 contract, 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 contract, transaction or arrangement of the nature and extent so specified; and

101.1.2 an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

101.2 Any Investor Director shall be entitled to disclose to the A Ordinary Shareholders which appointed him as Director such information concerning the business and affairs of the Company as he sees fit.

## **POWERS OF DIRECTORS**

### **102 General powers**

The business and affairs of the Company shall be managed by the Directors, who may exercise all such powers of the Company subject to any regulations of these Articles, to the Statute and to any directions given by Special Resolution of the Company, but no direction so made by the Company shall invalidate any prior act of the Directors which would have been valid if such direction had not been made and provided always that the Company shall be managed and controlled in the United Kingdom for the purposes of United Kingdom taxation. The general powers given by this Article shall not be limited or restricted by any special authority or power given to the Directors by any other Article.

### **103 Appointment of attorney**

The Directors may from time to time and at any time by power of attorney or otherwise appoint any person to be the attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

### **104 Borrowing powers**

Subject to the Statute, the Directors may exercise all the powers of the Company to borrow and raise money, and to mortgage or charge all or part of its undertaking, property (present and future) and uncalled capital and to issue debentures and other securities, whether outright or as collateral security, for any debt, liability or obligation of the Company or of any third party.

## **SECRETARY**

### **105 Secretary**

Subject to the Act, the Secretary shall be appointed by the Directors on such terms and for such period as they may think fit. Any Secretary so appointed may at any time be removed from office by the Directors, but without prejudice to any claim for damages for breach of any contract of service between him and the Company.

## **DIVIDENDS**

### **106 Dividends**

Subject to the Statute, the Directors may declare and pay dividends. If the share capital is divided into different classes the Directors may declare and pay dividends on Shares which confer deferred or non-preferred rights with regard to dividend as well as on Shares which confer preferential rights with regard to dividend, but no dividend shall be paid on Shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears. The Directors may also declare and pay dividends on any class of Shares carrying a fixed dividend expressed to be payable on fixed dates on the half-yearly or other dates prescribed for the payment thereof and may also from time to time pay interim dividends on

Shares of any class of such amounts and on such dates and in respect of such periods as they think fit. Subject to the Statute, provided the Directors act in good faith they shall not incur any liability to the holders of any Shares for any loss they may suffer by the lawful payment, on any other class of Shares having rights ranking after or *pari passu* with those Shares, of any such fixed or interim dividend as aforesaid.

**107 Distribution in specie**

The Company may, upon the recommendation of the Directors, by Ordinary Resolution direct payment of a dividend in whole or in part by the distribution of specific assets (and in particular of paid-up Shares or debentures of any other company) and the Directors shall give effect to such resolution. Where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional certificates, may fix the value for distribution of such specific assets or any part thereof, may determine that cash shall be paid to any Member upon the footing of the value so fixed in order to adjust the rights of Members and may vest any assets in trustees.

**108 No dividend except out of funds lawfully available**

No dividend shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account or as otherwise permitted by the Statute.

**109 Ranking of Shares for dividend**

Unless and to the extent that the rights attached to any Shares or the terms of issue thereof otherwise provide, all dividends shall (as regards any Shares not fully paid throughout the period in respect of which the dividend is paid) be apportioned and paid pro rata according to the amounts paid on the Shares during any portion or portions of the period in respect of which the dividend is paid. For the purposes of this Article, no amount paid on a Share in advance of calls shall be treated as paid on the Share.

**110 Manner of payment of dividends**

Any dividend or other moneys payable on or in respect of a Share shall be paid to the Member or to such other person as the Member (or, in the case of joint holders of a Share, all of them) may in writing direct. Such dividend or other moneys may be paid (i) by cheque sent by post to the payee or, where there is more than one payee, to any one of them, or (ii) by inter-bank transfer to such account as the payee or payees shall in writing direct, or (iii) using the facilities of a relevant system, or (iv) by such other method of payment as the Member (or in the case of joint holders of a Share, all of them) may agree to. Every such cheque shall be sent at the risk of the person or persons entitled to the money represented thereby, and payment of a cheque by the banker upon whom it is drawn, and any transfer or payment within (ii) or (iii) above, shall be a good discharge to the Company.

**111 No interest on dividends**

Unless otherwise provided by these Articles, no dividend or other moneys payable on or in respect of a Share shall bear interest as against the Company.

## **112 Retention of dividends**

- 112.1** The Directors may retain any dividend or other moneys payable on or in respect of a Share on which the Company has a lien and may apply the same in or towards satisfaction of the moneys payable to the Company in respect of that Share.
- 112.2** The Directors may retain the dividends payable upon Shares in respect of which any person is, under the provisions as to the transmission of Shares hereinbefore contained, entitled to become a Member, or which any person is, under those provisions, entitled to transfer, until such person shall become a Member in respect of such Shares or shall transfer the same.

## **113 Unclaimed dividend**

Any dividend which has remained unclaimed for 12 years from the date on which it was declared or became due for payment shall be forfeited and shall revert to the Company.

## **CAPITALISATION OF PROFITS AND RESERVES**

### **114 Capitalisation of profits and reserves**

- 114.1** The Directors may, with the sanction of an Ordinary Resolution of the Company (and with the prior written consent of the Investors), capitalise any sum standing to the credit of any of the Company's reserve accounts (including any share premium account, capital redemption reserve or other undistributable reserve) or any sum standing to the credit of profit and loss account by appropriating such sum to the holders of Shares in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and on behalf of such Shareholders applying that part of such sum distributable amongst them in paying up in full unissued Shares for allotment and distribution credited as fully paid up to and amongst them.
- 114.2** The Directors may do all acts and things considered necessary or expedient to give effect to any such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrues to the Company rather than to the Members concerned). The Directors may authorise any person to enter, on behalf of all the Members interested, into an agreement with the Company providing for any such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

## **BOOKS OF ACCOUNT**

- 115** The Directors shall cause proper books of account to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions. Every Member of the Company shall have the right to inspect and take copies of any account or book or document of the Company during the Company's normal hours of business.
- 116** The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **AUDIT**

- 117** The Directors may appoint an Auditor of the Company who shall hold office until removed from office by a resolution of the Directors, and may fix his or their remuneration.
- 118** Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.
- 119** Auditors shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual General Meeting following their appointment and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

## **NOTICES**

- 120** Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to him or to his address as shown in the Register (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent by airmail.
- 121** Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have



been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.

- 122** A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

Subject to any rights or restrictions attached to any Shares, notice of every General Meeting shall be given in any manner hereinbefore authorised to every person shown as a Member in the Register on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register and every person upon whom the ownership of a Share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a Member of record where the Member of record but for his death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of General Meetings.

#### **WINDING-UP**

- 123** If the Company shall be wound up, and the assets available for distribution amongst the Members shall be insufficient to repay the whole of the share capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the Members in proportion to the par value of the Shares held by them. If in a winding up the assets available for distribution amongst the Members shall be more than sufficient to repay the whole of the share capital at the commencement of the winding up, the surplus shall be distributed amongst the Members in proportion to the par value of the Shares held by them at the commencement of the winding up subject to a deduction from those Shares in respect of which there are monies due of all monies payable to the Company for unpaid calls or otherwise. This Article is without prejudice to the rights of the holders of Shares issued upon special terms and conditions.

**124** **Distribution of assets *in specie***

If the Company shall be wound-up (whether the Liquidation is voluntary, under supervision, or by the court) the liquidator may sanction of a Special Resolution and any other sanction required by the Statute, divide among the Members *in specie* or kind the whole or any part of the assets of the Company and whether or not the assets shall consist of property of one kind or shall consist of properties of different kinds, and may for such purpose set such value as he deems fair upon any one or more class or classes of property and may determine how such

division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator with the like authority shall think fit, and the Liquidation of the Company may be closed and the Company dissolved, but so that no contributory shall be compelled to accept any Shares or other property in respect of which there is a liability.

## **INDEMNITY**

### **125 Indemnity**

Every Director, agent or officer of the Company shall be indemnified out of the assets of the Company against any liability incurred by him as a result of any act or failure to act in carrying out his functions other than such liability (if any) that he may incur by his own wilful neglect or default. No such Director, agent or officer shall be liable to the Company for any loss or damage in carrying out his functions unless that liability arises through the wilful neglect or default of such Director, agent or officer.

### **126 Financing Documents**

- 126.1** Notwithstanding any other provision of these Articles (but subject always to the requirement that the Company's statutory powers should not be fettered), no payment shall be made or agreed to be made by the Company in respect of any Shares or share capital (whether by way of dividend, distribution, purchase or redemption, or by way of reduction or return of share capital) if such payment is prohibited or restricted by the terms of the Financing Documents.
- 126.2** No dividend, distribution or other amount payable in respect of Shares (whether made pursuant to the provisions of these Articles or otherwise) will constitute a debt of the Company unless permitted to be paid and paid strictly in accordance with the provisions of the Financing Documents.
- 126.3** Subject to the requirement that the Company's statutory powers should not be fettered, any resolution of the Shareholders, any class of Shareholders, the Board or any committee of the Board which conflicts with the provisions of this Article will be null and void.

### **127 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31 December in each year and, following the year of incorporation, shall begin on 1 January in each year.

### **128 Principal Place of Business**

The principal place of business of the Company shall always be located within the United Kingdom.