

**THE COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

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**ARTICLES OF ASSOCIATION**

**OF**

**AMPHISTA THERAPEUTICS LIMITED**

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(Adopted by a special resolution passed on 25 March 2020)



**PENNINGTONS  
MANCHES**



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**NEW**

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**of**

**AMPHISTA THERAPEUTICS LIMITED**

(Adopted by a special resolution passed on 25 March 2020)

**1. INTRODUCTION**

1.1 The model articles for private companies limited by shares contained or incorporated in Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended before the date of adoption of these articles (the **Model Articles**) will apply to the Company, except insofar as they are varied or excluded by, or are inconsistent with, the following Articles.

1.2 In these Articles and the Model Articles any reference to any statutory provision will be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force.

1.3 In these Articles:

- (a) article headings are used for convenience only and will not affect the construction or interpretation of these Articles;
- (b) words denoting the singular include the plural and vice versa and reference to one gender includes the other gender and neuter and vice versa;
- (c) Articles 8(2), 9(4), 10(3), 11(2), 13, 14, 17(2), 17(3), 19, 21, 26(5), 27, 28, 29, 30(5) to (7) (inclusive), 44(4), 51, 52 and 53 of the Model Articles will not apply to the Company;
- (d) reference to **issued Shares** of any class will exclude any Shares of that class held as Treasury Shares from time to time, unless stated otherwise; and
- (e) reference to the **holders** of Shares or a class of Share will exclude the Company holding Treasury Shares from time to time, unless stated otherwise.

1.4 Where there is reference to any Series A Preferred Share under these Articles, this reference will be treated, where appropriate in the context, to such Series A Preferred Share on an As Converted Basis.

**2. DEFINITIONS**

In these Articles the following words and expressions will have the following meanings:

**Act** means the Companies Act 2006 (as amended from time to time);

**Acting in Concert** has the meaning given to it in The City Code on Takeovers and Mergers published by the Panel on Takeovers and Mergers (as amended from time to time);

**Actions** will have the meaning given in Article 6.6;

**Advent** means Advent Life Sciences Fund II LP acting by its manager Advent Life Sciences LLP, a limited liability partnership (registered in England and Wales with number OC347034);

**Advent Associate** means Advent Life Sciences LLP and any company, fund (including any unit trust or investment trust) or partnership (or investors or partners in such entity) which is advised, or the assets (or some material part of such assets) of which are managed (whether solely or jointly with others) from time to time, by Advent Life Sciences LLP or any person who advises, or manages the assets (or some material part of such assets) of Advent Life Sciences LLP;

**Advent Co-Invest** means Advent Life Sciences II Co-Invest LP acting by its manager Advent Life Sciences LLP, a limited liability partnership (registered in England and Wales with number OC347034);

**Anti-Dilution Shares** will have the meaning given in Article 10.1;

**Arrears** means in relation to any Share, all arrears of any dividend (including, for the avoidance of doubt, the Preference Dividend) or other sums payable in respect of that Share, whether or not earned or declared and irrespective of whether or not the Company has had at any time sufficient Available Profits to pay such dividend or sums, together with all interest and other amounts payable on that Share;

**As Converted Basis** in reference to any calculation of number means that such calculation shall be made, or number determined, on the basis that each Series A Preferred Share is equivalent to such number of Ordinary Shares into which such Series A Preferred Share may be converted in accordance with Article 9 at the then applicable Conversion Ratio of such Series A Preferred Share (whether or not such conversion is actually made and ignoring any impediment on the making of such conversion (including without limitation, any limit of the ability of the Company to issue Ordinary Shares));

**Asset Sale** means the disposal by the Company of all or substantially all of its undertaking and assets (where disposal may include, without limitation, the grant by the Company of an exclusive licence of intellectual property not entered into in the ordinary course of business);

**Associate** in relation to any person means:

- (a) any person who is an associate of that person and the question of whether a person is an associate of another is to be determined in accordance with section 435 of the Insolvency Act 1986 and (whether or not an associate as so determined);

- (b) any Member of the same Group;
- (c) any Member of the same Fund Group;

**Auditors** means the auditors of the Company from time to time;

**Available Profits** means profits available for distribution within the meaning of part 23 of the Act;

**Bad Leaver** means:

- (a) a person who ceases to be an Employee at any time:
  - (i) as a consequence of that person's dismissal as, or ceasing to be, an Employee for cause, where "**cause**" will mean the lawful termination of that person's contract of employment or the relevant consultancy agreement through which such services are provided (including, for the avoidance of doubt, the Scientific Research Agreement between the University and the Company effective from 1 March 2018 as amended from time to time) without notice or payment in lieu of notice as a consequence of that person's misconduct or as otherwise permitted pursuant to the terms of the relevant contract of employment or consultancy or, in the case of a person who is a director, their removal as, or ceasing to be, a director as a consequence of that person's gross misconduct or material breach of fiduciary duties as a director; and/or
  - (ii) as a consequence of that person's resignation or service of notice as an Employee, including in circumstances where the Company could otherwise have dismissed or served notice on such Employee for cause (as defined in paragraph (a)(i) above) or, in the case of a person who is a director, where such person could otherwise have been removed as a director as a consequence of that person's gross misconduct or material breach of fiduciary duties as a director, in each case except in circumstances which constitute a constructive, wrongful and/or unfair dismissal save in the case that unfair dismissal is as a result of a procedural defect; or
- (b) a former Employee who breaches (or has breached) in any material respect any restrictive covenants in clause 14 of the Subscription and Shareholders' Agreement or any restrictive covenant applicable to him under any agreement under which employment and/or consultancy services were provided by such former Employee (including, for the avoidance of doubt, the Scientific Research Agreement between the University and the Company effective from 1 March 2018 as amended from time to time) to the Company and/or any member of the Group;

**BioMotiv** means BioMotiv-Amphista, LLC;

**Board** means the board of Directors and any committee of the board constituted for the purpose of taking any action or decision contemplated by these Articles;

**Bonus Issue or Reorganisation** means any return of capital, bonus issue of Shares or other securities of the Company by way of capitalisation of profits or reserves (other than a capitalisation issue in substitution for or as an alternative to a cash dividend which is made available to the Series A Preferred Shareholders) or any consolidation or sub-division or redenomination or any repurchase or redemption of Shares (other than Series A Preferred Shares) or any variation in the subscription price or conversion rate applicable to any other outstanding Shares in each case other than Shares issued as a result of the events set out in Article 13.8;

**Business Day** means a day on which English clearing banks are ordinarily open for the transaction of normal banking business in the City of London (other than a Saturday or Sunday);

**Capitalisation Issue** means an issue of Shares by the Company credited as fully paid up as to nominal value from any share premium account of the Company (or otherwise lawfully paid up from a capitalisation of profits or reserves (including any capital redemption reserve);

**Civil Partner** means in relation to a Shareholder, a civil partner (as defined in the Civil Partnership Act 2004) of the Shareholder;

**"Commencement Date** means:

- (a) 27 February 2018 in respect of any Founder who is an Employee on 28 June 2019; and
- (b) in respect of any other Employee, the date of their employment agreement or the relevant consultancy agreement (as the case may be) or commencement of office with the Company or any member of the Group;

**Company** means Amphista Therapeutics Limited;

**Company's Lien** has the meaning given in Article 36.1;

**Conditions** has the meaning given in Article 9.1;

**Controlling Interest** means an interest in Shares giving to the holder or holders control of the Company within the meaning of section 1124 of the CTA 2010;

**Conversion Date** has the meanings given in Article 9.1 and Article 9.2(a) (as applicable);

**Conversion Ratio** means the conversion ratio applicable to the relevant Share, as set out in Article 9.5 or 9.8 (as the case may be);

**CTA 2010** means the Corporation Tax Act 2010;

**Date of Adoption** means 25 March 2020;

**Deferred Conversion Date** means the date that the relevant Employee's Employee Shares convert into Deferred Shares pursuant to Article 19.1;

**Deferred Shares** means deferred shares of £0.0001 each in the capital of the Company from time to time;

**Director(s)** means a director or directors of the Company from time to time;

**Effective Termination Date** means the date on which the relevant Employee becomes a Leaver;

**electronic address** has the meaning given to that term in section 333 of the Act;

**electronic form** and **electronic means** have the meaning given to that term in section 1168 of the Act;

**Eligible Director** means a Director who would be entitled to vote on a matter had it been proposed as a resolution at a meeting of the Directors;

**Employee** means an individual who is employed by or is a director of or who provides consultancy services (including through a company or other entity which provides consultancy services) to, the Company or any member of the Group;

**Employee Shares** in relation to an Employee means all Shares held by:

- (a) the Employee in question; and
- (b) any Permitted Transferee of that Employee other than those Shares held by those persons that a Qualified Majority declares itself satisfied were not acquired directly or indirectly from the Employee or by reason of that person's relationship with the Employee;

other than Ordinary Shares that an Employee holds as result of exercising option(s) or otherwise pursuant to any Share Incentive Scheme(s);

**Encumbrance** means any mortgage, charge, security, interest, lien, pledge, assignment by way of security, equity, claim, right of pre-emption, option, covenant, restriction, reservation, lease, trust, order, decree, judgment, title defect (including without limitation any retention of title claim), conflicting claim of ownership or any other encumbrance of any nature whatsoever (whether or not perfected other than liens arising by operation of law);

**Equity Securities** has the meaning given in sections 560(1) to (3) inclusive of the Act and for the avoidance of doubt an allotment of Equity Securities includes a transfer of Shares which immediately before such transfer were held by the Company as Treasury Shares;

**Equity Shares** means the Shares other than the Deferred Shares;

**Exercising Investor** means any Investor who exercises its rights to acquire Anti-Dilution Shares in accordance with Article 10.1;

**Exit** means a Share Sale, an Asset Sale or an IPO;

**Expert Valuer** is as determined in accordance with Article 17.2;

**Fair Value** is as determined in accordance with Article 17;

**Family Trusts** means as regards any particular individual member or deceased or former individual member, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) under which no immediate beneficial interest in any of the Shares in question is for the time being vested in any person other than the individual and/or Privileged Relations of that individual; and so that for this purpose a person will be considered to be beneficially interested in a Share if such Share or the income thereof is liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are exercisable by or as directed by such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons;

**Financial Year** has the meaning given to that term in section 390 of the Act;

**Founders** means Alessio Ciulli, Michael Ferguson and Steve Butcher;

**Fractional Holders** has the meaning given to that term in Article 9.9;

**Fund Manager** means a person whose principal business is to make, manage or advise upon investments in securities;

**Group** means the Company and its Subsidiary Undertaking(s) (if any) from time to time and **Group Company** will be construed accordingly;

**hard copy form** has the meaning given to that term in section 1168 of the Act;

**Holding Company** means a newly formed holding company, pursuant to which the membership, pro rata shareholdings and classes of shares comprised in such holding company matches that of the Company (excluding Treasury Shares) immediately before the transfer of the issued Shares to such holding company;

**Investor Director Consent** means the consent of:

- (a) one Investor Director, if only one is appointed at the relevant time;
- (b) both Investor Directors if only two are appointed at the relevant time; or
- (c) if more than two Investor Directors are appointed at the relevant time, a majority of the Investor Directors appointed at the relevant time;

**Investor Director(s)** means such director(s) of the Company appointed pursuant to Article 28.1(a);

**Investor** means each of:

- (a) Advent;
- (b) Advent Co-Invest;
- (c) BioMotiv; and
- (d) any other person to whom any of Advent, Advent Co-Invest or BioMotiv transfers its Shares in accordance with these Articles and the Subscription



and Shareholders' Agreement and who becomes a party to the Subscription and Shareholders' Agreement as an 'Investor' by signing a Deed of Adherence (as defined in the Subscription and Shareholders' Agreement) and is named therein as an Investor;

and **Investors** shall be construed accordingly;

**IPO** means the admission of all or any of the Shares or securities representing those Shares (including without limitation depositary interests, American depositary receipts, American depositary shares and/or other instruments) on NASDAQ or the Official List of the United Kingdom Listing Authority or the AIM Market operated by the London Stock Exchange Plc or any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000);

**ITEPA** means Income Tax (Earnings and Pensions) Act 2003;

**Issue Price** means the price at which the relevant Share is issued, including any premium which for the avoidance of doubt shall be £1.00 per Series A Preferred Share for those Series A Preferred Shares in issue immediately following the Date of Adoption;

**Leaver** means an Employee who ceases to be an Employee (and for the avoidance of doubt, if an Employee continues to provide services to, the Company or any member of the Group as an employee, or director or a consultant (whether directly or indirectly through a consultancy agreement with a service company or a consultancy provider or similar) he shall not be a Leaver);

**Lien Enforcement Notice** has the meaning given in Article 36.4;

**Liquidity Event** means a distribution of all or substantially all of the assets (whether in cash or specie) of the Company by the Company on a liquidation or otherwise (including any such return of assets following an Asset Sale or Merger) and shall include any distribution by way of dividend but shall not include any dividend or other distribution which is:

- (a) made by way of Capitalisation Issue approved by a Qualified Majority or which is a Permitted Capitalisation Issue;
- (b) a Preferred Dividend; or
- (c) paid to all Shareholders pro rata to the number of Shares held by each such person (regardless of class) and approved by a Qualified Majority.

**a Member of the same Fund Group** means if the Shareholder is a fund, partnership, company, syndicate or other entity whose business is managed by a Fund Manager (an **Investment Fund**) or is a nominee of that Investment Fund:

- (a) any participant or partner in or member of any such Investment Fund or the holders of any unit trust which is a participant or partner in or member of any Investment Fund (but only in connection with the dissolution of the Investment Fund or any distribution of assets of the Investment Fund

pursuant to the operation of the Investment Fund in the ordinary course of business);

- (b) any Investment Fund managed or advised by that Fund Manager;
- (c) any Parent Undertaking or Subsidiary Undertaking of that Fund Manager, or any Subsidiary Undertaking of any Parent Undertaking of that Fund Manager; or
- (d) any trustee, nominee or custodian of such Investment Fund and vice versa;

**a Member of the same Group** means as regards any company, a company which is from time to time a Parent Undertaking or a Subsidiary Undertaking of that company or a Subsidiary Undertaking of any such Parent Undertaking;

**Merger** means the merger, consolidation or amalgamation of the Company in which the Company is not the surviving entity;

**NASDAQ** means the NASDAQ Stock Market of the NASDAQ OMX Group Inc.;

**New Securities** means any Shares or other securities convertible into, or carrying the right to subscribe for, Shares issued by the Company after the Date of Adoption (other than Shares or securities issued as a result of the events set out in Article 13.8) excluding for the avoidance of doubt any Treasury Shares transferred by the Company after the Date of Adoption;

**Offer** has the meaning given to that term in Article 20.2;

**Offer Period** has the meaning given to that term in Article 16.7(a);

**Ordinary Shareholders** means the holders from time to time of the Ordinary Shares (but excludes the Company holding Treasury Shares);

**Ordinary Shares** means the ordinary shares of £0.0001 each in the capital of the Company from time to time;

**Original Shareholder** has the meaning given to that term in Article 15.1;

**Permitted Capitalisation Issue** means a Capitalisation Issue made pursuant to Articles 6.7 or 10;

**Permitted Transfer** means a transfer of Shares in accordance with Article 15;

**Permitted Transferee** means:

- (a) in relation to a Shareholder who is an individual, any of his Privileged Relations, Trustees or Qualifying Companies;
- (b) in relation to a Shareholder which is an undertaking (as defined in section 1161(1) of the Act) means any Member of the same Group;
- (c) in relation to a Shareholder which is an Investment Fund means any Member of the same Fund Group;
- (d) in relation to an Investor:

- (i) to any Member of the same Group;
  - (ii) to any Member of the same Fund Group;
  - (iii) to any other Investor;
  - (iv) or to any nominee of that Investor; and
- (e) in relation to any Advent Associate, to another Advent Associate;

**Preference Amount** means a price per share equal to the Issue Price for such Share together with a sum equal to any Arrears;

**Preference Dividend** has the meaning given in Article 4.10;

**Pre-New Money Valuation** means the result of multiplying the total number of Ordinary Shares in issue immediately after the IPO (but excluding any new Ordinary Shares issued upon the IPO) by the subscription price per share (including any premium) in respect of new Ordinary Shares issued at the time of the IPO;

**Priority Rights** means the rights of Shareholders to purchase Shares contained in a Transfer Notice in the priority stipulated in Article 16.6 or Article 19.5 (as the case may be);

**Privileged Relation** in relation to a Shareholder who is an individual member or deceased or former member means a spouse, Civil Partner, child or grandchild (including step or adopted or illegitimate child and their issue);

**Proceeds of Sale** means the consideration payable (including any deferred and/or contingent consideration) whether in cash or otherwise to those Shareholders selling Shares under a Share Sale less any fees, costs and expenses payable in respect of such Share Sale as approved by a Qualified Majority;

**Proposed Exit** has the meaning given in Article 6.3;

**Proposed Purchaser** means a proposed independent third party purchaser who at the relevant time has made an offer on arm's length terms;

**Proposed Sale Date** has the meaning given in Article 20.3;

**Proposed Sale Notice** has the meaning given in Article 20.3;

**Proposed Sale Shares** has the meaning given in Article 20.3;

**Proposed Seller** means any person proposing to transfer any Share(s);

**Proposed Transfer** has the meaning given in Article 20.1;

**Qualified Majority** means the holders of at least 55 per cent of the Series A Preferred Shares in issue from time to time;

**Qualified Majority Consent** means the prior written consent of a Qualified Majority;

**Qualifying Company** means a company in which a Shareholder or Trustee(s) holds the entire issued share capital and over which that Shareholder or Trustee(s) exercises control (within the meaning of section 1124 of the CTA 2010);

**Qualifying IPO** means an IPO in which the net aggregate subscription amount in respect of new Ordinary Shares issued at the time of the IPO is not less than £20,000,000 (twenty million) at an issue price per Ordinary Share of at least 3 (three) times the subscription price paid for Series A Preferred Shares issued on or around the Date of Adoption (subject to appropriate adjustment following any Bonus Issue or Reorganisation);

**Qualifying Person** has the meaning given in section 318(3) of the Act;

**Realisation Price** means the value of each Ordinary Share (excluding Treasury Shares) in issue immediately before an IPO, determined by reference to the price per share at which Ordinary Shares are to be offered for sale, placed or otherwise marketed pursuant to such IPO;

**Relevant Interest** has the meaning given to that term in Article 31.5;

**Restricted Shares** has the meaning given to that term in Article 19.7;

**Sale Shares** has the meaning given to that term in Article 16.2(a);

**Seller** has the meaning given to that term in Article 16.2;

**Series A Preferred Shareholders** means the holders of the Series A Preferred Shares (but excludes the Company holding Treasury Shares);

**Series A Preferred Shares** means the series A preferred shares of £0.0001 each in the capital of the Company from time to time;

**Shareholder** means any holder of any Shares (but excludes the Company holding Treasury Shares);

**Share Incentive Scheme(s)** means any share incentive scheme(s) of the Company (including any share option plan), the terms of which have in each case been approved by a Qualified Majority;

**Shares** means the Ordinary Shares, Deferred Shares, the Series A Preferred Shares and any other shares in the capital of the Company from time to time;

**Share Sale** means the sale of (or the grant of a right to acquire or to dispose of) any of the Shares (in one transaction or as a series of transactions) which will result in the purchaser of those Shares (or grantee of that right) and persons Acting in Concert with him together acquiring a Controlling Interest in the Company, except where following completion of the sale the Shareholders and the proportion of Shares held by each of them are the same as the Shareholders and their shareholdings in the Company immediately before the sale;

**Starting Price** means the average Issue Price per share (if applicable, adjusted as referred to in Article 10.3) of all of the Series A Preferred Shares (being initially, as at the Date of Adoption £1.00);

**Subscription and Shareholders' Agreement** means the subscription and shareholders' agreement relating to the Company dated 28 June 2019;

**Subsidiary, Subsidiary Undertaking and Parent Undertaking** have the respective meanings given to those terms in sections 1159 and 1162 of the Act;

**Tag Offer Period** has the meaning given to that term in Article 20.3;

**Transfer Notice** will have the meaning given in Article 16.2;

**Transfer Price** will have the meaning given in Article 16.2(c);

**Treasury Shares** means Shares held by the Company as treasury shares from time to time within the meaning given to that term in section 724(5) of the Act;

**Trustees** in relation to a Shareholder means the trustee or the trustees of a Family Trust;

**Unvested** means Employee Shares which have not Vested; and

**Vested** means such number of Employee Shares as is determined in accordance with Article 19.2.

### **3. SHARE CAPITAL**

- 3.1 In these Articles, unless the context requires otherwise, references to shares of a particular class will include shares allotted and/or issued after the Date of Adoption and ranking pari passu in all respects (or in all respects except only as to the date from which those shares rank for dividend) with the shares of the relevant class then in issue.
- 3.2 Except as otherwise provided in these Articles, the Series A Preferred Shares and the Ordinary Shares will rank pari passu in all respects but will constitute separate classes of shares.
- 3.3 The words "and the directors may determine the terms, conditions and manner of redemption of any such shares" will be deleted from article 22(2) of the Model Articles.
- 3.4 Subject to Qualified Majority Consent and the Act, the Company may purchase its own Shares to the extent permitted by section 692(1ZA) of the Act.
- 3.5 Paragraph (c) of article 24(2) of the Model Articles will be amended by the replacement of the words "that the shares are fully paid; and" with the words "the amount paid up on them; and".
- 3.6 In article 25(2) of the Model Articles, the words "payment of a reasonable fee as the directors decide" in paragraph (c) will be deleted and replaced by the words "payment of the expenses reasonably incurred by the Company in investigating evidence as the directors may determine".
- 3.7 For the avoidance of doubt, the Company will not exercise any right in respect of any Treasury Shares, including without limitation any right to:

- (a) receive notice of or to attend or vote at any general meeting of the Company;
- (b) receive or vote on any proposed written resolution; and
- (c) receive a dividend or other distribution

except as otherwise permitted by section 726(4) of the Act.

- 3.8 The Company will be entitled to retain any share certificate(s) relating to Employee Shares while any such Shares remain Unvested.

#### **4. DIVIDENDS**

- 4.1 In respect of any Financial Year, the Company's Available Profits will be applied as set out in this Article 4.

- 4.2 Except where Article 4.10 applies, any Available Profits which the Company may determine, with Qualified Majority Consent, to distribute in respect of any Financial Year will be distributed among the holders of the Equity Shares (pari passu as if the Equity Shares constituted one class of share) pro rata to their respective holdings of Equity Shares on an As Converted Basis.

- 4.3 Subject to the Act and these Articles, the Board may, provided Qualified Majority Consent is given, pay interim dividends if justified by the Available Profits in respect of the relevant period.

- 4.4 Every dividend will accrue on a daily basis assuming a 365 day year. All dividends are expressed net and will be paid in cash.

- 4.5 On an IPO, if the Company has insufficient Available Profits for distribution to pay any Arrears, the Company will, by way of special dividend and in lieu of the accrued dividends the Company is prohibited from paying, allot to each holder of Equity Shares by way of capitalisation of reserves such number of Ordinary Shares (disregarding any fraction of a share) as will have an aggregate Realisation Price equal to the unpaid dividend.

- 4.6 If there are nil paid or partly paid Share(s), any holder of such Share(s) will only be entitled, in case of any dividend, to be paid an amount equal to the amount of the dividend multiplied by the percentage of the amount that is paid up (if any) on such Share(s) during any portion or portions of the period in respect of which a dividend is paid.

- 4.7 A capitalised sum which was appropriated from profits available for distribution (which are not required for the Preference Dividend) may be applied in or towards paying up any sums unpaid on existing Shares held by the persons entitled to such capitalised sum.

- 4.8 If:

- (a) a Share is subject to the Company's Lien; and
- (b) the Directors are entitled to issue a Lien Enforcement Notice in respect of it,

they may, instead of issuing a Lien Enforcement Notice, deduct from any dividend or other sum payable in respect of the Share any sum of money which is payable to the Company by the holder of that Share to the extent that they are entitled to require payment under a Lien Enforcement Notice. Money so deducted will be used to pay any of the sums payable in respect of that Share. The Company will notify the distribution recipient in writing of:

- (i) the fact and sum of any such deduction;
- (ii) any non-payment of a dividend or other sum payable in respect of a Share resulting from any such deduction; and
- (iii) how the money deducted has been applied.

4.9 Article 31(1) of the Model Articles will be amended by:

- (a) the replacement of the words "either in writing or as the directors may otherwise decide" at the end of paragraphs (a), (b) and (c) of that article 31(1) with the words "in writing"; and
- (b) the replacement of the words "either in writing or by such other means as the directors decide" from the end of paragraph (d) of that article 31(1) with the words "in writing".

4.10 The Company will, without any need for a resolution of the Board or of the Company and before application of any profits to reserve or for any other purpose, pay in respect of each Series A Preferred Share a fixed cumulative cash preferential dividend (the **Preference Dividend**) accruing, subject always to such Series A Preferred Share being held at the Payment Date (as defined below) (and not having been previously re-designated as an Ordinary Share or a Deferred Share as the case may be), at the annual rate of 8 per cent of the Issue Price per Series A Preferred Share (on a non-compounding basis), such Preference Dividend to be paid (i) as determined by the Company or, if earlier (ii) on a Liquidity Event or (iii) on the Conversion Date (each a **Payment Date**) to the person registered as its holder on the relevant date.

4.11 If the Company is unable to pay in full on the due date any Preference Dividend by reason of having insufficient Available Profits then it will on that date pay it to the extent that it is then lawfully able to do so. Any Preference Dividend which is not paid on the due date as aforesaid will be paid as soon as the Company has sufficient Available Profits and will be paid in one or more instalments.

4.12 Unless the Company has insufficient Available Profits, the Preference Dividend will, although it is expressed to be cumulative, automatically become a debt due from and immediately payable by the Company on the relevant Payment Date.

4.13 Articles 30(2) and 32 of the Model Articles will not apply to the Preference Dividend.

## 5. LIQUIDATION PREFERENCE

On a Liquidity Event the surplus assets of the Company remaining after payment of its liabilities will be applied (to the extent that the Company is lawfully permitted to do so):

- (a) first in paying to each of the Series A Preferred Shareholders, in priority to any other classes of Shares, an amount per Series A Preferred Share held equal to the Preference Amount (provided that if there are insufficient surplus assets to pay the amounts per Series A Preferred Share equal to the Preference Amount, the remaining surplus assets will be distributed to the Series A Preferred Shareholders pro rata to the amount of the Preference Amount due in respect of each Series A Preferred Share held by them as against the aggregate Preference Amounts due in respect of all of the Series A Preferred Shares as at such date);
- (b) second in paying to the holders of the Deferred Shares, if any, a total of £1.00 for the entire class of Deferred Shares (which payment will be deemed satisfied by payment to any one holder of Deferred Shares); and
- (c) the balance of the surplus assets (if any) will be distributed among the holders of Equity Shares pro rata (as if the Equity Shares constituted one and the same class) to the number of Equity Shares held on an As Converted Basis.

## 6. EXIT PROVISIONS

- 6.1 On a Share Sale the Proceeds of Sale will be distributed in the order of priority set out in Article 5 and the Directors will not register any transfer of Shares if the Proceeds of Sale are not so distributed except in respect of any Shares not sold in connection with that Share Sale provided that if the Proceeds of Sale are not settled in their entirety upon completion of the Share Sale:
- (a) the Directors will not be prohibited from registering the transfer of the relevant Shares so long as the Proceeds of Sale that are settled have been distributed in accordance with Articles 5 and 6; and
  - (b) the Shareholders (insofar as they are able) will take any action required by a Qualified Majority to ensure that the Proceeds of Sale in their entirety are distributed in accordance with Articles 5 and 6.
- 6.2 On an Asset Sale the surplus assets of the Company remaining after payment of its liabilities will be distributed (to the extent that the Company is lawfully permitted to do so) in the order of priority set out in Article 5 provided always that if it is not lawful for the Company to distribute its surplus assets in accordance with the provisions of these Articles, the Shareholders will take any action required by a Qualified Majority (including, but without prejudice to the generality of this Article 6.2, actions that may be necessary to put the Company into voluntary liquidation) so that Article 5 applies.
- 6.3 If the surplus assets in respect of any Liquidity Event, or Proceeds of Sale in respect of a Share Sale, include any non-cash consideration (**Non-Cash**



**Consideration**), then, for the purposes of Articles 5, 6.1 and 6.2 such Non-Cash Consideration shall be deemed to have a cash value equivalent to such amount as the Expert Valuer (acting as expert and not as arbitrator) may, at the cost of the Company, determine (in its opinion) represents a reasonable estimation of the market value of such Non-Cash Consideration as at the date of the Liquidity Event or Share Sale (as the case may be), taking into account such matters, facts and circumstances as the Expert Valuer (in its sole discretion) consider reasonable. In the absence of fraud or manifest error, such determination of the Expert Valuer shall be final and binding on all Shareholders.

- 6.4 If the surplus assets in respect of any Liquidity Event, or Proceeds of Sale in respect of a Share Sale, include any deferred or contingent consideration, including any consideration held in an escrow account for the purpose of satisfying claims by the buyer (**Delayed Consideration**) (and after having determined the deemed value of such Delayed Consideration in accordance with Article 6.3 if such consideration is also Non-Cash Consideration) then for the purposes of Articles 5, 6.1 and 6.2, the potential value of any Delayed Consideration shall be excluded for the purposes of calculating any initial distribution to be made in consequence of such Liquidity Event or Share Sale (as the case may be) and only such of the surplus assets or Proceeds of Sale which are not Delayed Consideration (**Initial Consideration**) shall then be distributed in accordance with Articles 5, 6.1 or 6.2 (as the case may be). Subsequent distributions pursuant to Articles 5, 6.1 or 6.2 shall be made as surplus assets or Proceeds of Sale become available and as at the time of each distribution of the Delayed Consideration the entitlement of each Shareholder in accordance with Articles 5, 6.1 or 6.2 (including the amounts previously distributed plus the Delayed Consideration to be then distributed) (the **Entitlement Amount**) shall be recalculated and distributed so as to make good any shortfall between the Initial Consideration previously distributed and the Entitlement Amount of each Shareholder. Notwithstanding the foregoing provisions, no Shareholder shall be required to repay or otherwise relinquish any amount previously distributed to them (unless expressly agreed by such Shareholder) in the event that its Entitlement Amount as so calculated is less than the amount of any prior distribution of surplus assets or Proceeds of Sale actually made to it under Articles 5, 6.1 or 6.2.
- 6.5 The total amount payable to each Shareholder under Article 5 or 6 (as the case may be) shall only be payable once, however such amount may be satisfied in a series of payments.
- 6.6 If there is an Exit approved by the Board and a Qualified Majority in accordance with the terms of these Articles (the **Proposed Exit**), all Shareholders will consent to, vote for, raise no objections to and waive any applicable rights in connection with the Proposed Exit (**Actions**) save for the rights granted to Shareholders pursuant to Articles 5, 20 and 22. The Shareholders will be required to take all Actions with respect to the Proposed Exit as are reasonably required by the Board to facilitate the Proposed Exit. If any Shareholder fails to comply with the provisions of this Article, the Company will be constituted the agent of each defaulting Shareholder for taking the Actions as are necessary to effect the Proposed Exit and the Directors may authorise an officer or member to execute

and deliver on behalf of such defaulting Shareholder the necessary documents and the Company may receive any purchase money due to the defaulting Shareholder in trust for each of the defaulting Shareholders.

**6.7 On an IPO:**

- (a) any Treasury Shares will be cancelled or, with Qualified Majority Consent, transferred in accordance with these Articles before the IPO;
- (b) the Company will issue to each Series A Preferred Shareholder such number (if any) of Ordinary Shares such that the proportion which the Equity Shares held by that Shareholder bears to the issued Equity Shares following the completion of all such issues (and any transfer of Treasury Shares pursuant to Article 6.7(a)) and the conversion of all Series A Preferred Shares will be equal to the proportion that the proceeds such Shareholder would have been entitled to receive on a Share Sale on that date would bear to the valuation of the Company at that date (assuming that the valuation of the Company was equal to the Pre-New Money Valuation); and
- (c) the additional Ordinary Shares will be paid up by the automatic capitalisation of any amount standing to the credit of the share premium account or any other available reserve of the Company as determined by the Directors and such additional Ordinary Shares will be issued at par fully paid. The capitalisation will be automatic and will not require any action on the part of the Shareholders and the Directors will allot the Ordinary Shares arising on the capitalisation to the Shareholders entitled to them in accordance with this Article. If the Company is not legally permitted to carry out the capitalisation the Series A Preferred Shareholders will be entitled to subscribe in cash at par for that number of additional Ordinary Shares as would otherwise have been issued pursuant to Article 6.7(b).

**7. VOTES IN GENERAL MEETING AND WRITTEN RESOLUTIONS**

- 7.1 The Series A Preferred Shares will confer on each holder of Series A Preferred Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive and vote on proposed written resolutions of the Company.
- 7.2 The Ordinary Shares will confer on each holder of Ordinary Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company and to receive and vote on proposed written resolutions of the Company.
- 7.3 The Deferred Shares (if any) will not entitle the holders of them to receive notice of, to attend, to speak or to vote at any general meeting of the Company nor to receive or vote on, or otherwise constitute an eligible member for the purposes of, proposed written resolutions of the Company.
- 7.4 Where Shares confer a right to vote, on a show of hands each holder of such Shares who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy will have

one vote. On a poll each such holder so present will have one vote for each Share held by him on an As Converted Basis.

7.5 No voting rights attached to a Share which is nil paid or partly paid may be exercised:

- (a) at any general meeting, at any adjournment of it or at any poll called at or in relation to it; or
- (b) on any proposed written resolution,

unless all of the amounts payable to the Company in respect of that Share have been paid.

## **8. CONSOLIDATION OF SHARES**

8.1 Whenever as a result of a consolidation of Shares any Shareholders would become entitled to fractions of a Share, the Directors may, on behalf of those Shareholders, sell the Shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the Company) and distribute the net proceeds of sale in due proportion among those Shareholders, and the Directors may authorise any person to execute an instrument of transfer of the Shares to, or in accordance with the directions of, the purchaser. The transferee will not be bound to see to the application of the purchase money nor will his title to the Shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

8.2 When the Company sub-divides or consolidates all or any of its Shares, the Company may, subject to the Act and to these Articles, by ordinary resolution determine that, as between the Shares resulting from the sub-division or consolidation, any of them may have any preference or advantage or be subject to any restriction as compared with the others.

## **9. CONVERSION OF SERIES A PREFERRED SHARES**

9.1 Any holder of Series A Preferred Shares will be entitled, by notice in writing to the Company, to require conversion into Ordinary Shares of all of the fully paid Series A Preferred Shares held by them at any time and those Series A Preferred Shares will convert automatically on the date of such notice (the **Conversion Date**), provided that the holder may in such notice, state that conversion of its Series A Preferred Shares into Ordinary Shares is conditional upon the occurrence of one or more events (the **Conditions**).

9.2 All of the fully paid Series A Preferred Shares will automatically convert into Ordinary Shares:

- (a) on the date of a notice given by a Qualified Majority (which date will be treated as the Conversion Date); or
- (b) immediately upon the occurrence of a Qualifying IPO.

9.3 In the case of (i) Articles 9.1 and 9.2(a), not more than five Business Days after the Conversion Date or (ii) Article 9.2(b), at least five Business Days before the

occurrence of the Qualifying IPO, each holder of the relevant Series A Preferred Shares will deliver the certificate (or an indemnity for lost certificate in a form acceptable to the Board) in respect of the Series A Preferred Shares being converted to the Company at its registered office for the time being.

- 9.4 Where conversion is mandatory on the occurrence of a Qualifying IPO, that conversion will be effective only immediately before and conditional upon such Qualifying IPO (and **Conversion Date** will be construed accordingly) and, if such Qualifying IPO does not become effective or does not take place, such conversion will be deemed not to have occurred. If there is a conversion under Article 9.1, if the Conditions have not been satisfied or waived by the relevant holder by the Conversion Date such conversion will be deemed not to have occurred.
- 9.5 On the Conversion Date, the relevant Series A Preferred Shares will without further authority than is contained in these Articles stand converted into Ordinary Shares on the basis of one Ordinary Share for each Series A Preferred Share held (as adjusted from time to time in accordance with Article 9.8) (the **Conversion Ratio**), and the Ordinary Shares resulting from that conversion will in all other respects rank pari passu with the existing issued Ordinary Shares.
- 9.6 The Company will on the Conversion Date enter the holder of the converted Series A Preferred Shares on the register of members of the Company as the holder of the appropriate number of Ordinary Shares and, subject to the relevant holder delivering its certificate(s) (or an indemnity for lost certificate in a form acceptable to the Board) in respect of the Series A Preferred Shares in accordance with this Article, the Company must within 10 Business Days of the Conversion Date forward to such holder of Series A Preferred Shares by post to his address shown in the register of members, free of charge, a definitive certificate for the appropriate number of fully paid Ordinary Shares.
- 9.7 On the Conversion Date (or as soon afterwards as it is possible to calculate the amount payable), the Company will, if it has sufficient Available Profits, pay to holders of the Series A Preferred Shares falling to be converted a dividend equal to all Arrears and accruals of dividends in relation to those Series A Preferred Shares to be calculated on a daily basis down to and including the day immediately preceding the Conversion Date. If the Company has insufficient Available Profits to pay all such Arrears and accruals of dividends in full then it will pay the same to the extent that it is lawfully able to do so and any Arrears and accruals of dividends that remain outstanding must continue to be at debt due from and immediately payable by the Company.
- 9.8 The Conversion Ratio will from time to time be adjusted in accordance with the provisions of this Article:
- (a) if Series A Preferred Shares remain capable of being converted into new Ordinary Shares and there is a consolidation and/or sub-division of Ordinary Shares, the Conversion Ratio will be adjusted by an amount, which in the opinion of the Board (with Investor Director Consent) is fair and reasonable, to maintain the right to convert so as to ensure that each Series A Preferred Shareholder is in no better or worse position as a result of such

consolidation or sub-division, such adjustment to become effective immediately after such consolidation or sub-division;

- (b) if Series A Preferred Shares remain capable of being converted into Ordinary Shares, on an allotment of fully paid Ordinary Shares pursuant to a capitalisation of profits or reserves to holders of Ordinary Shares the Conversion Ratio will be adjusted by an amount, which in the opinion of the Board (with Investor Director Consent) is fair and reasonable, to maintain the right to convert so as to ensure that each Series A Preferred Shareholder is in no better or worse position as a result of such capitalisation of profits or reserves, such adjustment to become effective as at the record date for such issue.

9.9 If any Series A Preferred Shareholder becomes entitled to fractions of an Ordinary Share as a result of conversion (**Fractional Holders**), the Directors may (in their absolute discretion) deal with these fractions as they think fit on behalf of the Fractional Holders. In particular, the Directors may aggregate and sell the fractions to a person for the best price reasonably obtainable and distribute the net proceeds of sale in due proportions among the Fractional Holders or may ignore fractions or accrue the benefit of such fractions to the Company rather than the Fractional Holder. For the purposes of completing any such sale of fractions, the chairman of the Company or, failing him, the secretary will be deemed to have been appointed the Fractional Holder's agent for the purpose of the sale.

9.10 If a doubt or dispute arises concerning an adjustment of the Conversion Ratio in accordance with Article 9.8, or if so requested by a Qualified Majority, the Board will refer the matter to the Expert Valuer for determination who will make available to all Shareholders their report and whose certificate as to the amount of the adjustment is, in the absence of manifest error, conclusive and binding on all concerned and their costs will be met by the Company.

## 10. **ANTI-DILUTION PROTECTION**

10.1 If New Securities are issued by the Company at a price per New Security which equates to less than the Starting Price (a **Qualifying Issue**) (which in the event that the New Security is not issued for cash will be a price certified by the Expert Valuer (acting as expert and not as arbitrator) at the cost of the Company as being in its opinion a reasonable estimation of the market value of such non cash consideration for the allotment of the New Securities taking into account such matters, facts and circumstances as the Expert Valuer (in its sole discretion) consider reasonable) then the Company will, unless and to the extent that any of the holders of the relevant Series A Preferred Shares will have specifically waived their rights under this Article in writing, issue to each holder of Series A Preferred Shares (the **Exercising Investor**) a number of new Series A Preferred Shares determined by applying the following formula (and rounding the product, N, down to the nearest whole share), subject to adjustment as certified in accordance with Article 10.3 (the **Anti-Dilution Shares**):

$$N = \left( \left( \frac{SIP}{WA} \right) \times Z \right) - Z$$

Where:

N= Number of Anti-Dilution Shares to be issued to the Exercising Investor.

$$WA = \frac{(SIP \times ESC) + (QISP \times NS)}{(ESC + NS)}$$

SIP = Starting Price.

ESC = the number of Equity Shares in issue plus the aggregate number of Shares in respect of which options to subscribe have been granted, or which are subject to convertible securities (including but not limited to warrants) in each case immediately before the Qualifying Issue.

QISP = the lowest per share price of the New Securities issued pursuant to the Qualifying Issue (which in the event that that New Security is not issued for cash will be the sum certified by the Expert Valuer acting as expert and not arbitrator as being in its opinion the current cash value of the non cash consideration for the allotment of the New Security).

NS = the number of New Securities issued pursuant to the Qualifying Issue.

Z = the number of Series A Preferred Shares held by the Exercising Investor before the Qualifying Issue.

## 10.2 The Anti-Dilution Shares must:

- (a) be paid up by the automatic capitalisation of available reserves of the Company, unless and to the extent that the same will be impossible or unlawful or the Exercising Investors will agree otherwise, in which event the Exercising Investors will be entitled to subscribe for the Anti-Dilution Shares in cash at par (being the par value approved in advance by the Board) and the entitlement of such Exercising Investors to Anti-Dilution Shares will be increased by adjustment to the formula set out in Article 10.1 so that the Exercising Investors will be in no worse position than if they had not so subscribed at par. In the event of any dispute between the Company and any Exercising Investor as to the effect of Article 10.1 or this Article 10.2, the matter will be referred (at the cost of the Company) to the Expert Valuer for certification of the number of Anti-Dilution Shares to be issued. The Expert Valuer's certification of the matter will in the absence of manifest error be final and binding on the Company and the Exercising Investor; and
- (b) subject to the payment of any cash payable pursuant to Article 10.2(a) (if applicable), be issued, credited fully paid up in cash and will rank *pari passu* in all respects with the existing Series A Preferred Shares, within five Business Days of the expiry of the offer being made by the Company to the Exercising Investor and pursuant to Article 10.2(a).

- 10.3 In the event of any Bonus Issue or Reorganisation, the Starting Price will be subject to adjustment on such basis as may be agreed by the Company with a Qualified Majority within 10 Business Days after such Bonus Issue or Reorganisation. If the Company and a Qualified Majority cannot agree such adjustment it will be referred to the Expert Valuer whose determination will, in the absence of manifest error, be final and binding on the Company and each of the Shareholders. The costs of the Expert Valuer will be borne by the Company.
- 10.4 For the purposes of this Article 10 any Shares held as Treasury Shares by the Company will be disregarded when calculating the number of Anti-Dilution Shares to be issued.

## **11. DEFERRED SHARES**

- 11.1 Subject to the Act, any Deferred Share(s) may be purchased by the Company at any time at its option for one penny for all the Deferred Shares registered in the name of any holder(s) without obtaining the sanction of the holder(s).
- 11.2 The allotment or issue of any Deferred Share or the conversion or re-designation of any Share into a Deferred Share will be deemed to confer irrevocable authority on the Company at any time after its allotment, issue, conversion or re-designation, without obtaining the sanction of such holder(s), to:
- (a) appoint any person to execute any transfer of (or any agreement to transfer) such Deferred Share to such person as the Company may determine (as nominee or custodian thereof or otherwise); and/or
  - (b) give, on behalf of such holder, consent to the cancellation of such Deferred Share; and/or
  - (c) purchase such Deferred Share in accordance with the Act,
- in any such case (i) for a price being not more than an aggregate sum of one penny for all the Deferred Shares registered in the name of such holder(s) and (ii) with the Company having authority pending such transfer, cancellation and/or purchase to retain the certificates (if any) in respect thereof.
- 11.3 No Deferred Share may be transferred without the prior approval of the Board and Qualified Majority Consent.

## **12. VARIATION OF RIGHTS**

- 12.1 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 (either whilst the Company is a going concern or during or in contemplation of a winding-up) with the consent in writing of the holders of more than 75 per cent. in nominal value of the issued shares of that class except that the special rights attaching to the Series A Preferred Shares may only be varied or abrogated with Qualified Majority Consent.

- 12.2 The creation of a new class of Shares which has preferential rights to one or more existing classes of Shares will not constitute a variation of the rights of those existing classes of shares.

**13. ALLOTMENT OF NEW SHARES OR OTHER SECURITIES: PRE-EMPTION**

- 13.1 Subject to the remaining provisions of this Article 13, the Directors are generally and unconditionally authorised for the purpose of section 551 of the Act to exercise any power of the Company to:

- (a) allot Shares; or
- (b) grant rights to subscribe for or convert any securities into Shares,

to any persons, at any times and subject to any terms and conditions as the Directors think proper.

- 13.2 Sections 561(1) and 562(1) to (5) (inclusive) of the Act do not apply to an allotment of Equity Securities made by the Company.

- 13.3 Unless otherwise agreed by special resolution, if the Company proposes to allot any New Securities those New Securities must not be allotted to any person unless the Company has in the first instance offered them to the Investors on the same terms and at the same price as those New Securities are being offered to other persons on a pari passu and pro rata basis to the number of Equity Shares held by the Investors on an As Converted Basis (as nearly as may be without involving fractions). The offer:

- (a) will be in writing, be open for acceptance from the date of the offer to the date 10 Business Days after the date of the offer (inclusive) (the **Subscription Period**) and give details of the number and subscription price of the New Securities; and
- (b) may stipulate that any Investor who wishes to subscribe for a number of New Securities in excess of the proportion to which such Investor is entitled will in his/its acceptance state the number of excess New Securities for which he/it wishes to subscribe.

- 13.4 If, at the end of the Subscription Period, the number of New Securities applied for is equal to or exceeds the number of New Securities, the New Securities will be allotted to the Investors who have applied for New Securities on a pro rata basis to the number of Equity Shares held by such Investors on an As Converted Basis which procedure will be repeated until all New Securities have been allotted (as nearly as may be without involving fractions or increasing the number allotted to any Subscriber beyond that applied for by him).

- 13.5 If, at the end of the Subscription Period, the number of New Securities applied for is less than the number of New Securities, the New Securities will be allotted to the Investors in accordance with their applications and any remaining New Securities will be offered, subject to Article 13.6, to any other person as the Directors may determine with Qualified Majority Consent at the same price and on the same terms as the offer to the Investors.



- 13.6 If after the allotments have been made pursuant to Articles 13.3 to 13.5 (inclusive) all of the New Securities have not been allotted the Board will offer the unallotted New Securities to the holders of Equity Shares other than the Investors pro rata to their holding of Equity Shares inviting them to apply in writing within the period from the date of the offer to the date 10 Business Days after the date of the offer (inclusive) for the maximum number of New Securities for which they wish to subscribe and that offer will be made mutatis mutandis the provisions in Articles 13.3 to 13.5 (inclusive).
- 13.7 Subject to the requirements of Articles 13.3 to 13.6 (inclusive) and to the provisions of section 551 of the Act, any New Securities will be at the disposal of the Board who may allot, grant options over or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper, provided that the allotment or grant to that person must be approved in writing by a Qualified Majority.
- 13.8 The provisions of Articles 13.3 to 13.7 (inclusive) will not apply to:
- (a) options to subscribe for Ordinary Shares or Ordinary Shares issued under any Share Incentive Scheme;
  - (b) New Securities issued or granted in order for the Company to comply with its obligations under these Articles including, but not limited to the Anti-Dilution Shares, and Shares issued in accordance with Articles 4.5, 6.6 and 10;
  - (c) New Securities issued in consideration of a merger or the acquisition, consolidation, strategic alliance or similar by the Company of any company or business, in each case which has been approved by the Board and approved in writing by a Qualified Majority; and
  - (d) New Securities issued as a result of a bonus issue of Shares which falls under Article 13.8(b).
- 13.9 Any New Securities offered under this Article 13 to:
- (a) an Investor may be accepted (in full or part only) by a Member of the same Fund Group as that Investor or a Member of the same Group as that Investor in accordance with the terms of this Article 13; and
  - (b) an Advent Associate may be accepted (in full or part only) by another Advent Associate.
- 13.10 No Share will be allotted (nor any Treasury Shares be transferred) to any Employee, Director, prospective Employee or prospective director of the Company, who in the opinion of the Board is subject to taxation in the United Kingdom, unless such person has entered into a joint section 431 ITEPA election with the Company if so required by the Company.
- 14. TRANSFERS OF SHARES – GENERAL**
- 14.1 In Articles 14 to 22 inclusive, reference to the transfer of a Share includes the transfer or assignment of a beneficial or other interest in that Share or the creation

of a trust or Encumbrance over that Share and reference to a Share includes a beneficial or other interest in a Share.

- 14.2 No Share may be transferred unless the transfer is made in accordance with these Articles.
- 14.3 If a Shareholder transfers or purports to transfer a Share otherwise than in accordance with these Articles he will be deemed immediately to have served a Transfer Notice in respect of all Shares held by him.
- 14.4 Any transfer of a Share by way of sale which is required to be made under Articles 16 to 22 (inclusive) will be deemed to include a warranty that the transferor sells with full title guarantee.
- 14.5 Unless express provision is made in these Articles to the contrary, prior to a Liquidity Event or an IPO, no Share held by any Founder or Employee will be transferred without Qualified Majority Consent.
- 14.6 The Directors may refuse to register a transfer if:
- (a) it is a transfer of a Share to a bankrupt, a minor or a person of unsound mind;
  - (b) the transfer is to an Employee, Director or prospective Employee or prospective director of the Company, who in the opinion of the Board is subject to taxation in the United Kingdom, and such person has not entered into a joint section 431 ITEPA election with the Company;
  - (c) it is a transfer of a Share which is not fully paid:
    - (i) to a person of whom the Directors do not approve; or
    - (ii) on which Share the Company has a lien;
  - (d) the transfer is not lodged at the registered office or at such other place as the Directors may appoint;
  - (e) the transfer is not accompanied by the certificate for the Shares to which it relates (or an indemnity for lost certificate in a form acceptable to the Board) and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;
  - (f) the transfer is in respect of more than one class of Shares;
  - (g) the transfer is in favour of more than four transferees; or
  - (h) these Articles otherwise provide that such transfer will not be registered.
- If the Directors refuse to register a transfer, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.
- 14.7 The Directors may, as a condition to the registration of any transfer of Shares (whether pursuant to a Permitted Transfer or otherwise), require the transferee to

execute and deliver to the Company a deed agreeing to be bound by the terms of any shareholders' agreement or similar document in force between some or all of the Shareholders and the Company in any form as the Directors may reasonably require (but not so as to oblige the transferee to have any obligations or liabilities greater than those of the proposed transferor under any such agreement or other document) and if any condition is imposed in accordance with this Article 14.7 the transfer may not be registered unless that deed has been executed and delivered to the Company's registered office by the transferee.

- 14.8 To enable the Directors to determine whether or not there has been any disposal of any Share(s) (or any interest in any Share(s)) in breach of these Articles the Directors may require any Shareholder or the legal personal representatives of any deceased Shareholder or any person named as transferee in any transfer lodged for registration or any other person who the Directors may reasonably believe to have information relevant to that purpose, to furnish to the Company that information and evidence the Directors may request regarding any matter which they deem relevant to that purpose, including (but not limited to) the names, addresses and interests of all persons respectively having interests in the Share(s) from time to time registered in the Shareholder's name. If the information or evidence is not provided to enable the Directors to determine to their reasonable satisfaction that no breach has occurred, or where as a result of the information and evidence the Directors are reasonably satisfied that a breach has occurred, the Directors will immediately notify the holder of such Share(s) in writing of that fact and the following will occur:

- (a) the relevant Share(s) will cease to confer upon the holder of them (including any proxy appointed by the holder) any rights to vote (whether on a show of hands or on a poll and whether exercisable at a general meeting or on a written resolution of the Company or at any separate meeting or written resolution of the class in question) provided that, at the election of the relevant Investor, such rights will not cease if as a result of such cessation the Company will become a Subsidiary of an Investor; or
- (b) the withholding of payment of all dividends or other distributions (other than the amount they may be entitled to pursuant to the application of Article 4.10) otherwise attaching to the relevant Share(s) or to any further Share(s) issued in respect of such Share(s); and
- (c) the holder may be required at any time following receipt of the notice to transfer some or all of its Shares to any person(s) at the price that the Directors may require by notice in writing to that holder.

The rights referred to in (a) and (b) above may be reinstated by the Board (with Investor Director Consent) and will in any event be reinstated upon the completion of any transfer referred to in (c) above.

- 14.9 In any case where the Board requires a Transfer Notice to be given in respect of any Share, if a Transfer Notice is not duly given within a period of 10 Business Days of demand being made, a Transfer Notice will be deemed to have been given at the end of that period.

- 14.10 If a Transfer Notice is required to be given by the Board or is deemed to have been given under these Articles, the Transfer Notice, unless otherwise specified in the Articles, will be treated as having specified that:
- (a) the Transfer Price for the Sale Share(s) will be as agreed between the Board with Investor Director Consent (in each case with any director or Investor Director who is a Seller or with whom the Seller is connected (within the meaning of section 252 of the Act) not voting) and the Seller, or, failing agreement within five Business Days after the date on which the Board becomes aware that a Transfer Notice has been deemed to have been given, will be the Fair Value of the Sale Shares;
  - (b) it does not include a Minimum Transfer Condition (as defined in Article 16.2(d)); and
  - (c) the Seller wishes to transfer all of the Shares held by it.
- 14.11 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of:
- (a) the transferor; and
  - (b) (if any of the Shares is partly or nil paid) the transferee.

## **15. PERMITTED TRANSFERS**

- 15.1 A Shareholder (who is not a Permitted Transferee who/which has received a Permitted Transfer) (the **Original Shareholder**) may, subject to the any express provisions of the these Articles otherwise, transfer all or any of his or its Shares to a Permitted Transferee without restriction as to price or otherwise except that the transfer of Restricted Shares held by any Founder or Employee under this Article 15.1 will require Qualified Majority Consent.
- 15.2 Shares previously transferred as permitted by Article 15.1 may be transferred by the transferee to any other Permitted Transferee of the Original Shareholder without restriction as to price or otherwise.
- 15.3 Where under the provision of a deceased Shareholder's will or laws as to intestacy, the persons legally or beneficially entitled to any Shares, whether immediately or contingently, are Permitted Transferees of the deceased Shareholder, the legal representative of the deceased Shareholder may transfer any Share to those Permitted Transferees, in each case without restriction as to price or otherwise.
- 15.4 If a Permitted Transferee which has received a Permitted Transfer from the Original Shareholder and which was a Member of the same Group as the Original Shareholder ceases to be a Member of the same Group as the Original Shareholder, such Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the Shares held by it to the Original Shareholder or a Member of the same Group as the Original Shareholder (which in either case is not in liquidation) without restriction

as to price or otherwise failing which it will be deemed to have given a Transfer Notice in respect of those Shares.

- 15.5 If a Permitted Transferee which has received a Permitted Transfer from the Original Shareholder and which was a Member of the same Fund Group as the Original Shareholder ceases to be a Member of the same Fund Group, the Permitted Transferee must not later than five Business Days after the date on which the Permitted Transferee so ceases, transfer the Shares held by it to the Original Shareholder or a Member of the same Fund Group as the Original Shareholder (which in either case is not in liquidation) without restriction as to price or otherwise failing which it will be deemed to give a Transfer Notice in respect of such Shares.
- 15.6 Trustees may transfer any Share(s) to: (i) a Qualifying Company or (ii) the Original Shareholder or to another Permitted Transferee of the Original Shareholder or (iii) the new or remaining trustees upon a change of Trustees, in each case without restriction as to price or otherwise.
- 15.7 No transfer of any Share(s) may be made to Trustees unless the Board is satisfied:
- (a) with the terms of the trust instrument and in particular with the powers of the trustees;
  - (b) with the identity of the proposed trustees;
  - (c) the proposed transfer must not result in 50 per cent or more of the aggregate of the Company's equity share capital being held by trustees of that and any other trusts; and
  - (d) that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company.
- 15.8 If a Permitted Transferee which has received a Permitted Transfer from, and which is a Qualifying Company of, the Original Shareholder ceases to be a Qualifying Company of the Original Shareholder, it must within five Business Days of so ceasing, transfer the Shares held by it to the Original Shareholder (or, to any Permitted Transferee of the Original Shareholder) (any may do so without restriction as to price or otherwise) failing which it will be deemed (unless it obtains the approval of the Board (with Investor Director Consent) to have given a Transfer Notice in respect of such Shares.
- 15.9 If a Permitted Transferee who has received a Permitted Transfer from, and who is a spouse or Civil Partner of, the Original Shareholder ceases to be a spouse or Civil Partner of the Original Shareholder whether by reason of divorce or otherwise he must, within 15 Business Days of so ceasing either:
- (a) execute and deliver to the Company a transfer of the Shares held by him to the Original Shareholder (or, to any Permitted Transferee of the Original Shareholder) for such consideration as may be agreed between them; or
  - (b) give a Transfer Notice to the Company in accordance with Article 16.2,

failing which he will be deemed to have given a Transfer Notice.

- 15.10 On the death (subject to Article 15.3), bankruptcy, liquidation, administration or administrative receivership of a Permitted Transferee who/which has received a Permitted Transfer from the Original Shareholder (other than a joint holder) his personal representatives or trustee in bankruptcy, or its liquidator, administrator or administrative receiver must within five Business Days after the date of the grant of probate, the making of the bankruptcy order or the appointment of the liquidator, administrator or the administrative receiver execute and deliver to the Company a transfer of the Shares held by such Permitted Transferee without restriction as to price or otherwise. The transfer will be to the Original Shareholder if still living (and not bankrupt or in liquidation) or, if so directed by the Original Shareholder, to any Permitted Transferee of the Original Shareholder. If the transfer is not executed and delivered within five Business Days of such period or if the Original Shareholder has died or is bankrupt or is in liquidation, administration or administrative receivership, the personal representative or trustee in bankruptcy or liquidator, administrator or administrative receiver will be deemed to have given a Transfer Notice.
- 15.11 A transfer of any Share(s) approved by the Board and a Qualified Majority may be made without restriction as to price or otherwise and with any such conditions as may be imposed and each such transfer will be registered by the Directors.
- 15.12 Any Share(s) may at any time be transferred where there is a sale of the entire issued share capital of the Company to a Holding Company, which has been approved by a majority of the Board (with Qualified Majority Consent).
- 15.13 The Company will only be permitted to sell or transfer any Share held as a Treasury Share to any person with Qualified Majority Consent.

## **16. TRANSFERS OF SHARES SUBJECT TO PRE-EMPTION RIGHTS**

- 16.1 Except where the provisions of Articles 15, 20 and 22 apply, any transfer of Shares by a Shareholder will be subject to the pre-emption rights contained in this Article 16.
- 16.2 A Shareholder who wishes to transfer any Share(s) (a **Seller**) will, except as otherwise provided in these Articles, before transferring or agreeing to transfer any Share(s) give notice in writing (a **Transfer Notice**) to the Company specifying:
- (a) the number of Shares which he wishes to transfer (the **Sale Shares**);
  - (b) if he wishes to sell the Sale Shares to a third party, the name of the proposed transferee;
  - (c) the price at which he wishes to transfer the Sale Shares; and
  - (d) whether the Transfer Notice is conditional on all or a specific number of the Sale Shares being sold to Shareholders (a **Minimum Transfer Condition**).

If no cash price is specified by the Seller, the price at which the Sale Shares are to be transferred (the **Transfer Price**) must be agreed by the Board (with Investor

Director Consent). In addition, if the price is not specified in cash, an equivalent cash value price must be agreed between the Seller and the Board (with Investor Director Consent). In both cases, the price will be deemed to be the Fair Value of the Sale Shares if no price is agreed within 5 Business Days of the Company receiving the Transfer Notice.

16.3 Except with the prior approval of the Board (with Investor Director Consent), no Transfer Notice once given or deemed to have been given under these Articles may be withdrawn.

16.4 A Transfer Notice constitutes the Company the agent of the Seller for the sale of the Sale Shares at the Transfer Price.

16.5 As soon as practicable following the later of:

- (a) receipt of a Transfer Notice; and
- (b) in the case where the Transfer Price has not been agreed, the determination of the Transfer Price under Article 17,

the Board will offer the Sale Shares for sale to the Shareholders in the manner set out in Article 16.7. Each offer must be in writing and give details of the number and Transfer Price of the Sale Shares offered.

16.6 *Priority for offer of Sale Shares*

The Sale Shares will be offered in the following priority:

- (a) first, to the Investors; and
- (b) second, to the holders of Equity Shares (other than the Investors),

in each case on the basis set out in Article 16.7.

16.7 *Transfers: Offer*

- (a) The Board will offer the Sale Shares pursuant to the Priority Rights to all Shareholders specified in the offer other than the Seller (the **Continuing Shareholders**) inviting them to apply in writing within the period from the date of the offer to the date 10 Business Days after the offer (inclusive) (the **Offer Period**) for the maximum number of Sale Shares they wish to buy.
- (b) If the Sale Shares are subject to a Minimum Transfer Condition then any allocation made under Article 16.7 will be conditional on the fulfilment of the Minimum Transfer Condition.
- (c) If, at the end of the Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the Board will allocate the Sale Shares to each Continuing Shareholder who has applied for Sale Shares in the proportion (fractional entitlements being rounded to the nearest whole share) which his existing holding of Equity Shares bears to the total number of Equity Shares (in each case on an As Converted Basis) held by those Continuing Shareholders who have applied for Sale Shares

which procedure will be repeated until all Sale Shares have been allocated but no allocation will be made to a Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy.

- (d) If, at the end of the Offer Period, the number of Sale Shares applied for is less than the number of Sale Shares, the Board will allocate the Sale Shares to the Continuing Shareholders in accordance with their applications and the balance will be dealt with in accordance with Article 16.8(e).

#### 16.8 *Completion of transfer of Sale Shares*

- (a) If the Transfer Notice includes a Minimum Transfer Condition and the total number of Shares applied for does not meet the Minimum Transfer Condition the Board will notify the Seller and all those to whom Sale Shares have been conditionally allocated under Article 16.7 stating the condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect.
- (b) If:
  - (i) the Transfer Notice does not include a Minimum Transfer Condition; or
  - (ii) the Transfer Notice does include a Minimum Transfer Condition and allocations have been made in respect of all or the minimum required number of the Sale Shares,

the Board will, when no further offers are required to be made under Article 16.7 and once the requirements of Article 20 have been fulfilled to the extent required, give written notice of allocation (an **Allocation Notice**) to the Seller and each Shareholder to whom Sale Shares have been allocated (an **Applicant**) specifying the number of Sale Shares allocated to each Applicant and the place and time (being not less than 10 Business Days nor more than 20 Business Days after the date of the Allocation Notice) for completion of the transfer of the Sale Shares.

- (c) Upon service of an Allocation Notice, the Seller must, against payment of the Transfer Price, transfer the Sale Shares in accordance with the requirements specified in it.
- (d) If the Seller fails to comply with the provisions of Article (c):
  - (i) the chairman of the Company or, failing him, one of the directors, or some other person nominated by a resolution of the Board, may on behalf of the Seller:
    - (A) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants;
    - (B) receive the Transfer Price and give a good discharge for it; and
    - (C) (subject to the transfer being duly stamped) enter the Applicants in the register of Shareholders as the holders of the Shares purchased by them; and



- (ii) the Company will pay the Transfer Price into a separate bank account in the Company's name on trust (but without interest) or otherwise hold the Transfer Price on trust for the Seller until he has delivered to the Company his certificate or certificates for the relevant Shares (or an indemnity for lost certificate in a form acceptable to the Board).
- (e) If an Allocation Notice does not relate to all the Sale Shares then, subject to Article 16.8(f), the Seller may, within eight weeks after service of the Allocation Notice, transfer the unallocated Sale Shares to any person at a price at least equal to the Transfer Price.
- (f) The right of the Seller to transfer Shares under Article 16.8(e) does not apply if the Board is of the opinion on reasonable grounds that:
  - (i) the transferee is a person (or a nominee for a person) who the Board determine in their absolute discretion is a competitor with (or an Associate of a competitor with) the business of the Company or with a Subsidiary Undertaking of the Company;
  - (ii) the sale of the Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee; or
  - (iii) the Seller has failed or refused to provide promptly information available to it or him and reasonably requested by the Board for the purpose of enabling it to form the opinion mentioned above.

16.9 Any Sale Shares offered under this Article 16 to:

- (a) an Investor may be accepted (in full or part only) by a Member of the same Fund Group as that Investor or a Member of the same Group as that Investor in accordance with the terms of this Article 16; or
- (b) an Advent Associate may be accepted (in full or part only) by another Advent Associate.

## 17. VALUATION OF SHARES

17.1 If no Transfer Price can be agreed between the Seller and the Board in accordance with provisions of Articles 14.10 or 16.2 or otherwise then, on the date of failing agreement, the Board shall either:

- (a) appoint an expert valuer in accordance with Article 17.2 (the "**Expert Valuer**") to certify the Fair Value of the Sale Shares; or
- (b) (if the Fair Value has been certified by an Expert Valuer within the preceding 12 weeks) specify that the Fair Value of the Sale Shares will be calculated by dividing any Fair Value so certified by the number of Sale Shares to which it related and multiplying such Fair Value by the number of Sale Shares the subject of the Transfer Notice.

17.2 The Expert Valuer will be either:

- (a) the Auditors; or

- (b) a third party valuer appointed by the Board.
- 17.3 The "Fair Value" of the Sale Shares shall be determined by the Expert Valuer on the following assumptions and bases:
  - (a) valuing the Sale Shares as on an arm's-length sale between a willing seller and a willing buyer;
  - (b) if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
  - (c) that the Sale Shares are capable of being transferred without restriction;
  - (d) valuing the Sale Shares as a rateable proportion of the total value of all the issued Shares without any premium or discount being attributable to the percentage of the issued share capital of the Company which they represent but taking account of the rights attaching to the Sale Shares; and
  - (e) reflecting any other factors which the Expert Valuer reasonably believes should be taken into account.
- 17.4 If any difficulty arises in applying any of these assumptions or bases then the Expert Valuer shall resolve that difficulty in whatever manner they shall in their absolute discretion think fit.
- 17.5 The Expert Valuer shall be requested to determine the Fair Value within 20 Business Days of their appointment and to notify the Board of their determination.
- 17.6 The Expert Valuer shall act as experts and not as arbitrators and their determination shall be final and binding on the parties (in the absence of fraud or manifest error).
- 17.7 The Board will give the Expert Valuer access to all accounting records or other relevant documents of the Company subject to them agreeing to such confidentiality provisions as the Board may reasonably impose.
- 17.8 The Expert Valuer shall deliver their certificate to the Company. As soon as the Company receives the certificate it shall deliver a copy of it to the Seller. Unless the Sale Shares are to be sold under a Transfer Notice, which is deemed to have been served, the Seller may by notice in writing to the Company within five Business Days of the service on him of the copy certificate, cancel the Company's authority to sell the Sale Shares.
- 17.9 The cost of obtaining the certificate shall be paid by the Company unless:
  - (a) the Seller cancels the Company's authority to sell; or
  - (b) the Sale Price certified by the Expert Valuer is less than the price (if any) offered by the directors to the Seller for the Sale Share before Expert Valuer was instructed,in which case the Seller shall bear the cost.

## **18. COMPULSORY TRANSFERS – GENERAL**

- 18.1 A person entitled to any Share in consequence of the bankruptcy of a Shareholder will be deemed to have given a Transfer Notice in respect of such Share at a time determined by the Directors.
- 18.2 If any Share remains registered in the name of a deceased Shareholder for longer than one year after the date of his death the Directors may require the legal personal representatives of that deceased Shareholder either:
- (a) to effect a Permitted Transfer of such Share (including for this purpose an election to be registered in respect of the Permitted Transfer); or
  - (b) to show to the satisfaction of the Directors that a Permitted Transfer will be effected before or promptly upon the completion of the administration of the estate of the deceased Shareholder.

If either requirement in this Article 18.2 will not be fulfilled to the satisfaction of the Directors a Transfer Notice will be deemed to have been given in respect of each such Share except to the extent that, the Directors may otherwise determine.

- 18.3 If a Shareholder which is a company, either suffers or resolves for the appointment of a liquidator, administrator or administrative receiver over it or any material part of its assets (other than as part of a bona fide restructuring or reorganisation), the relevant Shareholder (and its Permitted Transferees to whom the relevant Shareholder has made a Permitted Transfer) will be deemed to have given a Transfer Notice in respect of all the Shares held by the relevant Shareholder and its Permitted Transferees except to the extent that, and at a time, the Directors may determine.
- 18.4 If there is a change in control (as control is defined in section 1124 of the CTA 2010) of any Shareholder which is a company, it will be bound at any time, if and when required in writing by the Directors to do so, to give (or procure the giving in the case of a nominee) a Transfer Notice in respect of all the Shares registered in its and their names and their respective nominees' names except that, in the case of the Permitted Transferee which has received a Permitted Transfer from such Shareholder, it will first be permitted to transfer those Shares back to the Original Shareholder from whom it received its Shares or to any other Permitted Transferee of the Original Shareholder before being required to serve a Transfer Notice. This Article 18.4 will not apply to a member that is an Investor or the University.

## **19. DEPARTING EMPLOYEES**

### *Deferred Shares*

- 19.1 Unless the Board and a Qualified Majority determine that this Article 19.1 will not apply and subject to Article 19.4, if at any time an Employee becomes a Leaver in circumstances where he is a Bad Leaver, all of his Employee Shares which are Unvested as at the Effective Termination Date will automatically convert into Deferred Shares (on the basis of one Deferred Share for each Ordinary Shares held) on the Effective Termination Date of such Employee.

19.2 For the purposes of this Article 19, the percentage of Employee Shares which are Vested shall be:

- (a) in the first 12 months following the Commencement Date, 0 (zero); and
- (b) with effect from the first anniversary of the Commencement Date, determined as follows:

$$(100 - ((1/48 \times 100) \times NM))$$

where NM = number of full calendar months from the Commencement Date to the Effective Termination Date, such that one hundred per. cent of the Employee Shares will be Vested on the first day of the 49th month after the Commencement Date and thereafter.

19.3 Upon such conversion into Deferred Shares, the Company will be entitled to enter the holder of such Deferred Shares on the register of members of the Company as the holder of the appropriate number of Deferred Shares as from the Deferred Conversion Date. Upon the Deferred Conversion Date, the Employee (and his Permitted Transferee(s) (if any)) will deliver to the Company at its registered office the relevant share certificate(s) (to the extent not already in the possession of the Company) (or an indemnity for lost certificate in a form acceptable to the Board) for the Unvested Shares so converting and upon such delivery there will be issued to him (or his Permitted Transferee(s)) (as the case may be) share certificate(s) for the number of Deferred Shares resulting from the relevant conversion and any remaining Ordinary Shares.

*Deemed Transfer Notice*

19.4 The Board and a Qualified Majority will be entitled to determine that, in the alternative to Article 19.1, if an Employee becomes a Leaver a Transfer Notice will be deemed to be given in respect all of his Employee Shares which were to convert into Deferred Shares under Article 19.1 on the Effective Termination Date. In such circumstances the Transfer Price will be the nominal value of such Employee Shares.

19.5 For the purposes of this Article, the Priority Rights will be such that the Employee Shares are offered in the following order of priority:

- (a) to any person(s) approved by the Board (by a unanimous resolution, but excluding any director whose Employee Shares are the subject of such approval) and a Qualified Majority; and/or
- (b) to the Company (subject always to the provisions of the Act).

*Suspension of voting rights*

19.6 All voting rights attached to Employee Shares held by an Employee or by any Permitted Transferee of that Employee (the Restricted Member), if any, will at the time he is a Bad Leaver be suspended unless the Board and a Qualified Majority notify him otherwise.

- 19.7 Any Employee Shares whose voting rights are suspended pursuant to Article 19.6 (Restricted Shares) will confer on the holders of Restricted Shares the right to receive a notice of and attend all general meetings of the Company but will have no right to vote either in person or by proxy or to vote on any proposed written resolution. Voting rights suspended pursuant to Article 19.6 will be automatically restored immediately before an IPO. If a Restricted Member transfers any Restricted Shares in accordance with these Articles all voting rights attached to the Restricted Shares so transferred will upon completion of the transfer (as evidenced by the transferee's name being entered in the Company's register of members) automatically be restored.

## **20. MANDATORY OFFER ON A CHANGE OF CONTROL**

- 20.1 Except in the case of Permitted Transfers and transfers pursuant to Articles 18 and 19, after going through the pre-emption procedure in Article 16, the provisions of Article 20.2 will apply if one or more Proposed Sellers propose to transfer in one or a series of related transactions any Equity Shares (the **Proposed Transfer**) which would, if put into effect, result in any Proposed Purchaser (and Associates of his or persons Acting in Concert with him) acquiring a Controlling Interest in the Company.
- 20.2 A Proposed Seller must, before making a Proposed Transfer procure the making by the Proposed Purchaser of an offer (the **Offer**) to any Series A Preferred Shareholders who have not taken up their pre-emptive rights under Article 16 to acquire all of the Equity Shares for a consideration per share the value of which is at least equal to the Specified Price (as defined in Article 20.7).
- 20.3 The Offer must be given by written notice (a **Proposed Sale Notice**) at least 10 Business Days (the **Tag Offer Period**) before the proposed sale date (**Proposed Sale Date**). The Proposed Sale Notice must set out, to the extent not described in any accompanying documents, the identity of the Proposed Purchaser, the purchase price and other terms and conditions of payment, the Proposed Sale Date and the number of Shares proposed to be purchased by the Proposed Purchaser (the **Proposed Sale Shares**).
- 20.4 If any other Series A Preferred Shareholders (other than a Proposed Seller) is not given the rights accorded him by this Article, the Proposed Sellers will not be entitled to complete their sale and the Company will not register any transfer intended to carry that sale into effect.
- 20.5 If the Offer is accepted by Series A Preferred Shareholder (an **Accepting Shareholder**) within the Tag Offer Period, the completion of the Proposed Transfer will be conditional upon the completion of the purchase of all the Shares held by Accepting Shareholders.
- 20.6 The Proposed Transfer is subject to the pre-emption provisions of Article 16 but the purchase of the Accepting Shareholders' Shares will not be subject to Article 16.
- 20.7 For the purpose of this Article:

(a) the expression **Specified Price** will mean in respect of each Share a sum in cash equal to the highest price per share offered or paid by the Proposed Purchaser:

(i) in the Proposed Transfer; or

(ii) in any related or previous transaction by the Proposed Purchaser or any person Acting in Concert with the Proposed Purchaser in the 12 months preceding the date of the Proposed Transfer,

plus an amount equal to the Relevant Sum, as defined in Article 20.7(b), of any other consideration (in cash or otherwise) paid or payable by the Proposed Purchaser or any other person Acting in Concert with the Proposed Purchaser, which having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Shares (the **Supplemental Consideration**) provided that the total consideration paid by the Proposed Purchaser in respect of the Proposed Transfer is distributed to the Proposed Seller and the Accepting Shareholders in accordance with the provisions of Articles 4.10 and 6;

(b) **Relevant Sum** =  $C \div A$

where:

A = number of Equity Shares being sold in connection with the relevant Proposed Transfer; and

C = the Supplemental Consideration.

## 21. CO-SALE RIGHT

21.1 No transfer (other than a Permitted Transfer) of any of the Employee Shares relating to a Founder or an Employee may be made or validly registered unless the relevant Founder or Employee and any Permitted Transferee of that Founder or Employee (each a "**Selling Founder/Employee**") shall have observed the following procedures of this Article unless a Qualified Majority has determined that this Article 21 shall not apply to such transfer.

21.2 After the Selling Founder/Employee has gone through the pre-emption process set out in Article 16, the Selling Founder/Employee shall give to each holder of Series A Preferred Shares (an "**Equity Holder**") not less than 15 Business Days' notice in advance of the proposed sale (a "**Co-Sale Notice**"). The Co-Sale Notice shall specify:

21.2.1 the identity of the proposed purchaser (the "**Buyer**");

21.2.2 the price per share which the Buyer is proposing to pay;

21.2.3 the manner in which the consideration is to be paid;

21.2.4 the number of Shares which the Selling Founder/Employee proposes to sell; and

21.2.5 the address where the counter-notice should be sent.

- 21.3 For the purposes of this Article 21, it is acknowledged that Shares of different classes will be transferable at different prices, such price per class of Share being a sum equal to that to which they would be entitled if the consideration payable by the Buyer to the Selling Founder/Employee were used to determine the valuation of the entire issued share capital of the Company and such valuation was then allocated as between the Shares in accordance with Articles 5 and 6.
- 21.4 Each Equity Holder shall be entitled within five Business Days after receipt of the Co-Sale Notice, to notify the Selling Founder/Employee that they wish to sell a certain number of Shares held by them at the proposed sale price, by sending a counter-notice which shall specify the number of Shares which such Equity Holder wishes to sell. The maximum number of shares which an Equity Holder can sell under this procedure shall be:

$$\left( \frac{X}{Y} \right) \times Z$$

where:

- X is the number of Series A Preferred Shares held by the Equity Holder;
- Y is the total number of Series A Preferred Shares held by the Equity Holders;
- Z is the number of Equity Shares the Selling Founder/Employee proposes to sell.
- 21.5 Any Equity Holder who does not send a counter-notice within such five Business Day period shall be deemed to have specified that they wish to sell no shares.
- 21.6 Following the expiry of five Business Days from the date the Equity Holders receive the Co-Sale Notice, the Selling Founder/Employee shall be entitled to sell to the Buyer on the terms notified to the Equity Holders a number of shares not exceeding the number specified in the Co-Sale Notice less any shares which Equity Holders have indicated they wish to sell, provided that at the same time the Buyer (or another person) purchases from the Equity Holders the number of shares they have respectively indicated they wish to sell on terms no less favourable than those obtained by the Selling Founder/Employee from the Buyer.
- 21.7 No sale by the Selling Founder/Employee shall be made pursuant to any Co-Sale Notice more than three months after service of that Co-Sale Notice.
- 21.8 Sales made in accordance with this Article 21 shall not be subject to Article 16.

## 22. DRAG-ALONG

- 22.1 If a Qualified Majority (the **Selling Shareholders**) wish to transfer all their interest in Shares (the **Sellers' Shares**) to a Proposed Purchaser, the Selling Shareholders will have the option (the **Drag Along Option**) to compel each other Shareholder (each a **Called Shareholder** and together the **Called Shareholders**)

to sell and transfer all their Shares to the Proposed Purchaser or as the Proposed Purchaser will direct (the **Drag Purchaser**) in accordance with (and subject to) the provisions of this Article.

22.2 The Selling Shareholders may exercise the Drag Along Option by giving a written notice to that effect (a **Drag Along Notice**) to the Company which the Company will forthwith copy to the Called Shareholders at any time before the transfer of the Sellers' Shares to the Drag Purchaser. A Drag Along Notice will specify that:

- (a) the Called Shareholders are required to transfer all their Shares (the **Called Shares**) under this Article;
- (b) the person to whom they are to be transferred;
- (c) the consideration for which the Called Shares are to be transferred (calculated in accordance with this Article);
- (d) the proposed date of transfer, and
- (e) the form of any sale agreement or form of acceptance or any other document of similar effect that the Called Shareholders are required to sign in connection with such sale (the **Sale Agreement**),

(and, in the case of paragraphs (b) to (d) above, whether actually specified or to be determined in accordance with a mechanism described in the Drag Along Notice). No Drag Along Notice or Sale Agreement may require a Called Shareholder to agree to any terms except those specifically provided for in this Article.

22.3 Drag Along Notices will be irrevocable but will lapse if for any reason there is not a sale of the Sellers' Shares by the Selling Shareholders to the Drag Purchaser within 60 Business Days after the date of service of the Drag Along Notice. The Selling Shareholders will be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice.

22.4 The consideration (in cash or otherwise) for which the Called Shareholders will be obliged to sell each of the Called Shares will be that to which they would be entitled if the total consideration proposed to be paid, allotted or transferred by the Drag Purchaser were distributed to the holders of the Called Shares and the Sellers' Shares in accordance with the provisions of Articles 5 and 6 (the **Drag Consideration**).

22.5 In respect of a transaction that is the subject of a Drag-Along Notice and with respect to any Drag Document (as defined in Article 22.7), no Called Shareholder shall be bound by the Drag-Along Notice unless:

- (a) any representations and/or warranties to be made by such Called Shareholder in connection therewith are limited to representations and/or warranties that (i) such Called Shareholder holds all right, title and interest in and to the Called Shares such Called Shareholder purports to hold, free and clear of all liens and Encumbrances and shall sell the same with full title guarantee, (ii) the obligations/undertakings of the Called Shareholder in



connection with the Proposed Drag Sale have been duly authorised, if applicable and (iii) the documents to be entered into by such Called Shareholder have been duly executed by such Called Shareholder and delivered to the acquirer and are enforceable against the Called Shareholder in accordance with their respective terms and (iv) neither the execution and delivery of documents to be entered into in connection with the Proposed Drag Sale, nor the performance of the Called Shareholder's obligations thereunder, will cause a breach or violation of the terms of any agreement, law, or judgment, order or decree of any court or governmental agency;

- (b) such Called Shareholder are not be liable for the inaccuracy of any representation or warranty made by any other person, other than the Company (except to the extent that funds may be paid out of an escrow or holdback established to cover breach of representations, warranties and covenants of the persons giving such representations, warranties and covenants under the Sale Agreement);
- (c) the liability of such Called Shareholder is several and not joint with any other person (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any Shareholder of any of identical representations, warranties and covenants provided by all Shareholders), and is pro rata in proportion to, and does not exceed, the amount of consideration received by such Called Shareholder in connection with such proposed transaction (except with respect to claims related to fraud, the liability for which need not be limited as to such individual Shareholder), taking into consideration the distributions any waterfall or other liquidation preferences in these Articles or otherwise that exist with respect to any Shares (a "Distribution Preference");
- (d) liability is limited to such Called Shareholder's applicable share (determined based on the respective proceeds payable to each Shareholder in connection with such proposed transaction) of a negotiated aggregate indemnification amount that applies equally to all Shareholders but that in no event exceeds the amount of consideration otherwise received by such Called Shareholder in connection with such proposed transaction, except with respect to claims related to fraud by such Called Shareholder, the liability for which need not be limited as to such Called Shareholder; and
- (e) upon the consummation of the proposed transaction, each holder of each class of the Shares will receive the same form of consideration for its shares of such class as is received by other holders in respect of their Shares of such same class of Shares (taking into consideration any Distribution Preference).

22.6 In the event that the Dragging Shareholders, in connection with the Proposed Drag Sale, appoint a third party independent shareholder representative (a **"Shareholder Representative"**) with respect to the establishment and management of any escrow or holdback fund in connection with any indemnification or breach of warranty under the Sale Agreement following

completion of such Proposed Drag Sale (the "Escrow"), each Called Shareholder shall be deemed to consent to (i) the appointment of such Shareholder Representative, (ii) the establishment of the Escrow and (iii) the payment of such Called Shareholder's applicable portion (from the Escrow) of any reasonable and properly incurred fees and expenses of such Shareholder Representative, in each case in connection with such Shareholder Representative's services and duties in connection with the establishment and management of such Escrow.

22.7 Within ten Business Days of the Company copying the Drag Along Notice to the Called Shareholders (or such later date as may be specified in the Drag Along Notice) (the **Drag Completion Date**), each Called Shareholder will deliver:

- (a) duly executed stock transfer form(s) for its Shares in favour of the Drag Purchaser;
- (b) the relevant share certificate(s) (or a duly executed indemnity for lost certificate in a form acceptable to the Board) to the Company; and
- (c) duly executed Sale Agreement, if applicable, in the form specified in the Drag Along Notice or as otherwise specified by the Company,

(together the **Drag Documents**).

22.8 On the Drag Completion Date, the Company will pay or transfer to each Called Shareholder, on behalf of the Drag Purchaser, the Drag Consideration that is due to the extent the Drag Purchaser has paid, allotted or transferred such consideration to the Company. The Company's receipt of the Drag Consideration will be a good discharge to the Drag Purchaser. Following the Company's receipt of the Drag Consideration, but pending its payment or transfer to the Called Shareholder, the Company shall hold the Drag Consideration in trust for each of the Called Shareholders without any obligation to pay interest.

22.9 To the extent that the Drag Purchaser has not, on the Drag Completion Date, satisfied the Drag Consideration that is due to the Company, the Called Shareholders will be entitled to the immediate return of the Drag Documents for the relevant Shares and the Called Shareholders will have no further rights or obligations under this Article 22 in respect of their Shares.

22.10 If a Called Shareholder fails to deliver the Drag Documents for its Shares to the Company by the Drag Completion Date, the Company and each Director will be constituted the agent of such defaulting Called Shareholder to take such actions and enter into any Drag Document or such other agreements or documents as are necessary to effect the transfer of the Called Shareholder's Shares pursuant to this Article 22 and the Directors will, if requested by the Drag Purchaser, authorise any Director to transfer the Called Shareholder's Shares on the Called Shareholder's behalf to the Drag Purchaser to the extent the Drag Purchaser has, by the Drag Completion Date, paid, allotted or transferred the Drag Consideration to the Company for the Called Shareholder's Shares offered to him. The Board will then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Called Shareholder will surrender his share certificate for his

Shares (or suitable executed indemnity) to the Company. On surrender, he will be entitled to the Drag Consideration due to him.

- 22.11 Any transfer of Shares to a Drag Purchaser pursuant to a sale in respect of which a Drag Along Notice has been duly served will not be subject to the provisions of Article 16.
- 22.12 On any person, following the issue of a Drag Along Notice, becoming a Shareholder pursuant to the exercise of a pre-existing option or warrant to acquire Shares or pursuant to the conversion of any convertible security of the Company (a **New Shareholder**), a Drag Along Notice will be deemed to have been served on the New Shareholder on the same terms as the previous Drag Along Notice who will then be bound to sell and transfer all Shares so acquired to the Drag Purchaser and the provisions of this Article will apply with the necessary changes to the New Shareholder except that completion of the sale of the Shares will take place immediately on the Drag Along Notice being deemed served on the New Shareholder.

#### *Asset Sale*

- 22.13 If an Asset Sale is approved by the Board and a Qualified Majority, such consenting Shareholders will have the right, by notice in writing to all other Shareholders, to require such Shareholders to take any and all such actions as it may be necessary for Shareholders to take in order to give effect to or otherwise implement such Asset Sale, subject always to the proceeds from such Asset Sale being distributed to Shareholders in accordance with the provisions of Articles 5 and 6.

### **23. GENERAL MEETINGS**

- 23.1 If the Directors are required by the Shareholders under section 303 of the Act to call a general meeting, the Directors must convene the meeting for a date not later than 28 days after the date on which the Directors became subject to the requirement under section 303 of the Act.
- 23.2 The quorum for the transaction of business at a general meeting, is:
- (a) if the Company has only one member, one Qualifying Person present at the meeting; and
  - (b) in any other case, two Qualifying Persons (to include one Qualifying Person representing Advent or Advent Co-Invest and one Qualifying Person representing a Qualified Majority), present at that meeting unless each of them represents the same Shareholder.
- 23.3 If any two or more Qualifying Persons attend the meeting in different locations, the meeting will be treated as being held at the location specified in the notice of the meeting, except that if no one is present at that location so specified, the meeting will be deemed to take place where the largest number of Qualifying Persons is assembled or, if no such group can be identified, at the location of the chairman.

- 23.4 If a demand for a poll is withdrawn under article 44(3) of the Model Articles, the demand will not be taken to have invalidated the result of a show of hands declared before the demand was made and the meeting will continue as if the demand had not been made.
- 23.5 Polls must be taken in such manner as the chairman directs. A poll demanded on the election of a chairman or on a question of adjournment must be held immediately. A poll demanded on any other question must be held either immediately or at such time and place as the chairman directs not being more than 14 days after the poll is demanded. The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded.
- 23.6 No notice need be given of a poll not held immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice will be given specifying the time and place at which the poll is to be taken.
- 23.7 If the poll is to be held more than 48 hours after it was demanded the Shareholders will be entitled to deliver Proxy Notices in respect of the poll at any time up to 24 hours before the time appointed for taking that poll. In calculating that period, no account will be taken of any part of a day that is not a working day.

## **24. PROXIES**

- 24.1 Paragraph (c) of article 45(1) of the Model Articles will be deleted and replaced by the words: "is signed by or on behalf of the shareholder appointing the proxy and accompanied by any the authority under which it is signed (or a certified copy of such authority or a copy of such authority in some other way approved by the directors)".
- 24.2 The instrument appointing a proxy and any authority under which it is signed or a certified copy of such authority or a copy in some other way approved by the Directors may:
- (a) be sent or supplied in hard copy form, or (subject to any conditions and limitations which the Board may specify) in electronic form, to the registered office of the Company or to such other address (including electronic address) as may be specified for this purpose in the notice convening the meeting or in any instrument of proxy or any invitation to appoint a proxy sent or supplied by the Company in relation to the meeting at any time before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote;
  - (b) be delivered at the meeting or adjourned meeting at which the person named in the instrument proposes to vote to the chairman or to the company secretary or to any Director; or
  - (c) in the case of a poll, be delivered at the meeting at which the poll was demanded to the chairman or to the company secretary or to any Director, or

at the time and place at which the poll is held to the Chairman or to the company secretary or to any Director or scrutineer,

and an instrument of proxy which is not deposited or delivered in a manner so permitted will be invalid.

## **25. DIRECTORS' BORROWING POWERS**

The Directors may, with Investor Director Consent or Qualified Majority Consent where required, exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures, debenture stock and other securities as security for any debt, liability of obligation of the Company or of any third party.

## **26. ALTERNATE DIRECTORS**

26.1 Notwithstanding any provision of these Articles to the contrary, any person appointed as a Director (the **Appointer**) may appoint any director or any other person as he thinks fit to be his alternate Director to:

- (a) exercise that Director's powers; and
- (b) carry out that Director's responsibilities in relation to the taking of decisions by the Directors in the absence of the alternate's Appointor.

The appointment of an alternate Director will not require approval by a resolution of the Directors.

26.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the Appointor, or in any other manner approved by the Directors.

26.3 The notice must:

- (a) identify the proposed alternate; and
- (b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the Director giving the notice.

26.4 An alternate Director may act as an alternate to more than one Director and has the same rights, in relation to any Directors' meeting (including as to notice) or Directors' written resolution, as the alternate's Appointor.

26.5 Except as these Articles specify otherwise, alternate directors:

- (a) are deemed for all purposes to be Directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their Appointors; and
- (d) are not deemed to be agents of or for their Appointors,

and, in particular (without limitation), each alternate director will be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his Appointor is a member.

26.6 A person who is an alternate Director but not a Director:

- (a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's Appointor is not participating); and
- (b) may sign a Directors' written resolution (but only if his Appointor is an Eligible Director in relation to that decision, but does not participate).

No alternate may be counted as more than one Director for such purposes.

26.7 A Director who is also an alternate Director is entitled, in the absence of his Appointor, to a separate vote on behalf of each Appointor, in addition to his own vote on any decision of the Directors (provided that his Appointor is an Eligible Director in relation to that decision).

26.8 An alternate Director is not entitled to receive any remuneration from the company for serving as an alternate Director, except such part of the alternate's Appointor's remuneration as the Appointor may direct by notice in writing made to the Company.

26.9 An alternate Director's appointment as an alternate will terminate:

- (a) when the alternate's Appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a Director;
- (c) on the death of the alternate's Appointor; or
- (d) when the alternate's Appointor's appointment as a Director terminates.

## **27. NUMBER OF DIRECTORS**

Unless the Company will otherwise determine by ordinary resolution, the number of Directors must be not less than two or more than six.

## **28. APPOINTMENT OF DIRECTORS**

28.1 In addition to the powers of appointment under article 17(1) of the Model Articles:

- (a) each Investor for so long as such Investor (and its Permitted Transferees who hold any Share(s) as a result of a Permitted Transfer by such Investor) holds any of their Series A Preferred Shares shall have the right to appoint and maintain in office such natural person as such Investor may from time to time nominate as a Director and to remove any Director so appointed and, upon his removal whether by the Investor or otherwise, to appoint another Director in his place; and

- (b) the Board (with the prior approval of a Qualified Majority) may appoint and maintain in office such natural person as it may from time to time nominate as an independent non-executive director of the Company and to remove any director so appointed and, upon his removal (with the prior approval of a Qualified Majority), to appoint another director in his place.
- 28.2 An appointment or removal of a Director under Article 28.1 will take effect at and from the time when the notice is received at the registered office of the Company or produced to a meeting of the directors of the Company.
- 28.3 Each Investor Director will be entitled at his request to be appointed to any committee of the Board established from time to time and to the board of directors of any Subsidiary Undertaking.
- 28.4 Each Investor for so long as they and their Permitted Transferees (and their Permitted Transferees who hold any Share(s) as a result of a Permitted Transfer by such Investor) hold any Series A Preferred Shares will be entitled to appoint a representative to act as an observer to at each and any meeting of the Board and of each and any committee of the Board who will be entitled to speak at any such meetings but will not be entitled to vote.

## **29. DISQUALIFICATION OF DIRECTORS**

In addition to that provided in article 18 of the Model Articles, the office of a Director will also be vacated if:

- (a) he is convicted of a criminal offence (other than a minor motoring offence) and the Directors resolve that his office be vacated; or
- (b) in the case of Directors other than an Investor Director, if a majority of his co-Directors serve notice on him in writing, removing him from office.

## **30. PROCEEDINGS OF DIRECTORS**

- 30.1 The quorum for Directors' meetings will be: (i) in the event that fewer than two Investor Directors are appointed, two Directors who must include an Investor Director (if appointed) or (ii) in the event that two Investor Directors are appointed, three Directors who must include all Investor Directors (if appointed), in each case except that where a Relevant Interest of an Investor Director is being authorised by other Directors in accordance with section 175(5)(a) of the Act, such Investor Director and any other interested Director will not be included in the quorum required for the purpose of such authorisation but will otherwise be included for the purpose of forming the quorum at the meeting. If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting will stand adjourned to the same day in the next week at the same time and place or at such time and place as determined by the Directors present at such meeting, the Investor Directors (if appointed). If a quorum is not present at any such adjourned meeting within half an hour from the time appointed, then the meeting will proceed.
- 30.2 If a meeting of the Directors is attended by a Director who is acting as alternate for one or more other Directors, the Director or Directors for whom he is the alternate

will be counted in the quorum notwithstanding their absence, and if on that basis there is a quorum the meeting may be held notwithstanding the fact (if it is the case) that only one Director is physically present.

- 30.3 If all the Directors participating in a meeting of the Directors are not physically in the same place, the meeting will be deemed to take place where the largest group of participators in number is assembled. In the absence of a majority the location of the chairman will be deemed to be the place of the meeting.
- 30.4 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company at any time before or after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.
- 30.5 Provided (if these Articles so require) that he has declared to the Directors, in accordance with the provisions of these Articles, the nature and extent of his interest (and subject to any restrictions on voting or counting in a quorum imposed by the Directors in authorising a Relevant Interest), a Director may vote at a meeting of the Directors or of a committee of the Directors on any resolution concerning a matter in which he has an interest, whether a direct or an indirect interest, or in relation to which he has a duty and will also be counted in reckoning whether a quorum is present at such a meeting, save that a Director may not vote or count towards a quorum at any meeting or on any resolutions to approve his own remuneration or to remove him as a Director.
- 30.6 Questions arising at any meeting of the Directors will be decided by a majority of votes. In the case of any equality of votes, the chairman will not have a second or casting vote.
- 30.7 A decision of the Directors may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing (including confirmation given by electronic means). Reference in article 7(1) of the Model Articles to article 8 of the Model Articles will be deemed to include a reference to this article also.

## **31. DIRECTORS' INTERESTS**

### *Specific interests of a Director*

- 31.1 Subject to the provisions of the Act and provided (if these Articles so require) that he has declared to the Directors in accordance with the provisions of these Articles, the nature and extent of his interest, a Director may (except as to the extent not permitted by law from time to time), notwithstanding his office, have an interest of the following kind:
- (a) where a Director (or a person connected with him) is party to or in any way directly or indirectly interested in, or has any duty in respect of, any existing or proposed contract, arrangement or transaction with the Company or any other undertaking in which the Company is in any way interested;



- (b) where a Director (or a person connected with him) is a director, employee or other officer of, or a party to any contract, arrangement or transaction with, or in any way interested in, any body corporate promoted by the Company or in which the Company is in any way interested;
  - (c) where a Director (or a person connected with him) is a Shareholder or a shareholder in, employee, director, member or other officer of, or consultant to, a Parent Undertaking of, or a Subsidiary Undertaking of a Parent Undertaking of, the Company;
  - (d) where a Director (or a person connected with him) holds and is remunerated in respect of any office or place of profit (other than the office of auditor) in respect of the Company or body corporate in which the Company is in any way interested;
  - (e) where a Director is given a guarantee, or is to be given a guarantee, in respect of an obligation incurred by or on behalf of the Company or any body corporate in which the Company is in any way interested;
  - (f) where a Director (or a person connected with him or of which he is a member or employee) acts (or any body corporate promoted by the Company or in which the Company is in any way interested of which he is a director, employee or other officer may act) in a professional capacity for the Company or any body corporate promoted by the Company or in which the Company is in any way interested (other than as auditor) whether or not he or it is remunerated for this;
  - (g) an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - (h) any other interest authorised by ordinary resolution,
- save always that a Director may not vote or count towards a quorum at any meeting or on any resolutions to approve his own remuneration or to remove him as a Director.

*Interests of an Investor Director*

31.2 In addition to the provisions of Article 31.1, subject to the provisions of the Act and provided (if these Articles so require) that he has declared to the Directors in accordance with the provisions of these Articles, the nature and extent of his interest, where a Director is an Investor Director he may (except as to the extent not permitted by law from time to time), notwithstanding his office, have an interest arising from any duty he may owe to, or interest he may have as an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or direct or indirect investor (including without limitation by virtue of a carried interest, remuneration or incentive arrangements or the holding of securities) in:

- (a) an Investor;
- (b) a Fund Manager which advises or manages an Investor;

- (c) any of the funds advised or managed by a Fund Manager who advises or manages an Investor from time to time; or
- (d) another body corporate or firm in which a Fund Manager who advises or manages an Investor or any fund advised or managed by such Fund Manager has directly or indirectly invested, including without limitation any portfolio companies.

*Interests of which a Director is not aware*

- 31.3 For the purposes of this Article 31, an interest of which a Director is not aware and of which it is unreasonable to expect him to be aware will not be treated as an interest of his.

*Accountability of any benefit and validity of a contract*

- 31.4 In any situation permitted by this Article 31 (except as otherwise agreed by him) a Director must not by reason of his office be accountable to the Company for any benefit which he derives from that situation and no such contract, arrangement or transaction will be avoided on the grounds of any such interest or benefit.

*Terms and conditions of Board authorisation*

- 31.5 Subject to Article 31.6, any authority given in accordance with section 175(5)(a) of the Act in respect of a Director (**Interested Director**) who has proposed that the Directors authorise his interest (**Relevant Interest**) pursuant to that section may, for the avoidance of doubt:
- (a) be given on such terms and subject to such conditions or limitations as may be imposed by the authorising Directors as they see fit from time to time, including, without limitation:
    - (i) restricting the Interested Director from voting on any resolution put to a meeting of the Directors or of a committee of the Directors in relation to the Relevant Interest;
    - (ii) restricting the Interested Director from being counted in the quorum at a meeting of the Directors or of a committee of the Directors where such Relevant Interest is to be discussed; or
    - (iii) restricting the application of the provisions in Articles 31.7 and 31.8, so far as is permitted by law, in respect of such Interested Director;
    - (iv) be withdrawn, or varied at any time by the Directors entitled to authorise the Relevant Interest as they see fit from time to time; and
  - (b) subject to Article 31.6, an Interested Director must act in accordance with any such terms, conditions or limitations imposed by the authorising Directors pursuant to section 175(5)(a) of the Act and this Article 31.

*Terms and conditions of Board authorisation for an Investor Director*

- 31.6 Notwithstanding the other provisions of this Article 31, it must not (except with the consent in writing of an Investor Director) be made a condition of any authorisation of a matter in relation to such Investor Director in accordance with section 175(5)(a) of the Act, that he will be restricted from voting or counting in the quorum at any meeting of, or of any committee of the Directors or that he will be required to disclose, use or apply confidential information as contemplated in Article 31.8.

*Director's duty of confidentiality to a person other than the Company*

- 31.7 Subject to Article 31.8 (and without prejudice to any equitable principle or rule of law which may excuse or release the Director from disclosing information, in circumstances where disclosure may otherwise be required under this Article 31), if a Director, otherwise than by virtue of his position as director, receives information in respect of which he owes a duty of confidentiality to a person other than the Company, he will not be required:

- (a) to disclose such information to the Company or to any Director, or to any officer or employee of the Company; or
- (b) otherwise to use or apply such confidential information for the purpose of or in connection with the performance of his duties as a Director.

- 31.8 Where such duty of confidentiality arises out of a situation in which a Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company, Article 31.7 will apply only if the conflict arises out of a matter which falls within Article 31.1 or Article 31.2 or has been authorised under section 175(5)(a) of the Act.

*Additional steps to be taken by a Director to manage a conflict of interest*

- 31.9 Where a Director has an interest which can reasonably be regarded as likely to give rise to a conflict of interest, the Director will take such additional steps as may be necessary or desirable for the purpose of managing such conflict of interest, including compliance with any procedures laid down from time to time by the Directors for the purpose of managing conflicts of interest generally and/or any specific procedures approved by the Directors for the purpose of or in connection with the situation or matter in question, including without limitation:

- (a) absenting himself from any discussions, whether in meetings of the Directors or otherwise, at which the relevant situation or matter falls to be considered; and
- (b) excluding himself from documents or information made available to the Directors generally in relation to such situation or matter and/or arranging for such documents or information to be reviewed by a professional adviser to ascertain the extent to which it might be appropriate for him to have access to such documents or information.

*Requirement of a Director to declare an interest*

- 31.10 Subject to section 182 of the Act, a Director must declare the nature and extent of any interest permitted by Article 31.1 or Article 31.2 at a meeting of the Directors,

or by general notice in accordance with section 184 (notice in writing) or section 185 (general notice) of the Act or in such other manner as the Directors may determine, except that no declaration of interest will be required by a Director in relation to an interest:

- (a) falling under Article 31.1(g);
- (b) if, or to the extent that, the other Directors are already aware of such interest (and for this purpose the other Directors are treated as aware of anything of which they ought reasonably to be aware); or
- (c) if, or to the extent that, it concerns the terms of his service contract (as defined by section 227 of the Act) that have been or are to be considered by a meeting of the Directors, or by a committee of Directors appointed for the purpose under these Articles.

*Shareholder approval*

31.11 Subject to section 239 of the Act, the Company may by ordinary resolution ratify any contract, transaction or arrangement, or other proposal, not properly authorised by reason of a contravention of any provisions of this Article 31.

31.12 For the purposes of this Article 31:

- (a) a conflict of interest includes a conflict of interest and duty and a conflict of duties;
- (b) the provisions of section 252 of the Act will determine whether a person is connected with a Director;
- (c) a general notice to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested will be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified.

**32. NOTICES**

32.1 Subject to the requirements set out in the Act, any notice given or document sent or supplied to or by any person under these Articles, or otherwise sent by the Company under the Act, may be given, sent or supplied:

- (a) in hard copy form;
- (b) in electronic form; or
- (c) (by the Company) by means of a website (other than notices calling a meeting of Directors),

or partly by one of these means and partly by another of these means.

32.2 Notices must be given and documents supplied in accordance with the procedures set out in the Act, except to the extent that a contrary provision is set out in this Article 32.

*Notices in hard copy form*

- 32.3 Any notice or other document in hard copy form given or supplied under these Articles may be delivered or sent by first class post (airmail if overseas):
- (a) to the Company or any other company at its registered office; or
  - (b) to the address notified to or by the Company for that purpose; or
  - (c) in the case of an intended recipient who is a member or his legal personal representative or trustee in bankruptcy, to such member's address as shown in the Company's register of members; or
  - (d) in the case of an intended recipient who is a Director or alternate, to his address as shown in the register of Directors; or
  - (e) to any other address to which any provision of the Companies Acts (as defined in the Act) authorises the document or information to be sent or supplied; or
  - (f) where the Company is the sender, if the Company is unable to obtain an address falling within one of the addresses referred to in (a) to (e) above, to the intended recipient's last address known to the Company.
- 32.4 Any notice or other document in hard copy form given or supplied under these Articles will be deemed to have been served and be effective:
- (a) if delivered, at the time of delivery;
  - (b) if posted, on receipt or 48 hours after the time it was posted, whichever occurs first.

*Notices in electronic form*

- 32.5 Subject to the provisions of the Act, any notice or other document in electronic form given or supplied under these Articles may:
- (a) if sent by email (provided that an address for email has been notified to or by the Company for that purpose), be sent by the relevant form of communication to that address;
  - (b) if delivered or sent by first class post (airmail if overseas) in an electronic form (such as sending a disk by post), be so delivered or sent as if in hard copy form under Article 32.3; or
  - (c) be sent by such other electronic means (as defined in section 1168 of the Act) and to such address(es) as the Company may specify:
    - (i) on its website from time to time; or
    - (ii) by notice (in hard copy or electronic form) to all members of the Company from time to time.
- 32.6 Any notice or other document in electronic form given or supplied under these Articles will be deemed to have been served and be effective:

- (a) if sent by email (where an address for email has been notified to or by the Company for that purpose), on receipt or 48 hours after the time it was sent, whichever occurs first;
- (b) if posted in an electronic form, on receipt or 48 hours after the time it was posted, whichever occurs first;
- (c) if delivered in an electronic form, at the time of delivery; and
- (d) if sent by any other electronic means as referred to in Article 32.5(c), at the time such delivery is deemed to occur under the Act.

32.7 Where the Company is able to show that any notice or other document given or sent under these Articles by electronic means was properly addressed with the electronic address supplied by the intended recipient, the giving or sending of that notice or other document will be effective notwithstanding any receipt by the Company at any time of notice either that such method of communication has failed or of the intended recipient's non-receipt.

*Notice by means of a website*

32.8 Subject to the provisions of the Act, any notice or other document or information to be given, sent or supplied by the Company to Shareholders under these Articles may be given, sent or supplied by the Company by making it available on the Company's website.

*General*

32.9 In the case of joint holders of a Share all notices will be given to the joint holder whose name stands first in the register of members of the Company in respect of the joint holding (the **Primary Holder**). Notice so given will constitute notice to all the joint holders.

32.10 Anything agreed or specified by the Primary Holder in relation to the service, sending or supply of notices, documents or other information will be treated as the agreement or specification of all the joint holders in their capacity as such (whether for the purposes of the Act or otherwise).

### **33. INDEMNITIES AND INSURANCE**

33.1 Subject to the provisions of and so far as may be permitted by, the Act:

- (a) every Director or other officer of the Company (excluding the Company's auditors) will be entitled to be indemnified by the Company (and the Company will also be able to indemnify directors of any associated company (as defined in section 256 of the Act)) out of the Company's assets against all liabilities incurred by him in the actual or purported execution or discharge of his duties or the exercise or purported exercise of his powers or otherwise in relation to or in connection with his duties, powers or office, provided that no Director or any associated company is indemnified by the Company against:

- (i) any liability incurred by the director to the Company or any associated company; or
- (ii) any liability incurred by the director to pay a fine imposed in criminal proceedings or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirements of a regulatory nature; or
- (iii) any liability incurred by the director:
  - (A) in defending any criminal proceedings in which he is convicted;
  - (B) in defending civil proceedings brought by the Company or any associated company in which final judgment (within the meaning set out in section 234 of the Act) is given against him; or
  - (C) in connection with any application under sections 661(3) or 661(4) or 1157 of the Act (as the case may be) for which the court refuses to grant him relief,

except that, in respect of a provision indemnifying a director of a company (whether or not the Company) that is a trustee of an occupational pension scheme (as that term is used in section 235 of the Act) against liability incurred in connection with that company's activities as trustee of the scheme, the Company will also be able to indemnify any such director without the restrictions in Articles 33.1(a)(i), 33.1(a)(iii)(B) and 33.1(a)(iii)(C) applying;

- (b) the Directors may exercise all the powers of the Company to purchase and maintain insurance for any such Director or other officer against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company, or any associated company including (if he is a director of a company which is a trustee of an occupational pension scheme) in connection with that company's activities as trustee of an occupational pension scheme.

- 33.2 The Company must (at the cost of the Company) effect and maintain for each Director policies of insurance insuring each Director against risks in relation to his office as each director may reasonably specify including without limitation, any liability which by virtue of any rule of law may attach to him in respect of any negligence, default of duty or breach of trust of which he may be guilty in relation to the Company.

#### **34. DATA PROTECTION**

- 34.1 The Company must comply with all laws, directives and guidance relating to data protection and privacy that are from time to time applicable to the Company and its processing of personal data.
- 34.2 By adopting these Articles, each of the Shareholders and Directors acknowledges the processing of his personal data by the Company, the Shareholders and Directors (each a Recipient, acting as an independent controller) for the purposes

of performing the Company's obligations to the Shareholders and Directors and purposes ancillary thereto, due diligence exercises, compliance with applicable laws, regulations and procedures and the exchange of information among themselves or otherwise where the Recipient has a valid legal basis to do so. A Recipient may process the personal data either electronically or manually. The personal data which may be processed under this Article will include any information which may have a bearing on the prudence or commercial merits of investing, or disposing of any Shares (or other investment or security) in the Company. Other than as required by law, court order or other regulatory authority, that personal data may not be disclosed by a Recipient or any other person except to a Member of the same Group (Recipient Group Companies) and to employees, directors, service providers, professional advisers and current or potential investors in, or purchasers of shares of, that Recipient or the Recipient Group Companies and funds managed by any of the Recipient Group Companies. By adopting these Articles, each of the Shareholders and Directors acknowledges the transfer of relevant personal data to persons acting on behalf of the Recipient and to the offices of any Recipient within the European Economic Area for the purposes stated above, where it is necessary or desirable to do so. Where it is necessary to transfer such Personal Data outside of the European Economic Area, the Recipient shall make the transfer subject to European Commission-approved contractual terms which impose data protection obligations equivalent to those provided by data protection legislation within the European Economic Area, unless such transfers are permitted under applicable data protection law without such formalities. Recipients should be aware that countries outside the European Economic Area may not have adequate data protection laws. References to the European Economic Area in these Articles shall be deemed to include the UK.

### **35. SECRETARY**

Subject to the provisions of the Act, the Directors may appoint a secretary for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

### **36. LIEN**

36.1 The Company will have a first and paramount lien (the **Company's Lien**) over every Share (not being a fully paid Share) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that Share.

36.2 The Company's Lien over a Share:

- (a) will take priority over any third party's interest in that Share; and
- (b) extends to any dividend or other money payable by the Company in respect of that Share and (if the lien is enforced and the Share is sold by the Company) the proceeds of sale of that Share.

36.3 The Directors may at any time decide that a Share which is, or would otherwise be, subject to the Company's Lien will not be subject to it, either wholly or in part.

36.4 Subject to the provisions of this Article 36, if:



(a) a notice complying with Article 36.5 (a **Lien Enforcement Notice**) has been given by the Company in respect of a Share; and

(b) the person to whom the notice was given has failed to comply with it,

the Company will be entitled to sell that Share in such manner as the Directors decide.

36.5 A Lien Enforcement Notice:

(a) may only be given by the Company in respect of a Share which is subject to the Company's Lien, in respect of which a sum is payable and the due date for payment of that sum has passed;

(b) must specify the Share concerned;

(c) must require payment of the sum payable within 14 days of the notice;

(d) must be addressed either to the holder of the Share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise; and

(e) must state the Company's intention to sell the Share if the notice is not complied with.

36.6 Where any Share is sold pursuant to this Article 36:

(a) the Directors may authorise any person to execute an instrument of transfer of the Share to the purchaser or a person nominated by the purchaser; and

(b) the transferee will not be bound to see to the application of the consideration, and the transferee's title will not be affected by any irregularity in or invalidity of the process leading to the sale.

36.7 The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied:

(a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the Lien Enforcement Notice;

(b) secondly, to the person entitled to the Share at the date of the sale, but only after the certificate for the Share sold has been surrendered to the Company for cancellation or an indemnity for lost certificate in a form acceptable to the Board has been given for any lost certificate, and subject to a lien equivalent to the Company's Lien for any money payable (whether or not it is presently payable) as existing upon the Share before the sale in respect of all Shares registered in the name of that person (whether as the sole registered holder or as one of several joint holders) after the date of the Lien Enforcement Notice.

36.8 A statutory declaration by a Director or the company secretary that the declarant is a Director or the company secretary and that a Share has been sold to satisfy the Company's Lien on a specified date:

- (a) will be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share; and
- (b) subject to compliance with any other formalities of transfer required by these Articles or by law, will constitute a good title to the Share.

### **37. CALL NOTICES**

37.1 Subject to these Articles and the terms on which Shares are allotted, the Directors may send a notice (a **Call Notice**) to a Shareholder who has not fully paid for that Shareholder's Share(s) requiring the Shareholder to pay the Company a specified sum of money (a **call**) which is payable to the Company by that Shareholder when the Directors decide to send the Call Notice.

37.2 A Call Notice:

- (a) may not require a Shareholder to pay a call which exceeds the total sum unpaid on that Shareholder's Shares (whether as to the Share's nominal value or any sum payable to the Company by way of premium);
- (b) will state when and how any call to which it relates it is to be paid; and
- (c) may permit or require the call to be paid by instalments.

37.3 A Shareholder will comply with the requirements of a Call Notice, but no Shareholder will be obliged to pay any call before 14 days have passed since the notice was sent.

37.4 Before the Company has received any call due under a Call Notice the Directors may:

- (a) revoke it wholly or in part; or
- (b) specify a later time for payment than is specified in the Call Notice, by a further notice in writing to the Shareholder in respect of whose Shares the call is made.

37.5 Liability to pay a call will not be extinguished or transferred by transferring the Shares in respect of which it is required to be paid. Joint holders of a Share will be jointly and severally liable to pay all calls in respect of that Share.

37.6 Subject to the terms on which Shares are allotted, the Directors may, when issuing Shares, provide that Call Notices sent to the holders of those Shares may require them to:

- (a) pay calls which are not the same; or
- (b) pay calls at different times.

37.7 A Call Notice need not be issued in respect of sums which are specified, in the terms on which a Share is issued, as being payable to the Company in respect of that Share (whether in respect of nominal value or premium):

- (a) on allotment;

- (b) on the occurrence of a particular event; or
  - (c) on a date fixed by or in accordance with the terms of issue.
- 37.8 If the due date for payment of such a sum as referred to in Article 37.7 has passed and it has not been paid, the holder of the Share concerned will be treated in all respects as having failed to comply with a Call Notice in respect of that sum, and will be liable to the same consequences as regards the payment of interest and forfeiture.
- 37.9 If a person is liable to pay a call and fails to do so by the Call Payment Date (as defined below):
- (a) the Directors may issue a notice of intended forfeiture to that person; and
  - (b) until the call is paid, that person will be required to pay the Company interest on the call from the Call Payment Date at the Relevant Rate (as defined below).
- 37.10 For the purposes of Article 37.9:
- (a) the **Call Payment Date** will be the time when the call notice states that a call is payable, unless the Directors give a notice specifying a later date, in which case the **Call Payment Date** is that later date;
  - (b) the **Relevant Rate** will be:
    - (i) the rate fixed by the terms on which the Share in respect of which the call is due was allotted;
    - (ii) such other rate as was fixed in the Call Notice which required payment of the call, or has otherwise been determined by the Directors; or
    - (iii) if no rate is fixed in either of these ways, five per cent. a year,

provided that the Relevant Rate will not exceed by more than five percentage points the base lending rate most recently set by the Monetary Policy Committee of the Bank of England in connection with its responsibilities under Part 2 of the Bank of England Act 1998(a).
- 37.11 The Directors may waive any obligation to pay interest on a call wholly or in part.
- 37.12 The Directors may accept full payment of any unpaid sum in respect of a Share notwithstanding payment not being called under a Call Notice.

## 38. FORFEITURE OF SHARES

- 38.1 A notice of intended forfeiture:
- (a) may be sent in respect of any Share for which there is an unpaid sum in respect of which a call has not been paid as required by a Call Notice;
  - (b) must be sent to the holder of that Share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise;

- (c) must require payment of the call and any accrued interest and all expenses that may have been incurred by the Company by reason of such non-payment by a date which is not fewer than 14 days after the date of the notice;
  - (d) must state how the payment is to be made; and
  - (e) must state that if the notice is not complied with, the Shares in respect of which the call is payable will be liable to be forfeited.
- 38.2 If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, then the Directors may decide that any Share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited Shares and not paid before the forfeiture.
- 38.3 Subject to these Articles, the forfeiture of a Share extinguishes:
  - (a) all interests in that Share, and all claims and demands against the Company in respect of it; and
  - (b) all other rights and liabilities incidental to the Share as between the person whose Share it was before the forfeiture and the Company.
- 38.4 Any Share which is forfeited in accordance with these Articles:
  - (a) will be deemed to have been forfeited when the Directors decide that it is forfeited;
  - (b) will be deemed to be the property of the Company; and
  - (c) may be sold, re-allotted or otherwise disposed of as the Directors think fit.
- 38.5 If a person's Shares have been forfeited then:
  - (a) the Company will send that person notice that forfeiture has occurred and record it in the register of members;
  - (b) that person will cease to be a Shareholder in respect of those Shares;
  - (c) that person will surrender the certificate for the Shares forfeited to the Company for cancellation;
  - (d) that person will remain liable to the Company for all sums payable by that person under the Articles at the date of forfeiture in respect of those Shares, including any interest (whether accrued before or after the date of forfeiture); and
  - (e) the Directors will be entitled to waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the Shares at the time of forfeiture or for any consideration received on their disposal.

- 38.6 At any time before the Company disposes of a forfeited Share, the Directors will be entitled to decide to cancel the forfeiture on payment of all calls and interest and expenses due in respect of it and on such other terms as they think fit.
- 38.7 If a forfeited Share is to be disposed of by being transferred, the Company will be entitled to receive the consideration for the transfer and the Directors will be entitled to authorise any person to execute the instrument of transfer.
- 38.8 A statutory declaration by a Director or the company secretary that the declarant is a Director or the company secretary and that a Share has been forfeited on a specified date:
- (a) will be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the Share; and
  - (b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the Share.
- 38.9 A person to whom a forfeited Share is transferred will not be bound to see to the application of the consideration (if any) nor will that person's title to the Share be affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the Share.
- 38.10 If the Company sells a forfeited Share, the person who held it before its forfeiture will be entitled to receive the proceeds of such sale from the Company, net of any commission, and excluding any sum which:
- (a) was, or would have become, payable; and
  - (b) had not, when that Share was forfeited, been paid by that person in respect of that Share,
- but no interest will be payable to such a person in respect of such proceeds and the Company will not be required to account for any money earned on such proceeds.

## **39. SURRENDER OF SHARES**

- 39.1 A Shareholder will be entitled to surrender any Share:
- (a) in respect of which the Directors issue a notice of intended forfeiture;
  - (b) which the Directors forfeit; or
  - (c) which has been forfeited.
- The Directors will be entitled to accept the surrender of any such Share.
- 39.2 The effect of surrender on a Share will be the same as the effect of forfeiture on that Share.
- 39.3 The Company will be entitled to deal with a Share which has been surrendered in the same way as a Share which has been forfeited.

**40. AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS**

40.1 The Board may, if authorised to do so by an ordinary resolution (with Qualified Majority Consent):

- (a) decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and
- (b) appropriate any sum which they so decide to capitalise (a **Capitalised Sum**) to such Shareholders and in such proportions as the Board may in their absolute discretion deem appropriate (the **Shareholders Entitled**).

Article 36 of the Model Articles will not apply to the Company.

40.2 Capitalised Sums may be applied on behalf of such Shareholders and in such proportions as the Board may (in its absolute discretion) deem appropriate.

40.3 Any Capitalised Sum may be applied in paying up new Shares up to the nominal amount (or such amount as is unpaid) equal to the Capitalised Sum, which are then allotted credited as fully paid to the Shareholders Entitled or as they may direct.

40.4 A Capitalised Sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the Company which are allotted credited as fully paid to the Shareholders Entitled or as they may direct.

40.5 Subject to the Articles the Board may:

- (a) apply Capitalised Sums in accordance with Articles 40.3 and 40.4 partly in one way and partly another;
- (b) make such arrangements as they think fit to deal with Shares or debentures becoming distributable in fractions under this Article 40; and
- (c) authorise any person to enter into an agreement with the Company on behalf of all of the Shareholders Entitled which is binding on them in respect of the allotment of Shares or debentures under this Article 40.