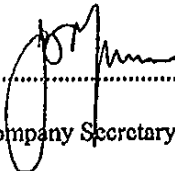


SPECIAL RESOLUTION  
OF  
THE ALEHOUSE GROUP LIMITED

The following Resolution of the above-named Company was proposed as a special resolution and passed at an Extraordinary General Meeting duly convened and held on 3<sup>rd</sup> July 1998

THAT

- 1 The regulations contained in the document produced to the meeting and signed for identification by the Chairman be adopted as the articles of association of the Company in substitution for and to the entire exclusion of the existing articles of association.
- 2 The capital of the Company be increased to £3,865,492 by the creation of 24,000 Ordinary Shares of 1p each, such shares ranking pari passu for all purposes with existing Ordinary Shares of 1p each in the capital of the Company, 5,649,600 Preferred Ordinary Shares of 1p each and 5,625,600 A Ordinary Shares of 1p each, having the rights and being subject to the restrictions attaching thereto under the new articles of association of the Company adopted pursuant to paragraph 1 of this resolution.
- 3 The Directors are generally and unconditionally authorised pursuant to section 80 of the Companies Act 1985 to allot and issue 5,649,600 Preferred Ordinary Shares of 1p each within one month of the date of this resolution (on the expiration of which this authority shall expire) and the Directors shall have power to exercise the authority hereby conferred upon them to allot such shares to such persons and on such conditions as they may in their discretion determine as if section 89(1) and 90(i) of the Companies Act 1985 did not apply thereto.

  
.....  
Company Secretary



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THE COMPANIES ACT 1985 to 1989  
PRIVATE COMPANY LIMITED BY SHARES  
MEMORANDUM OF ASSOCIATION  
OF  
THE ALEHOUSE GROUP LIMITED

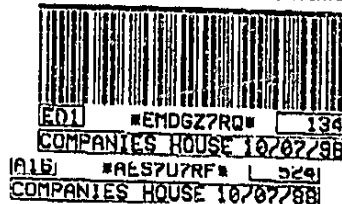
- 1 The name of the Company is "The Alehouse Group Limited".
- 2 The registered office of the Company will be situated in England and Wales.
- 3(i) The object of the Company is to carry on business as a general commercial company.
- 3(ii) Without prejudice to the generality of the objects and the powers of the Company derived from Section 3A of the Act the Company has power to do all or any of the following things:-

(A) To carry on business as merchants and dealers in beers, wines, spirits, aerated waters and beverages of every description, whether alcoholic or not, and of casks, Bottles, cans and other receptacles for the same and to deal in all other substances and things capable of being used in connection with any such businesses: to carry on the business of licensed victuallers, hotel and restaurant proprietors, managers and renters of bars, wine bars, public houses, clubs, eating houses, fast food outlets, cafes, snack bars and coffee shops, places of amusement and entertainment of every kind and as caterers and contractors; to establish and provide all kinds of facilities and amenities for customers and others; to undertake or direct the management of property, buildings, lands and estates of the company or any other person; to acquire by purchase or otherwise land and property of any tenure or any interest in land in any part of the world; to sell, lease, let, mortgage, charge or otherwise dispose of land, houses, buildings and other property of the company or any interest therein; to acquire and hold controlling and other interests in land in any part of the world; to sell, lease, let, mortgage or otherwise dispose of land, houses, buildings, and other property of the Company, to acquire and hold controlling and other interests in the share or loan capital of any company or companies; to provide financial, managerial and administrative advice, services and assistance for any company in which this company is interested and for any other company; to carry on all or any of the business of general merchants and traders.

(B) To purchase, take on lease or on hire or otherwise acquire, hold, develop, sell, hire out, grant leases or licenses or otherwise dispose of or deal with real and personal property of all and any kinds and any interest, right or privilege therein, for such consideration and on such terms as may be considered expedient.

(C) To purchase, subscribe for or otherwise acquire, and hold and deal with any shares, stocks, debentures, bonds or securities of any other company.

(D) To sell or otherwise dispose of the whole or any part of the business and or undertaking of the Company, either together or in portions for such consideration and on such terms as may be considered expedient.



(E) To purchase or otherwise acquire and undertake, and to supervise and manage, all or any part of the business, property, assets and liabilities of any person or company.

(F) To invest and deal with the monies of the Company not immediately required for the purpose of its business in or on such investments or securities and in such manner as may be considered expedient, and to dispose of or vary any such investments or securities.

(G) To enter into any partnership or into any arrangement for sharing profits or to amalgamate with any person or company carrying on or proposing to carry on any business.

(H) To lend or advance money or give credit to such persons or companies and on such terms as may be considered expedient, and to receive money on deposit or loan from any person or company.

(I) To borrow or raise money on such terms and on such security as may be considered expedient and, in particular, but without limiting the generality of the foregoing, by the issue or deposit of debentures, and to secure the repayment of any money borrowed, raised or owing by mortgage, charge or lien upon the whole or any part of the undertaking, property and assets of the Company both present and future, including its uncalled capital.

(J) To give indemnity for, or to guarantee, support or secure the performance of all or any of the obligations of any person or company whether by personal covenant or by mortgage, charge or lien on the whole or any part of the undertaking, property and assets of the Company both present and future, including its uncalled capital, or by all or any of such methods; and in particular, but without limiting the generality of the foregoing to give indemnity for, or to guarantee support or secure whether by personal covenant or by any such mortgage, charge, or lien, or by all or any of such methods, the performance of all or any of the obligations (including the repayment or payment of the principal and premium of, and interest on, any securities) of any company which is for the time being the Company's holding company or subsidiary or another subsidiary of any such holding company.

(K) To pay for any property, assets or rights acquired by the Company, and to discharge or satisfy any debt, obligation or liability of the Company, either in cash or in shares with or without preferred or deferred rights in respect of dividend or repayment of capital or otherwise, or by any other securities which the Company has power to issue, or partly in one way and partly in another, and generally on such terms as may be considered expedient.

(L) To accept payment for any property, assets or rights disposed of or dealt with or for any services rendered by the Company, or in discharge or satisfaction of any debt, obligation or liability to the Company, either in cash or in shares, with or without deferred or preferred rights in respect of dividend or repayment of capital or otherwise, or in any other securities, or partly in one way and partly in another, and generally on such terms as may be considered expedient.

- (M) To form, promote, finance or assist any other company, whether for the purpose of acquiring all or any of the undertaking, property and assets of the Company or for any other purpose which may be considered expedient.
- (N) To issue, place, underwrite or guarantee the subscription of, or conclude or assist in the issuing or placing, underwriting or guaranteeing the subscription of shares, stocks, debentures, bonds and other securities of any company on such terms as to remuneration and otherwise as may be considered expedient.
- (O) To apply for, purchase or otherwise acquire and hold, use, develop, sell, licence or otherwise dispose of or deal with patents, copyrights, designs, trade marks, secret processes, know-how and inventions and any interest therein.
- (P) To draw, make, accept, endorse, negotiate, discount, execute, and issue promissory notes, bills of exchange, scrip warrants and other transferable or negotiable instruments.
- (Q) To establish and maintain or procure the establishment and maintenance of, any pension superannuation funds or retirement benefit schemes (whether contributory or otherwise) for the benefit of, and to give or procure the giving of donations, gratuities, pensions, allowances, emoluments and any other relevant benefits to any persons who are or were at any time in the employment or service of the Company, or of any company which is a subsidiary or holding company or the Company or which is a subsidiary or any such holding company or is allied to or associated with the Company, or any such subsidiary or of any of the predecessors of the Company or any such other company as aforesaid, or who may be or have been Directors or officers of the Company, or of any such other company as aforesaid, and the wives, widows, families and dependants of any such persons, and to establish, subsidise and subscribe to any institutions, associations, societies, clubs or funds calculated to be for the benefit of, or to advance the interests and well being of the Company or of any other company as aforesaid, or of any such persons as aforesaid, and to make payments for or towards the insurance of any such persons as aforesaid, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object, and to do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid and without prejudice to the generality of the foregoing to act either alone or jointly as trustee or administrator for the furtherance of any of the aforesaid purposes.
- (R) To establish, on and subject to such terms as may be considered expedient, a scheme or schemes for or in relation to the purchase of, or subscription for, any fully or partly paid shares in the capital of the Company by, or by trustees for, or otherwise for the benefit of employees of the Company or of its subsidiary or associated companies.
- (S) To the extent permitted by law, to give financial assistance for the purpose of the acquisition of shares of the Company or for the purpose of reducing or discharging a liability incurred for the purpose of such an acquisition and to give such assistance by means of a gift, loan, guarantee, indemnity, the provision of security or otherwise.
- (T) To subscribe or guarantee money for any national, charitable, benevolent, public, general, political or useful object, and to under-take and execute any trusts the undertaking whereof may be considered expedient, and either gratuitously or otherwise.

(U) To enter into any arrangement with any Government or other authority, supreme, municipal, local or otherwise, and to obtain from any such Government or authority any rights, concessions, privileges, licences and permits, and to promote any legislation, as may be considered expedient.

(V) To distribute among the Members in specie any property of the Company or any proceeds of sale or disposal of any property of the Company and for such purpose to distinguish and separate capital from profits, but so that no distribution amounting to a reduction of capital shall be made except with the sanction (if any) for the time being required by law.

(W) To remunerate any person or company rendering service to the Company in any manner and to pay all costs, charges and expenses incurred or sustained in or about the promotion and establishment of the Company and of any other company formed, promoted, financed or assisted by the Company, or which the Company shall consider to be in the nature of preliminary expenses in relation to the Company or any such other company, including the cost of advertising, commissions for underwriting, brokerage, printing and stationery, and the legal and other expenses of the promoters.

(X) To carry on any business which, in the opinion of the Directors of the Company, may seem capable of being conveniently carried on in connection with or as ancillary to any of the above businesses or calculated directly or indirectly to enhance the value of or render profitable any of the property of the Company or to further any of its objects and to do all other things as may be incidental or conducive to the attainment of any of the objects of the Company.

(Y) To do all or any of the above things in any part of the world, either alone or in conjunction with others, and either as principals, agents, contractors, trustees or otherwise and either by or through agents, contractors, trustees or otherwise.

It is hereby declared:-

(1) that the expressions "subsidiary" and "holding company" where they appear in this clause shall have the meanings ascribed to those expressions by Section 736 of the Act;

(2) that, where the context so admits, the word "company" in this clause shall be deemed to include any partnership or other body of persons whether or not incorporated and, if incorporated, whether or not a company within the meaning of the Act;

(3) that the objects specified in each of the sub-clauses of this clause shall be regarded as independent objects and accordingly shall in no way be limited or restricted (except where otherwise expressed therein) by reference to or inference from the terms of any other sub-clause or the name of the Company, but may be carried out in as full and ample a manner and construed in as wide a sense as if each defined the objects of a separate and distinct company; and

(4) in this clause the expression "the Act" means the Companies Act 1985, but so that any reference in this clause to any provision of the Act shall be deemed to include a

reference to any statutory modification or re-enactment of the provision for the time being in force.

4 The liability of Members is limited.

5 \* The share capital of the Company is £3,752,500 divided into 250,000 Ordinary Shares of 1p each and 3,750,000 Preference Shares of £1 each.

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+ By two special resolutions passed on 3rd July 1998, the share capital of the Company was increased to £5,705,310.68 by the creation of 5,625,600 Preferred Ordinary Shares of 1p each, 5,625,600 A Ordinary Shares of 1p each, an additional 132,468 Ordinary Shares of 1p each and an additional 1,896,734 Preference Shares of £1 each.

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THE COMPANIES ACTS 1985 AND 1989

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

THE ALEHOUSE GROUP LIMITED

(Adopted by a Special Resolution passed  
on 3rd July 1998)

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**1. INTERPRETATION**

1.1 In these Articles:

"A Ordinary Shares" means the A ordinary shares in the Company with the rights as set out in Article 7;

"The Act" means the Companies Act 1985 including any statutory modification or re-enactment for the time being in force;

"Alchemy" means Alchemy Partners (Guernsey) Limited;

"Alchemy Director" means the director appointed as such under the Subscription Agreement;

"Charge" means any charge, security, debenture, mortgage or hypothecation over any share(s) in the capital of the Company which is granted in respect of a loan guaranteed by the Company or a subsidiary of the Company and/or secured over assets of the Company or a subsidiary of the Company;

"Credit Agreement" means the credit agreement of 11 June 1997 between (1) The Alehouse Company Limited and (2) the Bank (as such term is more particularly defined in such agreement and as such agreement shall be varied, amended, novated or supplemented from time to time,

"Employee" means a person for the time being in the bona fide employment (whether full or part-time) of the Company or any subsidiary of the Company including any officer of the Company or any such subsidiary holding a salaried employment or office under the Company or any such subsidiary;

"Employee Share Trust" means The Alehouse Qualifying Employee Share Ownership Trust and any other employees' share scheme constituted by a trust established by the Company and (where appropriate) means the trustees thereof;

"Listing" means the listing of the Company's, or any holding company's entire issued share capital on a recognised investment exchange (as defined by Section 207(1) of the Financial Services Act 1986);

"Ordinary Share Capital" means the A Ordinary Shares, Ordinary Shares and Preferred Ordinary Shares in issue from time to time;

"Ordinary Shares" means the ordinary shares in the capital of the Company with the rights set out in these Articles;

"Preference Shares" means the redeemable preference shares in the capital of the Company with the rights set out in Article 5;

"Preferred Ordinary Shares" means the preferred ordinary shares in the capital of the Company with the rights set out in Article 6;



"Relevant Director" means a person who is a director of the Company or any Subsidiary of the Company

"Sale" shall have the meaning set out in Article 9

"Subordination Agreement" means the subordination agreement of on or about 3rd July 1998 between (1) The Alehouse Company Limited, (2) the Company; (3) the Bank; and (4) the Investors (in each case as such terms are more particularly defined in such agreement and as such agreement shall be varied, amended, novated or supplemented from time to time);

*Subscription*  
"Subordination Agreement" means the agreement of 3rd July 1998 made by (1) Duncan Murray and others, (2) Alchemy Partners (Guernsey) Limited (3) The Alehouse Group ESOP Limited and (4) the Company as amended from time to time;

"Subscription Price" means the subscription price paid for each Preferred Ordinary Share;

"Transfer Event" means in relation to a holder of Ordinary Shares who is an Employee or Relevant Director:

- (i) that shareholder ceasing to be an Employee or Relevant Director; or
- (ii) that shareholder, being an Employee or Relevant Director of a subsidiary of the Company, ceasing to be an Employee or Relevant Director by virtue of that subsidiary ceasing to be under the control of the Company within the meaning of Section 840 Income and Corporation Taxes Act 1988; or
- (iii) that shareholder dying; or
- (iv) that shareholder acquiring shares in pursuance of rights or interests obtained by them (or any other person) as an Employee or Relevant Director, where they (or such other person) have ceased to be an Employee or Relevant Director on such acquisition.

1.2 Words and expressions defined in the Act have the same meanings in these Articles unless inconsistent with the context.

1.3 The renunciation of a right to be allotted shares shall be treated as if it were a transfer of those shares and therefore shall be governed by Articles 10 to 15

1.4 Notwithstanding, any other provisions contained herein, these Articles shall be subject to the terms of the Subordination Agreement and the Credit Agreement.

## 2 TABLE A

2.1 The regulations contained in Table A in the Schedule to the Companies (Tables A-F) Regulations 1985 as amended ("Table A"), apply to the Company except to the extent that they are excluded by or inconsistent with those Articles.

2.2 The first sentence of regulation 24 and regulations 64, 73 to 78, 80, 81, 90, 94, 95, 115 and 118 of Table A do not apply.

## 3 PRIVATE COMPANY

The Company is a private company and accordingly any invitation to the public to subscribe for any shares or debentures of the Company is prohibited.

## 4 SHARE CAPITAL

The authorised share capital of the Company is £5,765,310.68 divided into 382,468 Ordinary Shares of 1p each, 5,649,600 Preferred Ordinary Shares of 1p each, 5,625,600 A Ordinary Shares of 1p each and 5,648,734 Preference Shares of £1 each.

## 5 PREFERENCE SHARES

The rights attaching to the Preference Shares are set out below.

**5.1 Dividend**

The Preference Shares do not confer any right to a dividend or other right of participation in the profits of the Company.

**5.2 Return of capital**

On a return of capital on liquidation or otherwise the assets of the Company available for distribution among the shareholders shall be applied firstly to the holders of the Preferred Ordinary Shares pursuant to Article 6.2 below, and secondly in paying to the holders of the Preference Shares:

5.2.1 the nominal amount and premium paid on each of their Preference Shares; and

5.2.2 secondly, a redemption premium ("Redemption Premium") in respect of each Preference Share equal to 16% (exclusive of any tax credit) per annum of the nominal amount of each Preference Share from the date of issue up to and including the date of return of capital provided that in the event a Preference Share is redeemed either prior to the first anniversary of the date of issue of the Preference Share or following any anniversary of the date of issue of the Preference Share the entire redemption premium for that year shall be payable (notwithstanding the fact the Preference Shares were only in issue for part of that year) in respect of the Preference Share and thirdly any interest payable pursuant to Article 5.8.6.

**5.3 Further participation**

The Preference Shares do not confer any further right of participation in the assets of the Company.

#### **5.4 Scheduled redemption**

Subject to the terms and conditions of the Credit Agreement and only at a time when there are no Preferred Ordinary Shares in issue and subject to Articles 5.5, 5.6 and 5.7 the Company shall redeem all the Preference Shares on 19<sup>th</sup> June 2002 ("Redemption Date").

#### **5.5 Early redemption on events of default**

**5.5.1** Subject to the terms and conditions of the Credit Agreement and only at a time when there are no Preferred Ordinary Shares in issue the holders of a majority of the Preference Shares in issue are entitled to require redemption of some or all the Preference Shares if any of the following events occur and if within 28 days after they serve the Company with notice specifying their requirements:

- (i) When Preference Shares are due for redemption, the Company does not pay all the redemption money then payable to Preference Shareholders, whether or not the Company has enough profits available for distribution or other requisite funds to pay the redemption money;
- (ii) Those Preference Shareholders become aware of a material breach of Articles 10, 11, 12, or 13;
- (iii) Those Preference Shareholders become aware of a material breach of the Subscription Agreement, or
- (iv) Those Preference Shareholders become aware that any indebtedness of the Company or a subsidiary undertaking has become repayable before its specified maturity or has been the subject of a demand for repayment.

5.5.2 For the purposes of Article 5.8 the Redemption Date for such a redemption is the date specified in the Preference Shareholders' notice.

5.5.3 The holders of a majority of the Preference Shares are entitled to withdraw the notice requiring redemption if they serve the Company with notice to that effect before the redemption takes place.

**5.6 Early Redemption by Company**

Subject to the terms and conditions of the Credit Agreement, and only at a time when there are no Preferred Ordinary Shares in issue, the Company may redeem all or 100,000 multiples of the Preference Shares at any time by serving notice on the Preference Shareholders specifying the number of Preference Shares to be redeemed and a date between 14 and 28 days later (the "Redemption Date") on which the redemption is to take place.

**5.7 Redemption on Listing**

5.7.1 Subject to the terms and conditions of the Credit Agreement the company shall redeem all the Preference Shares immediately before a Listing.

5.7.2 For the purposes of Article 5.8, the Redemption Date on a Listing is the day immediately before the Listing and the redemption money is to be paid immediately after the Listing.

**5.8 Provisions applying to all redemptions**

5.8.1 When only some of the Preference Shares are being redeemed, the redemption shall take place in proportion as nearly as possible to each Preference Shareholder's holding of Preference Shares.

5.8.2 On the Redemption Date the Company shall pay the following amount in cash in respect of each Preference Share to be redeemed:

- (i) the nominal amount and premium (if any) paid on the share; and
- (ii) the Redemption Premium.

The amount payable in respect of all the Preference Shares to be redeemed comprises the "redemption money".

5.8.3 On the Redemption Date the redemption money shall become a debt due and payable by the Company to the Preference Shareholders, whether or not the Company has enough profits available for distribution or other requisite funds to pay the redemption money.

5.8.4 On the Redemption Date the redemption money shall be paid to each Preference Shareholder in respect of those of his Preference Shares which are to be redeemed against receipt of the relevant share certificate or an indemnity in a form reasonably satisfactory to the Company in respect of a share certificate which cannot be produced. If a Preference Shareholder produces neither the share certificate nor an indemnity the Company may retain his redemption money until delivery of the certificate or an indemnity.

5.8.5 The Company shall cancel share certificates in respect of redeemed Preference Shares and issue fresh certificates without charge in respect of any Preference Shares represented by those certificates and remaining outstanding.

5.8.6 In the event that following the Redemption Date the redemption money (or part thereof) has not been paid to a Preference Shareholder (save in the event of a Preference Shareholder failing to comply with his obligations pursuant to Article 5.8.4) interest at 16% per annum shall accrue on such outstanding redemption money from day to day and shall be compounded annually.

#### **5.9 Preference Share Capital Redemption Reserve**

At the end of each financial year, the Company shall reserve from the profits available for distribution and note in its accounts the Redemption Premium due within the next financial year provided that in respect of the first financial year the Company shall also reserve from profits available for distribution the Redemption Reserve due within the first financial year and such amount shall constitute the Redemption Reserve.

#### **5.10 Votes**

Preference Shareholders are entitled to receive notice of and to attend and speak at General Meetings of the Company. Preference Shareholders may not vote at general meetings of the Company unless:

5.10.1 When Preference Shares are due for redemption, the Company does not pay all the redemption money then payable to the Preference Shareholders, whether or not the Company has enough profits available for distribution or other requisite funds to pay the redemption money; or

5.10.2 Any indebtedness of the Company or a subsidiary undertaking has become repayable before its specified maturity or has been the subject of a demand for repayment.

For so long as such a default continues Preference Shareholders may vote at General Meetings of the Company on the basis set out in regulation 54 of Table A.

#### **5.11 Transfor**

5.11.1 Subject to Article 5.11.2 the Preference Shares are freely transferable.

5.11.2 The Directors may not register a transfer of Preference Shares unless the proposed transferee has entered into an agreement to be bound by the Shareholders Agreement in the form required by that agreement.

## **6. PREFERRED ORDINARY SHARES**

The rights attaching to the Preferred Ordinary Shares are set out below.

### **6.1 Dividend**

Subject to Article 8

6.1.1 The Company shall, in priority to payment of any dividend to all other shareholders, pay to the holders of the Preferred Ordinary Shares a variable annual cumulative preferential dividend ("the Preferred Ordinary Dividend") equal to 6.75 per cent (exclusive of any tax credit) above the average base lending rate of the National Westminster Bank plc over the twelve months prior to the Preferred Ordinary Dividend Date (as defined below) multiplied by the Subscription Price. The Preferred Ordinary Dividend shall accrue on a daily basis and be payable annually on the 31st December ("Preferred Ordinary Dividend Date") in each year provided that the first payment of the Preferred Ordinary Dividend shall be on 31st December 1999 in respect of the period from the date of issue of the Preferred Ordinary Shares to that date.

6.1.2 At any time when the Preferred Ordinary Dividend is due for payment and the Company has determined to distribute such profits as are insufficient for paying the Preferred Ordinary Dividend, the profits which have been determined as being available for distribution shall be distributed to the holders of the Preferred Ordinary Shares pro rata to the proportion of Preferred Ordinary Shares each holds.



6.1.3 To the extent that the Preferred Ordinary Dividend is due for payment and the Preferred Ordinary Dividend (or any of it) is not paid, whether under Article 6.1.2 above, because the Company does not have sufficient profits available for distribution or because the payment of the Preferred Ordinary Dividend is not permitted by the Credit Agreement, the Preferred Ordinary Dividend shall be a debt due by the Company and payable in priority to any other dividends.

6.1.4 After dividends have been paid in any financial year on each Ordinary Share in issue of £15,000 per share, any further profits of the Company resolved to be distributed shall be distributed amongst the holders of the Ordinary Shares, Preferred Ordinary Shares and A Ordinary Shares pro rata to their existing holdings.

## **6.2 Capital**

6.2.1 On a return of capital on liquidation or otherwise the assets of the Company available for distribution among the shareholders shall be applied in paying to the holders of the Preferred Ordinary Shares, in priority to any payment to the holders of any other class of shares, first the Subscription Price of each Preferred Ordinary Share and secondly such sum equal to any arrears or accruals of the Preferred Ordinary Dividend calculated down to the date of the return of assets.

6.2.2 The Preferred Ordinary Shares shall not confer any further right of participation in the assets of the Company.

## **6.3 Voting**

The holders of the Preferred Ordinary Shares shall have the right to receive notice of all General Meetings of the Company but shall have no right to attend and vote thereat either in person or by proxy by virtue of their holdings of Preferred Ordinary Shares.

#### **6.4 Conversion**

The Preferred Ordinary Shares shall be convertible into Ordinary Shares and A Ordinary Shares as set out below:

**6.4.1** No Preferred Ordinary Share shall convert, under the provisions of this Article, for so long as it is subject to a Charge and in any event shall not convert for the period of 3 months following the date of subscription for the Preferred Ordinary Shares;

**6.4.2** To the extent that every 1,177 Preferred Ordinary Shares are released from a Charge and continue to be held by the subscriber for those Shares with the result that such Preferred Ordinary Shares are no longer subject to any Charge ("Released") those Preferred Ordinary Shares shall automatically convert into 5 Ordinary Shares and 1,172 A Ordinary Shares;

**6.4.3** To the extent that the number of Preferred Ordinary Shares Released at any time is not 1,177 or a multiple of 1,177, such Preferred Ordinary Shares shall convert as nearly as possible into the same proportion of Ordinary Shares and A Ordinary Shares as set out in Article 6.4.2 above. PROVIDED THAT where such conversion would result in fractions of shares, those fractions of shares shall be rounded to the nearest whole number of shares (with the result that a fraction of A Ordinary Shares shall be rounded down unless that fraction is above 0.5 and a fraction of Ordinary Shares shall be rounded up unless that fraction is below 0.5) AND PROVIDED THAT there shall be at least one Ordinary Share resulting from such conversion;

**6.4.4** Immediately following any Preferred Ordinary Share being Released, the holder of the Preferred Ordinary Shares so Released (for the purposes of this

Article "the Shareholder") shall give written notice to the Company stating the number of Preferred Ordinary Shares which as a result have been converted and the resulting number of Ordinary Shares and A Ordinary Shares together with the date on which the Preferred Ordinary Shares are Released ("the Conversion Date");

6.4.5 Within one calendar month of the Conversion Date the Shareholder shall deliver to the Company at its registered office the certificate(s) for the Preferred Ordinary Shares so converted and upon such delivery there shall be issued to him a certificate for the number of Ordinary Shares and A Ordinary Shares resulting from the conversion and re-designation referred to at Article 6.4.2 above;

6.4.6 The Ordinary Shares arising from the conversion under Article 6.4.2 above shall rank pari passu with the Ordinary Shares then in issue and fully paid up and shall entitle the holders of such Ordinary Shares to all dividends and other distributions declared made or paid on the Ordinary Shares by reference to any record date occurring after the Conversion Date;

## 6.5 Listing

6.5.1 In anticipation of a Listing of the Ordinary Shares of the Company, the holders of any Preferred Ordinary Shares which are not subject to a Charge may by written notice ("Conversion Notice") require the Company to convert all their Preferred Ordinary Shares into Ordinary Shares (for the purposes of this Article 6.5 referred to as a "Listing Conversion") at the Conversion Rate (as defined below).

6.5.2 On a Listing Conversion, each Preferred Ordinary Share shall convert into such number of Ordinary Shares whose value is equivalent to the Subscription

Price of the Preferred Ordinary Shares together with any unpaid arrears and accruals of the Preferred Ordinary Dividend ("the Conversion Rate"). For the purposes of this Article, the value of the Ordinary Shares shall be agreed by the holders of the Preferred Ordinary Shares and the Alchemy Director. Where the holder of the Preferred Ordinary Shares and the Alchemy Director cannot agree the value of the Ordinary Shares, the provisions of Articles 15.4 and 15.5 shall apply as if the holder of the Preferred Ordinary Shares were the "Compulsory Sellers".

6.5.3 No later than ten working days prior to the anticipated date of the Listing, the holder(s) of the Preferred Ordinary Shares to be converted under Article 6.5.1 above shall deliver to the Company at its registered office the certificate(s) for the Preferred Ordinary Shares so converted and upon such delivery there shall be issued to him a certificate for the number of Ordinary Shares resulting from the Listing Conversion.

#### **6.6 Transfer**

6.6.1 Subject to Article 6.6.2 the Preferred Ordinary Shares are freely transferable.

6.6.2 The Directors may not register a transfer of Preferred Ordinary Shares unless the proposed transferee has entered into an agreement to be bound by the Shareholders Agreement in the form required by that Agreement.

#### **6.7 Issue**

By virtue of Section 91 of the Act Sections 89(1) and 90(1) to 90(6) of the Act shall be excluded from applying to the Preferred Ordinary Shares.

## **7. A ORDINARY SHARES**

The A Ordinary Shares shall entitle the holders thereof to the following rights:

### **7.1 Dividend**

Subject to Article 8, after payment of the Preferred Ordinary Dividend and after dividends have been paid in any financial year on each Ordinary Share in issue of £15,000 per share, any further profits of the Company resolved to be distributed shall be distributed amongst the holders of the Ordinary Shares and Preferred Ordinary Shares and A Ordinary Shares pro rata to their existing holdings.

### **7.2 Capital**

On a return of capital on liquidation or otherwise and only after the holders of the Preference Shares have received such amounts due to them under Article 5.2, the holders of the Preferred Ordinary Shares have received such amounts due to them under Article 6.2 and the holders of the Ordinary Shares have received £15,000 per Ordinary Share, the balance of the assets of the Company available for distribution among the shareholders shall be distributed amongst the holders of the Ordinary Shares and A Ordinary Shares pro rata to the amounts paid up on each such share.

### **7.3 Voting**

The holders of the A Ordinary Shares shall have the right to receive notice of all General Meetings of the Company but shall have no right to attend and vote thereat either in person or by proxy by virtue of their holdings of A Ordinary Shares.

### **7.4 Transfer**

7.4.1 Subject to Article 7.4.2 the A Ordinary Shares are freely transferable.

7.4.2 The Directors may not register a transfer of A Ordinary Shares unless the proposed transferee has entered into an agreement to be bound by the Subordination Agreement in the form required by that Agreement.

#### 8. DIVIDEND

No dividend shall be declared or distributed save in accordance with the terms and conditions of the Credit Agreement and with the prior consent of the holders of 75% of the Ordinary Shares.

#### 9. SALE PREFERENCE

9.1 At any time when there are any Preferred Ordinary Shares in issue:

9.1.1 in the event of the transfer of Ordinary Shares under Articles 11.1, 12, 13 or 14 which results in a person or any other person

- (i) who in relation to him is a connected person, as defined in Section 839 of the Income and Corporation Taxes Act 1988; or
- (ii) with whom he is acting in concert, as defined in the City Code on Take-overs and Mergers;

holding or increasing a holding of more than 90% of the Ordinary Share Capital (for the purposes of this Article 9 referred to as a "Sale") the total of all and any cash or other consideration of any nature received in respect of the aggregate of the Ordinary Share Capital and the Preference Shares that are subject to the Sale ("Consideration") shall be reallocated between the holders of Preferred Ordinary Shares, Preference Shares, Ordinary Shares and A Ordinary Shares in the capital of the Company so as to ensure the following order of application of the Consideration as follows:

- 9.1.2 first, in paying to the holders of the Preferred Ordinary Shares a sum equal to the Subscription Price on each Preferred Ordinary Shares together with a sum equal to any arrears deficiency or accruals of the Preferred Ordinary Dividend calculated down to the date of completion of the Sale;
- 9.1.3 second, in paying to the holders of the Preference Shares a sum equal to the nominal amount (and premium if any) on each Preference Share and the Redemption Premium PROVIDED THAT should there be Insufficient Consideration to make this payment in full, the Consideration available shall be apportioned between the holders of the Preference Shares pro rata according to the proportion which the amount due to them bears to the aggregate amount due to all of them;
- 9.1.4 third, in paying pro rata to the holders of the Ordinary Shares a sum of up to £15,000 per Ordinary Share; and
- 9.1.5 fourth, in paying the balance pro rata to the holders of the Ordinary and A Ordinary Shares.

PROVIDED THAT where there is sufficient Consideration available to pay to the holders of Preferred Ordinary Shares the full amount due under Article 9.1.2 above and the full amount due to the Preference Shareholders under Article 9.1.3 above, the holders of the Preference Shares may require that the Company shall redeem all the Preference Shares immediately before the Sale under the provisions set out in Article 5.8 where the Redemption Date is the date of the Sale.

- 9.2 At any time when there are no Preferred Ordinary Shares in issue, subject to the terms and conditions of the Credit Agreement the Company shall redeem all the

Preference Shares immediately before a Sale on the provisions set out in Article 5.8 where the Redemption Date is the date of the Sale.

#### 10. PROVISIONS APPLYING ON EVERY TRANSFER OF ORDINARY SHARES

10.1 The Directors may not register a transfer of Ordinary Shares unless

10.1.1 It is permitted by Article 11 or has been made in accordance with Articles 12 and, if appropriate, 13 or Articles 14 or 15; and

10.1.2 The proposed transferee has entered into an agreement to be bound by the Subordination Agreement and an agreement to be bound by the Subscription Subordination Agreement in the forms required by those agreements.

10.2 Shareholders are not entitled to transfer Ordinary Shares unless the transfer is permitted by Article 11 or has been made in accordance with Articles 12 and, if appropriate, 13 or Articles 14 or 15.

#### 11. PERMITTED TRANSFERS OF ORDINARY SHARES

11.1 With the written consent of the holders of 80% or more of the Ordinary Shares in issue, Ordinary Shares may be transferred to any person.

11.2 Ordinary Shares may be transferred to the trustees of a trust of which the only beneficiaries (and the only people capable of being beneficiaries) are the Ordinary Shareholders who established the trust and who are transferring the relevant shares and/or their spouse and/or their lineal descendants by blood or adoption; and the trustees of such a trust may not transfer Ordinary Shares under Article 11.2 other than to replacement trustees of the same trust.

11.3 A shareholder which is a body corporate may transfer Ordinary Shares to a member of the same group (meaning a subsidiary or holding company of the body



corporate or a subsidiary of a holding company of the body corporate) if the transferee gives an undertaking to the Company that if the transferee ceases to be a member of the same group, all its shares in the Company will, before the cessation, be transferred to another member of the same group.

**11.4** An Ordinary Shareholder who holds Ordinary Shares as nominee or trustee for a limited partnership or unit trust which is primarily a vehicle for institutional investors may transfer those Ordinary Shares:

**11.4.1** To another nominee or trustee for the limited partnership or unit trust;

**11.4.2** On a distribution in kind under the relevant partnership agreement or trust deed to the partners of the limited partnership or their nominees or the holders of units in the unit trust or their nominees, or

**11.4.3** To a nominee or trustee for a limited partnership, unit trust or investment trust which is primarily a vehicle for institutional investors and which is advised or managed by the adviser or manager of the former limited partnership or unit trust.

**11.5** An Ordinary Shareholder which is an investment trust (as defined in The Listing Rules of the London Stock Exchange) whose shares are listed on the London Stock Exchange may transfer Ordinary Shares to another such investment trust which is also managed by the manager of the Ordinary Shareholder.

**11.6** A holder of Ordinary Shares which is an Employee Share Trust may at any time transfer any Ordinary Shares it holds to one or more other Employee Share Trusts or to the new trustees of any such trust on the occasion of a change in the identity of the trustees of such trust or to an approved profit sharing trust or to the trustees of any other employees' share scheme for the benefit of all or any of the Company's (or any of its subsidiaries') Employees or ex-Employees or to Employees or former Employees in

accordance with any rules it shall establish from time to time or to a nominee and an approved profit sharing trust or the trustees of any other such profit sharing scheme may at any time transfer any shares they hold to any Employee or ex-Employee of the Company or any of its subsidiaries.

## **12. PRE-EMPTION RIGHTS**

**12.1** An Ordinary Shareholder ("Selling Shareholder") who wishes to transfer Ordinary Shares to a person to whom Article 11 does not apply shall serve notice on the Company ("Sale Notice") stating the numbers of shares he wishes to transfer ("Sale Shares"). The price for the Sale Shares ("the Asking Price") shall be determined according to the provisions of Article 15.4 and 15.5, with the following replacement terms:

**12.1.1** "Selling Shareholder" shall replace "Compulsory Sellers"; and

**12.1.2** the reference in Article 15.4.1 to "cessation of employment" shall be a reference to "the date of service of the Sale Notice".

**12.2** The Selling Shareholder may state in the Sale Notice that:

**12.2.1** He is only willing to transfer all the Sale Shares, in which case no Sale Shares can be sold unless offers are received for all of them; and/or

**12.2.2** The Sale Shares can only be transferred with a specified number of his Preference Shares (if any) at a specified price per Preference Share, in which case:

- (i) An offer for Sale Shares must include an offer for a corresponding proportion of the Preference Shares at the specified price per share; and
- (ii) Article 12 applies mutatis mutandis to the sale of such Preference Shares on the basis that a reference to Sale Shares is a reference to those

Preference Shares and a reference to the Asking Price is to the specified price per Preference Share.

12.3 The Sale Notice shall make the Company the agent of the Selling Shareholder for the sale of the Sale Shares on the following terms, which the Company shall notify to the other Ordinary Shareholders within seven days of receiving the Sale Notice:

12.3.1 The price for each Sale Share is the Asking Price;

12.3.2 The Sale Shares are to be sold free from all liens, charges and encumbrances together with all rights attaching to them;

12.3.3 Each of the other Ordinary Shareholders (except those who are Compulsory Sellers for the purposes of Article 15) are entitled to buy the Sale Shares in proportions reflecting, as nearly as possible, the nominal amount of their existing holdings of Ordinary Shares; an Ordinary Shareholder is entitled to buy fewer Sale Shares than his proportional entitlement;

12.3.4 Ordinary Shareholders may offer to buy any number of the Ordinary Shares that are not accepted by the other Ordinary Shareholders ("Excess Shares");

12.3.5 Any additional terms pursuant to Article 12.2 apply; and

12.3.6 21 days after the Company's despatch of the terms for the sale of the Sale Shares (the "Closing Date");

- (i) The Sale Notice shall become irrevocable;
- (ii) An Ordinary Shareholder who has not responded to the offer in writing shall be deemed to have declined it; and

(iii) Each offer made by an Ordinary Shareholder to acquire Sale Shares shall become irrevocable.

12.4 If the Company received offers for more Ordinary Shares than the number of Sale Shares, each Ordinary Shareholder who offered to buy Excess Shares shall be entitled to a number of Excess Shares reflecting, as nearly as possible, the number of Excess Shares he offered to buy as a proportion of the total number of Excess Shares for which offers were received.

12.5 Within seven days after the Closing Date, the Company shall notify the Selling Shareholder and the Ordinary Shareholders who offered to buy Sale Shares of the result of the offer and, if any Sale Shares are to be sold pursuant to the offer:

12.5.1 The Company shall notify the Selling Shareholder of the names and addresses of the Ordinary Shareholders who are to buy Sale Shares and the number to be bought by each;

12.5.2 The Company shall notify each Ordinary Shareholder of the number of Sale Shares he is to buy; and

12.5.3 The Company's notices shall state a place and time, between seven and 14 days later, on which the sale and purchase of the Sale Shares is to be completed.

12.6 If the Selling Shareholder does not transfer the Sale Shares in accordance with Article 12.5, the Directors may authorise any Director to transfer the Sale Shares on the Selling Shareholder's behalf to the buying Ordinary Shareholders concerned against receipt by the Company of the Asking Price per share. The Company shall hold the Asking Price in trust for the Selling Shareholder without any obligation to pay interest. The Company's receipt of the Asking Price shall be a good discharge to the buying

Ordinary Shareholder. The Directors shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Selling Shareholder shall surrender his share certificate or an indemnity in a form reasonably satisfactory to the Company in respect of a share certificate which cannot be produced for the Sale Shares to the Company. On surrender, he shall be entitled to the Asking Price for the Sale Shares.

12.7 If, by the Closing Date, the Company has not received offers for all the Sale Shares, the Selling Shareholder may within the next two months transfer the Sale Shares for which offers were not received (or, if the Sale Notice stated that he was only willing to transfer all the Sale Shares, all the Sale Shares) to any person at no less than the Asking Price per share, with any other terms being no more favourable than those in the Sale Notice.

### 13 TRANSFERS WHICH CHANGE CONTROL

13.1 Article 13 applies when a transfer of Ordinary Shares made under Article 11.1 or 12 would, if registered, result in a person and any other person (other than Alchemy):

13.1.1 Who in relation to him is a connected person, as defined in section 839 of the Income and Corporation Taxes Act 1988; or

13.1.2 With whom he is acting in concert, as defined in The City Code on Takeovers and Mergers (and Alchemy's role or the role of any of its associates as investment adviser shall not be deemed to make its clients act in concert) (each a "member of the purchasing group") holding or increasing a holding of 30% or more of the Ordinary Shares in issue.

13.2 No transfer to which Article 13 applies may be made or registered unless:

13.2.1 It is agreed to in writing by the holders of 80% or more of the Ordinary Shares in issue; or

13.2.2 The proposed transferee has made an offer to buy all the other Ordinary Shares on the terms set out in Article 13.3 and the offer has closed and each accepted offer has been completed, unless failure to complete is the fault of the offeree.

13.3 The terms of the proposed transferees offer shall be as follows:

13.3.1 The offer shall be open for acceptance for at least 21 days;

13.3.2 The consideration of each Ordinary Share shall be the higher of:

- (i) The highest consideration offered for each Ordinary Share whose proposed transfer has led to the offer; and
- (ii) The highest consideration paid by any member of the purchasing group for an Ordinary Share in the twelve months up to and including the date of the offer; and

13.3.3 The proposed transferee shall offer to buy each Preference Share for a cash consideration equal to the amount which would be payable to the holder if the Preference Share were redeemed on the date of its purchase, unless the Preference Share is redeemed in accordance with Article 5.7.

13.4 Any dispute on the appropriate consideration for the Ordinary Shares shall be referred to an umpire chosen by the parties concerned or, if they cannot agree on an umpire, nominated by the President of the Institute of Chartered Accountants in England and Wales. The umpire shall act as an expert and not as an arbitrator and his decision shall be final and binding. The selling Shareholder wishing to sell Ordinary Shares to the proposed transferee shall pay half the umpire's costs and Ordinary Shareholders in dispute with the proposed transferee shall pay the other half.

13.5 A transfer of Ordinary Shares to the proposed transferee shall be made in accordance with Article 12.

#### 14 DRAG-ALONG RIGHTS

If transfers under Articles 11.1, 12 and/or 13 result in members of the purchasing group holding or increasing their shareholding to 75% or more of the Ordinary Shares in issue, the members of the purchasing group may, by serving a "Compulsory Purchase Notice" on each other Ordinary Shareholder ("Minority Shareholder"), require all the Minority Shareholders to sell all their Ordinary Shares to one or more persons identified by the members of the purchasing group at the consideration specified in Article 13.3.2. If the members of the purchasing group hold all the Preference Shares except those of the Minority Shareholders, their Compulsory Purchase Notices shall also require the Minority Shareholders to sell all their Preference Shares to one or more persons identified by the members of the purchasing group at the consideration specified in Article 13.3.3 unless the Preference Shares are redeemed in accordance with Article 5.7.

The shares subject to the Compulsory Purchase Notices shall be sold and purchased in accordance with the provisions of Articles 14.6 to 15.8 mutatis mutandis:

14.1 The "completion date" being the date which is 14 days after the service of the Compulsory Purchase Notices;

14.2 "Sale Shares" being the Minority Shareholder's Ordinary Shares and, if covered by the Compulsory Purchase Notice, his Preference Shares;

14.3 "Compulsory Sellers" being the Minority Shareholders; and

14.4 "Offerees" being the persons identified as purchasers in the Compulsory Purchase Notice.

While Article 14 applies to a Minority Shareholder's shares, those shares may not be transferred otherwise than under Article 14.

Article 12 does not apply to transfers of shares made under Article 14.

## **15 COMPULSORY TRANSFERS**

**15.1** Article 15 applies when an Employee or Relevant Director of the Company or any of its subsidiary undertakings;

**15.1.1** who is a holder of Ordinary Shares; or

**15.1.2** who has established a trust pursuant to Article 8.2 above which holds Ordinary Shares

becomes subject to a Transfer Event.

**15.2** Within two months of the Transfer Event, the Directors shall serve a notice requiring a holder of Ordinary Shares (or his personal representatives in the case of his death) or trustee as set out in Article 15.1 above ("the Compulsory Sellers" to offer all of his Ordinary Shares ("Sale Shares") to:

**15.2.1** A person or persons intended to take the Employee's or Relevant Director's place;

**15.2.2** Any of the existing Employees or Relevant Directors of the Company or any of its subsidiary undertakings;

**15.2.3** An Employee Share Trust; or

**15.2.4** Any other person or persons approved by resolution of the Directors (together defined as "the Offerees")



The Alchemy Director's notice may reserve the Alchemy Director the right to finalise the identity of the Offerees once the price for the Sale Shares has been agreed or certified.

15.3 The Compulsory Sellers shall then offer their Sale Shares to the Offerees free from all liens, charges and encumbrances together with all rights attaching to them on the following terms.

15.4 The price for the Sale Shares shall be the price agreed between the Compulsory Sellers and the Alchemy Director or, if they do not agree a price within 14 days of the Alchemy Director's notice, the price certified by a valuer appointed pursuant to Article 15.5 to be:

15.4.1 The market value of the Sale Shares immediately after the cessation of employment calculated in accordance with Article 15.5; or

15.4.2 If the Compulsory Seller is in breach of the provisions of the Shareholders Agreement or his contract of employment with the Company and such breach occurred due to the fraudulent conduct of the Compulsory Seller or such breach has a material adverse effect on the value of the issued share capital of the Company, the issue price (inclusive of premium) of the Sale Shares if less.

15.5 In the event that Article 15.4.1 applies the Alchemy Director shall instruct a valuer ("valuer") on the following basis:-

15.5.1 Forthwith upon being required to instruct a valuer, the Alchemy Director shall notify the Compulsory Sellers that he will instruct the Company's auditors for the time being to carry out the valuation unless an objection is received within seven business days of dispatch of the notice. If an objection is so received, or if the auditors refuse to act, then the Alchemy Director shall forthwith request the President for the time being of the Institute of Chartered Accountants in England and Wales to nominate an independent expert who shall act as the valuer.

15.5.2 The valuer shall be instructed to deliver a written opinion certifying the price within 30 business days of the matter being referred to him and shall act at the cost and expense of the Company unless the valuer otherwise directs.

15.5.3 The valuer shall be entitled to instruct other experts to assist in his valuation.

15.5.4 Any member shall be entitled to make submissions to the valuer and the Directors shall provide the valuer with such information, documents and assistance as he shall reasonably require to make his decision.

15.5.5 The valuer shall act as expert and not as arbitrator and his written opinion on the matters referred to him shall, in the absence of manifest error, be final and binding.

15.5.6 The price for the Sale Shares as determined by the valuer shall be the relevant proportion of the fair market value of the entire issued share capital of the Company based on the following assumptions:-

- (i) An arm's length sale between a willing seller and a willing buyer;
- (ii) No account shall be taken of whether the Sale Shares constitute a minority or majority holding;
- (iii) The Company being sold as a going concern; and
- (iv) The Sale Shares shall be deemed to be sold free of all restrictions, liens and charges.

15.6 Within seven days after the price has been agreed or certified.

15.6.1 The Company shall notify the Compulsory Sellers of the names and addresses of the Offerees and the number of Sale Shares to be offered to each;

15.6.2 The Company shall notify each Offeree of the number of Sale Shares on offer to him; and

15.6.3 The Company's notices shall specify the price per share and state a date between seven and 14 days later, on which the sale and purchase of the Sale Shares is to be completed ("completion date").

15.7 By the completion date the Compulsory Sellers shall deliver stock transfer forms for the Sale Shares, with the relevant share certificates or an indemnity in a form reasonably satisfactory to the Company in respect of a share certificate which cannot be produced to the Company. On the completion date the Compulsory Sellers shall surrender their share certificate or execute a suitable indemnity whereupon the Company shall pay the Compulsory Sellers, on behalf of each of the Offerees, the agreed or certified price for the Sale Shares to the extent the Offerees have put the Company in the requisite funds. The Company's receipt for the price shall be a good discharge to the Offerees. Pending receipt of the relevant share certificate or a suitable indemnity the Company shall hold the price in trust for the Compulsory Sellers without any obligation to pay interest.

15.8 To the extent that the Offerees have not, by the completion date, put the Company in funds to pay the agreed or certified price, the Compulsory Sellers shall be entitled to the return of the stock transfer forms and share certificates for the relevant Sale Shares and the Compulsory Sellers shall have no further rights or obligations under Article 15 in respect of those Sale Shares.

15.9 If a Compulsory Seller fails to deliver stock transfer forms for Sale Shares to the Company by the completion date, the Directors may (and shall if requested by the Alchemy Director) authorise any Director to transfer the Sale Shares on the Compulsory Seller's behalf to each Offeree to the extent the Offeree has, by the completion date, put the Company in funds to pay the agreed or certified price for the Sale Shares offered to him. The Directors shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Compulsory Seller shall surrender his share certificate or execute an Indemnity in a form reasonably satisfactory to the Company in respect of a share certificate which cannot be produced for the Sale Shares to the Company. On surrender, he shall be entitled to the agreed or certified price for the Sale Shares which, in the event of a delay in the surrender of such share certificate or execution of such indemnity, shall have been held by the Company in trust for the Compulsory Seller without obligation to pay interest.

15.10 While Ordinary Shares are Sale Shares by virtue of Article 15.2, they may not be transferred under Articles 11 or 12.

## **16 GENERAL PROVISIONS**

### **16.1 Shareholders' meetings and resolutions.**

16.1.1 Regulation 37 of Table A is modified by the deletion of the words "eight weeks" and the substitution for them of the words "28 days" and by the insertion of the words "or the Alchemy Director acting alone" after the second word of that regulation.

16.1.2 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 of the Company. 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.

16.1.3 A poll may be demanded by the chairman or by any member present in person or by proxy and entitled to vote and regulation 46 of Table A is modified accordingly.

16.1.4 Where an ordinary resolution of the Company is expressed to be required for any purpose, a special or extraordinary resolution is also effective for that purpose, and where an extraordinary resolution is expressed to be required for any purpose a special resolution is also effective for that purpose.

16.1.5 Regulation 53 of Table A is modified by the addition at the end of the following sentence: "If a resolution in writing is described as a special resolution or as an extraordinary resolution it shall have effect accordingly".

16.1.6 Regulation 57 of Table A is modified by the inclusion after the word "shall" of the phrase "unless the Directors otherwise determine".

16.1.7 Regulation 59 of Table A is modified by the addition at the end of the following sentence: "Deposit of an instrument of proxy shall not preclude a member from attending and voting at the meeting or at any adjournment of it".

6.1.8 Regulation 62 of Table A 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 or by facsimile transmission to", by the substitution in paragraph (a) of the words, "one hour" in place of "48 hours" and by the substitution in paragraph (b) of the words "one hour" in place of "24 hours".

## **16.2 Number of Directors**

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

## **16.3 Alternate directors**

16.3.1 The Alchemy Director is entitled to appoint any person willing to act, whether or not he is a Director of the Company, to be an alternate director. That person need not be approved by resolution of the Directors and regulation 65 of Table A is modified accordingly.

16.3.2 An alternate director who is absent from the United Kingdom is entitled to receive notice of all meetings of Directors and meetings of committees of Directors and regulation 66 of Table A is modified accordingly.

16.3.3 Regulation 68 of Table A is modified by the addition at the end of the following sentence, "Any such notice may be left at or sent by post or facsimile transmission to the office or such other place as may be designated for the purpose by the Directors".

## **16.4 Appointment, retirement and removal of Directors**

16.4.1 The Directors are not subject to retirement by rotation and any reference in any regulation of Table A to retirement by rotation is to be disregarded.

16.4.2 The Company may by ordinary resolution appoint a person who is willing to act to be a Director either to fill a vacancy or as an additional Director.

16.4.3 A person appointed by the Directors to fill a vacancy or as an additional Director need not retire from office at the annual general meeting next following

his appointment and the last two sentences of regulation 79 of Table A are deleted.

16.4.4 The holders of a majority of the shares giving the right to vote at General Meetings may at any time and from time to time by serving notice on the Company remove any Director from office and appoint any person to be a Director. A removal or appointment takes effect when the notice is received by the Company or on a later date specified in the notice. Article 16.4.4 does not apply to the removal or appointment of an Alchemy Director.

#### **16.5 Disqualification and removal of Directors**

16.5.1 The office of a Director shall be vacated if:

- (i) He ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a Director;
- (ii) He becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (iii) He becomes, in the opinion of all his co-Directors, incapable by reason of mental disorder of discharging his duties as Director;
- (iv) He resigns his office by notice in writing to the Company;
- (v) 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 such period attended any such meetings instead of him, and the Directors resolve that his office be vacated; or
- (vi) (Other than in the case of the Alchemy Director) he is removed from office by notice addressed to him at his last known address and signed by all his co-Directors.

16.5.2 A person voting against a resolution under section 303 of the Act to remove the Alchemy Director is deemed, in respect of that resolution, to have five times the votes of a person voting in favour of the resolution and regulation 54 of Table A is modified accordingly.

#### **16.6 Proceedings of Directors**

16.6.1 Regulation 88 of Table A is modified by the exclusion of the third sentence and the substitution for it of the following sentence: "Every Director shall 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 board meeting either prospectively or retrospectively".

16.6.2 Any Director or his alternate may validly participate in a meeting of the Directors or a committee of Directors through the medium of conference telephone or similar form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout such meeting. A person participating in this way is deemed to be present in person at the meeting and is counted in a quorum and entitled to vote. Subject to the Act, all business transacted in this way by the Directors or a committee of the Directors is for the purposes of the Articles deemed to be validly and effectively transacted at a meeting of the Directors or of a committee of the Directors, although fewer than two Directors or alternate directors are physically present at the same place. The meeting is deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is.

16.6.3 Meetings of the board of Directors shall take place no less frequently than once per calendar month and at least five working days' notice shall be given to each Director provided that with the consent of a majority of the Directors,



including the written consent of the Alchemy Director, board meetings may be held less frequently and convened on less notice.

**16.6.4** If and for so long as there is a sole Director, he may exercise all the powers conferred on the Directors by the Articles by resolution in writing signed by him and regulations 88, 89, 91 and 93 of Table A and Article 16.6.2 shall not apply.

**16.6.5** 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. The Director shall be counted in the quorum present when any such resolution is under consideration and if he votes his vote shall be counted.

#### **16.7 Borrowing powers of Directors**

The Directors may exercise all the powers of the Company to borrow and raise money and to mortgage and charge all or any part of the undertaking, property and uncalled capital of the Company and, subject to the provisions of the Act, to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

#### **16.8 Dividends**

The Directors may deduct from any dividend or other monies payable to a person in respect of a share any amounts due from him to the Company on account of a call or otherwise in relation to a share.

## **16.9 Capitalisation of profits**

The Directors may, with the authority of any ordinary resolution of the Company, resolve that any shares allotted under regulation 110 of Table A to any member in respect of a holding by him of any partly paid shares rank for dividends, so long as those shares remain partly paid, only to the extent that those partly paid shares rank for dividend and regulation 110 of Table A is modified accordingly.

## **16.10 Notices**

**16.10.1** Regulation 112 of Table A is modified by the deletion of the last sentence and the substitution for it of the following: "A member whose registered address is not within the United Kingdom shall be entitled to have notices given to him at that address".

**16.10.2** A notice sent by post to an address within the United Kingdom is deemed to be given 24 hours after posting, if pre-paid as first class, and 48 hours after posting, if pre-paid as second class. A notice sent by post to an address outside of the United Kingdom is deemed to be given four days after posting, if pre-paid as airmail. Proof that an envelope containing the notice was properly addressed, pre-paid and posted is conclusive evidence that the notice was given. A notice not sent by post but left at a member's registered address is deemed to have been given on the day it was left.

**16.10.3** Regulation 116 of Table A is modified by the deletion of the words "within the United Kingdom".

**16.10.4** Where the Articles require notice to be given by the holders of stated percentage of shares, notice may consist of several documents in similar form each signed by or on behalf of one or more shareholders.

## **16.11 Indemnity**

**16.11.1** Subject to the provisions of the Act, but without prejudice to an indemnity to which, he may otherwise be entitled, every Director, alternate director or secretary of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses and liabilities incurred by him in the proper execution of his duties or the proper exercise of his powers, authorities and discretions including, without limitation, a liability incurred defending proceedings (whether civil or criminal) in which judgement is given in his favour or in which he is acquitted or which are otherwise disposed of without a finding or admission of material breach of duty on his part, or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

**16.11.2** The Directors may, exercise all the powers of the Company, to purchase and maintain insurance for the benefit of a person who is a Director, alternate Director, secretary or auditor or former Director, alternate director, secretary or auditor of the Company or of a company which is a subsidiary of the Company or in which the Company has an interest (whether direct or indirect) or who is or was trustee of a retirements benefit scheme or another trust in which a Director, alternate director or secretary or former Director, alternate director or secretary is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the Company.

## **17. RELATIONSHIP TO CREDIT AGREEMENT**

Each of these Articles is subject to the terms of the Subordination Agreement and the Credit Agreement, which terms shall prevail to the extent that they conflict with these Articles.

Alchouse/Idem&art 2 July