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**THE COMPANIES ACTS 1985 TO 1989  
PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of**

**BAXI HOLDINGS LIMITED**

**Registered No. 4921647**

**Incorporated in England and Wales the 6th day of October 2003**

**Adopted on the 12th day of March 2004**

**As amended by Written Resolution dated 2nd March 2005**

**and**

**Special Resolution passed 8th October 2007**



**Dickson Minto W.S.  
London**

**FRIDAY**



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**ARTICLES OF ASSOCIATION**  
**of**  
**BAXI HOLDINGS LIMITED**  
**(Registered Number 4921647)**

**CONSTITUTION**

- 1 The Company is established as a private company within the meaning of Section 1(3) of the Act in accordance with and subject to the provisions of the Act and of the Memorandum of Association of the Company and of the Regulations contained in Table A, set out in Statutory Instrument 1985 No 805 as amended by Statutory Instrument 1985 No 1052 and Statutory Instrument 2000 No 3373 (hereinafter referred to as "**Table A**") subject to the exceptions and amendments thereto set out in paragraph 2 of Schedule 1 to these Articles

**INTERPRETATION**

- 2 In these Articles, unless the context otherwise requires, words and expressions shall bear the meaning ascribed to them in Schedule 1 to these Articles and the Schedules shall be part of and construed as one with these Articles

**SHARE CAPITAL**

- 3 The share capital of the Company is £100,000 divided into 9,250,000 A Shares of £0 01 each and 750,000 Ordinary Shares of £0 01 each<sup>1</sup>

**RIGHTS ATTACHING TO THE SHARES**

- 4 The rights and restrictions attaching to the Equity Shares are as follows

**Income**

- 4.1 Any profits which the Directors may lawfully determine to distribute in respect of any financial year shall be distributed amongst the holders of the Equity Shares pro rata in relation to the Paid Up Amount upon each such share held

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<sup>1</sup> By resolutions passed 8th October 2007, the existing 9,250,000 A Shares in the capital of the Company were reclassified as A1 Shares of £0 01 each and 2,150,000 A2 Shares of £0 01 each were created such that the share capital of the Company was altered to £121,500 divided into 9,250,000 A1 Shares of £0 01 each, 2,150,000 A2 Shares of £0 01 each and 750,000 Ordinary Shares of £0 01 each

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## Capital

- 42 Subject to the provisions of Schedule 4, the capital and assets of the Company on a winding-up or other return of capital available for distribution to the members of the Company shall be distributed amongst the holders of the Equity Shares pro rata in relation to the Paid Up Amount upon each such share held

## Voting

- 43 On a show of hands every holder of Equity Shares who (being an individual) is present or (being a corporation) is present by a duly authorised representative (not being himself a member entitled to vote) shall have one vote and on a poll every member holding Equity Shares shall have one vote for every such share of which he is the holder

## Conversion

- 44 On the Exit Conversion Date, the A1 Shares shall convert into the numbers of A1 Shares and Deferred Shares which, in respect of the relevant Conversion Dates, are calculated as set out in Schedule 2 (in respect of each Interim Conversion) and, thereafter, the remaining number of A1 Shares and the A2 Shares shall convert into the numbers of Ordinary Shares and Deferred Shares which are calculated as set out in Schedule 3 (in respect of the Exit Conversion), where all calculations and conversions under Schedule 2 shall be made prior to any calculations or conversions under Schedule 3

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- 45 Save as required by law or as expressly set out herein the A Shares and the Ordinary Shares shall constitute one class of shares
- 46 Whenever the share capital of the Company is divided into different classes of shares, the special rights attached to any such class may only be varied or abrogated with the consent in writing of the holders of more than 75% of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate meeting of the holders of that class. To every such separate general meeting all the provisions of these articles relating to general meetings of the Company (and to proceedings at general meetings) shall, *mutatis mutandis*, apply
- 47 Without prejudice to the provisions of Articles 45 and 46 above, the rights conferred upon the holders of the Ordinary Shares shall be deemed to be varied by (and the prior consent or sanction of the holders of the Ordinary Shares (given in accordance with the provisions of Article 46) shall be required for) the amendment of any provision of Article 44 (*conversion*), Article 7 (*transfer of shares*), Articles 32-38 (*permitted transfers, pre-emptive transfers, compulsory transfers, fair price, change of control, tag-along, drag-along*) and Schedules 2 and 3 (*interim conversions, exit conversions*) and any amendment to the provisions of Article 37 (*investors tag-along*) which is adverse to the interests of the holders of the Ordinary Shares

## ISSUES OF SHARES

### 5. Issues of Shares

- 5 1 Any shares may be issued on the terms that they are, or at the option of the Company are liable, to be redeemed
- 5 2 Subject to the provisions of the Act and of every other statute for the time being in force concerning companies and affecting the Company and to any direction to the contrary that may be given by ordinary resolution of the Company, all the unissued shares (including any redeemable shares) of the Company (whether forming part of the existing or any increased capital) shall be at the disposal of the Directors, who may offer, allot, issue, grant options or rights over or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions and with such preferred, deferred or other special rights or restrictions whether in regard to dividend, voting, return of capital or otherwise as the Directors may determine, but so that no shares shall be issued at a discount
- 5 3 For the purposes of Section 80 of the Act, the Directors are authorised generally and unconditionally to allot without the authority of the Company in general meeting up to a maximum of £99,999 in nominal amount of relevant securities (as defined in Section 80(2) of the Act) of the Company at any time or times from the date of adoption of these Articles until the date occurring five years after such date. The aforesaid authority may be previously revoked or varied by the Company in general meeting and may be renewed by the Company in general meeting for a further period not exceeding five years. The Company may make any offer or agreement before the expiry of this authority which would or might require relevant securities to be allotted after this authority has expired and the Directors may allot relevant securities in pursuance of any such offer or agreement notwithstanding the expiry of this authority. In this paragraph, references to the allotment of relevant securities shall be construed in accordance with Section 80 of the Act
- 5 4 In accordance with Section 95 of the Act, sub-Section (1) of Section 89 of the Act shall be excluded from applying to the allotment of equity securities (as defined in Section 94 of the Act)
- 6 The Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as otherwise provided by these Articles or by law) any other rights in respect of any share except an absolute right to the entirety thereof held by the registered holder. The Company shall however be entitled to register trustees as such in respect of any shares

## TRANSFER OF SHARES

### 7. Transfer of Shares

- 7.1 The Directors shall register any transfer of shares made in accordance with the provisions of Articles 32 to 39 (*permitted transfers, pre-emptive transfers, compulsory transfers, fair price, change of control, tag-along, drag-along and investors drag-along*) Save as aforesaid the Directors may, in their absolute discretion and without assigning any reason therefore, decline to register any transfer of any shares, whether or not such shares are fully paid
- 7.2 Subject to such of the restrictions set out in these Articles as may be applicable, any member may transfer all or any of his shares by instrument of transfer in writing in any usual or common form or in any other form which the Directors may approve The instrument of transfer shall be executed by or on behalf of the transferor and (except in the case of fully paid shares) by or on behalf of the transferee and the transferor shall remain the holder of the shares and as such a member of the Company until the name of the transferee is entered in the Register of Members in respect thereof

## GENERAL MEETINGS

- 8 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business Save as herein otherwise provided, any two members entitled to vote upon the business transacted present in person or by proxy (provided that one Non-employee Member is present in person or by proxy or, if a corporation, represented by a duly authorised representative) shall be a quorum
- 9 If a quorum is not present within half an hour of the time appointed for a general meeting the meeting, if convened on the requisition of members, shall be dissolved, in any other case it shall stand adjourned to such day and at such time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum
- 10 A resolution in writing signed by all the members of the Company who would be entitled to receive notice of and to attend and vote at a general meeting at which such resolution was to be proposed, or by their duly appointed attorneys or representatives, shall be as valid and effectual as if it had been passed at a general meeting of the Company duly convened and held Any such resolution may consist of several documents in the like form each signed by one or more of the members or their duly appointed attorneys or representatives and the signature in the case of a corporation which is a member shall be sufficient if made by a director or the secretary thereof or by its duly appointed attorney(s) or representative(s)
- 11 A poll may be demanded at any general meeting by the chairman or by any member present in person or by proxy or, if a corporation, by any representative duly authorised and entitled to vote Regulation 46 of Table A shall be construed accordingly

- 12 No resolution not previously approved by the Directors shall be moved by any member other than a director at a general meeting unless the member intending to move the same shall have left a copy thereof with his name and address at the Office three clear days prior to such meeting
- 13 A notice of every general meeting shall be given to every member whether or not he shall have supplied to the Company an address within the United Kingdom for the giving of notices and Regulation 112 of Table A shall be construed accordingly

#### DIRECTORS

- 14 The quorum for the transaction of the business of the Directors may be fixed by the Directors and, unless so fixed at any other number or unless there is only one director, shall be two, one of whom shall be an Investor Director (unless no Investor Director is, at the relevant time, appointed) A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum If there is an Investor Director in office but no Investor Director is present at any duly convened meeting of the Directors, the meeting shall be adjourned to such time (being not less than two or more than seven days from the date of the meeting so adjourned) as the Directors present at the adjourned meeting shall agree and this shall be notified to each Director and the quorum for the transaction of business at the reconvened meeting shall be any two Directors provided that the only business which may be transacted at that meeting is the business details of which are set out in the notice of the reconvened meeting
- 15 Unless and until otherwise determined by ordinary resolution of the Company, the minimum number of directors shall be one and there shall be no maximum number A sole director shall have all the power and authority vested in "the Directors" in terms of these Articles
- 16 A director shall not be required to hold shares of the Company in order to qualify for office as a director, but he shall be entitled to receive notice of and attend and speak at all general meetings of the Company or meetings of any class of members of the Company
- 17 A director who is in any way whether directly or indirectly interested in a contract or proposed contract or arrangement with the Company shall declare the nature of his interest at a meeting of the Directors in accordance with Section 317 of the Act Subject to such disclosure as aforesaid a director may vote in respect of any contract or proposed contract or arrangement in which he is interested and if he does so vote his vote shall be counted and he may be counted in ascertaining whether a quorum is present at any meeting at which any such contract or proposed contract or arrangement shall come before the Directors for consideration and may retain for his own absolute use and benefit all profits and advantages accruing to him therefrom For the purposes of this Article
- 17 1 a general notice given 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, and

- 17 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
- 18 The Directors may dispense with the keeping of attendance records for meetings of the Directors or committees of the Directors Regulation 100 of Table A shall be modified accordingly
- 19 The office of a director shall be vacated
- 19 1 if he becomes bankrupt or suspends payment of or compounds with his creditors,
- 19 2 if he becomes of unsound mind or a patient for the purpose of any statute relating to mental health or otherwise incapacitated,
- 19 3 if (not being a director holding executive office as such for a fixed term) by notice in writing to the Company he resigns his office,
- 19 4 if he is prohibited by law from being a director or ceases to be a director by virtue of any provision of the Act,
- 19 5 if he is removed from office by notice in writing signed by all his co-directors and served upon him,
- 19 6 if he, not being an Electra Director appointed pursuant to Article 40 3, is removed from office by notice in writing signed by the holders of shares representing more than 50% of the aggregate Voting Rights, and/or
- 19 7 if he shall for more than six consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the Directors resolve that his office be vacated
- 20 The Directors shall have power at any time to appoint any person to be a director of the Company either to fill a casual vacancy or as an addition to the existing directors
- 21 The ordinary remuneration of the directors for their services as directors shall from time to time be determined by an ordinary resolution of the Company and shall (unless such resolution otherwise provides) be divisible among the Directors as they may unanimously agree or, failing agreement, equally except that any director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for such proportion of remuneration as relates to the period during which he has held office The Directors may repay to any director all such reasonable expenses as he may properly incur in attending meetings of the Directors or of any committee of the Directors or general meetings of the Company or any class of members of the Company or otherwise in or about



the business of the Company In the event of any director necessarily performing or rendering any special duties or services to the Company outside his ordinary duties as a director the Directors may, if so authorised by an ordinary resolution of the Company, pay such director special remuneration and such special remuneration may be paid by way of salary, commission, participation in profits or otherwise as may be arranged and approved by the Directors

- 22 The Directors may from time to time appoint one or more of their number to an executive office (including that of Chief Executive Officer, Managing Director, Deputy or Assistant Managing Director, Manager or any other salaried office) for such period and on such terms and conditions as they shall think fit and, subject to the terms and conditions of any agreement entered into in any particular case, may revoke such appointment Subject to the terms and conditions of any such agreement the appointment of any director as aforesaid shall be ipso facto determined if he ceases from any cause to be a director Regulation 72 of Table A shall extend to the posts of Deputy or Assistant Managing Director or Manager aforesaid
- 23 A Chief Executive Officer, Managing Director, Deputy or Assistant Managing Director, Manager or other executive officer as aforesaid shall receive such remuneration (either by way of salary, commission, participation in profits or pension or otherwise howsoever, whether similar to the foregoing or not) as the Directors may determine
- 24 The Directors on behalf of the Company and without the approval of any resolution of the Company may establish, maintain, participate in and contribute to, or procure the establishment and maintenance of, participation in and contribution to, any pension, superannuation, benevolent or life assurance fund, scheme or arrangement (whether contributory or otherwise) for the benefit of any persons (including Directors, former Directors, officers and former officers) who are or shall have been at any time in the employment or service of the Company or of any company which at the time is or was a subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company (as defined in Section 736 of the Act) or otherwise associated with the Company or of the predecessors of the Company in business or of any such other company as aforesaid, or for the benefit of the relations, spouses, widows, families, connections or dependants of any such persons or for the benefit of any other persons whose service or services have directly or indirectly been of benefit to the Company and their relations, connections or dependants, and the Directors on behalf of the Company and without the approval of any resolution of the Company may grant or procure the grant of donations, gratuities, pensions, allowances, including allowances on death, or other payments or benefits of any kind to any of such persons as aforesaid, and the Directors on behalf of the Company and without the approval of any resolution of the Company may establish, subsidise, subscribe to or support institutions, associations, clubs, schools, funds or trusts calculated or considered to be for the benefit of any of such persons as aforesaid or otherwise for the advancement of the interests and well-being of the Company or of any such other company as aforesaid or its members, and the Directors on behalf of the Company and without the

approval of any resolution of the Company may make payments for or towards the insurance of any of such persons as aforesaid. Any such director or ex-director may participate in and retain for his own benefit any such donation, gratuity, pension, allowance, payment or other benefit conferred under or pursuant to this Article and the receipt thereof shall not disqualify any person from being or becoming a director of the Company.

- 25 The Directors on behalf of the Company and without the approval of any resolution of the Company (but subject to the provisions of Sections 151 to 158 of the Act) may establish and contribute to any employees' share scheme (within the meaning of Section 743 of the Act) for the purchase or subscription by trustees of shares of the Company or of a holding company of the Company and may lend money to the Company's employees to enable them to purchase or subscribe for shares of the Company or of a holding company of the Company, and may establish and maintain any option or incentive scheme whereby selected employees (including salaried directors and officers) of the Company are given the opportunity of acquiring shares in the capital of the Company, and may formulate and carry into effect any scheme for sharing the profits of the Company with its employees (including salaried directors and officers) or any of them. Any director may participate in and retain for his own benefit any such shares, profit or other benefit conferred under or pursuant to this Article and the receipt thereof shall not disqualify any person from being or becoming a director of the Company.
- 26 The Directors shall not be subject to retirement by rotation and accordingly all references in Table A to retirement by rotation shall be disregarded.
- 27 A resolution in writing signed by all the Directors from time to time in the United Kingdom shall be as valid and effectual as a resolution passed at a meeting of the Directors duly convened and held and may consist of several documents in the like form, each signed by one or more of the directors.
- 28 A meeting of the Directors or of a committee of the Directors may consist of a conference between directors who are not all in one place, but of whom each is able (directly or by telephonic communication) to speak to each of the others, and to be heard by each of the others simultaneously. A director taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote or be counted in a quorum accordingly. Subject to the Act, all business transacted in such manner by the Directors or a committee of the Directors shall for the purposes of these Articles be deemed to be validly and effectively transacted at a meeting of the Directors or a committee notwithstanding that fewer than two directors or alternate directors are physically present at the same place. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is. The word "meeting" in these Articles shall be construed accordingly.

#### **BORROWING AND OTHER POWERS**

- 29 The Directors may exercise all the powers of the Company without limit as to amount to borrow and raise money and to accept money on deposit and to

grant any security, mortgage, charge or discharge as they may consider fit for any debt or obligation of the Company or which is binding on the Company in any manner or way in which the Company is empowered so to grant and similarly as they may consider fit to enter into any guarantee, contract of indemnity or suretyship in any manner or way in which the Company is empowered so to enter into

#### ALTERNATE DIRECTORS

##### 30. Alternate Directors

- 30 1 Any director (other than an alternate director) may at any time by writing under his hand and deposited at the Office, or delivered at a meeting of the Directors, appoint any person to be his alternate director and may in like manner at any time terminate such appointment. If such alternate director is not another director, such appointment, unless previously approved by the Directors, shall have effect only upon and subject to being so approved (provided that the appointment of an alternate by an Investor Director shall be effective immediately on notice of such appointment being given to the Company and shall not require the approval of the Directors)
- 30 2 The appointment of an alternate director shall determine on the happening of any event which if he were a director would cause him to vacate such office or if his appointor ceases to be a director
- 30 3 An alternate director shall (except when absent from the United Kingdom) be entitled to receive notice of all meetings of the Directors and of all meetings of committees of the Directors of which his appointor is a member and shall be entitled to attend and vote as a director at any such meetings at which his appointor is not personally present and generally at such meetings to perform all the functions of his appointor as a director in his absence and for the purposes of the proceedings at such meeting the provisions of these Articles shall apply as if he were a director. If his appointor is for the time being absent from the United Kingdom or temporarily unable to act through ill-health or disability, an alternate director's signature to any resolution in writing of the Directors shall be as effective as the signature of his appointor. Every person acting as an alternate director shall have one vote for each director for whom he acts as alternate (in addition to his own vote if he is also a director). An alternate director shall not (save as aforesaid) have power to act as a director or be deemed to be a director for the purposes of these Articles
- 30 4 An alternate director may be repaid expenses and shall be entitled to be indemnified by the Company to the same extent *mutatis mutandis* as if he were a director but he shall not be entitled to receive from the Company any remuneration except only such proportion (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct

### INDEMNITY

- 31 Every director or officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution or discharge of the duties of his office or otherwise 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 in which the charge is found not proven or in connection with any application under Section 727 of the Act in which relief is granted to him by the Court and no director or other officer shall be liable for any loss, damage or misfortune which may happen to be incurred by the Company in the execution or discharge of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act

### PERMITTED TRANSFERS

- 32 The following transfers of shares may be made without restriction as to price or otherwise and without any requirement to offer such shares pursuant to the provisions of Article 33 (*pre-emptive transfers*) and without any requirement, save in the case of sub-paragraph 32.8 below, to comply with the provisions of Article 36 (*change of control*) namely transfers
- 32.1 by any member being a company to any holding company of such company or any direct or indirect subsidiary of any such holding company,
- 32.2 by any Non-employee Member holding shares as a nominee or on trust (whether directly or indirectly) for an employee share scheme to any other nominee or trustee of the same scheme,
- 32.3 by any nominee or trustee to any other nominee or trustee of the same beneficiary,
- 32.4 by any Original Employee Member to any Permitted Transferee (subject always to such transferee undertaking in a form satisfactory to an Investor Director (including a power of attorney in respect of such shares) that such transferee will be bound by the provisions of these Articles (in particular, the provisions of Article 34 (*compulsory transfers*) as if such transferee were the Original Employee Member and the transferred shares remained held by the Original Employee Member),
- 32.5 by the trustees of any trust established for the benefit of employees or directors (or former employees or directors) to the beneficiaries of such trust (or any of them) as may be approved by the remuneration committee of the Company and/or by any member to the trustees of such trust to hold on trust for the benefit of the beneficiaries of the trust, and/or
- 32.6 by any Financial Institution which is a fund (which, for the avoidance of doubt, shall include Electra and each of the CIE Investors) to
- 32.6.1 the holders of units in, or a nominee or trustee for the holders of units in, or partners in, or members of or investors in such fund,

32 6 2 a nominee or trustee for such fund,

32 6 3 another fund (or nominee or trustee for another fund) which is managed or advised by the same manager or adviser as the transferor or by any member of the same group of companies of such manager or adviser, and/or

32 7 by any of the CIE Investors to any Financial Institution provided that no such transfer shall be permitted pursuant to this Article 32 7 to the extent that it would result in the CIE Investors together holding 50% or less of the aggregate Voting Rights, and/or

32 8 by any member with the prior written consent of the holders of A Shares representing not less than 60% of the A Shares (and, if the transferee is a holder of A Shares, the consent of the Electra Director (if any)) provided that no transfer shall be permitted pursuant to this Article 32 8 to the extent that it would result in the CIE Investors together holding 50% or less of the aggregate Voting Rights

If any person to whom shares are transferred pursuant to sub-paragraphs 32 1 to 32 6 above ceases to be within the required relationship with the original transferor of such shares, such shares shall be transferred back to the original transferor (or to any other person falling within the required relationship with the original transferor) forthwith upon such relationship ceasing and, if the holder of such shares fails to make such transfer, the holder shall be deemed to have served a separate Transfer Notice in respect of all of such shares then held by him and the provisions of Article 33 (*pre-emptive transfers*) shall apply save that the Specified Price shall be deemed to be the Fair Price

### PRE-EMPTIVE TRANSFERS

#### 33. Pre-Emptive Transfers

33 1 Save as provided by Article 32 (*permitted transfers*) and Article 34 (*compulsory transfers*) and Article 36 to Article 39 (*change of control, tag-along, drag-along and investors drag-along*) no member or person entitled by transmission shall transfer or dispose of or agree to transfer or dispose of or grant any interest or right in any Equity Share to any person (hereinafter a "**transferee**") without first offering the same for transfer to the holders for the time being of Equity Shares (other than the proposing transferor) Such offer may be in respect of all or part only of the Equity Shares held by the proposing transferor, shall be made by the proposing transferor by the giving in writing of a notice ("**a Transfer Notice**") and may make acceptance of the offer conditional upon acquiring Loan Notes and/or DDBs and/or any other securities (whether of the Company or any of its subsidiaries on the terms specified in the Transfer Notice)

33 2 Each Transfer Notice shall specify the number of Equity Shares offered (hereinafter called "**the Sale Shares**") and (unless the Transfer Notice is deemed given as provided by these Articles) the price at which the Sale Shares are offered ("**the Specified Price**") and the identity(ies) of the

proposed transferee(s) (if any) and it shall constitute the Directors as the agent of the proposing transferor for the sale of the Sale Shares to the other holders of Equity Shares (other than the proposing transferor)

- 33 3 Upon receipt or deemed receipt by the Company of the Transfer Notice the Directors shall forthwith give written notice to the holders of Equity Shares (other than the proposing transferor) of the number and description of the Sale Shares and the Specified Price and (unless the Transfer Notice is deemed given as provided by these Articles) the identity(ies) of the proposed transferee(s) inviting each of such holders to state by notice in writing to the Company within 60 days whether he is willing to purchase any and, if so, what maximum number of the Sale Shares ("**Maximum**") he is willing to purchase, and shall also forthwith give a copy of such notice to the proposing transferor. A person who, pursuant to such a notice, expresses a willingness to purchase any Sale Shares is referred to below as a "**Purchaser**"
- 33 4 Within 10 days of the expiration of the said period of 60 days the Directors shall, subject to Article 33 6 below, allocate the Sale Shares to or amongst the Purchasers and such allocation shall be made so far as practicable as follows
- 33 4 1 if the Sale Shares are Ordinary Shares, first to existing or prospective employees of the Company or any of its subsidiaries or a trust established for the benefit of such employees or former employees (in each case as approved by an Investor Director), second to the holders of Ordinary Shares and third to the holders of A Shares, or
- 33 4 2 if the Sale Shares are A Shares, first to the holders of A Shares and second to the holders of the Ordinary Shares
- 33 5 Each allocation among the relevant persons identified in Article 33 4 shall in the case of competition be made pro-rata to the number of shares of the relevant class held by them but individual allocations shall not exceed the Maximum which the relevant person shall have expressed a willingness to purchase
- 33 6 If the Transfer Notice shall state that the proposing transferor is not willing to transfer part only of the Sale Shares, no allocation shall be made unless all the Sale Shares are allocated
- 33 7 Forthwith upon such allocation being made, the Purchasers to or amongst whom such allocation has been made shall be bound to pay to the Company (as agent for the proposing transferor) the Specified Price for, and to accept a transfer of, the Sale Shares so allocated to them respectively and the proposing transferor shall, subject to Article 36 (*change of control*) be bound forthwith upon payment of the Specified Price as aforesaid to deliver to the Company (as agent for the Purchasers) such documents as are required to transfer such shares to the respective Purchasers
- 33 8 If in any case the proposing transferor, after having become bound to transfer Sale Shares as aforesaid, makes default in so doing the Company may receive the Specified Price and the Directors may appoint some person to execute instruments of transfer of such Sale Shares in favour of the Purchasers and

shall thereupon, subject to such transfers being properly stamped, cause the name of each of the Purchasers to be entered in the Register of Members as the holder of those Sale Shares allocated to him as aforesaid and shall hold the Specified Price in trust for the proposing transferor. The issue of a receipt by the Company therefor shall be a good discharge to the Purchasers and after their names shall have been entered in the Register of Members in exercise of the aforesaid power the validity of the transactions shall not be questioned by any person.

- 33 9 If, at the expiration of the period of 10 days referred to in Article 33 4 above, any of the Sale Shares have not been allocated in accordance with the provisions of this Article, the proposing transferor may, subject always to Article 33 10, at any time within a period of 60 days after the expiration of the said period of 10 days referred to in Article 33 4 above transfer such unallocated Sale Shares to the proposed transferee(s) (if any) specified in the Transfer Notice, or to any other person at any price not being less than the Specified Price provided that
- 33 9 1 if the Transfer Notice shall contain the statement referred to in Article 33 6 the proposing transferor shall not be entitled hereunder to transfer any of such unallocated Sale Shares unless in aggregate all of such unallocated Sale Shares are so transferred,
- 33 9 2 the Board may require to be satisfied on reasonable grounds that such unallocated Sale Shares are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer without any deduction, rebate or allowance whatsoever to the transferee and if not so satisfied may refuse to register the instrument of transfer,
- 33 9 3 if the Transfer Notice shall make any acceptance of the offer conditional as referred to in Article 33 1 the proposing transferor shall not be entitled hereunder to transfer any of such unallocated Sale Shares unless the transferee acquires the relevant proportion of DDBs, Loan Notes and/or other securities and the terms and as are set out in the Transfer Notice
- 33 10 No member (other than any of the CIE Investors) may transfer any shares under Article 33 9 to any person or entity who is not a current member of the Company without the prior written consent of an Investor Director (which consent shall not be unreasonably withheld)
- 33 11 The restrictions on transfer contained in this Article shall apply to all transfers and transmissions by operation of law or otherwise of Equity Shares
- 33 12 Where a member or other person is under these Articles deemed to have served a Transfer Notice in respect of Equity Shares, such Transfer Notice shall be deemed not to contain the condition referred to in Article 33 9 3 or the statement referred to in Article 33 6

## COMPULSORY TRANSFERS

### 34. Compulsory Transfers

34 1 Subject to Article 34 5, a Leaver shall be deemed on the date of cessation of employment to have served a separate Transfer Notice in respect of such number of the Ordinary Shares then held by him as set out in Article 34 3 (and such deemed Transfer Notice shall supersede any previous Transfer Notice which has not completed) and, subject to Articles 34 2 and 34 3, the provisions of Article 33 shall apply

34 2 A deemed service of a Transfer Notice pursuant to Article 34 1 shall provide that the Specified Price in respect of any Ordinary Shares the subject of the deemed Transfer Notice shall be

34 2 1 in respect of a Bad Leaver the lower of

- (a) the price paid therefor by the relevant Leaver (including any premium paid thereupon (which, in the case of shares issued on or around the date of adoption of these Articles, shall be deemed to be £2 67 per Ordinary Share)), and
- (b) the Fair Price,

34 2 2 in respect of a Good Leaver the lower of

- (a) the price paid therefor by the relevant Leaver (including any premium paid thereupon (which, in the case of shares issued on or around the date of adoption of these Articles shall be deemed to be £2 67 per Ordinary Share)) plus interest on such sum from the date of acquisition by the relevant Leaver to the date upon which such shares are transferred hereunder at a rate of 10% per annum, and
- (b) the Fair Price

34 3 Subject to Article 34 4, a deemed service of a Transfer Notice pursuant to Article 34 1 shall provide that the number of Ordinary Shares held by the Leaver the subject of the deemed Transfer Notice shall be

34 3 1 in respect of a Bad Leaver, all of the Ordinary Shares held by such Leaver,

34 3 2 (a) in respect of a Good Leaver who becomes a Good Leaver prior to the second Anniversary, all of the Ordinary Shares held by such Leaver,

- (b) in respect of a Good Leaver who becomes a Leaver on the second Anniversary, 75% of the Ordinary Shares held by such Leaver,



- (c) in respect of a Good Leaver who becomes a Leaver on or after the third Anniversary, 50% of the Ordinary Shares held by such Leaver,
- (d) in respect of a Good Leaver who becomes a Leaver after the second Anniversary but prior to the third Anniversary, a decreasing number of Ordinary Shares reducing from 75% on the day after the second Anniversary to 50% on the day before the third Anniversary, decreasing on a daily basis

34 4 The Investor Director may, by notice in writing served on the Company and the Leaver at any time, deem such member to have served a Transfer Notice in respect of some or all of the Ordinary Shares held by a Leaver which are not the subject of a deemed Transfer Notice in accordance with Article 34 3 (or which were the subject of such a transfer notice but were not acquired in accordance with Article 33) (and such deemed Transfer Notice shall supersede any previous Transfer Notice which has not completed) provided that the Specified Price in respect of such shares shall be the Fair Price

34 5 The Investor Director may, by notice in writing served on the Company and the Leaver prior to the expiry of three months from the date upon which the relevant person became a Leaver, specify that not all of the Leaver's shares are to be the subject of the deemed Transfer Notice and/or specify that a Bad Leaver shall in respect of some or all of the relevant shares be deemed to be a Good Leaver for the purposes of Article 34 and may, by notice in writing served on the Leaver, suspend the operation of the provisions of Article 33 for all or any part of such three month period

34 6 Notwithstanding any other provision herein contained, if a Leaver retains shares, he shall have all the rights of and shall rank *pari passu* with the other holders of the class or classes of shares held by him save that

34 6 1 at any general meeting or class meeting of the Company he shall be deemed to vote (whether on a poll or otherwise) in the same manner as the majority of votes cast at the relevant meeting by the holders of the relevant class or classes of shares held by him,

34 6 2 in a written resolution he will be deemed to resolve in the same manner as the majority of the holders of the relevant class or classes of shares held by him,

34 6 3 in relation to any matter where the consent of the holders of the class or classes of shares held by him is required he shall be deemed to grant consent if the majority of the holders of the relevant class or classes of shares held by him grant such consent,

34 6 4 on any transfer of a majority of the shares of the relevant class or classes held by him in circumstances where an offer is made to him to acquire his shares at a price which is not lower than the average price per share payable to the holders of a majority of the shares of the such class or classes he shall be deemed to accept such offer and to transfer such shares at the time and place specified by the offeror,

and he hereby appoints any director of the Company from time to time to sign any such resolution, consent, transfer form or other document and/or take any other act in his name and on his behalf to implement all or any of the above provisions provided that, in respect of any transfer made pursuant to Article 34 6 4, the Company shall retain on trust the proceeds of sale and shall account to him for such proceeds (but shall not be bound to earn or pay interest thereon) forthwith on demand

- 34 7 The Investor Director may, by notice in writing served on the Company and the Leaver at any time, specify the Leaver's retained shares be transferred at nominal value to a nominee company nominated by the Remuneration Committee to be held by such nominee company for the benefit of the Leaver. The nominee company shall conduct all votes and exercise all rights, obligations and discretions in respect of such shares as directed by the Remuneration Committee or as otherwise may be required these Articles or the Shareholders' Agreement and the relevant Leaver hereby waives all rights in respect of such shares and indemnifies the nominee company in respect of all actions (other than actions in breach of trust by such nominee) take by them in respect of such shares
- 34 8 If, in the opinion of the Board (acting reasonably), any member to whom Article 34 6 applies takes or seeks to take any action contrary to the terms of Article 34 6 or seeks to prevent any director of the Company from taking any action pursuant to the authority conferred on them pursuant to the terms of Article 34 6 any director may, by serving written notice on the Company and the relevant member deem such member to have served a Transfer Notice in respect of all of the shares then held by him and in respect of which the Specified Price shall be the Paid Up Amount in respect of each share

#### FAIR PRICE

- 35 "Fair Price" means the price per share as at the date of occurrence of the event which triggered the requirement to agree or determine Fair Price agreed between the selling shareholder and the Directors within 21 days or, in the absence of such agreement, the price as at such date certified in writing by the Valuer as being in their opinion the fair value of the shares as between a willing seller and a willing buyer in cash on completion (with no discount to reflect the unquoted status of the shares) provided that the Valuer, in determining the fair value of any of such shares shall
- 35 1 determine the sum in cash which a willing buyer would offer to a willing seller for the whole of the issued share capital of the Company, and
- 35 2 divide the resultant figure by the number of issued Equity Shares and outstanding options or rights to acquire Equity Shares (assuming exercise in full and assuming that any Equity Shares available to be allocated to employees of the Company pursuant to the Shareholders' Agreement have been issued),

but so that

- (i) there shall be no addition or subtraction of any premium or discount arising in relation to the size of the holding the subject of the relevant transfer or in relation to any restrictions on the transferability of the shares arising only out of the provisions of these Articles,
- (ii) the Valuer shall take into account in relation to determining the appropriate figure for Article 35 1 above any bona fide offer from any third party to purchase any holdings the subject of a Transfer Notice, and
- (iii) the Valuer shall not take into account, in relation to determining the appropriate figure for Article 35 1 above in respect of the valuation of any shares held by a Leaver, any conversions pursuant to Article 4 4 which are to occur after the date upon which the relevant Leaver became a Leaver save to the extent any such conversion is as a result of a triggering event occurring prior to the date upon which the Leaver became a Leaver

The costs of the Valuer shall be borne by the Company

### CHANGE OF CONTROL

- 36 Notwithstanding any other provision of these Articles, but save for transfers pursuant to Articles 32 1-32 6 (*permitted transfers*) and Article 39 (*investors drag-along*) or transfers to any of the CIE Investors or transfers to Electra no sale or transfer of, or transfer of any interest in, any shares conferring a right to vote at general meetings of the Company to any person whomsoever which would result, if made and, if appropriate, registered, in a person (together with persons acting in concert therewith) whether or not then a member of the Company obtaining or increasing a Controlling Interest in the Company, shall be made or registered and no right to subscribe for any shares which would result, when such shares are issued, in such a person obtaining or increasing a Controlling Interest in the Company shall be exercised unless
- 36 1 prior to such transfer being completed a General Offer is made to all members by the person or persons proposing to acquire the Controlling Interest to purchase all the Equity Shares in issue and all the unissued Equity Shares for which any person shall then be entitled to subscribe, and
- 36 2 the relevant offer is approved by an Investor Director

Any General Offer shall conform to the requirements of the Code (so far as applicable and subject as hereinafter provided) as if the Code applied to such General Offer (with an Investor Director making any determinations or dispensations which would otherwise fall to be made by the Panel (such determinations or dispensations to be binding on all of the members provided they are made by the Investor Director in good faith in what he believes to be the interests of the members as a whole)) and shall attribute an equal value to each Equity Share being a value not less than the highest value paid or agreed to be paid to a Non-employee Member for an Equity Share by the proposed acquiror(s) of the Controlling Interest in the 6 months preceding

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the date of the General Offer. It shall be a term of a General Offer and of any agreement to acquire any shares pursuant thereto that a Controlling Interest is only obtained or increased in consequence of such General Offer or agreement if such General Offer is accepted in respect of a number of shares which would result in the offeror holding more than 50% of the Voting Rights. Any General Offer shall be made in writing (stipulated to be open for acceptance for at least twenty-eight days) to all shareholders and shall include an undertaking by the offeror that neither he nor any person acting in concert with him has within the 6 months immediately preceding or will within the 6 months immediately succeeding the making of the General Offer entered into or will enter into more favourable terms with any member for the purchase of shares of the same class. Such a General Offer shall be accepted or rejected in writing within the time period reasonably stipulated and shall be deemed to have been rejected by a member if he does not respond within such time period.

### TAG-ALONG

#### 36. Tag-Along

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36.1 If as the result of a General Offer or a Relevant Sale (pursuant to Article 39.1) a person or persons (in this Article the "**Buyer**") acquires a Compulsory Purchase Interest the Company shall forthwith notify all members accordingly and any member who did not accept the General Offer or did not participate in the Relevant Sale under Article 39.1 may by written notice to the Company served within 60 days of such notification require the Company as agent for such member to serve a notice (in this Article a "**Compulsory Purchase Notice**") on the Buyer requiring it to buy such member's shares at, in respect of a General Offer, the consideration applicable to such General Offer or, in respect of an offer made under Article 39.1, the price per share that was or would be payable under the Compulsory Acquisition Notice. The Company shall serve the Compulsory Purchase Notice forthwith upon receipt of any such written notice by a member.

36.2 The Buyer shall complete the purchase of all shares in respect of which a Compulsory Purchase Notice has been given and no later than 21 days from the date of the serving of such Compulsory Purchase Notice on it. The consideration shall be payable in full without any set off. Any transfer pursuant to a Compulsory Purchase Notice shall not require the proposing transferor to give a Transfer Notice. The Directors shall not register any transfer to the Buyer and the Buyer shall not be entitled to exercise or direct the exercise of any rights in respect of any shares to be transferred to the Buyer until in each case the Buyer has fulfilled all his obligations pursuant to this Article. If and for so long as the Buyer fails to comply with the provisions of this Article, the shares held by the Buyer shall confer on the Buyer no right to receive notice of, attend or vote at any general meeting of the Company or at any separate general meeting of the holders of the shares of that class until the obligations of the Buyer hereunder have been complied with and such shares shall confer no right to receive notice of, attend or vote at any meeting of the Company unless and until the Buyer has complied with such obligations under this Article.

## DRAG-ALONG

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Numbering**37. Drag-Along**

**37.1** If as the result of a General Offer a person or persons (in this Article the "Buyer") acquires a Compulsory Purchase Interest the Buyer may by written notice to the Company served within 60 days of such acquisition require the Company as agent for the Buyer to serve notices (in this Article each a "Compulsory Purchase Notice") on members who have not accepted such offer (the "Minority Shareholders") requiring them to sell their shares at the consideration applicable to such General Offer. The Company shall serve the Compulsory Purchase Notices forthwith and for the period of 21 days from the service of the Compulsory Purchase Notices the Minority Shareholders shall not be entitled to transfer their shares to anyone except the Buyer or a person identified by the Buyer.

**37.2** The Buyer shall complete the purchase of all shares in respect of which a Compulsory Purchase Notice has been given at the same time and no later than 21 days from the date of the serving of such Compulsory Purchase Notices. The consideration shall be payable in full without any set off. Any transfer pursuant to a Compulsory Purchase Notice shall not require the proposing transferor to give a Transfer Notice. The Directors shall not register any transfer to the Buyer and the Buyer shall not be entitled to exercise or direct the exercise of any rights in respect of any shares to be transferred to the Buyer until in each case the Buyer has fulfilled all his obligations pursuant to this Article.

**37.3** If in any case a Minority Shareholder, on the expiration of 21 days from the service of the Compulsory Purchase Notice, shall have not transferred his shares to the Buyer or a person identified by the Buyer against payment of the price therefor, the Directors may authorise some person to execute and deliver on his behalf any necessary transfer in favour of the Buyer or the person identified by the Buyer and shall receive the consideration in respect of such shares and shall thereupon (subject to the transfer being duly stamped) cause the name of the Buyer (or the person identified by the Buyer) to be entered into the Register of Members as the holder of the relevant shares. The Company shall hold the consideration in trust for the Minority Shareholder but shall not be bound to earn or pay interest thereon. The issue of a receipt by the Company for the consideration shall be a good receipt for the price for the relevant shares but the Buyer shall not be discharged from procuring that the Company applies the money in payment to the Minority Shareholder which shall be made against delivery by the Minority Shareholder of the certificate in respect of the shares or an indemnity in respect of the same. After the name of the Buyer or the person identified by the Buyer has been entered in the Register of Members in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.

## INVESTOR DRAG-ALONG

## 38. Investor Drag-Along

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- 39 1 Notwithstanding any other provisions of these Articles and, in particular, the provisions of Articles 33, 36 and 38 (*pre-emptive transfers, change of control, and drag-along*), the holders of 50% or more of the A Shares (in this Article the "Seller") may agree to sell or transfer (the "Relevant Sale") shares representing not less than 50% of the Voting Rights to any person whatsoever (together with persons acting in concert therewith) (in this Article the "Buyer") A Relevant Sale shall only be a Relevant Sale for the purposes of this Article 39 if it is a transaction at arms length in good faith to a person unconnected to the Seller If such Relevant Sale becomes unconditional in all respects, the Buyer may by written notice to the Company served within 60 days of such acquisition require the Company as agent for the Buyer to serve notices (in this Article each a "Compulsory Acquisition Notice") on some or all of the members specified by the Buyer being members who have not participated in such Relevant Sale (the "Remainder Shareholders") requiring them to sell their shares to the Buyer or a person or entity nominated by the Buyer at a consideration per share (including any contingent or deferred consideration) which is not less than the consideration payable to the Seller in respect of their shares it being recognised that such consideration payable to the Seller may have been reduced by the Buyer agreeing to pay costs associated with the Relevant Sale and the consideration payable to the Remainder Shareholders shall be the net amount per share received by the Sellers The Company shall serve the Compulsory Acquisition Notices forthwith upon being required to do so and the Remainder Shareholders shall not be entitled to transfer their shares to anyone except the Buyer or a person identified by the Buyer Each Compulsory Acquisition Notice shall specify the same date (being not less than seven nor more than twenty one days after the date of the Compulsory Acquisition Notice) for the completion of the relevant transfer of shares to the Buyer (the "Compulsory Acquisition Completion Date")
- 39 2 The Buyer shall be ready and able to complete the purchase of all shares in respect of which a Compulsory Acquisition Notice has been given on the Compulsory Acquisition Completion Date Any transfer pursuant to a Compulsory Acquisition Notice shall not require the relevant Remainder Shareholder to give a Transfer Notice
- 39 3 If in any case a Remainder Shareholder shall not on or before the Compulsory Acquisition Completion Date have transferred his shares to the Buyer or a person identified by the Buyer against payment of the price therefor
- 39 3 1 the Directors shall authorise some person to execute and deliver on his behalf any necessary transfer in favour of the Buyer or the person identified by the Buyer,
- 39 3 2 the Company shall receive the consideration in respect of such shares, and

39.3.3 the Company shall (subject to the transfer being duly stamped) cause the name of the Buyer (or the person identified by the Buyer) to be entered into the Register of Members as the holder of the relevant shares

The Company shall hold the consideration in trust for the Remainder Shareholder but shall not be bound to earn or pay interest thereon. The issue of a receipt by the Company for the consideration shall be a good receipt for the price for the relevant shares. The Company shall apply the consideration received by it in payment to the Remainder Shareholder against delivery by the Remainder Shareholder of the certificate in respect of the shares or an indemnity in respect of the same in form and substance acceptable to the Company. After the name of the Buyer or the person identified by the Buyer has been entered in the Register of Members in purported exercise of the aforesaid powers the validity of the proceedings shall not be questioned by any person.

### INVESTOR DIRECTOR

#### 39. Investor Director

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39.1 Members holding more than one half in nominal value of the Equity Shares from time to time in issue may, by notice in writing addressed to the Company signed by or on behalf of each of them and delivered to the Office appoint any person or persons to be directors of the Company

39.2 Shareholders appointing a director pursuant to the provisions of Article 40.1 may specify that such director is designated an Investor Director provided there are no more than three Investor Directors at any one time

39.3 For so long as Electra holds no less than 5% of the Voting Rights they may, by notice in writing addressed to the Company signed by or on their behalf and delivered to the Office, appoint any person to be a director of the Company (such director to be designated as the Electra Director) and to remove and replace such person provided always that no more than one Electra Director is appointed pursuant to this article 40.3 at any one time

39.4 If, at any time, there is no Investor Director then the members entitled to designate an Investor Director may designate any person to be an Observer. If, at any time, there is no Electra Director, then provided that Electra holds no less than 5% of the Voting Rights, they may designate any person to be an Observer. An Observer shall have the right to attend all meetings of the Directors and (of any committee of the Directors and to receive such other information as a director would be entitled to receive at the same time as such information is provided to Directors and shall, as regards confidentiality, have the same obligations to the Company as if he were a director. An Observer shall be entitled to attend and speak at any such meetings of the Board but shall not be entitled to vote

39.5 Each Investor Director and/or Electra Director and/or Observer shall be entitled to report back to the members appointing him on the affairs of the Company and its subsidiaries on a confidential basis and to disclose to such

members on a confidential basis such information as he shall reasonably consider appropriate including, for the avoidance of doubt, all papers distributed to the Board



## SCHEDULE 1

- 1 In the Articles to which this forms a schedule the following words and expressions shall, unless the context otherwise requires, bear the following meanings

"Act" means the Companies Act 1985 (as amended by the Companies Act 1989) including any statutory modification or re-enactment thereof for the time being in force,

"acting in concert" shall bear the meaning attributed thereto in the Code,

"Anniversary" means, in respect of a Leaver, the anniversary of the date upon which such Leaver first held any shares,

"A Shares" means the A1 Shares and the A2 Shares,

**Deleted** A ordinary shares of £0.01 each in the capital of the Company

"A1 Shares" means the A1 Ordinary Shares of £0.01 each in the capital of the Company,

"A2 Shares" means the A2 Ordinary Shares of £0.01 each in the capital of the Company,

"Auditors" means the auditors of the Company from time to time,

"Bad Leaver" means a Leaver where the cessation of employment is as a result of the relevant member

- (a) resigning (other than as a result of permanent incapacity due to ill health (save where such ill-health arises as a result of an abuse of drink or drugs)), or
- (b) being summarily dismissed in circumstances where the Company is not liable to pay him compensation for the cessation of his employment other than compensation required by statute or statutory instrument, or
- (c) retiring (other than at the normal retirement age for the Leaver concerned),

"Board" means the board of directors of the Company from time to time or any duly constituted committee of it,

"Buyer" as defined in Article 37 1 (*tag-along*) and/or 38 1 (*drag-along*) and/or 39 1 (*investors drag-along*),

"CIE Investors" means each of the Investors set out in rows 1 to 27 (inclusive) of Schedule 2 of the Shareholders' Agreement together with any holder of shares acquired from such Investors pursuant to Article 32 1 to 32 6 (inclusive),

"Code" means the City Code on Takeovers and Mergers,

**"Compulsory Acquisition Notice"** as defined in Article 39 1 (*investors drag-along*),

**"Compulsory Acquisition Completion Date"** as defined in Article 39 1 (*investors drag-along*),

**"Compulsory Purchase Interest"** means an interest in shares carrying more than 50% of Voting Rights,

**"Compulsory Purchase Notice"** as defined in Article 37 1 (*tag-along*) and/or 38 1 (*drag-along*),

**"Controlling Interest"** means shares representing not less than 50% of Voting Rights,

**"Conversion Date"** means each Interim Conversion Date and each Exit Conversion Date,

**"DDBs"** means any deep discount bonds issued by the Company (or any of its subsidiaries from time to time) and held by a member,

**"Deferred Shares"** means the deferred shares of £0.01 each in the capital of the Company having the rights set out in Schedule 3,

**"Directors"** means the directors of the Company from time to time,

**"Electra"** means Electra Investment Trust plc together with any holder of shares acquired from Electra Investment Trust plc pursuant to Article 32 1 to 32 6 (inclusive),

**"Electra Director"** means any director appointed pursuant to Article 40 3 (or, if there is no Electra Director at the relevant time, the Observer appointed by Electra pursuant to Article 40 4 (if any)),

**"Employee Member"** means any member who is a trust for the benefit of employees of the Group, any member who is or was an employee of any member of the Group and any person who acquired shares from any such member pursuant to a Permitted Transfer,

**"Equity Shares"** means the A Shares and the Ordinary Shares taken together as a class,

**"Exit Conversion"** means the conversion of A Shares into Deferred Shares in accordance with Schedule 3 which takes place on the Exit Conversion Date following completion of all Interim Conversions,

**"Fair Price"** means the price per share determined in accordance with Article 35 (*fair price*),

**"Family Settlement"** means in relation to any Employee Member any trust or trusts (whether arising under a settlement inter vivos or a testamentary disposition by whomsoever made or on intestacy) under which no immediate

beneficial interest in the shares in question is, for the time being, vested in any person other than the Employee Member concerned and/or his Privileged Relations,

**"Financial Institution"** means any institution recognised by the United Kingdom Inland Revenue as carrying on through its lending office a bona fide banking business in the United Kingdom for the purposes of section 349(3) of the Income and Corporation Taxes Act 1988 or any full member of the British Venture Capital Association,

**"General Offer"** means an offer made in accordance with the provisions of Article 36 (*change of control*),

**"Good Leaver"** means any Leaver other than a Bad Leaver,

**"Group"** means the Company and its subsidiaries from time to time and "member of the Group" shall be construed accordingly,

**"Interim Conversion"** means the relevant conversion of A1 Shares into Deferred Shares in accordance with Schedule 2 which takes place on the Exit Conversion Date,

**"Investor Director"** means a director appointed pursuant to Article 40 1 and designated an Investor Director pursuant to Article 40 2 (*Investor Director*) (or if there is no Investor Director at the relevant time, the Observer (if any)),

**"Leaver"** means any holder of shares who is employed by and/or is a director of the Company or a relevant member of the Group from time to time (other than an Investor Director) and who dies or who ceases to be an employee and/or director of the Company or any such member of the Group (whether or not his contract of employment is validly terminated and/or whether or not any such termination is wrongful or unfair or otherwise) or who ceases to be an employee and/or director of a member of the Group because such member of the Group ceases to be a member of the Group and does not continue (or is not immediately re-employed) as an employee and/or director of the Company or any such member of the Group. In this definition and in the definition of "Bad Leaver" and for the purposes of Article 34 (*compulsory transfers*) any reference to the date of cessation of employment (or similar) shall be the date upon which the contract of employment or appointment as director of the relevant person terminates or, if earlier, the date upon which the relevant person gives or is given or purportedly gives or is purportedly given notice of termination of his contract of employment or of his appointment as director whether or not such notice is valid,

**"Loan Notes"** means any loan notes issued by the Company (or any of its subsidiaries from time to time and held by a member),

**"member"** means a person (whether an individual or a corporation) who holds shares,

**"Minority Shareholders"** as defined in Article 38 1 (*drag-along*),

**"Non-employee Member"** means any member who is not an Employee Member,

**"Observer"** means any person appointed pursuant to Article 40 4 (*Investor Directors*),

**"Office"** means the registered office of the Company,

**"Ordinary Shares"** means ordinary shares of £0 01 each in the capital of the Company,

**"Original Employee Member"** means each Employee Member other than an Employee Member who became an Employee Member by reason of a Permitted Transfer,

**"Paid Up Amount"** means the amount paid up or credited as paid up on any shares disregarding any premium,

**"Panel"** means the Panel on Takeovers and Mergers,

**"Permitted Transfer"** means a transfer of shares pursuant to Article 32 (*permitted transfers*),

**"Permitted Transferee"** means, in respect of any Employee Member, any Privileged Relation or Family Settlement of that Employee Member,

**"Privileged Relation"** means in respect of any Employee Member the parent or spouse or brother or sister of the Employee Member or any lineal descendent of the Employee Member and for these purposes the step-child or adopted child of any person shall be deemed to be that person's lineal descendent,

**"Register of Members"** means the register of members kept by the Company pursuant to Section 352 of the Act,

**"Relevant Sale"** as defined in Article 39 1 (*investors drag-along*),

**"Remainder Shareholders"** as defined in Article 39 1 (*investors drag-along*),

**"Sale Shares"** as defined in Article 33 2,

**"Seller"** as defined in Article 39 1 (*investors drag-along*),

**"Shareholders' Agreement"** means the amendment and restatement of the shareholders' agreement dated 27 January 2004 entered into by the Company and others on or around the date of adoption of these Articles,

**"shares"** means shares in the share capital of the Company,

**"Specified Price"** as defined in Article 33 2,

**"Table A"** as defined in Article 1,

**"Transfer Notice"** as defined in Article 33 1,

**"Valuer"** means the Auditors (or in the event of their being unwilling or unable to act or at, the option of the Company, an independent firm of chartered accountants nominated by the President of the Institute of Chartered Accountants of England and Wales (or his equivalent from time to time)) in each case acting as an expert and not as an arbiter, and

**"Voting Rights"** means the right to receive notice of, attend (in person or by proxy), speak (in person or by proxy) and vote (in person or by proxy) at general meetings of the Company

- 2 The Regulations contained in Table A shall apply to the Company save insofar as they are amended by or are inconsistent with these Articles and, in particular
- 2 1 Regulations 2, 3, 5, 23, 24, 40, 41, 53, 54, 64 to 69 (inclusive), 73 to 87 (inclusive), 89, 93, 94 and 118 of Table A shall not apply,
- 2 2 In Regulation 1 of Table A the words "the common seal of the Company" shall be omitted and the words "any seal for the time being adopted by the Company as its common seal" shall be inserted after the words ""the Seal" means",
- 2 3 In Regulation 8 of Table A the words "(not being a fully paid share)" shall be omitted and the words "and the Company shall also have a first and paramount lien on all shares standing registered in the name of a single person or in the name of any person jointly with another or others for all monies presently payable by him or any of them or his estate or their estates to the Company" shall be inserted after the words "in respect of that share",
- 2 4 In Regulation 12 of Table A the words "save in the case of a call deemed to have been made in terms of Regulation 16 which call shall be irrevocable " shall be inserted after the words "postponed in whole or in part",
- 2 5 In Regulation 15 of Table A the words "and all expenses that may have been incurred by the Company by reason of such non-payment" shall be inserted after the word "Act)" and after the words "payment of the interest",  
  
In Regulation 18 of Table A the words "and expenses that may have been incurred by the Company by reason of such non-payment" shall be inserted after the words "may have accrued"
- 3 Words and expressions defined in the Act shall, unless the context otherwise requires, bear the same meanings herein
- 4 This Schedule and Schedules 2, 3 and 4 and the Annexure shall be deemed to be part of, and shall be construed as one with, the Articles

## SCHEDULE 2

### INTERIM CONVERSIONS

1 In this Schedule

"**Accounts**" means the audited consolidated accounts for the relevant period adjusted (if appropriate) pursuant to paragraph 16,

"**Acquisition Conversion Date**" the first date after the date of the adoption of these articles upon which the Company issues new equity share capital in connection with the funding of an acquisition,

"**Cash Flow**" means, in respect of the Relevant Group in relation to any period, the aggregate of EBITDA for that period

plus any decrease, or minus any increase, in the average Net Working Capital during that period as compared to the average Net Working Capital for the immediately preceding period (other than any decrease or increase which is attributable to the acquisition or disposal of any shares in any company or assets acquired or disposed of as a going concern),

plus any cash receipts by way of Extraordinary Items and minus any cash payments by way of Extraordinary Items, in each case, received or made during that period,

minus any dividends paid in cash in respect of minority interests for that period,

plus any dividends received from other fixed assets investments during that period,

minus any payment in cash made to associated undertakings during that period,

plus any increase or minus any decrease in provisions for liabilities and charges made in respect of that period (other than any decrease which is attributable to the acquisition of any shares in any company or assets acquired as a going concern),

minus Capital Expenditure paid in respect of that period,

In relation to this definition "**Net Working Capital**" means the aggregate of Current Assets (excluding all of cash at bank and cash in hand, all assets in relation to corporation tax or similar tax on profits of the Relevant Group and accrued interest receivable) less the aggregate of Current Liabilities (excluding moneys due in relation to the Facilities and other Indebtedness and liabilities in relation to corporation tax or similar tax on profits of the Relevant Group, Extraordinary Items and dividends payable), "**Current Assets**" means, in relation to the Relevant Group, the aggregate value of its assets which are treated as current assets in accordance with GAAP, and "**Current Liabilities**" means, in relation to the Relevant Group, the aggregate

value of its liabilities which are treated as current liabilities in accordance with GAAP)

Certain terms and words in this definition have the meaning attributed to them in the Credit Agreement,

**"Credit Agreement"** means the agreement dated 27 January 2004 among the Company, Global Heating Products plc, The Royal Bank of Scotland plc (in its various capacities) and the Banks (as defined therein) relating to the provision of banking facilities to the Group comprising a term A loan facility, a term B loan facility, a term C loan facility and a multicurrency revolving loan and guarantee facility,

**"EBITDA"** means in relation to any period, the consolidated profit of the Relevant Group for that period (including, for the avoidance of doubt, Exceptional Items) before all Taxation and all interest, periodic fees and other financing charges (including the interest element of Finance Lease payments and adding back

- (a) depreciation charged to the Relevant Group's profit and loss account,
- (b) any amounts of goodwill and any other intangible asset amortised or written off during such period or charged to the Relevant Group's profit and loss account during such period, and
- (c) any amount amortised against, or charged to, the Relevant Group's profit and loss account during such period in respect of Acquisition Costs,

but excluding

- (i) profit attributable to minority interests,
- (ii) Extraordinary Items,
- (iii) any profit or loss arising on the disposal of fixed assets,
- (iv) amounts written off the value of investments, and
- (v) income from participating interests in associated undertakings and income from any other fixed asset investment other than where received in cash

Where the EBITDA of businesses of the Group denominated in Euros and purchases by United Kingdom businesses of the Group from Italian businesses of the Group denominated in Euros shall be converted into Sterling at the rate of €1 40 £1 00 (being the rate applied in the Information Memorandum) rather than the actual rate,

Certain terms and words in this definition have the meaning attributed to them in the Credit Agreement,

**"Exit Conversion Date"** as defined in Schedule 3,

**"First Interim Conversion Date"** means the date falling 7 Business Days after the date upon which the audited consolidated accounts for the Company for the financial year ending 31st December 2004 are signed,

**"Information Memorandum"** means the information memorandum prepared by the Company in September 2003 and issued by Merrill Lynch in connection with the Acquisition,

**"Interim Conversion Date"** means the relevant one of the First Interim Conversion Date, the Second Interim Conversion Date, the Third Interim Conversion Date and/or the Acquisition Conversion Date (as appropriate),

**"Management Accounts"** means in respect of any Interim Conversion Date the consolidated management accounts of the Relevant Group for the 12 month period ending on the last day of the immediately preceding financial year where such management accounts are reconciled to the relevant Accounts to the satisfaction of an Investor Director (acting reasonably),

**"Relevant Group"** means those entities whose results are reflected in the figures in the Information Memorandum in each case to the extent such figures are reflected in the Information Memorandum (adjusted to reflect disposals (where such adjustment is approved by an Investor Director (acting reasonably))),

**"Revenue"** means net sales in relation to the Relevant Group where the net sales of businesses of the Group denominated in Euros shall be translated into Sterling at the rate of €1 40 £1 00 (being the rate applied in the Information Memorandum) rather than the actual rate,

**"Second Interim Conversion Date"** means the date falling 7 Business Days after the date upon which the audited consolidated accounts for the Company for the financial year ending 31st December 2005 are signed,

**"Target Cash Flow"** means Cash Flow as specified on page 77 in the Information Memorandum for the relevant period (adjusted to reflect any disposals (where such adjustment is approved by an Investor Director (acting reasonably))),

**"Target EBITDA"** means the EBITDA as specified on page 73 in the Information Memorandum for the relevant period (adjusted to reflect any disposals (where such adjustment is approved by an Investor Director (acting reasonably))),

**"Target Revenue"** means 97.5% of the Revenue as specified on page 72 in the Information Memorandum for the relevant period (adjusted to reflect any disposals (where such adjustment is approved by an Investor Director (acting reasonably))), and



**"Third Interim Conversion Date"** means the date falling 7 Business Days after the date upon which the audited consolidated accounts for the Company for the financial year ending 31st December 2006 are signed

In the event that a Fresh Issue takes place involving the issue of A Shares and/or Ordinary Shares then the terms of this Schedule 2 and Schedule 3 will need to be reviewed and may need to be amended to take account of the intentions of members holding more than 50% in nominal value of the Equity Shares in issue immediately prior to such Fresh Issue

- 2 If, on the First Interim Conversion Date, the EBITDA, Cash Flow and Revenue as shown in the Management Accounts for the immediately preceding financial year all adjusted in accordance with the definitions of EBITDA and Revenue set out above (in order to adjust Euro denominations into Sterling at the rate applied in the Information Memorandum) all exceed the Target EBITDA, Target Cash Flow and Target Revenue for that year then, on the Exit Conversion Date, 1,176,471 A1 Shares shall convert into Deferred Shares provided no conversion has occurred or is to occur in accordance with paragraph 10 below and where such conversion shall take place prior to any calculations or conversion of shares in accordance with Schedule 3
- 3 If, on the Second Interim Conversion Date, the EBITDA, Cash Flow and Revenue as shown in the Management Accounts for the immediately preceding financial year all adjusted in accordance with the definitions of EBITDA and Revenue set out above (in order to adjust Euro denominations into Sterling at the rate applied in the Information Memorandum) all exceed the Target EBITDA, Target Cash Flow and Target Revenue for that year and the 1,176,471 A1 Shares mentioned in paragraph 2 above have converted or are to convert into Deferred Shares, then on the Exit Conversion Date, 928,792 A1 Shares shall convert into Deferred Shares provided no conversion has occurred or is to occur in accordance with paragraphs 10 or 11 below and where such conversion shall take place prior to any calculations or conversion of shares in accordance with Schedule 3
- 4 If, on the Second Interim Conversion Date, the EBITDA, Cash Flow and Revenue as shown in the Management Accounts for the immediately preceding financial year all adjusted in accordance with the definitions of EBITDA and Revenue set out above (in order to adjust Euro denominations into Sterling at the rate applied in the Information Memorandum) all exceed the Target EBITDA, Target Cash Flow and Target Revenue for that year and no A1 Shares have previously converted or are to convert into Deferred Shares under paragraph 2 above, then on the Exit Conversion Date, 1,176,471 A1 Shares shall convert into Deferred Shares provided no conversion has occurred or is to occur in accordance with paragraphs 10 or 11 below and where such conversion shall take place prior to any calculations or conversion of shares in accordance with Schedule 3
- 5 If, on the Second Interim Conversion Date, the Cash Flow measured on a cumulative basis in respect of the two preceding financial years exceeds the Target Cash Flow for the same period and EBITDA and Revenue as shown in the Management Accounts for the financial year immediately preceding all

adjusted in accordance with the definitions of EBITDA and Revenue set out above (in order to adjust Euro denominations into Sterling at the rate applied in the Information Memorandum) all exceed the Target EBITDA and Target Revenue for that year, then, on the Exit Conversion Date, 2,105,263 A1 Shares shall convert into Deferred Shares provided no conversion of shares has occurred or is to occur in accordance with paragraphs 2, 3, 4, 10 or 11 below and where such conversion shall take place prior to any calculations or conversion of shares in accordance with Schedule 3. In the event a conversion has occurred or is to occur in accordance with paragraphs 2, 3 or 4, then 2,105,263 number of shares to convert under this paragraph shall be reduced by the number which have converted or are to convert under paragraphs 2, 3 and 4.

- 6 If, on the Third Interim Conversion Date, the EBITDA, Cash Flow and Revenue as shown in the Management Accounts for the immediately preceding financial year all adjusted in accordance with the definitions of EBITDA and Revenue set out above (in order to adjust Euro denominations into Sterling at the rate applied in the Information Memorandum) all exceed the Target EBITDA, Target Cash Flow and Target Revenue for that year and the conversions under 2 and 3 or 5 above have taken place then, on the Exit Conversion Date, 1,076,555 A1 Shares shall convert into Deferred Shares provided no conversion has occurred or is to occur in accordance with paragraphs 10, 11 or 12 below and where such conversion shall take place prior to any calculations or conversion of shares in accordance with Schedule 3. If A1 Shares have been converted or are to convert in accordance with paragraph 4, then the number of A1 Shares to convert in accordance with this paragraph will be 1,323,529.
- 7 If, on the Third Interim Conversion Date, the EBITDA, Cash Flow and Revenue as shown in the Management Accounts for the immediately preceding financial year all adjusted in accordance with the definitions of EBITDA and Revenue set out above (in order to adjust Euro denominations into Sterling at the rate applied in the Information Memorandum) all exceed the Target EBITDA, Target Cash Flow and Target Revenue for that year and there have been and will not be any conversions under paragraphs 2, 3, 4 or 5 then, on the Exit Conversion Date, 1,666,667 A1 Shares shall convert into Deferred Shares provided no conversion has occurred or is to occur in accordance with paragraphs 10, 11 or 12 below.
- 8 If, on the Third Interim Conversion Date, the EBITDA, Cash Flow and Revenue as shown in the Management Accounts for the immediately preceding financial year all adjusted in accordance with the definitions of EBITDA and Revenue set out above (in order to adjust Euro denominations into Sterling at the rate applied in the Information Memorandum) all exceed the Target EBITDA, Target Cash Flow and Target Revenue for that year and there has been or will be a conversion under paragraph 2 but no conversions under paragraphs 3 or 5 then, on the Exit Conversion Date, 1,323,529 A1 Shares shall convert into Deferred Shares provided no conversion has occurred or is to occur in accordance with paragraphs 10, 11 or 12 below.

- 9 If on the Third Interim Conversion Date, the Cash Flow measured on a cumulative basis in respect of the three preceding financial years exceeds the Target Cash Flow for the same period, and EBITDA and Revenue as shown in the Management Accounts for the financial year immediately preceding all adjusted in accordance with the definitions of EBITDA and Revenue set out above (in order to adjust Euro denominations into Sterling at the rate applied in the Information Memorandum) all exceed the Target EBITDA and Target Revenue for that year then, on the Exit Conversion Date, the number of A1 Shares equal to Z shall convert into Deferred Shares where Z shall equal  $(3,181,818 - \text{the aggregate of the number of A1 Shares converted or to be converted into Deferred Shares under paragraphs 2, 3, 4, 5, 6, 7 and 8 above})$  provided no conversion has occurred or is to occur in accordance with paragraphs 10, 11 or 12 below and where such conversion shall take place prior to any calculations or conversion of shares in accordance with Schedule 3
- 10 If an Acquisition Conversion Date and/or an Exit Conversion Date occurs prior to the occurrence of the First Interim Conversion Date then, on the Exit Conversion Date, 3,181,818 A1 Shares shall convert into Deferred Shares where such conversion shall take place prior to any calculations or conversion of shares in accordance with Schedule 3 and no other conversion of A1 Shares shall take place under this Schedule 2
- 11
  - (a) If an Acquisition Conversion Date occurs after the First Interim Conversion Date but prior to the Second Interim Conversion Date then, on the Exit Conversion Date, 2,005,347 A1 Shares shall convert into Deferred Shares where such conversion shall occur prior to any calculations or conversion of shares in accordance with Schedule 3 and no other conversion of A1 Shares shall take place under this Schedule 2 other than in accordance with paragraph 2. If no conversion is to take place under paragraph 2 of this Schedule 2, then an Investor Director may, in his absolute discretion, determine that the number of A1 Shares to be converted into Deferred Shares under this paragraph shall be 3,181,818 rather than 2,005,347 and no other conversion of A1 Shares shall take place under this Schedule 2
  - (b) If an Exit Conversion Date occurs after the First Interim Conversion Date but prior to the Second Interim Conversion Date then, on the Exit Conversion Date,  $W_1$  A1 Shares shall convert into Deferred Shares where  $W_1$  shall equal  $(3,181,818 - \text{the number of A1 Shares (if any) converted or to be converted into Deferred Shares under paragraph 2 above})$  and where such conversion shall occur prior to any calculations or conversion of shares in accordance with Schedule 3 and no other conversion of A1 Shares shall take place under this Schedule 2 other than in accordance with paragraph 2
- 12
  - (a) If an Acquisition Conversion Date occurs after the Second Interim Conversion Date but prior to the Third Interim Conversion Date then, on the Exit Conversion Date, 1,076,555 A1 Shares shall convert into Deferred Shares where such conversion shall occur prior to any calculations or conversion of shares in accordance with Schedule 3

and no conversion of A1 Shares shall take place in accordance with paragraphs 6, 7, 8 or 9. If no conversion is to take place under paragraphs 2, 3, 4 or 5 of this Schedule 2, then an Investor Director may, in his absolute discretion, determine that the number of A1 Shares to be converted into Deferred Shares under this paragraph shall be (3,181,818 less the aggregate number to be converted under paragraphs 2, 3, 4 and 5) rather than the 1,076,555 mentioned above and no other conversion of A1 Shares shall take place under this Schedule 2 other than under paragraphs 2, 3, 4 or 5.

- (b) If an Exit Conversion Date occurs after the Second Interim Conversion Date but prior to the Third Interim Conversion Date then, on the Exit Conversion Date, provided no conversion has occurred or is to occur in accordance with paragraph 10,  $W_2$  A1 Shares shall convert into Deferred Shares where  $W_2$  shall equal (3,181,818 - the number of A1 Shares (if any) converted into Deferred Shares under paragraph 2, 3, 4, 5, and 12(a) above) and where such conversion shall occur prior to any calculations or conversion of shares in accordance with Schedule 3. In the event  $W_2$  is negative, it shall be deemed to equal zero.

- 13 For the avoidance of doubt, the maximum number of A1 Shares which may convert into Deferred Shares in accordance with this Schedule 2 is 3,181,818.

- 14 If an Interim Conversion and the allocation of shares referred to above would result in any member holding a fraction of an A1 Ordinary Share or a fraction of a Deferred Share the number of the A1 Ordinary Shares held by that Member shall be rounded up and the number of the Deferred Shares held by that member shall be rounded down, in each case to the nearest whole number of shares. The calculations set out in this Schedule must be agreed between each of the Remuneration Committee (on behalf of the Company), the holders of more than 50% of the A1 Shares (on behalf of the A1 Shareholders) and the holders of more than 50% of the Ordinary Shares (on behalf of the Ordinary Shareholders). In the event of a dispute over the operation of the provisions of this Schedule 2 the Remuneration Committee shall instruct the Valuers to make the calculations required and the determination of the Valuers shall be final and binding on the Company and the members.

Deleted A

- 15 The Company shall inform the A Shareholders and the Ordinary Shareholders of the results of the calculations or determinations set out in this Schedule 2 forthwith upon their being made available. The procedure for delivery of share certificates in respect of the shareholdings following Interim Conversions and Exit Conversions is set out in Schedule 3.
- 16 The Company's accounting policies for the Accounts referred to in this Schedule 2 shall be the accounting policies used by Target (as defined in the Shareholders' Agreement) for the preparation of Target's audited consolidated accounts as at the date of the adoption of these Articles (the "Accounting Policies"). Should the Company during period from the date of adoption of these Articles until the Third Interim Conversion Date ("the Interim Conversion Period") either alter any of the Accounting Policies used

by it for the preparation of its consolidated accounts and/or alter its accounting reference date, the Company shall, in addition to preparing its accounts in accordance with the Act, instruct its auditors to prepare separate accounts as follows

- 16 1 in the event of any alteration to the Company's Accounting Policies during the Interim Conversion Period, on the basis that the Accounting Policies shall be used to prepare any accounts required by this Schedule 2, and/or
- 16 2 in the event that the Company's accounting reference date has been altered during the Interim Conversion Period, on the basis that the financial year for any accounts required by this Schedule 2 is 1 January to 31 December

### SCHEDULE 3

#### EXIT CONVERSION

1 In this Schedule

"A Shareholders" means any person who holds A Shares at any time between the Subscription Date and the Exit Conversion Date (inclusive),

"AS%" means the percentage of equity represented by the A Shares immediately prior to application of the calculations in this Schedule but after application of the calculations set out in Schedule 2 where such percentage shall be expressed as an integer plus up to 3 decimal places (for example, 58.013% shall be expressed as 58.013),

"AS" means the number of A Shares in issue immediately prior to Exit Conversion after application of the calculations set out in Schedule 2,

"B" means the number of Ordinary Shares in issue immediately prior to Exit Conversion after application of the calculations set out in Schedule 2,

"B%" means the percentage of equity represented by the Ordinary Shares immediately prior to application of the calculations in this Schedule 3 but after application of the calculations set out in Schedule 2 where such percentage shall be expressed as an integer plus up to 3 decimal places (for example, 58.013% shall be expressed as 58.013),

"Cash Flow" or "CF" means

- (a) subscription monies paid by the A Shareholders in respect of the A Shares, the DDBs and any subscription monies paid by the Investors in respect of any Fresh Issue. In the event the Investors do not hold all of the A Shares on the Exit Conversion Date, the subscription monies in respect of the A Shares, the DDBs and any Fresh Issue held other than by the Investors will be deemed to equal the subscription monies paid by the Investors (on a pro rata basis as appropriate) and they will be deemed to have subscribed at the same time as the Investors,
- (b) dividends or interest received by the A Shareholders on the A Shares and any Fresh Issue from the date of their issue to and including the Exit Conversion Date,
- (c) interest (including default interest, penalties and other payments) received by the A Shareholders on any DDBs or Fresh Issue,
- (d) redemption moneys paid by the Company paid to holders of A Shares on the redemption or repayment of any DDBs held by such holders of A Shares and any Fresh Issue redeemed or repaid to such holders of A Shares on or prior to the Exit Conversion Date, and
- (e) moneys received by the A Shareholders on a return of capital in respect of A Shares or on any Fresh Issue,

provided that no payment to or by the A Shareholders shall be counted more than once and where payments to the A Shareholders will be treated as positive and payments by the A Shareholders will be treated as negative (and for the avoidance of doubt, the value of the A Shares at the time of Exit Conversion will not be included within the meaning of Cash Flow) and each item within Cash Flow shall be deemed to arise on the last day of the month in which its date of payment or receipt occurs,

**"Cash Equivalent"** means, in relation to any deferred consideration, the sum agreed between the holders of not less than 50% of the A Shares and 50% of the Ordinary Shares (or, failing such agreement, certified by the Valuers) as being in their opinion the current value of the right to receive that consideration and, in relation to any non-cash consideration, the sum agreed between the holders of not less than 50% of the A Shares and the holders of not less than 50% of the Ordinary Shares or, failing such agreement, certified by the Valuers as being in their opinion the current market value of that non-cash consideration,

**"Conversion"** means the conversion of A Shares on the Exit Conversion Date in accordance with the provisions of Article 4.4 and the calculations set out in Schedule 2 and this Schedule 3,

**"Exit Conversion Date"** means the date of the first occurring Exit Conversion Event,

**"Exit Conversion Event"** means a Listing, a Sale or a Liquidation,

**"Fresh Issue"** means any shares, loan notes, deep discount bonds, debenture or other security of the Company subscribed for by the Investors subsequent to the date of adoption of these Articles and before the Exit Conversion Date,

**"Investors"** means each of the Investors set out in rows 1 to 27 (inclusive) of Schedule 2 of the Shareholders' Agreement together with any holder of shares acquired from such Investors pursuant to Article 32.1 to 32.6 (inclusive) of these Articles,

**"IRR"** means the annualised discount rate which when applied to a series of cash flows produces an aggregate net present value of such cash flows as at the Subscription Date equal to zero,

**"L"** means the aggregate of all positive items of Cash Flow being items included under paragraphs (b), (c), (d) or (e) (as appropriate) of the definition of Cash Flow but excluding the value of the A Shares on the Exit Conversion Date,

**"Liquidation"** means the making of a winding up order by the court or the passing of a resolution by the members that the Company be wound up,

**"Listing"** means the admission of the Company's equity securities to trading on the London Stock Exchange plc, the Alternative Investment Market or any Recognised Investment Exchange (as such term is defined in Section 285 of the Financial Services and Markets Act 2000) or any investment exchange

which meets the criteria specified in Part I or specified in Part II or Part III at Schedule 3 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 becoming effective and "list" and "listed" shall be construed accordingly,

"the London Stock Exchange" means the London Stock Exchange plc,

"Market Capitalisation" or "MC" means

- (i) in the case of Listing, the market value of the Equity Shares in issue (on the assumption that Exit Conversion has occurred) determined by reference to the new issue price of any shares to be issued on Listing or, if there is no new issue, the price at which any such Equity Shares are to be placed or offered for sale for the purposes of Listing (where, if the shares to be issued on Listing are not Equity Shares the Valuers shall be requested to take account of any reorganisation or recapitalisation which occurs on or immediately prior to Listing and to certify what the value of Equity Shares would be in determining Market Capitalisation) less such proportion of market value as shall be equal to the proportion which the total number of Equity Shares to be issued on Listing will, immediately following their issue, bear to the number of Equity Shares then in issue,
- (ii) in the case of a Sale, the aggregate cash consideration payable by the relevant purchasers for the Equity Shares (on the assumption that the entire issued share capital of the Company is acquired by them pursuant to the Sale) plus, to the extent that consideration shall be so payable otherwise than in cash or shall be so payable on deferred terms, the Cash Equivalent of that consideration, and
- (iii) in the case of a Liquidation the aggregate amount, including the Cash Equivalent of any non-cash consideration, which the holders of Equity Shares will receive on completion of the Liquidation,

"month" means calendar month,

"NA" means the number of A Shares which, on Exit Conversion, convert into Ordinary Shares on the Exit Conversion Date as calculated pursuant to this Schedule 3,

"Sale" means the acquisition of more than 50% of the Voting Rights by any person (or by persons who in relation to each other are acting in concert),

"Subscription Date" means the date of adoption of these Articles, and

"Threshold Amount" or "TA" means a positive amount equal to two times the aggregate of all negative payments included in Cash Flow

## 2. Interpretation

- 2.1 For the purposes of this Schedule 3, Cash Flow arises in the month in which it is paid or received



- 2.2 References in this Schedule 3 to paragraphs are to paragraphs of this Schedule 3 unless the context otherwise requires

### 3. Conversion Calculations

- 3.1 The Board shall at least 14 days prior to the Exit Conversion Date

- (a) estimate the timing of the Exit Conversion Date ("Anticipated Conversion Date"),
- (b) procure that the calculations provided for in Schedule 2 and paragraph 3.2 of this Schedule 3 are made,
- (c) procure that the Valuers certify their opinion of the Cash Equivalent (if required) and that the other calculations provided for are made in accordance with this Schedule 3 insofar as necessary to enable the provisions of paragraph 5 to be given effect, and
- (d) notify Shareholders of the results of such calculations. The holders of A Shares and Ordinary Shares and the Board shall use all reasonable endeavours to reach agreement as to the accuracy of such calculations in such period, to record that agreement in writing signed by or on behalf of, in respect of the calculations made in accordance with Schedule 2, the holders of not less than 50% of the A Shares and the holders of not less than 50% of the Ordinary Shares and, in respect of the calculations made in accordance with this Schedule 3, the holders of not less than 50% of the A Shares and the holders of not less than 50% of the Ordinary Shares and, if, in either case, they fail to do so, to procure the determination thereof by the Valuers who shall issue a certificate accordingly. Any such written agreement and any such certificate shall, in the absence of manifest error, be final and binding on all Shareholders, each of whom shall be sent a copy as soon as practicable following its issue.

- 3.2 For the purposes of determining the number of Ordinary Shares arising on Exit Conversion the calculations set out in this paragraph shall be carried out immediately prior to Exit Conversion

- (a) The MC shall be calculated
- (b) The amount shall be calculated which, if it were received by the A Shareholders on the Exit Conversion Date would, when taken together with the Cash Flow, result in an IRR of 25% to the A Shareholders. This amount shall be referred to as I and shall be calculated as

$$I + \sum_{j=0}^n CF_j \cdot (1.25)^{-j} = 0$$

where

"n" is the number of months between the month in which the Subscription Date falls and the month in which Exit Conversion falls counting the month in which the Subscription Date falls as a month 0 and the month in which Exit Conversion Date falls as month n,

"j" is the arithmetical number attributable to a month, the number 0 being attributed to the month in which the Subscription Date falls, the number 1 being attributed to the following month and so forth until j=n,

"CF<sub>j</sub>" is the amount of Cash Flow in month j,

"\*" means multiply by,

$\sum_{j=0}^n$  means the sum of the items which follow this symbol from month 0 to month n

- (c) If I as calculated in paragraph 3 2(b) above is less than (TA-L), then it shall be deemed to equal (TA-L)

The value of MC at which the A Shareholders would receive a share of the MC equal to I shall be referred to as MTC and shall be calculated as the formulae

$$MTC = \frac{I * 100}{AS\%}$$

- (d) If MC is greater than MTC then

$$NA \text{ shall equal } \frac{NA\% * TNOS}{100}$$

$$\text{where TNOS shall equal } \frac{B * 100 * MC}{(B\% + 9) * MC - (9 * MTC)}$$

and where NA% shall equal

$$\frac{(AS\% - 9) * MC + (9 * MTC)}{MC}$$

- (f) If MC is less than or equal to MTC then NA will equal AS

#### 4. Change in Circumstances

If after any such certification as referred to in paragraph 3 1 has been made there shall be any change in the MC, or any delay in the occurrence of the Exit Conversion Date shall arise such that is expected to occur in a month later than the month next after that in which the anticipated Exit Conversion Date falls, the procedures set out

in the preceding paragraphs of this Schedule shall be repeated (as often as required) and the calculations recomputed accordingly

## 5. Conversion of A Shares

### 5.1 On the Exit Conversion Date

(i) the number of A1 Shares to be converted into Deferred Shares in accordance with Schedule 2 shall be converted into Deferred Shares, and such Deferred Shares shall be allocated to members pro rata to their holding of A1 Shares immediately prior to such conversion (and for the avoidance of doubt, those A1 Shares which do not convert into Deferred Shares shall remain as A1 Shares), following which

Deleted .

(ii) the number of A Shares equal to NA in this Schedule 3, which number shall be comprised of a pro rata number of A1 Shares and A2 Shares to the total numbers of A1 Shares and A2 Shares in issue following application of paragraph 5.1(i) above, shall convert into Ordinary Shares on a one for one basis and the remainder of the A Shares shall convert into Deferred Shares on a one for one basis where "NA" is calculated in accordance with the provisions of this Schedule 3 and the "NA" Ordinary Shares and (A-NA) Deferred Shares so arising shall be allocated to members pro rata to their holding of A Shares immediately prior to such conversion

Deleted. ,

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(iii)

Deleted under paragraphs  
5.1(i) and (ii) above

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5.2 If Conversion and the allocation of shares referred to above would result in any member holding a fraction of an Ordinary Share or a fraction of a Deferred Share the number of the Ordinary Shares held by that member shall be rounded up and the number of Deferred Shares held by that member shall be rounded down, in each case to the nearest whole number of shares. The calculations set out in this Schedule must be agreed between each of the Remuneration Committee (on behalf of the Company) the holders of more than 50% of the A Shares (on behalf of the A Shareholders) and the holders of more than 50% of the Ordinary Shares (on behalf of the Ordinary Shareholders). In the event of a dispute over the operation of the provisions of this paragraph 5 and this Schedule 3 the Remuneration Committee shall instruct the Valuers (at the cost of the Company) to make the calculations required and the determination of the Valuers shall be final and binding on the Company and the members

5.3 The Company shall inform the holders of the A Shares and the holders of the Ordinary Shares of the results of the calculations or determinations set out in paragraph 3 forthwith upon their being made available. Forthwith upon receipt of a notice from the Company requiring them so to do, the holders of the A Shares shall deliver to the Company at the Office the share certificates in respect of the A Shares and of which they were, prior to Conversion, the holders (or an indemnity in respect thereof in a form reasonably satisfactory to the Company), and the Company shall, on receipt of such certificates (or an indemnity in respect thereof in a form reasonably satisfactory to the Company), deliver to such members new certificates, in respect of the Ordinary Shares arising from Conversion to which they are entitled

- 5 4 After Conversion, the shares (excluding the Deferred Shares) shall constitute one class of shares and shall rank pari passu in all respects

**6. Miscellaneous**

- 6 1 Forthwith upon Conversion, the Company shall give written notice to each of the members of the number of Ordinary Shares and the number of Deferred Shares (if any) of which it is the holder
- 6 2 Subject to any special rights which may be attached to any other class of shares, any profits which the Company may determine to distribute after Conversion and any capital or assets which may be distributed, on a winding up or otherwise, by way of return of capital after Conversion shall be distributed amongst the holders of Ordinary Shares pro rata according to the amount paid up or credited as paid up thereon (excluding any premium over their nominal value)

**7. Illustrative Example**

The Annexure to this Schedule 3 contains a worked example showing the operation of the provisions set out in this Schedule. The worked example is illustrative only and, in the event of any ambiguity between the provisions of this Schedule 3 and the worked example the terms of this Schedule 3 and Schedule 2 shall prevail

## RATCHET EXAMPLE

## ASSUMPTIONS

## Initial Funding Structure and Share Capital

	Share Numbers		Subscription Amounts:
A Shareholders: A Shares	9,250,000	92.5%	9,400
Management: Ordinary Shares	750,000 (8)	7.5%	2,000
	<u>10,000,000</u>	<u>100.0%</u>	<u>11,400</u>
A Shareholders: DDB			125,700
Management: Shareholder Loan			2,000
			<u>139,100</u>

Subscription Date: 31-Dec-03 (in order to check against projections)

## Acquisition Conversion Date

First Interim Conversion Date: 31-Mar-05  
 Second Interim Conversion Date: 31-Mar-06  
 Third Interim Conversion Date: 31-Mar-07

	Option Number	1	2	3
Exit Conversion Date		31-Dec-06	31-Dec-07	31-Dec-08
MC		158,700	225,600	300,100
Cash Flow	Subscription Date	31-Dec-03	(135,100)	(135,100)
	Exit Conversion Date	31-Dec-06	176,600	
		31-Dec-07	197,800	
		31-Dec-08		221,500
L =	aggregate of all positive items in Cash Flow (excluding equity value on Exit)	176,600	197,800	221,500
TA =		270,200	270,200	270,200
Management Shareholder Loan Repaid including interest		2,800	3,100	3,500

## INTERIM CONVERSIONS

Schedule 2  
Paragraph

2	First Interim Conversion Date	Assume performance exceeds Target EBITDA/Cash/ Revenue
	Number of A Shares which convert into Deferred Shares	1,176,471
	Number of A Shares and Ordinary Shares after conversion	
	A Shares	8,073,529
	Ordinary Shares	750,000
		<u>8,823,529</u>
		100.0%
	Deferred Shares	1,176,471

All figures £000 unless otherwise stated

## RATCHET EXAMPLE

3 Second Interim Conversion Date. Assume performance exceeds Target EBITDA/Cash/ Revenue  
 Number of A Shares which convert into Deferred Shares 928 792

Number of A Shares and Ordinary Shares after conversion.

A Shares	7 144 737	90.5%
Ordinary Shares	750 000	9.5%
	<u>7 894 737</u>	<u>100.0%</u>

Deferred Shares 2 105,263

10(b) Option 1 Exit Conversion Date is after Second Interim Conversion Date but before Third Interim Conversion Date

On Exit Conversion Date number of A Shares which convert into Deferred Shares (under Sch 2) = 1,076,555

Number of A Shares and Ordinary Shares after conversion.

A Shares	6,068 182	89.0%	AS%
Ordinary Shares	750 000	11.0%	BS%
	<u>6 818 182</u>	<u>100.0%</u>	

Deferred Shares 3 181 818

6 Options 2 and 3:  
 Third Interim Conversion Date Assume performance exceeds Target EBITDA/Cash/ Revenue

Number of A Shares which convert into Deferred Shares. 1 076 555

Number of A Shares and Ordinary Shares after conversion.

A Shares	6 068 182	89.0%	AS%
Ordinary Shares	750 000	11.0%	BS%
	<u>6 818 182</u>	<u>100.0%</u>	

Deferred Shares 3 181 818

All figures £000 unless otherwise stated

## RATCHET EXAMPLE

## EXIT CONVERSION

Schedule 3 Paragraph	Option Number	1	2	3
3 2(a)	Calculate MC	158 700	225 600	300 100
3 2(b)	Calculate I	$I + \sum CF_j \cdot (1.25)^{(n-j)/12} = 0$		
	n =	36	48	60
	j = 0	CF <sub>j</sub> = (135,100)	(135 100)	(135 100)
	j = 36	CF <sub>j</sub> = 176,600		
	j = 48		197 800	
	j = 60			221 500
	I =	87 267	132,034	190 792
	Check if I is equal to or greater than (TA-L)	No	Yes	Yes
	I is deemed to equal	93 600	132 034	190 792
3 2(c)	AS% =	89%	89%	89%
	MTC =	105 169	148 353	214 374
3 2(d)	Is MC > MTC?	Yes	Yes	Yes
	NA = NA%*TNOS/100	4 593 475	4 576,073	4 776 517
	TNOS = $\frac{B \cdot MC \cdot 100}{((B\% + 9) \cdot MC - 9 \cdot MTC)}$	5 343 475	5 326,073	5 526 517
	NA% = $\frac{(AS\% - 9) \cdot MC + 9 \cdot MTC}{MC}$	85 96%	85 92%	86 43%
Check multiple of Investment				
A Shareholders receive.		313 025	391 632	480 874
TA =		270,200	270,200	270,200
Is amount received greater than TA?		Yes	Yes	Yes
<b>RESULTS</b>				
MC		158 700	225 600	300 100
Split	Investors	136 425	193 832	259 374
	Management	22 275	31 768	40 726
% split	Investors	85 96%	85 92%	86 43%
	Management	14 04%	14 08%	13 57%
		100 00%	100 00%	100 00%
Total Return for Investors		313,025	391,632	480 874
IRR(%)		32 32%	30 48%	28 91%
Total return for Management		25,075	34 868	44 226

All figures £000 unless otherwise stated

**SCHEDULE 4**  
**DEFERRED SHARES**

The rights and restrictions attaching to the Deferred Shares are as follows

**1. Income/Voting/Capital**

The holders of Deferred Shares (as holders of Deferred Shares) shall not be entitled to receive any dividend or distribution and shall not be entitled to receive notice of, nor to attend, speak or vote at any General Meeting of the Company. On a return of assets, whether on liquidation or otherwise, the Deferred Shares shall entitle the holder thereof only to the repayment of the amounts paid up on such shares (including any premium) after repayment of the capital paid up on the Equity Shares plus the payment of £5,000,000 on each of the Equity Shares and the holders of the Deferred Shares (as such) shall not be entitled to any further participation in the assets or profits of the Company.

**2. Purchase**

The Special Resolution passed on the date of adoption of these Articles and creating the Deferred Shares shall be deemed to confer irrevocable authority on the Company at any time after Completion to appoint any person to execute on behalf of the holders of the Deferred Shares remaining in issue (if any) a transfer thereof and/or an agreement to transfer the same, without making any payment to the holders thereof, to such person as the Company may determine as custodian thereof and to cancel and/or acquire the same (in accordance with the provisions of the Act) without making any payment to or obtaining the sanction of the holders thereof and pending such transfer and/or the cancellation and/or purchase to retain the certificate (if any) for such shares. The Company may, at its option at any time after Completion, redeem all or any of the Deferred Shares then in issue (if any), at a price not exceeding 1 penny for all the Deferred Shares redeemed, at any time upon giving the registered holder of such share or shares not less than twenty-eight (28) days' previous notice in writing of its intention so to do, fixing a time and place for its redemption.

**3. Re-classification**

Upon the redemption or purchase by the Company or cancellation of any Deferred Shares, the directors may, pursuant to the authority given by the adoption of this Article, convert and sub-divide the authorised share capital created as a consequence of such redemption or purchase by the Company or cancellation into shares of any class of share capital into which the authorised share capital of the Company is or may at that time be divided of a like nominal amount (as nearly as may be) as the shares of such class then in issue.