

# DEM SOLUTIONS

Discrete Element Modeling

**DEM SOLUTIONS LIMITED**  
(Incorporated in Scotland, registered number SC240438)

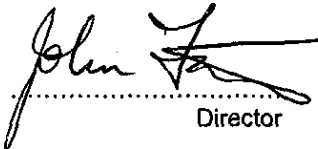
## WRITTEN RESOLUTION of the MEMBERS of DEM SOLUTIONS LIMITED

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I, the undersigned, being a director of the Company, confirm that the written resolution set out below was signed by the members of the Company and is effective from 4 August 2003 (being the date on which the last member signed).

### WRITTEN RESOLUTION

"THAT the regulations contained in the document annexed hereto and signed by us for the purposes of identification, be and are hereby approved and adopted as the new articles of association of the Company in substitution for, and to the entire exclusion of, the existing articles of association of the Company."

  
Director



John

John

## ARTICLES of ASSOCIATION

### **DEM SOLUTIONS LIMITED**

(Registered Number SC240438)

(ADOPTED 4 August 2003)



### **MURRAY BEITH MURRAY WS**

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Ref: DEM449/01/WAF/JAGS/RJW

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# ARTICLES OF ASSOCIATION

of

## DEM Solutions Limited

(Registered Number SC240438)

A PRIVATE LIMITED COMPANY

(ADOPTED

2003)

### DEFINITIONS AND INTERPRETATION

#### 1. In these Articles:

- 1.1 The words and expressions below shall have the following meanings unless the context requires otherwise:

"the Act"	means the Companies Act 1985;
"Articles"	means these articles of association constituted by the following regulations together with any duly authorised amendments or alterations from time to time, and the term "Article" shall be a reference to a regulation contained in these Articles;
"Acting in Concert"	shall have the meaning given to it in the City Code on Takeovers and Mergers from time to time;
"Authorised Amount"	means £1,000 divided into 100,000 Ordinary shares of £0.01 each;
"Company"	means DEM Solutions Limited, a company incorporated under the Companies Acts 1985, registered in Scotland under number SC240438 and having its registered office at 39 Castle Street, Edinburgh, EH2 3BH, Scotland;
"Controlling Interest"	means an interest in shares in the capital of the Company conferring in the aggregate more than 50% of the total voting rights

conferred by all the issued shares in the Company from time to time;

"Default Circumstance" means in relation to any person who is a former director, employee, or officer of the Company, any breach by that person of any restrictive covenant in his contract of employment, consultancy or appointment or other contact with the Company;

"Director" means a director of the Company or any alternate director duly appointed for the time being in accordance with these Articles;

"ETF" means Edinburgh Technology Fund Limited, registered in Scotland under the company number SC92426 and having its registered office at Roslin BioCentre, Roslin, Midlothian, EH25 9PS;

"ETF Director" means a Director appointed by ETF pursuant to Article 27;

"Founder" means Dr John Favier of 17 (1F2) Bruntsfield Gardens, Edinburgh, Midlothian, EH10 4DX, Scotland;

"Good Leaver Reason" means one or more of the following reasons:

- a) the wrongful dismissal by the Company;
- b) leaving employment for reasons of:-
  - Ill-health or disability as certified by and to reasonable satisfaction of an independent doctor; or
  - Where the death or long term illness or disability of a spouse, long-term partner or child makes it reasonably necessary to provide care themselves to that spouse, partner or child;
- c) the unfair dismissal by the Company;
- d) the dismissal for reasons of redundancy;
- e) the retirement at the normal retirement

	age of 65 years of age;
	and "Good Leaver" shall be construed accordingly;
"Group Member"	means any subsidiary company or wholly-owned subsidiary company as defined in terms of section 736 of the Act;
"Jin Ooi"	means Jin Ooi, residing at 1 Hawkhead Crescent, Edinburgh EH16 6LT;
"member"	means a person registered as a member in the register of members of the Company;
"Privileged Director"	means the Founder;
"Privileged Relation"	means the spouse or widow of the relevant member and the relevant member's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the relevant member's children ("family members") and any trust established for the benefit of the relevant member or his family members;
"Qualifying Majority"	means 60%;
"Regulation"	means a regulation contained in Table A;
"share"	means any share forming part of the share capital of the Company;
"Table A"	means Table A of the Companies (Tables A to F) Regulations 1985, SI1985/805;
"UoE"	means University Court of the University of Edinburgh, having its principal place of business at Old College, South Bridge, Edinburgh EH8 9YL; and
"UoE Body"	means UoE and any subsidiary of UoE and "subsidiary" shall have the meaning attributed to it in Section 736 of the Act.

- 1.2 Words importing the singular include the plural and vice versa.
- 1.3 Words importing a particular gender include any gender.
- 1.4 References to a "person" include any natural person, or any legal person, body or organisation, incorporated or unincorporated.

- 1.5 The headings in these Articles are for convenience only and shall not affect the construction of these Articles.
- 1.6 Words and expressions defined in the Act shall bear the same meanings in these Articles, excluding any statutory modification to those defined terms not in force as at the date of adoption of these Articles.
- 1.7 Unless provision is made to the contrary, references to any statute or statutory provision includes a reference to:
  - 1.7.1 that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated whether before or after the date of adoption of these Articles; and
  - 1.7.2 all statutory instruments or orders made pursuant to it.

#### **TABLE A**

2. The Regulations contained in Table A shall apply to the Company except in so far as they are excluded or varied by or are inconsistent with these Articles.
3. Regulations 2, 5, 8, 24, 26, 41, 59, 64, 73 to 80 (inclusive), 89, 90, 94 to 97 (inclusive), 101 and 118 shall not apply to the Company.
4. The following amendments shall be made to the Regulations in so far as they apply to the Company:
  - 4.1 in Regulation 6, by the deletion of the phrase: "sealed with the seal" in the second sentence, and by the substitution, in its place, of the phrase: "executed in accordance with the Act or the Requirements of Writing (Scotland) Act 1995";
  - 4.2 in Regulation 46, by the deletion of the second sentence which comprises the whole of the remainder of that Regulation and by the substitution, in its place, of the following sentence:

"A poll may be demanded at any general meeting or at any meeting of a class of members by the chairman or by any member entitled to vote at that meeting, present in person, or by any member's proxy or attorney, or if a corporation, by its duly authorised representative"; and
  - 4.3 in Regulation 115, by the addition of the following words at the end:

" , or in the case of an envelope prepaid with first class postage, at the expiration of 24 hours after it was posted".

#### **SHARE CAPITAL**

5. The authorised share capital of the Company as at the date of adoption of these Articles consists of the Authorised Amount. All unissued shares in the share capital of the Company from time to time shall be under the control of the directors who may (subject to sections 80 and 89 of the Act and to Article 7 and

subject to any direction to the contrary that may be given by ordinary resolution of the Company) allot, grant options or rights over or otherwise dispose of the same to such persons, at such times, and on such terms as they think fit.

6. The Company may at its sole discretion recognise and record the holding of a share by a person on trust, or in the names of trustees, but unless specifically recognised by the Company as such a holding, the Company shall not be bound by, or obliged to recognise, any interest in any share except for the absolute rights of the holder named in the register of members.
7.
  - 7.1 Notwithstanding any other provisions of these Articles (other than Article 8), but subject to Article 8, the Directors shall be bound to offer to any UoE Body for the time being holding shares such a proportion of any shares forming part of the equity share capital of the Company which the Directors determine to issue as the aggregate nominal value of shares in the equity share capital of the Company for the time being held by such UoE Body bears to the total issued equity share capital of the Company immediately prior to the issue of shares and such members shall have not less than 21 days to accept the same. Any shares issued to a UoE Body pursuant to such offer shall be issued upon terms and conditions that are no less beneficial as to payment and otherwise than those made available to other shareholders or such other terms as UoE shall agree and so that such shares shall at the request of UoE be registered in the name or names of any one or more UoE Body.
  - 7.2 Subject to Articles 7.1 and 8, any unissued shares from time to time in the capital of the Company which the Directors propose to allot and issue shall be offered first to existing members in proportion as nearly as may be (with the Directors determining how to deal with fractional entitlements) to the number of shares held by them at that time. The offer shall be made by notice to each member specifying the number of shares offered and limiting a period (not being less than 21 days) within which the offer if not accepted by notice to the Company shall be deemed to be declined. Following expiry of such period or receipt of notice of the acceptance or refusal of every offer made hereunder the Directors may dispose of any shares not accepted by the members in such manner as they think most beneficial to the Company provided that such shares shall not be disposed of on terms which are more favourable to the allottee than the terms on which they were offered to the members hereunder.
8. Article 7 shall not apply in respect of: (i) any allotment and/or issue of up to 67 shares to ETF; and/or (ii) any allotment and/or issue of up to 45 shares to UoE; and/or (iii) any allotment(s) and/or issue(s) from time to time of up to an aggregate number of 278 shares in the Company to employees of the Company and/or Jin Ooi, provided always that those shares are not allotted and/or issued to the Founder and/or to a Privileged Relation of his.
9. The directors are generally and unconditionally authorised, for the purposes of section 80 of the Act, to exercise all the powers of the Company to allot and grant rights to subscribe for or convert securities into relevant securities in the



Company up to the aggregate nominal amount of the unissued shares in the capital of the Company from time to time while this authority is in force at any time or times during the period of five years from the date of adoption of these articles. The directors may, after that period, allot any relevant securities or grant any such rights under this authority in pursuance of an offer or agreement so to do made by the Company within that period. The authority hereby given may at any time (subject to the said section 80) be renewed, revoked or varied by ordinary resolution of the Company. For the purposes of this article, **"relevant securities"** has the meaning given by section 80(2) of the Act. Pursuant to Section 91 of the Act, Sub-Section (1) of Section 89 shall be excluded from applying to the Company.

## **LIEN**

10. The Company shall have a first and paramount lien on every share for all monies, whether presently payable or not, called or payable at a fixed time in respect of that share, and the Company shall also have a first and paramount lien on all shares registered in the name of any person, whether solely or jointly with others, for all monies owing to the Company from that person, or that person's estate, either alone or jointly with any other person, whether as a member, or not, and whether such monies are presently payable or not. The Directors may at any time declare any share to be wholly or partly exempt from the provisions of this Article.

## **TRANSFER OF SHARES**

11. 11.1 No transfer of any share shall be registered unless it is first approved by the Directors in which case the Directors are obliged to register such transfer.
- 11.2 The Directors may refuse to register the transfer of a share:
  - 11.2.1 which is not fully paid to a person of whom they do not approve; and/or
  - 11.2.2 in respect of which the Company has exercised its lien.
- 11.3 The Directors shall refuse to register the transfer of a share except a transfer complying with one or more of the conditions specified in Article 11.5.
- 11.4 Subject only to:
  - 11.4.1 Articles 11.2 and 14; and
  - 11.4.2 the presentation of such evidence as the Directors may reasonably require to show the right of a transferor to make the transfer;a transfer complying with one or more of the conditions specified in Article 11.5 shall be registered by the Directors.

11.5 The following are the conditions specified in Articles 11.3 and 11.4:

11.5.1 a transfer of a share made with the prior written consent of all the members of the Company for the time being, other than the transferor;

11.5.2 a transfer of a share pursuant to Article 12;

11.5.3 a transfer or transmission of a share by any UoE Body to another UoE Body, provided always that if any UoE Body holding shares in the capital of the Company ceases to be a subsidiary of UoE (a "Former UoE Body"), then that Former UoE Body shall forthwith transfer to a UoE Body for no consideration all of the shares in the capital of the Company held by that Former UoE Body and if it shall fail to so transfer those shares then the provisions of Article 12.13 shall apply *mutatis mutandis*; and/or

11.5.4 a transfer or the transmission of a share by the Founder (or his personal representatives) to his Privileged Relations.

11.6 Notwithstanding the provisions contained in Article 12, any UoE Body shall be entitled to transfer of all or any of the shares in the Company held by it to a third party and any such transfer shall be registered by the Directors provided the following provisions have first been complied with:-

11.6.1 Following an offer by a third party ("the Proposed Purchaser") for any or all the shares held by a UoE Body, where such member ("the Vendor") wishes to transfer such shares it shall give to the Company notice in writing of such offer and the desire to transfer such shares (a "UoE Transfer Notice"). Subject as hereinafter mentioned a UoE Transfer Notice shall constitute the Company as the Vendor's agent for the sale of the shares specified therein ("the UoE Sale Shares") to all the members at the Sale Price. The Sale Price shall be the price which the Vendor shall have been offered for the UoE Sale Shares by such third party, immediately prior to the giving of the UoE Transfer Notice.

11.6.2 The Company shall forthwith offer the UoE Sale Shares to all of the members (other than the Vendor) pro rata as nearly as may be in proportion to the existing numbers of shares of the same class held by such members giving details of the number and the Sale Price of such UoE Sale Shares. The Company shall invite each such member as aforesaid to state in writing within 21 days from the date of the notice whether he is willing to purchase any of the UoE Sale Shares at the Sale Price and if so the maximum number thereof which he is willing to purchase. If at the expiration of the said period of 21 days there are any UoE Sale Shares offered which any of the members hereinbefore mentioned have not so stated their willingness to purchase the Company shall offer such shares to such members as have

stated in writing their willingness to purchase all of the shares previously offered to them. Such remaining shares shall be offered pro rata as nearly as may be in proportion to the existing numbers of shares of the same class then held by such holders which offer shall remain open for a further period of 7 days.

11.6.3 If the Company shall pursuant to the above provisions of this Article find a member or members willing to purchase all of the UoE Sale Shares the Vendor shall be bound upon receipt of the Sale Price to transfer the UoE Sale Shares to such member or members. If the Vendor shall make default in transferring the UoE Sale Shares the Company shall if so required by the persons willing to purchase such UoE Sale Shares receive and give a good discharge for the purchase money on behalf of the Vendor and shall authorise some person to execute transfers of the UoE Sale Shares in favour of the purchasers and shall enter the names of the purchasers in the Register of Members as the holders of such of the UoE Sale Shares as shall have been transferred to them as aforesaid.

11.6.4 If the Directors shall not have found a member or members willing to purchase all of the UoE Sale Shares or the Vendor shall not have received the Sale Price within 45 days of the date of the UoE Transfer Notice, the Vendor shall be at liberty to sell and transfer the UoE Sale Shares to the Proposed Purchaser at any price (provided that the price shall not be lower than the Sale Price) within a period of three months of the date of the UoE Transfer Notice.

## **PRE-EMPTION RIGHTS**

12. 12.1 Subject to the provisions of Article 11.6 and except in the case of a transfer expressly authorised by Articles 11.5.1, 11.5.3 and 11.5.4 no person shall be entitled to dispose of any interest in any shares without first offering such shares for transfer to the holders of other shares in the Company. The offer shall be made by the proposing transferor(s) (the "Transferor") by notice in writing to the Company (a "Transfer Notice") and may be in respect of all or some only of the shares held by the Transferor (the "Offer Shares"); provided that a Deemed Transfer Notice (as defined in Article 13) must be in respect of all shares held by the Transferor.

12.2 The Transfer Notice shall specify the Offer Shares and the price at which they are offered (the "Suggested Price") and shall constitute the Directors as the agents of the Transferor for the sale of the Offer Shares (a) to other holders of shares in the Company and (b) to the Company, in accordance with this Article 12. A Transfer Notice, other than a Deemed Transfer Notice (as defined in Article 13), may contain a provision that unless all the Offer Shares are sold under this Article, none shall be sold. A Transfer Notice may not be revoked unless it

contains such a provision or all the members of the Company other than the Transferor agree in writing that it may be revoked.

- 12.3 Within seven days after a Transfer Notice is received by the Company, the Directors shall give notice to all the holders of shares in the Company (other than the Transferor) of the number and description of the Offer Shares and the Suggested Price, inviting each such holder to notify the Company within 21 days (a) if he requires the Offer Shares to be independently valued and (b) if he does not so require whether he is willing to purchase any and, if so, what maximum number, of Offer Shares at the Suggested Price.
- 12.4 If on or before the expiry of the 21 day period referred to in Article 12.3 the Directors shall receive notice that a member does require the Offer Shares to be independently valued then the Directors shall instruct a person ("the Valuer") nominated by agreement in writing amongst all the members of the Company (including the Transferor) or failing such agreement within 14 days of the expiry of such 21 day period, nominated by the President for the time being of the Institute of Chartered Accountants of Scotland, to determine the fair value of the Offer Shares in accordance with Article 12.5, acting as an expert and not an arbiter, and to produce a certificate stating such value (a "Certificate of Fair Value").
- 12.5 The fair value of the Offer Shares ("the Fair Value") shall be calculated as between a willing seller and a willing buyer, with no account being taken of the proportion which the Offer Shares bear to the total number of shares in issue, or shares of the same class as the Offer Shares in issue. The Fair Value of each Offer Share shall be calculated by dividing the Fair Value of all the Offer Shares by the total number of the Offer Shares.
- 12.6 Within seven days of receipt of the Certificate of Fair Value, the Directors shall send a copy thereof to the Transferor and the Transferor (provided the Transferor is not a Compulsory Transferor, as defined in Article 13) shall be entitled to revoke the Transfer Notice by notice in writing to the Directors within seven days from the date of service upon the Transferor of such copy.
- 12.7 The cost of obtaining a Certificate of Fair Value shall be borne by the Company, unless the Transferor revokes the Transfer Notice in accordance with Article 12.6 in which case the Transferor shall bear such cost.
- 12.8 If the Transfer Notice has not been revoked by the Transferor after seven days from the date of the service of the Certificate of the Fair Value on the Transferor in accordance with Article 12.6, the Directors shall give notice to all the holders of shares in the Company (other than the Transferor) of the number and description of the Offer Shares and the lower of the Suggested Price and the Fair Value, inviting each such holder to notify the Company within 14 days whether he is willing to

purchase any and, if so, what maximum number, of Offer Shares at the lower of the Suggested Price and the Fair Value.

- 12.9 On the expiry of the 21 day period referred to in Article 12.3 or if a Certificate of Fair Value has been obtained the expiry of the 14 day period referred to in Article 12.8, the Directors shall allocate the Offer Shares to those members who have applied to purchase shares, and in the event of competition amongst members such allocation shall be in accordance with Article 12.10. If the Transfer Notice contains a provision that, unless all the Offer Shares are sold under this Article, none shall be sold, no allocation of the Offer Shares shall be made under this sub-Article unless as a result of such allocation combined with the purchase of shares by the Company pursuant to Article 12.16 (if any), all the Offer Shares will be sold.
- 12.10 If the aggregate number of shares for which members have applied exceeds the number available, priority shall be given to those members holding shares of the same class as the Offer Shares, and the allocation shall be made so far as practicable in proportion to the nominal amount of share capital of that class held by each of those members but shall not in the case of any member exceed the number of Offer Shares for which he has applied. Thereafter, any Offer Shares remaining unallocated shall be allocated amongst the holders of other classes of shares so far as practicable in proportion to the nominal amount of share capital of the Company held by each of those members but shall not in the case of any member exceed the number of Offer Shares for which he has applied.
- 12.11 The price at which the Offer Shares are allocated in terms of Article 12.10 or sold to the Company in terms of Article 12.16 ("the Purchase Price") shall be the Suggested Price, or if a Fair Value has been determined and is lower than the Suggested Price, the Fair Value.
- 12.12 On the allocation being made, the Directors shall give details of the allocation in writing to the Transferor and to each member who has stated his willingness to purchase and, on the seventh day after such details are given, the members to whom the allocation has been made shall be bound to pay the Purchase Price for, and to accept a transfer of, the Offer Shares allocated to them respectively and the Transferor shall be bound, on payment of the Purchase Price, to transfer the Offer Shares to the respective purchasers.
- 12.13 If in any case a Transferor, after having become bound to transfer any shares to a purchaser, shall make default in transferring the shares, the Directors may authorise any Director to execute on behalf of and as attorney for the Transferor any necessary transfers and may receive the Purchase Price and shall thereupon cause the name of the purchaser to be entered in the register as the holder of the shares and hold the Purchase Price in trust for the Transferor. The receipt of the Directors for the Purchase Price shall be a good discharge to the purchaser and after the name of the purchaser has been entered in the

register of members of the Company the validity of the transfer to the purchaser may not be questioned by the Transferor.

12.14 Where more than one member has stated his willingness to purchase Offer Shares and through no default of the Transferor any purchase is not duly completed, the Directors shall forthwith notify all the other members who have stated their willingness to purchase Offer Shares and if, within seven days of such notice being given, those other members shall not between them duly complete the purchase of the Offer Shares in respect of which there has been default in completion, the provisions of Article 12.15 shall apply.

12.15 This Article shall apply if:

12.15.1 following the expiry of the 21 day period referred to in Article 12.3 or if a Certificate of Fair Value has been obtained, the expiry of the 14 day period referred to in Article 12.8, any of the Offer Shares have not been allocated under Article 12.9 or 12.10; or

12.15.2 Article 12.14 applies.

If this Article applies, the Transferor may at any time within a period of 30 days from the occurrence of the event causing it to apply, transfer the Offer Shares not allocated to other members of the Company to any person and at any price (being not less than the Suggested Price, or if a Fair Value has been determined and is lower than the Suggested Price, the Fair Value); provided that if the Transfer Notice contains a provision that, unless all the Offer Shares are sold under this Article, none shall be sold, the Transferor shall be entitled to transfer all but not some only of the Offer Shares.

12.16 12.16.1 Notwithstanding any other Article, the Directors may at any time before Article 12.15 applies, determine that the Company shall attempt to purchase some or all of the Offer Shares itself at the Suggested Price, or if a Fair Value has been determined and is lower than the Suggested Price, the Fair Value.

12.16.2 The Directors shall have a period of 30 days from the date of notification of any such determination to the Transferor to obtain any necessary consents and authorities to any such purchase by the Company and to complete any such purchase.

12.16.3 In the event that a Transferor refuses to sign any document necessary to enable the purchase of some or all of the Offer Shares by the Company, the Directors may authorise any Director to execute on behalf of and as attorney for the Transferor any such document and may receive the Purchase Price and hold the Purchase Price in trust for the Transferor; provided that if the Transfer Notice contains a provision that, unless all the Offer Shares are sold under this Article, none

shall be sold, the Directors may only so authorise any Director if all the Offer Shares will as a result be sold.

12.16.4 The receipt of the Directors for the Purchase Price shall be a good discharge to the Company and after the Offer Shares purchased by the Company have been cancelled, the Transferor may not question the validity of the purchase.

#### **EMPLOYEE ETC SHAREHOLDERS**

13. 13.1 Subject to Article 13.2, the following provisions shall apply where a member who is an employee, a director or an officer of the Company ("a Compulsory Transferor") ceases to be such an employee, a director or an officer for any reason (and does not continue in any of those capacities in connection with the Company), other than by reason of a Good Leaver Reason, or gives or receives notice of such cessation:-

13.1.1 a Transfer Notice ("a Deemed Transfer Notice") shall, unless the Directors in their absolute discretion decide otherwise, be deemed to have been issued pursuant to this Article 13 on the earlier of the date of any such cessation and the date of giving or receiving of notice of such cessation for each class of shares and in respect of all of the shares held by that member or beneficially owned or controlled by that member and his Privileged Relation ("the Deemed Transfer Notice Date");

13.1.2 for the purpose of the Deemed Transfer Notice the Suggested Price shall be the Fair Value as calculated in accordance with Article 12.5;

13.1.3 the Directors shall immediately instruct a Valuer (as defined in Article 12.4) to determine the Fair Value, acting as an expert and not an arbiter, and to produce a certificate stating such value (a "Certificate of Fair Value") and Articles 12.6 to 12.14 and Article 12.16 shall then apply; and

13.1.4 the price to be received for the sale of the Offer Shares by the Compulsory Transferor and the Privileged Relations of the Compulsory Transferor in accordance with the provisions of this Article 13 shall be allocated to the Compulsory Transferor and his Privileged Relations in proportion to the number of Offer Shares held by the Compulsory Transferor and his Privileged Relations respectively.

13.2 Notwithstanding the terms of Article 13.1 and subject to Article 13.4, in the event that the Privileged Director who is also a member of the Company ceases to be an employee, a director or an officer of the Company for any reason other than a Good Leaver Reason (and does not continue in any of those capacities in connection with the

Company), a Deemed Transfer Notice shall be served pursuant to Article 13 in respect of a proportion of those shares held by the Privileged Director as follows:

13.2.1 if he ceases to be an employee, a director or an officer within twelve months from the date of adoption of these Articles, in respect of 75% of the shares then held by the Privileged Director;

13.2.2 if he ceases to be an employee, a director or an officer at any time from twelve to twenty-four months from the date of adoption of these Articles, in respect of 50% of the shares then held by the Privileged Director;

13.2.3 if he ceases to be an employee, a director or an officer at any time from twenty-four to thirty six months from the date of adoption of these Articles, in respect of 25% of the shares then held by the Privileged Director; and

13.2.4 if he ceases to be an employee, a director or an officer at any time thereafter, no Deemed Transfer Notice will be served in respect of his shares;

declaring that the date of such Deemed Transfer Notice in respect of the Privileged Director's shares (or any part of them) shall be the date of his ceasing to be an employee, a director an officer.

13.3 The Transfer Price applicable to any transfers pursuant to Article 13.2 shall be calculated as follows. The Privileged Director shall be considered to be a Good Leaver unless the reason for his ceasing to be an employee, a director or an officer of the Company is his dismissal by the Board in circumstances justifying summary dismissal of the employee, director or officer (including, without limitation, gross misconduct or dishonesty or personal impropriety). The Transfer Price applying to such transfers shall, if the Privileged Director is deemed to be a Good Leaver, be the higher of the subscription price paid for the shares and their Fair Value whereas if such Privileged Director is not deemed to be a Good Leaver, the transfer Price shall be the subscription price paid for the shares.

13.4 Where a member who is an employee, a director or an officer of the Company ceases to be such an employee, a director or an officer of the Company for a Good Leaver Reason and triggers a Default Circumstance then Article 13.1 shall apply regardless of the Good Leaver Reason with the Deemed Transfer Notice Date being deemed to be the date on which a Default Circumstance has occurred.

13.5 In the event that the Founder dies, the deceased Founder's personal representatives may transfer the deceased Founder's shares to the deceased Founder's Privileged Relations and the foregoing provisions of Articles 12 and 13 shall not apply to any such transfer and the Directors shall register that transfer.



## **LIMITATION ON CHANGE OF CONTROL**

14. Notwithstanding any other Article, no sale or transfer (other than a sale or transfer permitted by Articles 11.5.1, 11.5.3 or 11.5.4) of any shares ("the Specified Shares") to any person not being a member of the Company as at the date of adoption of these Articles which would result if made and registered in that person taken together with any persons Acting in Concert with that person obtaining a Controlling Interest shall be made or registered without the previous written consent of all of the members of the Company (other than the Transferor) unless before the transfer is lodged for registration the proposed transferee or his nominees make an offer (stipulated to be open for acceptance for at least 28 days) to such other members to purchase all the other shares at the Specified Price (as defined in Article 15). A member who fails to accept any such offer within the period limited for acceptance shall be deemed to have rejected it.
15. In Article 14, the expression "the Specified Price" shall mean a cash price per share being not less than the Fair Value and at least pari passu to the value of the consideration offered by the proposed transferee or transferees or any third party (as the case may be) or his or their nominees for the Specified Shares to the holder(s) thereof (and/or any member of the same group (as defined below) of the holder(s) thereof) together with an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holder(s) of the Specified Shares or any member of the same group of the said holder(s) which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the consideration for the Specified Shares including, without limitation, any increase in salary, any bonus or termination payment. The Specified Price in respect of a particular share shall not take into account any differences in class rights between it and any other share including, without limitation, any Specified Share. In the event of a disagreement the calculation of the Specified Price shall be referred to an expert (acting as expert and not as arbiter and whose decision shall be final and binding) nominated by and acting at the expense of all the members of the Company (in proportion to their respective shareholdings) or (in the event of disagreement as to nomination) appointed by the President for the time being of the Institute of Chartered Accountants of Scotland. The expression "member of the same group" means a company which is for the time being a holding company of which the transferor company is a subsidiary or a subsidiary of the transferor company or of any holding company of which the transferor company is a subsidiary.

## **SALE BY QUALIFYING MAJORITY**

16. Notwithstanding any other Article, where any person or persons (an "Offeror") makes a Qualifying Offer (as hereinafter defined), the Majority Members (as hereinafter defined) may by notice in writing to the other members of the Company (the "Minority Members") require the Minority Members to forthwith accept such Qualifying Offer (provided that the Majority Members shall also accept such Qualifying Offer). In the event that any Minority Member fails to accept such Qualifying Offer or having accepted such Qualifying Offer fails to

execute and deliver any of the documents required to effect any transfer of shares pursuant thereto, such Minority Member shall be deemed to have appointed the Directors to be his agents and attorneys for the purposes of accepting such Qualifying Offer and/or as the case may be executing and delivering any such documents. The provisions of Article 12.13 shall have effect as if such Minority Member was the Transferor and the Offeror was the purchaser.

For the purposes of this Article:-

"Majority Members" means members, (which must include ETF, as long as ETF holds at least 5% of the then total issued ordinary share capital of the Company) holding shares conferring in aggregate not less than the Qualifying Majority of the total voting rights conferred by all the shares in the capital of the Company for the time being in issue and conferring the right to attend and vote at all General Meetings;

"Qualifying Offer" means an offer which:

- (i) is made on identical terms to all members; and
- (ii) specifies a price which is not less than the Fair Value of each share; and
- (iii) is certified as complying with conditions (i) and (ii) above by an expert (acting as expert and not as arbiter and whose decision shall be final and binding) nominated by and acting at the expense of all the members of the Company (in proportion to their respective shareholdings) or (in the event of disagreement as to nomination) appointed by the President for the time being of the Institute of Chartered Accountants of Scotland.

In determining whether an offer satisfies condition (i) above such expert shall not take into account:

- (a) any differences in class rights between shares; and
- (b) any consideration (in cash or otherwise) received or receivable by any member which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the price paid or payable to that member including, without limitation, any increase in salary, any bonus or termination payment.

## **PROCEEDINGS AT GENERAL MEETINGS**

17. If a quorum is not present within half an hour of the time appointed for a general meeting, the meeting, if convened on the requisition of members, shall be dissolved and in any other case it shall stand adjourned to such day and at such time and place as the Directors determine, and if at the adjourned

meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

18. Where the Company has only a single member, the quorum shall be one.
19. On a show of hands or on a poll, votes may be given either personally or by proxy, or if a corporation, by its duly authorised representative.

#### **DEEMED VARIATION OF CLASS RIGHTS**

20. The rights of the UoE Bodies set out in Articles 7.1, 11.5.3 and 11.6 shall be deemed to be separate class rights and any variation thereof shall be deemed to be a variation of such rights. Any variation of any of those class rights shall require the prior consent of the holders of at least 75% of the shares of the Company then held by the UoE Bodies.

#### **NUMBER OF DIRECTORS**

21. Unless otherwise determined by ordinary resolution of the Company, the number of Directors shall not be subject to any maximum and the minimum number of directors shall be one.
22. A Director shall not be required to hold any share in the Company in order to qualify for office as a Director. A Director, whether or not the Director holds any share in the Company, shall be entitled to attend and speak at any general meeting, or any meeting of any class, of the members of the Company.

#### **ALTERNATE DIRECTORS**

23. Where an alternate Director is also a Director, or acts as an alternate Director for more than one Director, such alternate Director shall have one vote for every Director represented by that Director in addition to that Director's own vote.
24. Where two or more Directors are required to constitute a quorum, an alternate Director, notwithstanding that that Director may be the alternate Director for a number of Directors, shall not, alone, constitute a quorum, and shall only act in conjunction with, at least, one Director or another alternate Director.

#### **APPOINTMENT AND RETIREMENT OF DIRECTORS**

25. The Directors shall not be subject to retirement by rotation and any reference in the Regulations to such retirement shall be construed accordingly.
26. The Company may by ordinary resolution appoint a person who is willing to act as a Director, either to fill a vacancy or as an additional Director.
27. The Directors may appoint any person who is willing to act as a Director, either to fill a casual vacancy or as an additional Director.
28. Notwithstanding any other provisions of these Articles, so long as ETF is the holder of at least 5% of the then total issued ordinary share capital in the Company, it shall be entitled to appoint one person willing to act to be a

director of the Company ("ETF Director"). The right to appoint any such ETF Director shall carry the corresponding right to remove such appointee and appoint another in his/her place. The appointment and removal of the ETF Director shall, unless otherwise agreed between ETF and the Company, be effected by a notice or notices in writing signed on behalf of ETF and given to the Company at its registered office and shall take effect forthwith upon receipt.

29. There shall be no age limit for Directors of the Company.

### **PROCEEDINGS OF DIRECTORS**

30. A sole Director shall have and may exercise all the powers of, and the full authority conferred on, the Directors in terms of these Articles, and all references to the Directors in the Articles and Regulations shall be construed accordingly.
31. The quorum for the transaction of the business of the Directors may be fixed by the Directors but unless so fixed shall be two, except in the case of a sole Director, when the quorum shall be one. A person who holds office only as an alternate Director shall, if the appointing Director is not present, be counted in the quorum.
32. Any Director, including an alternate Director, may participate in a meeting of the Directors or a committee of Directors by means of a conference telephone or other conference communication facility by which all persons participating in the meeting can hear and speak with each other. Participation in a meeting in this manner shall be deemed to constitute the presence of a Director in person at such meeting, entitling him to be counted in the quorum and to vote accordingly. A telephone conference meeting shall be deemed to be held at the place where the largest number of Directors is present, or, where there is no such gathering, where the chairman is present.
33. Subject to such disclosure as is required by the Regulations, or the Act, a Director shall be entitled to vote at, and be counted in the quorum of, a meeting of Directors or of a committee of Directors on any resolution concerning a matter in which the Director has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the Company.

### **THE SEAL**

34. The Company shall not have a seal.

### **INSURANCE**

35. The Directors shall be entitled to purchase and maintain insurance for the benefit of any persons who are or have at any time been Directors, officers, employees or auditors of the Company or any Company which is its holding Company or its subsidiary.

### **GOVERNING LAW**

36. These Articles shall be governed by, and construed in accordance with, the Law of Scotland and the Company, its officers and its members, from time to time, prorogate the non-exclusive jurisdiction of the Scottish Courts.