



Company number SC337102

**PRIVATE COMPANY LIMITED BY SHARES**

**DUNWILCO (1529) LIMITED** (the "Company")

By Written Resolutions of the sole member of the above Company in accordance with Section 288 of the Companies Act 2006, the following Resolutions were passed on 4 April 2008 as Special Resolutions

- 1 That the entire issued and authorised share capital of the Company, comprising 1,000 shares of £1 be converted into and redesignated into 1,000 C Ordinary Shares of £1 each having the rights and being subject to the restrictions set out in the new articles of association of the Company (the "**Articles**") to be adopted pursuant to paragraph 3 of this resolution
- 2 That the authorised share capital of the Company be increased from £1,000 comprised of 1,000 C Ordinary Shares of £1 00 each to £2,462,034 by the creation of 928,112 new A ordinary shares of £0 10, 309,288 B Ordinary Shares of £0 10 each, 2,169,198 C Ordinary Shares of £1 00 each and 168,096 D Ordinary Shares of £1 00 each having the rights and being subject to the restrictions set out in the Articles
- 3 That the regulations contained in the printed document produced to the meeting and signed, for the purpose of identification, by the chairman of the meeting, be adopted as the new articles of association of the Company in substitution for the existing articles of association of the Company
- 4 That the name of the Company be changed to "FST Technologies Holdings Limited"

Khalid Faqir  
Company Secretary

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## **ARTICLES OF ASSOCIATION**

**DUNWILCO (1529) LIMITED**

**Dated:** 4<sup>th</sup> June 2008

### **DUNDAS & WILSON LLP**

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Company no. SC337102

**COMPANIES ACTS 1985 AND 2006**

**COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**OF**

**DUNWILCO (1529) LIMITED**  
**(the "Company")**

**(adopted by written resolution of the Company**

**passed on 4<sup>th</sup> April 2008)**

**1 TABLE A**

Except as excluded or varied in these articles, Table A (as defined below) will apply to the Company and will be deemed to form part of these articles

**2 DEFINITIONS AND INTERPRETATION**

**2.1** In these articles the following words and expressions will have the following meanings

**Accounting Period** means an accounting reference period of the Company beginning on 1 April and ending on the following 31 March, or such other date as is notified to the Registrar of Companies from time to time;

**Accounts** means the audited consolidated accounts of the Group;

**Allocation Notice** has the meaning given in Article 12.12,

**Approved Offer** has the meaning given in Article 15,

**A Ordinary Share** means an A ordinary share of £0.10 in the capital of the Company,

**Audit Committee** means a standing committee of the Directors, named as such and comprising the Non Executive Director (if appointed), an Investor Director and the finance director,

**B Ordinary Share** means a B ordinary share of £0.10 in the capital of the Company,

**Bad Leaver** means a Relevant Individual who ceases to be an employee and/or director and/or consultant of the Company or any member of the Group and who is not a Good Leaver. In this definition the Relevant Individual will be deemed to cease to be an employee and/or director and/or consultant on the Cessation Date;

**Board** means the incumbent board of Directors including an Investor Director (if any);

**Business Day** means a day (which for these purposes ends at 5.30pm) on which banks are open for commercial business in the City of London other than a Saturday or Sunday or bank or public holiday;

**Business Plan** means the business plan adopted by the Company from time to time;

**Buyer** has the meaning given in Article 15,

**C Ordinary Share** means a C ordinary share of £1 in the capital of the Company.

**Cessation Date** means the date on which a Relevant Individual gives or is given notice of termination of his contract of employment or consultancy or the date of occurrence of a repudiatory breach by him of such contract (whichever is the earlier),

**Co-Investment Scheme** means a scheme under which certain officers, employees or partners of an Investor or of its advisor or manager are entitled (as individuals or through a body corporate or any other vehicle) to acquire shares,

**Controlling Interest** means an interest in shares which confer on the holder more than 50 per cent of the total voting rights at general meetings of the company conferred by all the shares in issue at the relevant time;

**Companies Act** means the Companies Act 1985 including any statutory modification or re enactment thereof for the time being in force and includes any provisions of the Companies Act 2006 which are in force;

**Compulsory Sale Notice** means a notice served on a Compulsory Seller pursuant to Article 14.3,

**Compulsory Seller** and **Compulsory Sellers** have the meanings given in Article 14.3,

**D Ordinary Share** means a D ordinary share of £1 in the capital of the Company

**Directors** means the Company's directors for the time being,

**Drag Along Right** has the meaning given in Article 15.1;

**Electronic Communication** means any communication transmitted by way of fax or email;

**Employee Benefit Trust** means any trust which may be established for the benefit of the employees (which may include past employees) of the Company and/or any other member of the Group, and which satisfies the definition of an "employees' share scheme" set out in section 743 of the Companies Act,

**Extra Shares** has the meaning given in Article 12 9(d);

**Facility Agreement** means any facility agreement as may be entered into by the Company from time to time with its bankers,

**FSMA** means the Financial Services and Markets Act 2000;

**Fund** means any investment trust or investment company (within the meaning of chapter 21 of the Listing Rules), bank, building society, industrial and provident or friendly society, unit trust, any other collective investment scheme (as defined in section 235 of FSMA), any intermediate customer within the meaning of the Conduct of Business Rules made under FSMA, partnership, limited partnership, limited liability partnership, pension fund or insurance company or any person who is an authorised person (within the meaning of section 31(2) of FSMA), and the term will include any subsidiary undertaking of any of the foregoing and any co investment scheme in relation to any of the foregoing,

**Good Leaver** means a Relevant Individual.

- (a) who ceases to be an employee and/or director and/or consultant of any Group Member as a result of (i) his death or (ii) permanent incapacity due to ill health (except where such ill health arises as a result of an abuse of drink or drugs) which, in the opinion of the Remuneration Committee is sufficiently serious to prevent him from carrying out his normal duties or retirement in accordance with his contract of employment or (iii) redundancy, or
- (b) does not fall within the categories in (a) above, but is determined by an Investor Director in his absolute discretion following consultation with the Board within 3 months of the Cessation Date to be a Good Leaver

In this definition the Relevant Individual will be deemed to cease to be an employee and/or director and/or consultant of any Group Member on the Cessation Date.

**Group** means the Company and its subsidiaries (as defined by section 736 Companies Act) from time to time and references to a **Member of the Group** or a **Group Member** will be construed accordingly,

**Independent Accountants** has the meaning given in Article 2 4;

**Investor Director** means a director appointed as such pursuant to Article 32 and the term **Investor Directors** shall be construed accordingly,

**Investor** means Saints Capital Chamonix LP,

**Investor Majority** means the consent or approval in writing of the holders from time to time of not less than 75% of the A Ordinary Shares or the approval of the Investor Director,

**Liquidation** means the passing of a resolution for the winding up of the Company;

**Listing Rules** means the rules of the UK Listing Authority,

**Managers** means Ronald Ramage, Alan Wade and William McFedries;

**Market Value** has the meaning given in Article 13 (in relation to voluntary share transfers), and in Article 14 7 (in relation to compulsory share transfers),

**Member** means a registered holder of any Share as recorded in the Company's register of members,

**Non-Executive Director** means a director appointed as such pursuant to Article 32;

**Other Shareholders** has the meaning given in Article 15 2;

**Proportionate Entitlement** has the meaning given in Article 12 9(d),

**Proposed Transferee** means a person to whom a Seller proposes to transfer Sale Shares,

**PRs** means the legal personal representatives of a deceased Member,

**Related Persons** means in relation to any person (or deceased person) any one or more of his wife or her husband, his widow or her widower, and any of his or her children or remoter issue,

**Relevant Individual** means an employee or director or consultant of any Group Member,

**Remuneration Committee** means a standing committee of the Directors, named as such and comprising the Non Executive Director (if appointed), an Investor Director and the managing director (where appropriate);

**Sale Shares** means Shares which a Seller wishes to transfer;

**Seller** means any Member who wishes to transfer any Shares;

**Share** means a share in the capital of the Company and "Shares" shall be construed accordingly,

**Table A** means Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 no 805) as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1985 no 1052) and the Companies Act 1985 (Electronic Communications) Order 2000 and the Companies (Tables A to F) (Amendment) Regulations 2007,

**Total Transfer Condition** means a condition in a Transfer Notice stipulating that such Transfer Notice is conditional upon all and not some only of the Sale Shares specified in it being sold,

**Transfer Notice** means a notice in writing by a Seller of his wish to transfer any Shares;

**Transfer Price** has the meaning given in Article 12 4,

**UK Listing Authority** means the Financial Services Authority acting in its capacity as the competent authority for the purposes of Part VI of FSMA including, where the context so permits, any committee, employee, officer or servant to whom any function of the UK Listing Authority may for the time being be delegated

2 2 Words and phrases which are defined or referred to in or for the purposes of the Companies Act or Table A have the same meanings in these articles unless a contrary intention appears

2 3 In these articles, unless a contrary intention appears:

- (a) words which refer to the singular number include the plural number and vice versa, words which refer to one gender include all genders, and words which refer to persons include bodies corporate and unincorporated associations,



- (b) reference to a statute or a statutory provision includes reference to:
  - (i) the statute or statutory provision as modified or re enacted or both from time to time; and
  - (ii) any subordinate legislation made under the statutory provision (as modified or re enacted as set out above);
- (c) reference to a Regulation is to a regulation of Table A, and reference to an Article is to a provision of these articles;
- (d) reference to a "**transfer**" of Shares or any similar expression will be deemed to include (without limitation).
  - (i) any sale or other disposition of the legal or equitable interest (an "**Interest**") in a Share (including any voting right attached to a Share);
  - (ii) the creation of any mortgage, charge, pledge or other encumbrance over any Interest,
  - (iii) any direction by a Member entitled to an allotment or issue of Shares that a Share be allotted or issued to some person other than himself; and
  - (iv) any grant of an option to acquire either or both of the legal and equitable ownership of any Share by any Member entitled to any such Share,
- (e) reference to a "**group undertaking**" means, in relation to any undertaking, its holding company (if any) and its subsidiaries (as such terms are defined by section 736 Companies Act) and any other subsidiaries of its holding company,
- (f) reference to an address for the purposes of any Electronic Communication means any number or address used for the purpose of such communication and notified to the Company for such purpose, and
- (g) reference to "written" or "in writing" includes any method of representing or reproducing words in a legible form including, for the avoidance of doubt, Electronic Communication

- 2 4 Unless it is specifically stated otherwise, any dispute as to value, or as to calculations or adjustments to be made, or as to amount, whether to or in respect of Market Value of Sale Shares under Articles 12 4, 13 or 14.7 or otherwise pursuant to these articles, if not agreed, will be referred immediately for final determination to an independent firm of chartered accountants (the "**Independent Accountants**") agreed for the purpose by the parties concerned or, in default of agreement within 15 Business Days after any party may declare to the other(s) in writing, as appointed by the Board with the approval of an Investor Director. The Independent Accountants will act as expert and not as arbitrator and their costs will be borne as directed by the Article in question or, if the Article is silent on the point, as directed by the Independent Accountants. In the absence of any such direction, such costs will be borne equally between parties concerned. The written certificate of the Independent Accountants will be conclusive and binding on the Company and the Members (except in the case of fraud or manifest error).
- 2 5 The headings in these articles are included for convenience only and do not affect the meaning of these articles.
- 2 6 Where, for any purpose, an ordinary resolution of the Company is required, a special or an extraordinary resolution is also effective for that purpose, and where, for any purpose, an extraordinary resolution is required, a special resolution is also effective for that purpose.

### 3. **SHARE CAPITAL**

The authorised share capital of the Company at the date of adoption of these articles is £2,462,034 divided into.

- 3 1 928,112 A Ordinary Shares,
- 3 2 309,288 B Ordinary Shares;
- 3 3 2,170,198 C Ordinary Shares, and
- 3 4 168,096 D Ordinary Shares

### 4 **SHARE RIGHTS**

Regulation 2 will not apply to the Company. The rights and restrictions attaching to the A Ordinary Shares, the B Ordinary Shares, the C Ordinary Shares and the D Ordinary Shares are set out in these articles.

## 5. SHARE RIGHTS - INCOME

### Dividends - priority order and payment

- 5.1 The profits of the Company which are available for lawful distribution and which the Company determines to distribute in respect of any Accounting Period will be applied as following:

	Class of Share	Payment
1.	C Ordinary Shares and D Ordinary Shares (as if one class)	Right to receive any distributions made following the date of adoption of these articles up to an aggregate sum of £3,562,733 (as reduced by the pro rata value of any D Ordinary Shares cancelled by the Company)
2	A Ordinary Shares and B Ordinary Shares (as if one class)	Right to receive any distributions over the aggregate payment entitlement from time to time under column 3 of row 1 above and up to and including the aggregate sum of £100,000,000
3	A Ordinary Shares and B Ordinary Shares (as if one class)	Right to receive 99% of any distributions in aggregate in excess of £100,000,000
4	C Ordinary Shares and D Ordinary Shares (as if one class)	Right to receive 1% of any distributions in aggregate in excess of £100,000,000

Any such dividend will be paid in cash on the Share in respect of which it is payable and will belong to and be paid to the holders of the relevant class of Shares pro rata according to their holdings of such class

### **Dividends - general**

- 5.2 If at any time it is not possible to determine the amount of any dividend or payment by reference to any Accounts, such amount will be determined by reference to the latest available management accounts. Any dispute as to such amount will be determined in accordance with Article 24, whose provisions will apply as if set out in full in this Article

### **6. SHARE RIGHTS - RETURN OF CAPITAL**

- 6.1 On a return of capital of the Company on a Liquidation, an Approved Offer or otherwise (other than a redemption of shares or the purchase by the Company of its own shares), the surplus assets, retained profits or proceeds of an Approved Offer of the Company available for distribution among the Members will be applied in the following order and priority:

<b>Priority</b>	<b>Class of Share</b>	<b>Amount entitled to</b>
1	C Ordinary Shares and D Ordinary Shares (as if one class)	Paying up to £3,562,733 less (i) any amount received on such shares by way of lawful dividend and (ii) as reduced by the pro rata value of any D Ordinary Shares cancelled by the Company)
2.	A Ordinary Shares and B Ordinary Shares (as if one class)	Paying any excess over the aggregate amount payable to from time to time under column 3 of row 1 above and up to £100,000,000
3	A Ordinary Shares and B Ordinary Shares (as if one class)	Right to receive 99% of any balance of such surplus assets, retained profits or proceeds in aggregate in excess of £100,000,000
4	C Ordinary Shares and D Ordinary Shares (as if one class)	Right to receive 1% of any balance of such surplus assets, retained profits or proceeds in aggregate in excess of £100,000,000

- 6.2 Any return on some but not all of any Shares of a particular class will be made amongst their holders pro rata as nearly as possible to their respective holdings of Shares of that class.

## **7. SHARE RIGHTS - VOTING**

- 7 1 The voting rights of Members set out in Article 21 are subject to:

- (a) the following provisions of this Article 7, and
- (b) Article 14.6 (suspension of voting rights during compulsory transfer procedure)

- 7 2 Subject to any special rights or restrictions attached to any shares by or pursuant to these articles, the Shares in the Company shall have the following voting rights

A Ordinary Shares: one vote per share

B Ordinary Shares: shall be non voting shares

C Ordinary Shares. shall be non voting shares

D Ordinary Shares shall be non voting shares

## **8 VARIATION OF SHARE RIGHTS**

- 8 1 The rights attached to the Shares, may in the case of each class, be altered or abrogated (whether or not the Company is being wound up) only with the prior consent of the holders of the issued Shares of that class given in accordance with Article 8 2

- 8 2 The consent of the holders of a class of Shares may be given by

- (a) a special resolution passed at a separate general meeting of the holders of that class,
- (b) a written resolution in any form signed by or on behalf of the holders of not less than 75 per cent in nominal value of the issued Shares of that class

- 8 3 Without prejudice to the general effect of Article 8 1, the following will be deemed to constitute a variation of the rights attached to the A Ordinary Shares , the C Ordinary Shares and the D Ordinary Shares

- (a) any variation of the rights attaching to the A Ordinary Shares, the B Ordinary Shares, the C Ordinary Shares or the D Ordinary Shares,
- (b) the convening of a meeting to consider the passing of any resolution to reduce the Company's share capital or any amount standing to the credit of its share premium account or capital redemption reserve fund, or to reduce any uncalled liability in respect of partly paid shares,
- (c) the convening of a meeting to consider the passing of any resolution to alter the Company's memorandum or articles of association,
- (d) any variation to the returns of a capital nature to any shareholder other than.
  - (i) to the holders of the A Ordinary Shares in accordance with these articles; and
  - (ii) to the holders of the C Ordinary Shares and the D Ordinary Shares;
- (e) the capitalisation of any undistributed profits (whether or not the same are available for distribution, and including profits standing to the credit of any reserve) or of any sums standing to the credit of the Company's share premium account or capital redemption reserve fund;
- (f) the payment of any distribution or return of an income nature to any shareholder otherwise than in accordance with these articles, or
- (g) any variation of the authorised or issued share capital of any Group Member (other than a wholly owned subsidiary of the Company),
- (h) the creation or grant of any option or other right to subscribe for, convert into or issue any shares or other securities in the capital of any Group Member; or
- (i) the taking of any steps to wind up or dissolve any Group Member

## 9 ISSUE AND ALLOTMENT OF NEW SHARES

- 9.1 Unless the Company by ordinary resolution directs otherwise, any new Shares will be offered by the Board in its discretion (subject to the approval by an Investor Director) which may elect and who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms as they think fit

- 9.2 The provisions of sections 89(1) and 90(1) to (6) of the Companies Act will not apply to the Company.

## 10. TRANSFERS OF SHARES - PROHIBITED TRANSFERS

### General prohibitions

- 10.1 The Directors will not register any transfer of Shares to any of the following.
- (a) any person who, in the opinion of an Investor Director is carrying on business directly or indirectly in competition with the Company or any member of the Group, except this restriction will not apply to
    - (i) any transfer of Shares pursuant to Article 15 (Drag Along Rights), or
    - (ii) any transfer of shares to the Investor, or
  - (b) any person who does not have legal capacity to transfer such Shares or otherwise to comply fully with the provisions of these articles.

### Prohibition unless in accordance with these articles

- 10.2 Subject to Article 10.1, the Directors will not register a transfer of Shares unless
- (a) the transfer is permitted by Article 11, (Permitted Transfers), or has been made in accordance with Article 12 (Pre-emption), and
  - (b) the proposed transferee has entered into a deed of adherence to, and in the form required by any shareholder's or investment agreement in respect of the Company from time to time in force
- 10.3 For the purpose of ensuring that.
- (a) a transfer of shares is permitted under these articles, or
  - (b) no circumstances have arisen whereby a Transfer Notice is required to be or ought to have been given

the Board may, and will if so requested by an Investor Director, require any Member to procure that any person whom the Board or an Investor Director reasonably believes to have information relevant to such purpose to provide the Company with such information and evidence as the Board or an Investor Director thinks fit

Pending the provision of such information the Board will be entitled to refuse to register any relevant transfer.

10.4 Regulations 24 and 26 will not apply to the Company

## 11 PERMITTED TRANSFERS

11.1 Where any Shares are the subject of a Transfer Notice, no transfers of any such Shares shall be permitted pursuant to this Article 11.

11.2 Subject to Article 11.1, and to Articles 11.3 to 11.5 (inclusive), any Share may be transferred

- (a) when required by, and in accordance with, Article 14 (Compulsory Transfers); or
- (b) to a Buyer in acceptance of an Approved Offer pursuant to Article 15 (Drag Along Rights),
- (c) in the case of Shares held by the Investor, subject to Articles 10 and 11.3, to a group undertaking of the transferor, or
- (d) in the case of A Ordinary Shares or C Ordinary Shares held by or on behalf of a Fund:
  - (i) to another nominee or trustee for, or general partner of, the Fund, and by any such nominee or trustee to another nominee or trustee for that Fund or to the Fund itself; or
  - (ii) on a distribution in kind under the constitutive documents of the Fund, to the partners in or holders of units in, or to the shareholders of, participants in or the holders of other interests in the Fund (or to a nominee or trustee for any such partners, holders, members or investors), and by a nominee or trustee for such holders, partners, members or investors to such holders, partners, members or investors or to another nominee or trustee for such holders, partners, members or investors, or
  - (iii) to any other Fund whether or not it is managed or advised by the same manager or advisor as the transferor (or as the Fund on behalf of whom any such Share is held by the transferor as nominee or trustee) or by a group undertaking of such manager or advisor, or



- (e) (in the case of A Ordinary Shares and C Ordinary Shares only) to a Co Investment Scheme, or
- (f) in the case of a Co Investment Scheme which holds A Ordinary Shares or C Ordinary Shares through another undertaking:
  - (i) to another undertaking which holds or is to hold the Shares as trustee for the Co Investment Scheme, or
  - (ii) to any person entitled to the Shares under the Co Investment Scheme; or
- (g) in the case of any Shares held by an Employee Benefit Trust, to any beneficiary of that trust or to any replacement trustees or into the joint name of the existing and any new or additional trustees.

11 3 Where Shares have been transferred under Article 11 2(c) (transfers to group undertakings) and the transferee ceases to be a group undertaking of the transferor, it will, on or before the cessation, transfer such Shares to the original transferor or to another group undertaking of the original transferor;

11 4 If a Member fails or refuses to execute and deliver any transfer in respect of any Shares pursuant to its obligations under Article 12 or Article 11 3, the Board may (and will if requested by an Investor Director) authorise any Director to execute and deliver the necessary transfer(s) on the defaulting Member's behalf. The Board will authorise registration of the transfer, and of the transferee as the holder of the Shares so transferred, once appropriate stamp duty (if any) has been paid. After registration, the title of the transferee as registered holder of such Shares will not be affected by any irregularity in or invalidity of such proceedings, which will not be questioned by any person.

#### **Provisions specific to Investor Shares**

11 5 A Ordinary Shares will, if so required by an Investor Director by notice served on the Company, immediately and without resolution of the Directors or the Members be converted into Ordinary Shares upon being held by any person who is not a holder of any other A Ordinary Shares.

## 12. PRE-EMPTION

### Transfer Notices

- 12.1 Except in the case of a transfer pursuant to Article 11 (Permitted Transfers), and subject to the prohibitions on transfers set out in Article 10 (Transfer of Shares – Prohibited Transfers), a Seller must give a Transfer Notice to the Company copied to the Investor
- 12.2 Each Transfer Notice will (except as provided in Article 14 (Compulsory Transfers)) relate to one class of Shares only and will specify.
- (a) the number and class of Sale Shares;
  - (b) the identity of the Proposed Transferee (if any);
  - (c) the price per Share at which the Seller wishes to transfer the Sale Shares; and
  - (d) whether or not the Transfer Notice is subject to a Total Transfer Condition. In the absence of any such stipulation it will be deemed not to be so conditional. No Total Transfer Condition will apply in respect of any Transfer Notice deemed to have been given pursuant to Article 14 (Compulsory Transfers)
- 12.3 No Transfer Notice will be capable of variation or cancellation without the unanimous consent of the Board (subject to the approval of an Investor Director) unless the Independent Accountants determine the Market Value of the Sale Shares to be less than the price specified in the Transfer Notice.

### Transfer Price

- 12.4 The Transfer Notice will constitute the Company as the agent of the Seller for the transfer of the Sale Shares in accordance with this Article 12 at the following price (the "**Transfer Price**")
- (a) the price agreed between the Seller and the Board (subject to the approval of an Investor Director) within 40 Business Days after the date of service or deemed service of the Transfer Notice; or
  - (b) in default of agreement under Article 12.4(a) the lower of
    - (i) the price per Share specified in the Transfer Notice, and

- (ii) if the Board elects within 45 Business Days after the date of service or deemed service of the Transfer Notice to instruct the Independent Accountants for the purpose, the Market Value of the Sale Shares as at the date of service or deemed service of the Transfer Notice, and as determined in accordance with Article 24 and Article 13 (Valuation).

#### **First offer to Investor**

12 5 The following provisions of this Article 12 5 will apply to any transfer of any Shares by any Member.

- (a) Within 10 Business Days after the later of

- (i) the receipt by the Company of a Transfer Notice; and
- (ii) the determination of the Transfer Price,

the Board shall direct the Company (in its capacity as agent for the Seller) immediately to offer the Sale Shares at the Transfer Price to the Investor (or its nominee).

- (b) If the Investor accepts in part or in whole the offer of the Sale Shares pursuant to this Article 12 5 within 20 Business Days after the date of the offer, the Company will immediately allocate the Investor (or its nominee) such number of Sale Shares applied for
- (c) If all of the Sale Shares are so allocated, the provisions of Articles 12.7 to 12 10 will not apply. If none or some only of the Sale Shares are so allocated, the provisions of Articles 12 6 to 12 10 will have effect as if reference to Sale Shares was to those not allocated in accordance with this Article 12 5.

#### **Second Offer**

12 6 Subject to Article 12.5, within 30 Business Days after its receipt of a Transfer Notice or, where later, on the determination of the Transfer Price, the Company (acting by the discretion of the Board subject to the Investor Director's consent, in its capacity as agent for the Seller) shall be entitled to give notice in writing to such of the proposed senior management and/or existing senior management and/or the EBT and/or the Company (the "**Offerees**") (other than the Seller and any other Member who has served or who is deemed to have served a Transfer Notice in respect of his entire holding of Shares pursuant to which the sale of such Shares has not then been

concluded) as the Board may elect offering the Sale Shares for sale at the Transfer Price in accordance with Articles 12.9 and 12.9(d). The notice will specify that the Offerees will have a period of up to 10 Business Days from the date of such notice within which to apply for some or all of the Sale Shares. If none or some only of the Sale Shares are so allocated under the provisions of Article 12.5 and 12.6, the provisions of Articles 12.7 to 12.10 will have effect as if reference to Sale Shares was to those not allocated in accordance with Articles 12.5 and 12.6.

#### **Offer to Members and notice to Investor**

- 12.7 Subject to Article 12.5 and 12.6, within 40 Business Days after its receipt of a Transfer Notice or, where later, on the determination of the Transfer Price, the Company (in its capacity as agent for the Seller) will give notice in writing to each of the Members (other than the Seller and any other Member who has served or who is deemed to have served a Transfer Notice in respect of his entire holding of Shares pursuant to which the sale of such Shares has not then been concluded) offering the Sale Shares for sale at the Transfer Price in accordance with Articles 12.9 and 12.9(d). The notice will specify that the Members will have a period of up to 20 Business Days from the date of such notice within which to apply for some or all of the Sale Shares.
- 12.8 Whenever the Sale Shares are B Ordinary Shares or D Ordinary Shares, all holders of such shares to whom the offer is made must, before making their applications for Sale Shares and in any event within 10 Business Days from the date of the notice given by the Company, notify the Investor in writing of whether they intend to accept the offer and, if so, the number of Sale Shares, including Extra Shares, for which they intend to apply.

#### **Pre-emption procedure**

- 12.9 It will be a term of any offer made pursuant to Article 12.7 that, if Members holding Shares of more than one class apply for some or all of the Sale Shares, the Sale Shares of a particular class specified in column (1) in the table below will be treated as 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) (whether as part of their Proportionate Entitlement or as Extra Shares), to all persons in the category set out in the corresponding line in column (3) in the table below, and

- (c) to the extent not accepted by persons in column (3) (whether as part of their Proportionate Entitlement or as Extra Shares), to all persons in the category set out in the corresponding line in column (4) in the table below:

(1)	(2)	(3)	(4)
<b>Class of Sale Shares</b>	<b>First priority</b>	<b>Second priority</b>	<b>Third priority</b>
A Ordinary Shares	Holders of A Ordinary Shares	As the Board may direct to any Members	Holder of B Ordinary Shares
B Ordinary Shares	Holders of A Ordinary Shares	As the Board may direct to any Members	Holders of B Ordinary Shares
C Ordinary Shares	Holders of C Ordinary Shares	As the Board may direct to any Members	Holders of D Ordinary Shares
D Ordinary Shares	Holders of C Ordinary Shares	As the Board may direct to any Members	Holders of D Ordinary Shares

- (d) It will be a further term of the offer that, if there is competition within any class of shareholder for the Sale Shares offered to that class, such Sale Shares will be treated as offered among the holders of such class in proportion (as nearly as possible) to their existing holdings of Shares of that class (the "**Proportionate Entitlement**") However, the offer will also invite Members to indicate in their applications for Sale Shares, whether they would be willing to buy Shares in excess of their Proportionate Entitlement should any such Shares be available and, if so, how many (the "**Extra Shares**")

#### **Allocation of Shares**

12 10 After the expiry of the offer period specified in Article 12 7, (or, if sooner, upon valid responses being received from all of the Members to whom Sale Shares are offered in accordance with that Article), the Board will allocate the Sale Shares as follows

- (a) if the total number of Sale Shares applied for (including Extra Shares) is equal to or less than the available number of Sale Shares, each offeree will be

allocated the number applied for in accordance with his application (subject to Article 12 14); or

- (b) if the total number of Sale Shares applied for is greater than the available number of Sale Shares, each offeree will be allocated his Proportionate Entitlement, or, if less, the number of Sale Shares which he has applied for, and
- (c) applications for Extra Shares will be allocated in accordance with such applications or, in the event of competition within any class of shareholder, among those applying for Extra Shares in such proportions as equal (as nearly as possible) the proportions of all the Shares of the same class held by such offerees

12.11 Allocations of Sale Shares made by the Company pursuant to this Article 12 will constitute the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them, provided that no person will be obliged to take more than the maximum number of Sale Shares which he has indicated to the Company he is willing to purchase.

#### **Completion of sale and purchase of Sale Shares**

12 12 The Company will immediately upon allocating any Sale Shares (pursuant to Article 12 10) give notice in writing (an "**Allocation Notice**") to the Seller and to each person to whom Sale Shares have been allocated specifying:

- (a) the number of Sale Shares so allocated,
- (b) the aggregate price payable for them,
- (c) any additional information required by Article 12.14(a) (if applicable); and
- (d) (subject to Article 12 14(a)) the place and time (being not later than five Business Days after the date of the Allocation Notice) at which the sale of the Sale Shares will be completed

12 13 Subject to Article 12.14, completion of the sale and purchase of Sale Shares in accordance with the Allocation Notice will take place at the place and time specified in the Allocation Notice when the Seller will, upon payment of the due price, transfer those Sale Shares specified in the Allocation Notice and deliver the relevant Share certificates to the persons to whom they have been allocated

12.14 If the Transfer Notice included a Total Transfer Condition and the total number of Shares applied for is less than the number of Sale Shares

- (a) the Allocation Notice will refer to such Total Transfer Condition and will contain a further offer, open for 20 Business Days, to those persons to whom Sale Shares have been allocated to apply for further Sale Shares, and
- (b) completion of the transfer in accordance with the preceding paragraphs of this Article 12 will be conditional upon all such Sale Shares being so allocated.

**Default by the Seller**

12 15 Except in the case of an acquisition of Sale Shares by the Company, if the Seller fails by the due completion date to execute and deliver transfers in respect of any of the Sale Shares which he is due to transfer, the Board may (and will if requested by an Investor Director) authorise any Director to.

- (a) execute the necessary transfer(s) on the Seller's behalf; and
- (b) against receipt by the Company of the Transfer Price payable for the relevant Sale Shares (to be held on trust for the Seller without interest) (the receipt being a good discharge to the offeree who will not be bound to see to the application of it), deliver such transfer(s) to the relevant offeree(s).

The Board will authorise registration of the transfer(s), and of the offeree(s) as the holder(s) of the Sale Shares so transferred, once appropriate stamp duty has been paid. After registration, the title of such offeree(s) as registered holder(s) of such Sale Shares will not be affected by any irregularity in, or invalidity of such proceedings, which will not be questioned by any person

12 16 In the case of an acquisition of Sale Shares by the Company, if the Seller fails by the due completion date to transfer and/or to deliver the certificates (or a suitable indemnity) in respect of any Sale Shares, the Board may (and will if requested by an Investor Director) authorise any Director to execute, complete and deliver the necessary transfer and indemnity to the Company on the Seller's behalf. When that instrument has been duly stamped, the Company will ensure that such share capital is cancelled in accordance with the Companies Act, and will hold the purchase monies on trust (without interest) for the Seller

**Exhaustion of pre-emption rights - rights and restrictions with regard to sale to third party**

12 17 Immediately after the exhaustion of any pre-emption process followed in accordance with these articles, if any Sale Shares remain unallocated such Sale Shares shall be offered to the Company pursuant to the provisions of Part V of the Companies Act. If after the expiry of 10 Business Days thereafter any Sale Shares still remain unallocated, the Company will notify the Seller of that fact. The Seller may, at any time within one calendar month after receiving such notice (but not otherwise unless the pre-emption procedure set out in these articles is repeated), transfer any unsold Sale Shares to the Proposed Transferee at any price which is not less than the Transfer Price, except that.

- (a) the Board will refuse registration of any transfer to a Proposed Transferee who is a person to whom Shares may not be transferred by virtue of Articles 10.1(a) or 10.1(b);
- (b) if the Seller included a Total Transfer Condition in the Transfer Notice which has not been satisfied, the Seller will be entitled to transfer all (but not some only) of the Sale Shares,
- (c) any such transfer must be in good faith and the Board may require to be satisfied (in such manner as it may reasonably think fit) that the Sale Shares are being sold at a price which is not less than the Transfer Price without any deduction, rebate or allowance whatsoever. If not so satisfied, the Board (subject to the approval of an Investor Director) may refuse to register the transfer; and
- (d) in the case of any deemed transfer process pursuant to Article 14 (Compulsory Transfers), the Compulsory Seller will not be entitled to transfer any unsold Sale Shares to any third party.

## 13 VALUATION

### **Determination of "Market Value"**

If the Independent Accountants are required to determine Market Value pursuant to Article 12.4(b)(ii), the provisions set out below will apply.

13.1 Market Value will be determined by Independent Accountants, first valuing the Company as a whole.

- (a) assuming, if the Company is then carrying on business as a going concern, that it will continue to do so,



- (b) assuming that the entire issued share capital of the Company is being sold as between a willing buyer and a willing seller by arm's length private treaty for cash payable in full on completion,
- (c) taking account of any Shares which may be allotted pursuant to options which have been issued by the Company and which are still outstanding;
- (d) taking account of any bona fide offer for the Company received from an unconnected third party within six months prior to the Transfer Notice being served or deemed to have been served; and
- (e) recognising that in any other circumstances the Shares are not freely marketable

13.2 Having valued the Company as a whole, the Independent Accountants will determine the Market Value of the Shares concerned.

- (a) having deducted from the value of the Company as a whole (if not already taken into account when so valuing the Company) any arrears, accruals or deficiencies of dividend on Shares of any class; and
- (b) disregarding whether the Shares concerned represent a majority or a minority interest, and
- (c) having regard of the rights and restrictions attached to the Shares concerned in respect of income, capital and transfer

13.3 The costs and expenses of the Independent Accountants for reporting on their opinion of the Market Value will be borne by the party whose personal valuation of the Sale Shares as set out in the notice referred to at Article 12.4 (in the case the Company) and the Transfer Notice (in the case of the Seller) is furthest away from the Market Valuation unless

- (a) the Seller revokes the transfer notice under Article 12.3; or
- (b) none of the Sale Shares are purchased by Members pursuant to Article 12

in which case the Seller will pay all such costs and expenses

## 14 **COMPULSORY TRANSFERS**

### **Circumstances which trigger compulsory transfer**

- 14.1 This Article 14 applies when a Relevant Individual is a beneficial holder (whether directly or indirectly) of B Ordinary Shares or D Ordinary Shares and the Relevant Individual ceases for any reason (including death or bankruptcy) to be an employee and/or director or consultant of any member of the Group or, though still an employee or director or consultant of a member of the Group, becomes eligible for benefits under a permanent health insurance policy
- 14.2 For the purposes of this Article, the Relevant Individual will cease to be an employee and/or director or consultant of a member of the Group on the Cessation Date

#### **Compulsory pre-emption procedure**

- 14.3 Within four months after the Cessation Date the Board (or failing which an Investor Director) may serve notice (a "**Compulsory Sale Notice**") on the Relevant Individual and/or any holder of the shares referred to in Article 14.1 (or the PRs of any deceased Member, or the trustee in bankruptcy of any bankrupt Member, or any trustee of a trust created in favour of, or holding Shares on behalf of, the Relevant Individual or his Related Persons, or any entity or undertaking of which the Relevant Individual has a Controlling Interest) (each a "**Compulsory Seller**" and together, "**Compulsory Sellers**") requiring each such person to offer all of the Shares registered in his or their name(s) or to which he is or they are or may become entitled whether as a result of his or their holding of Shares or otherwise. A Compulsory Seller shall, to the extent it is able, take all actions as are necessary to procure that any corporate entity or trust holding shares to which he is beneficially entitled shall comply with the provisions of article 14
- 14.4 Each class of the Shares which are the subject of the Compulsory Sale Notice will be offered for sale (other than to any Compulsory Seller or any other Member who has served or who is deemed to have served a Transfer Notice in respect of his entire holding of Shares which is still outstanding) in accordance with the provisions of Article 12, which will apply as if set out in full in this Article except to the extent that they are varied by the following provisions of this Article 14. An Investor Director may also determine in his absolute discretion to revoke any Transfer Notice previously given or deemed to have been given by the Compulsory Seller(s) which is still outstanding at the Cessation Date
- 14.5 The Investor accepting in part or in whole the offer of the Shares pursuant to a Compulsory Sale Notice shall be entitled to specify (subject always to the Relevant Percentage of Shares to which such Sale Price applies) at which Sale Price it will acquire those Shares (in part or whole)

**Sale Price - Good Leaver/Bad Leaver**

14.6 The price for the Sale Shares will be:

(a) in the case of Ordinary Shares as set out below

	<b>Relevant Individual</b>	<b>Relevant Percentage</b>	<b>Sale Price</b>
<b>1.</b>	<b>Good Leaver:</b>		
	within 1 year of the date of first allotment of Ordinary Shares	0% 100%	Market Value  the lower of Issue Price and Market Value
	between 1 year and 2 years of the date of first allotment of Ordinary Shares	20% 80%	Market Value  the lower of Issue Price and Market Value
	between 2 years and 3 years of the date of first allotment of Ordinary Shares	40% 60%	Market Value  the lower of Issue Price and Market Value
	between 3 years and 4 years of the date of first allotment of Ordinary Shares	60% 40%	Market Value  the lower of Issue Price and Market Value
	After 4 years of the date of first allotment of Ordinary Shares	80% 20%	Market Value  the lower of Issue Price and Market Value
<b>2.</b>	<b>Bad Leaver</b>	100%	the lower of Issue Price and Market

	Relevant Individual	Relevant Percentage	Sale Price
			Value

(b) in the case of D Ordinary Shares as set out below

	Relevant Individual	Relevant Percentage	Sale Price
1.	<b>Good Leaver:</b>	100%	the lower of the Issue Price and Market Value
2.	<b>Bad Leaver</b>	100%	the lower of the Issue Price and Market Value

14.7 For the purposes of Article 14.

**"Issue Price"** means £0.10 per A Ordinary Share, £0.10 per B Ordinary Share and £1 per C Ordinary Shares and £1 per D Ordinary Share ,

**"Market Value"** will be

- (a) the price agreed between the Compulsory Seller(s) and the Board (subject to Investor Director's consent), or
- (b) if they fail to agree a price within 45 Business Days of the Cessation Date, or otherwise in accordance with any different timetable determined by an Investor Director, the price determined by the Independent Accountants to be the Market Value of such Shares on the Cessation Date, according to the principles set out in Article 13, but having regard also to the effect on the Group of the Relevant Individual in question ceasing to be an employee or director or consultant of any Group Member,

**"Relevant Percentage"** means the proportion of the holding of Shares in the Company of the Relevant Individual (or the PRs of a deceased member or the trustee in bankruptcy of any bankrupt member) to be offered at the stated Sale Price,

**Suspension of voting rights during compulsory transfer procedure**

- 14.8 Unless an Investor Director directs otherwise in writing, any Shares held by a Compulsory Seller on the Cessation Date (and any Shares issued to a Compulsory Seller after such date by virtue of the exercise of any right or option granted or arising by virtue of his holding of the Sale Shares) will cease to confer the right to be entitled to receive notice of, attend and vote at any general meeting of the Company, or any meeting of the holders of any class of Shares with effect from the Cessation Date (or, where appropriate, the date of issue of such Shares, if later), and such Shares will not be counted in determining the total number of votes which may be cast at any such meeting, or for the purposes of a written resolution of any Members or class of Members. That right will be restored immediately upon the Company registering a transfer of the Sale Shares in accordance with this Article 14.

### **Transmission of Shares**

- 14.9 Regulations 29 to 31 shall take effect subject to Articles 14.10 and 14.11.
- 14.10 Without prejudice to Articles 14.1 and 14.3 (the provisions of which, when operable, will override the provisions of this Article 14.10 and the provisions of Articles 14.9 and 14.11), a person entitled to a Share or Shares in consequence of the death, bankruptcy, receivership or liquidation of a Member or otherwise by operation of law shall be bound at any time, if called upon in writing to do so by the Directors with the consent of an Investor Director not later than 90 days after the Directors receive notice from the person concerned that he has become so entitled, to give a Transfer Notice (without specifying a Transfer Price) in respect of all of the Shares then registered in the name of the deceased or insolvent Member in accordance with the provisions of Article 12, which will apply as if set out in full in this Article.
- 14.11 If any such person fails to give a Transfer Notice in accordance with Article 14.10 within 10 Business Days after being called upon to do so
- (a) the Board may (and will if requested by an Investor Director) authorise any Director to execute and deliver a transfer of the Shares concerned to a person appointed by the Directors as a nominee for the person entitled to the Shares, and
  - (b) the Company may give a good receipt for the purchase price of such Shares, register the purchaser or purchasers as the holders of them and issue certificates for the same to such purchasers. After registration, the title of such purchaser or purchasers as registered holder(s) of such Shares will not be affected by any irregularity in, or invalidity of, such proceedings, which will not

be questioned by any person. In any such case the person entitled to the Shares as a consequence of the death, insolvency or otherwise by operation of law will be bound to deliver up the certificates for the Shares concerned to the Company whereupon he will become entitled to receive the purchase price. In the meantime, the purchase price will be held by the Company on trust for such person without interest.

## 15. DRAG ALONG RIGHTS

15.1 For the purposes of this Article 15 an **"Approved Offer"** means an Offer in writing from a proposed transferee (the **"Buyer"**) which has been approved in writing by 75% or more of the A Ordinary Shareholders, offering to purchase all the Shares in existence at the date of such Offer and

- (a) offers the same or equivalent consideration for each Share in the same class (whether in cash, securities or otherwise in any combination);
- (b) includes an undertaking by or on behalf of the Buyer that no other consideration, (whether in cash or otherwise) is to be received or receivable by any Member which, having regard to the transaction as a whole, can reasonably be regarded as an addition to the substance of price paid or payable for the Shares to be sold by such Member, and that neither the Buyer nor any person acting by agreement or understanding with it has otherwise entered into more favourable terms or has agreed more favourable terms with any other Member for the purchase of such Shares;
- (c) is approved by the Investor.

15.2 Whenever an Approved Offer is made, the holders of 75% or more of the A Ordinary Shares shall have the right (the **"Drag Along Right"**) to require (in the manner set out in Article 15.3) all of the other holders of Shares (the **"Other Shareholders"**) to accept the Approved Offer in full

15.3 The Drag Along Right may be exercised by the service of notice to that effect on the Other Shareholders at the same time as, or within 20 Business Days following the making of the Approved Offer. Such notice will be accompanied by all documents required to be executed by the Other Shareholders to give effect to the relevant transfer

15.4 On the exercise of the Drag Along Right, each of the Other Shareholders will be bound to accept the Approved Offer in respect of its entire holding of Shares and to comply with the obligations assumed by virtue of such acceptance.

15.5 If any of the Other Shareholders fails to accept the Approved Offer or, having accepted such offer, fails to complete the sale of any of its Shares pursuant to the Approved Offer, or otherwise fails to take any action required of it under the terms of the Approved Offer, any holder of A Ordinary Shares or any persons so authorised by the Board with the consent of an Investor Director may accept the offer on behalf of the Other Shareholder in question, or undertake any action required under the terms of the Approved Offer on the part of the Other Shareholder in question. In particular, such person may execute the necessary transfer(s) on that Other Shareholder's behalf, and against.

(a) receipt by the Company (on trust for such Other Shareholder) of the consideration payable for the relevant Shares (the receipt being a good discharge to the Buyer, who will not be bound to see to the application of it); and

(b) compliance by the Buyer and, where relevant, the Company with all other material terms of the Approved Offer,

deliver such transfer(s) to the Buyer (or its nominee). The Board will then authorise registration of the transfer(s) and of the Buyer (or its nominee) as the holder of the Shares so transferred. After registration, the title of the Buyer (or its nominee) as registered holder of such Shares will not be affected by any irregularity in, or invalidity of such proceedings, which will not be questioned by any person. The Other Shareholder will in such a case be bound to deliver up its certificate for its Shares to the Company, or a statutory declaration of loss (as appropriate) whereupon the Other Shareholder will be entitled to receive the purchase price for such Shares (without any interest accrued on such amount).

## 16 **ELECTRONIC COMMUNICATION**

Regulation 1 is modified by deleting the definition given of "electronic communication" and substituting in its place the definition given in these articles

## 17 **SHARE CERTIFICATES**

Regulation 6 is modified by adding after "Every certificate shall be sealed with the seal" the words "or executed in such other manner as the Directors authorise, having regard to the Companies Act,"

## 18. **LIEN**

18.1 Regulation 8 is modified by the deletion of the words "(not being a fully paid share)".

18.2 The lien conferred by Regulation 8 will apply to all Shares, whether fully paid or not, and to all Shares registered in the name of any person under a liability (whether actual or contingent), whether he is the sole registered holder of such Shares or one of two or more joint holders of such Shares

## 19 **GENERAL MEETINGS**

19.1 Regulation 37 is modified by the insertion of the words "or an Investor Director acting alone" after the second word of that Regulation

19.2 A general meeting may consist of a conference between Members, some or all of whom are in different places if each Member who participates is able

(a) to hear each of the other participating Members addressing the meeting; and

(b) if he so wishes, to address all of the other participating Members simultaneously,

whether directly, by conference telephone or by any other form of communications equipment (whether in use when these articles are adopted or not) or by a combination of those methods.

A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of Members required to form a quorum. A meeting held in this way is deemed to take place at the place where the largest group of participating members is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates. A resolution put to the vote of a meeting will be decided by each Member indicating to the chairman (in such manner as the chairman may direct) whether the Member votes in favour of or against the resolution or abstains. References in this Article 19 to Members includes their duly



appointed proxies and, in the case of corporate members, their duly authorised representatives

## **20 PROCEEDINGS AT GENERAL MEETINGS**

- 20 1 Regulation 40 is modified so that the quorum for any general meeting (other than a separate class meeting) will include at least one Member present in person or by proxy from each class of Share.
- 20 2 If any meeting is adjourned pursuant to Regulation 41 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 will form a quorum Regulation 41 is modified accordingly.
- 20.3 Regulation 46 is modified so that a poll may be demanded by the chairman or by any Member present in person or by proxy and entitled to vote at the meeting
- 20.4 A corporation which is a member of the Company may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or at any meeting of any class of Members The person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member
- 20.5 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman will be entitled to a casting vote in addition to any other vote which he may have
- 20 6 Regulation 51 is amended by replacing the first and second sentences with the following words. "A poll demanded will be taken immediately"

## **21 VOTES OF MEMBERS**

- 21 1 Regulation 54 is modified so that
  - (a) a proxy will be entitled to vote whether on a show of hands or on a poll, and
  - (b) a duly authorised representative of a corporate Member will be entitled to vote on its behalf whether on a show of hands or on a poll, and whether or not such duly authorised representative is also a Member entitled to vote

- 21 2 Regulation 57 is modified by the inclusion after the word "shall" of the phrase", unless the Directors otherwise determine,"
- 21 3 Regulation 59 is modified by the addition of the following sentence at the end: "Deposit of an instrument of proxy will not preclude a Member from attending and voting at the meeting or at any adjournment of the meeting."
- 21 4 Regulation 62 is modified by the deletion in paragraph (a) of the words "deposited at" and by the substitution for them of the words "left at or sent by post to" and by the insertion at the end of the penultimate sentence of the Regulation (after the word "invalid") of the words "unless a majority of the Directors (the Investor Director(s) being part of that majority) resolve otherwise".

## 22 **NUMBER OF DIRECTORS**

Unless and until otherwise determined by ordinary resolution of the Company, the number of Directors (other than alternate directors) is not subject to any maximum and the minimum is one.

## 23. **ALTERNATE DIRECTORS**

- 23 1 An Investor Director may appoint any person willing to act, whether or not he is a director of the Company, to be an alternate director. Regulation 65 is modified so that any such appointment does not need to be approved by resolution of the Directors. In Regulation 67 the words "but, if" and the words which follow to the end of the Regulation are deleted.
- 23 2 Regulation 66 is modified so that an alternate director who is absent from the United Kingdom is entitled to receive notice of all meetings of Directors and of committees of Directors of which his appointor is a member. An alternate director may waive the requirement that notice be given to him of a meeting of Directors or of a committee of Directors of which his appointor is a member, either prospectively or retrospectively.
- 23 3 The first sentence of Regulation 66 is modified so that an alternate director will not be entitled as such to receive any remuneration from the Company although he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as his appointor may direct by notice in writing to the Company.
- 23 4 An alternate director will be entitled to be reimbursed by the Company such expenses as might properly be reimbursed to him if he were a Director.

- 23 5 An alternate director's appointment will determine if he resigns by written notice left at or sent to the registered office of the Company.
- 23 6 A director, or any other person mentioned in Regulation 65, may act as an alternate director to represent more than one Director, and an alternate director will be entitled at any meeting of the Board to one vote for every Director whom he represents in addition to his own vote (if any) as a Director, but he will count as only one person for the purpose of determining whether a quorum is present.
- 23.7 Regulation 68 is modified by the addition at the end of the first sentence of the following sentence: "Any such notice may be left at or sent by post or facsimile transmission to the office or another place designated for the purpose by the Directors."

#### **24. DELEGATION OF DIRECTOR'S POWERS**

Regulation 72 is modified by the addition at the end of the Regulation of the following sentence. "Where a provision of these articles refers to the exercise of a power, authority or discretion by the Directors and that power, authority or discretion has been delegated by the Directors to a committee, the provision must be construed as permitting the exercise of the power, authority or discretion by the committee "

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

- 25.1 No person will be disqualified from being appointed a Director and no Director will be required to vacate that office by reason only of the fact that he has attained the age of 70 years or any other age.
- 25 2 A Director will not retire by rotation and a Director appointed to fill a vacancy or as an additional director will not retire from office at the annual general meeting next following his appointment Regulations 76, 77 and 80 will not apply to the Company, reference in Regulations 67, 78 and 84 to retirement by rotation will be disregarded.
- 25 3 Regulation 81(e) will not apply to an Investor Director
- 25 4 The holder or holders of such number of Shares as give the right to a majority of votes at general meetings of the Company may, by giving notice on the Company, remove any Director from office and/or appoint any person to be a Director The notice must be signed by or on behalf of such holder or holders (and may consist of several documents in similar form each signed by or on behalf of one or more holders) and must be left at or sent by post to the registered office or such other

place designated by the Directors for the purpose. Such removal or appointment will take effect when the notice is received by the Company or on such later date (if any) as may be specified in the notice. This Article 25.4 will not apply to the appointment or removal of an Investor Director.

## **26. DISQUALIFICATION AND REMOVAL OF DIRECTORS**

The office of a Director will be vacated if

- 26.1 he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a director,
- 26.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally;
- 26.3 he becomes, in the opinion of all his co Directors, incapable by reason of mental disorder of discharging his duties as Director;
- 26.4 he resigns his office by notice in writing to the Company;
- 26.5 (other than in the case of an Investor Director) he has for more than six consecutive months been absent without permission of the Directors from meetings of Directors held during that period and his alternate director (if any) has not during that period attended any such meetings instead of him, and the Directors resolve that his office be vacated;
- 26.6 (other than in the case of an Investor Director) he is removed from office by notice addressed to him at his last known address and signed by all his co Directors;
- 26.7 (other than in the case of an Investor Director) he is removed from office by notice given by a member or members under Article 25.4, or
- 26.8 being an executive Director he ceases, for whatever reason, to be employed by any member of the Group.

## **27. REMUNERATION AND AUDIT COMMITTEES**

Without prejudice to Regulation 72 the Remuneration Committee and (if appointed) the Audit Committee will operate in accordance with any shareholder's or investment agreement in respect of the Company and/or the terms of reference of such committee from time to time in force. Regulation 82 will not apply to the Company.

## 28. DIRECTORS' APPOINTMENTS AND INTERESTS

- 28.1 Regulation 84 is modified by addition of the words "with the consent of the Investor" after the words "the directors" and before the words "may appoint" in the first sentence, and after the words "the directors" and before the word "determine" and after the words "as they" and before the words "think fit" in the second sentence
- 28.2 Regulation 85 is modified by the addition of the words "and except in the case of an Investor Director, and subject to the consent of the Investor" after the words "provisions of the Act" and before the words ", and provided that he has disclosed" in the first sentence.

## 29. DIRECTOR'S GRATUITIES AND PENSIONS

Regulation 87 is modified by the addition of the words "with the consent of the Investor" after the words "The directors" and before the words "may provide benefits" in the first sentence

## 30. BORROWING POWERS

The Directors may exercise all the powers of the Company (whether express or implied) to borrow and/or secure the payment of money, to guarantee the payment of money, the fulfilment of obligations and the performance of contracts and to mortgage or charge the property, assets and uncalled capital of the Company, and (subject to section 80 of the Companies Act) to issue debentures, debenture stock and all other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party not exceeding an aggregate sum of £100,000 or such higher amount as the Investor Director may agree in writing

## 31. PROCEEDINGS OF DIRECTORS

- 31.1 In the case of an equality of votes, the chairman will have a second or casting vote only if such Chairman is an Investor Director.
- 31.2 Subject to article 23.6, at any meeting of the Board, each Director shall be entitled to one vote provided always that the Investor Directors shall be entitled to such number of votes as shall equal one vote in excess of fifty per cent of the other votes exercisable at any such meeting
- 31.3 Regulation 88 is modified by the exclusion of the third sentence and the substitution for it of the following sentences "Every Director will receive notice of a meeting,

whether or not he is absent from the United Kingdom. A Director may waive the requirement that notice be given to him of a meeting of Directors or a committee of Directors, either prospectively or retrospectively".

- 31.4 The quorum necessary for the transaction of business at any meeting of the Directors will be two of which one will be an Investor Director (unless otherwise agreed in writing by the Investor) and Regulation 89 will be modified accordingly. If any meeting of the Directors is inquorate then it will be adjourned for the consideration of the same business until the same time and place the next following week when those Directors present will constitute a quorum.
- 31.5 Any Director or alternate may participate in a meeting of the Board or a committee of the Directors by means of conference telephone or similar communications equipment if all persons participating in the meeting can hear and speak to each other throughout the meeting, and any Director or member of a committee participating in a meeting in this manner is deemed to be present in person at such meeting and will be counted when reckoning a quorum.
- 31.6 Without prejudice to the obligation of any Director to disclose his interest in accordance with section (317) of the Act, a Director may vote at a meeting of Directors or of a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty provided that he has first obtained the consent of the Investor (unless the director concerned is an Investor Director, in which case no such consent will be required) The Director will be counted in the quorum present when any such resolution is under consideration and if he votes, his vote will be counted

## 32. **INVESTOR DIRECTORS AND OBSERVER**

- 32.1 So long as the Investor holds any Shares they will have the right to appoint two persons as non executive Directors of the Company (each, an **"Investor Director"** and together, the **"Investor Directors"**) but
- (a) not more than two persons may hold such office at any one time,
  - (b) any such appointment must be effected by notice in writing to the Company by an Investor Majority who may in a similar manner remove from office any Investor Director appointed pursuant to this Article, and appoint any person in place of any Investor Director so removed or who had died or otherwise vacated office as such,

- (c) subject to section 303 of the Companies Act, on any resolution to remove an Investor Director, the A Ordinary Shares held by the Investor will together carry one vote in excess of fifty per cent. of all the other votes exercisable at the general meeting at which such resolution is to be proposed, and if any such Investor Director is removed pursuant to section 303 of the Companies Act or otherwise, an Investor Majority may reappoint him or any other person as an Investor Director.

32.2 Upon request by an Investor Majority, the Directors shall also procure that an Investor Director is appointed and acts as Chairman of the board of directors of the Company.

32.3 Notwithstanding any other provisions in these articles, an Investor Majority shall in addition to its appointees under Article 32.1 be entitled to appoint a non executive director to the Company (the "**Non-Executive Director**"). An Investor Majority may remove any person appointed as Non-Executive Director by notice in writing issued on the Company signed by or on behalf of an Investor Majority. The remuneration and expenses will be such as may be agreed between him and the Company, or failing agreement, such reasonable sum as may be specified by an Investor Majority.

32.4 The Investor Directors will be entitled to be appointed to the board of directors of any member of the Group and to any committee of the board of any member of the Group.

32.5 In addition to the rights set out at Article 32.1, so long as the Investor holds any Shares they will have the right at any time to appoint any one person to attend observe and speak at meetings of the Board and the provisions of Article 32.1(b) will apply as if they were set out in full in this Article, but with the word "observer" substituted for "Investor Director". Any person so appointed will not be a Director.

### 33. **DIVIDENDS**

Regulation 103 is modified by the addition of the following words. "with the consent of the Investor" after the words "the directors" in the first sentence.

### 34. **NOTICES**

34.1 Any notice or other document to be served or delivered to or by any person pursuant to these articles (other than a notice calling a meeting of the Directors) shall be in writing and shall be delivered in accordance with Article 34.2.

34.2 Any notice or other document may only be served on, or delivered to, any Member by the Company or by any other Member:

- (a) personally,
- (b) by sending it through the post in a prepaid envelope addressed to the Member at his registered address,
- (c) by delivery of it by hand to or leaving it at that address in an envelope addressed to the Member; or
- (d) except in the case of a share certificate and only if an address has been specified by the Member for such purpose, by Electronic Communication

34.3 In the case of joint holders of a Share, all notices and other documents shall be given to the person named first in the register in respect of the joint holding, and notice so given shall be sufficient notice to all joint holders

34.4 Any notice or other document may only be served on, or delivered to, the Company by anyone:

- (a) by sending it through the post in a prepaid envelope addressed to the Company or any officer of the Company at its registered office or such other place in the United Kingdom as may from time to time be specified by the Company,
- (b) by delivering it by hand to its registered office or such other place in the United Kingdom as may from time to time be specified by the Company, or
- (c) if an address has been specified by the Company for such purpose (and in the case of an appointment of a proxy such address has been specified in a document or other communication referred to in Regulation 62), by Electronic Communication

34.5 Any notice or other document (other than the appointment of a proxy):

- (a) addressed to the recipient in the manner prescribed by these articles shall, if sent by post, be deemed to have been served or delivered
  - (i) (if prepaid as first class) 24 hours after it was posted, and
  - (ii) (if prepaid as second class) 48 hours after it was posted,



- (b) not sent by post, but delivered by hand to or left at an address in accordance with these articles, shall be deemed to have been served or delivered on the day it was so delivered or left;
- (c) sent by Electronic Communication shall be deemed to have been served or delivered at the time it was sent, and in proving such service it shall be sufficient to produce (in the case of a fax) a transaction report or log generated by a fax machine which evidences the fax transmission and (in the case of an e mail) a confirmation setting out the total number of recipients sent to or each recipient to whom the message was sent as the case may be

34 6 Regulations 111, 112 and 115 will not apply to the Company

### 35. **INDEMNITIES**

Subject to the provisions of the Companies Act but without prejudice to any indemnity to which he may otherwise be entitled every Director alternate director secretary and other officer or employee of the Company will be indemnified out of the assets of the Company against any liability (other than any liability arising out of any shareholder's or investment agreement in respect of the Company from time to time in force) sustained or incurred by him in defending any proceedings whether civil or criminal relating to his conduct as an officer or employee of the Company in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 144 or section 727 of the Companies Act in which relief is granted to him by the Court Regulation 118 will not apply to the Company