

Company Number: 3879766

**THE COMPANIES ACT 1985 TO 1989**

**COMPANY LIMITED BY SHARES**

**WRITTEN RESOLUTION**

of

**GRAVITY MEDIA GROUP LIMITED**

**(pursuant to s.381A of the Companies Act 1985)**

I, the undersigned, being the sole member of the above named Company who, at the date of this resolution, would be entitled to attend and vote at general meetings of the Company, hereby pass the following resolutions as a ordinary and special resolutions respectively and agree that the said resolution shall, for all purposes, be as valid and effective as if the same had been passed by me at a general meeting of the Company duly convened and held:-

**ORDINARY RESOLUTION**

That the authorised share capital of the Company be increased from £10,000 to £500,000 by the creation of an additional 61,327 Ordinary shares of £1 each, 378,673 "A" Ordinary shares of £1 each and 50,000 "B" Ordinary Shares of £1 each which shares shall confer upon the holders thereof the respective rights set out in the new Articles of Association of the Company adopted by the Special Resolution set out below.

**SPECIAL RESOLUTION**

That the Articles of Association contained in the printed document produced to the meeting marked "A" and for the purpose of identification signed by the Chairman thereof be and the same are hereby approved and adopted as the Articles of Association of the Company in substitution for and to the exclusion of all the existing Articles of Association of the Company.

  
.....  
John Newton

Date: 29 February 2000

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We being the auditors to the above named Company hereby:-

- (a) acknowledge that a copy of the attached Resolution has been sent to us; and
- ~~\*(b) notify the Company that in our opinion the above Resolution does not concern us as auditors; or~~
- \*(c) notify the Company that in our opinion the above Resolution does concern us as auditors but need not be considered by the Company in general meeting.

\* delete as appropriate

*Grant Thornton*

"A"

*Resheet  
BAC Min*

DATED 29 February 2000

GRAVITY MEDIA GROUP LIMITED

**NEW ARTICLES OF ASSOCIATION**

Adopted by Written Resolution  
passed on 29 February 2000

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# NEW ARTICLES OF ASSOCIATION

-of-

GRAVITY MEDIA GROUP LIMITED



(Adopted by Special Resolution passed on 29 February 2000)

## 1. INTERPRETATION

1.1 Subject as provided in paragraph 1.2 below, the regulations contained in Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No 805) shall, together with the following regulations, constitute the articles of association of the Company.

1.2 Regulations numbered 73 to 80 (both inclusive) in Table A shall not apply to the Company.

1.3 In these Articles:

- (a) headings are used for convenience only and shall not affect the construction hereof;
- (b) words and expressions which are defined in Table A shall bear the same meaning where used herein and, unless the context otherwise requires or save as otherwise provided herein, words and expressions contained herein shall bear the same meaning as in the Act;
- (c) if there is any conflict or inconsistency between any provision in Table A which is applicable to the Company and any provision set forth herein the latter shall prevail;
- (d) the following words and expressions shall have the following meanings:

**"A Ordinary Shares"** A Ordinary Shares of £1 (one pound) each in the capital of the Company having rights as set out in these Articles;

**the "Act"** the Companies Act 1985 and every statutory modification or re-enactment thereof and statutory instrument relevant thereto or derived therefrom for the time being in force;

**"Associate"** shall have the following meaning:-

- i) the husband, wife, mother, father, grandmother, grandfather, brother, sister, child (including adopted child) or other lineal descendant of any relevant person;

- ii) the trustees of any settlement set up by any relevant person provided that only the relevant person, or such persons who are in a relationship referred to in (i) above to the relevant person are or are capable of being a beneficiary or beneficiaries thereof;
- iii) any nominee of a relevant person; and
- iv) any subsidiary or holding company of any company or corporation which is for the time being a Member and any other subsidiary of any such holding company.

**"these Articles"** these articles of association as amended from time to time;

**"B Ordinary Shares"** B Ordinary Shares of £1 (one pound) each in the capital of the Company having rights as set out in these Articles;

**"Controlling Interest"** the meaning ascribed thereto in Article 6.2;

the **"Directors"** the directors for the time being of the Company as a body, or a quorum of the Directors present at a meeting of the Directors;

**"Employee Benefit Trust"** means any trust which may be established from time to time 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 "employee benefit trust" set out in section 743 of the Companies Act;

**"Equity Majority"** the holders of more than one half of the Equity Shares at the relevant time;

**"Equity Shares"** Ordinary Shares, A Ordinary Shares and B Ordinary Shares and the expression "Equity Share Capital" shall be construed accordingly;

**"Executive"** John Newton;

**"Facilities Agreement"** means a facility agreement dated on or about the date of the adoption of these Articles and made between inter alia (1) the Company and (2) Barclays Bank PLC (together with its transferees, successors and assigns) as the same may be supplemented, varied or amended hereafter;

**"Group"** the Company and its subsidiary undertakings from time to time and the expression Group Company shall be construed accordingly;

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

**"Member"** any holder for the time being of shares in the capital of the Company of whatever class;

**"Ordinary Shares"** Ordinary Shares of £1 (one pound) each in the capital of the Company having rights as set out in these Articles;

**"Prescribed Period"** the period during which an offer to sell the Sale Shares under Article 5 must be accepted;

**"Redemption Price"** means in respect of all the B Ordinary Shares an aggregate amount calculated as at the date of redemption as follows:

- (i) £640,000 in the first Year;
- (ii) £744,000 in the second Year;
- (iii) £848,000 in the third Year;
- (iv) in each subsequent Year, the Redemption Price shall be increased at the end of each Year by 6 per cent of the Redemption Price in the previous Year.

**"Year"** means each consecutive period of 12 months from the date of adoption of these Articles.

**"Shares"** (unless the context does not so admit) shares in the capital of the Company (of whatever class);

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~~**"Share Sale"** the completion of any transaction or series of transactions whereby any person or connected persons or group of persons acting in concert purchases or otherwise acquires or obtains not less than 90 per cent in nominal value of the Equity Shares; and~~

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~~**"Take over"** the acquisition by a Buyer (as defined in Article 6.2) of a Controlling Interest or the sale or other disposal of the whole or substantially the whole of the undertaking of the Company (other than to a wholly owned subsidiary of the Company).~~

- 1.4 A special or Extraordinary Resolution shall be effective for any purpose for which an Ordinary Resolution is expressed to be required under any provision of these Articles or the Act.

## 2. SHARE CAPITAL

The authorised share capital of the Company at the date of adoption of these Articles is £500,000 divided into 71,327 Ordinary Shares of £1 each, 378,673 A Ordinary Shares of £1 each, and 50,000 B Ordinary Shares of £1 each.

## 3. SHARE RIGHTS

- 3.1 The Ordinary Shares, the A Ordinary Shares and the B Ordinary Shares shall be separate classes of shares but save as otherwise expressly provided in these Articles shall have the same rights and privileges and shall rank *pari passu* in all aspects.
- 3.2 The Ordinary Shares shall confer on the holders thereof (in that capacity) the right to receive notice of and to attend, speak and vote at all general meetings of the Company and each such share shall carry one vote.
- 3.3 The holders of the A Ordinary Shares shall each be entitled to receive notice of and to attend and speak at all general meetings of the Company but not to vote at such meetings.
- 3.4 Subject to Article 10, notwithstanding any other provision in these Articles the holders of the B Ordinary Shares:-
- 3.4.1 shall each be entitled to receive notice of and to attend and speak at all general meetings of the Company but not to vote at such meetings; and
- 3.4.2 shall as a class be entitled to an aggregate dividend equal to 10 (ten) per cent of the profits or reserves which the Company may determine to distribute from time to time whether by final or interim dividend or otherwise; and
- 3.4.3 shall on a return of capital or assets of the Company upon a liquidation or otherwise be entitled to 10 (ten) per cent of the surplus assets of the Company remaining after the payment of its liabilities.
- 3.5 Subject to Article 10, notwithstanding any other provision in these Articles the rights attached to the A Ordinary Shares ~~and the B Ordinary Shares respectively~~ may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up with the prior written consent of a majority of the holders of the A Ordinary Shares ~~or the B Ordinary Shares respectively~~ but not otherwise. Without prejudice to the generality of these Articles the rights attached to the A Ordinary Shares ~~and the B Ordinary Shares~~ shall be deemed to be varied by any increase or alteration or variation or reduction (by purchase or redemption of shares or otherwise) or sub-division or consolidation of the authorised or issued share capital of the Company or any of its subsidiaries or the passing of any resolution making any alteration to any of the provisions of the Memorandum or Articles of Association of the Company or any of its subsidiaries which has the effect of creating any shares having the same rights as the A Ordinary



~~Shares or the B Ordinary Shares respectively~~ relating to dividends and/or profits or having greater or additional rights to dividends and/or profits or by any disposal of the undertaking of the Company or any subsidiary pursuant to a group reorganisation or by anything which otherwise has the effect of decreasing in whole or in part the rights or value attached to the A Ordinary Shares ~~or the B Ordinary Shares respectively~~.

- 3.6 Subject to Article 10, notwithstanding any other provision in these Articles the rights attached to the ~~A Ordinary Shares and the B Ordinary Shares respectively~~ may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up with the prior written consent of a majority of the holders of the ~~A Ordinary Shares or the B Ordinary Shares respectively~~ but not otherwise. Without prejudice to the generality of these Articles the rights attached to the ~~A Ordinary Shares and the B Ordinary Shares~~ shall be deemed to be varied by any increase or alteration or variation or reduction (by purchase or redemption of shares or otherwise) or sub-division or consolidation of the authorised or issued share capital of the Company or any of its subsidiaries or the passing of any resolution making any alteration to any of the provisions of the Memorandum or Articles of Association of the Company or any of its subsidiaries which has the effect of creating any shares having the same rights as the ~~A Ordinary Shares or the B Ordinary Shares respectively~~ relating to dividends and/or profits or having greater or additional rights to dividends and/or profits or by any disposal of the undertaking of the Company or any subsidiary pursuant to a group reorganisation or by anything which otherwise has the effect of decreasing in whole or in part the rights or value attached to the ~~A Ordinary Shares or the B Ordinary Shares respectively~~.
- 3.7 Subject to the provisions of the Act, the B Ordinary Shares shall be redeemable in whole but not in part at any time by the Company at its option at the Redemption Price by notice in writing to the holders of the B Ordinary Shares payment of the Redemption Price being payable in cash on completion of the purchase.

#### 4. SHARE TRANSFERS

##### Registration of Transfers

- (a) The Directors may refuse to register the transfer of any Share to a person who is (or whom the Directors reasonably believe to be) under 18 years of age ~~or who does not have (or who the Directors reasonably believe does not have)~~ the legal capacity freely to dispose of any Share without hindrance or court approval.
- (b) The Directors shall refuse to register the transfer of any Share, not being such a transfer as is permitted under paragraph (c) below (a "Permitted Transfer"), or purported to be made other than in accordance with or as permitted under Article 5 or 6.

##### Permitted Transfers

- (c) Subject to paragraphs (a) and (b) above and to Article 6, a Member may at any time transfer any Share (but not further or otherwise):
- i) to a person who is the beneficial owner of such Share or to a different or additional nominee or trustee on behalf of such beneficial owner provided that such person has not become the beneficial owner thereof in circumstances where a Transfer Notice (as hereinafter defined) should have been but was not given; or
  - ii) to an Associate (within the meaning of paragraphs (i) and (ii) (only) of the definition of "Associate" contained in Article 1.3(d)) of such Member provided that in this case the Shares shall be retransferred within 7 days to the transferor if the transferee is not or shall cease to be an Associate of the transferor, failing any of which a Mandatory Transfer Notice shall be deemed to have been served by the holder in relation to all Shares transferred or purportedly transferred to such transferee on the date of notification to him of the breach of this paragraph; or
  - iii) with the prior consent in writing of an Equity Majority.

## 5. PRE-EMPTION PROCEDURE

### Transfer Notice

- (a) Except in the case of a Permitted Transfer, the right to transfer or otherwise dispose of a Share or any interest in or arising from a Share (an option or other like right to acquire any Share (whether by subscription or otherwise) being deemed to be an interest in a Share for this purpose) shall be subject to the following restrictions and provisions, namely:
- i) before transferring or disposing of any Share or any interest in or arising from any Share or any rights attaching thereto, the person proposing to transfer or dispose of the same (a "Proposing Transferor") shall give a notice in writing (a "Transfer Notice") to the Company specifying the Shares, interest and/or rights of which the Proposing Transferor wishes to dispose. Notwithstanding that a Transfer Notice specifies that the Proposing Transferor wishes to dispose only of an interest in or arising from, and/or any right(s) attaching to, the Shares referred to therein, the Transfer Notice shall (regardless of any provisions in the Transfer Notice to the contrary) unconditionally constitute the Company the agent of the Proposing Transferor for the sale of all the legal title to, beneficial ownership of and all interests and rights attaching to the Shares referred to therein (the "Sale Shares") at the Sale Price during the Prescribed Period (as those terms are hereinafter defined) in accordance with the provisions of this Article. A Transfer Notice shall not be revocable except with the consent of the Directors. Except in the case of any Transfer Notice which a Member is bound to give or is deemed to have given pursuant to this Article (a "Mandatory Transfer Notice"), a Transfer Notice may include a condition (a "Total Transfer Condition") that if all the Sale Shares (of whatever class) are not sold to Members and/or

such other persons as are referred to in sub-paragraph (iv) below, then none shall be so sold. If a Total Transfer Condition is included then any offer of Sale Shares shall be made subject to sub-paragraph (vi) below. Shares of different classes may not be included in the same Transfer Notice (other than a Mandatory Transfer Notice).

ii) except in the case of a Mandatory Transfer Notice, if the Proposing Transferor is proposing to transfer all his legal title to, beneficial ownership of and all other interests and rights attaching to the Sale Shares the Transfer Notice may state, in addition to details of the Sale Shares:

(aa) the name or names of a person or persons (such person or persons being hereinafter referred to as the "Proposing Transferee") to whom the Sale Shares (or an interest or right therein or arising therefrom) are proposed to be transferred if the Sale Shares are not acquired by Purchasers (as hereinafter defined); and

(bb) the entire consideration per Share for which any such transfer or transfers will be made (and, if any of the said consideration is not a cash price expressed in pounds sterling a cash price per share which is so expressed and which is reasonably commensurate with the entire consideration);

and in such event, subject to the Directors being satisfied (and to that end being provided with such evidence as they may reasonably require) that the price is a bona fide price (not inflated for particular reasons) agreed between the Proposing Transferor and the Proposing Transferee at arms length and in good faith, the said price shall be the Sale Price and the Prescribed Period shall commence on the date on which the Transfer Notice is given and shall expire 60 days thereafter.

#### Price

iii) In the case of a Mandatory Transfer Notice or a Transfer Notice which does not state the further details referred to in sub-paragraph (ii) above:

(aa) if not more than 30 days after the date on which the Transfer Notice was given or was deemed or required to be given, the Proposing Transferor and the Directors shall have agreed a price per Share as representing the fair value of the Sale Shares or as being acceptable to the Proposing Transferor and not more than the fair value thereof, then such price shall be the Sale Price (subject to the deduction therefrom of any net dividend or other distribution declared or made after such agreement and prior to the said date) and the Prescribed Period shall commence on the date on which such agreement is reached and shall expire 90 days thereafter;

(bb) otherwise, upon the expiry of 30 days after the date on which

the Transfer Notice was given (or the date on which the Company became aware that the same had been deemed or had become required to be given) the Directors shall request an independent firm of accountants nominated by the Directors to determine and report the sum per Share considered by them to be the fair value of the Sale Shares and the sum per Share so determined and reported shall be the Sale Price and the Prescribed Period shall commence on the date on which the auditors shall so determine and report and shall expire 90 days thereafter. Such accountants shall act hereunder at the cost and expense of the Company as experts and not as arbitrators and their determination shall be final. For the purposes of these Articles, the fair value of Sale Shares shall be the market value thereof as between a willing buyer and a willing seller but disregarding the size of the holding of the Sale Shares and disregarding whether or not any voting rights are attached to the Sale Shares ~~whether the Sale Shares represent a minority shareholding.~~

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

- iv) *Save in relation to redemption of the B Ordinary Shares, and save as provided in the proviso to this sub-paragraph (iv), Sale Shares shall:*
- (aa) first be offered in writing by the Company to the holders for the time being of the A Ordinary Shares;
  - (bb) subject to (aa) above, thereafter be offered to the Company which shall have a period of 14 days during which the Directors may resolve that the Company shall make or keep the Sale Shares available for the persons referred to in Article 7 below;
  - (cc) subject to (bb) above, thereafter be offered in writing by the Company to the holders for the time being of the Ordinary Shares;
  - (dd) subject to (cc) above, thereafter be offered to the Company to purchase the Sale Shares pursuant to the provisions of part V of the Act in which case the Directors shall determine a timetable for such purchase and all parties and Members shall adhere thereto;
  - (ee) subject to (dd) above, thereafter be offered in writing by the Company to the holders for the time being of the B Ordinary Shares;

provided that the Company shall not be required to, and shall not, offer any Sale Shares to any person who remains a Member but who has been deemed to have given a Mandatory Transfer Notice on or prior to the date on which any such offer as is referred to in this sub-paragraph (iv) was made.

## Pre-emption Procedure

- v) Any such offer as is required to be made by the Company pursuant to sub-paragraph (aa), (cc) and (ee) of paragraph (iv) above shall state the Prescribed Period (not being less than 7 days or more than 28 days) during which the offer must be accepted or, in default, will lapse. Following any such offer, if acceptances are received in respect of an aggregate number of Shares in excess of that offered, the number of Sale Shares shall be allocated amongst those who have accepted the same in proportion to the number of Shares held by each acceptor (or in the case of any such offer made to persons who are not already Members on such basis as the Directors shall determine) provided that no acceptor shall be obliged to acquire more Sale Shares than the number for which he has applied and so that the provisions of this sub-paragraph shall continue to apply mutatis mutandis until all Shares which any such acceptor would but for this proviso have acquired on the proportionate basis specified above have been allocated accordingly.
- (vi) If a Transfer Notice shall validly contain a Total Transfer Condition then any such offer as aforesaid shall be conditional upon such condition being satisfied and no acceptance of an offer of Sale Shares will become effective unless such condition is satisfied.
- (vii) If, prior to the expiry of the Prescribed Period, the Company shall, pursuant to the foregoing provisions, find Members or other persons (hereinafter called "Purchasers") to purchase some or (if sub-paragraph (vi) shall apply) all of the Sale Shares and shall give notice in writing thereof to the Proposing Transferor he shall be bound, upon payment of the Sale Price, to transfer such Shares to the respective Purchasers. Every such notice shall state the name and address of the Purchaser or Purchasers and the number of the Sale Shares agreed to be purchased by him or them and the purchase shall be completed at a place and time to be appointed by the Directors not being less than 3 days nor more than 28 days after the date of such notice.
- (viii) If a Proposing Transferor shall fail or refuse to transfer any Sale Shares to a Purchaser hereunder, the Directors shall authorise some person to execute and deliver on his behalf the necessary transfer and the Company may receive the purchase money in trust for the Proposing Transferor and cause the Purchaser to be registered as the holder of such Shares. The receipt of the Company for the purchase money shall be a good discharge to the Purchaser (who shall not be bound to see to the application thereof) and after the Purchaser has been registered in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.
- (ix) If by the foregoing procedure the Company shall not, prior to the expiry of the Prescribed Period, find Purchasers willing to purchase some or (if sub-paragraph (vi) shall apply) all of the Sale Shares and

shall give notice in writing thereof to the Proposing Transferor, the Proposing Transferor, at any time thereafter up to the expiration of 60 days from the date of such notice, shall, subject as hereinafter provided, be at liberty to transfer those of the Sale Shares not purchased by Purchasers or all the Sale Shares (as the case may be) to the Proposing Transferee or, where the Transfer Notice is a Mandatory Transfer Notice or does not contain details of a Proposing Transferee, to any one person on a bona fide sale at any price not being less than the Sale Price. The Directors may require the Proposing Transferor to provide evidence to them (to their reasonable satisfaction) that such Shares are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer without any deduction, rebate, allowance or indulgent terms whatsoever to the purchaser thereof and, if not so satisfied, may refuse to register the instrument of transfer and/or serve a Disenfranchisement Notice with the effect set out in sub-paragraph (g)(i)(bb) below in respect of such Shares as shall have been so sold.

- (b) No Share and no interest or right in or arising from any Share may be sold, transferred or otherwise disposed of to any person unless a transfer of such Share or interest or right to such person would rank as a Permitted Transfer or as a transfer permitted pursuant to paragraph (a) of this Article. If the foregoing provisions shall be infringed the holder of the Shares concerned shall, unless the Directors otherwise determine, be deemed to have given, on the date on which the Directors become aware of such infringement, a Mandatory Transfer Notice in respect of all Shares of which such person and any Associate(s) of such person is then the holder.

#### **Deceased and Bankrupt Shareholder Provisions**

- (c) If any person becomes entitled to Shares in consequence of the death, bankruptcy or liquidation of a Member then (unless the transfer to him ranks as a Permitted Transfer ) a Mandatory Transfer Notice or Notices shall be deemed to have been given on the date on which the Directors became aware that such entitlement has arisen in respect of all Shares held by the Member and any Associate(s) of such Member. For the avoidance of doubt, death constitutes a Good Leaver under Article 5(d)(iii) below.

#### **Employee Compulsory Transfer**

- (d)
  - i) If at any time any director of, employee of or consultant to the Company or any subsidiary of the Company (other than the Executive) shall cease to be an employee of or consultant to the Company or any subsidiary of the Company (for whatever reason) and such person and/or any Associate(s) of such person shall be a Member of the Company, then unless an Equity Majority resolves otherwise at the relevant time) there shall be deemed to have been given on the date of such cessation a Mandatory Transfer Notice in respect of all Shares then held by such person and any Associate(s) of such person.

- ii) Upon deemed service of a Mandatory Transfer Notice pursuant to Article 5 (d)(i) above the provisions relating to the transfer price of Sale Shares shall apply save that:
  - (aa) subject to paragraph (bb) below if such director, employee or consultant shall not be a Good Leaver then the price shall be the lower of the price determined as aforesaid and the price subscribed for each Sale Share; and
  - (bb) if he shall resign or be dismissed following a reasonable determination of dishonesty following an allegation of fraud proven in court or where admitted by the employee then the price shall be the lower of the price determined as aforesaid and £1 for each Sale Share.
- iii) For the purposes of Article 5(d)(ii) above, a "Good Leaver" is a member who ceases to be an employee, or consultant of the Company as a result of death, redundancy or incapacity; or who resigns or is dismissed not arising out of a reasonable determination of dishonesty (following an allegation of fraud proven in court or where admitted by the employee) after 1 January 2003; or who resigns or is dismissed in circumstances which constitute unfair dismissal (other than unfair dismissal arising solely as a result of a procedural defect on the part of the Company); or in any other circumstances which an Equity Majority in its reasonable discretion so determines. For the avoidance of doubt, the price for the Sale Shares shall be as determined under Article (5)(a)(iii).

For the avoidance of doubt this Article 5(d) shall not apply in relation to B Ordinary Shares.

#### **Corporate Compulsory Transfer**

- (e) If a corporation which is a holder and/or beneficial owner of any Ordinary or A Ordinary Shares ceases to be controlled by the person or persons who were in control of the corporation at the time when such corporation became such holder and/or owner, it shall, within 7 days of such cessation of control, give notice in writing to the Company of that fact and there shall be deemed to have been given as from the date on which the Directors became aware of such cessation a Mandatory Transfer Notice in respect of all Ordinary or A Ordinary Shares held and/or owned by such corporation and any Associate(s) of such corporation. For the purposes of this paragraph "control" shall carry the same meaning as in section 840 Income and Corporation Taxes Act 1988. For the avoidance of doubt this Article 5(e) shall not apply in relation to B Ordinary Shares.
- (f) Subject to the proviso in Article 4(c) (ii), if a person in whose favour a Permitted Transfer was made pursuant to Article 4(c)(ii) shall cease to be an Associate of the person by whom such transfer was made then he shall, within 7 days of such cessation, give notice in writing to the Company of that fact and, unless the Directors determine otherwise at the relevant time, there

shall be deemed to have been given as from the date on which the Directors become aware of such cessation (however they become so aware) a Transfer Notice in respect of all Shares held by such person (as is first-mentioned in this Article 5(f)) and any Associate(s) of such person.

#### **Evidence of Transfer/Deemed Transfer**

(g)

- i) For the purpose of ensuring that a transfer of Shares is a Permitted Transfer or that no circumstances have arisen whereby a Transfer Notice is required or deemed to be given hereunder, the Directors may from time to time require any Member or the personal representatives of any deceased Member or any person named as transferee in any transfer lodged for registration or any Associate of any of the foregoing to furnish to the Company such information and evidence as the Directors may think fit regarding any matter which they may deem relevant to such purpose. Failing such information or evidence being furnished to the reasonable satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled:
  - (aa) to refuse to register the transfer in question or, in case no transfer is in question, to require by notice in writing that a Transfer Notice be given by the holders of the relevant Shares in respect of all such Shares. If such information or evidence discloses that a Transfer Notice ought to have been given in respect of any Shares the Directors may by notice in writing require that a Transfer Notice be given or state that a Mandatory Transfer Notice shall be deemed to have been given by the holders of those Shares or their Associates in respect of all of such Shares; and/or
  - (bb) to serve upon the holder(s) of the Shares in question a notice (a "Disenfranchisement Notice") stating that such Shares shall as from the date of service of such Disenfranchisement Notice on such holder no longer confer any right to attend, speak or vote at any general meeting of the Company or at any class meeting or to receive or be entitled to receive any dividend or other distribution until such time as the Directors shall think fit and, as from such date, such Shares shall no longer confer any such rights accordingly.
- ii) In any case where the Directors have duly required a Transfer Notice to be given in respect of any Shares or any one or more Members have become bound to give a Transfer Notice and such Transfer Notice is not duly given within a period of 14 days (or such longer period (if any) as the Directors may allow for the purpose) a Mandatory Transfer Notice shall (except and to the extent that a Permitted Transfer of any of such Shares shall have been lodged), be deemed to have been given on such date after the expiration of the said period as the Directors may by resolution determine and the



provisions of this Article relating to transfers shall apply accordingly.

- (h) The provisions of this Article 5 shall take effect subject to the provisions of Article 6.

## 6. LIMITATION ON THE TRANSFER OF A CONTROLLING INTEREST

### Tag Along

6.1 Subject to Article 10, notwithstanding anything to the contrary contained in these Articles, no Buyer (as hereinafter defined) shall be entitled or permitted to acquire, and no holder shall transfer, any Equity Shares ("Specified Shares") if, as a result, a Buyer would acquire a Controlling Interest in the Company unless and until the Buyer has first made a bona fide, arms length Offer to all the holders of ~~all~~ Equity Shares in the Company at the relevant time (of whatever class) (other than the Buyer if he is already such a holder) to purchase from them for cash at the ~~same~~ Specified Price their entire holdings of Shares in the capital of the Company and unless before or at the same time as the transfer of the ~~Equity~~Specified Shares in question is approved by the directors (subject to stamping) each such accepted Offer is ~~completed and the consideration due thereunder on completion thereof at that~~ time paid.

6.2 For the purposes of this Article 6:

- (a) the expression "Buyer" means any one person (not being an Investor as defined in the Facilities Agreement or an Associate of an Investor) but so that any Associate of any such person shall be deemed to be such person;
- (b) the expression "acquire" means to be or become the legal or beneficial owner of Shares, whether directly or indirectly and whether by the issue, transfer, renunciation or conversion of shares or otherwise and whether all at one time or not;
- (c) the expression a "Controlling Interest" means Shares (or the right to exercise the votes attaching to Shares) which confer in the aggregate in the case of Article 6.1 more than 50% and in the case of Article 6.3 more than 75% of the total voting rights conferred by all the Shares in the capital of the Company for the relevant time being in issue and conferring the right to vote at all general meetings;
- (d) the expression "Specified Price" means in relation to Ordinary Shares and A Ordinary Shares a price per share equal to the highest price paid or payable by the Buyer or persons acting in concert with him or connected with him for any Shares within the last twelve months plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of the Specified Shares which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Specified Shares.

The expression "Specified Price" means in relation to B Ordinary Shares an amount equal to 10% of a sum calculated by multiplying the Specified Price in relation to each Ordinary Share and A Ordinary Share (calculated as provided above) by the number of Equity Shares in issue and under option.

If any part of the Specified Price is payable otherwise than in cash any holder of B Ordinary Shares may require, as a condition of his acceptance of the Offer made under this Article, to receive in cash all or any of the price offered for the shares sold by him pursuant to the Offer.

If the Specified Price or its cash equivalent cannot be agreed within 21 days of the proposed sale or transfer between the Buyer and the members holding 75 (seventy five) per cent of the class of shares concerned (excluding the Buyer and persons who have waived their right to receive the Offer) it may be referred by any member to an independent firm of accountants to be nominated by the Directors following a request by such member. The costs of the independent firm of accountants shall be paid as it may direct.

- (e) Any such offer as is referred to in Articles 6.1 and 6.3 (an "Offer") must be made in writing, must be open for acceptance for a period of not less than 30 days and must not be subject to any condition, and in the case of the B Ordinary Shares must not require the holders to give any warranties, representations, undertakings or restrictive or other covenants in relation to the sale of the B Ordinary Shares;
- (f) if within 120 days of the making of an Offer the Buyer has not acquired a Controlling Interest then such Offer shall be deemed not to have been made to the extent that the Buyer shall not be entitled to acquire a Controlling Interest at any time thereafter unless and until he has made a further Offer.

#### **Drag Along**

- 6.3 If a Buyer makes ~~ana bona fide~~ arms length Offer pursuant to which any one or more of the holders of Equity Shares wish to transfer any interest which together will result in the Buyer owning a Controlling Interest then the Buyer may give written notice to those Members who have not accepted or not been subject to the Offer requiring them so to do, and each of such Members shall upon the giving of such notice (i) be deemed to have accepted the same in respect of all Shares held by him for cash at the Specified Price and (ii) become obliged to deliver up to the Buyer an executed transfer of such Shares and the certificate(s) in respect of the same.
- 6.4 If any such Member as is referred to in Article 6.3 shall not, within 14 days of becoming required to do so, execute transfers in respect of the Shares held by such Member, then the Directors shall be entitled to, and shall, authorise and instruct some person to execute the necessary transfer(s) on his behalf and, against receipt by the Company (on trust for such Member) of the

Specified Price payable for the relevant Shares, deliver such transfer(s) to the Buyer (or its agents) and, after the Buyer (or its nominees) has been registered as the holder of such Shares, the validity of such proceedings shall not be questioned by such Member.

## **General**

6.5 All other regulations of the Company relating to the allotment, issue, conversion or transfer of Shares and, in the case of transfers, the right to registration of transfers shall be read subject to the provisions of this Article 6 PROVIDED ALWAYS THAT Article 6.1 will not apply to a transfer of Shares pursuant to Article 4(c)(i) or (ii).

6.6 For the purpose of ensuring:

(a) that no Buyer has acquired or may acquire a Controlling Interest otherwise than as permitted by this Article (and to that end for the purpose of determining whether one person is an Associate of another); or

(b) that a price offered or proposed to be offered for any Shares is the Specified Price;

the Directors may from time to time require any Member to furnish to the Company such information and evidence as the Directors may reasonably think fit regarding any matter which they may deem relevant for such purposes.

## **7. WAREHOUSING OF SHARES AND TRANSFERS TO EMPLOYEES**

7.1 If a Transfer Notice is given or deemed to be given pursuant to these Articles then the Directors shall forthwith notify all the members of the Company in writing and shall if so required by the Directors within the 14 day period set out in Article 5(a)(iv)(bb) give written notice to the Company (an "Employee Priority Notice") requiring that all or any of the shares to which such Transfer Notice relates should be offered to any of the following:

7.1.1 any person or persons who is or are (an) existing Director(s) and/or employee(s) of the Company or of any member of the Group (an "Existing Employee");

7.1.2 a person or persons (whether or not then ascertained) whom it is proposed should be appointed as (a) Director(s) and/or employee(s) of the Company or of any member of the Group (a "New Employee");

7.1.3 two or more persons to be held on trust as set out in Article 7.2.2;

7.1.4 the Trustees of any Employee Benefit Trust.

and (in the case of offers pursuant to Articles 7.1.1 and 7.1.2 (or either or them) the Employee Priority Notice shall state the proportions in which such shares are to be offered to each Existing Employee and/or New Employee. The Company shall advise the Proposing Transferor and all other Members

in writing of the Employee Priority Notice within 7 days after receiving the same.

7.2 Within 8 weeks after the date on which an Employee Priority Notice is given, the shares subject to it (the "Employee Shares") shall either:

7.2.1 be offered by the Company to the person(s) (and if more than one, in the proportions) specified in the Employee Priority Notice (conditional, in the case of any prospective Director and/or employee upon the taking up of his proposed appointment with the Company or any member of the Group); or

7.2.2 if the relevant Employee Priority Notice so requires, be offered by the Company to not less than two persons designated by the Directors to be held (in the event of their acquiring the Employee Shares) on trust for any one or more Existing Employees or for New Employees as and when appointed (but so that in the latter case payment for the Employee Shares shall only be made at the time when the same are transferred to a New Employee and not on transfer to the persons holding such Employee Shares on trust or (if earlier) within six months of the date of the Employee Priority Notice); or

7.2.3 if the relevant Employee Priority Notice requires, be offered by the Company to the trustees of any Employee Benefit Trust.

7.3 Any offer made by the Company pursuant to Article 7.2 shall state that the offer must be accepted within 14 days or in default will lapse.

7.4 If a Transfer Notice validly contains a Total Transfer Condition Article 5(a)(vi) shall apply mutatis mutandis.

7.5 If an offer made pursuant to Article 7.2 is accepted in respect of some or (if Article 7.4 shall apply) all of the Employee Shares the Company shall give notice in writing of the same to the Proposing Transferor and the provisions of Articles 5(a)(vii) and 5(a)(viii) shall apply mutatis mutandis as if such persons were Purchasers save that in the case of a transfer pursuant to an offer made under Article 7.2.2 the Proposing Transferor shall be bound to transfer Employee Shares to the respective Purchasers pursuant to Article 5(a)(viii) and the Directors shall be entitled to exercise the powers conferred on them under Article 5(a)(viii) despite the fact that payment for such shares may not be made until a later date in accordance with the provisions of Article 7.2.2

7.6 If on the expiry of 12 weeks after the date of the Employee Priority Notice any Employee Shares have not been transferred pursuant to an offer made under Article 7.2 such Shares shall forthwith be offered by the Company to its Members in accordance with the provisions of Article 5(a)(iv)(bb) and the provisions of Articles 5(a)(iv) to 5(a)(ix) shall apply mutatis mutandis.

## **8. APPOINTMENT AND REMOVAL OF DIRECTORS**

Either the Company by Ordinary Resolution or the Directors may appoint a person, who is willing, to be a director, provided that the appointment does not cause the

number of directors to exceed any maximum number fixed in accordance with these Articles. Any Director may be removed by Ordinary Resolution.

## **9. INDEMNITY**

9.1 Subject to the provisions of the Act, every director, auditor, secretary or other officer of the Company shall be entitled to be indemnified by the Company out of its own funds for all costs, charges, losses, expenses and liabilities incurred by him in the actual or purported execution and/or discharge of his duties and/or the exercise or purported exercise of his powers and/or otherwise in relation to or in connection with his duties, powers or office including (without prejudice to the generality of the foregoing) any liability incurred by him in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as officer or employee of the Company and in which judgment is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omission in which relief is granted to him by the Court.

9.2 Without prejudice to the provisions of Article 9.1 above, the Directors shall have the power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time directors, officers, employees or auditors of the Company or of any subsidiary undertaking of the Company including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or the exercise or purported exercise of their powers and/or otherwise in relation to or in connection with their duties, powers or offices in relation to the Company or any such subsidiary undertaking.

9.3 Subject to the provisions of the Act, a Director shall (in the absence of some other material interest as is indicated below) be entitled to vote (and be counted in the quorum) in respect of any resolution concerning any proposal concerning any insurance which the Company is empowered to purchase and/or maintain for or for the benefit of any Directors provided that for the purposes of this Article 9.3 insurance shall mean only insurance against the liability incurred by a Director in respect of any such act or omission by him as is referred to in Article 9.2 above or any other insurance which the Company is empowered to purchase and/or maintain for or for the benefit of any groups of persons consisting of or including Directors.

## **10. RELATIONSHIP TO FACILITIES AGREEMENT**

10.1 The provisions of Article 3 are for the avoidance of doubt subject to the following provisions of this Article 10.

10.2 Notwithstanding any other provisions of these Articles no payment shall be declared or made by the Company by way of dividend or other distribution, purchase, redemption, reduction or return of shares or capital or by addition to or repayment of any divided reserve if and to the extent that such payment

Clauses 14.7.7 and/or  
14.7.8 of

is prohibited or restricted by the terms of the Facilities Agreement. No dividends or other distributions payable in respect of shares, whether pursuant to the provisions of these Articles or otherwise shall constitute a debt of the Company unless permitted to be paid in accordance with the Facilities Agreement. For the avoidance of doubt, if any dividend or other distribution is permitted to be paid in accordance with Clauses 14.7.7 and/or 14.7.8 of the Facilities Agreement and is declared, it will be dealt with in accordance with Article 3.4.2.

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- 10.3 Where any dividend or redemption payment is not made because of the provisions of Article 10.2 such dividend shall be paid or redemption payment made upon the necessary consent being obtained or the bar thereon ceasing to apply.