

Company No: SC240992

**THE COMPANIES ACTS 1985 AND 1989**

**WRITTEN MEMBERS' RESOLUTION**


**of**

**GRANNUS BIOSCIENCES LIMITED**

**(the "Company")**

By a written resolution dated 12 December 2003, passed in accordance with regulation 53 of Table A, all the members of the Company who at the date of the resolution would be entitled to attend and vote at a general meeting of the Company, unanimously resolved that the following resolution shall have effect as if it had been passed at a general meeting of the Company duly convened and held:

1. **THAT** the Company adopt new Articles of Association in the form of the draft produced to the Board Meeting held on 9 January 2004 and for the purpose of identification signed by the Chairman thereof in substitution for and to the exclusion of the existing Articles of Association.

 Attorney for  
D.W. Company Services Limited  
For Grannus Biosciences Limited,  
Company Secretary

Presented by:

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Our ref: HEB/GDJF/GRA256.0001





THE COMPANIES ACT 1985  
PRIVATE COMPANY LIMITED BY SHARES

**ARTICLES OF ASSOCIATION**  
of  
**GRANNUS BIOSCIENCES LIMITED**

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Incorporated in Scotland 11 December 2002

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THE COMPANIES ACT 1985

PRIVATE COMPANY LIMITED BY SHARES

**ARTICLES OF ASSOCIATION**

of

**GRANNUS BIOSCIENCES LIMITED<sup>1</sup>**

(Adopted by Written Resolution passed on 12 December 2003)

**1. INTERPRETATION**

In these Articles the undernoted expressions shall have the meanings set opposite them below:

<b>Act</b>	the Companies Act 1985 including any statutory modification or re-enactment for the time being in force
<b>Board</b>	the board of Directors
<b>Controlling Interest</b>	an interest in shares (as defined in Schedule 13 Part 1 and section 324 of the Act) in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that Company
<b>Convertible Loan Stock</b>	the £300,000 Convertible Loan Stock of the Company constituted by the Loan Note Instrument
<b>Deferral Notice</b>	has the meaning ascribed to it in the Management Services Agreement
<b>Deferred Shares</b>	deferred shares of £0.001 each referred to in Article 2.3 and having the rights set out in these Articles
<b>Directors</b>	the directors of the Company from time to time
<b>Equity Shares</b>	all of the Ordinary Shares in the Company and the expression " <b>Equity Share Capital</b> " and " <b>equity share capital</b> " shall be construed accordingly
<b>Employee Member</b>	a person who is or has been a director and/or an

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<sup>1</sup> The company's name was changed from Dunwilco (1011) Limited on 4 July 2003

	employee of the Company or any of its subsidiaries
<b>Employee Share Pool</b>	the issue of up to 200,000 Ordinary Shares to employees of the Company, the terms of such issue being subject to the approval of the Board
<b>Employee Trust</b>	a trust, the terms and constitution of which have been approved by the Investors and whose beneficiaries are the bona fide employees of the Company or any of its subsidiaries
<b>Exempt Issue</b>	the issue of Ordinary Shares pursuant to the Loan Note Instrument or in respect of the Employee Share Pool
<b>Expert</b>	an umpire (acting as an expert and not as an arbiter or arbitrator) nominated by the parties concerned (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)
<b>Founding Scientists</b>	John Young, Iain McInnes, Alistair Gracie, John Stevenson
<b>Good Leaver</b>	any Employee Member (other than a person who has been declared bankrupt) who ceases to be a director and/or employee: (i) as a result of death, illness (including mental illness), permanent disability, permanent incapacity through ill health; or (ii) as a result of wrongful dismissal; or (iii) in circumstances where he has been dismissed from employment and such dismissal is found to have been unfair by any industrial tribunal or any appellate body thereof
<b>Group Companies</b>	the Company and each subsidiary of the Company for the time being and " <b>Group Company</b> " shall mean any of the Group Companies as the context requires
<b>Investors</b>	Pharmetix, Inc. a California Corporation having its principal place of business at 38 Calle Ameno, San Clemente, California, 92672, United States of America (" <b>Pharmetix</b> "); the Synergy Fund, a Scottish limited

	partnership registered under the Limited Partnerships Act 1907 under number 3639 (the " <b>Fund</b> "); and G U Holdings Limited (" <b>Holdings</b> "); and any other member of an Investor's Group for the time being holding any share in the Company, in each case for so long as they are members of the Company and/or holders of Convertible Loan Stock
<b>Investment Agreement</b>	the agreement among <i>inter alia</i> the Company and the Investors (as therein defined) executed by the Company following the adoption of these Articles
<b>an Investor's Group</b>	in the case of the Fund shall mean the Fund, any partner of the Fund, any body of persons which shall have acquired the whole or substantially the whole of the undertaking of the Fund, and any other fund managed by Scottish Equity Partners Limited; in the case of Holdings, shall mean any member of the University Group; and in respect of any other Investor shall mean that Investor, any subsidiary of that Investor, any holding company of that Investor, and any subsidiary of such holding company
<b>Loan Note Instrument</b>	the instrument constituting the Convertible Loan Stock executed on behalf of the Company following the adoption of these Articles
<b>Management Services Agreement</b>	the Management Services Agreement to be entered into between the Company and Pharmetix relating to the provision of management and consultancy services to the Company following the adoption of these Articles
<b>Milestones</b>	has the meaning ascribed to it in the Management Services Agreement
<b>Ordinary Shares</b>	the ordinary shares of £0.001 each in the capital of the Company
<b>Original Member</b>	any individual who was a registered member of the Company on the date of adoption of these Articles and/or

each of the Investors

**Privileged Relation**

in relation to a member means the spouse or widow or widower of the member and the member's children and grandchildren and for the purpose aforesaid a step-child or adopted child of any person shall be deemed to be a child of such person

**Termination Date**

- where employment ceases by virtue of notice given by the employer to the employee, the date on which such notice expires;
- where a contract of employment is terminated by the employer and a payment is made in lieu of notice, the date on which notice of termination was served;
- where the Employee Member concerned is a director but not an employee and/or a consultant, the earlier of the date upon which he ceases to be a director of all Group Companies and the date upon which any contract for the provision of his services with or to the Company is terminated; and
- in any other case, the date on which the contract of employment is terminated

**University Group**

The University Court of the University of Glasgow incorporated under the Universities (Scotland) Act 1889 (the "**University**") and any company which, were the University a company, would be a subsidiary thereof including, without limitation, G U Holdings Limited.

The Regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 and the Companies Act 1985 (Electronics Communications Order 2002) (such Table being hereinafter called "**Table A**") shall apply to the Company save in so far as they are excluded or varied hereby and such Regulations (save as so excluded or varied) and the Articles hereinafter contained shall be the regulations of the Company.

## 2. **SHARE CAPITAL**

- 2.1 The share capital of the Company at the date of the adoption of these Articles is £2,000 divided into 2,000,000 Ordinary Shares.
- 2.2 The rights attaching to the shares shall be as set out in these Articles.

### **Conversion of Ordinary Shares to Deferred Shares**

- 2.3 Immediately following the service of a Deferral Notice (a "**Trigger Event**"), the Ordinary Shares held by Pharmetix, Inc. (or any person or persons to whom some or all of such Ordinary Shares may have been transferred pursuant to these Articles of Association) ("**Pharmetix Ordinary Shares**") shall automatically convert into Deferred Shares on a one for one basis in accordance with Articles 2.4 and 2.5 of this Article. For the avoidance of doubt, if there is a consolidation or sub-division of any of the Ordinary Shares in the capital of the Company, then the amounts of shares stated in this Article 2.3 shall be adjusted proportionately so as to put the parties in the same position as they would have been in had the consolidation or sub-division not taken place, any dispute as to the interpretation of this provision being referred to the auditors of the Company for decision which shall be final and binding on all parties.
- 2.4 Immediately following a Trigger Event such number of Pharmetix Ordinary Shares as are stated in the relevant Deferral Notice to be converted into Deferred Shares will be converted into Deferred Shares.
- 2.5 The provisions of Articles 2.3 and 2.4 shall cease to have effect on the date falling one month after the second anniversary of the date of adoption of these Articles unless prior written notice of a Trigger Event has been validly given by the Company to Pharmetix prior to that date.

## 3. **INCOME**

### 3.1 **Dividend**

The profits of the Company available for distribution and which the Directors determine to distribute in any financial year shall be applied in paying to the holders of the Ordinary Shares (pro rata according to the amounts paid up or credited as paid up on the Ordinary Shares held by them respectively) such amount by way of dividend as the Directors may determine. The Deferred Shares will carry no right to a dividend or distribution.

### 3.2 **Capital**

On a return of assets on liquidation, reduction of capital or otherwise the surplus assets of the Company remaining after the payment of its liabilities shall be distributed amongst the holders of the Ordinary Shares pro rata according to the amounts paid up or credited as paid up on the Ordinary Shares held by

them respectively. The holders of the Deferred Shares will be entitled to receive 1 pence for every 5,000 Deferred Shares held pari passu with the sums payable to the holders of the Ordinary Shares pursuant to this Article.

#### **4. ISSUE OF SHARES**

For the purposes of Section 80 of the Act, the Directors are authorised generally and unconditionally to allot up to a maximum of £1,999 in nominal amount of relevant securities (as hereinafter defined) of the Company at any time or times from the date of adoption of these Articles until the date occurring five years after such date of adoption. The aforesaid authority may be previously revoked or varied by the Company in general meeting and may be renewed by the Company in general meeting from time to time for a further period not exceeding five years. The Company may make any offer or agreement before the expiry of this authority which would or might require relevant securities to be allotted after this authority has expired and the Directors may allot relevant securities in pursuance of any such offer or agreement. In this paragraph, references to the allotment of relevant securities shall be construed in accordance with Section 80 of the Act.

Notwithstanding any other provisions of these Articles other than Article 4.3, the Directors shall be bound to offer to all members of an Investor's Group for the time being holding shares in the capital of the Company in aggregate 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 all such members of an Investor's Group bears to the total issued equity share capital of the Company immediately prior to the issue of the shares (split between the various Investors proportionately in accordance with their respective holdings of Ordinary Shares).

Any shares issued to a member of an Investor's Group 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 unless the relevant Investor shall agree otherwise and so that such shares shall at the request of the relevant Investor be registered in the name or names of any one or more members of that Investor's Group.

- 4.1 Any shares not taken up pursuant to the foregoing provisions of this Article 4 shall, subject to the provisions of Section 80 of the Act and Article 5, be at the disposal of the directors provided that such shares shall not be disposed of at a price or on terms which are more favourable than the terms on which they were offered to the members of the Investor's Group.
- 4.2 In accordance with Section 95 of the Act, Sections 89(1) and 90(1) to 90(6) inclusive of the Act shall not apply to the Company.



### **Permitted allotments**

- 4.3 The Directors shall, subject to the provisions of Section 80 of the Act, have power to allot Shares pursuant to an Exempt Issue.

## **5. CLASS RIGHTS**

The prior written consent of all the Investors shall be required to:

- 5.1 the grant of any option or other right to subscribe for shares in the Company or any alteration or increase or reduction of the authorised or issued capital of the Company or of any of its subsidiaries, or any variation of the rights attached to any of the shares for the time being in the capital of the Company or of any of its subsidiaries;
- 5.2 the disposal of the undertaking of the Company or of any of its subsidiaries or any substantial part thereof;
- 5.3 the disposal of any share in the capital of any subsidiary of the Company;
- 5.4 any alteration of the restrictions on the powers of the Directors of the Company and its subsidiaries to borrow, give guarantees or create charges;
- 5.5 the acquisition of any interest in any share in the share capital of any company by the Company or any of its subsidiaries;
- 5.6 the application by way of capitalisation of any sum in or towards paying up any share or loan capital of the Company;
- 5.7 the calling of a meeting of the Company or any of its subsidiaries for the purpose of considering a resolution for the winding up of the Company or such subsidiary, and the passage of any such resolution;
- 5.8 the calling of a meeting of the Company to approve a resolution for the purchase or redemption of any of the Company's shares, and the passage of any such resolution;
- 5.9 the calling of a meeting of the Company for the purpose of considering a resolution amending the Memorandum or Articles of Association of the Company, and the passage of any such resolution;

- 5.10 any change in the accounting reference date of the Company;
- 5.11 the entering into of new service contracts or contracts for services with Directors of the Company or their connected persons or material alterations to such existing contracts;
- 5.12 the entering into of any dealings by the Company which are not for full value and on an arm's length basis; and
- 5.13 the calling of a meeting of the Company or the Directors to effect or approve any of the above.

## **6. TRANSFERS OF SHARES**

### **6.1 Permitted transfers**

#### **6.1.1 Inter-group transfers**

Notwithstanding any other provisions of these Articles a transfer of shares in the Company held by any member of an Investor's Group may be made between that member and any other member of that Investor's Group without restriction as to price or otherwise and the Directors shall register any such transfer.

#### **6.1.2 Other permitted transfers**

##### **Privileged Relations**

Any member (or a person entitled to shares in consequence of the death or bankruptcy of any member) may (subject as hereinafter provided) at any time transfer all or any of the Equity Shares held by him to a Privileged Relation of such member.

##### **Pre-emption Rights**

- 6.2 Save as otherwise provided in these Articles every member who desires to transfer any shares (the "**Vendor**") shall give to the Company notice in writing of such desire ("**Transfer Notice**"). Where a Transfer Notice is deemed to have been given pursuant to Article 6.13 below it is referred to as a Deemed Transfer Notice. Subject as hereinafter mentioned a Transfer Notice or Deemed Transfer Notice shall constitute the Company the Vendor's agent for the sale of the shares specified therein (the "**Sale Shares**") in one or more lots at the discretion of the Directors (other than the Vendor) at the Sale Price. The Sale Price shall be the price agreed by the Vendor and the Directors or if the Vendor and the Directors are unable to agree a price within 28 days of the Transfer Notice being given or being deemed

to have been given the price which an Expert shall certify in writing to be in his opinion a fair value thereof on a going concern basis as between a willing seller and a willing buyer ignoring any reduction in value which may be ascribed to the Sale Shares by virtue of the fact that they represent a minority interest and on the assumption that the Sale Shares are capable of transfer without restriction (hereinafter referred to as the "**Fair Value**") and his decision as to the Sale Price shall be final and binding. Save for shares sold pursuant to a Deemed Transfer Notice the Transfer Notice may contain a provision ("**Total Transfer Provision**") that unless all the shares comprised therein are sold by the Company pursuant to this Article none shall be sold and any such provision shall be binding on the Company.

- 6.3 If an Expert is asked to certify the fair value as aforesaid his certificate shall be delivered to the Company and as soon as the Company receives the certificate it shall furnish a certified copy thereof to the Vendor. Save for shares sold pursuant to a deemed Transfer Notice the Vendor shall be entitled by notice in writing given to the Company within ten days of the service upon him of the certified copy to cancel the Company's authority to sell the Sale Shares. The cost of obtaining the certificate shall be borne by the Company unless the Vendor shall give notice of cancellation as aforesaid in which case the Vendor shall bear the cost.
- 6.4 Upon the price being fixed as aforesaid and provided the Vendor has not given a valid notice of cancellation the Company shall forthwith offer the Sale Shares for sale as set out below.
- 6.5 Any shares being sold by reason of a Compulsory Employee Transfer may (at the discretion of the Board) be offered to an Employee Trust and/or (if the Company is legally able to purchase such shares) to the Company within 14 days of the Sale Price being determined. Any shares not sold under this Article 6.5 within 14 days of such offer will be available for sale to the members of the Company as set out below.
- 6.6 As soon as the Sale Shares become available they shall forthwith be offered to all holders of Equity Shares (other than the Vendor) pro rata as nearly as may be in proportion to the existing number of Equity Shares held by such members giving details of (i) the number and the Sale Price of such Sale Shares and (ii) whether the Sale Shares are subject to a Total Transfer Provision and (iii) the method of allocation of the Sale Shares. The Company shall invite each such member as aforesaid to state in writing within twenty-one days from the date of the notice whether he is willing to purchase any of the Sale Shares so offered to him and if so the maximum thereof which he is willing to purchase and such invitation will set the basis of allocation of the Sale Shares. The Sale Shares shall be allocated in accordance with Article 6.7.
- 6.7 If the total number of Sale Shares applied for by the members is equal to or less than the number of Sale Shares available the Sale Shares shall be allocated in satisfaction of the applications received. If the total number of Sale Shares applied for is more than the number of Sale Shares available, the Directors

shall allocate Sale Shares in satisfaction of each member's application for Sale Shares in accordance with the following formula. This formula shall be applied repeatedly until such time as there are no Sale Shares remaining to be allocated. Each application of the formula is herein referred to as an **"iteration"**.

$$A = \frac{B \times D}{C}$$

Where:

A is the number of Sale Shares to be allocated to the relevant member in the iteration.

B is the number of Equity Shares held by the member

C is the number of Equity Shares held by all members to whom the iteration is being applied.

D is the number of Sale Shares or, after the first iteration, the number of Sale Shares remaining unallocated by previous iterations.

If, in any iteration, a member would be allocated all or more than all of the Sale Shares for which he applied (including allocations from previous iterations) then any excess will not be allocated to that member. That member will cease to take part in any further iterations and the excess Sale Shares will be available for allocation in the next iteration.

- 6.8 The Company shall notify the Vendor and each member who applied for Sale Shares of the number of Sale Shares that have been allocated and the persons to whom they have been allocated. The notification shall include the place and time (being not later than 14 days after the date by which applications had to be received) at which the sale of the Sale Shares shall be completed.
- 6.9 If the Company shall pursuant to the above provisions of this Article find a member or members of the Company willing to purchase all or (in the event of a Transfer Notice which does not contain a Total Transfer Provision) any of the Sale Shares the Vendor shall be bound upon receipt of the Sale Price to transfer the Sale Shares (or such of the same for which the Company shall have found a purchaser or purchasers) to such persons. If the Vendor shall make default in so doing he shall be deemed to have irrevocably appointed any person nominated for the purpose by the Directors to be his agent and attorney to execute all necessary transfer(s) on his behalf and against receipt by the Company (on trust for such holder) of the purchase monies or any other consideration payable for the Sale Shares deliver such transfer(s) to the purchaser(s) and the Directors shall forthwith register the purchaser(s) as the holder thereof and, after the purchaser(s) has/have been registered as the holder(s), the validity of such proceedings shall not be questioned by any such person. It shall be no impediment to registration of Sale Shares under this sub-article that no share certificate has been produced.

- 6.10 If the Directors shall not have found a member or members of the Company willing to purchase all of the Sale Shares pursuant to the foregoing provisions of this Article the Vendor shall at any time within six months after the final offer by the Company to its members be at liberty to sell and transfer such of the Sale Shares as have not been so sold to any person (subject to that person first being approved by the Board) at a price being no less than the Sale Price. If the Sale Shares were the subject of a Total Transfer Provision, such a sale may only be of all the Sale Shares and not part only.
- 6.11 The foregoing provisions of this Article shall not apply to a transfer if the holders of all of the Ordinary Shares so direct in writing and the Directors shall be obliged to register any such transfer.
- 6.12 Where any member purports to transfer any shares other than in accordance with these articles without giving a Transfer Notice to the Company, such transfer shall be void and ineffectual and the Board may elect at its sole discretion that a Transfer Notice shall be deemed to have been given to the Company in respect of such shares, and, in these circumstances, the deemed Transfer Notice shall:
- 6.12.1 be deemed to apply to the number and class of shares purported to have been transferred;
- 6.12.2 entitle the Company to require delivery to it of the certificate for the shares purported to have been transferred and where the context admits, references in these Articles to a Vendor shall include a member deemed to have served a Transfer Notice.

### **Employee Members**

- 6.13 Unless the Board and the Investors agree otherwise in writing if an Employee Member (other than any Employee Member who is, or who is an employee, officer, or director of, an Investor) ceases to be a director or employee of any Group Company and does not forthwith become or continue to be a director or an employee, as the case may be, of another Group Company for any reason (including death), a Transfer Notice shall be deemed to have been served (a "**Deemed Transfer Notice**"):
- 6.13.1 on the relevant Termination Date in respect of all of the shares held by him and his Associates in the Company as at the Termination Date;
- 6.13.2 in respect of all shares in the Company acquired by him or his Associates under any option scheme or other arrangement which was made prior to the Termination Date (and in this case the Transfer Notice will be deemed served on the date that such shares are acquired by him or his Associates pursuant to such scheme or arrangement);

and until such shares shall have been transferred in accordance with these Articles to another party by or on behalf of such Employee Member they shall not entitle the holder thereof to attend or vote, whether in person or by proxy, at any general meeting of the Company.

Any transfer of shares pursuant to this Article 6.13 shall be referred to as a "**Compulsory Employee Transfer**". For the avoidance of doubt, in the case of a Compulsory Employee Transfer pursuant to Article 6.13.2 where the Employee Member is a Good Leaver, the Sale Price applicable to the relevant shares shall be the Sale Price that would have applied in accordance with these Articles had the shares been the subject of a Compulsory Employee Transfer on the Termination Date.

In the event that a Deemed Transfer Notice has been served (or deemed to be served) by an Employee Member pursuant to these Articles where that Employee Member is not a Good Leaver, the Sale Price shall be the amount subscribed (or its cash equivalent) for the Sale Shares.

- 6.14 Unless the Board and the Investors agree otherwise in writing, if a corporate member ceases to be within the control (as such term is defined by Section 840 Income and Corporation Taxes Act 1988) of the person(s) who controlled such company on the date on which it became a member of the Company or on the date of adoption of these Articles (whichever shall be the later) it shall be deemed to have immediately given a Transfer Notice in respect of all the shares registered in its name; provided that this Article shall not apply to (a) any change of control resulting from a transfer within an Investor's Group; and/or (b) any change of control which is the result of a solvent reconstruction or reorganisation of an Investor or any member of an Investor's Group.

## 7. **LIMITATION ON TRANSFER/TAG ALONG**

- 7.1 No sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered if as a result of such sale or transfer and registration thereof a Controlling Interest would be obtained in the Company:

7.1.1 by a company (other than a company to which the immediately following sub-article applies) or by a person or persons (other than a company) who are not Original Members except (i) with the consent in writing of each Investor and (ii) unless the proposed transferee or transferees or his or their nominees are independent third parties acting in good faith and has or have offered to purchase all the Equity Shares (the same terms and conditions being offered to each holder of Equity Shares) and allocates the consideration payable for all such shares it is purchasing and offering to purchase in the same manner as if the consideration was to be distributed to the selling shareholders pro rata according to the amounts paid up or credited as paid up on such Equity Shares held by them respectively; or

7.1.2 by a company in which one or more of the members of the Company (other than an Investor) or persons acting in concert with any member of the Company (other than an Investor) has or as a result of such sale or transfer will have a Controlling Interest.

- 7.2 In this Article and in Article 8:

- 7.2.1 the expressions "**transfer**" and "**transferee**" shall include respectively the renunciation of a renounceable letter of allotment and the renouncee under any such letter of allotment;
  - 7.2.2 the expression "**shares**" includes bearer shares, depository receipts and any other security or instrument into which shares may be converted with a view to a sale;
  - 7.2.3 whether or not persons are acting in concert will be determined by the then most recent edition of the City Code on Takeovers and Mergers.
- 7.3 All other regulations of the Company relating to the transfer of shares and the right to registration of transfers shall be read subject to the provisions of this Article and (in circumstances where it applies) Article 8.

## 8. **DRAG ALONG**

- 8.1 Subject always to the provisions of Article 7, if the holders of at least sixty five per cent (65%) of the Ordinary Shares (the "**Selling Shareholders**") wish to transfer all their interest in Equity Shares (the "**Sellers' Shares**") to a bona fide arms length purchaser (the "**Third Party Purchaser**") the Selling Shareholders shall have the option (the "**Drag Along Option**") to require all the other holders of Equity Shares (the "**Called Shareholders**") to sell and transfer all their shares to the Third Party Purchaser or as the Third Party Purchaser shall direct in accordance with the provisions of this article.
- 8.2 The Selling Shareholders may exercise the Drag Along Option by giving written notice to that effect (a "**Drag Along Notice**") at any time before the transfer of the Sellers' Shares to the Third Party Purchaser. A Drag Along Notice shall specify that the Called Shareholders are required to transfer all their Equity Shares (the "**Called Shares**") pursuant to this article, the person to whom they are to be transferred, the consideration for which the Called Shares are to be transferred (calculated in accordance with this article) and the proposed date of transfer.
- 8.3 Drag Along Notices shall be irrevocable but will lapse if for any reason there is not a sale of the Sellers' Shares by the Selling Shareholders to the Third Party Purchaser within 60 days after the date of service of the Drag Along Notice. The Selling Shareholders shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice.

The consideration (in cash or otherwise) for which the Called Shareholders shall be obliged to sell each of the Called Shares shall be the price per share which the Selling Shareholders would be entitled to receive from the Third Party Purchaser, provided, however, that if such price is less than the fair market value of such Called Shares (as determined, if requested by the holders of Ordinary Shares possessing twenty per cent (20%) or more of the total number of Ordinary Shares then issued and outstanding, by an independent evaluator with experience in the valuation of technology equities, which evaluation shall be performed at the expense of the Company), then the Called Shareholders shall have no

obligation to sell the Called Shares he holds unless the offeror for such Called Shares shall increase the price to be paid therefor to an amount which equals or exceeds the fair market value determined by such independent evaluator.

- 8.4 Completion of the sale of the Called Shares shall take place on the same date as the date proposed for completion of the sale of the Sellers' Shares unless:

8.4.1 all of the Called Shareholders and the Selling Shareholders agree otherwise; or

8.4.2 that date is less than 3 days after the Drag Along Notice where it shall be deferred until the third day after the Drag Along Notice.

- 8.5 The rights of pre-emption set out in these articles shall not arise on any transfer of shares to a Third Party Purchaser (or as he may direct) pursuant to a sale in respect of which a Drag Along Notice has been duly served.

- 8.6 Subject to the provision of Section 8.3 above, if any holder of Equity Shares does not on Completion of the sale of Called Shares execute transfer(s) in respect of all the Called Shares held by him the defaulting holder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Selling Shareholders to be his agent and attorney to execute all necessary transfer(s) on his behalf and against receipt by the Company (on trust for such holder) of the purchase monies or any other consideration payable for the Called Shares deliver such transfer(s) to the Third Party Purchaser (or as he may direct) and the Directors shall forthwith register the Third Party Purchaser (or as he may direct) as the holder thereof and, after the Third Party Purchaser (or his nominee) has been registered as the holder, the validity of such proceedings shall not be questioned by any such person. It shall be no impediment to registration of shares under this sub-article that a share certificate has not been produced.

- 8.7 Upon any person, following the issue of a Drag Along Notice, becoming a member of the Company pursuant to the exercise of a pre-existing option or other right to acquire shares in the Company (a "New Member"), a Drag Along Notice shall be deemed to have been served upon the New Member on the same terms as the previous Drag Along Notice who shall thereupon be bound to sell and transfer all such shares acquired by him to the Third Party Purchaser or as the Third Party Purchaser may direct and the provisions of this article shall apply mutatis mutandis to the New Member save that completion of the sale of such shares shall take place forthwith upon the Drag Along Notice being deemed to be served on the New Member.

## 9. GENERAL MEETINGS AND RESOLUTIONS

- 9.1 A notice convening a General Meeting shall be required to specify the general nature of the business to be transacted only in the case of special business and Regulation 38 in Table A shall be modified accordingly.



All business shall be deemed special that is transacted at an Extraordinary General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets and the reports of the Directors and Auditors, and the appointment of, and the fixing of the remuneration of, the Auditors.

9.2 Every notice convening a General Meeting shall comply with the provisions of Section 372(3) of the Act as to giving information to members in regard to their right to appoint proxies; and notices of and other communications relating to any General Meeting which any member is entitled to receive shall be sent to the Directors and to the Auditors for the time being of the Company.

9.3 Regulation 40 in Table A shall be read and construed as if the words "at the time when the Meeting proceeds to business" were added at the end of the first sentence.

9.4 If a quorum is not present within half an hour from the time appointed for a General Meeting the General Meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine; and if at the adjourned General Meeting a quorum is not present within half an hour from the time appointed therefore such adjourned General Meeting shall be dissolved.

9.5 Regulation 41 in Table A shall not apply to the Company.

9.6 Regulation 50 in Table A shall not apply to the Company.

## 10. **VOTING**

10.1 The Equity Shares shall carry one vote per share. On a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a representative not being himself a member, shall have one vote, and on a poll every member who is present in person or by proxy or (being a corporation) is present by a representative shall have one vote for every share in the capital of the Company of which he is the holder. The holders of Deferred Shares shall not by reason of such holding be entitled to receive notice of or to attend, vote or speak at any general meeting of the Company.

10.2 Regulation 54 in Table A shall not apply to the Company.

## 11. **LIEN**

The lien conferred by Regulation 8 in Table A shall attach also to fully paid-up shares, and the Company shall also have a first and paramount lien on all shares, whether fully paid or not, standing registered in the name of any person indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company. Regulation 8 in Table A shall be modified accordingly.

## **12. CALLS ON SHARES**

The liability of any member in default in respect of a call shall be increased by addition at the end of the first sentence of Regulation 18 in Table A of the words "and all expenses that may have been incurred by the Company by reason of such non-payment".

## **13. DIRECTORS**

13.1 The Directors shall not be required to retire by rotation and Regulations 73 to 80 (inclusive) in Table A shall not apply to the Company.

13.2 Unless otherwise determined by Ordinary Resolution in General Meeting of the Company the number of Directors (other than alternate Directors) shall not be subject to any maximum and the minimum number of Directors shall be one. If and so long as the minimum number of Directors shall be one a sole Director may exercise all the authorities and powers which are vested in the Directors and Table A shall be modified accordingly. Regulation 64 of Table A shall not apply to the Company.

13.3 Other than any appointment of a Director pursuant to Article 13.6 hereof, no person shall be appointed a Director at any General Meeting unless either:

13.3.1 he is recommended by the Directors; or

13.3.2 not less than fourteen nor more than thirty-five clear days before the date appointed for the General Meeting, a notice executed by a member qualified to vote at the General Meeting has been given to the Company of the intention to propose that person for appointment, together with notice executed by that person of his willingness to be appointed.

13.4 Subject to Article 13.3 above, the Company may by Ordinary Resolution in General Meeting (or by resolution in writing in accordance with Section 381A of the Act) (i) appoint any person who is willing to act to be a Director, either to fill a vacancy or as an additional Director and (ii) remove any Director (other than a Director appointed pursuant to Article 13.6) without any requirement for Special Notice (as defined in Section 379 of the Act).

13.5 The Directors may appoint a person who is willing to act to be a Director, either to fill a vacancy or as an additional Director with the prior written consent of the holders of at least 75% of the Ordinary Shares. Any Director (other than a Director appointed pursuant to Article 13.6) may be removed from office by resolution in writing of all of the other Directors.

13.6 Notwithstanding any limitation on the number of Directors imposed by these Articles each Investor shall be entitled to appoint as a Director of the Company any one person and to remove from office any person so appointed and to appoint another person in his place. Any appointment or removal in terms of this paragraph shall be effected by notice in writing signed by the relevant Investor and delivered to the

registered office of the Company. No Director appointed in terms of this Article shall be required to hold any share qualification nor shall he be subject to retirement by rotation and the remuneration to be paid to him shall be payable by the Company and shall be such sum as shall for the time being be agreed for that purpose between the Company and him or failing such agreement such reasonable sum as shall be fixed by the appointing Investor. Upon request by such Investor the Company shall also procure that a Director appointed in terms of this paragraph be appointed a Director to any subsidiary of the Company. Upon request by the Investors, one of the Directors appointed by them in terms of this paragraph shall act as Chairman of the board of Directors.

**14. ALTERNATE DIRECTORS**

14.1 Any Director appointed pursuant to Article 13.6 (other than an alternate director) may appoint any other director or any other person willing to act, to be an alternate director and may remove from office an alternate director so appointed by him. Regulation 65 shall be modified accordingly.

14.2 An alternate Director shall not be entitled as such to receive any remuneration from the Company, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct, and the first sentence of Regulation 66 in Table A shall be modified accordingly.

14.3 A Director, or any such other person as is mentioned in Regulation 65 in Table A, may act as an alternate Director to represent more than one Director, and an alternate Director shall be entitled at any meeting of the Directors or of any committee of the Directors to one vote for every Director whom he represents in addition to his own vote (if any) as a Director, but he shall count as only one for the purpose of determining whether a quorum is present.

**15. DISQUALIFICATION OF DIRECTORS**

The office of a Director shall be vacated if he becomes incapable by reason of illness or injury of managing and administering his property and affairs, and Regulation 81 in Table A shall be modified accordingly.

**16. PROCEEDINGS OF DIRECTORS**

16.1 Regulation 96 of Table A shall apply to the Company, subject to the reference to an ordinary resolution being deemed to have been replaced by a reference to a special resolution.

16.2 Regulation 97 in Table A shall not apply to the Company.

16.3 Meetings of the Directors may be held by conference telephone or similar equipment, so long as all the participants can hear each other. Such meetings shall be as effective as if the Directors had met in person.

- 16.4 Any questions arising at a meeting of the Directors of the Company shall be decided by a majority of votes. The words "In the case of an equality of votes, the chairman shall have a second or casting vote" which appear in Regulation 88 in Table A shall not apply to the Company.
- 16.5 Where a Director or Directors have been appointed pursuant to Article 13.6 no meeting of the Directors shall be quorate unless at least one of the Directors appointed pursuant to Article 13.6 is present unless the Investors agree otherwise in writing in any particular case and clause 89 of Table A shall be *amended accordingly. Notwithstanding the foregoing generality, the quorum for the transaction of the business of the directors shall be four, save where the actual number of directors is less than four in which case the quorum shall be equal to the actual number of directors then appointed. The words "may be fixed by the directors and unless so fixed at any other number" which appear in Regulation 89 of Table A shall not apply to the Company.*

## 17. **BORROWING POWERS**

Subject as hereinafter provided, the Directors may exercise all the powers of the Company (whether express or implied):

- 17.1 of borrowing or securing the payment of money;
- 17.2 of guaranteeing the payment of money and the fulfilment of obligations and the performance of contracts; and
- 17.3 of mortgaging or charging the property assets and uncalled capital of the Company and (subject to Section 80 of the Act) issuing debentures, debenture stock and other securities whether outright or as security for any debt liability or obligation of the Company or of any third party.

## 18. **THE SEAL**

Regulation 6 of Table A shall be modified so as to remove the reference to the Company seal and Regulation 101 of Table A shall be modified by the insertion of the words "if the Company has one" after the words "The seal" at the beginning of that clause.

**19. INDEMNITY**

- 19.1 Every Director or other officer of the Company shall be indemnified out of the assets of the Company against all costs, charges, expenses, losses and liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 144 or Section 727 of the Act in which relief is granted to him by the Court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.
- 19.2 Regulation 118 in Table A shall not apply to the Company.