

THE COMPANIES ACTS 1985 AND 1989

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COMPANY LIMITED BY SHARES

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WRITTEN RESOLUTIONS

of

PINCO 1604 LIMITED  
(the "Company")



We, being all the members of the Company who at the date of this resolution are entitled to attend and vote at general meetings of the Company, hereby unanimously RESOLVE that the following resolutions be passed as written resolutions of the Company, resolutions 1 and 2 having effect as ordinary resolutions and resolutions 3 and 4 having effect as special resolutions of the Company, in accordance with section 381A Companies Act 1985 and agree that the said resolutions shall for all purposes be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held:-

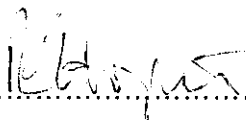
ORDINARY RESOLUTIONS

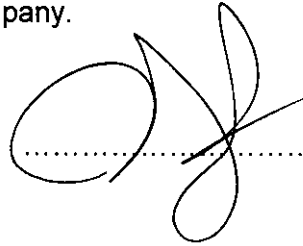
1. **THAT** the authorised share capital of the Company comprising £3,000 divided into 30,000 Ordinary Shares of 10 pence each, of which 28,000 are in issue, be and is increased from £3,000 to £5,436 by the creation of 137,862 A Ordinary Shares of 1 pence each and 35,474 B Ordinary Shares of 1 pence each and 7,020 Ordinary Shares at 10 pence each. All such shares are to have the rights set out in the New Articles.
2. **THAT** in substitution for any previous authority, the Directors be hereby generally and unconditionally authorised, in accordance with section 80 Companies Act 1985 (the "**Act**") to exercise all powers of the Company to allot the unissued share capital of the Company provided that this authority will expire on the date being five years from the date on which this resolution is passed, but the Company may before this authority expires make an offer or agreement which would or might require relevant securities to be allotted after this authority expires and the Directors may allot relevant securities pursuant to such offer or agreement as if this authority had not expired.

SPECIAL RESOLUTIONS

3. **THAT** subject to the passing of resolution 3 above the Directors be hereby given power in accordance with section 95 of the Act to allot equity securities (within the meaning of section 94 of the Act) pursuant to the authority conferred by resolution 3 above as if section 89(1) of the Act did not apply to the allotment provided that such power shall expire on the date being five years from the date on which this resolution is passed unless previously renewed, varied or revoked by the Company in general meeting but the Directors may before such expiry make an offer or agreement which would or might require equity securities to be allotted after such expiry and the Directors may allot equity securities in pursuance of that offer or agreement as if this power had not expired.

4. **THAT** the regulations contained in the printed document now produced to the Meeting and for the purposes of identification initialled by the Chairman are hereby adopted as the Articles of Association of the Company in substitution for and to the exclusion of all existing Articles of Association of the Company.

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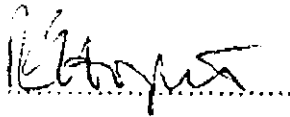
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Signed on 24 May 2001

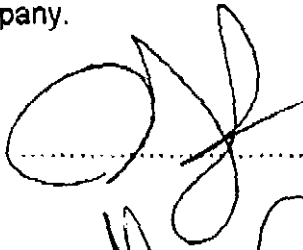

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4. **THAT** the regulations contained in the printed document now produced to the Meeting and for the purposes of identification initialled by the Chairman are hereby adopted as the Articles of Association of the Company in substitution for and to the exclusion of all existing Articles of Association of the Company.

  
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Signed on 24 May 2001

  
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Company No 4191096

COMPANIES HOUSE

20/05/01

THE COMPANIES ACTS 1985 AND 1989

COMPANY LIMITED BY SHARES

NEW ARTICLES OF ASSOCIATION

of

PINCO 1604 LIMITED

**CERTIFIED A TRUE COPY**

SIGNED *PCB* ..... DATE *04/06/01*

Pincent  
Curtis  
Biddle

**SOLICITORS**

DASHWOOD HOUSE, 69 OLD BROAD STREET  
LONDON EC2M 1NR

(Adopted by special resolution on *May 2001*)  
TEL No: +44 (0)20 7418 7000 FAX No: +44 (0)20 7418 7050

PRELIMINARY

1.1 In these Articles:-

""A" Loan Stock"	means the A loan stock of £14,964,814 issued or to be issued to the Investors by Pinco pursuant to the "A" Loan Stock Instrument
""A" Loan Stock Instrument"	means the £14,964,814 variable rate unsecured A loan stock 2008 instrument
"Acquisition Agreement"	means the agreement between the Sellers (1), Rotch (2) and the Company (3) for the acquisition of Preferred Mortgages Limited
"Act"	means the Companies Act 1985 and every statutory modification or re-enactment thereof for the time being in force
"A Ordinary Shares"	means the A Ordinary Shares of one penny each in the capital of the Company
"Annual Business Plan"	means the business plan adopted by the directors of the Company from time to time in accordance with the terms of the Investment Agreement
""B" Loan Stock"	means the £3,850,284 variable rate unsecured "B" loan stock 2008 issued or to be issued to Rotch and SKT by Pinco pursuant to the "B" Loan Stock Instrument
""B" Loan Stock Instrument	means the £3,850,284 variable rate unsecured "B" loan stock 2008 instrument

**"B Ordinary Shares"**

means the B Ordinary Shares of one penny each in the capital of the Company

**"Bad Leaver"**

means an Employee Member who ceases to be a director or employee of the Company or any of its subsidiaries and does not continue in that capacity in relation to any of them where such cessation occurs for one of the following reasons:-

- (a) termination in circumstances entitling the company to dismiss the Employee Member summarily in accordance with the provisions of Clause 15.2 of his service agreement;
- (b) breach by him of any of the material provisions of the Investment Agreement (other than any of the Warranties given by him under that Agreement) or of his service agreement which, if capable of remedy, has not been remedied within 30 days of a request by the Investor Manager so to do; or
- (c) breach by him of any of the Warranties given by him pursuant to the Investment Agreement arising by reason of a fraud, wilful non disclosure or wilful default capable of resulting in a claim in excess of £50,000.

**"Benefits"**

means all salary, fees and bonuses including sums paid by way of expenses allowance (if taxable), pension contributions, sums paid under long term incentive schemes and the cash value of benefits in kind

**"Board"**

means the board of directors of the Company for the time being

**"Cashflows"**

means the following (aggregated on a monthly basis from (and including) the date of the inflow or outflow of such cashflow to (and including) the date of completion of the Realisation):-

- (a) the aggregate of all sums paid by the Investors to the Group by way of subscription for A Ordinary Shares (including any premium), the "A" Loan Stock pursuant to the Investment Agreement or otherwise invested by the Investors prior to any Realisation;
- (b) those sums received (excluding directors' or monitoring fees or commission in each case payable pursuant to the Investment Agreement and net of all reasonable costs, fees and expenses reasonably incurred by the Investors in connection with any Realisation) by the Investors (which shall be treated as received on the date of payment thereof by the Group) on or prior to or in connection with a Realisation in respect of:

- (i) the A Ordinary Shares subscribed pursuant to the Investment Agreement by way of any dividends or other distributions or payments on redemption or purchase by the Company;
  - (ii) the "A" Loan Stock by way of repayment of capital or interest on the "A" Loan Stock; or
  - (iii) any sums received on completion of the Realisation whether in cash, shares, loan stock or a combination thereof or in any other form which could reasonably be said to be consideration receivable on Realisation;
  - (iv) any other cash amounts received by the holders of A Ordinary Shares or by any Investor to whom any part of the "A" Loan Stock is owed by the Company which are directly attributable to the A Ordinary Shares or the "A" Loan Stock;
- (c) the value of that percentage of the Market Capitalisation as is represented by the A Ordinary Shares as a proportion of the Equity Shares in issue immediately prior to a Realisation which are not disposed of pursuant thereto on the basis of:-
- (i) if the Realisation is a Sale or Disposal or Liquidation the consideration expressed as a cash price (whether that consideration is to be satisfied in cash, shares, loan stock or a combination thereof or otherwise) paid or payable for such "A" Ordinary Shares as is sold or realised on the Realisation;
  - (ii) if the Realisation is a listing the price per share (expressed in pounds Sterling) at which the A Ordinary Shares are proposed to be sold or issued in connection with the Listing (in the case of an offer for sale being the underwritten price (or if applicable the minimum tender price) and in the case of a placing being the placing price) less in each case all associated costs and the due proportion of costs incurred on the Realisation which shall be calculated by reference to the

percentage shareholding of the Equity  
Shares concerned

<b>"Clearsky"</b>	means Clearsky Limited a company incorporated in the British Virgin Islands whose principal office is at Akara Building, 24 De Castro Street, Wickams Cay 1, Road Town, Tortola, British Virgin Islands
<b>"Clearsky Associate"</b>	means Rotch and any other company (wherever incorporated) ultimately held subject to the same trusts as is Clearsky and Rotch
<b>"Co-Investment Scheme"</b>	means each of any scheme adopted from time to time under which certain officers, employees or partners (including their immediate relatives, family trusts and any Retirement Benefits Scheme (as detailed in section 611 of the Income and Corporation Taxes Act 1988) established for their benefit) of an Investor or its adviser or manager are entitled (as individuals or through a body corporate or any other vehicle) to acquire shares in the Company
<b>"Completion"</b>	has the meaning attributed to it in the Investment Agreement
<b>"Controlling Interest"</b>	means an interest in shares in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that company taking account of restrictions on voting rights contained in the articles of association of that company
<b>"Connected Person"</b>	has the meaning attributed by section 839 Income and Corporation Taxes Act 1988
<b>"Default Notice"</b>	means a notice signed by the holders of A Ordinary Shares arising in circumstances set out in Article 3.3
<b>"Deferred Shares"</b>	means Deferred Shares of one penny each in the capital of the company
<b>"Disposal"</b>	means the payment of a dividend or other distribution or other capital repayment to the holders of Equity Shares following the sale or other disposal (whether by one transaction or a series of transactions) of the whole or substantially the whole of the undertaking of the Company and its subsidiaries (other than to a wholly owned subsidiary of the Company) which is not by way of a Sale
<b>"Early Leaver"</b>	means an Employee Member who ceases, for whatever reason other than in circumstances when he would otherwise be a Good Leaver pursuant to sub-paragraphs (a), (b), (c) and (e) of that definition, to be a director or employee of the Company or any of its subsidiaries and does not continue in that capacity in relation to any of them and such cessation occurs within

2 years of the date upon which such Employee Member or his Privileged Relation first became a holder of Equity Shares, or, if earlier, the date of adoption of these Articles

**"Encumbrance"**

means any mortgage, standard security, charge (whether fixed or floating), pledge, lien, right of set-off, hypothecation, right to acquire, right of pre-emption, option, conversion right, third party right or interest, assignment or assignation for the purpose of providing security, trust arrangement in the nature of security, security interest or other encumbrance of any kind securing any obligation of any person or any other type of preferential arrangement having a similar effect (including, without limitation, the deposit of monies or property with a person with the primary intention of affording such person a right of set-off or lien and title transfer and/or retention arrangements) and any agreement, whether conditional or otherwise to create or grant any of the same

**"Employee Member"**

means a person who is or has been a director and/or an employee of the Company or any of its subsidiaries

**"Employee Trust"**

means a trust approved by the holders of 75% of the A Ordinary Shares and whose beneficiaries are the bona fide employees other than the Managers of the Company or any of its subsidiaries

**"Equity Shares"**

means the A Ordinary Shares of one penny each and the B Ordinary Shares of one penny each and the Ordinary Shares of ten pence each in the capital of the Company

**"Facilities Agreements"**

means any agreement pursuant to which the Company or any member of the Group is advanced borrowing facilities

**"Family Trust"**

means a trust which permits any of the settled property or the income therefrom to be applied only for the benefit of:-

(a) that settlor and/or a Privileged Relation of that settlor; or

(b) any charity or charities as default beneficiaries (meaning that such charity or charities have no immediate beneficial interest in any of the settled property or the income therefrom when the trust is created but may become so interested if there are no other beneficiaries from time to time except another such charity or charities);

and under which no power of control is capable of being exercised over the votes of any shares which are the subject of the trust by any person other than the trustees



or the settlor or the Privileged Relations of the settlor; "settlor" includes a testator or an intestate in relation to a Family Trust arising respectively under a testamentary disposition or an intestacy of a deceased member

**"Good Leaver"**

means an Employee Member who ceases to be a director or employee of the Company or any of its subsidiaries and does not continue in that capacity in relation to any of them in any of the following circumstances:-

- (a) death;
- (b) illness or disablement;
- (c) retirement at normal retirement age;
- (d) who is neither an Early Leaver or a Bad Leaver; or
- (e) anyone whom the Remuneration and Appointments Committee (reconstituted if the Leaver in question is a current representative on that Committee to include a replacement executive member of the Board as nominated by the Investor Director(s)) determines is a Good Leaver

**"Group"**

means the Company and its subsidiary undertakings from time to time and reference to a "member of the Group" or a "Group Member" shall be construed accordingly

**"ICTA"**

means the Income and Corporation Taxes Act 1988

**"Independent Expert"**

means an umpire (acting as an expert and not as an arbitrator) nominated by the parties concerned or in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales

**"Investment Agreement"**

means the agreement for loan stock and share subscription entered into or to be entered into between the Company (1) the Managers (2) Rotch (3) Clearsky (4) and the Investors (5)

**"Investors"**

means each of Barclays Industrial Development Limited, Barclays Private Equity PVLP Limited Partnership, Parallel Ventures Nominees No 2 Limited, Clink Street Nominees Limited and any person who is or becomes an Investor for the purposes of the Investment Agreement, or any nominee of an Investor or of any such person. The expression "member of an Investor's Group" shall mean an Investor, any subsidiary of that Investor and any holding company of that Investor and any subsidiary of such holding company and any nominee of any of the foregoing

<b>"Investor Director"</b>	means a director appointed pursuant to Article 15.1
<b>"Investors IRR"</b>	means the IRR achieved in respect of the Investors' Cashflows
<b>"IRR"</b>	<p>means the internal rate of return (expressed as a percentage) actually achieved by the Investors on a Realisation in respect of the A Ordinary Shares and the "A" Loan Stock, such internal rate of return which when applied as a discount gives a Net Present Value of zero for those Cashflows on the basis that:-</p> <p>(a) each of the Cashflows is regarded as arising at the end of the calendar month in which the Cashflow occurs or is deemed to occur; and</p> <p>(b) the rate of return is treated as compounding annually at the end of each calendar year.</p>
<b>"Liquidation"</b>	means the solvent winding up or liquidation of the Company
<b>"Listing"</b>	means the date on which all of the equity share capital of the Company is admitted to the official list of the UK Listing Authority or on any Recognised Investment Exchange (as such term is defined in the Investment Agreement) or on any exchange or market replacing the same
<b>"Manager"</b>	has the meaning given in the Investment Agreement
<b>"Market Capitalisation"</b>	<p>means:-</p> <p>(a) on a Listing the aggregate market value of all the issued equity share capital of the Company as conclusively certified (at the cost to the Company) by the sponsoring broker (calculated on the basis of the underwritten price in the case of an offer for sale or if applicable the minimum tender price) and in the case of a placing being the placing price less the gross amount of new money raised by the Company by an issue of equity share capital at the time of and in connection with the Listing; and</p> <p>(b) on a Sale the aggregate value of all the issued Equity Shares calculated by reference to the price paid upon such Sale plus the cash value of any other sum (in cash or otherwise) received or receivable by the shareholders which can be regarded as an addition to the price (whether or not paid at the time of Sale) and to the extent that the sale involves an element of deferred consideration its value shall be the gross value attributed to the deferred consideration discounted by the IRR to the date of Realisation;</p>

(c) on a Disposal a sum equal to the total amount that is available to be distributed amongst the holders of the Equity Shares after deducting all tax arising on the Disposal and after deducting the debts of the Company and its subsidiaries assuming Liquidation has taken place immediately following such Disposal;

(d) on a Liquidation a sum equal to the total amount that is available for distribution amongst the holders of the Equity Shares after deducting all tax arising on the Liquidation and after deducting the debts of the Company and its subsidiaries;

the value of such Market Capitalisation to be agreed between the Investors and the holders of 75% of the Ordinary Shares and failing such agreement within 14 days, it shall be conclusively determined (at the cost of the Company) by an Independent Expert

**"Net Present Value"**

means the net aggregate Cashflows discounted by a discount rate back to the date of completion of the Investment Agreement

**"Offer "**

means either:-

(a) the making of an offer to purchase all the Equity Shares of the Company which is accepted in relation to such percentage of such share capital as when aggregated with such share capital if any already held by the offeror (to include persons who are a Connected Person in relation to the offeror or persons acting in concert within the meaning of the City Code on Take-overs and Mergers) will result in the offeror acquiring more than 90% of the Equity Shares; or

(b) entering into one or more agreements which will result in any person(s) acquiring more than 90% of the Equity Shares which agreements become unconditional

**"Ordinary Shares"**

means the Ordinary Shares of ten pence each in the capital of the Company

**"Pinco"**

means Pinco 1616 Limited (company number 04192432) a company incorporated in England and Wales

**"Privileged Relation"**

means the spouse or widow or widower of the member and the member's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the member's children

**"Relevant Directors"**

means the directors and former directors of the Company and any subsidiary (but only if such directors

or former directors or their Connected Persons are interested in shares in the Company) and their Connected Persons but excluding any Investor Director

**"Realisation"**

means a Sale Listing Disposal or Liquidation and in the circumstances that it cannot be agreed between the Investors and the holders of 75% of the Ordinary Shares that such an event has taken place it shall be conclusively determined (at the cost of the Company) by an Independent Expert

**"Remuneration and Appointments Committee"**

means a committee of the board of directors as set up in accordance with the terms of the Investment Agreement

**"Rotch"**

means Rotch Property Group Limited (company no 01505228) a company incorporated in England and Wales

**"Sale"**

means the completion of the transaction envisaged by an Offer

**"Securitisation Vehicles"**

means Preferred Funding One Limited, Preferred Residential Securities 1 plc, Preferred Residential Securities 2 plc, Preferred Residential Securities 3 plc and any other corporate entity set up from time to time in connection with or for the purpose of securitising mortgages advanced by the Group

**"Sellers"**

means Clearsky and Financial Security Assurance Holdings Limited

**"SKT"**

means the Siesta Key Trust of Twenty Two Colomberie, St Helier, Jersey, Channel Islands JE1 4XA

**"Table A"**

means Table A in the Companies (Tables A - F) Regulations 1985 as amended by the Companies (Tables A - F) (Amendment) Regulations 1985

**"Target Exit Value"**

means in relation to any date such Market Capitalisation as would provide the Investors with the higher of either:-

(a) net proceeds from the Realisation as exceed an amount equal to two times the aggregate of all sums paid by the Investors to the Company by way of subscription for A Ordinary Shares (including any premium), the "A" Loan Stock or otherwise pursuant to the Investment Agreement or otherwise invested in the period prior to any Realisation; and

(b) an Investors IRR in excess of 30%

**"Termination Date"**

means:-

(a) where employment ceases by virtue of notice given by the employer to the employee, the date on which such notice expires;

- (b) where a contract of employment is terminated by the employer and a payment is made in lieu of notice, the date on which notice of termination was served;
- (c) where the Employee Member concerned is a director but not an employee, the date on which the contract for the provision of his services (whether entered into directly with him or with a third party) with the Company is terminated; and
- (d) in any other case, the date on which the contract of employment is terminated

**"voting rights"** shall be construed in accordance with section 736(A) of the Act

- 1.2 The regulations contained in or incorporated in Table A shall apply to the Company save insofar as they are excluded or varied hereby or are inconsistent herewith and such regulations (save as so excluded varied or inconsistent) and the Articles hereinafter contained shall be the regulations of the Company.
- 1.3 Regulations 54, 73-80 (inclusive), 85, 86, 94-98 (inclusive) and 118 of Table A shall not apply to the Company.
- 1.4 Words and expressions defined in the Investment Agreement shall have the same meaning when used in these Articles unless a contrary intention appears.
- 1.5 Except where specifically provided otherwise the B Ordinary Shares shall rank *pari passu* with the A Ordinary Shares.

## **SHARE CAPITAL**

- 2. The share capital of the company is £5,436 divided into 137,862 A Ordinary Shares and 35,474 B Ordinary Shares each and 37,020 Ordinary Shares. The rights attaching to the respective classes of shares shall be as follows:-

### **2.1 Income**

- 2.1.1 The profits of the Company available for distribution and resolved to be distributed shall be distributed by way of dividend among the holders of the Equity Shares pro rata to the numbers of such shares held by each of them.
- 2.1.2 No dividend shall be declared or paid to the holders of Equity Shares pursuant to Article 2.1.1 in respect of any financial year of the Company unless otherwise agreed by the holders of 75 per cent. or more of the A Ordinary Shares.

### **2.2 Conversion**

- 2.2.1 On a Realisation, if the Investors entitlement to the Market Capitalisation is in excess of the Target Exit Value determined at the date of Realisation then entitlements of shareholders to the amount of the net proceeds of a Realisation in excess of the Target Exit Value (the "**Excess**") shall be adjusted as follows:-

- (a) the holders of the Ordinary Shares entitlement to the Excess shall be increased by 4.5 per cent of the Excess; and

- (b) the holders of A Ordinary Shares and B Ordinary Shares entitlement to the Excess shall be reduced pro rata to their respective shareholdings by 4.5 per cent of the Excess.
- 2.2.2 In order to achieve any adjustment required pursuant to Article 2.2.1 immediately prior to the Realisation such number of A Ordinary Shares and B Ordinary Shares then in issue shall convert, on a one for one basis, into Deferred Shares, so that, immediately following such conversion the holders of the Ordinary Shares shall achieve their adjusted entitlement to the Excess.
- 2.2.3 Any conversion of Equity Shares pursuant to Article 2.2.2 shall be made among the holders of the relevant class *pari passu* with any fractions arising therefrom being rounded up or down to the nearest whole number. The Board shall procure that the calculations set out in Article 2.2.1 and Article 2.2.2 for determination of the number of Equity Shares to be converted are carried out at least 14 days prior to any event requiring such conversion. If the number of shares to be converted as determined by the Board and notified to the holders of Equity Shares is agreed between the holders of not less than 75% in nominal value of each class of shares then their agreement shall be final and binding on all of the holders of Equity Shares. In default of such agreement within 5 days of having been notified by the Board, the matter shall then immediately be referred to an independent chartered accountant (the "**Expert**") for determination and certification. The Expert shall be an independent Chartered Accountant of not less than five years standing who shall be nominated by agreement between the holders of 75% in nominal value of each class of Equity Shares or failing such nomination within 5 days, as may be nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales upon the request of any holder of shares or the directors of the Company. Upon being nominated the Expert shall determine and certify the number of shares to be converted in accordance with the Articles and the written certificate of the Expert (acting as expert and not as arbitrator) as to the number of shares to be transferred shall (save in the case of manifest error) be conclusive and binding on the Company and its members. The costs of the Expert shall be borne by the Company.
- 2.2.4 Upon determination as provided in Article 2.2.3 of the number of Equity Shares to be converted aforesaid the Company shall give notice thereof to the holders of the applicable Equity Shares concerned who (subject thereto) shall be obliged within fourteen days of such conversion to surrender to the Company the certificates in respect of such Equity Shares (or an appropriate indemnity in a form reasonable satisfactory to the Company) so as to be received by the Company before the time of the Realisation, as appropriate;
- 2.2.5 The Company shall be entitled to effect any conversions in respect of shares converted for which it has not received the certificates (or an appropriate indemnity) as provided above. Within fourteen days after the date of conversion the Company shall send to each holder whose shares have been converted a definitive certificate for the appropriate number of fully-paid shares then relevant to the certificates surrendered by him.
- 2.2.6 Conversion of the A Ordinary Shares and/or B Ordinary Shares into Deferred Shares shall be deemed to confer an irrevocable authority on the Company at any time:-
- (a) to appoint any person to execute on behalf of the holder of such Deferred Shares or transfer thereof and for an agreement to transfer the same for no

consideration to such person as the Company may determine to hold as custodian for the original holder; and/or

- (b) to purchase the same in accordance with the provisions of the Act for not more than an aggregate sum of one penny for all such Deferred Shares without obtaining the sanction of the holder or holders thereof and for the purpose of such purchase to appoint a person to execute on behalf of any holder of such Deferred Shares a contract for sale to the Company of any such shares held by such holder; and
- (c) pending such transfer and/or purchase to retain the certificates for such Deferred Shares.

2.2.7 The holders of the Deferred Shares shall have no right to receive notice of or to attend or vote at general meetings and shall have no rights to any dividend or (save as provided in Articles 2.3) to capital.

## 2.3 Capital

On a return of assets on liquidation or capital reduction or otherwise, the assets of the Company remaining after the payment of its liabilities shall be applied as follows:-

- 2.3.1 first, in paying to the holders of the A Ordinary Shares and B Ordinary Shares a sum equal to the amount credited as paid up thereon together with a sum equal to any arrears or accruals of any declared but unpaid dividends on the A Ordinary Shares and B Ordinary Shares;
- 2.3.2 second, in paying to the holders of the Ordinary Shares a sum equal to the amount credited as paid up thereon together with a sum equal to any arrears or accruals of any declared but unpaid dividends thereon; and
- 2.3.3 third, in paying to the holders of Deferred Shares a sum equal to the amount credited as paid up thereon;
- 2.3.4 the balance of such assets shall be distributed amongst the holders of the A Ordinary Shares, B Ordinary Shares and Ordinary Shares (pari passu as if the same constituted one class of share).

## CLASS RIGHTS

- 3. Whenever the capital of the company is divided into different classes of shares the special rights attached to any class may be varied or abrogated either whilst the company is a going concern or during or in contemplation of a winding up, only with the consent in writing of the holders of 75% of the issued shares of that class.
- 3.1 Without prejudice to the generality of this Article, the special rights attached to the A Ordinary Shares shall be deemed to be varied:-
  - 3.1.1 by any alteration of the Company's memorandum or articles of association; or
  - 3.1.2 by the grant of any option or other right to subscribe for shares or any variation of the rights attached to any of the shares for the time being in the capital of the Company or of any of its subsidiaries; or

- 3.1.3 by the disposal of the undertaking of the Company or of any of its subsidiaries or any substantial part thereof or by the disposal of any share in the capital of any subsidiary of the Company; or
  - 3.1.4 by the acquisition of any interest in any share in the capital of any company by the Company or any of its subsidiaries; or
  - 3.1.5 by the application by way of capitalisation of any sum in or towards paying up any share or loan capital of the Company; or
  - 3.1.6 by the redemption of any of the Company's shares (otherwise than pursuant to these Articles) or by the entering into of a contract by the Company to purchase any of its shares; or
  - 3.1.7 by the appointment or removal of auditors to the Company; or
  - 3.1.8 by any alteration of the Company's accounting reference date; or
  - 3.1.9 by the calling of a meeting of the Company to effect or approve any matter which would by virtue of this Article be a variation of the class rights of the A Ordinary Shares.
- 3.2 Without prejudice to the generality of this Article the special rights attaching to the B Ordinary Shares shall be deemed to be varied by:-
- 3.2.1 by any alteration of the Company's memorandum or articles of association other than an increase in its authorised share capital for the purpose of issuing more shares provided that such shares will be offered to all shareholders in amounts pro-rata as nearly as may be in proportion to the number of shares held by each shareholder in accordance with Article 6 (Issue of New Shares); or
  - 3.2.2 by the grant of any option or other right to subscribe for shares unless such securities are offered to all shareholders in amounts pro rata as may be in proportion to the number of shares held by each shareholder in accordance with the procedure set out in Article 6 (Issue of New Shares); or
  - 3.2.3 by the application by way of capitalisation of any sum in or towards paying up any share or loan capital of the Company; or
  - 3.2.4 by the redemption of any of the Company's shares (otherwise than in respect of the Deferred Shares pursuant to these Articles) or by the entering into of a contract by the Company to purchase any of its shares; or
  - 3.2.5 by the appointment or removal of auditors to the Company; or
  - 3.2.6 by any alteration of the Company's accounting reference date.
- 3.3 Without prejudice to the generality of this Article unless and until the holders of 50% of the A Ordinary Shares serve on the Company a Default Notice (as defined below) the special rights attaching to the Ordinary Shares shall be deemed to be varied:-
- 3.3.1 by any alteration of the Company's memorandum or articles of association; or
  - 3.3.2 by any alteration of the Company's accounting reference date; or



- 3.3.3 by the Company calling a meeting to effect or approve any matter which would by virtue of this sub-article be a variation of the class rights of the Ordinary Shares; or
  - 3.3.4 by the application by way of capitalisation of any sum in or towards paying up any share or loan capital of the Company; or
  - 3.3.5 by the redemption of any of the Company's shares (otherwise than in respect of the Deferred Shares pursuant to these Articles) or by the entering into of a contract by the Company to purchase any of its shares.
- 3.4 For the purposes of this Article a "**Default Notice**" means a notice in writing signed on behalf of the holders of 50% of the A Ordinary Shares and which may be served on the Company if and whenever:-
- 3.4.1 Pinco fails to make any payment of capital or interest on the due date or within 30 days of such date pursuant to the A Loan Stock and for such time as the default remains unremedied thereafter;
  - 3.4.2 in the reasonable opinion of the holders of 50% of the A Ordinary Shares the Company, any member of the Group or any of the Securitisation Vehicles is in breach or likely to be in breach of any Facilities Agreements which would entitle the counterparty to such agreement to accelerate and demand repayment of any amounts then due and payable for such time as any such breach remains unremedied; and
  - 3.4.3 the Company wishes to increase its authorised share capital for the purpose of issuing more shares and authorise that issue and allotment provided such shares will be offered to all shareholders in amounts pro rata as nearly as may be in proportion to the number of shares held by each shareholder in accordance with Article 6 (Issue of New Shares).
- 3.5 Once a Default Notice has been served on the Company and subject to the holders of A Ordinary Shares acting in good faith at the time and exercising the powers under this Article for the purpose of either dealing with a situation which has given rise to a Default Notice and its consequences in the cases of Articles 3.4.1 and 3.4.2 or carrying out the envisaged activities under Article 3.4.3:-
- 3.5.1 the special rights attaching to the Ordinary Shares shall not be deemed to be varied by reason of sub-article 3.3 unless and until the holders of 50% of the A Ordinary Shares serve on the Company a notice in writing withdrawing the Default Notice; and
  - 3.5.2 the holders of the Ordinary Shares covenant with and undertake to the holders of the A Ordinary Shares that they will in accordance with directions from the holders of more than 75 per cent of the A Ordinary Shares give their written consent or exercise their votes at any such separate meeting and/or extraordinary general meeting, as the case may be, and give their consents to any such separate meeting and/or extraordinary general meeting, as the case may be, being held at short notice, and each such holder of Ordinary Shares hereby irrevocably and as security for its obligations under this Article 3.4 hereby appoints any Investor Director as its attorney to execute on its behalf any document (including, but without limitation, any written consent or resolution or form of proxy) and to do any act, matter or thing for the purpose of complying with such directions as may be given by the holders of more than 75 per cent of the A Ordinary Shares

PROVIDED that at no time will the holders of the A Ordinary Shares be entitled to exercise such powers under this Article 3 to amend, or replace or override the Tag Along provisions of Article 10.8

- 3.6 The holders of 50% of the A Ordinary Shares shall serve a notice withdrawing the Default Notice on the Company as soon as reasonably practicable upon becoming aware that the event giving rise to the Default Notice has ceased to be continuing.
- 3.7 If:
- 3.7.1 the holders of more than 50% of the A ordinary shares have given their written consent to a Sale or a Listing and to implement such Sale or Listing would otherwise require (whether under the provisions of Articles 3.1, 3.2 or 3.3 or otherwise) the written consent of the holder(s) of the B Ordinary Shares or the Ordinary Shares or the sanction of an extraordinary resolution passed at a separate meeting of the holders of the B Ordinary Shares or the Ordinary Shares or the sanction of an ordinary or special resolution passed at an extraordinary general meeting of the Company (or passed by way of written consent or resolution); and
- 3.7.2 in respect of which the relevant criteria as set out in article 3.8 are satisfied the holders of the B Ordinary shares and the holders of the Ordinary Shares covenant with and undertake to the holders of the A Ordinary Shares that they will in accordance with directions from the holders of more than 75% of the A Ordinary Shares give their written consent or exercise their votes at any such separate meeting and/or extraordinary general meeting, as the case may be, and give their consents to any such separate meeting and/or extraordinary general meeting, as the case may be, being held at short notice, and each such holder or Ordinary Shares hereby irrevocably and as security for its obligations under this Article 3.7 hereby appoints any Investor Director as its attorney to execute on its behalf any document (including, but without limitation, any written consent or resolution or form of proxy) and to do any act, matter or thing for the purpose of complying with such directions as may be given by the holders of more than 75% of the A Ordinary Shares.
- 3.8 For the purpose of Article 3.7, the relevant criteria will be satisfied if the matter (which would otherwise require (whether under the provisions of Articles 3.1, 3.2 or 3.3 or otherwise) the written consent of each such holder of B Ordinary Shares or Ordinary Shares or the sanction of an extraordinary resolution or ordinary or special resolution or written consent or resolution) would not result in the holders of B Ordinary shares or Ordinary Shares:
- 3.8.1 on a Sale, realising a price per B Ordinary Share or Ordinary Share less than that which would be calculated by complying with Article 10.8 and the provisions of Article 10 have been complied with; or
- 3.8.2 on a Listing, having their B Ordinary Shares or Ordinary Shares valued at a price per B Ordinary Share or Ordinary Share that is less than the valuation of each A Ordinary Share arising on the conversion of the A Ordinary Shares into Ordinary Shares for the purpose of a Listing.

#### LIEN

- 4.1 The lien conferred by regulation 8 of Table A shall apply to all shares of the Company whether fully paid or not and to all shares registered in the name of any person indebted

or under liability to the Company whether he be the sole registered holder thereof or one of several joint holders.

### **CALLS**

- 5.1 The liability of any member in default in respect of a call shall be increased by the addition at the end of the first sentence of regulation 18 in Table A of the words "and all expenses that may have been incurred by the Company by reason of such non-payment."

### **ISSUE OF NEW SHARES**

- 6.1 Unless otherwise determined by special resolution or pursuant to Article 6.3 and subject to Article 6.2 any new Equity Shares created after the date of adoption of these Articles shall before they are issued be offered to the holders of the Equity Shares pro rata. The offer shall be made by notice specifying the number and class of shares offered and the price per share (which will include an amount calculated per share of any obligation to advance debt in connection with such issue) and limiting a time (not being less than twenty-one days or greater than thirty days) within which the offer, if not accepted, will be deemed to be declined. After the expiration of such time, or on the receipt of an indication from the person to whom the offer is made that he declines to accept the shares offered to any of them, the Directors shall offer the shares declined in like manner to the holders of the Equity Shares who have agreed to subscribe for all the shares offered to them.
- 6.2 If the shares comprised in such further offer are declined or deemed to be declined the further offer shall be withdrawn and the Directors may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper, provided that:-
- 6.2.1 no shares shall be issued at a discount;
- 6.2.2 no shares to which Article 6.1 applies shall be issued more than three months after the expiry of the period for acceptance of the last offer of such shares made under Article 6.1 unless the procedure set out in Article 6.1 is repeated in respect of such shares (and so that the time limit set out in this paragraph 6.2.2 shall apply equally to any repetition of that procedure); and
- 6.2.3 no shares shall be issued at a price (including as specified in Article 6.1 any obligation to advance debt) less than that at which they were offered to the members of the Company in accordance with Article 6.1 and so that if the Directors are proposing to issue such Share wholly or partly for non-cash consideration the cash value for the purposes of this sub-paragraph shall be as determined by the Auditors of the Company who shall act as experts and not as arbitrators and whose determination shall be final and binding on the Company and each of its members.
- 6.3 The holders of 50% in nominal value of A Ordinary Shares in issue for the time being may by notice in writing to the Ordinary Shareholders reduce the price per share at which any shares pursuant to article 6.1 are offered to the Ordinary Shareholders and may reduce the amount of or waive any obligation to advance debt.
- 6.4 The provisions of sub-sections 89(1) and 90(1) of the Act shall not apply to the Company.
- 6.5 Any holder of B Ordinary Shares (the "**Transferring B Member**") may transfer whether or not for consideration the right to subscribe for any issue of new Equity Shares and any associated debt pursuant to Article 6.1 to a third party (the "**Proposed B Member**"), by giving 7 days written notice to the Company specifying the third party, the number of

proposed new Equity Shares to be issued to such person and the price to be paid by such person for such transfer subject to:-

- 6.5.1 any subscription by the Proposed B Member being completed within the time period specified in the offer pursuant to article 6.1.
  - 6.5.2 the holders of 50% of the issued A Ordinary Shares have consented to the transfer to the third party provided that the consent of the A Ordinary Shareholders may only be withheld if the Proposed B Member is not a financial investor or the A Ordinary Shareholders are of the reasonable opinion that the Proposed B Members' business reputation would be prejudicial to the best interests of the Company or the Investors in their capacity as Investors.
  - 6.5.3 the holders of the A Ordinary Shares not having served written notice on the Transferring B Member requiring the Transferring B Member to transfer the whole or part of such right to subscribe for shares to the holders of the A Ordinary Shares specified in such notice in which case the A Ordinary Shareholders will be obliged to accept such right for the same consideration per share offered by the Proposed B Member.
- 6.6 Any Proposed B Member or A Ordinary Shareholder shall on a subscription for shares pursuant to Article 6.5 comply with the provisions of Article 6.1.
- 6.7 Any Equity Share transferred to a shareholder shall (without further authority than is herein contained being necessary) forthwith on the transfer of the same be deemed to have been converted into a class of Equity Share then already held by such shareholder having all the rights, privileges and restrictions attaching to that class (and any further shares issued pursuant to Article 6 shall be issued to any shareholder in the same class of Equity Shares then already held by such shareholder so that the holders of A Ordinary Shares shall be issued with A Ordinary Shares, the holders of B Ordinary Shares shall be issued with B Ordinary Shares, the holders of Ordinary Shares shall be issued with Ordinary Shares and the holders of both B Ordinary and Ordinary Shares shall be issued with B Ordinary and Ordinary Shares in the proportion to which prior to such issue such member holds such shares).

## TRANSFER OF SHARES

- 7.1 The Board shall refuse to register any transfer of shares made in contravention of the provisions of this agreement but (subject to Regulation 24 of Table A) shall not otherwise be entitled to refuse to register any transfer of shares. For the purpose of ensuring that a particular transfer of shares is permitted under the provisions of this agreement, the Board may request the transferor, or the person named as transferee in any transfer lodged for registration, to furnish the Company with such information and evidence as the Board may reasonably think necessary or relevant. Failing such information or evidence being furnished to the satisfaction of the Board within a period of 28 days after such request the Board shall be entitled to refuse to register the transfer in question.
- 7.2 Save for transfers pursuant to Articles 8, 9 or Article 10 and Article 8,9 and 10 shall apply on their terms notwithstanding such consent no shares may be transferred unless the prior written consent of the holders of 75% of the A Ordinary Shares has been obtained.
- 7.3 A reference in these Articles to a transfer of shares shall include a transfer of any interest in shares (including a beneficial interest) and these Articles shall take effect accordingly.

## PERMITTED TRANSFERS

8.1 Save as expressly provided for in this Article 8 the holder of any Ordinary Shares shall not transfer and the Directors shall not (without the approval of the Investor Director) be permitted to register any transfer of any Ordinary Shares for so long as the holder thereof remains an employee or director or consultant of the Company or its subsidiaries.

### 8.2 Permitted transfers to relations and Family Trusts

Notwithstanding any other provision in these Articles any member may at any time transfer (or by will bequeath or otherwise dispose of on death) all or any of the shares held by him to a Privileged Relation or to trustees to be held upon a Family Trust of which he is the settlor provided that any transfer of shares to trustees to be held upon a Family Trust made during the lifetime of such member may only be made with the consent in writing of the holders of 75% of the A Ordinary Shares.

### 8.3 Criteria for consents to Family Trusts

Where the consent of the holders of A Ordinary Shares is requested to a transfer to a Family Trust such consent shall be given when the holders are reasonably satisfied:-

- 8.3.1 with the powers of the trustees;
- 8.3.2 with the identity of the proposed trustees;
- 8.3.3 that the proposed transfer will not result in 50% or more in the aggregate equity share capital in the Company subscribed for by the Managers and their Connected Persons in the Investment Agreement being held by trustees of that and any other trusts; and
- 8.3.4 that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.

### 8.4 Permitted transfers by Family Trusts

Where any shares are held by trustees upon a Family Trust:-

- 8.4.1 on any change of trustees such shares may be transferred to the new trustees of that Family Trust; and
- 8.4.2 such shares may be transferred at any time to the settlor or to another Family Trust of which he is the settlor or to any Privileged Relation of the settlor.

### 8.5 Permitted transfers by Clearsky

Notwithstanding any other provision in these Articles Clearsky may at any time

- (a) transfer all or any of the B Ordinary Shares held by it to a Clearsky Associate;
- (b) transfer the beneficial interest (but not the legal title) of up to 30% of the number of B Ordinary Shares held by it to employees or consultants of Clearsky or any Clearsky Associate;
- (c) create an Encumbrance over the B Ordinary Shares held by it but only to a recognised bank or financial institution authorised to accept deposits under the Banking Act 1987 with a branch presence in the United Kingdom and

subject to giving not less than 14 days prior written notification to the Company of such Encumbrance together with details of the institution in whose favour such Encumbrance is to be granted.

## **8.6 Permitted transfers by Investors**

Notwithstanding any other provision in these Articles the following transfers may be made without restriction as to price or otherwise and any such transfers shall be registered by the directors:-

- 8.6.1 any transfer by any member of an Investor's Group to any other member in the same Investor's Group (but if such transferee other than Barclays Private Equity Limited ceases to be a member of the Investor's Group it shall forthwith transfer the relevant shares to a member of the relevant Investor's Group) provided that the requirement to transfer shall not apply to any shares held by a Co-Investment Scheme;
- 8.6.2 a transfer of any shares in the Company held by an Investor or any person to whom the Investor may have transferred shares pursuant to this sub-article to:-
- (a) the beneficial owner or owners in respect of which the transferor is a nominee or custodian or any other nominee or custodian for such beneficial owner or owners;
  - (b) any other Investor;
  - (c) a Co-Investment Scheme or any nominee for, or administrator for (or other vehicle which is to hold shares for), a Co-Investment Scheme;
  - (d) any member or participant in (or the legal representative or such member or participant) a Co-Investment Scheme;
  - (e) a partner in a member of an Investor which is a partnership or fund whose principal purpose is to make investments or nominee of such a person; or
  - (f) an Investor Director or a non-executive Chairman of the board of directors of the Company at which time such shares shall on transfer immediately convert one for one into Ordinary Shares.
- 8.6.3 any transfer of up to 50% of the total aggregate A Ordinary Shares held by the Investors to any third party.

## **8.7 Transfers to the Company**

Any holder of shares may at any time transfer shares to the Company in accordance with the Act and these Articles.

## **8.8 Transfers with shareholder approval**

Notwithstanding any other provisions of these Articles a transfer of any shares approved by the holders of 75% of the Ordinary Shares, the holders of 75% of the A Ordinary Shares and the holders of 75% of the B Ordinary Shares may be made without restriction as to price or otherwise and any such transfer shall be registered by the directors.

## **8.9 Mandatory transfer if trust ceases to be a "Family Trust"**

If and whenever any shares held by trustees upon a Family Trust cease to be so held upon a Family Trust (otherwise than in consequence of a transfer to the settlor or to any Privileged Relation of the settlor) or there cease to be any beneficiaries of the Family Trust other than a charity or charities a Transfer Notice (as hereinafter defined) shall be deemed to have been given in respect of the relevant shares (as hereinafter defined) by the holders thereof and such shares may not otherwise be transferred.

For the purposes of this sub-article the expression "**relevant shares**" means and includes the shares originally subscribed for by or transferred to the trustees and any additional shares issued or transferred to the trustees by virtue of the holding of the relevant shares or any of them.

## **8.10 Mandatory transfer on cessation of employment**

Transfers under this sub-article are in these Articles referred to as Compulsory Employee Transfers. An Employee Member the subject of a Compulsory Employee Transfer shall not receive any offers pursuant to Article 9 and shall be treated as a Vendor (as hereinafter defined) for those purposes.

If an Employee Member ceases to be a director or employee of the Company or any of its subsidiaries and does not continue in that capacity in relation to any of them, Transfer Notices shall be deemed to have been served on the relevant Termination Date in respect of:-

8.10.1 all Ordinary Shares then held by the Employee Member;

8.10.2 all Ordinary Shares then held by the Employee Member's Privileged Relations and/or Family Trusts (other than shares which the directors are satisfied, upon reasonable grounds, were not acquired by such holders either (i) directly or indirectly from the Employee Member or (ii) by reason of their connection with the Employee Member, and the decision of the board of directors in this respect will be final).

## **8.11 Mandatory transfer on change of control and enforcement of security**

If:-

8.11.1 a member being a company ceases to be within the control (as such term is defined by section 840 of the Income and Corporation Taxes Act 1988) of the person(s) who controlled such company on the date on which it became a member of the Company or on the date of adoption of these Articles (whichever shall be the later); and/or

8.11.2 an Encumbrance granted by Clearsky or a Clearsky Associate over its B Ordinary Shares becomes enforceable or an encumbrancer seeks to exercise rights over those shares or a receiver is appointed over Clearsky or a Clearsky Associate with rights to control and exercise the rights attaching to such shares.

in either case it shall be deemed to have immediately given a Transfer Notice in respect of all the shares as shall then be registered in its name; provided that this sub-article shall have no application to an Investor or to any member of an Investor's group or to any Co-Investment Scheme.

## 8.12 Permitted transfer by the Employee Trust

Notwithstanding any other provision in these Articles a transfer of any shares in the Company held by the Employee Trust may be made by the Employee Trust to any of:-

- 8.12.1 an employee of the Company or any of its subsidiaries;
- 8.12.2 any Privileged Relations of such employee;
- 8.12.3 the trustees of a Family Trust of such employee; or
- 8.12.4 if approved by the Remuneration Committee to a former employee of the Company or any of its subsidiaries or any of the persons set out in Article 8.12.2 and Article 8.12.3 above of such former employee.

## PRE-EMPTION RIGHTS

### 9.1 Transfer notices

Save as otherwise provided in these Articles every member who desires to transfer any shares shall give to the Company notice in writing of such desire (a "**Transfer Notice**"). Where the Transfer Notice is deemed to have been given it is referred to as a Deemed Transfer Notice. Transfer Notices and Deemed Transfer Notices shall constitute the Company the agent of the member who desires to transfer the shares or the member the subject of the Deemed Transfer Notice (in either case the "**Vendor**") for the sale of the shares specified therein (the "**Sale Shares**") in one or more lots at the discretion of the directors at the Sale Price.

### 9.2 Calculation of the Sale Price

The price for the shares being transferred (the "**Sale Price**") shall be the price agreed by the Vendor and the directors. If the Vendor and the directors are unable to agree a price within 28 days of the Transfer Notice being given or being deemed to have been given the Sale Price will instead be the price which the Independent Expert shall certify to be in his opinion a fair value thereof (the "**Fair Market Value**"). The Fair Market Value will be determined by the Independent Expert valuing the shares on the basis of the Company as a going concern and for a sale by a willing seller and a willing buyer disregarding any discount that might attach to the Sale Shares if they constitute a minority interest and any transfer restrictions which apply to the Sales Shares pursuant to these Articles. The decision of the Independent Expert as to the Sale Price shall be final and binding and the costs of the Independent Expert shall be borne as determined by the Independent Expert.

### 9.3 Restriction of Sale Price for certain transfers by Employee Members

9.3.1 In the case of Compulsory Employee Transfers the price for the Sale Shares shall be as follows:-

- (a) if the Employee Member is an Early Leaver or a Bad Leaver the price shall be the lesser of the Market Value of the Sale Shares as at the Termination Date and the original subscription price for the Sale Shares;
- (b) if the Employee Member is a Good Leaver the price shall be the Fair Market Value of the Sale Shares.

9.3.2 The Market Value shall be the price agreed between the Compulsory Employee Transfer Vendor and the Board with the approval of an Investor Director or, if they fail to agree a price within 21 days of the Deemed Transfer Notice date, the



price certified by the Independent Expert to be the Market Value of the Sale Shares upon the Termination Date calculated on the basis of the Company as a going concern and for a sale by a willing seller and a willing buyer disregarding any discount that might attach to the Sale Shares if they constitute a minority interest and any transfer restrictions which apply to the Sales Shares pursuant to these Articles. The decision of the Independent Expert as to the Sale Price shall be final and binding and the costs of the Independent Expert shall be borne as determined by the Independent Expert.

**9.4 Right of Vendor to reject partial sales**

A Transfer Notice (but not a Deemed Transfer Notice) may contain a condition (a "**Total Transfer Condition**") that unless all the shares comprised therein are sold by the Company pursuant to this Article none shall be sold. Any such provision shall be binding on the Company.

**9.5 Certification of the Sale Price and right of Vendor to cancel**

If the Independent Expert is asked to certify the Fair Market Value or Market Value his certificate shall be delivered to the Company. As soon as the Company receives the certificate it shall deliver a copy of it to the Vendor. The Vendor shall be entitled by notice in writing given to the Company within ten days of the service upon him of the copy certificate to cancel the Company's authority to sell the Sale Shares unless the shares are to be sold pursuant to a Deemed Transfer Notice. The cost of obtaining the certificate shall be borne as determined by the Independent Expert unless the Vendor cancels it in which case the Vendor shall bear the cost.

**9.6 Pre-emptive offers - general**

Once the Sale Price has been determined then unless the Vendor gives a valid notice of cancellation the Sale Shares shall be offered for sale as set out below. All offers made by the Company shall give details of the number and Sale Price of the Sale Shares.

**9.7 Preliminary offer to a "Warehouse"**

Unless the holders of 50% of the A Ordinary Shares agree otherwise any shares being sold by reason of an Employee Compulsory Transfer shall first be offered to the Employee Trust or a person or persons intended to take the place of the leaving Employee Member upon such terms as the Remuneration Committee may determine (the "**Warehouse**"). Any shares not sold under this sub-article within 21 days of such offer will be offered for sale to the members of the Company as set out below.

**9.8 First Offer**

As soon as Sale Shares become available they shall be forthwith offered for sale by the Company as follows:-

- 9.8.1 in the cases of A Ordinary Shares, to all holders of A Ordinary Shares (other than the Vendor) pro rata as nearly as may be to the respective numbers of A Ordinary Shares held by such members;
- 9.8.2 in the cases of B Ordinary Shares, to all holders of B Ordinary Shares (other than the Vendor) pro rata as nearly as may be to the respective numbers of B Ordinary Shares held by such members;
- 9.8.3 in the case of Ordinary Shares, first to the Warehouse and then in respect of those shares not taken up by the Warehouse to all holders of Ordinary Shares

(other than the Vendor) pro rata as nearly as may be to the respective numbers of Ordinary Shares held by such members;

Any offer made by the Company under this sub-article will invite the relevant members to state in writing the maximum number of the shares offered to them they wish to purchase and will remain open for twenty one days (the "**First Offer Period**").

#### 9.9 **Second Offer**

If at the end of the First Offer Period there are any Sale Shares offered which have not been allocated the Company shall offer such shares to such members as have stated in writing their willingness to purchase all the shares previously offered to them.

This offer will invite the relevant members to state in writing the maximum number of shares they wish to purchase. If there are insufficient Sale Shares to meet the demand then the directors will allocate the Sale Shares pro rata as nearly as may be in proportion to the number of A Ordinary Shares, B Ordinary Shares or Ordinary Shares (as the case may be) held or deemed to be held by the relevant members. This further offer will remain open for a further period of twenty one days (the "**Second Offer Period**").

#### 9.10 **Third Offer**

If at the end of the Second Offer Period there are any Sale Shares which have not been allocated the Company will offer such shares as follows:-

- 9.10.1 in the case of A Ordinary Shares, to all holders of B Ordinary Shares and Ordinary Shares (other than the Vendor if applicable) pro rata as nearly as may be to the respective numbers of B Ordinary Shares and Ordinary Shares held by such members;
- 9.10.2 in the case of B Ordinary Shares, to all holders of A Ordinary Shares and Ordinary Shares (other than the Vendor if applicable) pro rata as nearly as may be to the respective numbers of A Ordinary Shares and Ordinary Shares held by such members; and
- 9.10.3 in the case of Ordinary Shares, to all holders of A Ordinary Shares and B Ordinary Shares (other than the Vendor if applicable) pro rata as nearly as may be to the respective numbers of A Ordinary Shares and B Ordinary Shares held by such members.

The Company shall invite each such member to whom shares have been offered under this sub-article to state in writing within twenty-one days from the date of the relevant notice whether he is willing to purchase any of the Sale Shares so offered to him and if so the maximum thereof which he is willing to purchase. This offer will remain open for a period of twenty one days (the "**Third Offer Period**").

#### 9.11 **Fourth Offer**

If at the end of the Third Offer Period there are any Sale Shares which have not been allocated the Company shall offer such shares to such members as have stated in writing their willingness to purchase all the shares previously offered to them. Such remaining shares shall be offered pro rata as nearly as may be to the respective numbers of A Ordinary Shares, B Ordinary Shares or Ordinary Shares (as the case may be) then held by such members which offer shall remain open for a fourth period of twenty-one days.

Thereafter the Company shall continue to make offers on the same terms while any member continues to state in writing his willingness to purchase all shares offered to him.

#### 9.12 **Transfer procedure for pre-emptive offers**

If the Company finds a purchaser for all or any of the Sale Shares under the terms of this Article the Vendor shall be bound upon receipt of the Sale Price to transfer the Sale Shares (or such of the same for which the Company shall have found a purchaser or purchasers) to such persons. If the Vendor defaults in transferring Sale Shares the Company shall if so required by the person or persons willing to purchase such Sale Shares receive and give a good discharge for the purchase money on behalf of the Vendor and shall authorise some person to execute transfers of the Sale Shares in favour of the purchasers and shall enter the names of the purchasers in the Register of Members as the holder of such of the Sale Shares as shall have been transferred to them as aforesaid.

#### 9.13 **Transfers free of pre-emption**

If the Company does not find purchasers for all of the Sale Shares under the terms of this Article the Vendor shall at any time within three months after the final offer by the Company to its members be free to sell and transfer such of the Sale Shares as have not been so sold to any person at a price which is no less than the Sale Price. However if the Sale Shares were the subject of a Total Transfer Condition such a sale may only be made of all the shares and not part only.

#### 9.14 **Effect of non-compliance**

Any purported transfer of shares otherwise than in accordance with the foregoing provision of these Articles shall be void and have no effect.

### **DRAG ALONG AND TAG ALONG**

- 10.1 If the holders of 75% in nominal value of the A Ordinary Shares in issue for the time being (the "**Selling Shareholders**") wish to transfer all their interest in Equity Shares to a person (or a Connected Person of that person or persons acting in concert with that person within the meaning of the City Code on Take-overs and Mergers) not already a member of the Company (the "**Third Party Purchaser**") the Selling Shareholders shall have the option (the "**Drag Along Option**") to require all the other holders of Equity Shares (the "**Called Shareholders**") to sell with full title guarantee and transfer all their shares to the Third Party Purchaser or as the Third Party Purchaser shall direct in accordance with this Article 10.
- 10.2 The Selling Shareholders may exercise the Drag Along Option by giving notice to that effect (a "**Drag Along Notice**") at any time before the transfer of the shares of the Selling Shareholders. A Drag Along Notice shall specify that the Called Shareholders are required to transfer all their Equity Shares (the "**Called Shares**") pursuant to this Article 10, the person to whom they are to be transferred, the price at which the Called Shares are to be transferred (calculated in accordance with Article 10.4) and the proposed date of transfer ("**Completion**").
- 10.3 A Drag Along Notice is irrevocable but the Drag Along Notice and all obligations thereunder will lapse if for any reason there is not a sale of Equity Shares by the Selling Shareholders to the Third Party Purchaser within 60 days after the date of the Drag Along Notice.
- 10.4 The Called Shareholders shall be obliged to sell each of the Called Shares at the price attributed by the offer from the Third Party Purchaser for an A Ordinary share.

- 10.5 Completion of the sale of the Called Shares shall take place on the same date as the date proposed for completion of the sale of the Selling Shareholders' Equity Shares unless:-
- 10.5.1 all of the Called Shareholders and the Selling Shareholders agree otherwise; or
- 10.5.2 that date is less than 7 days after the Drag Along Notice where it shall be deferred until the seventh day after the Drag Along Notice.
- 10.6 The rights of pre-emption set out in these Articles shall not arise on any transfer of shares to a Third Party Purchaser (or as he may direct) pursuant to a sale in respect of which a Drag Along Notice or Tag Along Offer has been duly served.
- 10.7 If any holder of Equity Shares does not on completion of the sale of Called Shares execute transfer(s) in respect of the Called Shares held by him the Directors shall be irrevocably entitled to and shall authorise and instruct such person as they shall think fit to execute necessary transfer(s) on his behalf and against receipt by the Company (on trust for such member) of the purchase monies payable for the Called Shares deliver such transfer(s) to the Third Party Purchaser (or as he may direct) and register the Third Party Purchaser (or as he may direct) as the holder thereof and, after the Third Party Purchaser (or his nominee) has been registered as the holder, the validity of such proceedings shall not be questioned by any such person.
- 10.8 If the Selling Shareholders wish to transfer all their interest in Equity Shares to a Third Party Purchaser (other than pursuant to Article 8.6, 8.8 and 8.11) and as a result of such sale or transfer of a Controlling Interest is obtained by a person (or persons acting in concert) where such person did not have a Controlling Interest immediately prior to the relevant transaction then the Selling Shareholders shall procure that the Third Party Purchaser shall make an offer to all other holders of Equity Shares to acquire their Equity Shares at a price per share equivalent to the price per A Ordinary Share offered by the Third Party Purchaser to the Selling Shareholders and failing which such transfer may not be validly registered ("**Tag Along Offer**") and completion of the acquisition of any shares which are the subject of a Tag Along Offer, if accepted by any of the other holders, must take place at the same time as completion of the sale by the Selling Shareholders.
- 10.9 All other regulations of the Company relating to the transfer of shares and the right to registration of transfers shall be read subject to the provisions of this Article.

## VOTING

- 11.1 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with these Articles and in particular, without limitation, to Article 11.2, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a representative not being himself a member, shall have one vote, and on a poll every member who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall (except as hereinafter provided) have one vote for every share in the capital of the Company of which he is the holder.
- 11.2 Upon service of a "**Default Notice**" pursuant to Article 3.4 the voting rights attaching to the A Ordinary Shares shall be amended with effect from the date of the written notice to the effect that on a poll the holders of the A Ordinary Shares shall have such number of votes for every A Ordinary Share as shall in aggregate equal not less than 75% of the aggregate voting rights of all the Equity Shares. For the avoidance of doubt, service of a Default Notice shall not affect the class rights attaching to the B Ordinary Shares as contained in Article 3.2.

## APPOINTMENT OF DIRECTORS

- 12.1 The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director. In addition, the holders of shares carrying voting rights representing more than 50% of the voting rights attaching to all shares in the capital of the Company may by notice in writing to the Company together appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.
- 12.2 Unless and until otherwise determined by ordinary resolution of the Company the number of directors shall not exceed 8 and shall not be less than 2.
- 12.3 Any person appointed as a director (other than an alternate director) may appoint any other director, or any person approved by resolution of the directors and willing to act, to be an alternate director and may remove from office an alternate director so appointed by him. In relation to Article 15 and Article 16, any such alternate director is appointed with the full rights, powers and obligations contained in such articles of the director to whom he is appointed as alternate and regulations 65 to 69 of Table A shall be construed accordingly.

## PROCEEDINGS OF DIRECTORS

- 13.1 Notice of every meeting of the directors shall be given to each director at any address supplied by him to the Company for that purpose whether or not he be present in the United Kingdom provided that any director may waive notice of any meeting either prospectively or retrospectively and if he shall do so it shall be no objection to the validity of such meeting that notice was not given to him. Meetings of the directors may be held by conference telephone or similar equipment as long as the participants can all hear each other. Subject to the provisions of the Act and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:-
- 14.1.1 may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;
- 14.1.2 may be a director or other officer of or employed by or be a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested;
- 14.1.3 may (and any firm or company of which he is a partner or member or director may) act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;
- 14.1.4 shall not by reason of his office be accountable to the Company for any benefit which he derives from such office service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
- 14.1.5 shall be entitled to vote and be counted in the quorum on any matter concerning the foregoing paragraphs of this Article.
- 14.2 For the purposes of this Article:-
- 14.2.1 a general notice to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be

deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;

14.2.2 an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and

14.2.3 an interest of a person who is for any purpose of the Act (excluding any statutory modification not in force when these Articles were adopted) connected with a director shall be treated as an interest of the director and in relation to an alternate director an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.

14.3 The quorum necessary for the transaction of business of the directors shall be 4 one of whom shall be an Investor Director. If within an hour from the time appointed for the meeting an Investor Director or his alternate is not present the meeting shall stand adjourned to the next day at the same time and place or to such other days at such other time and place as the directors present may determine and if at the adjourned meeting the Investor Director is not present within an hour from the time appointed for the meeting the directors present (subject to a minimum of 2) shall be a quorum.

#### **INVESTOR DIRECTORS**

15.1 Notwithstanding any other provisions of these Articles and in accordance with the provisions of the Investment Agreement the Investors shall be entitled to appoint as directors of the Company any 2 persons each to be referred to as an "Investor Director" and to remove from office any person(s) so appointed and to appoint another person in his or their place. Upon request by the Investors the directors shall also procure that one other appointee appointed by the Investors is appointed and acts as Non-Executive Chairman of the board of directors of the Company to be referred to as the "Non-Executive Chairman". The remuneration and reasonable expenses to be paid to the Investor Directors and the Non-Executive Chairman shall be payable by the Company and shall be such sum as may be agreed between each of them and the Company or failing agreement such reasonable sum as shall be fixed by the Investors. Upon request by the Investors the Company shall also procure that the Investor Directors be appointed as directors to any subsidiary of the Company.

15.2 On any resolution to remove an Investor Director or the Non-Executive Chairman, the A Ordinary Shares shall carry at least one vote in excess of 75 per cent of the votes exercisable at the general meeting at which such resolution is proposed.

#### **CLEARSKY DIRECTOR**

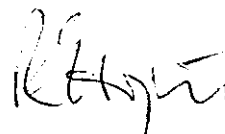
16.1 Notwithstanding any other provisions of these Articles and in accordance with the provisions of the Investment Agreement Clearsky shall be entitled to appoint as a director of the Company any person to be referred to as the "Clearsky Director" and to remove from office any person so appointed and to appoint another person in his place. For the avoidance of doubt no remuneration nor reasonable expenses shall be paid to the Clearsky Director by the Company.

16.2 On any resolution to remove the Clearsky Director, the B Ordinary Shares shall carry at least one vote in excess of 75 per cent of the votes exercisable at the general meeting at which such resolution is proposed.

- 16.3 The rights conferred by this Article 16 shall be disregarded and cease to apply upon Clearsky and its permitted transferees pursuant to Article 8.5(a) and (b) ceasing to hold in aggregate less than 10% of the issued share capital of the Company.

#### INDEMNITY

- 17.1 Subject to the provisions of the Act but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any 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.

A handwritten signature in black ink, appearing to read 'K. H. H.', is located below the indemnity clause.