

**PRIVATE COMPANY LIMITED BY SHARES**

**NOTICE OF WRITTEN RESOLUTIONS**

**OF**

**METAFORIC LIMITED**

**(Registered No. SC300538)**

MONDAY



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19/07/2010

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COMPANIES HOUSE

Notice is hereby given that in accordance with Chapter 2 of Part 13 of the Companies Act 2006, on ~~29<sup>th</sup>~~ June 2010 the following resolutions were passed by the shareholders of the Company by way of written resolution:

**ORDINARY RESOLUTION**

- (a) THAT in substitution for any existing power under section 551 of the Companies Act 2006 or section 80 of the Companies Act 1985 but without prejudice to the exercise of any such authority prior to the date hereof, the Directors be and are hereby authorised generally and unconditionally in accordance with section 551 of the Companies Act 2006 to allot shares up to an aggregate nominal amount of £110,750, divided into 3,605,000 ordinary shares of £0.01 each and 7,470,000 A ordinary shares of £0.01 each, such authority to expire on the date 5 years from the passing of this resolution but so that such authority shall allow the Company to make offers or agreements before the expiry of such authority which would or might require shares to be allotted after this authority has expired and the Directors may allot shares in pursuance of any such offer or agreement as if the power conferred hereby had not expired. In this resolution, references to the allotment of shares shall include the grant of rights to subscribe for, or to convert any security into shares.

**SPECIAL RESOLUTIONS**

- (b) THAT the regulations contained in the document attached hereto are approved and are adopted as the articles of association of the Company ("the Articles") and in substitution for and to the exclusion of all existing articles of association of the Company.
- (c) THAT in substitution for any existing power under section 570 of the Companies Act 2006 (the "Act"), the Directors be and are hereby generally and unconditionally empowered pursuant to section 570 of the Act, to allot equity securities (as defined in section 560 of the Act) for cash pursuant to the authority given above in accordance with section 551 of the Act as if section 561 of the Act did not apply to the allotment such power to expire on the date five years from the passing of this resolution but so that such power shall allow the Company to make offers or agreements before the expiry of this power which would or might require equity securities to be allotted after

such expiry and the Directors may allot equity securities in pursuance of such offers or agreements as if the power conferred hereby had not expired.



LINDA ANNE MACKELLAR  
, director of Metaforic Limited

29<sup>th</sup> June 2010 Date:

**THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of**

**METAFORIC LIMITED**

**Registered No SC300538**

**Incorporated in Scotland the 10th day of April 2006**

**Adopted on the 29th day of June 2010**



**Dickson Minto W.S.**

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**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**of**  
**METAFORIC LIMITED**  
**(Registered Number SC300538)**

**CONSTITUTION**

1. The Company is established as a private company within the meaning of section 4(1) of the Companies Act 2006 (the "2006 Act") subject to the provisions of the 2006 Act including any statutory modification or re-enactment thereof for the time being in force and the articles contained in The Model Form Articles for private companies limited by shares as set out in The Companies (Model Articles) Regulations 2008 (Statutory Instrument 2008 No. 3229) (the "**Model Articles**") with the exception of articles 2, 14, 17 to 20 (inclusive), 22(2), 24(2)(c), 26, 38, 41, 44(1), 44(2), 52 and 53, and of any other articles which are inconsistent with the additions and modifications hereinafter set forth.
2. The name of the Company is Metaforic Limited.
3. The Registered Office of the Company will be in Scotland.
4. The liability of the members is limited to the amount, if any, unpaid on the Shares held by them.
5. In accordance with the 2006 Act the objects of the company shall be unrestricted.
6. The name of the Company may be changed by resolution of the Directors.

**INTERPRETATION**

7. In these Articles, unless the context otherwise requires, words and expressions shall bear the meaning ascribed to them in Schedule 1 of these Articles and the Schedules shall be part of and construed as one with these Articles.

**SHARE CAPITAL**

- 8.
- 8.1. Any offer to the public (whether for cash or otherwise) of any shares in or debentures of the Company or any allotment of or agreement to allot (whether for cash or otherwise) any shares in or debentures of the Company

with a view to all or any of these shares or debentures being offered for sale to the public shall be prohibited.

- 8.2. The shares which the shareholders of the Company may authorise the directors to allot shall be restricted to an aggregate nominal amount £110,750, divided into 3,605,000 Ordinary Shares and 7,470,000 A Ordinary Shares, save as otherwise agreed by Ordinary Resolution.
- 8.3. The A Ordinary Shares and the Ordinary Shares shall be separate classes of shares and carry the respective rights set out in these Articles.

### RIGHTS ATTACHING TO THE SHARES

9.

- 9.1. The rights and restrictions attaching to the A Ordinary Shares and the Ordinary Shares are as follows:

#### Income

- 9.2. No dividend shall be paid on any Share without the prior consent of all of the Investor Directors.

#### Liquidation Preference and Allocation of Sale Proceeds

- 9.3. Upon a liquidation, dissolution or winding up of or other return of capital by the Company (a "**Capital Distribution Event**") or a Sale, the proceeds of such Sale or the assets of the company available to the Members (as the case may be, and each being the "**Proceeds**") shall be distributed (to the extent that the Company is lawfully permitted to do so) (among the Members (being, in the case of a Sale, the Members immediately prior to such Sale) by either:
  - 9.3.1. (A) in paying to each holder of A Ordinary Shares the Issue Price in respect of each A Ordinary Share of which it is the holder, (the "**Liquidation Preference**") and (B) in paying to the holders of the Shares (including for the avoidance of doubt the holders of the A Ordinary Shares) the balance of the Proceeds after payment in full of the Liquidation Preference in proportion to the number of Shares held by them (the "**Balancing Payment**") provided that, in the case of the A Ordinary Shares, the Balancing Payment shall not exceed an amount equal to two times the Liquidation Preference on each A Ordinary Share (with any excess balance payable to the holders of the Ordinary Shares in proportion to their respective holdings of Ordinary Shares); or
  - 9.3.2. in paying to the holders of the Shares the Proceeds in proportion to the number of Shares held by them if to do so would result in a greater amount of the proceeds being payable to the holders of the A Ordinary Shares than would otherwise be payable under Article 9.3.1.
- 9.4. The provisions of Article 9.3 shall be subject to the following overriding provisions:

- (a) upon a Sale, those Shares not acquired by the relevant purchaser(s) shall not be entitled to any allocation of Proceeds pursuant to Article 9.3;
  - (b) if the Sale relates to a sale of A Ordinary Shares only to the proposed purchaser(s) and no Ordinary Shares are to be sold, the provisions of Clause 9.3 shall not apply; and
  - (c) the Members and the Board shall use all reasonable endeavours to reach agreement (without delay) as to the accuracy of calculations to be undertaken to give effect to the provisions of this Article 9.3. In the event that they fail to do so within 7 days, the Valuers shall be instructed to determine and state in writing to the Board what in its opinion are the results of such calculations. Any such opinion in writing shall, in the absence of manifest error, be final and binding on all of the shareholders, each of whom shall be sent a copy by the Board.
- 9.5. If a Listing is proposed then, immediately prior to and conditional on the Listing taking place, the Company shall complete all necessary steps required to reorganise or recapitalise the issued share capital of the Company (including if necessary the allotment and issue to each A Ordinary Shareholder (at no cost to such A Ordinary Shareholder and, in the first instance and if lawful, by way of automatic capitalisation of available reserves of the Company) of new shares) (the "**Pre-Listing Reorganisation**") to ensure that the proportion of the Shares held by each Member following completion of such Pre-Listing Reorganisation entitles such Members to that amount of the proceeds of the Listing that each Member would have received in accordance with Article 9.3 if the Listing were a Sale (and assuming the valuation of the issued share capital of the Company immediately prior to the Listing constitutes the proceeds referred to in Article 9.3). Any capitalisation shall be automatic (once the Listing has taken place) and shall not require any action on the part of the holders of shares and the directors shall allot the Ordinary Shares arising on a capitalisation to the A Ordinary Shareholders. If the Company is not legally permitted to carry out a capitalisation, the A Ordinary Shareholders shall be entitled to subscribe in cash at par for that number of additional Ordinary Shares as would have otherwise been issued pursuant to this Article 9.5. To the extent there is insufficient share capital and/or directors' authority to effect the issue the directors shall procure (so far as they are able) that (i) the Company's share capital is increased to the extent necessary, (ii) the directors are granted the requisite authority to the extent necessary to permit the issue required and (iii) all holders of Shares shall vote in favour of the necessary resolutions to effect the increase and authorising the allotment.
- 9.6. Unless otherwise agreed in writing by an Investor Majority, a Disposal will be regarded as a Capital Distribution Event in respect of the proceeds received by the Company in relation thereto (after payment of the expenses of the Group relating to the Disposal) (the "**Net Disposal Proceeds**") and the following provisions of this Article 9.6 shall apply to the Net Disposal Proceeds:

- 9.6.1. (subject to Article 9.6.2 below), the Net Disposal Proceeds shall be paid into an escrow account or into a client account of the Company's solicitors (in trust for the relevant shareholders) and shall be allocated between, and (to the extent that the Company is lawfully permitted to do so) distributed amongst the relevant Members in accordance with the provisions of Article 9.3, save that as regards any Net Disposal Proceeds that are not in cash the Company shall ensure that Alternative Arrangements (as defined in Article 9.6.2 below) are put in place;
- 9.6.2. For the purposes of Article 9.6.1 "**Alternative Arrangements**" means arrangements proposed by the Board and approved in writing by an Investor Majority, taking into account the requirements of, and entitlements under, Article 9.3, provided that if within 10 Business Days of the relevant Disposal no Alternative Arrangements have been approved the Valuers shall be asked to determine the nature of the Alternative Arrangements and their determination shall apply for the purpose of this Article 9.6;
- 9.6.3. the Members and the Company shall (to the extent legally permissible) use all their reasonable endeavours to ensure that the Net Disposal Proceeds are distributed amongst the Shareholders in accordance with Article 9.3; and
- 9.6.4. in the event that there is more than one Disposal, the provisions of Article 9.3 shall only be invoked in relation to any second or more Disposals to the extent that the aggregate amount received by the Investors pursuant to the earlier Disposal or Disposals has not exceeded an amount equal to three times the Liquidation Preference.

#### **Anti-Dilution Protection**

#### 9.7.

- 9.7.1. Subject to Article 9.8, the holders of A Ordinary Shares shall have anti-dilution protection so that:
  - (a) if the Company shall issue new shares (or grant rights to subscribe for new shares) in the Company ("New Shares") after the date of adoption of these Articles (the "New Issue") (other than a Permitted Allotment) at a price (the "New Issue Price") per New Share which is less than the Starting Price; and
  - (b) a holder of A Ordinary Shares participates in the New Issue in accordance with Article 10 (each being defined herein as a "Relevant Shareholder"),

then the Company shall offer to each Relevant Shareholder the right to receive and/or to subscribe at par for such number of new A Ordinary Shares (with such nominal value as determined in accordance with Article 9.7.3) (the "Compensation Shares") by applying the following



formula (and rounding the product, N, up or down as appropriate to the nearest whole Share):

- (i)  $N = (W \text{ divided by } X) \text{ minus } Z$ ; or
- (ii) where the Relevant Shareholder is required to subscribe in cash for any Compensation Shares in accordance with Article 9.7.3, N shall be calculated as follows if required by the majority of the A Ordinary Shareholders (who may instead elect to calculate N in accordance with Article 9.7.3(i)):

$N = (((W \text{ divided by } Z) \text{ minus } X) \text{ multiplied by } Z) \text{ divided by } (X \text{ minus } V)$ ;

Where:

N = the number of Compensation Shares (and for the avoidance of doubt, if N is zero or less this Article 9.7.1 shall not apply) to be offered to the Relevant Shareholder pursuant to this Article 9.7.1;

W = the total subscription price for the Shares held by the Relevant Shareholder, provided that in determining the number of Shares held by a Relevant Shareholder for the purposes of defining "W" any shares which it subscribes pursuant to Article 10 in relation to the New Issue which triggers the operation of this Article 9.7.1 shall be excluded.

X = the weighted average price which shall be calculated as follows:

$$\frac{((\text{Starting Price}) \times A) + ((\text{New Issue Price}) \times B)}{(A+B)}$$

Where:

A = the total number of shares comprised in the issued share capital of the Company immediately prior to the New Issue, that is excluding the New Shares, any Shares allotted or to be allotted pursuant to Article 10 in connection with the Third Party Issue triggering this Article 9.7.1 and any Compensation Shares allotted or to be allotted by operation of these anti dilution provisions;

B = the total number of New Shares proposed to be allotted in connection with the New Issue.

In the event that the New Shares to be issued in connection with the New Issue are not issued for cash, the New Issue Price shall be the sum certified by the Valuers acting as expert and not as arbitrator as being in its opinion the current cash value of the non cash consideration for the allotment of the New Shares;

Z = the number of Shares held by the Relevant Shareholder prior to the application of this Article 9.7.1 provided that in determining the number of Shares held by a Relevant Shareholder for the purposes of

defining "Z" any shares which it subscribes pursuant to Article 10 in relation to the New Issue which triggers the operation of this Article 9.7.1 shall be excluded;

V = the nominal value of each Compensation Share (as determined in accordance with Article 9.7.3).

9.7.2. Save for the first New Issue after the date of adoption of these Articles which triggers the operation of this Article 9.7 in which case the Starting Price shall be £0.632, the Starting Price in connection with a New Issue (the "Relevant New Issue") shall be deemed to be the weighted average price calculated for the purposes of "X" in connection with the last New Issue to have triggered the operation of Article 9.7.1 prior to the Relevant New Issue.

9.7.3. The Compensation Shares arising by the operation of Article 9.7.1 shall:

- (a) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same shall be impossible or unlawful or the Relevant Shareholders shall agree otherwise, in which event the Relevant Shareholders shall be entitled to subscribe for the Compensation Shares in cash at par (being such par value approved in advance by the Relevant Shareholders); and
- (b) subject to the payment of any cash payable pursuant to Article 9.7.3(a) (if applicable), be issued, credited fully paid up in cash and shall have class rights identical to and rank pari passu in all respects with the existing A Ordinary Shares within 5 Business Days of the offer of the Compensation Shares being accepted by the Relevant Shareholder.

9.7.4. In the event of any Issue or Reorganisation the Starting Price shall be subject to adjustment on such basis as may be agreed by the Board with the consent of an Investor Majority within 10 Business Days after the date of the Issue or Reorganisation. Any dispute between relevant persons as to any adjustment under this Article shall be determined by the Valuers whose determination shall in the absence of manifest error be final and binding on the Company and its shareholders. The Valuers shall determine the allocation of responsibility between the Company and the A Ordinary Shareholders for the costs of the Valuers.

9.7.5. In the event of any dispute as to the effect of this Article 9.7 (other than Article 9.7.4), the disputed matter shall be referred to the Valuers for certification of the number of Compensation Shares to be issued and any other matter which is disputed. The Valuers' certification shall in the absence of manifest error be final and binding upon the Company and its shareholders. The Valuers shall determine the

allocation of responsibility between the Company and the relevant Investor(s) for the costs of the Valuers.

- 9.7.6. Any A Ordinary Shareholder (who is an investment fund or collective investment scheme) shall be entitled to nominate that any of its Associated Funds shall have the right to receive and/or to subscribe at par in its stead for all or any of the Compensation Shares allocated to it.

## **Voting**

### **9.8.**

- 9.8.1. On a show of hands every holder of A Ordinary Shares who (being an individual) is present or (being a corporation) is present by a duly authorised representative (not being himself a member entitled to vote) shall have one vote and on a poll every member holding A Ordinary Shares shall have one vote for every such share of which he is the holder.

- 9.8.2. On a show of hands every holder of Ordinary Shares who (being an individual) is present or (being a corporation) is present by a duly authorised representative (not being himself a member entitled to vote) shall have one vote and on a poll every member holding Ordinary Shares shall have one vote for every such share of which he is the holder.

## **Other Class rights**

- 9.9. In addition to any other approval required by law or these Articles, for so long as the Investors or any of them hold any shares in the capital of the Company giving them the right to exercise more than 5% of the votes exercisable at general meetings of the Company, the Company shall not:

- 9.9.1. do any of the matters set out in Part A of Schedule 2 without the prior written consent of an Investor Majority and, in respect of paragraph 2 of Part A of Schedule 2 only, without the prior written consent of Scottish Enterprise;
- 9.9.2. do any of the matters set out in Part B of Schedule 2 without the prior consent of all of the Investor Directors appointed at the relevant time and, in respect of paragraphs 6 and 14 of Part B of Schedule 2 only, without the prior written consent of Scottish Enterprise.
- 9.9.3. Any consent required by Articles 9.9.1 and 9.9.2 shall be in writing and may consist of one document or several documents whether or not in like form.

### **9.10. Variation of Class rights**

- 9.10.1. Whenever the share capital of the Company is divided into different classes of shares, the special rights attached to any such class may

only be varied or abrogated, either whilst the Company is a going concern or during in contemplation of a winding up, with the consent in writing of the holders of more than 75% of the total voting rights of eligible members of that class or with the sanction of a special resolution passed at a separate meeting of the holders of that class.

9.10.2. To every separate general meeting referred to in Article 9.10.1 all the provisions of these Articles relating to general meetings of the Company and to the proceedings at those meetings shall, with the necessary changes, apply, except that:

- (a) the necessary quorum at any such meeting (other than an adjourned meeting) shall be two persons holding or representing by proxy at least one-third in nominal amount of the issued shares of the class (unless only one person holds issued shares of the class in which event such quorum shall be one person holding such shares);
- (b) at an adjourned meeting the necessary quorum shall be one person holding shares of the class or his proxy;
- (c) the holders of shares of the relevant class shall on a poll have one vote in respect of every share of that class held by them respectively; and
- (d) a poll may be demanded by any holder of shares of the class whether present in person or by proxy.

9.10.3. Without prejudice to the generality of Article 9.10.1, the special rights attached to the A Ordinary Shares shall each be deemed to be varied at any time by any of the following:

- (a) an increase, reduction or other alteration in the issued share capital of the Company (save in accordance with Clause 3.3 or Clause 3.4 of the Investment Agreement or Clauses 3 and 4 of the Supplemental Investment Agreement) or any other member of the Group or a variation in the rights attaching to any class thereof;
- (b) the grant of an option to subscribe for shares in the Company or any other member of the Group (other than grants of options under the Share Option Plan, where approved by the Remuneration Committee of the Board) or the issue of any securities or instruments convertible into shares in any such company;
- (c) the creation by the Company or any other member of the Group of any mortgage, charge, pledge, lien, encumbrance or other security interest (excluding an interest arising by operation of law in the ordinary course of business or the Floating Charges);

- (d) the making of any material change (including cessation) in the nature of the business of the Group taken as a whole;
- (e) the alteration of the memorandum of association of the Company or these Articles or the passing of any special resolution of the Members;
- (f) the declaration or payment of any dividend or the making of any other distribution in respect of the profits, assets or reserves of the Company or any other member of the Group;
- (g) the institution of any proceedings or the making of any application for, or the passing of any resolution for the winding up, receivership, liquidation, striking off or dissolution or administration of the Company or any other member of the Group;
- (h) the removal of any director (other than an Investor Director removed by an Investor Majority in accordance with Article 47 (*Investor Directors*) or a Founder Director removed in accordance with Article 48 (*Founder Director*));
- (i) a Sale, Disposal or Listing;
- (j) the registration or purported registration of any transfer of any share or interest therein other than as expressly permitted by these Articles;
- (k) the disposal of any share in the capital of any subsidiary of the Company;
- (l) the application by way of capitalisation of any sum in or towards paying up any debenture or debenture stock of the Company;
- (m) the passing of any resolution to approve a contract by the Company to purchase any of its shares;
- (n) the Company or its subsidiaries entering into any agreement or arrangement for the purchase of any business undertakings;
- (o) the appointment or removal of any director or officer of the Company or any subsidiary of the Company (other than an Investor Director or a Founder Director); or
- (p) the establishment or adoption of any retirement, death or disability scheme or any bonus or profit sharing scheme or any share option scheme, employee share ownership plan or employees' trust or other similar incentive scheme.

These rights are not entrenched provisions within the meaning of section 22 of the 2006 Act.

## ISSUES OF SHARES

### 10. Issues of Shares

- 10.1. Any shares may be issued on the terms that they are, or at the option of the Company or the holder are liable, to be redeemed and the Directors shall be authorised to determine the terms, conditions and manner of redemption of such shares.
- 10.2. Subject to Article 10.3, the provisions of the 2006 Act and of every other statute for the time being in force concerning companies and affecting the Company and to any direction to the contrary that may be given by ordinary resolution of the Company, the Directors may offer, allot, issue, grant options or rights over or otherwise dispose of any shares in the Company to such persons, at such times and for such consideration and upon such terms and conditions and with such preferred, deferred or other special rights or restrictions whether in regard to dividend, voting, return of capital or otherwise as the Directors may determine, but so that no shares shall be issued at a discount to their nominal value.
- 10.3.
- 10.3.1. Save as otherwise agreed by an Investor Majority and the consent of the Board and save for any Permitted Allotments and any new shares from time to time created ("shares" for this purpose to include any rights to subscribe for such shares whether pursuant to options, warrants, convertible securities or otherwise) the issue of which has been permitted with the consent of an Investor Majority shall before they are issued to any person (the "**Third Party Issue**") be offered to the Shareholders (the "**Offer**"). The Offer shall be made to each Shareholder (pari passu as if the shares held by such Shareholders constituted one class of share) by written notice from the Company:
- (a) specifying the number and class of the shares offered (the "**Offered Shares**"); and
  - (b) specifying the subscription price per share; and
  - (c) limiting a time (not being less than 15 days or greater than 30 days) (the "**Time Period**") within which the Offer, if not accepted, will be deemed to have been declined; and
  - (d) inviting each Shareholder to state by notice in writing to the Company within the Time Period whether he is willing to subscribe for any of the Offered Shares and, if so, what maximum number of such Offered Shares (the "**Subscription Maximum**") he is willing to subscribe.

A person who, pursuant to such notice, expresses a willingness to subscribe for any Offered Shares is referred to herein as a "**Subscriber**".

Within 7 days of the expiration of the Time Period, the Company shall allocate and allot the Offered Shares amongst the Subscribers. Each allocation among the Subscribers shall in the case of competition be made pro-rata according to the number of Shares held by each Subscriber in relation to the total number of Shares held by all Subscribers immediately prior to the date of the Offer but individual allocations shall not exceed the Subscription Maximum which the relevant Subscriber has expressed a willingness to subscribe. If any shares comprised in the Offer are declined or deemed to be declined (the "**Declined Shares**"), the Offer in respect of such Declined Shares shall be withdrawn, at which time the Company shall be obliged to offer the Declined Shares in accordance with Article 10.3.2.

- 10.3.2. The Shareholders who are "**Subscribers**" (as defined in Article 10.3.1) (hereinafter "**Participating Shareholders**") shall in addition to the shares subscribed for by them (or their Associated Funds) pursuant to the Offer, be offered by the Company in priority to any other person the right to subscribe for all or any of the Declined Shares (the "**Second Offer**").

The Second Offer shall be made immediately after the expiry of the Time Period relating to the Offer by written notice from the Company to each Participating Shareholder on terms no less favourable than those offered or agreed by the Company in respect of the relevant Third Party Issue and such notice shall:

- (i) specify the number and class of the Declined Shares; and
- (ii) specify the subscription price per share; and
- (iii) shall limit a time (not being less than 15 days or greater than 30 days) (the "**Second Offer Time Period**") within which the Second Offer, if not accepted, will be deemed to have been declined;
- (iv) invite each Participating Shareholder to notify the Company within the Second Offer Time Period of the maximum number of Declined Shares for which it wishes to subscribe.

A Participating Shareholder who pursuant to such notice expresses a willingness to subscribe for any of the Declined Shares (a "**Second Offer Subscriber**") shall be allocated and allotted the relevant number of Declined Shares within 7 days of the expiration of the Second Time Period provided that:

- (i) individual allocations shall not exceed the amount which the Second Offer Subscriber has expressed a willingness to subscribe; and
- (ii) in the event of competition for the allocation of Declined Shares, allocations will be made pro rata among the Second Offer Subscribers by reference to the proportion held by each

of them of the aggregate number of Shares held by Second Offer Subscribers at the date of the Second Offer (such proportions to be determined by making the following assumptions: (aa) in the event that the Third Party Issue triggers the operation of Article 9.7, by including any Compensation Shares which the relevant Second Offer Subscribers are entitled to by the operation of Article 9.7 and (bb) including any shares allocated to the relevant Second Offer Subscriber pursuant to the Offer.

If any Declined Shares comprised in such Second Offer are declined or deemed to be declined, the Second Offer in respect of such shares shall be withdrawn, at which time the Company shall be entitled to issue that number of Declined Shares not taken pursuant to the Second Offer to any person or persons provided that the terms of subscription and subscription price relating to the allotment of such shares shall be the same as that offered in respect of the Offer and Second Offer.

Any Shareholder (who is an investment fund or collective investment scheme) shall be entitled to nominate that any of its Associated Funds subscribe in its stead for all or any of the Offered Shares allocated to such Shareholder pursuant to this Article 10.3 provided that where an Associated Fund is involved the proportions which are required to operate this Article 10.3 shall be determined by reference to the shareholding of the Associated Fund and/or the shareholding of the Shareholder who nominates the Associated Fund and including for the purposes of the Second Offer any allocation of shares to the Associated Fund and/or the Shareholder under Article 10.3.1).

For the purposes of this Article, "Permitted Allotments" shall mean each of the following:

- (b) an allotment of Shares which takes place on exercise of these options granted pursuant to paragraph 15 of Schedule 6 of the Investment Agreement;
- (c) an allotment of Shares arising from any conversion of the loans under the Existing Facility Agreements into Shares;
- (d) an allotment of Shares pursuant to a bona fide acquisition by the Company of the share capital of another company or all or substantially all of the assets of another company, provided such allotment has been approved by the Board acting unanimously;
- (e) an allotment of Shares in connection with lease lines, bank financing or other similar transactions that are primarily of a non-equity financing nature, provided such allotment is approved by the Board acting unanimously.

10.4. The rights pursuant to Article 10.3 shall terminate on a Listing.



- 10.5. For the purposes of Section 551 of the 2006 Act, the Directors are authorised generally and unconditionally to allot without the authority of the Company in general meeting up to a maximum of £110,750 in nominal amount of shares 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. The aforesaid authority may be revoked or varied by the Company in general meeting and may be renewed by the Company in general meeting 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 notwithstanding the expiry of this authority. In this paragraph, references to the allotment of shares shall include the grant of rights to subscribe for, or to convert any security into shares.
- 10.6. In accordance with Section 570 of the 2006 Act, sub-Section (1) of Section 561 of the 2006 Act shall be excluded from applying to the allotment of equity securities (as defined in Section 560 of the 2006 Act).
- 10.7. The Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as otherwise provided by these Articles or by law) any other rights in respect of any share except an absolute right to the entirety thereof held by the registered holder. The Company shall however be entitled to register trustees as such in respect of any shares.
11. No Shares shall be allotted to any current or prospective employee or director of the Company unless such person shall first have entered into a joint election with the Company under section 431 of the Income Tax (Earnings and Pensions) Act 2003.

#### LIEN

12. The Company shall have a first and paramount lien on every share for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share. The Board may at any time declare any share to be wholly or in part exempt from the provisions of this article.
- 12.2. All Shares to be sold in the enforcement of the Company's lien or rights of forfeiture shall be offered in accordance with Article 42 (*Compulsory Transfers*) as if a Deemed Transfer Notice were deemed given in respect of such Shares.

#### TRANSFER AND TRANSMISSION OF SHARES

- 13.
- 13.1. The Board shall not register the transfer of any Share or any interest in any Share unless the transfer is permitted by and is made in accordance with these Articles and is not prohibited under Article 46 (*Prohibited Transfers*).

- 13.2. For the purpose of ensuring that a transfer of Shares is in accordance with these Articles or that no circumstances have arisen whereby a Member may be bound to give or be deemed to have given a Transfer Notice the Board may from time to time require any Member or any person named as transferee in any transfer lodged for registration to furnish to the Board such information and evidence as they deem relevant for such purpose.
- 13.3. Failing such information or evidence being furnished to their reasonable satisfaction within a reasonable time after request under Article 13.2 the Board may (with the approval of an Investor Majority) in their absolute discretion refuse to register the transfer in question or (with the approval of an Investor Majority where no transfer is in question) require by notice in writing to the Member(s) concerned that a Transfer Notice be given in respect of the Shares concerned.
- 13.4. If such information or evidence requested under Article 13.2 discloses to the satisfaction of the Board in their absolute discretion (with the approval of an Investor Majority) that circumstances have arisen whereby a Member may be bound to give or be deemed to have given a Transfer Notice the Board may in their absolute discretion (with the approval of an Investor Majority) by notice in writing to the Member(s) concerned require that a Transfer Notice be given in respect of the Shares concerned.
- 13.5. An obligation to transfer a Share under these Articles shall be deemed to be an obligation to transfer the entire legal and beneficial interest in such Share free from any lien, charge or encumbrance.
- 13.6. A person who is not already a shareholder (or who has only become a shareholder through the death or bankruptcy of a Member) and who becomes entitled to a Share upon the death or bankruptcy of a Member:
  - (a) shall only be entitled to vote that Share in line with the votes of the holder(s) of the majority of the Shares of the same class; and
  - (b) (without prejudice to any other provision of these Articles of Association) shall not be permitted to dispose of any Share or any interest in any Share except to an existing Member or in accordance with Article 44 (*Drag Along*) or Articles 45.4 to 45.6 (*Tag Along – Exit Sale Transaction*) or Article 43 (*Change of Control*).
- 13.7. The Directors shall not register any transfer of shares in accordance with a Sale or a Listing in circumstances where Article 9.3 applies unless the Proceeds are allocated in accordance with the arrangements set out in Article 9.3.
- 13.8. Subject to such of the restrictions set out in these Articles as may be applicable, any member may transfer all or any of his shares by instrument of transfer in writing in any usual or common form or in any other form which the Directors may approve. The instrument of transfer shall be executed by or on behalf of the transferor and (except in the case of fully paid shares) by or on behalf of the transferee and the transferor shall remain the holder of the

shares and as such a member of the Company until the name of the transferee is entered in the Register of Members in respect thereof.

### GENERAL MEETINGS

- 14.1. The Board shall procure that the annual general meeting in respect of each financial year shall be convened to take place not later than 42 days after the date of the auditors' report contained in the audited accounts of the Company for the relevant financial year and that the audited accounts and report shall be laid thereat.
- 14.2. A notice of every general meeting shall be given to every member whether or not he shall have supplied to the Company an address within the United Kingdom for the giving of notices.
- 14.3. An Investor Director may call a general meeting of the Company.

### PROCEEDINGS AT GENERAL MEETINGS

- 15.
- 15.1. No business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. One member holding A Ordinary Shares and one member holding Ordinary Shares or, in each case, a proxy for such a member or a duly authorised representative of a corporation which is such a member shall be a quorum.
- 15.2. If a meeting is adjourned because a quorum is not present, and at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the shareholders present shall form a quorum.
- 16. The Chairman shall not be entitled to exercise any second or casting vote at any general meeting or class meeting.
- 17. A poll may be demanded at any general meeting by the chairman or by any director or by any member present in person or by proxy or, if a corporation, by any representative duly authorised and entitled to vote.
- 18. A director shall not be required to hold any share qualification, but nevertheless shall be entitled to attend and speak at any general meeting of the Company and at any separate general meeting of the holders of any class of shares in the capital of the Company.
- 19.
- 19.1. A resolution in writing (i) in respect of the passing of an ordinary resolution, signed by a simple majority of the total voting rights of eligible members of the Company; or (ii) in respect of the passing of a special resolution, signed by a 75% majority of the total voting rights of eligible members of the Company; in each case shall be as valid and effectual as if it had been passed at a general meeting of the Company duly convened and held. Any special resolution to be passed as a written resolution must state on the face of the

resolution that it is to be passed as a special resolution. Any written resolution may consist of several documents in the like form each signed by one or more of the members or their duly appointed attorneys or representatives and the signature in the case of a corporation which is a member shall be sufficient if made by a director or the secretary thereof or by its duly appointed attorney(s) or representative(s).

- 19.2. No resolution not previously approved by the Directors shall be moved by any member other than a director at a general meeting unless the member intending to move the same shall have left a copy thereof with his name and address at the Office at least three clear days prior to such meeting.

## DIRECTORS

20. The quorum for the transaction of business of the Board shall be one director who is also a holder of Ordinary Shares (if any such director is appointed) and all Investor Directors then appointed (unless the relevant Investor Director or the Investor appointing him has previously agreed otherwise in writing). A person who holds office only as an alternate director shall, if his appointer is not present, be counted in the quorum.
21. Notwithstanding Article 20 above, if the conflict of interest provisions contained in the 2006 Act apply such that any Investor Director is not entitled to vote, form part of the quorum or attend any meeting of the Directors despite the application of Article 49 or any authorisation granted in respect of any of the relevant Investor Director pursuant to Article 47 then the quorum requirements for the relevant meeting shall not require the relevant Investor Director to form part of the quorum.
22. Except with the prior written consent of all Investor Directors:
- (a) the Board shall not delegate any of its powers to a committee other than a Remuneration Committee constituted as specified in the Investment Agreement; and
  - (b) meetings of the Board shall not be held outside the United Kingdom.
23. In the event of an equality of votes, the Chairman of the Board shall have a casting vote at a meeting of the Board.
24. Unless and until otherwise determined by ordinary resolution of the Company, the minimum number of directors shall not be less than two and the maximum number, excluding any Investor Directors, shall be 6.
25. A director shall not be required to hold shares of the Company in order to qualify for office as a director, but he shall be entitled to receive notice of and attend and speak at all general meetings of the Company or meetings of any class of members of the Company. Notice of meetings of the Board shall be served on a Director who is absent from the United Kingdom.
26. A director who is in any way, whether directly or indirectly, interested in an actual or proposed transaction or arrangement with the Company shall

declare the nature and extent of his interest at a meeting of the Board or any committee of the Board in accordance with Section 177 and/or Section 182 of the 2006 Act. Subject to such disclosure as aforesaid, and to any terms and conditions imposed by the directors in accordance with Article 49.2, a director may vote in respect of any contract or proposed contract or arrangement in which he is interested and if he does so vote his vote shall be counted and he may be counted in ascertaining whether a quorum is present at any meeting at which any such contract or proposed contract or arrangement shall come before the directors for consideration and may retain for his own absolute use and benefit all profits and advantages accruing to him therefrom. Provided always that:

- 26.1. a director on the Remuneration Committee may not at a meeting of such committee vote on any item concerning his own office, remuneration or benefits or in which he has a direct interest nor be counted in determining the quorum on such matter;
- 26.2. at a meeting of the Board at which a recommendation of the Remuneration Committee in respect an item concerning a director's office, remuneration or benefits or in which he has a direct interest, such a director may not vote at the meeting nor be counted in determining the quorum on such matter.

For the purposes of this Article 26:

- 26.3. 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 transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and
- 26.4. A director need not declare an interest under Article 26:
- 26.5. if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 26.6. of which the director is not aware, although for this purpose a director is treated as being aware of matters of which he ought reasonably to be aware;
- 26.7. if, or to the extent that, the other directors are already aware of it, and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware based on information provided to them by the Company or the directors; or
- 26.8. if, or to the extent that, it concerns the terms of his service contract that have been, or are to be, considered at a board meeting.
- 27. The Directors may dispense with the keeping of attendance records for meetings of the Directors or committees of the Directors. Article 15 of the Model Articles shall be modified accordingly.
- 28. The office of a director shall be vacated:

- 28.1. if he becomes bankrupt or suspends payment of or compounds with his creditors;
- 28.2. if he becomes of unsound mind or a patient for the purpose of any statute relating to mental health or otherwise mentally incapacitated;
- 28.3. if (not being a director holding executive office as such for a fixed term) by notice in writing to the Company he resigns his office;
- 28.4. if he is prohibited by law from being a director or ceases to be a director by virtue of any provision of the 2006 Act;
- 28.5. if he, not being an Investor Director appointed pursuant to Article 47, is removed from office by notice in writing signed by all his co-directors and served upon him;
- 28.6. if he, not being an Investor Director appointed pursuant to Article 47, is removed from office by notice in writing signed by the holders of shares representing more than 50% of the aggregate Voting Rights;
- 28.7. if he shall for more than six consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the Directors resolve that his office be vacated; and/or
- 28.8. if both:
  - 28.8.1. (being an executive director of the Company or any subsidiary) he ceases to hold office as an employee, of the Company or any subsidiary without being appointed or continuing to be an employee of another member of the Group; and
  - 28.8.2. a majority of the Board (including all Investor Directors) so requires.
29. The Directors shall have power at any time to appoint any person to be a director of the Company either to fill a casual vacancy or as an addition to the existing directors.
30. Subject to the Investment Agreement, the ordinary remuneration of the directors for their services as directors shall from time to time be determined by an ordinary resolution of the Company and shall (unless such resolution otherwise provides) be divisible among the Directors as they may unanimously agree or, failing agreement, equally except that any director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for such proportion of remuneration as relates to the period during which he has held office. The Directors may repay to any director all such reasonable expenses as he may properly incur in attending meetings of the Directors or of any committee of the Directors or general meetings of the Company or any class of members of the Company or otherwise in or about the business of the Company. In the event of any director necessarily performing or rendering any special duties or services to the Company outside his ordinary duties as a director the Directors may, if so authorised by an ordinary resolution of the

Company, pay such director special remuneration and such special remuneration may be paid by way of salary, commission, participation in profits or otherwise as may be arranged and approved by the Directors. To the extent that any matter set out in this Article falls within the terms of reference of the Remuneration Committee, the Remuneration Committee shall (notwithstanding the other terms of this Article) be authorised to make determinations in respect of such matter. The provisions of this Article shall not be taken as depriving a person affected by it of any compensation or damages payable to him or any rights that he may have under a contract of employment with the Company or a member of the Group.

31. A majority of the Directors may, subject to the consent of an Investor Majority, from time to time appoint one or more of their number to an executive office (including that of Chief Executive Officer, Managing Director, Deputy or Assistant Managing Director, Manager or any other salaried office) for such period and on such terms and conditions as they shall think fit and, subject to the terms and conditions of any agreement entered into in any particular case, may revoke such appointment. Subject to the terms and conditions of any such agreement the appointment of any director as aforesaid shall be ipso facto determined if he ceases from any cause to be a director. To the extent that any matter set out in this Article falls within the terms of reference of the Remuneration Committee, the Remuneration Committee shall (notwithstanding the other terms of this Article) be authorised to make determinations in respect of such matter. The provisions of this Article shall not be taken as depriving a person affected by it of any compensation or damages payable to him or any rights that he may have under a contract of employment with the Company or a member of the Group.
32. A Chief Executive Officer, Managing Director, Deputy or Assistant Managing Director, Manager or other executive officer as aforesaid shall receive such remuneration (either by way of salary, commission, participation in profits or pension or otherwise howsoever, whether similar to the foregoing or not) as the Directors may determine. To the extent that any matter set out in this Article falls within the terms of reference of the Remuneration Committee, the Remuneration Committee shall (notwithstanding the other terms of this Article) be authorised to make determinations in respect of such matter. The provisions of this Article shall not be taken as depriving a person affected by it of any compensation or damages payable to him or any rights that he may have under a contract of employment with the Company or a member of the Group.
33. The Directors on behalf of the Company and without the approval of any resolution of the Company may establish, maintain, participate in and contribute to, or procure the establishment and maintenance of, participation in and contribution to, any pension, superannuation, benevolent or life assurance fund, scheme or arrangement (whether contributory or otherwise) for the benefit of any persons (including Directors, former Directors, officers and former officers) who are or shall have been at any time in the employment or service of the Company or of any company which at the time is or was a subsidiary or a holding company of the Company or another

subsidiary of a holding company of the Company (as defined in Section 1159 of the 2006 Act) or otherwise associated with the Company or of the predecessors of the Company in business or of any such other company as aforesaid, or for the benefit of the relations, spouses, widows, families, connections or dependants of any such persons or for the benefit of any other persons whose service or services have directly or indirectly been of benefit to the Company and their relations, connections or dependants, and the Directors on behalf of the Company and without the approval of any resolution of the Company may grant or procure the grant of donations, gratuities, pensions, allowances, including allowances on death, or other payments or benefits of any kind to any of such persons as aforesaid; and the Directors on behalf of the Company and without the approval of any resolution of the Company may establish, subsidise, subscribe to or support institutions, associations, clubs, schools, funds or trusts calculated or considered to be for the benefit of any of such persons as aforesaid or otherwise for the advancement of the interests and well-being of the Company or of any such other company as aforesaid or its members; and the Directors on behalf of the Company and without the approval of any resolution of the Company may make payments for or towards the insurance of any of such persons as aforesaid. Any such director or ex-director may participate in and retain for his own benefit any such donation, gratuity, pension, allowance, payment or other benefit conferred under or pursuant to this Article and the receipt thereof shall not disqualify any person from being or becoming a director of the Company. To the extent that any matter set out in this Article falls within the terms of reference of the Remuneration Committee, the Remuneration Committee shall (notwithstanding the other terms of this Article) be authorised to make determinations in respect of such matter.

34. The Directors on behalf of the Company and without the approval of any resolution of the Company may establish and contribute to any employees' share scheme (within the meaning of Section 1166 of the 2006 Act) for the purchase or subscription by trustees of shares of the Company or of a holding company of the Company and may lend money to the Company's employees to enable them to purchase or subscribe for shares of the Company or of a holding company of the Company; and may establish and maintain any option or incentive scheme whereby selected employees (including salaried directors and officers) of the Company are given the opportunity of acquiring shares in the capital of the Company; and may formulate and carry into effect any scheme for sharing the profits of the Company with its employees (including salaried directors and officers) or any of them. Any director may participate in and retain for his own benefit any such shares, profit or other benefit conferred under or pursuant to this Article and the receipt thereof shall not disqualify any person from being or becoming a director of the Company.
35. Without prejudice to Article 8 of the Model Articles, a resolution in writing signed by all the Directors from time to time shall be as valid and effectual as a resolution passed at a meeting of the Directors duly convened and held and may consist of several documents in the like form, each signed by one or more of the directors.



36. A meeting of the Directors or of a committee of the Directors may consist of a conference between directors who are not all in one place, but of whom each is able (directly or by telephonic communication) to speak to each of the others, and to be heard by each of the others simultaneously. 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. Subject to the 2006 Act, all business transacted in such manner by the Directors or a committee of the Directors shall for the purposes of these Articles be deemed to be validly and effectively transacted at a meeting of the Directors or a committee notwithstanding that fewer than two directors or alternate directors are physically present at the same place. 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. The word "**meeting**" in these Articles shall be construed accordingly.

### **BORROWING AND OTHER POWERS**

37. The Directors may exercise all the powers of the Company without limit as to amount to borrow and raise money and to accept money on deposit and to grant any security, mortgage, charge or discharge as they may consider fit for any debt or obligation of the Company or which is binding on the Company in any manner or way in which the Company is empowered so to grant and similarly as they may consider fit to enter into any guarantee, contract of indemnity or suretyship in any manner or way in which the Company is empowered so to enter into.

### **ALTERNATE DIRECTORS**

#### **38. Alternate Directors**

- 38.1. Any director (other than an alternate director) may at any time by writing under his hand and deposited at the Office, or delivered at a meeting of the Directors, appoint any person to be his alternate director and may in like manner at any time terminate such appointment. If such alternate director is not another director, such appointment, unless previously approved by the Directors, shall have effect only upon and subject to being so approved provided that the appointment of an alternate by an Investor Director shall be effective immediately on notice of such appointment being given to the Company.
- 38.2. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. If an alternate director is himself a director or attends any meeting as an alternate director for more than one director, his voting rights shall be cumulative but he shall only be counted once in deciding whether a quorum is present.
- 38.3. 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 his appointer ceases to be a director.
- 38.4. An alternate director shall (including when absent from the United Kingdom) be entitled to receive notice of all meetings of the Directors and of all

meetings of committees of the Directors of which his appointer is a member and shall be entitled to attend and vote as a director at any such meetings at which his appointer is not personally present and generally at such meetings to perform all the functions of his appointer as a director in his absence and for the purposes of the proceedings at such meeting the provisions of these Articles shall apply as if he were a director. If his appointer is for the time being absent from the United Kingdom or temporarily unable to act through ill-health or disability, an alternate director's signature to any resolution in writing of the Directors shall be as effective as the signature of his appointer. Every person acting as an alternate director shall have one vote for each director for whom he acts as alternate (in addition to his own vote if he is also a director). An alternate director shall not (save as aforesaid) have power to act as a director or be deemed to be a director for the purposes of these Articles.

- 38.5. An alternate director may be repaid expenses and shall be entitled to be indemnified by the Company to the same extent *mutatis mutandis* as if he were a director but he shall not be entitled to receive from the Company any remuneration except only such proportion (if any) of the remuneration otherwise payable to his appointer as such appointer may by notice in writing to the Company from time to time direct.

## INDEMNITY AND INSURANCE

### 39. Indemnity and Insurance

- 39.1. Without prejudice to any other indemnity which may from time to time be applicable, a relevant officer of the Company or an associated company shall be indemnified out of the assets of the Company against:

- (a) any liability incurred by that officer in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated company,
- (b) any liability incurred by that officer in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act); and
- (c) any other liability incurred by that officer as an officer of the company or an associated company,

provided always that this article does not authorise any indemnity which would be prohibited or rendered void by any provision of the 2006 Act or by any other provision of law.

In this article:

- (i) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and

- (ii) a "relevant officer" means any director, former director, company secretary or former company secretary or other officer of the company or an associated company (but not its auditor).

39.2. The directors may decide to purchase and maintain insurance at the expense of the Company for the benefit of any relevant officer in respect of any relevant loss. Without prejudice to the generality of Article 26 at a meeting of the Directors where such insurance is under consideration a Director may form part of the quorum and vote notwithstanding any interest he may have in such insurance.

In this article:

- (a) a "relevant officer" means any director or former director, company secretary or former company secretary of the company or an associated company, any other officer or employee or former officer or employee of the company (but not its auditor) or any trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act) for the purposes of an employees' share scheme of the company or an associated company,
- (b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company, and
- (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

#### PERMITTED TRANSFERS

40.

##### 40.1. Definitions

For the purposes of Article 40 (*Permitted Transfers*), Article 41 (*Voluntary Transfers*) and Article 42 (*Compulsory Transfers*):

- (a) "**Family Member**" means, in relation to a Member, any of his spouse (or widow or widower), civil partner, children and grandchildren (including step and adopted children and grandchildren);
- (b) "**Family Trust**" means, in relation to a Member, a trust which does not permit any of the settled property or the income from it to be applied otherwise than for the benefit of that Member or any of his Family Members and under which no power of control over the voting powers conferred by any Shares, the subject of the trust is capable of being exercised by, or being subject to the consent of, any person other than the trustees or such Member or any of his Family Members;

- (c) **"investment fund"** means any arrangement constituting a collective investment scheme for the purpose of section 235 Financial Services and Markets Act 2000 (as amended or re-enacted for the time being) or which would constitute such a scheme if it did not fall within an exemption or exclusion to that section;
- (d) **"a member of the same group"** means, in relation to a body corporate, any other body corporate which is for the time being a holding company of that body corporate or a subsidiary of that body corporate or a subsidiary of any holding company of which that body corporate is also a subsidiary;
- (e) **"permitted transfer"** means any transfer of Shares expressly permitted under this Article 40;
- (f) **"Family Shares"** means, in relation to a Member, any Shares for the time being held by that Member or any of his Family Members or trustees of his Family Trust;
- (g) **"Scottish Enterprise"** means Scottish Enterprise established by the Enterprise and New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ;
- (h) **"Scottish Enterprise Group"** means Scottish Enterprise, any subsidiary for the time being of Scottish Enterprise and any company corporation or other body of persons which shall have acquired the whole or substantially the whole of the undertaking of Scottish Enterprise or any subsidiary of such company, corporation or body and any other body to which the statutory functions of Scottish Enterprise have been delegated or a Scottish Enterprise Successor and the expression "member of the Scottish Enterprise Group" shall be construed accordingly; and
- (i) **"Scottish Enterprise Successor"** means any party succeeding in whole or in part to the interests of Scottish Enterprise.

#### 40.2. Family members and trusts

- (a) Subject to Articles 40.2(b) to 40.2(d) (inclusive) and to Article 46 (*Prohibited Transfers*), any Member who is an individual may at any time transfer Shares originally allotted to and still held by him to a person or persons shown to the reasonable satisfaction of the Board to be:
  - (i) a Family Member of his; or
  - (ii) trustees to be held under a Family Trust for that Member.
- (b) No transfer of Shares shall be made under Article 40.2(a):

- (i) unless an Investor Majority has confirmed in writing its satisfaction:
    - 1) with the terms of the instrument constituting the relevant family trust and in particular with the powers of the trustees including but not limited to the express power to give warranties and indemnities on any disposal of trust property;
    - 2) with the identity of the trustees and the procedures for the appointment and removal of trustees;
    - 3) with the restrictions on changes in the terms of the trust instrument and on distributions by the trustees; and
    - 4) that none of the costs incurred in establishing or maintaining the relevant Family Trust will be payable by any member of the Group; and
  - (ii) unless the aggregate number of Shares held by that Member following that transfer exceeds the aggregate number of Shares held by that Member's Family Trusts and Family Members.
- (c) Where Shares are held by trustees under a Family Trust:
  - (i) those Shares may, on any change of trustees, be transferred by those trustees to any new trustee of that Family Trust whose identity has been approved in writing by an Investor Majority;
  - (ii) those Shares may at any time be transferred by those trustees to the settlor of that trust or any other person to whom the settlor could have transferred them under Article 40.2(a) if he had remained the holder of them; and
  - (iii) if and whenever any of those Shares cease to be held under a Family Trust (other than by virtue of a transfer made under Article 40.2(c)(ii)), the trustees shall forthwith give a Transfer Notice (as defined in Article 41.1) in respect of all the Shares then held by those trustees and in any event within 28 days of the Shares ceasing to be so held.
- (d) If any person has acquired Shares as a Family Member of a Member by way of one or more permitted transfers and that person ceases to be a Family Member of that Member (other than as a result of the death of the relevant Member), that person shall forthwith transfer all the Shares then held by that person back to that Member, for such consideration as they agree, within 28 days of the cessation or, in default of such agreement, at the Market Value (calculated in accordance with Article 41.14).
- (e) If the personal representatives of a deceased Member are permitted under these Articles to become registered as the holders of any of the deceased Member's Shares and elect to do so, such Shares may at any time be transferred by those personal representatives under this Article 40.2 to any

person to whom the deceased Member could have transferred such Shares under this Article 40 if he had remained the holder of them. No other transfer of such Shares by personal representatives shall be permitted under this Article 40.

#### **40.3. Groups of companies**

- (a) Any Member which is a body corporate may at any time transfer any Shares held by it to a member of the same group.
- (b) Where Shares have been transferred under Article 40.3(a) (whether directly or indirectly or by a series of such transfers) from a Member (the "**Transferor**") to a member of the same group as the Transferor (the "**Transferee**") and subsequent to such transfer the Transferee ceases to be a member of that group the Transferee shall forthwith transfer all the Shares held by it to the Transferor, for such consideration as they agree and if they do not do so within 28 days of the date upon which the Transferee ceases to be a member of the same group the directors may require the Transferee to serve a Transfer Notice in respect of such Shares.

#### **40.4. Investment funds**

Any Shares held by or on behalf of an Investor may be transferred:

- (a) to the investment fund for whom the Shares are held; or
- (b) to another investment fund which is managed or advised by the same manager or adviser as the transferor or by a manager or adviser which is a member of the same group as the transferor's manager or adviser; or
- (c) to any unit-holder, shareholder, partner or participant in, or manager or adviser (or an officer or employee, past or present, of such partner, manager or adviser) of that investment fund; or
- (d) to any investor in any investment fund; or
- (e) to any entity which invests in parallel, or co-invests with, any Investor; or
- (f) to any custodian or nominee or general partner or trustee or other person so authorised, to be held solely on behalf of any person referred to in Article 40.4(a) to (e) above.

#### **40.5. With consent**

A Member may transfer Shares to any person at any time with the prior written consent of both an Ordinary Majority and an Investor Majority.

#### **40.6. Scottish Enterprise**

Notwithstanding any other provision contained in these Articles, the directors shall register the transfer of any shares made from any member of the Scottish Enterprise Group to any other member of the Scottish Enterprise Group, without restriction as to price or otherwise, provided that should the transferee cease to be a member of the Scottish Enterprise Group it shall forthwith transfer all the Shares held by it to another member of the Scottish Enterprise Group.

### VOLUNTARY TRANSFERS

41.

41.1. Except as expressly permitted under Article 40 (*Permitted Transfers*) and as provided for in Article 42 (*Compulsory Transfers*) and Articles 43 to 45 (*Change of control, drag-along and tag-along and co-sale*), any Member who wishes to transfer any Share (a "**Vendor**") shall before transferring or agreeing to transfer such Share or any interest in it, serve notice in writing (a "**Transfer Notice**") on the Company of his wish to make that transfer. Save as expressly permitted by Article 40 (*Permitted Transfers*) and subject always to Article 44 (*Drag Along*), Article 45 (*Tag Along and Co-sale*), and Article 46 (*Prohibited Transfers*) and Article 43 (*Change of Control*) a Member who wishes to transfer an interest in a Share (but not the Share itself) may do so only with the prior approval of both an Ordinary Majority and an Investor Majority.

41.2. In the Transfer Notice the Vendor shall specify:

- (a) the number of Shares which he wishes to transfer ("**Sale Shares**");
- (b) the identity of the person (if any) to whom the Vendor wishes to transfer the Sale Shares;
- (c) the price per share at which the Vendor wishes to transfer the Sale Shares (the "**Proposed Price**");
- (d) any other terms relating to the transfer of the Sale Shares; and
- (e) whether the Transfer Notice is conditional upon all (and not part only) of the Sale Shares being sold pursuant to the following provisions of this Article 41 (a "**Total Transfer Condition**").

41.3. Each Transfer Notice shall:

- (a) relate to one class of Share only;
- (b) constitute the Company as the agent of the Vendor for the sale of the Sale Shares on the terms of this Article 41;
- (c) save as provided in Article 41.5, be irrevocable; and
- (d) not contain or be deemed to contain a Total Transfer Condition unless the same is both expressly stated therein and permitted by these Articles.

- 41.4. The Sale Shares shall be offered for purchase in accordance with this Article 40 at a price per Sale Share (the "**Sale Price**") agreed between the Vendor and the Board (with the approval of all Investor Directors) or, in default of such agreement by the end of the 20th business day after the date of service of the Transfer Notice, the lower of:
- (a) the Proposed Price, in which case for the purpose of these Articles the Sale Price shall be deemed to have been agreed at the end of that 20th business day; and
  - (b) if the Board or an Investor Majority so elects within that 20 business day period after the date of service of the Transfer Notice, the price per share reported on by the Valuers as their written opinion of the open market value of each Sale Share in accordance with Article 41.14 (the "**Market Value**") as at the date of service of the Transfer Notice (in which case for the purposes of these Articles the Sale Price shall be deemed to have been determined on the date of the receipt by the Company of the Valuer's report.
- 41.5. If the Market Value is reported on by the Valuers under Article 41.4(b) to be less than the Proposed Price, the Vendor may revoke the Transfer Notice by written notice given to the Board within the period of 7 business days after the date the Board serves on the Vendor the Valuers' written opinion of the Market Value (the "**Withdrawal Period**").
- 41.6. The Board shall at least 10 business days after and no more than 20 business days after the Sale Price has been agreed or determined give an offer notice (an "**Offer Notice**") to all Members to whom the Sale Shares are to be offered in accordance with these Articles (whether first or second stage offerees).
- 41.7. An Offer Notice shall expire 15 business days after its service and shall:
- (a) specify the Sale Price;
  - (b) contain the other information set out in the Transfer Notice; and
  - (c) invite the relevant offerees to apply in writing, before expiry of the Offer Notice, to purchase the numbers of Shares specified by them in their application.
- 41.8. Sale Shares of a particular class specified in column (1) in the table below shall be offered:
- (a) in the first instance to all persons in the category set out in the corresponding line in column (2) in the table below;
  - (b) to the extent not accepted by persons in column (2), to all persons in the category set out in the corresponding line in column (3) in the table below, (but no Shares shall be treated as offered to the Vendor or any other Member who is then bound to give, has given or is deemed to have given a Transfer Notice); and



- (c) to the extent not accepted by persons in column (3), to all persons in the category set out in the corresponding line in column (4) in the table below, (but no Shares shall be treated as offered to the Vendor or any other Member who is then bound to give, has given or is deemed to have given a Transfer Notice):

| (1)                  | (2)  | (3)                             | (4)                               |
|----------------------|--|---------------------------------|-----------------------------------|
| Class of Sale Shares | First Stage Offer to   | Second Stage Offer to           | Third Stage Offer to              |
| Ordinary Share       | If required by an Investor Majority or if required by the Board (with the approval of an Investor Majority), to a person who is replacing the Vendor as an employee or director of the Company or another member of the Group or to an appropriate vehicle to be held in anticipation of appointing such a person. | Members holding Ordinary Shares | Members holding A Ordinary Shares |
| A Ordinary Shares    | Members holding A Ordinary Shares  | Members holding Ordinary Shares | N/A                               |

41.9. After the expiry date of the Offer Notice, (or, if earlier, after valid applications being received for all the Sale Shares in accordance with Article 41.7), the Board shall, in the priorities and in respect of each class of persons set out in the columns in the table in Article 41.8(a), allocate the Sale Shares in accordance with the applications received, subject to the other provisions of these Articles, save that:

- (a) if there are applications from any class of offerees for more than the number of Sale Shares available for that class of offerees, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Member more Sale Shares than the maximum number applied for by him) to the number of Shares of the class which entitles them to receive such offer then held by them respectively.

- (b) if it is not possible to allocate any of the Sale Shares without involving fractions, they shall be allocated amongst the applicants of each class in such manner as the Board shall think fit; and
  - (c) if the Transfer Notice contained a Total Transfer Condition, no allocation of Sale Shares shall be made unless all the Sale Shares are allocated.
- 41.10. Within 5 business days of the expiry date of the last Offer Notice, the Board shall give notice in writing (a "Sale Notice") to the Vendor and to each person to whom Sale Shares have been allocated (each a "Purchaser") specifying the name and address of each Purchaser, the number of Sale Shares agreed to be purchased by him and the total price payable for them.
- 41.11. Completion of a sale and purchase of Sale Shares pursuant to a Sale Notice shall take place at the registered office of the Company at the time specified in the Sale Notice when the Vendor shall, upon payment to him by a Purchaser of the Sale Price in respect of the Sale Shares allocated to that Purchaser, transfer those Sale Shares and deliver the relative share certificates to that Purchaser.
- 41.12. The Vendor may, during the period of 60 business days commencing 20 business days after the expiry date of the Offer Notice, sell all or any of those Sale Shares for which a Sale Notice has not been given by way of bona fide sale to the proposed transferee (if any) named in the Transfer Notice or, if none was so named, to any transferee at any price per Sale Share which is not less than the Sale Price, without any deduction, rebate or allowance to the proposed transferee, provided that if the Transfer Notice contained a Total Transfer Condition, the Vendor shall not be entitled, save with the written consent of all the other Members, to sell only some of the Sale Shares under this Article 41.12.
- 41.13. If a Vendor fails for any reason (including death) to transfer any Sale Shares when required pursuant to this Article 41:
- (a) the Board may authorise any person (who shall be deemed to be irrevocably appointed as the attorney of that Vendor for the purpose) to execute the necessary transfer of such Sale Shares and deliver it on the Vendor's behalf;
  - (b) the Company may receive the purchase money for such Sale Shares from the Purchaser and shall upon receipt (subject, if necessary, to the transfer being duly stamped) register the Purchaser as the holder of such Sale Shares;
  - (c) the Company shall hold such purchase money in a separate bank account on trust for the Vendor but shall not be bound to earn or pay interest on any money so held;
  - (d) the Company's receipt for such purchase money shall be a good discharge to the Purchaser who shall not be bound to see to the application of it; and

- (e) after the name of the Purchaser has been entered in the register of Members in purported exercise of the power conferred by this Article 41.13, the validity of the proceedings shall not be questioned by any person.
- 41.14. If instructed to report on their opinion of Market Value under Article 41.4(b) the Valuers shall:
- (a) act as expert and not as arbitrator and their written determination shall be final and binding on the Members (except in the case of manifest error); and
  - (b) proceed on the basis that the open market value of each Sale Share shall be the sum which a willing purchaser would agree with a willing vendor to be the purchase price for all the class of Shares of which the Sale Shares forms part, divided by the number of issued Shares then comprised in that class but so that for this purpose the Ordinary Shares and A Ordinary Shares shall be valued as if they were one and the same class and sold ex dividend but taking no account of any premium or any discount by reference to the size of the holding the subject of the Transfer Notice or in relation to any restrictions on the transferability of the Sale Shares; and
  - (c) are entitled in their absolute discretion to appoint legal advisers to advise on the interpretation and effect of any records or documents provided to it for the purposes of determining the Market Value.
- 41.15. The Company will use its reasonable endeavours to procure that the Valuers deliver their written opinion of the Market Value to the Board and to the Vendor within 28 days of being requested to do so.
- 41.16. The Valuers' fees for reporting on their opinion of the Market Value and the fees of any legal advisers appointed by the Valuer pursuant to Article 41.14(c) shall be paid as to one half by the Vendor and as to the other half by the Purchasers pro rata to the number of Sale Shares purchased by them unless:
- (a) the Vendor revokes the Transfer Notice pursuant to Article 41.5; or
  - (b) none of the Sale Shares are purchased pursuant to this Article 41.
- when the Vendor shall pay all the Valuers' fees.
- 41.17. Any Shares transferred to a member holding Shares of a different class or classes to the Shares transferred pursuant to this Article 41 shall immediately following such transfer be deemed to have been converted on a one for one basis into the same class as the Member holds immediately prior to the said transfer of Shares or, where the Member holds more than one class, pro rata into those classes having all the rights and privileges and subject to the restrictions attaching thereto.

#### COMPULSORY TRANSFERS

42.1. In this Article 42, a "**Transfer Event**" occurs:

- (a) in relation to any Member, if that Member or any Family Member or the trustees of any Family Trust of that Member shall attempt to deal with or dispose of any Share or any interest in it otherwise than in accordance with Article 40 (*Permitted Transfers*), Article 41 (*Voluntary Transfers*) and this Article 42 (*Compulsory Transfers*) or in breach of Article 45 (*Tag Along and Co Sale*) or Article 46 (*Prohibited Transfers*) and within the following twelve months the Board resolves that such event is a Transfer Event in relation to that Member for the purposes of this Article 42; or
- (b) in relation to any Member, if that Member shall for any reason not give a Transfer Notice in respect of any Shares or transfer any Shares (as the case may be) as required by Article 13.3, 40.2(c)(iii), 40.2(d) or 40.3(b) and within the following twelve months either the Investor Majority notifies the Company or the Board resolves that such event is a Transfer Event in relation to that Member for the purposes of this Article 42; or
- (c) in relation to Slam (or any body corporate acquiring any Shares from Slam in accordance with these Articles), if there is an acquisition whether by purchase, transfer, renunciation or otherwise of shares in Slam or other transaction (including without limitation any issue or cancellation of shares or scheme of arrangement) which results in any person (other than Andrew Stewart McLennan and Linda Anne MacKellar and any Family Members or trustees of Family Trusts of either of them) holding or being entitled to hold any legal or beneficial interest in 50% or more of the issued share capital of Slam or of the voting rights at a general meeting of Slam.

42.2. Upon the giving of a notification or passing of resolution under Article 42.1 that the same is a Transfer Event the Member in respect of whom it is a Transfer Event (the "Relevant Member") and any other Member who has acquired Shares from him under a permitted transfer within Article 40.2, 40.3 or 40.4 (directly or by means of a series of two or more such permitted transfers) shall be deemed to have immediately given a Transfer Notice in respect of all the Shares then held by such Member(s) (where the Transfer Event is an event falling under Article 42.1(b) or 42.1(c) or 42.1(d)) (a "**Deemed Transfer Notice**"), (which expression includes a Transfer Notice given under Article 40.2(c)(iii)).

42.3. For the purpose of Article 42.2 and 42.4, any Shares received by way of rights or on a capitalisation by any person to whom Shares may have been transferred (directly or by means of a series of two or more permitted transfers) shall also be treated as included within the Deemed Transfer Notice.

42.4. A Deemed Transfer Notice shall supersede and cancel any then current Transfer Notice insofar as it relates to the same Shares except for Shares which have then been validly transferred pursuant to that Transfer Notice.

- 42.5. Notwithstanding any other provision of these Articles, if an Investor Majority so resolves in relation to any Shares, any Member holding Shares in respect of which a Deemed Transfer Notice is deemed given shall not be entitled to exercise any voting rights at general meetings of the Company in respect of those Shares on and from the date of the relevant Deemed Transfer Notice until the entry in the register of members of the Company of another person as the holder of those Shares. In the event that any Shares in respect of a Deemed Transfer Notice is deemed given have not been purchased by other Members pursuant to the procedures set out in Article 41 (*Voluntary Transfers*), and such resolution of the Board shall cease to apply upon the completion of such procedures.
- 42.6. The Shares the subject of a Deemed Transfer Notice shall be offered for sale in accordance with Article 41 (*Voluntary Transfers*) as if they were Sale Shares in respect of which a Transfer Notice had been given and treating as the Vendor the person who is deemed to have given the Deemed Transfer Notice save that:
- (a) subject to Article 42.7, the Sale Price shall be a price per Sale Share agreed between the Vendor and the Board with the consent of an Investor Majority or, in default of agreement within 15 business days after the making of the notification or resolution under Article 42.1 that the same is a Transfer Event, the Market Value;
  - (b) a Deemed Transfer Notice shall be deemed not to contain a Total Transfer Condition and shall be irrevocable whether under Article 42.5 or otherwise;
  - (c) the Vendor may retain any Sale Shares for which Purchasers are not found; and
  - (d) the Sale Shares shall be sold together with all rights, attaching thereto as at the date of the Transfer Event, including the right to any dividend declared on those Shares after that date but not the right to any dividend declared prior to, but payable after, that date to which the Vendor shall remain entitled.
- 42.7. Once a Deemed Transfer Notice shall under these Articles be deemed to have been served in respect of any Share then, except as permitted by Article 40.5 no permitted transfer under Article 40 (*Permitted Transfers*) may be made in respect of such Share unless and until a Offer Notice shall have been served in respect of such Share and the period of allocation permitted under Article 41 (*Voluntary Transfers*) shall have expired without such allocation.

#### CHANGE OF CONTROL

43. Notwithstanding any other provision of these Articles, but save for transfers pursuant to Article 40 (*permitted transfers*) no sale or transfer of, or transfer of any interest in, any Shares conferring a right to vote at general meetings of the Company to any person whomsoever (other than the Investors or their Associated Funds), which would result, if made and, if appropriate, registered, in a person (together with persons acting in concert therewith)

whether or not then a member of the Company obtaining or increasing a Controlling Interest in the Company, shall be made or registered and no right to subscribe for any Shares which would result, when such Shares are issued, in such a person obtaining or increasing a Controlling Interest in the Company shall be exercised unless:

- 43.1. prior to such transfer being completed a General Offer is made to all members by the person or persons proposing to acquire the Controlling Interest to purchase all the Shares in issue and all the unissued Shares for which any person shall then be entitled to subscribe; and
- 43.2. the relevant offer is approved by the Board and the Investor Director(s).

Any General Offer shall attribute an equal value to each Share being a value not less than the highest value paid or agreed to be paid for a Share by the proposed acquiror(s) of the Controlling Interest in the 6 months preceding the date of the General Offer multiplied by the number of Shares then in issue (the "Aggregate General Offer Value") provided that it shall be a term of any such General Offer that the Aggregate General Offer Value shall be divided among the members in accordance with Article 9.3.

It shall be a term of a General Offer and of any agreement to acquire any Shares pursuant thereto that a Controlling Interest is only obtained or increased in consequence of the General Offers for the Shares and if the General Offers become wholly unconditional in respect of each class of Shares. Any General Offer shall be made (at the same time as any other General Offer made in terms of this Article 43) in writing (stipulated to be open for acceptance for at least twenty-eight days) to all relevant members and shall include an undertaking by the offeror that neither he nor any person acting in concert with him has within the six months immediately preceding the making of the General Offer entered into more favourable terms with any member for the purchase of Shares of the same class. Such a General Offer shall be accepted or rejected in writing within the time period stipulated and shall be deemed to have been rejected by a member if he does not respond within such time period.

Nothing in this Article 43 shall require any Investor to make any General Offer.

## DRAG-ALONG

### 44. Drag-Along

The provisions of Article 41(*Voluntary Transfers*) shall not apply to the provisions of this Article 44.

- 44.1. If any one or more Members holding at least 65% of the Shares and including amongst their number all of the Investors (together the "**Selling Shareholders**") wish to transfer all their Shares (the "**Relevant Shares**"), the Selling Shareholders shall have the option (the "**Drag Option**") to require all the other holders of Shares to transfer all their shares with full title guarantee

to the Third Party Purchaser or as the Third Party Purchaser shall direct in accordance with this Article 44.

- 44.2. The Selling Shareholders may exercise the Drag Option by giving notice to that effect (a "Drag Notice") to all other Members (the "Dragged Shareholders") at any time before the registration of the transfer of Shares resulting in the Change of Control. A Drag Notice shall specify that the Dragged Shareholders are required to transfer all their Shares (the "Dragged Shares") pursuant to Article 44.1 to the Third Party Purchaser, the price at which the Dragged Shares are to be transferred (determined in accordance with Article 44.4) the proposed date of transfer and the identity of the Third Party Purchaser.
- 44.3. A Drag Notice is irrevocable but the Drag Notice and all obligations thereunder will lapse if for any reason there is not a Change of Control caused by a transfer of Shares by the Selling Shareholders to the Third Party Purchaser within 60 days after the date of the Drag Notice.
- 44.4. The Dragged Shareholders shall be obliged to sell the Dragged Shares at the price specified in the Drag Notice which shall attribute an equal value to all Shares (including the Relevant Shares).
- 44.5. Completion of the sale of the Dragged Shares shall take place on the same date as the date proposed for completion of the sale of the Selling Shareholders' Shares unless:
  - (a) all of the Dragged Shareholders and the Selling Shareholders agree otherwise; or
  - (b) that date is less than 7 days after the date of the Drag Notice, when it shall be deferred until the 7th day after the date of the Drag Notice.
- 44.6. Each of the Dragged Shareholders shall on service of the Drag Notice be deemed to have irrevocably appointed each of the Selling Shareholders severally to be his attorney to execute any stock transfer and to do such other things as may be necessary or desirable to accept, transfer and complete the sale of the Dragged Shares pursuant to this Article 44.
- 44.7. In connection with the Sale the provisions of Article 9.3 (*Liquidation Preference and Allocation of Sale Proceeds*) shall apply to the proceeds of the Shares and save as aforesaid the provisions of this Article 44 shall prevail over any contrary provisions of these Articles including rights of pre-emption and other restrictions contained in these Articles which shall not apply on any sale and transfer of Shares to the Third Party Purchaser named in a Drag Notice. Any Transfer Notice or Deemed Transfer Notice served in respect of any Share shall automatically be revoked by the service of a Drag Notice.

## TAG-ALONG AND CO-SALE

## 45. Tag-Along and Co-sale

The provisions of 41(*Voluntary Transfers*) shall not apply to this Article 45.

- 45.1. Subject to Article 44 (Drag Along) but notwithstanding any other provision in these Articles (other than Article 40 (Permitted Transfers) which shall be excluded from the scope of this Article 45) no sale or transfer or other disposition by any Member (the "Selling Shareholder") of any interest in any Share (the "Specified Shares") shall have any effect unless before the transfer is lodged for registration the Third Party Purchaser has made a bona fide offer in accordance with these Articles to purchase at the Specified Price (defined in Article 45.3), the same proportion of the Shares held by each Member holding A Ordinary Shares (who is not acting in concert or otherwise connected with the Third Party Purchaser) as the Specified Shares represent as a proportion of all the Shares held by the Selling Shareholder (the "Uncommitted Shares").
- 45.2. An offer made under Article 45.1 shall be in writing, given in accordance with Article 51, open for acceptance for at least 21 days, and shall be deemed to be rejected by any member who has not accepted it in accordance with its terms within the time period prescribed for acceptance and the consideration thereunder shall be settled in full on completion of the purchase and within 30 days of the date of the offer.
- 45.3. For the purposes of this Article 45:
- (a) the expression "transfer", "transferor" and "transferee" include respectively the renunciation of a renounceable letter of allotment, and any renouncer and renounee of such letter of allotment; and
  - (b) the expression "Specified Price" means the higher of:-
    - (i) a price per share at least equal to the highest price paid or payable by the Third Party Purchaser or persons acting in concert with him or connected with him for any Shares within the last six months (including to avoid doubt the Specified Shares) plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of the Specified 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 the Specified Shares Provided always that an equal value shall be attributed to all Shares including the Specified Shares; and
    - (ii) (if holder of 75% of the Uncommitted Shares shall so require) a price per share equal to the Issue Price thereof plus a sum equal to any arrears or accruals of the dividends on that Share if such Share is sold cum such dividend grossed up to reflect



the tax credit payable in respect of such dividend if paid at that date calculated down to the date the transfer is completed.

- (c) If any part of the Specified Price is payable otherwise than in cash any Member may require, as a condition of his acceptance of the offer, to receive in cash on transfer all or any of the price offered for his Uncommitted Shares.
  - (d) If the Specified Price or its cash equivalent cannot be agreed between the Third Party Purchaser and Members holding 75% of the Uncommitted Shares (excluding the Third Party Purchaser and persons acting in concert or otherwise connected with him), within 21 days of the proposed sale or transfer referred to in Article 45.1 it may be referred to the Valuers by any Member and, pending its determination, the sale or transfer referred to in Article 45.1 shall have no effect.
  - (e) On the Sale effected under this Article 45, the provisions of Article 9.3 (Liquidation Preference and Allocation of Sale Proceeds) shall apply to the proceeds of the Shares.
- 45.4. Subject to Article 44 (Drag Along) but notwithstanding any other provision in these Articles no sale or transfer or other disposition by any Member (the "Selling Shareholder") of any interest in any Share (the "Specified Shares") in circumstances where the Drag Option applies (an "Exit Sale Transaction") shall have any effect unless before the transfer is lodged for registration the Third Party Purchaser has made a bona fide offer in accordance with these Articles to purchase at the Exit Specified Price (defined in Article 45.6), the Shares held by each Member holding Ordinary Shares (who is not acting in concert or otherwise connected with the Third Party Purchaser) (the "Uncommitted Shares").
- 45.5. An offer made under Article 45.4 shall be in writing, given in accordance with Article 51, open for acceptance for at least 10 days, and shall be deemed to be rejected by any member who has not accepted it in accordance with its terms within the time period prescribed for acceptance.
- 45.6. For the purposes of Article 45.4, the expression "Exit Specified Price" means a price per share at least equal to the price payable for the Specified Shares under the Exit Sale Transaction.

### PROHIBITED TRANSFERS

46. Notwithstanding any other provision of these Articles, no transfer of any Share shall be registered if it is to:
- (a) any minor, undischarged bankrupt, trustee in bankruptcy or person of unsound mind (as such may be determined by the Board); or
  - (b) any person (other than a Third Party Purchaser named in a Drag Notice) who has not executed a deed of adherence to, and in the manner required by, the Investment Agreement.

### INVESTOR DIRECTOR

- 47.
- 47.1.1. For so long as Pentech Fund (and/or its Permitted Transferees) holds 7.5% or more of the issued shares in the capital of the Company the Pentech Fund (and/or its Permitted Transferees) may at any time and on more than one occasion appoint any two persons to be directors and may at any time and on more than one occasion remove any Investor Director appointed by it;
  - 47.1.2. For so long as Scottish Enterprise (and/or its Permitted Transferees) holds 7.5% or more of the issued shares in the capital of the Company Scottish Enterprise (and/or its Permitted Transferees) may at any time and on more than one occasion appoint any person to be a director and may at any time and on more than one occasion remove any Investor Director appointed by it,
- (each an "Investor Director" which expression shall, where the context so permits, include a duly appointed alternate of such a director)
- 47.2. There shall not be more than 3 Investor Directors in office at any time.
  - 47.3. Any appointment or removal of an Investor Director shall be in writing served on the Company signed by the relevant person(s) and shall take effect at the time it is served on the Company or (if later) the date expressly stated therein. Any such appointment or removal by a corporation may be signed on its behalf by its duly authorised representative.
  - 47.4. Upon written request by the person(s) appointing him the Company shall procure that any Investor Director is forthwith appointed as a director of any other member of the Group indicated in such request.
  - 47.5. For so long as any Investor holds 7.5% or more of the issued shares in the capital of the Company that Investor shall be entitled to send a representative as an observer to attend and speak but not vote at any meeting of the Board, any committee of the Board and any meeting of the board or any committee of the board of any other member of the Group.

- 47.6. Each Investor Director and/or Observer shall be entitled to report back to the members appointing him on the affairs of the Company and its subsidiaries on a confidential basis and to disclose to such members on a confidential basis such information as he shall reasonably consider appropriate including, for the avoidance of doubt, all papers distributed to the Directors.

### FOUNDER DIRECTOR

- 48.1. If at any time prior to a Further Funding Round fewer than two Founders are directors of the Company, any person or persons holding more than 50% of the Ordinary Shares then held by the Founders or persons to whom they have transferred shares in accordance with Article 40.2 may at any time and on more than one occasion appoint a Founder (or such other person as shall be approved by an Investor Majority) to be a director (the "**Founder Director**" which expression shall, where the context so permits, include a duly appointed alternate of such a director) and may at any time and on more than one occasion remove the Founder Director appointed by them.
- 48.2. With effect from a Further Funding Round:
- 48.2.1. in the event that more than two Founders are directors of the Company, any Founder Director appointed in accordance with this Article 48 shall be deemed to be removed from office with immediate effect on the date of a Further Funding Round, save as otherwise agreed by an Investor Majority;
- 48.2.2. in the event that two Founders are directors of the Company, one of which is a Founder Director appointed in accordance with this Article 48, if required by an Investor Majority and as notified in writing by an Investor Majority to the Founder Director, such Founder Director shall be deemed to be removed from office with immediate effect on the date of a Further Funding Round;
- 48.2.3. in the event that no Founder is a director of the Company, a Founder nominated by a majority of the Founders (the identity of which shall require the consent of an Investor Majority, acting reasonably) may at any time and on more than one occasion be appointed as a Founder Director and may at any time and on more than one occasion remove the Founder Director appointed by them.
- 48.3. There shall not be more than one Founder Director in office at any time.
- 48.4. Subject to Article 48.2, any appointment or removal of a Founder Director shall be in writing served on the Company signed by the relevant person(s) and shall take effect at the time it is served on the Company or (if later) the date expressly stated therein.
- 48.5. Upon written request by the person(s) appointing him the Company shall procure that the Founder Director is forthwith appointed as a director of any other member of the Group indicated in such request.

## CONFLICTS OF INTEREST

- 49.1. The conflict of interest provisions contained in the 2006 Act (and in particular section 173(2)(b)) should be read in the light of the following Articles dealing with conflicts of interest.
- 49.2. If a situation arises in which a director (the "Conflicted Director") has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (including without limitation, in relation to the exploitation of any property, information or opportunity, whether or not the Company could take advantage of it) (a "Situation") the following provisions shall apply:
- (a) the Directors (other than the Conflicted Director and any other Director with a similar interest who shall not be counted in the quorum at the meeting and shall not vote on the resolution); or
  - (b) the members (by ordinary resolution or by notice in writing given to the Company by the holders of a majority of the Ordinary Shares),
- may resolve to authorise such Situation and the continuing performance by the Conflicted Director of his duties and confirm that the existence of such Situation shall not give rise to a breach of the duty of the Conflicted Director pursuant to section 175 of the 2006 Act (or as such section may be amended or restated or re-numbered from time to time). Any such authorisation may be subject to such conditions as the Directors or members (as applicable) may consider necessary or desirable.
- 49.3. Any proposed authorisation under Article 49.2 may only be given in respect of a matter which constitutes a Situation in which a director who is not an Investor Director has, or can have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company, if an Investor Director has given his consent to such authorisation (not to be unreasonably withheld or delayed).
- 49.4. In the execution of his duty to promote the success of the Company it is acknowledged that each of the Investor Directors shall be entitled to have regard to and take account of the interests of the person or party or entity who has appointed him (the "Appointer") and in doing so the Investor Directors shall not have infringed their duty to exercise independent judgement in accordance with section 173 of the 2006 Act (or as such section may be amended or restated or re-numbered from time to time).
- 49.5. Notwithstanding Article 49.2 above, the existence of the following Situations relating to an Investor Director which do or may give rise to a conflict arising as a result of the Investor Director's involvement with and relationship with his Appointer and the investment strategy and operations of the Appointer, shall be hereby authorised, without further approval being required by the Directors and/or the members (as appropriate) and consequently shall not give rise to a breach of duty to avoid conflicts of interest:

- (i) if the Investor Director is a shareholder in and/or member and/or partner and/or employee of the Appointer or if the Investor Director has any economic interest in an investment fund in relation to which the Appointer forms part of the relevant fund structure;
- (ii) if the Investor Director has an advisory relationship with a competitor of the Company;
- (iii) if the Appointer acquires a competitor of or a supplier to the Company or any other company within the Group, or a material interest therein;
- (iv) if the Appointer or any person connected with the Appointer wishes to take up an opportunity that had been offered to, but declined by the Group;
- (v) if the Investor Director is appointed by the Appointer or any person connected with the Appointer or is otherwise appointed as a director of any other company outside the Group, including in a competitor to or supplier of the Company;
- (vi) if the Group is considering a refinancing proposed by or supported by the Appointer;
- (vii) if the Appointer wishes to exit its investment in the Group by way of a Sale or Listing or a sale of assets by the Group or otherwise;
- (viii) if an Investor Director accepts a benefit from a third party conferred by reason of his being a Director or his doing (or not doing) anything as a Director, provided such benefit falls within section 176(4) of the 2006 Act (or as such section may be amended or restated or renumbered from time to time);
- (ix) if an Investor Director consents or withholds consent or gives any direction pursuant to the Investment Agreement and/or these Articles,

and an Investor Director shall be entitled to attend, be counted in the quorum and vote at any meeting of the Directors notwithstanding any such conflict or potential conflict.

- 49.6. Where an Investor Director obtains confidential information (other than through his position as a director of the Company) that is confidential to a third party, he will not be obliged to disclose it to the Company or to use it in relation to the Company's affairs in circumstances where to do so would amount to a breach of that confidence.

#### **CONVERSION OF A ORDINARY SHARES**

- 50.1. Any holder of A Ordinary Shares may at any time, by notice in writing to the Company, require conversion of all of the A Ordinary Shares held by it at any time into Ordinary Shares. Those A Ordinary Shares shall convert

automatically on the date of service of such notice on the Company (unless such notice states that conversion is to be effective on some later date, or when any conditions specified in the notice have been fulfilled, in which case conversion shall take effect on that later date, or when such conditions have been fulfilled, as the case may be).

50.2. All of the A Ordinary Shares shall automatically convert into Ordinary Shares on the date of a Listing in accordance with Article 9.5.

50.3. In the case of a conversion pursuant to:

50.3.1. Article 50.1, at least 5 Business Days after the date of conversion; or

50.3.2. Article 50.2, at least 5 Business Days before the date of the Listing,

each holder of the relevant A Ordinary Shares converted or to be converted shall deliver the certificate(s) (or an indemnity in a form reasonably satisfactory to the Directors for any lost share certificate) for the A Ordinary Shares being converted (together with such other evidence (if any) as the Directors may reasonably require to prove good title to those Shares) to the Company at its registered office for the time being.

50.4. Where conversion of any A Ordinary Share is mandatory on the occurrence of a Listing, that conversion shall only be effective immediately before such Listing. If such Listing does not become effective, or does not take place, such conversion shall be deemed not to have occurred.

50.5. On conversion pursuant to this Article 45 the relevant A Ordinary Shares shall (without any further authority than that contained in these Articles) stand converted into Ordinary Shares on the basis of applying the following formula (and rounding the product, Y, up or down as appropriate to the nearest whole share):

$$Y = \frac{A}{B}$$

Where:

Y = the number of Ordinary Shares to be issued on conversion in accordance with this Article 50

A = C + D

B = the price per share payable on conversion, being the Starting Price

C = Aggregate Issue Price of the shares held by the relevant A Ordinary Shareholder

D = accrued but unpaid dividends on the A Ordinary Shares held by the relevant A Ordinary Shareholder

(subject to adjustment to take account of any sub-division, consolidation or

re-classification of either the A Ordinary Shares or the Ordinary Shares at any time before a conversion in accordance with this Article 50) and the Ordinary Shares resulting from the conversion shall rank *pari passu* in all respects with the existing issued Ordinary Shares.

- 50.6. Forthwith following a conversion pursuant to this Article 50, the Company shall enter the holder(s) of the converted A Ordinary Shares in the register of shareholders of the Company as the holder(s) of the appropriate number of Ordinary Shares and, subject to the relevant holder of A Ordinary Shares delivering the relevant share certificate(s) (or indemnity or other evidence) in respect of the A Ordinary Shares in accordance with Article 50.3, the Company shall, within 10 Business Days of conversion, forward a definitive share certificate for the appropriate number of fully paid Ordinary Shares to such holder of converted A Ordinary Shares, by post to his address as shown in the Company's register of Shareholders, at his own risk and free of charge.

## 51. NOTICES AND COMMUNICATIONS

- 51.1. The Company may send, supply or give any document, information or notice to a member by hard copy, electronic form or by making that document or information available on a website and giving notice of the availability of that document or information to the relevant member (provided that member has individually agreed (or is deemed to have agreed) to the Company sending or supplying documents or information generally or those documents or information in question to him by means of a website), in each case subject to the provisions of sections 1143 to 1148 and Schedule 5 of the 2006 Act.
- 51.2. A notice given by means of a website shall be deemed to have been sent, supplied or given when the material was first made available on the website or, if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.
- 51.3. Any document, information or notice which is required to be sent or given to the Company shall be sent by hard copy or electronic form in each case, subject to the provisions of sections 1143 to 1148, Schedule 4 and Schedule 5 of the 2006 Act.
- 51.4. Proof that an envelope containing a document, notice or information was properly addressed, prepaid and posted shall be conclusive evidence that the document, notice or information was sent, supplied or given by post. A comprehensive transaction report or log generated by fax machine, suitably certified by or on behalf of the company, shall be conclusive evidence that a document, notice or information was sent, supplied or given by fax. A copy of a record of the total number of recipients sent to or each recipient to whom an e-mail message was sent together with any notices of failed transmissions and copies of records of subsequent re-sending, suitably certified by or on behalf of the company, shall be conclusive evidence that the document, notice or information was sent, supplied or given by e-mail.

## SHARE CERTIFICATES ETC

52. The Company may execute any share certificate, warrant or other document creating or evidencing any security allotted by the Company or any right or option to subscribe granted by the Company under the hand of two Directors, any one Director and the Company Secretary or any one Director in the presence of a witness.

#### **SUBSIDIARY UNDERTAKINGS**

53. The Board shall exercise all voting and other rights or powers of control exercisable by the Company in relation to itself and its subsidiary undertaking so as to secure (but as regards its subsidiary undertakings only in so far as by the exercise of such rights or powers of control the Board can secure) that:
- (a) no shares or other securities are issued or allotted by any such subsidiary and no rights are granted which might require the issue of any such shares or securities otherwise than to the Company or one of its wholly-owned subsidiaries; and
  - (b) neither the Company nor any of its subsidiaries transfers or disposes of any shares or securities of any subsidiary of the Company or any interest therein or any rights attached thereto otherwise than to the Company or one of its wholly-owned subsidiaries, without in either case the previous consent in writing of an Investor Majority.



## SCHEDULE 1

1. In the Articles to which this forms a schedule the following words and expressions shall, unless the context otherwise requires, bear the following meanings:

"**2006 Act**" as defined in Article 1;

"**acting in concert**" has the meaning ascribed to it by the City Code on Takeovers and Mergers as in force and construed on the Completion Date;

"**A Ordinary Shareholder**" means a holder of A Ordinary Shares;

"**A Ordinary Shares**" means A ordinary shares of £0.01 each in the capital of the Company and having the rights and restrictions ascribed to such shares as set out in these Articles;

"**Appointer**" as defined in Article 49.4;

"**Associated Funds**" means any other investment fund or collective investment scheme managed by the investment manager of any holder of A Ordinary Shares who is an investment fund or collective investment scheme;

"**Auditors**" means the auditors for the time being of the Company;

"**Board**" means the board of directors of the Company from time to time;

"**business day**" means a day, other than a Saturday or a Sunday, on which clearing banks are open for business in Scotland;

"**Change of Control**" means the acquisition whether by purchase, transfer, renunciation or otherwise but excluding a transfer of Shares made in accordance with Article 40 (*Permitted Transfers*) (other than Article 40.5) by any person not an original party to the Investment Agreement (a "**Third Party Purchaser**") of any interest in any Shares if, upon completion of that acquisition, the Third Party Purchaser, together with persons acting in concert or connected with him, would hold more than 50% of the Shares;

"**Conflicted Director**" as defined in Article 49.2;

"**connected with**" has the meaning ascribed to it in Section 839 Income and Corporation Taxes Act 1988 save that there shall be deemed to be control for that purpose whenever either Section 416 or Section 840 of that Act would so require;

"**Controlling Interest**" means shares representing not less than 50% of Voting Rights;

"**Directors**" means the directors of the Company from time to time;

"**Disposal**" means the making of one or more agreements (whether conditional or not) for the disposal by the Group of all or substantially all of its undertaking and assets and for the purposes of this definition "disposal"

shall mean a sale, transfer, assignment or other disposition whereby a person ceases to be the absolute beneficial owner of the assets in question or all rights attached thereto or an agreement to enter into such disposal or the grant to compel entry into such an agreement;

"**eligible member**" shall bear the meaning attributed thereto in Section 289(1) of the 2006 Act;

"**Existing Facility Agreements**" shall have the meaning set out in the Investment Agreement;

"**Floating Charges**" means each of the following:

- (a) the floating charge granted by the Company in favour of Pentech Ventures LLP (as security trustee) on 8 April 2009;
- (b) the floating charge granted by the Company in favour of Pentech Ventures LLP (as security trustee) on 3 November 2009;

"**Founder Director**" has the meaning ascribed to it in Article 48.1 (*Founder Director*);

"**Founders**" means, for so long as they are shareholders in the Company, Andrew Stewart McLennan, Linda Anne MacKellar and Neil William Stewart;

"**Further Funding Round**" means any further funding round after the date of the Supplemental Investment Agreement relating to any member of the Group which has been approved in accordance with the Investment Agreement, excluding any subscription for shares by the Investors in accordance with the Supplemental Investment Agreement;

"**Group**" means the Company and all its subsidiaries and subsidiary undertakings from time to time and "**member of the Group**" shall be construed accordingly;

"**Investor**" means an Investor, as defined in the Investment Agreement;

"**Independent Non Executive Director**" means the non executive director appointed in accordance with paragraph 16 of Part A of Schedule 6 of the Investment Agreement;

"**Investment Agreement**" means the Agreement relating to the Company made between (1) Andrew Stewart McLennan, Linda Anne MacKellar and Neil William Stewart, (2) the Company, and (3) Pentech Fund II Limited Partnership and Scottish Enterprise and (4) Slam on 9 July 2008, as amended, varied, restated, modified or supplemented from time to time;

"**Investor Directors**" has the meaning ascribed to it in Article 47.1 (*Investor Directors*);

**"Investor Majority"** means the holder(s) of at least 75% of the A Ordinary Shares for the time being in issue (excluding any A Ordinary Shares acquired in accordance with Article 41.17);

**"Issue"** or **"Reorganisation"** means any return of capital, issue of shares or other securities of the Company by way of capitalisation of profits or reserves (other than pursuant to Article 9.7.3) or any consolidation or sub-division or any repurchase or redemption of shares (other than A Ordinary Shares) or any variation in the subscription price or conversion rate applicable to any other outstanding shares;

**"Issue Price"** means the amount paid up or credited as paid up (including any premium on issue) on the Shares concerned;

**"Listing"** means any of:

- (a) the admission by the UK Listing Authority of all or any of the issued equity share capital of the Company to the Official List and such admission becoming effective; or
- (b) the granting of permission by the London Stock Exchange plc for the introduction of all or any of the issued equity share capital of the Company to the Alternative Investment Market, and such permission becoming effective; or
- (c) any equivalent admission to, or permission to deal on, any other Recognised Investment Exchange becoming unconditionally effective in relation to all or any of the issued equity share capital of the Company;

**"Member"** means any registered holder of a Share;

**"Model Articles"** as defined in Article 1;

**"Observer"** means any person appointed pursuant to Article 47.5;

**"Offer Period"** as defined in Article 37.3;

**"Office"** means the registered office of the Company;

**"Ordinary Majority"** means the holder or holders of at least 50% of the Ordinary Shares in issue;

**"Ordinary Shares"** means ordinary shares of £0.01 each in the capital of the Company and having the rights and the restrictions ascribed to such shares as set out in these Articles;

**"Ordinary Shareholder"** means a holder of Ordinary Shares;

**"Pentech"** means Pentech Ventures LLP, a limited liability partnership (registered number S0301769);

**"Pentech Fund"** means Pentech Fund II Limited Partnership, a limited partnership (registered number SL006306);

**"Permitted Allotment"** shall have the meaning set out in Article 10.3.2.;

**"Permitted Transfer"** means a transfer of shares pursuant to Article 40 (*permitted transfers*);

**"Permitted Transferee"** means a person or entity to whom Shares may be transferred in accordance with Article 40;

**"Recognised Investment Exchange"** has the meaning ascribed thereto in Section 285(1) Financial Services and Markets Act 2000;

**"Register of Members"** means the register of members kept by the Company pursuant to Section 113 of the 2006 Act;

**"Remuneration Committee"** means the remuneration committee of the Company constituted in accordance with the Investment Agreement;

**"Sale"** means the making of one or more agreements (whether conditional or not) for the disposal, transfer, purchase, subscription or renunciation of any part of the share capital of the Company and for the purposes of this definition "disposal" shall mean a sale, transfer, assignment or other disposition whereby a person ceases to be the absolute beneficial owner of the share in question or voting rights attached thereto or an agreement to enter into such disposal or the grant to compel entry into such an agreement;

**"Shareholder"** means a holder of Shares;

**"Share Option Plan"** means the share option plan of the Company for the employees and others, the terms of which have been approved by the Investor Directors;

**"Shares"** means the Ordinary Shares and the A Ordinary Shares and **"Share"** means any one share of any such class;

**"Situation"** as defined in Article 49.2;

**"Slam"** means Slam Games Limited (Company No. SC263196);

**"Starting Price"** shall have the meaning set out in Article 9.7.2;

**"Supplemental Investment Agreement"** means the supplemental investment agreement entered into between the Company, the Pentech Fund, Scottish Enterprise, Andrew Stewart McLennan, Linda Anne McKellar, Neil William Stewart, Slam Games Limited and Pentech dated on or around the date of adoption of these articles, as amended, varied, restated, modified or supplemented from time to time;

**"Third Party Purchaser"** has the meaning ascribed to it in the definition of "Change of Control" and where the relevant acquisition was effected by the

renunciation of a renounceable letter of allotment, shall include the relevant renouncee; and

"**Valuers**" means the Auditors unless:

- (a) (where the Valuers are asked to determine Market Value) within 21 days after the date of the Deemed Transfer Notice, the Vendor notifies the Board in writing that it objects to the Auditors making that report; or
- (b) the Auditors give notice to the Company that they decline an instruction to report on Market Value or Alternative Arrangements (as the case may be);

when the Valuers shall be a firm of chartered accountants agreed between the Vendor and the Board (where the Valuers are asked to determine Market Value) or the Investors and the Board (where the Valuers are asked to determine Alternative Arrangements) or, in default of agreement within 20 business days after the event referred to in (a) or (b) above, appointed by the President of the Institute of Chartered Accountants in Scotland on the application of the Vendor or the Board or any Investor;

"**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;

- 2. Words and expressions defined in the 2006 Act shall, unless the context otherwise requires, bear the same meanings herein.
- 3. This Schedule and Schedule 2 shall be deemed to be part of, and shall be construed as one with, the Articles.

**SCHEDULE 2****MATTERS REFERRED TO IN ARTICLE 9.9.1**

*Terms defined in this Schedule 2 shall have the meaning attributed to them in the Investment Agreement.*

**PART A**

- 1 Sell, license, transfer or otherwise dispose of, or acquire any interest in, any business or undertaking.
- 2 Expand or develop its business except through itself, the Company or a wholly owned subsidiary of the Company.
- 3 Alter its authorised or issued share capital or grant any options or other like rights, to acquire any share capital of the Company (other than in respect of (i) share options referred to in paragraph 14 of Schedule 6 of the Investment Agreement which have been recommended by the Board and approved by the Remuneration Committee and (ii) and A Ordinary Shares to be issued pursuant to Clause 3.3 or Clause 3.4 of the Investment Agreement) or dispose the whole or any material part of the Business of or of the whole or any part of the share capital of or any interest in the Company or any member of the Group.
- 4 Alter the Memorandum or Articles of Association of the Company or, in the case of any overseas subsidiary, its equivalent documents.
- 5 Take any steps to have any member of the Group wound up.

**PART B**

- 1 Issue any debt instrument or incur any indebtedness or Borrowings in the nature of indebtedness.
- 2 Borrow any monies or enter into any agreement if Borrowings of the Group would thereby exceed the amounts specified in the Budget or any later budget approved by the Investors pursuant to paragraph 7 to Schedule 6 of the Investment Agreement.
- 3 Create any mortgage, pledge, lien, charge, assignment by way of security, trust arrangement or other encumbrance or arrangement having the effect of security on its undertaking, property or assets, present or future, or any part thereof.
- 4 Acquire, sell or mortgage any interest in immovable property.
- 5 Make any loans or payments or grant any credit or give any guarantees or other commitment of the Company otherwise than in the normal course of business.

- 6 In any material way depart from the ordinary course of the day to day business of the Company either as regards the nature or the scope or the manner in which it conducts the same.
- 7 Enter into, terminate or alter any service contract or other terms of service with an executive director or officer of the company (including any increase in salary or Benefits payable under the Service Contracts).
- 8 Allow the Directors to invest in any other company or partnership, provided that the directors shall not be precluded from holding any shares in any company whose shares are listed or dealt in on the Stock Exchange for investment purposes and representing less than 3% of the shares or loan capital of the class concerned then in issue.
- 9 Change its accounting reference date.
- 10 Enter into a service or any other agreement with any director or connected person, or materially change such an agreement.
- 11 Adjust or alter the accounting policies and bases upon which the annual profit and loss account and balance sheet of the Company and its subsidiaries are prepared.
- 12 Enter into a contract regarding any capital asset or assets of which is in excess of ten per cent (10%) of the capital expenditure budget specified in the Budget or any later budget agreed by the Investors pursuant to Paragraph 7 of Schedule 6 (unless such item is specified for purchase within the Budget or any later budget agreed by the Investors pursuant to Paragraph 7 of Schedule 6 of the Investment Agreement).
- 13 Modify or terminate any banking facilities or take any action to do so or allow them to cease to become available.
- 14 Enter into any transactions other than at arm's length and on the best terms reasonably obtainable having regard to commercial considerations.
- 15 Enter into any transaction with any director (i) which would be prohibited if the Company was a relevant company in terms of section 198(1) of the 2006 Act or (ii) which would be prohibited if the Company was an associated company in terms of Section 256 of the 2006 Act or (iii) any other transaction in which any of the directors or a person connected with any of the directors (within the meaning given by Section 252 of the 2006 Act) has a material interest otherwise than as a director of or shareholder in the Company.
- 16 Subscribe for, purchase or acquire any shares, debentures, or other interest in any other company, trust partnership or other body.
- 17 Enter into any joint venture, partnership, consortium or other similar arrangement.
- 18 Appoint or remove any director or appoint any committee of its board of directors.

- 19 Employ or agree to employ (i) any employee whose emoluments and pension benefits shall be at an annual rate in excess of £60,000 or (ii) any person where his employment may not lawfully be terminated by the Company without compensation upon three months' notice or less or (iii) any senior sales staff.
- 20 Pay any salaries, or other emoluments, or receipts (including any consultancy payments or payments for other services) (other than salaries, bonuses and other payments made in accordance with the Service Contracts) to any Manager (or his successor in office) or any other person who is or is to be appointed a director of any member of the Group or any connected person or any trust of which they (or any of them) are or may become a settlor or beneficiary.
- 21 Save for any member of the Group which is an overseas company within the meaning of the Act, cease to be resident in the UK.
- 22 Pay, or resolve to pay, any dividend or make any distribution.
- 23 Make any change to the Business Plan.
- 24 Incur any expenditure in excess of that set out in the annual budget approved in accordance with Schedule 6 save for increases in expenditure of less than 5% on any line item set out in that budget.