

**THE POLISH BAKING COMPANY LIMITED (the**  
**"Company")**

**REGISTERED NUMBER: SC315169**

**THE COMPANIES ACTS 1985 AND 1989**

**WRITTEN RECORD OF**

**MEMBERS' WRITTEN RESOLUTION**

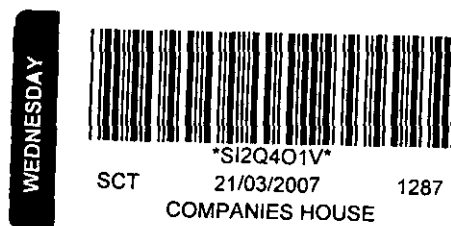
On the 20<sup>th</sup> day of March 2007, the following SPECIAL RESOLUTION IN WRITING were duly passed by all the members of the Company entitled to attend and vote at a general meeting of the Company pursuant to section 381A, Companies Act 1985 (as amended)

**SPECIAL RESOLUTION**

THAT the document attached, signed by the Sole Director for verification purposes, be adopted as new Articles of Association of the Company, in place of and to the exclusion of all other Articles of Association

  
\_\_\_\_\_  
Director  
For and on behalf of  
**THE POLISH BAKING COMPANY LIMITED**

20.03.2007  
Date



WARNING This document has been prepared by MBM Commercial LLP on behalf of The Polish Baking Company Limited. You should take independent legal advice before subscribing for or purchasing any shares in The Polish Baking Company Limited because all such shares issued or transferred to you will be subject to the terms of this document.

Galewski Sebastian  
20.03.2007



## ARTICLES of ASSOCIATION

### THE POLISH BAKING COMPANY LIMITED

(Registered Number SC315169)

(ADOPTED 20 MARCH 2007)

**C O M M E R C I A L   L L P**

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**ARTICLES OF ASSOCIATION**  
**of**  
**THE POLISH BAKING COMPANY LIMITED**  
**(Registered Number SC315169)**  
**A PRIVATE LIMITED COMPANY**  
**(ADOPTED 20 MARCH 2007)**

**DEFINITIONS AND INTERPRETATION**

**1 In these Articles**

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

"the Act"	means the Companies Act 1985 (as amended from time to time),
"Acting in Concert"	shall have the meaning given to it in the City Code on Takeovers and Mergers from time to time,
"Articles"	means these articles of association constituted by the following regulations together with any duly authorised amendments or alterations from time to time, and the term "Article" shall be a reference to a regulation contained in these Articles,
"Auditors"	means the auditors of the Company from time to time, unless auditors are not required pursuant to the Act and have not been appointed, in which case such reference shall instead mean the accountants of the Company from time to time,
"Authorised Amount"	means £1,000 divided into 1,000 Ordinary shares of £1.00 each,
"Bad Leaver"	means the cessation of (i) employment with the Company or any Group Member of the Company or (ii) holding the office of Director or

consultant of the Company or any Group Member of the Company, other than

- (a) by reason of wrongful dismissal of the employee,
- (b) by reason of the employee leaving employment for reasons of ill health or disability as certified to the Board's reasonable satisfaction by an independent doctor or where the death or long term illness or disability of a spouse, parent, long term partner or child of the employee makes it reasonably necessary for the employee to provide care by himself or herself to that spouse, parent, partner or child,
- (c) by reason of the unfair dismissal of the employee,
- (d) by reason of the dismissal of the employee by reason of redundancy,
- (e) by reason of the death of the employee, consultant or the Director (as the case may be),
- (f) by reason of the retirement of the employee, Director or consultant at the normal retirement of 65 years of age (or such other date as is mutually agreed between the Company or any Group Member of the Company and the Director/consultant/employee (as the case may be)),
- (g) by reason of the removal of a Director and employee as Director in circumstances where simultaneous dismissal as an employee would fall within the categories in paragraphs (a) or (c) above,
- (h) where such cessation occurs after the fifth anniversary of the date of commencement of employment or holding of office or of the date of adoption of these Articles (whichever is later), except where such cessation occurs in circumstances justifying summary dismissal of an employee (including without limitation gross misconduct or dishonesty),
- (i) by reason of the unlawful termination by the Company or any Group Member of the Company of the letter of appointment for the services of any non executive Director or the non renewal of the said letter of appointment at the instance of the Company or any such Group Member,
- (j) by reason of the unlawful termination by the Company or any Group Member of the Company of the consultancy contract for the services of any consultant or the non

renewal of the said consultancy contract at the end of its term at the instance of the Company or any such Group Member,

"Board"	means the board of Directors of the Company from time to time (including the Investors' Director(s) (if any)),
"Company"	means The Polish Baking Company Limited, a private limited company incorporated under the Act, registered in Scotland under number SC315169 and having its registered office at 107 George Street, Edinburgh, EH2 3ES,
"Compulsory Transferor"	means a member required to transfer his shares in accordance with Article 13 1 and "Compulsory Transfer" shall be construed accordingly,
"Connected Persons"	shall have the meaning ascribed to it in Section 839 of the Income and Corporation Taxes Act 1988,
"Control Percentage"	means any percentage exceeding 50%,
"Deemed Transfer Notice"	shall have the meaning given to it in Article 13 1,
"Director"	means a director of the Company or any alternate director duly appointed in accordance with these Articles,
"Founder"	means Mr Sebastian Waldemar Galewski of 7/1 Northfield Drive, Edinburgh, EH8 7RR,
"Group Member"	means any holding company, subsidiary company or wholly owned subsidiary company as defined in terms of section 736 of the Act or a parent company as defined in terms of section 258 of the Act,
"Investors"	means Mr Clemence and Mr Ford,
"member"	means a person registered as a member in the register of members of the Company,
"Mr Clemence"	means Jonathan Michael Offer Clemence, of 5 Shandon Road, Edinburgh, EH11 1QG,
"Mr Ford"	means Peter Ford, of 2 West Road, Whitekirk, Dunbar, EH42 1XA,
"Mr Galewski"	means Sebastian Waldemar Galewski, of 7/1 Northfield Drive, Edinburgh, EH8 7RR,

"Privileged Relation"	means the spouse or widow of the relevant person and the relevant person's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the relevant person's children ("family members"), any trust established for the benefit of the relevant person or his family members, or any charitable trust established by the relevant person and/or by his family members,
"Qualifying Majority"	means 75%,
"Regulation"	means a regulation contained in Table A,
"share"	means any share forming part of the share capital of the Company,
"Table A"	means Table A of the Companies (Tables A to F) Regulations 1985, SI1985/805 (and not as amended from time to time),
"Total Transfer Condition"	shall have the meaning given to it in Article 12 2, and
"Valuer"	means the Auditors, unless they decline to act and in such an instance the valuer shall instead be appointed by the President for the time being of the Institute of Chartered Accountants of Scotland

- 1 2 Words importing the singular include the plural and vice versa
- 1 3 Words importing a particular gender include any gender
- 1 4 References to a "person" include any natural person, or any legal person, body or organisation, incorporated or unincorporated
- 1 5 The headings in these Articles are for convenience only and shall not affect the construction of these Articles
- 1 6 Words and expressions defined in the Act shall bear the same meanings in these Articles, excluding any statutory modification to those defined terms not in force as at the date of adoption of these Articles
- 1 7 Unless provision is made to the contrary, references to any statute or statutory provision includes a reference to
- 1 7 1 that statute or statutory provision as from time to time amended, extended, re enacted or consolidated whether before or after the date of adoption of these Articles, and

1 7 2 all statutory instruments or orders made pursuant to it

## **TABLE A**

- 2 The Regulations contained in Table A shall apply to the Company except in so far as they are excluded or varied by or are inconsistent with these Articles
- 3 Regulations 5, 8, 24, 26, 41, 59, 64, 73 to 80 (inclusive), 89, 90, 94 to 97 (inclusive) 101 and 118 shall not apply to the Company
- 4 The following amendments shall be made to the Regulations in so far as they apply to the Company

4 1 in Regulation 6, by the deletion of the phrase "sealed with the seal" in the second sentence, and by the substitution, in its place, of the phrase "executed in accordance with the Act or the Requirements of Writing (Scotland) Act 1995",

4 2 in Regulation 46, by the deletion of the second sentence which comprises the whole of the remainder of that Regulation and by the substitution, in its place, of the following sentence

"A poll may be demanded at any general meeting or at any meeting of a class of members by the chairman or by any member entitled to vote at that meeting, present in person, or by any member's proxy or attorney, or if a corporation, by its duly authorised representative", and

4 3 in Regulation 112, by the deletion of the first sentence and by the substitution, in its place, of the following sentences

"Any notice required or permitted to be given by the Company to a member shall be sufficiently given to that member if sent in a legible form by facsimile transmission ("fax"), first class or express registered post ("post"), or airmail, or by personal delivery, including courier delivery, to the registered address of the member, or by electronic mail ("e mail") to the e mail address of the member notified to the Company

4 4 in Regulation 115, by the deletion of the second sentence and by the substitution, in its place, of the following sentences

"A notice shall be deemed to have been received (i) in the case of fax, when a successful transmission report is generated during that or the next Working Day, (ii) in the case of post, thirty six hours from midnight (00 00 hrs) on the date of posting, postage prepaid, evidenced by the relevant proof of posting, (iii) in the case of airmail, on the seventh Working Day following mailing, if mailed by airmail, postage prepaid, evidenced by the relevant proof of posting, (iv) in the case of personal delivery, thirty minutes after the time of delivery, evidenced, where appropriate, by the courier's receipt duly counter signed for or on behalf of the addressee and (v) in the case of email, when a successful delivery receipt is generated during that or the next Working Day Where the deemed day of receipt of a notice is not a "Working Day" (which means any day from Monday to Friday inclusive which is not a local, public or

statutory holiday) or where deemed receipt occurs at the place of delivery on a Working Day but after 1800hrs, that notice shall be deemed to have been received at 0930hrs on the next Working Day "

## **SHARE CAPITAL**

- 5 The authorised share capital of the Company as at the date of adoption of these Articles consists of the Authorised Amount
- 6 The Company may at its sole discretion recognise and record the holding of a share by a person on trust, or in the names of trustees, but unless specifically recognised by the Company as such a holding, the Company shall not be bound by, or obliged to recognise, any interest in any share except for the absolute rights of the holder named in the register of members
- 7 Subject to Article 9, any original shares of the Company for the time being unissued and any new shares from time to time to be created shall be offered to existing members in strict proportion to the number of shares held by them at that time. The offer shall be made by notice to each member specifying the number of shares offered and stating a period (not being less than 21 days) within which the offer if not accepted by notice to the Company shall be deemed to be declined. Following the expiry of such period or receipt of notice of the acceptance or refusal of every offer made hereunder the Directors may dispose of any shares not accepted by the members in such manner as they think most beneficial to the Company provided that such shares shall not be disposed of on terms which are more favourable to the allottee than the terms on which they were offered to the members hereunder
8. **THIS ARTICLE IS INTENTIONALLY LEFT BLANK**
- 9 Pursuant to Section 91 of the Act, Sub Section (1) of Section 89 and Sub Sections (1) to (6) inclusive of Section 90 of the Act shall be excluded from applying to the Company

## **LIEN**

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



## **TRANSFER OF SHARES**

11

- 11 1 Save in respect of a transfer complying with one or more of the conditions specified in Article 11 4, no transfer of any share shall be registered unless it is first approved by the Directors
- 11 2 Except a transfer complying with one or more of the conditions specified in Article 11 4, the Directors may, in their absolute discretion and without assigning any reason therefor, refuse to register any transfer of any share
  - 11 2 1 whether or not it is a fully paid share, and/or
  - 11 2 2 upon which the Company has a lien
- 11 3 Subject only to
  - 11 3 1 Articles 11 2, 14 and 16, and
  - 11 3 2 the presentation of such evidence as the Directors may reasonably require to show the right of a transferor to make the transfer,a transfer complying with one or more of the conditions specified in Article 11 4 shall be registered by the Directors
- 11 4 The following are the conditions specified in Articles 11 1, 11 2 and 11 3
  - 11 4 1 a transfer of a share made with the prior written consent of all the members of the Company for the time being, other than the transferor,
  - 11 4 2 a transfer of a share pursuant to Article 12,
  - 11 4 3 a transfer of a share pursuant to Article 13,
  - 11 4 4 a transfer or transmission of a share by any Investor to a Privileged Relation,
  - 11 4 5 a transfer or transmission of a share by a Founder to a Privileged Relation provided that in this instance any such transfer is conditional upon the transferor remaining the holder of at least one Ordinary Share thereafter

12

- 12 1 Except in the case of a transfer expressly authorised by Article 11 4, no person shall be entitled to dispose of any interest in any shares without first offering such shares for transfer to the holders of other shares in the Company The offer shall be made by the proposing transferor(s) (the

"Transferor") by notice in writing to the Company (a "Transfer Notice") and may be in respect of all or some only of the shares held by the Transferor (the "Offer Shares"), provided that a Deemed Transfer Notice must be in respect of all shares held by the Transferor and his Privileged Relations

- 12 2 The Transfer Notice shall specify the Offer Shares and the price at which they are offered for sale (the "Suggested Price") and shall constitute the Directors as the agents of the Transferor and his Privileged Relations (if appropriate) for the sale of the Offer Shares (a) to other holders of shares in the Company and, failing which, (b) to the Company, in accordance with this Article 12 A Transfer Notice, other than a Deemed Transfer Notice, may contain a provision that unless all the Offer Shares are sold under this Article, none shall be sold (a "Total Transfer Condition") A Transfer Notice may not be revoked unless (i) it contains a Total Transfer Condition or (ii) all the members of the Company agree in writing that it may be revoked or (iii) it is permitted in terms of Article 12 6
- 12 3 Within 7 days after a Transfer Notice is received by the Company, the Directors shall give notice to all the holders of shares in the Company (other than the Transferor and his Privileged Relations) of the number and description of the Offer Shares and the Suggested Price, inviting each such holder to notify the Company within 21 days (a) if he requires the Offer Shares to be valued (such notification being a "Valuation Notice") and (b) if he does not so require whether he is willing to purchase any and, if so, what maximum number, of Offer Shares at the Suggested Price
- 12 4 If on or before the expiry of the 21 day period referred to in Article 12 3 the Directors shall receive a Valuation Notice requesting a valuation then the Directors shall instruct the Valuer to determine the fair value of the Offer Shares in accordance with Article 12 5, acting as an expert and not as an arbiter, and to produce a certificate stating such value (a "Certificate of Fair Value") within 14 days of being instructed to do so
- 12 5 The fair value of the Offer Shares ("the Fair Value") shall be calculated on the basis of the value of the whole Company on a going concern basis as between a willing seller and a willing buyer, with no reduction or other account being taken of the proportion which the Offer Shares bear to the total number of shares in issue, or shares of the same class as the Offer Shares in issue or any restrictions on the ability to transfer the Offer Shares In the case of a Deemed Transfer Notice arising under Article 13 1 1(c), account shall be taken in assessing the Fair Value of the effect of the relevant person ceasing to be an employee, director or consultant The Fair Value of each Offer Share shall be calculated by dividing the Fair Value of all the Offer Shares by the total number of the Offer Shares
- 12 6 Within 7 days of receipt by the Directors of the Certificate of Fair Value, the Directors shall send a copy thereof to the Transferor, declaring that (i) the Transferor (provided the Transferor is not a Compulsory Transferor) shall be entitled to revoke the Transfer Notice by notice in writing to the Directors within 7 days from the date of service upon the Transferor of such copy, and (ii) where the Transferor is a Compulsory Transferor, the Compulsory Transferor shall be entitled within 7 days from the date of service upon the Compulsory Transferor of such copy to notify the Company that the Compulsory Transferor objects to the calculation of the Fair Value where it

has been calculated by the Auditors acting as the "Valuer", whereupon the Company shall immediately refer the matter to the President for the time being of the Institute of Chartered Accountants of Scotland with a request to nominate forthwith an independent valuer to calculate the Fair Value (in accordance with Article 12 5) within 14 days of being instructed to do so and the decision of such independently nominated valuer shall be final and binding on all parties concerned and the costs of the said valuer shall be borne by the Compulsory Transferor alone

- 12 7 The cost of obtaining a Certificate of Fair Value shall be borne by the Company, unless (i) the Transferor revokes the Transfer Notice in accordance with Article 12 6 in which case the Transferor shall bear such cost or (ii) the Compulsory Transferor notifies the Company that the Compulsory Transferor objects to the calculation of the Fair Value in accordance with Article 12 6 in which case the Compulsory Transferor shall bear such cost
- 12 8 If the Transfer Notice is not revoked by the Transferor in accordance with Article 12 6, and in the case of a Compulsory Transferor, as soon as reasonably practicable following any decision by an independently nominated valuer appointed in accordance with Article 12 6, the Directors shall give notice to all the holders of shares in the Company (other than the Transferor and, in the case of a Compulsory Transfer, the Privileged Relations of the Transferor) of (a) the Fair Value as calculated by such independently nominated valuer pursuant to Article 12 6, or (b) in the event that such valuation is not required pursuant to Article 12 6, the lower of (i) the Suggested Price and (ii) the Fair Value as determined by the Valuer (the "Purchase Price"), and in each case the number and description of the Offer Shares, inviting each such holder to notify the Company within 14 days whether he is willing to purchase any and, if so, what maximum number, of Offer Shares at the Purchase Price
- 12 9 On the expiry of the 21 day period referred to in Article 12 3 or if a Certificate of Fair Value has been obtained the expiry of the 14 day period referred to in Article 12 8, the Directors shall allocate the Offer Shares to those members who have applied to purchase the Offer Shares, and in the event that the number of Offer Shares applied for exceeds the number of Offer Shares available such allocation shall be made in accordance with Article 12 10 If the Transfer Notice contains a Total Transfer Condition, no allocation of the Offer Shares shall be made under this Article or Article 12 10 unless as a result of such allocation combined with the purchase of Offer Shares by the Company pursuant to Article 12 14 1 (if any), all the Offer Shares will be sold
- 12 10 If the aggregate number of Offer Shares for which members have applied exceeds the number of Offer Shares available, priority shall be given to those members holding shares of the same class as the Offer Shares, and the allocation shall be made so far as practicable in proportion to the nominal amount of the share capital of that class held by each of those members but shall not in the case of any member exceed the number of Offer Shares for which he has applied Thereafter, any Offer Shares remaining unallocated shall be allocated amongst the holders of other classes of shares so far as practicable in proportion to the nominal amount of share capital of the Company held by each of those members but shall not in the case of any member exceed the number of Offer Shares for which he has applied

12 11 On the allocation being made, the Directors shall give details of the allocation in writing to the Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor and to each member who has stated his willingness to purchase. On the seventh day after such details are given, the members to whom the allocation has been made shall be bound to pay the Purchase Price for, and to accept a transfer of, the Offer Shares allocated to them respectively and the Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor shall be bound, on payment of the Purchase Price, to transfer the Offer Shares to the respective purchasers

12 12 If in any case a Transferor and, in relation to a Compulsory Transfer, the Privileged Relations of the Transferor after having become bound to transfer any shares to a purchaser, shall default in transferring the Offer Shares, the Directors may authorise any Director to execute on behalf of and as attorney for the Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor any necessary transfers and may receive the Purchase Price and shall thereupon cause the name of the purchaser to be entered in the register as the holder of the Offer Shares and hold the Purchase Price in trust for the Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor. The receipt of the Directors for the Purchase Price shall be a good discharge to the purchaser and after the name of the purchaser has been entered in the register of members of the Company the validity of the transfer to the purchaser may not be questioned by the Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor

12 13 Where more than one member has stated his willingness to purchase Offer Shares and through no default of the Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor such purchase is not duly completed, the Directors shall forthwith notify all the other members who have stated their willingness to purchase Offer Shares and if, within seven days of such notice being given, those other members shall not between them duly complete the purchase of the Offer Shares in respect of which there has been default in completion, the provisions of Article 12 14 shall apply

12 14

12 14 1 Following the expiry of (i) the 21 day period referred to in Article 12 3 or (ii) if a Certificate of Fair Value has been obtained, the 14 day period referred to in Article 12 8 (in either case the "Relevant Expiry Date") if any of the Offer Shares have not been allocated under Article 12 9 or 12 10, the Directors may within 7 days of the Relevant Expiry Date determine that the Company shall, if it is permitted to do so under the Act, purchase some or all of the Offer Shares itself at the Purchase Price

12 14 2 The Directors shall have a period of 60 days from the date of any such determination to (i) obtain from the Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor any necessary consents and authorities including any required under the Act for any such purchase by the Company and (ii) to complete any such purchase

- 12 14 3 In the event that a Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor either (i) refuses to sign any document necessary to enable the purchase of some or all of the Offer Shares by the Company or (ii) fails to respond to the Directors within 14 days of any such request (in accordance with Article 12 14 2), the Directors may authorise any Director to execute on behalf of and as attorney for the Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor any such document and may receive the Purchase Price and hold the Purchase Price in trust for the Transferor and, in relation to a Compulsory Transfer, the Privileged Relations of the Transferor, provided that if the Transfer Notice contains a Total Transfer Condition, the Directors may only so authorise any Director if all the Offer Shares will as a result be sold
- 12 14 4 The receipt by the Directors of the Purchase Price shall be a good discharge to the Company and after the Offer Shares purchased by the Company have been cancelled, the Transferor and, in relation to a Compulsory Transfer, the Privileged Relations of the Transferor may not question the validity of the purchase
- 12 15 If either (i) the Directors do not by the close of business on the last day of the 7 day period referred to in Article 12 14 1, make a determination that the Company shall, if it is permitted to do so under the Act, purchase some or all of the Offer Shares at the Purchase Price (the "Determination"), or (ii) the Company shall not where the Directors have made such Determination, complete a purchase of the Offer Shares by the close of business on the last day of the 60 day period referred to in Article 12 14 2 (the "Buy Back Expiry Date"), then the Transferor and in relation to a Compulsory Transfer, the Privileged Relations of the Transferor may at any time within a period of 30 days from the occurrence of the relevant Buy Back Expiry Date, transfer the Offer Shares not allocated to other members of the Company to any third party at the Suggested Price provided that if the Transfer Notice contains a Total Transfer Condition, the Transferor shall be only entitled to transfer all of the Offer Shares
- 12 16 The holders of any shares which are the subject of a Deemed Transfer Notice or Compulsory Transfer shall be entitled to receive notice of and to attend general meetings of the Company but shall have no right to (i) vote thereat in respect of the Offer Shares which are the subject of a Deemed Transfer Notice or Compulsory Transfer until such time as those Offer Shares are transferred to another person in accordance with the provisions of this Article 12 or (ii) participate in any other offer round of shares pursuant to a compulsory transfer of shares under Article 12 applying to any other shareholder

#### **EMPLOYEE ETC SHAREHOLDERS**

13

- 13 1 Where any of the following events occurs in relation to a member, the member in question shall be deemed to have immediately given a Transfer Notice (a "Deemed Transfer Notice") in respect of all the shares as then

registered in the name of such member and all of the shares as then beneficially owned or controlled by that member and his Privileged Relations and the provisions of Article 12 regarding Deemed Transfer Notices shall apply

13 1 1 In relation to a member being an individual

- (a) such member is adjudicated bankrupt, or
- (b) such member is suffering from a mental disorder as referred to in paragraph (c) of Regulation 81 of Table A, or
- (c) such member ceases to be a Director and/or employee and/or consultant of the Company or of any Group Member of the Company where such member does not remain acting in any other of such capacities in relation to the Company or any such Group Member (as an employee, Director or consultant),

13 1 2 In relation to a member being a body corporate

- (a) a receiver, manager or administrative receiver is appointed in respect of such member or over all or any part of its undertaking or its assets, or
- (b) such member enters into liquidation (other than a voluntary liquidation for the purposes of a bona fide scheme of solvent amalgamation or reconstruction), or
- (c) such member ceases to be controlled (as defined by Section 416 of the Income and Corporation Taxes Act 1988) by the person(s) who controlled such member on the date on which it became the member of the Company or the date of adoption of these Articles (whichever is later)

13 2 The Suggested Price applicable to the transfers under Article 13 1 shall be calculated as follows

13 2 1 where the event giving rise to the Deemed Transfer Notice is the event referred to in Article 13 1 1(c) and such member is a Bad Leaver, the Suggested Price shall be the lower of (i) the par value of the shares and (ii) the Fair Value, and

13 2 2 in all other circumstances, the Suggested Price shall be the Fair Value

13 3 The Directors shall immediately instruct the Valuer to determine the Fair Value in accordance with Articles 12 4 and 12 5, to produce a Certificate of Fair Value and Articles 12 6 to 12 14 and Article 12 16 shall then apply

13 4 The price to be received for the sale of the shares by the Compulsory Transferor and the Privileged Relations of the Compulsory Transferor in accordance with the provisions of this Article 13 shall be allocated to the Compulsory Transferor and his Privileged Relations in proportion to the number of shares held by the Compulsory Transferor and his Privileged Relations

- 13 5 Any obligation to transfer a share under the provisions of this Article 13 shall be deemed to be an obligation to transfer the entire legal and beneficial interest in such share free from any lien, charge or other encumbrance
- 13 6 Articles 13 1 to 13 5 shall not apply to the Investors (or any transferee thereof under Article 11 4 4)
- 13 7 The provisions of this Article 13 may be waived in whole or in part in any particular case with the prior written consent of 75% by value of the Investors

#### **LIMITATION ON CHANGE OF CONTROL – TAG ALONG RIGHTS**

- 14 Notwithstanding any other Article, no sale or transfer (other than a sale or transfer permitted by Articles 11 4 1, 11 4 3, 11 4 4 or 11 4 5, of any shares (the “Specified Shares”) to any person not being a member of the Company as at the date of adoption of these Articles which would

14 1 result if made and registered in that person taken together with any persons Acting in Concert with that person obtaining an interest in the Control Percentage or more of the total voting rights conferred by all the shares in the capital of the Company for the time being in issue and conferring the right to attend and vote at all general meetings, or

14 2 result in the transfer of 50% or more of the shares held collectively by the Founders or their Privileged Relations or Connected Persons,

shall be made or registered without the previous written consent of all of the members of the Company (other than the Transferor) unless before the transfer is lodged for registration the proposed transferee or his nominees (i) makes an offer (stipulated to be open for acceptance for at least 21 days) to such other members (the “Uncommitted Members”) to purchase all the other shares at the Specified Price (as defined in Article 15) and (ii) in respect of any such Uncommitted Members who accept the said offer, the Specified Price is paid to each of them in full at completion of the transfer by the proposed transferee or his nominee So far as is reasonably practicable the Company shall use reasonable endeavours to ensure that the Uncommitted Members are provided with sufficient information as may be necessary for them to form a reasonable view as to the nature of the proposed transaction Any Uncommitted Member who fails to accept any such offer within the period limited for acceptance shall be deemed to have rejected it

- 15 In Article 14, the expression “the Specified Price” shall mean a price per share (cash or otherwise) being not less than the Fair Value (as defined in Article 12 5) and at least pari passu to the value of the consideration offered by the proposed transferee or transferees or any third party (as the case may be) or his or their nominees for the Specified Shares to the holder(s) thereof (and/or any member of the same group (as defined below) of the holder(s) thereof) received or receivable by the holder(s) of the Specified Shares or any Group Member of the said holder(s) which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the consideration for the Specified Shares including, without limitation, any increase in salary, any bonus or termination payment The Specified Price in respect of a particular share shall take into account any differences in class rights between it and any other share including, without limitation, any Specified Share In

the event of a disagreement the calculation of the Specified Price shall be referred to an expert (acting as an expert and not as an arbiter and whose decision shall be final and binding) nominated by and acting at the expense of all the members of the Company (in proportion to their respective shareholdings) or (in the event of disagreement as to nomination) appointed by the President for the time being of the Institute of Chartered Accountants of Scotland, provided that such expert may only be the Auditors, or a partner, director, consultant, or employee of the Auditors, unless either (i) the Auditors, or a partner, director, consultant, or employee of the Auditors (as the case may be) declines to act or (ii) at least 75% by value of the members of the Company so agree in writing

## **SALE BY QUALIFYING MAJORITY- DRAG ALONG RIGHTS**

16

- 16 1 Notwithstanding any other Article, where any person or persons (an "Offeror") makes a Qualifying Offer (as hereinafter defined) and this is to be accepted by the Majority Members (as hereinafter defined), the Majority Members may by notice in writing (a "Drag Along Notice") to the other members of the Company (the "Minority Members") require the Minority Members to (i) forthwith accept such Qualifying Offer and (ii) transfer all of their shares free from all charges, liens, encumbrances and other third party rights to the Offeror at the same time as the Majority Members transfer all of their own shares to the Offeror
- 16 2 A Drag Along Notice is irrevocable but the Drag Along Notice and all obligations thereunder shall lapse if for any reason the sale of the shares of the Majority Members pursuant to Article 16 1 does not complete within 60 days after the date of the Drag Along Notice
- 16 3 In the event that any Minority Member fails to accept such Qualifying Offer or having accepted such Qualifying Offer fails to execute and deliver any of the documents required to effect any transfer of shares pursuant thereto, such Minority Member shall be deemed to have irrevocably appointed any of the Directors to be his agents and attorneys for the purposes of accepting such Qualifying Offer and/or transferring all of that Minority Member's shares (as the case may be) and executing and delivering any such documents The provisions of Article 12 12 shall have effect as if such Minority Member was the Transferor and the Offeror was the purchaser

For the purposes of this Article 16

- "Majority Members" means members holding shares conferring in aggregate more than the Qualifying Majority of the total voting rights conferred by all the shares in the capital of the Company for the time being in issue and conferring the right to attend and vote at all General Meetings,
- "Qualifying Offer" means an offer which
- (i) is made on identical terms to all members, and
  - (ii) specifies a price which is not less than the Fair Value of each share, and



- (iii) is certified as complying with conditions (i) and (ii) above by an expert (acting as an expert and not as an arbiter and whose decision shall be final and binding) nominated by and acting at the expense of all the members of the Company (in proportion to their respective shareholdings) or (in the event of disagreement as to nomination) appointed by the President for the time being of the Institute of Chartered Accountants of Scotland, provided that such expert may only be the Auditors, or a partner, director, consultant, or employee of the Auditors, unless either (i) the Auditors, or a partner, director, consultant, or employee of the Auditors (as the case may be) declines to act or (ii) at least 75% by value of the members of the Company so agree in writing

In determining whether an offer satisfies condition (i) above such expert shall take into account

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

#### **PROCEEDINGS AT GENERAL MEETINGS**

- 17 If a quorum is not present within half an hour of the time appointed for a general meeting, the meeting, if convened on the requisition of members, shall be dissolved and in any other case it shall stand adjourned to such day and at such time and place as the Directors determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum
- 18 Where the Company has only a single member, the quorum shall be one
- 19 On a show of hands or on a poll, votes may be given either personally or by proxy, or if a corporation, by its duly authorised representative

#### **NUMBER OF DIRECTORS**

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

## **ALTERNATE DIRECTORS**

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

## **APPOINTMENT AND RETIREMENT OF DIRECTORS**

- 24 The Directors shall not be subject to retirement by rotation and any reference in the Regulations to such retirement shall be construed accordingly
- 25 The Company may by ordinary resolution appoint a person who is willing to act as a Director, either to fill a vacancy or as an additional Director (but not to fill the vacancy of any Investors' Director)
- 26 The Directors may appoint any person who is willing to act as a Director, either to fill a casual vacancy or as an additional Director
- 27 There shall be no age limit for Directors of the Company
- 28 Each of the Investors shall have the right to be a Director if he holds at least 5% of the total issued share capital in the Company from time to time

## **PROCEEDINGS OF DIRECTORS**

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

or of a committee of Directors on any resolution concerning a matter in which the Director has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the Company

### **INFORMATION**

- 33 Each member holding more than 5% in value of the total issued Ordinary Shares in the Company from time to time shall be entitled to request (but not more often than once a calendar month) that the Board provide them with an update of the business of the Company, and the Board shall be required to provide such information

### **MATTERS REQUIRING CONSENT OF AT LEAST 75% OF THE MEMBERS**

- 34 The members shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure insofar as they are able by the exercise of such powers that the Company shall not without the consent of at least 75% of the members approved in a meeting or in writing or by email

- 34 1 create any fixed or floating charge, security, lien (other than a lien arising by operation of law) or other encumbrance over the whole or any part of the undertaking, property, or assets of the Company,
- 34 2 borrow any sum other than trade credit obtained in the ordinary and proper course of the business,
- 34 3 create any guarantee or indemnity to secure the liabilities or obligations of any person (other than by the Company),
- 34 4 sell, transfer, lease, assign or otherwise dispose of a material part of the undertaking, property and/or assets of the Company otherwise than in the ordinary and proper course of the business,
- 34 5 enter into, alter or amend any contract, arrangement or commitment involving expenditure or the realisation of capital assets if the amount or the aggregate amount of such expenditure or realisation by the Company would exceed £20,000 in any one year or and for the purpose of this paragraph the aggregate amount payable under any agreement for hire, hire purchase or purchase on credit sale or conditional sale terms shall be deemed to be capital expenditure incurred in the year which such agreement is entered into,
- 34 6 pay any fees to a Director, other than any fees pursuant to a consultancy agreement, letter of appointment and/or contract of employment between the relevant Director and the Company,
- 34 7 permit the cessation of all or any part of the business carried on by the Company from time to time,
- 34 8 take or agree to take any leasehold, freehold or heritable interest in or license over any land or building,

- 34 9 create or acquire any subsidiaries,
- 34 10 do or permit to be done any act or thing whereby the Company may be voluntarily wound up,
- 34 11 issue any debentures or other securities convertible into shares or debentures or any share warrants or any options in respect of shares,
- 34 12 enter into any contract or transaction except in the ordinary and proper course of trading of the business of the Company from time to time on arms length terms,
- 34 13 acquire, purchase or subscribe for any shares, debentures, mortgages or securities (or any interest therein) in any company, trust or other bodies

### **THE SEAL**

- 35 The Company shall not have a seal

### **INDEMNITY**

- 36 Without prejudice to any indemnity to which any person referred to in this Article 36 may otherwise be entitled, every present and former Director, alternate Director, secretary or other officer of the Company (excluding any present or former Auditors) (an "Indemnified Person") shall be indemnified by the Company against all liabilities, costs, charges and expenses incurred by him in the execution and discharge of his duties to the Company and any Associated Company, including any liability incurred by any Indemnified Person in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to be done or omitted by him as an officer or employee of the Company or an Associated Company provided that such indemnity shall not extend to any liability arising out of the fraud or dishonesty of the relevant Indemnified Person (or the obtaining of any personal profit or advantage to which the relevant Indemnified Person was not entitled) and no Indemnified Person shall be entitled to be indemnified for
  - 36 1 any liability incurred by him to the Company or any Associated Company of the Company as above defined,
  - 36 2 any fine imposed in any criminal proceedings,
  - 36 3 any sum payable to a regulatory authority by way of a penalty in respect of non compliance with any requirement of a regulatory nature howsoever arising,
  - 36 4 any amount for which he has become liable in defending any criminal proceedings in which he is convicted and such conviction has become final,
  - 36 5 any amount for which he has become liable in defending any civil proceedings brought by the Company or any Associated Company in which a final judgment has been given against him, and

36 6 any amount for which he has become liable in connection with any application under sections 144(3) or (4) or 727 of the Act in which the court refuses to grant him relief and such refusal has become final

For the purposes of this Article 36, "Associated Company" shall have the same meaning as in section 309A of the Act

## **INSURANCE**

37 The Company shall have power to purchase and maintain for (i) any Indemnified Person (as defined in Article 36), (ii) any director, secretary or other officer or employee of an Associated Company and (iii) any persons who are or were at any time trustees of any pension fund or employees' share scheme in which employees of any Associated Company are interested, insurance against any liability incurred by him in connection with any negligence, default, breach of duty or breach of trust (actual or purported) by him in relation to the Company or any Associated Company or any such pension fund or employees' share scheme or otherwise in connection with his duties, powers or office

For the purposes of this Article 37, "Associated Company" shall have the same meaning as in section 309A of the Act

## **GOVERNING LAW**

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