

**Company number. 02989622**

**PRIVATE COMPANY LIMITED BY SHARES**

**WRITTEN RESOLUTION**

**of**

**IP FIBRE DEVICES (UK) LIMITED (Company)**

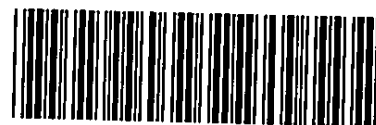
**Circulation Date 3 December, 2010**

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that the following resolutions are passed as special resolutions (**Resolutions**)

**SPECIAL RESOLUTIONS**

- 1 THAT the regulations contained in the document annexed to this resolution are approved and adopted as the Articles of Association of the Company in substitution for and to the exclusion of the existing Articles of Association
- 2 THAT the CEO and Managing Director, being Dr Valentin Gapontsev, be, and hereby is, solely authorized among the board of directors to make decisions and take actions with respect to the investment, voting and disposition of assets of the Company, including but not limited to portfolio securities

WEDNESDAY



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15/12/2010  
COMPANIES HOUSE


## AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution

The undersigned, being those entitled to vote on the Resolution on 9 December 2010, hereby irrevocably agree to the Resolution

Signed by **VALENTIN GAPONTSEV**

Date



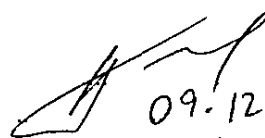
06.12.10

Signed by **DENIS GAPONTSEV**

Date

Signed by **NIKOLAI PLATANOV**


Date



09.12.10

Signed by **VALENTIN FOMIN**

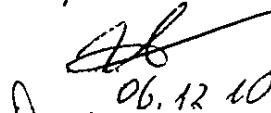
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06.12.10

Signed by **IGOR SAMARTSEV**

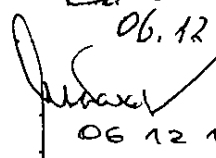
Date



06.12.10

Signed by **EUGENI SCHERBAKOV**

Date



06.12.10

## **NOTES**

1 If you agree with the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning the signed version either by hand or by post to Valentin P. Gapontsev, 50 Old Webster Road, Oxford, MA 01540 USA

You may not return the Resolution to the Company by any other method

If you do not agree to the Resolution, you do not need to do anything you will not be deemed to agree if you fail to reply

2 Once you have indicated your agreement to the Resolution, you may not revoke your agreement

3 Unless, by 28 days after the Circulation Date, sufficient agreement has been received for the Resolution to pass, it will lapse. If you agree to the Resolution, please ensure that your agreement reaches us before or during this date

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

IP FIBRE DEVICES (UK) LIMITED

(Adopted by special resolution passed on 9 December, 2010)

## AGREED TERMS

### 1 INTERPRETATION

1.1 In these Articles, the following words have the following meanings

**Act** the Companies Act 2006,

**Appointor** has the meaning given in article 12.1,

**Articles** the Company's articles of association for the time being in force,

**Business Day** any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business,

**Conflict** has the meaning given in article 9.1,

**Continuing Shareholder(s)** has the meaning given in article 19.7,

**Controlling Interest** an interest in shares giving to the holder or holders control of the Company within the meaning of section 1124 of the Corporation Tax Act 2010,

**Expert** an independent firm of accountants appointed by the directors or, in the absence of agreement between the directors on the expert or his terms of appointment within fifteen (15) Business Days of a shareholder serving details of a suggested expert on the other, an independent firm of professional appraisers, chartered or certified accountants or an investment bank of national standing in the United Kingdom or the United States appointed, and whose terms of appointment are agreed, by the Company's auditors from time to time

**Interested Director** has the meaning given in article 9.1,

**Model Articles** the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles,

**Original Shareholder** a shareholder who transfers its shares to a Permitted Transferee in accordance with article 17,

**Permitted Transferee** has the meaning ascribed to it in clause 17,

**Sale Shares** the shares specified or deemed to be specified for sale in a Transfer Notice or Deemed Transfer Notice,

**Share(s)** (an) ordinary share(s) of £1 in the capital of the Company,

**Seller** the transferor of shares pursuant to a Transfer Notice,

**Subsidiary** in relation to a company wherever incorporated (a holding company) means "subsidiary" as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee Unless the context requires otherwise, the application of the definition of Subsidiary to any company at any time shall apply to the company as it is at that time,

**Transfer Notice** a notice in writing given by any Shareholder to the Company where that shareholder desires, or is required by these Articles, to transfer (or enter into an agreement to transfer) any shares Where such notice is deemed to have been served, it shall be referred to as a **Deemed Transfer Notice** (which shall be deemed to include the matters listed at article 18 2 in respect of First Offers to Transfer pursuant to article 18 and 19 3 in respect of Transfers to third Parties pursuant to article 19)

**Writing or written** the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise,

- 1 2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles but excluding any statutory modification of them not in force on the date when these Articles become binding on the Company

- 1 3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles
- 1 4 A reference in these Articles to an "article" is a reference to the relevant article of these Articles unless expressly provided otherwise
- 1 5 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- 1 6 Save as expressly provided otherwise in these Articles, any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force

## **2. ADOPTION OF THE MODEL ARTICLES**

- 2 1 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by these Articles or are inconsistent with these Articles, and, subject to any such modifications, exclusions or inconsistencies, shall together with these Articles constitute the articles of association of the Company to the exclusion of any other articles or regulations set out in any statute or in any statutory instrument or other subordinate legislation
- 2 2 Articles 6(2), 7, 8, 9(1) and (3), 11 to 14 (inclusive), 16, 17(1), 22, 26(5), 27 to 29 (inclusive), 36, 38, 39, 43, 44(2), 49 and 50 to 53 (inclusive) of the Model Articles shall not apply to the Company
- 2 3 Article 20 of the Model Articles shall be amended by the insertion of the words "(including alternate directors and the secretary)" before the words "properly incur"
- 2 4 In article 25(2)(c) of the Model Articles, the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity"
- 2 5 Articles 31(1)(a) to (c) (inclusive) of the Model Articles shall be amended by the deletion, in each case, of the words "either" and "or as the directors may otherwise decide" Article 31(d) of the Model Articles shall be amended by the deletion of the words "either" and "or by such other means as the directors decide"

## **DIRECTORS**

### **3. DIRECTORS' MEETINGS**

- 3 1 Any decision of the directors must be taken at a meeting of directors in accordance with these Articles or must be a decision taken in accordance with article 4

3 2 Subject as provided in these Articles, the directors may participate in directors' meetings for the despatch of business, adjourn and otherwise regulate their meetings as they think fit

3 3 All decisions made at any meeting of the directors or of any committee of the directors shall be made only by resolution and resolutions at any meeting of the directors or committee of the directors shall be decided by a majority of votes

#### **4 UNANIMOUS DECISIONS OF DIRECTORS**

4 1 A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter

4 2 Such a decision 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

4 3 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at a directors' meeting to vote on the matter in accordance with article 7

#### **5 NUMBER OF DIRECTORS**

The number of directors shall not be subject to any maximum but shall not be less than one  
(1) No shareholding qualification for directors shall be required Whenever there shall be only one director of the Company such director may act alone in exercising all the powers and discretions and authorities vested in the directors

#### **6. CALLING A DIRECTORS' MEETING**

6 1 Any director may call a meeting of directors by giving not less than five (5) Business Days' written notice of the meeting (or such shorter period of notice as all the directors may agree) to each director or by authorising the Company secretary (if any) to give such notice

6 2 Notice of any directors' meeting must be accompanied by

(a) an agenda specifying in reasonable detail the matters to be raised at the meeting, and

(b) copies of any papers to be discussed at the meeting

6 3 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting of directors unless all the directors agree in writing

## **7. QUORUM FOR DIRECTORS' MEETINGS**

7 1 Subject to articles 5 and 7 2, the quorum at any meeting of the directors (including adjourned meetings) shall be two (2) directors, unless the number of directors shall be one (1) No business shall be conducted at any meeting of the directors unless a quorum is participating at the beginning of the meeting and also when that business is voted on If a quorum is not participating within 30 minutes of the time specified for the relevant meeting in the notice of the meeting then the meeting shall be adjourned for five (5) Business Days at the same time and place

7 2 For the purposes of any meeting (or part of a meeting)

- (a) held pursuant to article 9 to authorise a Conflict of a director, or
- (b) at which a director is not permitted to vote on any resolution in accordance with article 9 2 as a result of a Conflict,

and where only one director is remaining to authorise a conflict or permitted to vote, the quorum for such meeting (or part of a meeting) shall be one director

## **8. CHAIRING OF DIRECTORS' MEETINGS**

8 1 The post of chairman of the directors will be held by the director appointed by the board of directors from time to time The chairman shall have a casting vote Subject to article 8 2 if the chairman for the time being is unable to attend any meeting of the board of directors, the meeting shall be adjourned for five (5) Business Days

8 2 If the chairman is unable to attend a meeting of the board of directors on two consecutive occasions the remaining directors shall be entitled to appoint another director to act as Chairman at the third board meeting

## **9. DIRECTORS' INTERESTS**

9 1 The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (the **Interested Director**) breaching his duty under section 175 of the Act to avoid conflicts of interest (**Conflict**)

9 2 Any authorisation under this article will be effective only if

- (a) to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles or in such other manner as the directors may determine,



- (b) any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director, and
  - (c) the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted
- 9 3 Any authorisation of a Conflict under this article may (whether at the time of giving the authorisation or subsequently)
  - (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised,
  - (b) provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict,
  - (c) provide that the Interested Director will or will not be an eligible director in respect of any future decision of the directors in relation to any resolution related to the Conflict,
  - (d) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit,
  - (e) provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence, and
  - (f) permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters
- 9 4 Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict
- 9 5 The directors may revoke or vary such authorisation at any time but this will not affect anything done by the Interested Director prior to such revocation or variation in accordance with the terms of such authorisation
- 9 6 A director, notwithstanding his office, may be an employee of the shareholder who appointed him as a director of the Company and no authorisation under article 9 1 shall be necessary in respect of any such interest

- 9 7 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors in accordance with these Articles or by the Company in general meeting (subject in each case to any terms and conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds
- 9 8 Subject to sections 177(5) and 177(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a proposed transaction or arrangement with the Company shall declare the nature and extent of his interest to the other directors before the Company enters into the transaction or arrangement in accordance with the Act
- 9 9 Subject to sections 182(5) and 182(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other directors as soon as is reasonably practicable in accordance with the Act, unless the interest has already been declared under article 9 8
- 9 10 Subject, where applicable, to any terms and conditions imposed by the directors in accordance with article 9 3, and provided a director has declared the nature and extent of his interest in accordance with the requirements of the Act, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company
- (a) may be a party to, or otherwise interested in, any such transaction or arrangement with the Company, or in which the Company is otherwise (directly or indirectly) interested,
  - (b) shall be an eligible director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such transaction or arrangement or proposed transaction or arrangement in which he is interested,
  - (c) shall be entitled to vote at a meeting of directors (or of a committee of directors) or participate in any unanimous decision, in respect of such transaction or arrangement or proposed transaction or arrangement in which he is interested,
  - (d) may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director,

- (e) may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested, and
- (f) shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act

## **10 RECORDS OF DECISIONS TO BE KEPT**

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye

## **11 APPOINTMENT OF DIRECTORS**

11 1 No person shall be appointed a director unless either

- (a) he is willing to act to be a director and he is recommended by the directors either to fill a vacancy or as an additional director, or
- (b) not less than fourteen (14) nor more than thirty-five (35) clear days before the date of appointment for the General Meeting, notice executed by a Shareholder qualified to vote at the General Meeting has been given to the Company of the intention to propose that person for appointment together with notice executed by that person of his willingness to be appointed, and
  - (i) the Company has by ordinary resolution in General Meeting appointed that person, either to fill a vacancy or as an additional director

## **12. ALTERNATE DIRECTORS**

12 1 Any director (**appointor**) may appoint as an alternate any person (whether or not a director) approved by resolution of the directors to be an alternate director to exercise that director's powers, and carry out that director's responsibilities, in relation to the taking of decisions by the directors, in the absence of the alternate's appointor

12 2 Any appointment or removal of an alternate director must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors

12 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 he is willing to act as the alternate of the director giving the notice
- 12 4 An alternate director has the same rights, in relation to any decision of the directors, as the alternate's appointor
- 12 5 Except as the 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 shall 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
- 12 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 present (but only if that person's appointor is not participating), and
  - (b) may participate in a unanimous decision of the directors (but only if his appointor is an eligible director in relation to that decision, and does not himself participate)
- 12 7 A director who is also an alternate director is entitled, in the absence of his appointor, to a separate vote on behalf of his 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)
- 12 8 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as if he were a director but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate director except such part (if any) of the remuneration otherwise payable to the alternate's appointor as the appointor may by notice in writing to the Company from time to time direct
- 12 9 An alternate director's appointment as an alternate terminates
  - (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, or
- (c) when the alternate director's appointor ceases to be a director for whatever reason

## **SHARES**

### **13. SHARE CAPITAL**

13 1 The Share Capital of the Company is £1,000 divided into 1,000 Shares

### **14 FURTHER ISSUES OF SHARES. AUTHORITY**

14 1 Save to the extent authorised by these Articles, or authorised from time to time by an ordinary resolution of the shareholders, the directors shall not exercise any power to allot shares or to grant rights to subscribe for, or to convert any security into, any shares in the company

14 2 Subject to the remaining provisions of this article 14 and to article 15, the directors are generally and unconditionally authorised, for the purposes of section 551 of the 2006 Act and generally, to exercise any power of the Company to

- (a) offer or allot,
- (b) grant rights to subscribe for or to convert any security into,
- (c) otherwise deal in, or dispose of,

any Shares to any person, at any time and subject to any terms and conditions as the directors think proper

14 3 The authority referred to in article 14 2

- (a) shall only apply insofar as the Company has not renewed, waived or revoked it by ordinary resolution, and
- (b) may only be exercised for a period of five years commencing on the date on which these Articles are adopted, save that the directors may make an offer or agreement which would, or might, require Shares to be allotted after the expiry of such authority (and the directors may allot Shares in pursuance of an offer or agreement as if such authority had not expired)

**15. FURTHER ISSUES OF SHARES. PRE-EMPTION RIGHTS**

15 1 Sections 561 and 562 of the Act shall apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the Company except so far as they are modified or excluded by these Articles or are inconsistent with these Articles in which case these Articles shall prevail

15 2 Unless otherwise agreed by special resolution, if the Company proposes to allot any equity securities, those equity securities shall not be allotted to any person unless the Company has first offered them to all shareholders on the date of the offer on the same terms, and at the same price, as those equity securities are being offered to other persons on a *par passu* and *pro rata* basis to the number of Shares held by those holders (as nearly as possible without involving fractions) The offer

(a) shall be in writing, shall be open for acceptance for a period of 15 business days from the date of the offer and shall give details of the number and subscription price of the relevant equity securities, and

(b) may stipulate that any shareholder who wishes to subscribe for a number of equity securities in excess of the proportion to which he is entitled shall, in his acceptance, state the number of excess equity securities (**Excess Securities**) for which he wishes to subscribe

15 3 Any equity securities not accepted by shareholders pursuant to the offer made to them in accordance with article 15 2(a) shall be used for satisfying any requests for **Excess Securities** made pursuant to article 15 2(b) If there are insufficient **Excess Securities** to satisfy such requests, the **Excess Securities** shall be allotted to the applicants *pro rata* to the number of Shares held by the applicants immediately before the offer was made to shareholders in accordance with article 15 2(a) (as nearly as possible without involving fractions or increasing the number of **Excess Securities** allotted to any shareholder beyond that applied for by him) After that allotment, any **Excess Securities** remaining shall be offered to any other person as the directors may determine, at the same price and on the same terms as the offer to the shareholders

15 4 Subject to articles 15 2 and 15 3 and to section 551 of the Act, any equity securities shall be at the disposal of the directors 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

**16 SHARE TRANSFERS**

16 1 In these Articles, reference to the transfer of a share includes the transfer, assignment or other disposal 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

16 2 No Share shall be transferred unless the transfer is made in accordance with these Articles

## 17. PERMITTED TRANSFERS

17 1 In this article 17, the following words have the following meanings

**Employee Trust** in relation to an individual shareholders, a trust or settlement set up by a shareholder for the benefit of bona fide employees or former employees of the Group or undertaking (as defined under section 1161(1) of the Act) in which the Company has an interest (including but not limited to IPG Photonics Corporation),

**Existing Shareholder** a shareholder of the Company at the time of the transfer by the Original Shareholder,

**Family Companies** in relation to an individual shareholder, an incorporated company in which that shareholder, Family Trust(s) or his Privileged Relation(s) holds a Controlling Interest,

**Family Trusts** in relation to an individual shareholder, a trust or settlement set up for the benefit of that individual shareholder (**Settlor**) and/or the Settlor's Privileged Relation(s)

**Group** the Company and its Subsidiaries (if any) from time to time References to a **Group Company** are to any one or more of those companies

**Member of the Same Group** as regards any company, a company which is from time to time a parent undertaking or a subsidiary undertaking of any such parent undertaking

**Permitted Transfer** a transfer of Shares in accordance with this article 17

**Permitted Transferee** in relation to a shareholder

- (a) who is an individual, to any of his Privileged Relations, an Existing Shareholder, Family Companies, Family Trust(s) or to the trustees of those Family Trust(s),
- (b) that is an undertaking (as defined in section 1161(1) of the 2006 Act), to any Member of the same Group or an Existing Shareholder,

and **Privileged Relation** the spouse, widow or widower of a shareholder and the shareholder's children and grandchildren (including step and adopted children), and step and adopted children of the shareholder's children

- 17.2 A shareholder (the **Original Shareholder**) may transfer all or any of his or its Shares to a Permitted Transferee without any price or other restriction
- 17.3 If the Original Shareholder is a company, and a Permitted Transfer has been made to a Member of the Same Group, the Permitted Transferee shall, within five (5) Business Days of ceasing to be a Member of the Same Group as the Original Shareholder, transfer the Shares it holds to
- (a) the Original Shareholder, or
  - (b) a Member of the Same Group as the Original Shareholder,
- (which in either case is not in liquidation), without any price or other restriction. If the Permitted Transferee fails to make a transfer in accordance with this article 17.3, a Deemed Transfer Notice shall be given in respect of such Shares
- 17.4 Where Shares are held by the trustees of a Family Trust, the trustees may transfer Shares to
- (a) the Original Shareholder,
  - (b) the beneficiaries of the Family Trust,
  - (c) another Privileged Relation of the Original Shareholder,
  - (d) another Family Trust of which the Original Shareholder is the Settlor, or
  - (e) to the new (or remaining) trustees upon a change of trustees of a Family Trust,
- without any price or other restriction
- 17.5 A transfer of Shares may only be made to a Family Trust if the Directors are satisfied
- (a) with the terms of the trust instrument,
  - (b) with the identity of the proposed trustees, and
  - (c) that no costs incurred in connection with the setting up or administration of that Family Trust are to be paid by the Company
  - (d) For the purpose of this article, article 19 shall not apply
- 17.6 Where, under a deceased Shareholder's will (or the 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 Shares to those Permitted Transferees, in each case without restriction as to price or otherwise

- 17.7 Subject to article 17.6, on the death, bankruptcy or liquidation of a Permitted Transferee (other than a joint holder), his personal representatives, trustee in bankruptcy or its liquidator shall execute and deliver to the Company a transfer of the Shares held by the Permitted Transferee (without any price or other restriction) within thirty (30) Business Days after the date of the grant of probate, the making of the bankruptcy order or the passing of a resolution or making of an order for winding up, unless the Shares are to be transferred to individual, trust or other entity that qualified as a Permitted Transferee of the Permitted Transferee which has died, or in bankruptcy or liquidation. The transfer shall 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 thirty (30) Business Days of that period (unless an extension is approved by the Board), or if the Original Shareholder has died or is bankrupt or is in liquidation, the personal representative or trustee in bankruptcy or liquidator shall be deemed to have given a Transfer Notice

#### **18. FIRST OFFER FOR TRANSFER**

- 18.1 In this article, references to a transfer of a Share include 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
- 18.2 A shareholder shall before transferring or agreeing to transfer any shares, other than to a Permitted Transferee under article 17, give a Transfer Notice to the Company specifying
- (a) the number of shares,
  - (b) the name of the proposed transferee if the shareholder has found a specific buyer,
  - (c) the price (in cash) per share at which he wishes to transfer the Sale Shares (**Transfer Price**), and
  - (d) whether the Transfer Notice is conditional on all, or a specific number of, the Sale Shares being sold to shareholders (**Minimum Transfer Condition**)
- 18.3 If the Sale Shares are subject to a Minimum Transfer condition, any buy-back under this article 18 shall be conditional on the fulfilment of the Minimum Transfer Condition
- 18.4 As soon as practicable following receipt of a Transfer Notice the Board shall convene a board meeting to consider whether the Company having regard, inter alia, to the financial position of

the Company and the best interests of the Company, will buy-back the Sale Shares pursuant to Part 18 of the Act

- 18 5 The Board shall within 5 business days of the duly convened board meeting, notify the Seller of the decision of the Board
- 18 6 If the Board approves the buy-back of the Sale Shares by the Company, the Company shall have 90 business days to complete the buy-back of those Sale Shares at the Transfer Price
- 18 7 If the Board does not approve the buy-back of the Sale Shares, or only approves the buy-back of part of the Sale Shares, the Sale Shares or any proportion not subject to the buy-back may be transferred by the Seller in accordance with article 19

## **19 TRANSFER OF SHARES SUBJECT TO PRE-EMPTION RIGHTS**

- 19 1 In this article, references to a transfer of a Share include 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
- 19 2 Where the procedure under article 18 has been exhausted and except where the provisions of article 17 and article 21 apply, any transfer of Shares by a Shareholder shall be subject to the pre-emption rights in this article
- 19 3 Subject to article 18, a shareholder shall, before transferring or agreeing to transfer any Shares, give a Transfer Notice to the Company specifying
- (a) the number of Shares,
  - (b) if the shareholder wishes to sell the Sale Shares to a third party, the name of the proposed transferee,
  - (c) the price (in cash) per share at which he wishes to transfer the Sale Shares (**Transfer Price**), and
  - (d) whether the Transfer Notice is conditional on all, or a specific number of, the Sale Shares being sold to Shareholders (**Minimum Transfer Condition**)
- 19 4 Once given (or deemed to have been given) under these Articles, a Transfer Notice may not be withdrawn
- 19 5 A Transfer Notice appoints the Company the agent of the shareholder for the sale of the Sale Shares at the Transfer Price
- 19 6 As soon as practicable following the receipt of a Transfer Notice, the Board shall offer the Sale Shares for sale to the remaining shareholders in the manner set out in this article 19

Each offer shall be in writing and give details of the number and Transfer Price of the Sale Shares offered

- 19 7 The Board shall offer the Sale Shares to all shareholders other than the Seller (**Continuing Shareholders**), inviting them to apply in writing within 30 Business Days of the date of the offer (**First Offer Period**) for the maximum number of Sale Shares they wish to buy
- 19 8 If the Sale Shares are subject to a Minimum Transfer Condition, any allocation made under this article 19 shall be conditional on the fulfilment of the Minimum Transfer Condition
- 19 9 If, at the end of the First Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the Board shall allocate the Sale Shares to each Continuing Shareholder who has applied for Sale Shares in the proportion which his existing holding of Shares bears to the total number of Shares held by those Continuing Shareholders who have applied for Sale Shares. Fractional entitlements shall be rounded to the nearest whole number. No allocation shall be made to a Continuing Shareholder of more than the maximum number of Sale Shares which he has stated he is willing to buy
- 19 10 If, at the end of the First Offer Period, the total number of Sale Shares applied for is less than the number of Sale Shares, the Board shall allocate the Sale Shares to the Continuing Shareholders in accordance with their applications. The balance (**Initial Surplus Shares**) shall be dealt with in accordance with article 19 11
- 19 11 At the end of the First Offer Period, the Board shall offer the Initial Surplus Shares to all the Continuing Shareholders, inviting them to apply in writing within 30 Business Days of the date of the offer (**Second Offer Period**) for the maximum number of Initial Surplus Shares they wish to buy
- 19 12 If, at the end of the Second Offer Period, the number of Initial Surplus Shares applied for exceeds the number of Initial Surplus Shares, the Board shall allocate the remaining Initial Surplus Shares to each Continuing Shareholder who has applied for Initial Surplus Shares in the proportion that his existing holding of Shares (including any Sale Shares) bears to the total number of Shares (including any Sale Shares) held by those Continuing Shareholders who have applied for Initial Surplus Shares during the Second Offer Period. Fractional entitlements shall be rounded to the nearest whole number. No allocation shall be made to a Continuing Shareholder of more than the maximum number of Initial Surplus Shares which he has stated he is willing to buy
- 19 13 If, at the end of the Second Offer Period, the number of Initial Surplus Shares applied for is less than the number of Initial Surplus Shares, the Board shall allocate the Initial Surplus Shares to the Continuing Shareholders in accordance with their applications. The balance (**Second Surplus Shares**) shall be dealt with in accordance with article 19 11

19 14 If, having exhausted the procedure set out in articles 19 7 – 19 3 (inclusive), the Transfer Notice includes a Minimum Transfer Condition and the total number of Sale Shares applied for is less than the number of Sale Shares specified in the Minimum Transfer Condition, the Board shall notify the Seller and all those to whom Sale Shares have been conditionally allocated under article 18, stating that the Minimum Transfer Condition has not been met and that the relevant Transfer Notice has lapsed with immediate effect

19 15 If

- (a) the Transfer Notice includes a Minimum Transfer Condition and such Minimum Transfer Condition has been satisfied, or the Transfer Notice does not include a Minimum Transfer Condition, and
- (b) allocations under this article 19 have been made in respect of some or all of the Sale Shares,

the Board shall give written notice of allocation (**Allocation Notice**) to the Seller and each Continuing Shareholder to whom Sale Shares have been allocated (**Applicant**) The Allocation Notice shall specify the number of Sale Shares allocated to each Applicant, the amount payable by each Applicant for the number of Sale Shares allocated to him (**Consideration**) and the place and time for completion of the transfer of the Sale Shares (which shall be at least 10 Business Days after the date of the Allocation Notice)

19 16 On the service of an Allocation Notice, the Seller shall, against payment of the Consideration, transfer the Sale Shares allocated in accordance with the requirements specified in the Allocation Notice

19 17 If the Seller fails to comply with the requirements of the Allocation Notice

- (a) the Chairman of the Company (or, failing him, one of the other directors, or some other person nominated by a resolution of the Board) may, on behalf of the Seller
  - (i) complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant Sale Shares to the Applicants,
  - (ii) receive the Consideration and give a good discharge for it, and
  - (iii) (subject to the transfers being duly stamped) enter the Applicants in the register of Shareholders as the holders of the Shares purchased by them, and
- (b) the Company shall pay the Consideration into a separate bank account in the Company's name on trust (but without interest) for the Seller until he has delivered his certificate for the relevant Shares (or an indemnity, in a form reasonably satisfactory

to the Board, in respect of any lost certificate, together with such other evidence (if any) as the Board may reasonably require to prove good title to those Shares) to the Company

19 18 If an Allocation Notice does not relate to all of the Sale Shares or the Transfer Notice lapses pursuant to article 19 14 then, subject to article 19 19 and within four (4) weeks following service of the Allocation Notice or the date of the lapse of the Transfer Notice (as the case may be), the Seller may transfer the Second Surplus Shares or the Sale Shares (in the case of a lapsed offer) (as the case may be) to any person at a price at least equal to the Transfer Price. The sale of the Sale Shares (following the lapse of a Transfer Notice) in accordance with this article 19 18 shall continue to be subject to any Minimum Transfer Condition

19 19 The Seller's right to transfer Shares under article 19 18 does not apply if the Board reasonably considers that

- (a) the transferee is a person (or a nominee for a person) who is a competitor with (or an Associate of a competitor with) the business of the Company or with a Subsidiary Undertaking of the Company, or
- (b) 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
- (c) the Seller has failed or refused to provide promptly information available to the Seller and reasonably requested by the Board to enable it to form the opinion mentioned above

19 20 The restrictions imposed by this article may be waived in relation to any proposed transfer of Shares with the consent of shareholders who, but for the waiver, would or might have been entitled to have such Shares offered to them in accordance with this article

## **20. VALUATION**

20 1 the Transfer Price for each Share being the subject of a Transfer Notice served pursuant to article 17 7 or Article 21 (or Deemed Transfer Notice) shall, save where expressly provided otherwise in these Articles, be the price per Sale Share (in cash) agreed between the directors (any director with whom the Seller is connected not voting) and the Seller or, in default of agreement within fifteen (15) Business Days of the date of service of the Transfer Notice (or, in the case of a Deemed Transfer Notice, the date on which the board of directors first has actual knowledge of the facts giving rise to such deemed service), the Fair Value of each Sale Share

20 2 The Fair Value shall be the price per Sale Share determined by the Expert on the following bases and assumptions

- (a) valuing the Sale Shares as on an arm's-length sale between a willing seller and a willing buyer as at the date the Transfer Notice was served (or deemed served),
  - (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, and
  - (e) reflecting any other factors which the Expert reasonably believes should be taken into account
- 20 3 If any difficulty arises in applying any of these assumptions or bases then the Expert shall resolve that difficulty in whatever manner it shall in its absolute discretion think fit
- 20 4 The directors will give the Expert access to all accounting records or other relevant documents of the Group, subject to it agreeing such confidentiality provisions as the directors may reasonably impose
- 20 5 The parties are entitled to make submissions to the Expert including oral submissions and shall provide (or procure that others provide) the Expert with such assistance and documents as the Expert may reasonably require for the purpose of reaching a decision
- 20 6 The Expert shall act as expert and not as arbitrator and its determination shall be final and binding on the parties (in the absence of fraud or manifest error)
- 20 7 The Expert shall be requested to determine the Fair Value within fifteen (15) Business Days of its appointment and to deliver its certificate to the Company. Forthwith upon receipt, the Company shall deliver a copy of the certificate to the Seller
- 20 8 The cost of obtaining the Expert's certificate shall be borne by the parties equally or in such other proportions as the Expert directs
- 21 COMPULSORY TRANSFERS**
- 21 1 A person entitled to a Share in consequence of the bankruptcy of a Shareholder (or equivalent procedure in any jurisdiction outside England and Wales) shall be deemed to have given a Transfer Notice under article 18 and subsequently under article 19 in respect of that Share at such time as the directors may determine

- 21 2 If a Shareholder which is a body corporate either suffers or resolves to appoint a liquidator, administrator or administrative receiver over it, or any material part of its assets (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or suffers or takes any equivalent action in any jurisdiction outside England and Wales, that Shareholder shall be deemed to have given a Transfer Notice under article 18 and subsequently under article 19 in respect of all Shares held by it at such time as the directors may determine
- 21 3 If there is a change in control (as 'control' is defined in section 995 of the Income Tax Act 2007) of any Shareholder which is a company, it shall 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 under article 18 and subsequently under article 19 in respect of all the Shares registered in its name (or the name of its nominee(s)) save that, where that Shareholder acquired Shares as a Permitted Transferee of an Original Shareholder, it shall 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 that Original Shareholder before being required to serve a Transfer Notice
- 21 4 Forthwith upon a Transfer Notice being deemed to be served under this article 20 the Shares subject to the relevant Deemed Transfer Notice (**Restricted Shares**) shall cease to confer on the holder of them any rights
- (a) to vote (whether on a show of hands, on a poll or otherwise and whether in person, by proxy or otherwise), including in respect of any resolution of any class of Shares,
  - (b) to receive dividends or other distributions otherwise attaching to those Shares, or
  - (c) to participate in any future issue of Shares issued in respect of those Shares

The directors may reinstate the rights referred to in this article 21 4 at any time and, in any event, such rights shall be reinstated in respect of any Shares transferred pursuant to this article 21 on completion of such transfer

## 22. TAG ALONG

- 22 1 Except for transfers under clause 17, and after first giving a Transfer Notice under article 19 to the Continuing Shareholder(s) and going through the procedure set out in article 19, the provisions of article 22 2 to article 22 6 shall apply if the holder(s) of 75% or more of the Shares in issue for the time being (**Majority Seller**) proposes to transfer those Shares to a bona fide arm's length purchaser (**Proposed Transfer**) and such transfer would, if carried out, result in such person (**Buyer**) acquiring a Controlling Interest in the Company

- 22 2 Before making a Proposed Transfer, the Majority Seller shall procure that the Buyer makes an offer (**Offer**) to the Continuing Shareholders to purchase all of the Shares held by them for a consideration in cash per Share that is at least equal to the price per Share offered by the Buyer in the Proposed Transfer (**Specified Price**)
- 22 3 The Offer shall be given by written notice (**Offer Notice**), at least thirty (30) Business Days (**Offer Period**) before the proposed transfer date (**Transfer Date**) To the extent not described in any accompanying documents, the Offer Notice shall set out
- (a) the identity of the Buyer,
  - (b) the purchase price and other terms and conditions of payment,
  - (c) the Transfer Date, and
  - (d) the number of Shares proposed to be purchased by the Buyer (**Offer Shares**)
- 22 4 If the Buyer fails to make the Offer in accordance with article 22 2 and article 22 3, the Seller shall not be entitled to complete the Proposed Transfer and the Company shall not register any transfer of Shares effected in accordance with the Proposed Transfer
- 22 5 If the Offer is accepted by the holder(s) of the remaining Shares in issue in writing within the Offer Period, the completion of the Proposed Transfer shall be conditional on completion of the purchase of all the Offer Shares held by such shareholder
- 22 6 The Proposed Transfer is subject to the rights of pre-emption set out in article 19, but the purchase of the Offer Shares shall not be subject to those provisions

## **23 DRAG ALONG**

- 23 1 If the Shareholder(s) wishes to transfer all (but not some only) of its/his/their Shares representing in aggregate 75% or more of the Shares in issue for the time being (**Majority Seller**) to a bona fide arm's length purchaser (**Proposed Buyer**), the Majority Seller may require the holder(s) of the remaining Shares in issue (**Called Shareholder**) to sell and transfer all of the Shares held by them (**Called Shares**) to the Proposed Buyer (or as the Proposed Buyer directs) in accordance with the provisions of this article (**Drag Along Option**)
- 23 2 The Majority Seller may exercise the Drag Along Option by giving written notice to that effect to the Called Shareholder (**Drag Along Notice**) at any time before the transfer of the Majority Seller's Shares to the Proposed Buyer The Drag Along Notice shall specify
- (a) that the Called Shareholder is required to transfer all of its Called Shares pursuant to this article 23,



- (b) the person to whom the Called Shares are to be transferred,
  - (c) the purchase price payable for the Called Shares which shall, for each Called Share, be an amount at least equal to the price per Share offered by the Proposed Buyer for the Seller's Shares, and
  - (d) the proposed date of the transfer
- 23 3 Once issued, a Drag Along Notice shall be irrevocable. However, a Drag Along Notice shall lapse if, for any reason, the Majority Seller has not sold its/his/their Shares to the Proposed Buyer within 90 Business Days of serving the Drag Along Notice. The Seller may serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- 23 4 No Drag Along Notice shall require the Called Shareholder to agree to any terms except those specifically set out in this article 23.
- 23 5 Completion of the sale of the Called Shares shall take place on the Completion Date. Completion Date means the date proposed for completion of the sale of the Majority Seller's Shares unless
- (a) the Majority Seller and the Called Shareholder agree otherwise in which case the Completion Date shall be the date agreed in writing by them, or
  - (b) that date is less than thirty (30) Business Days after the date on which the Drag Along Notice is served, in which case the Completion Date shall be the 90 Business Day after service of the Drag Along Notice.
- 23 6 The proposed sale of the Shares by the Majority Seller to the Proposed Buyer is subject to the rights to first offer on a transfer set out in article 18 and the rights of pre-emption set out in article 19.
- 23 7 Within thirty (30) Business Days of the Majority Seller serving a Drag Along Notice on the Called Shareholder, the Called Shareholder shall deliver a stock transfer form for the Called Shares, together with the relevant share certificate (or a suitable indemnity for any lost share certificate) to the Company. On the expiration of that thirty (30) Business Day period, the Company shall pay the Called Shareholder, on behalf of the Proposed Buyer, the amounts due pursuant to article 23 2 to the extent that the Proposed Buyer has put the Company in the requisite funds. The Company's receipt for the price shall be a good discharge to the Proposed Buyer. The Company shall hold the amounts due to the Called Shareholder in trust for the Called Shareholder without any obligation to pay interest.
- 23 8 To the extent that the Proposed Buyer has not, on the expiration of the thirty (30) Business Day period referred to in article 23 7, put the Company in funds to pay the purchase price due

in respect of the Called Shares, the Called Shareholder shall be entitled to the return of the stock transfer form and share certificate (or suitable indemnity) for the relevant Called Shares and the Called Shareholder shall have no further rights or obligations under this article 23 in respect of its Shares

- 23 9 If the Called Shareholder does not, on completion of the sale of the Called Shares, execute transfer(s) in respect of all of the Called Shares held by it, the Called Shareholder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Seller to be its agent to execute all necessary transfer(s) on its behalf, against receipt by the Company (on trust for such holder) of the purchase price payable for the Called Shares, and to deliver such transfer(s) to the Proposed Buyer (or as he may direct) as the holder thereof. After the Proposed Buyer (or its nominee) has been registered as the holder, the validity of such proceedings shall not be questioned by any such person. Failure to produce a share certificate shall not impede the registration of shares under this article 23 9

#### **DECISION MAKING BY SHAREHOLDERS**

##### **24. QUORUM FOR GENERAL MEETINGS**

- 24 1 The quorum at any general meeting of the Company, or adjourned general meeting, shall be shareholders (or a duly authorised representative of such shareholder) owning not less than 50% of the issued Shares
- 24 2 No business shall be transacted by any general meeting unless a quorum is present at the commencement of the meeting and also when that business is voted on

##### **25. CHAIRING GENERAL MEETINGS**

The chairman of the board of directors shall chair general meetings. If the chairman is unable to attend any general meeting, the shareholders shall appoint another of the directors present at the meeting to act as chairman at the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting

##### **26 VOTING**

- 26 1 At a general meeting, on a show of hands every shareholder who is present in person or by proxy shall have one vote, unless the proxy is himself a shareholder entitled to vote, on a poll every shareholder present in person or by proxy shall have one vote for each share of which he is the holder, and on a vote on a written resolution every shareholder has one vote for each share of which he is the holder

## **27 POLL VOTES**

- 27 1 A poll may be demanded at any general meeting by a qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting
- 27 2 Article 44(3) of the Model Articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article

## **28. PROXIES**

- 28 1 Article 45(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the Company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of general meeting (or adjourned meeting) to which they relate"
- 28 2 Article 45(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid" as a new paragraph at the end of that article

## **ADMINISTRATIVE ARRANGEMENTS**

### **29. MEANS OF COMMUNICATION TO BE USED**

- 29 1 Subject to article 29 2, any notice, document or other information shall be deemed served on, or delivered to, the intended recipient
- (a) if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or five (5) Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within or outside the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five (5) Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider,
- (b) if properly addressed and delivered by hand, when it was given or left at the appropriate address,
- (c) if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied

For the purposes of this article, no account shall be taken of any part of a day that is not a working day

29 2 Any notice, document or other information served on, or delivered to, an intended recipient under article 6, article 18, article 19, article 21, article 22 or article 23 (as the case may be) may be served or delivered in electronic form

29 3 In proving that any notice, document or information was properly addressed, it shall be sufficient to show that the notice, document or information was addressed to an address permitted for the purpose by the Act

### **30. INDEMNITY AND INSURANCE**

30 1 Subject to article 30 2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled

(a) each relevant officer of the Company shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer

(i) in the actual or purported execution and/or discharge of his duties, or in relation to them, and

(ii) in relation to the Company's activities as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's affairs, and

(b) the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 30 1(a) and otherwise may take action to enable any such relevant officer to avoid incurring such expenditure

30 2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law

30 3 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss

30 4 In this article

- (a) a "relevant officer " means any director or other officer or former director or other officer of the Company but excluding in each case any person engaged by the Company as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor, and
- (b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company or any pension fund or employees' share scheme of the Company