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THE COMPANIES ACTS 1985 TO 1989

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PRIVATE COMPANY LIMITED BY SHARES

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NEW

ARTICLES OF ASSOCIATION

-of-

OSI GROUP HOLDINGS LIMITED

(Adopted by Written Resolution passed on 15<sup>th</sup> November 1995)

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## **PRELIMINARY**

1.1 The regulations contained or incorporated in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 shall apply to the Company save insofar as they are excluded or modified by or are inconsistent with the regulations hereinafter contained and the regulations contained in Table A and the regulations herein contained shall be the articles of association of the Company ("the Articles").

1.2 The whole of Regulations 2, 24, 25, 40, 41, 46, 50, 51, 52, 54, 64, 65, 73, 74, 75, 80, 82, 89, 96 the third and fifth sentence of Regulation 88 and the last sentence of Regulation 112 of Table A shall not apply to the Company.

## **DEFINITIONS AND INTERPRETATION**

2.1 In these Articles the following expressions shall have the following meanings:-

'A' Deferred Shares	the 'A' deferred shares of 0.001 pence each in the capital of the Company;
'A' Ordinary Shares	the 'A' ordinary shares of 10 pence each in the capital of the Company;
Accounts	the audited profit and loss account of the Company or, if at the relevant time the Company has any subsidiary undertaking(s), a consolidation of the audited profit and loss accounts of the Company and its subsidiary undertaking(s), for each financial year, to be prepared under the historical cost convention and in accordance with generally accepted accounting principles and all relevant Statements of Standard Accounting Practice,

Financial Reporting Standards and Statements of Recommended Practice;

Act the Companies Act 1985;

Advance CCRP Dividend the dividend payable pursuant to Article 4.2.2;

Applicable Rate 2 per cent above the base rate for the time being of Lloyds Bank plc;

Auditors the auditors of the Company for the time being and from time to time;

Available Profits profits available for distribution within the meaning of the Act;

'B' Ordinary Shares the 'B' ordinary shares of 10 pence each in the capital of the Company;

Board the board of directors of the Company from time to time or any duly authorised committee thereof;

BVCA Member any member of the British Venture Capital Association;

Cash Equivalent the sum certified by the Auditors (acting as experts and not arbitrators and whose certificate shall be binding on all members save in the case of manifest error) as being in their opinion the then current value of the right to receive the consideration in question (where the

consideration is payable on deferred terms) or (in the case of consideration payable otherwise than in cash) their opinion of the monetary value of such consideration at that time;

'C' Deferred Shares

the 'C' deferred shares of 0.001 pence each in the capital of the Company;

'C' Ordinary Shares

the 'C' ordinary shares of 10 pence each in the capital of the Company;

Compulsory Purchase Notice

a notice deemed to be served by the Company on itself on behalf of the Leaver and/or the Leavers' Permitted Transferee(s) (as the case may be) requiring the Company, subject to obtaining the necessary consents and approvals, to purchase all or any of the Leaver's Shares;

CCRP Dividend

the dividend payable pursuant to Article 4.1.3;

Convertible Shares

the convertible cumulative redeemable preferred ordinary shares of 10 pence each in the capital of the Company;

Conversion Date

the date on which conversion of any Convertible Shares occurs in accordance with Article 7;

Cumulative Dividends

the Preference Dividend, the CCRP Dividend and the Participating Dividend;

'D' Ordinary Shares

the 'D' ordinary shares of 10 pence each in the capital of the Company;

Deferred Share

any 'A' Deferred Share and/or 'C' Deferred Share;

Dividend Supplement

in respect of any Cumulative Dividend which is not paid on the due date for payment as a result of the Company having insufficient Available Profits, a dividend (net of any associated tax credit) equal to the notional interest on the amount of such unpaid Cumulative Dividend calculated on a daily basis (from and including the due date for payment down to the actual date of payment) at the Applicable Rate and compounded with half-yearly rests;

ECI Group

- (a) any fund, trust, company or partnership the assets of which are managed by ECI Ventures, ECI Ventures Limited, ECI Management (Jersey) Limited or ECI International Management Limited (or any partnership or company carrying on business in succession to any of such four persons), including but not limited to ECII, ECIIT, ECIIP, ECID, ECI EUROFUND, ECICP, ECICPB, ECID2, ECI5, ECI5B and ECID3, their custodians or nominees; or
- (b) any unitholder, partner, shareholder,

participant, manager or adviser (or an employee of an adviser) in any such fund, trust, company or partnership provided that such person is not a competitor of the Group;

- (c) a nominee of any of the persons referred to in paragraphs (a) and (b) above;

Group

the Company and its subsidiary undertaking(s) (if any) for the time being and from time to time and references to Group Company and members of the Group shall be construed accordingly;

ICTA 1988

the Income and Corporation Taxes Act 1988;

Investors

ECI 5, ECI 5 'B', and ECI Developments 3, three limited partnerships established under the Limited Partnerships Act 1907 of the United Kingdom, acting by their general partner, ECI Ventures GP Limited ("ECIVGP"), each of them having their place of business, and ECIVGP having its registered office, at Brettenham House, Lancaster Place, London WC2E 7EN, or any BVCA Member to whom any of such limited partnerships, BVCA Members (or in each case their nominees) transfer shares pursuant to Article 11.1;

Issue Price

the price per share at which the relevant shares are issued being the aggregate of the amount paid up or credited as paid up in respect of the

nominal value thereof and any share premium thereon;

Leaver

(a) any employee and/or director (other than a Nominated Director appointed by the Investors or the holders for the time being of the issued 'B' Ordinary Shares) of the Company or any other Group Company who has ceased (for whatever reason) to be an employee and director of the Company and every such other Group Company (whichever shall last occur);

(b) any member to whom shares were transferred in accordance with Article 12 who at any time ceases (for whatever reason) to be a Permitted Transferee of the member by whom such shares were transferred unless such shares are transferred, within 10 Business Days of such member having been notified by the Board or the Investors that it has ceased to be a Permitted Transferee, to the original transferor (who is not and/or has not been a Leaver) or to another of such original transferor's Permitted Transferees, and for the avoidance of doubt such transfer shall be a Permitted Transfer;

(c) any person who on the death of a member or employee or director (other than a Nominated Director appointed by the Investors or the holders for the time being of the issued 'B' Ordinary Shares) becomes entitled to any share in the Company; and

(d) any person who on the bankruptcy of a member (if an individual) or the receivership, administrative receivership, administration, liquidation or other arrangement for the winding-up (whether solvent or insolvent) of a member (if a company) or the bankruptcy of an employee or director (other than a Nominated Director appointed by the Investors or the holders from time to time of the issued 'B' Ordinary Shares) becomes entitled to any share in the Company provided that this shall not apply if such shares are transferred to a Permitted Transferee of such a corporate member in the case of a solvent liquidation or solvent winding up of such member;

Leaving Date

in relation to any member or person who becomes a Leaver, the date on which such member or person becomes a Leaver, or if later the date the Company becomes aware that such person has become a Leaver;

Leaver's Shares

all of the shares in the Company held by the Leaver and the Leaver's Permitted Transferee(s) on the Leaving Date;

Leaver's Permitted Transferee(s)

(i) any person(s) to whom shares in the Company formerly held by the Leaver have been transferred (by the Leaver or by any Permitted Transferee of the Leaver) in accordance with Article 12, (ii) any person(s) to whom shares in the Company were issued on the basis that



such person(s) would have been (a) Permitted Transferee(s) of the Leaver had such shares been issued directly to the Leaver; and (iii) any other persons holding shares as a result only of a Permitted Transfer by the Leaver or the Leaver's Permitted Transferees;

London Stock Exchange	The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;
Nominated Director	any director appointed pursuant to Article 17;
Ordinary Dividend	any dividend payable pursuant to Article 4.2.1;
Ordinary Share	any 'A' Ordinary Share and/or 'B' Ordinary Share and/or 'C' Ordinary Share and/or 'D' Ordinary Share;
Participating Dividend	the dividend payable pursuant to Article 4.1.2;
Permitted Transfer	a share transfer permitted under the terms of Article 12;
Permitted Transferee	any person to whom shares can be transferred in accordance with Article 12;
Preference Dividend	the dividend payable pursuant to Article 4.1.1;
Preference Shares	the cumulative redeemable preference shares of 1 penny each in the capital of the Company;
Profit before Tax	the amount of the profit/(loss) of the Group for

the financial year in question (as disclosed by the Accounts):-

(a) before any provision or reserve shall have been made for or in respect of:-

(i) any extraordinary item(s) which reduce(s) the said profit or increase(s) the said loss;

(ii) corporation tax (or any other tax levied upon or measured by reference to profits) on the profits earned by the Group;

(iii) the payment of any dividend or other distribution on or in respect of any share in the Company or the transfer of any sum to any reserve;

(iv) the redemption of any Preference Shares and/or any Convertible Shares; and

(v) the amortisation or writing-off of goodwill arising on consolidation; and

(b) before any credit shall have been taken in respect:-

- (i) of any extraordinary item(s) which increase(s) the said profit or reduce(s) the said loss; and
- (ii) any capital profit arising from a disposal of a part or parts of the Group representing more than 10 per cent. of the turnover of the Group, whether such disposal is of shares or assets;

the certificate of the Auditors (acting as experts and not as arbitrators) as to the amount of Profit before Tax in any financial year shall (except in the case of manifest error) be conclusive, final and binding on the members of the Company provided that if the auditors shall have qualified their report on such Accounts by reason of disagreement with the directors of the Company, they shall be entitled to certify a profit before tax figure for this purpose which is different from that arising from the Accounts;

#### Quotation

the admission of the whole of any class of the issued share capital of the Company to the Official List of the London Stock Exchange or to trading on the Alternative Investment Market of the London Stock Exchange or to any other recognised investment exchange (as defined in section 207 of the Financial Services Act 1986), and for this purpose the issued Ordinary Shares and Convertible Shares shall together be

treated as one class of issued share capital of the Company;

Quotation/Sale Value

- (i) in the case of Quotation, the estimated aggregate market value of the Ordinary Shares in issue (on the assumptions that the ratchet conversion has not occurred, but the Preference Shares have been redeemed, all the issued Convertible Shares have been converted into 'C' Ordinary Shares and there are no Deferred Shares) being the estimate of the market value of the Company by reference to the issue price per share of any new Ordinary Shares to be issued on Quotation (as opposed to created by the ratchet conversion), or if there is no new issue, the price at which any such Ordinary Shares are to be placed or otherwise marketed for the purposes of Quotation as intended to be indicated in the relevant listing particulars or prospectus;
- (ii) in the case of a Sale of shares in the Company, the aggregate consideration payable on completion of such Sale by the purchaser(s) for the Ordinary Shares (on the same assumptions as in (i) above) and in the case of a purchase of less than the entire issued equity share capital, grossed up to the value that the

price for the entire issued equity share capital would have assuming all Ordinary Shares are valued at the same price per share as paid in the Sale and otherwise on the same assumptions as in (i) above provided that if any part of the purchase price is payable otherwise than in cash or is cash payable on deferred terms or represents indebtedness of the Group paid off by the purchaser as a term of the Sale, the amount of the purchase price shall be the aggregate of the amount of the purchase price payable in cash (payable on completion of the Sale) and the Cash Equivalent per share and such indebtedness;

- (iii) in the case of a Sale of an undertaking, the value certified by the Auditors (acting as experts and not as arbitrators and whose certificate shall be binding on all members save in the case of manifest error) to be in their opinion the value of the entire issued equity share capital of the Company (on the same assumptions as in (i) above) as a result of the completion of such Sale;

#### Related Persons

in relation to any person (or deceased person) any one or more of his wife or her husband, or his or her child over the age of 18;

Sale

the unconditional completion of a bona fide sale of either:-

- (i) 75 per cent. or more of the issued equity share capital of the Company to a single purchaser or to one or more purchasers as part of a single transaction or a series of related transactions in circumstances where the holders of the 'B' Ordinary Shares have sold or been offered an equivalent opportunity to sell all of the shares held by them; or
- (ii) the whole or more than 75 per cent. of the undertaking by turnover of the Group;

Service Agreements

the service agreements dated November 1995 and made between the Company and each of Messrs Price, Hornby, Marshall, Bone, Hibbert, Parr, Bostock, Demetrius, Evans and Phillips.

2.2 The terms "subsidiary", "subsidiary undertaking", "wholly-owned subsidiary", "parent undertaking", "holding company", "financial year", "director", "body corporate" and "equity share capital" shall have the meanings respectively attributed to them at the date of the adoption of these Articles by the Act. The term "connected person" shall have the meaning attributed to it by section 839 of ICTA 1988 and the words "connected with" shall be construed accordingly.

2.3 A reference to any statutory provision in these Articles:-

2.3.1 includes any order, instrument, plan, regulation, permission and direction made or issued under such statutory provision or deriving validity from it; and

2.3.2 shall be construed as a reference to such statutory provision as in force at the date of adoption of these Articles (including, for the avoidance of doubt, any amendments made to such statutory provision that are in force at the date of the adoption of these Articles); and

2.3.3 shall also be construed as a reference to any statutory provision of which such statutory provision is a re-enactment or consolidation; and

2.3.4 shall also be construed as a reference to any later statutory provision which re-enacts or consolidates such statutory provision (in each case without amending the same).

2.4 References in these Articles to:-

2.4.1 any of the masculine, feminine and neuter genders shall (where appropriate) include other genders;

2.4.2 the singular shall (where appropriate) include the plural and vice versa;

2.4.3 a person shall (where appropriate) include a reference to any natural person, body corporate, unincorporated association, partnership, fund and trust; and

2.4.4 "Regulations" and "Articles" are to the regulations of Table A and to the regulations contained in these Articles respectively.

2.5 The headings in these Articles are for convenience only and shall not affect their meaning.

2.6 A reference in these Articles to any transfer of any share in the Company shall mean the transfer of either or both of the legal and beneficial ownership in such share and/or the grant of an option to acquire either or both of the legal and beneficial ownership in such share and the following shall be deemed (but without limitation) to be a transfer of a share in the Company:-

2.6.1 any direction (by way of renunciation or otherwise) by a member entitled to an allotment or issue of any share that such share be allotted or issued to some person other than himself; and

2.6.2 any sale or other disposition of any legal or equitable interest in a share (including any voting right attached thereto) and whether or not by the registered holder thereof and whether or not for consideration or otherwise and whether or not effected by an instrument in writing.

2.7 A reference in these Articles to any class of shareholder giving directions, consent or a notice shall mean the giving of such directions, consent or notice by the holders for the time being of more than 50 per cent. in nominal value of such class of shares then in issue.

2.8 In construing these Articles, general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

2.9 Philtech S.A. shall be deemed to be a Permitted Transferee and, where relevant, a Leaver's Permitted Transferee, of David Demetrius. Ositech S.A. shall be deemed to be a Permitted Transferee and, where relevant, a Leaver's Permitted Transferee of Richard Evans, and Chrisalis (Trustees) Guernsey Limited shall be deemed to be a Permitted Transferee and,



where relevant, a Leaver's Permitted Transferee of Alistair Phillips, and all references to "Permitted Transferees" and "Leaver's Permitted Transferees" shall be construed accordingly.

2.10 For the avoidance of doubt, the Issue Price of each Preference Share referred to in Article 3 shall be £1 per share. The Issue Price of each of the first 3,000,000 'A' Ordinary Shares in issue shall be 10p per share. The Issue Price of each 'B' Ordinary Share referred to in Article 3 shall be 10p per share. The Issue Price of the 2,200,000 Convertible Shares referred to in Article 3 shall be £1.20 per share. The Issue Price of each Deferred Share in Article 3 shall be 0.001p per share. The Issue Price of the 'C' Ordinary Shares resulting from conversion of Convertible Shares pursuant to Article 7 shall be £1.20 per share.

### SHARE CAPITAL

3.1 The authorised share capital of the Company at the date of the adoption of these Articles is £1,345,033.55 divided into 5,051,735 Preference Shares, 2,200,000 Convertible Shares, 4,244,082 'A' Ordinary Shares, 6,000,000 'A' Deferred Shares, 3,600,000 'B' Ordinary Shares, 2,400,000 'C' Ordinary Shares, 4,800,000 'C' Deferred Shares and 500,000 'D' Ordinary Shares.

3.2 Sections 89(1) and 90(1) to 90(6) of the Act shall not apply to the Company.

3.3 Unless the Company shall by special resolution otherwise direct and save for allotments of Deferred Shares, all unissued shares in the capital of the Company shall before allotment be offered for subscription to the then existing members of the Company holding shares of the same class (and for which purpose 'C' Ordinary Shares and Convertible Shares shall be treated as one class) as the shares to be allotted. Offers shall be made by notice to each such member specifying the number and class of shares offered, the subscription price and the period (not being less than 28 days) within which each such member must state whether he is willing to subscribe for any, and if so how many, of the shares to be allotted ("the new shares").

3.4 If such members or any of them shall within such period of 28 days apply for any of the new shares, the Company shall at the end of that period issue such new shares which have been applied for:-

3.4.1 first, to all such members holding shares of the same class as the new shares (if any) who have applied to subscribe for any of them and, if such members have applied in aggregate for a greater number than the new shares to be allotted, pro rata according to the number of shares of the same class held by them at the date of the offer; and

3.4.2 second (if any of the new shares shall remain after the applicants referred to in article 3.4.1 have been satisfied in full) to members holding shares of any different class or classes of shares to the new shares who have applied to purchase any of them and, if such members have applied in aggregate for a greater number than the new shares to be allotted, pro rata according to the number of shares (other than shares of the same class as the new shares, Preference Shares and Deferred Shares) held by them at the date of the offer.

3.5 If and to the extent that any of the new shares are not applied for by members of the Company within the said period of 28 days, the directors may allot, grant options over or otherwise dispose of the same to such persons, on such terms, and in such manner as they think fit provided that such shares shall not be disposed of on terms which are more favourable than the terms on which they were initially offered to the members.

3.6 No offeree of the new shares should be obliged to take more than the maximum number of new shares that he has indicated to the Company he was willing to subscribe. An allocation of new shares made by the Company pursuant to Articles 3.4 or 3.5 shall constitute the acceptance by the persons to whom they are allocated of the offer to subscribe for those new shares on the terms offered to them.

3.7 The Company shall forthwith upon allocating any new shares give notice in writing ("an allotment notice") to each person to whom new shares have been so allocated, of the

number of new shares to be allotted to him and the aggregate price payable therefor. Completion of the allotment of those new shares in accordance with the allotment notice shall take place within 7 days after the date of the allotment notice whereupon the Company shall, upon payment of the subscription price due in respect thereof, allot those new shares specified in the allotment notice to the person or persons to whom they have been allocated and, within two months of such allotment, deliver the relative share certificates.

#### DIVIDEND RIGHTS

4. The rights and restrictions as regards income attaching to the Preference Shares, the Convertible Shares, the Ordinary Shares and the Deferred Shares shall be as set out in this Article 4.

4.1 The Company shall, ipso facto and without resolution of the Board or of the Company in general meeting and notwithstanding anything contained in Regulations 102 to 105 (inclusive) and before application of any profits to reserve or for any other purpose apply Available Profits in the following order:-

4.1.1 first, pay to the holders of the Preference Shares a fixed cumulative preferential dividend (the "Preference Dividend") at the rate of 8 per cent. of the Issue Price per share per annum (net of any associated tax credit) which shall be paid in half-yearly instalments on 30 September and 31 March in each year in respect of the six months ending on such date, save that the first payment shall be on 30 September 1996 in respect of the period from and including the date of issue of the shares to such date;

4.1.2 second, prior only to a Sale or Quotation and in respect only of each financial year commencing on or after 1 July, 2001 pay to the holders of the issued 'B' Ordinary Shares PROVIDED THAT ECI Ventures Nominees Limited (or such other nominees appointed by the Investors) is at the relevant payment date the registered holder of at least 3,600,000 'B' Ordinary Shares (not including any shares

redesignated as 'B' Ordinary Shares as a result of a transfer pursuant to the provisions of these Articles) and the beneficial owner(s) of such shares are the Investors or members of the ECI Group, an aggregate sum equal to 10 per cent. of the Profit before Tax for such financial year. In the event that at the relevant payment date ECI Ventures Nominees Limited (or other nominees appointed by the Investors) is the registered holder (or the Investors or members of the ECI Group are the beneficial owner(s)) in aggregate of less than 3,600,000 'B' Ordinary Shares (not including any shares redesignated as 'B' Ordinary Shares as a result of a transfer pursuant to the provisions of these Articles), the Participating Dividend payable to the holders of the issued 'B' Ordinary Shares shall be such smaller pro-rata sum which corresponds to whichever is lower of (i) the amount of 'B' Ordinary Shares (not including any Shares redesignated as 'B' Ordinary Shares as a result of a transfer pursuant to the provisions of these Articles) of which ECI Ventures Nominees Limited (or other nominees appointed by the Investors) in aggregate is the registered holder and (ii) the amount of 'B' Ordinary Shares (not including any shares redesignated as 'B' Ordinary Shares as a result of a transfer pursuant to the provisions of these Articles) of which the Investors or members of the ECI Group in aggregate are the beneficial owners. The Participating Dividend (if any) shall be payable not more than 14 days after the date of the Auditors' Report relating to the Accounts for the relevant financial year and shall be waived in respect of any part financial year during which a Sale or Quotation occurs; and

4.1.3 third, on redemption of the same other than in circumstances where such shares are being converted, pay to the holders of the Convertible Shares a fixed cumulative preferential dividend (the "CCRP Dividend") at the rate of 4 per cent. of the Issue Price per share per annum (net of any associated tax credit) uncompounded which shall be paid, less any Advance CCRP Dividend(s) paid pursuant to Article 4.2.2 in respect of any Convertible Share(s) being redeemed.

4.2.1 Subject to the application of Available Profits as required by Article 4.1 and Article 4.2.2 any further Available Profits which the Company may determine to distribute in respect of any financial year (and subject to the Board recommending payment of the same)

shall be applied in paying to the holders of the Ordinary Shares a dividend (the "Ordinary Dividend") on each Ordinary Share.

4.2.2 In the event that the Board recommends the payment of an Ordinary Dividend, the Company shall, ipso facto and without resolution of the Board or of the Company in general meeting and notwithstanding anything contained in Regulations 102 to 105 (inclusive) and before application of any profits to reserve or for any other purpose other than the payment of any Preference Dividend and any Participating Dividend pay to the holders of the Convertible Shares a dividend (the "Advance CCRP Dividend") equal to the Ordinary Dividend declared on each Ordinary Share. The Board shall not recommend any Ordinary Dividend of an amount that would mean the Company has insufficient Available Profits to pay the corresponding Advance CCRP Dividend as well as such Ordinary Dividend.

4.3 Each Cumulative Dividend shall, provided the Company has sufficient Available Profits out of which to pay the same, ipso facto and notwithstanding that such dividend is expressed to be cumulative, automatically become a debt due from and immediately payable by the Company on any relevant payment date specified in Article 4.1. If and to the extent that the debt so constituted is not paid in full on the payment date concerned the unpaid amount shall carry interest at the Applicable Rate in respect of the period from and including the payment date concerned to the date of actual payment, calculated on a daily basis and compounded with half-yearly rests.

4.4 If in respect of any financial year the Company is unable to pay the Cumulative Dividends, or any of them, in full on the due date by reason of having insufficient Available Profits, then it shall on such date pay the same to the extent that it is lawfully able to do so and the shortfall together with the Dividend Supplement thereon shall be paid by the Company as soon thereafter as, and to the extent that, Available Profits have arisen in the following order of priority:-

4.4.1 first, in or towards paying off all arrears of the Preference Dividend and any Dividend Supplement in respect thereof;

4.4.2 second, in or towards redeeming all Preference Shares which have not been redeemed on or by the due date(s) for redemption specified in Article 8.3;

4.4.3 third, in or towards paying off all arrears of the Participating Dividend and any Dividend Supplement in respect thereof;

4.4.4 fourth, in or towards redeeming all Convertible Shares which have not been redeemed on or by the due date for redemption specified in Article 8.1;

4.4.5 fifth, in or towards paying off all arrears and accruals of the CCRP Dividend and any Dividend Supplement in respect thereof;

4.4.6 sixth, in or towards payment of the Preference Dividend and any Dividend Supplement in respect thereof due in respect of the financial year in which such Available Profits arise; and

4.4.7 seventh, in or towards the payment of the Participating Dividend and any Dividend Supplement in respect of the financial year in which such Available Profits arise.

4.5 The Cumulative Dividends shall be deemed to accrue from day to day as well after as before the commencement of a winding-up and shall therefore be payable by a liquidator in respect of any period after such commencement in priority to other claims or rights of members in respect of share capital.

4.6 The Company shall procure, so far as it lawfully may, that each of its subsidiaries and (so far as it is able) each of its subsidiary undertakings which has Available Profits shall from time to time declare and pay to the Company (or, as the case may be, the relevant Group Company that is its immediate holding company or parent undertaking) such dividends as are necessary to permit lawful and prompt payment by the Company of the Cumulative Dividends and any Dividend Supplement provided such subsidiary undertaking shall not be required to make payment of more than is lawful.

4.7 For so long as there are any 'B' Ordinary Shares in issue after 1 July, 2001 registered in the name of ECI Ventures Nominees Limited (or such other nominees appointed by the Investors) and beneficially owned by the Investors or members of the ECI Group, but prior to a Quotation or Sale, the Company shall require the Auditors at the Company's expense to prepare a certificate as to the Profit before Tax for each financial year of the Company commencing on or after 1 July, 2001 at the same time as the Accounts for that year are being audited and the Company shall cause a copy of such certificate to be delivered with the Accounts for the relevant financial year to ECI Ventures Limited.

4.8 In Regulation 103, the words from "If the share capital is divided" to the end of the Regulation shall be deleted.

4.9 Apart from bonus shares issued in accordance with Article 26, no dividends or other distributions shall be declared or paid on any Deferred Shares, unless the Company shall have failed to issue bonus shares in respect of any such shares and convert and consolidate any such shares into 'A' Ordinary Shares or 'C' Ordinary Shares (as the case may be) when required to do so by Article 26 whereupon the Deferred Shares in respect of which bonus shares should have been issued shall rank pari passu with the Ordinary Shares for any Ordinary Dividends paid pursuant to Article 4.2.1.

#### **RETURN OF CAPITAL RIGHTS**

5. On a return of capital on liquidation or otherwise (except on the redemption of shares of any class or the purchase by the Company of its own shares), the surplus assets of the Company remaining after the payment of its liabilities (including for the avoidance of doubt debts and interest thereon arising from non-payment of Cumulative Dividends and Dividend Supplements) shall be applied in the following order of priority:-

5.1 first, in paying, pari passu, to each holder of the Preference Shares in respect of each Preference Share of which it is the holder, and to each holder of the Convertible Shares in respect of each Convertible Share of which it is the holder, a sum equal to the Issue Price therefor together with a sum equal to any arrears,

deficiency or accruals of the Preference Dividend, CCRP Dividend and Advance CCRP Dividend (and any Dividend Supplement(s) in respect thereof) to be calculated down to and including the date of the return of capital and to be payable irrespective of whether such dividend would be unlawful by reason of there being insufficient Available Profits;

5.2 second, in paying to the holders of the issued 'B' Ordinary Shares in accordance with Article 4.1.2, a sum equal to any arrears, deficiency or accruals of the Participating Dividend (and any Dividend Supplement in respect thereof) calculated down to (and including) the date of the return of capital irrespective of whether such dividend would be unlawful by reason of there being insufficient Available Profits on the basis that the Profit before Tax for the financial year in question accrues at an equal rate per day over the period from the beginning of the financial year to (and including) the date of return of capital;

5.3 third, in paying to the holders of the issued Ordinary Shares a sum equal to the Issue Price therefor or in the case of a shortfall rateably in proportion to the Issue Price of such shares held by them respectively;

5.4 the balance of such assets (if any) shall be distributed amongst the holders of the Ordinary Shares and Convertible Shares (pari passu as if the same constituted one class of share) rateably in proportion to the nominal value of such shares held by them respectively.

As regards capital, the holders of the Deferred Shares shall on a liquidation or other return of capital in accordance with this Article 5 only be entitled to participate in the assets of the Company after the holders of the Convertible Shares and Ordinary Shares shall have received the sum of £1 million in respect of each share (other than Deferred Shares) held or deemed to be held by them, and then only to the extent of 1 penny per share, unless the Company shall have failed to issue bonus shares in respect of any such shares and to consolidate into 'A' Ordinary Shares or 'C' Ordinary Shares (as the case may be) when required to do so by Article 26 in which case the Issue Price of such Deferred Shares in



respect of which bonus shares should have been issued shall be deemed to 10p per share, and such shares shall be deemed to be Ordinary Shares for the purposes of Articles 5.3 and 5.4 above.

### **VOTING RIGHTS**

6.1 Subject to any rights or restrictions attached to any shares (and, in particular, to the provisions of this Article 6):-

6.1.1 on a show of hands, every member holding one or more Ordinary 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 shall have one vote; and

6.1.2 on a poll, every member holding one or more Ordinary 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 shall have one vote for each Ordinary Share of which he is the holder.

6.2 Subject to any rights or restrictions attached to any shares (and, in particular, to the provisions of this Article 6):-

6.2.1 on a show of hands, every member holding one or more Convertible 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 shall have one vote; and

6.2.2 on a poll, every member holding one or more Convertible 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 shall have one vote for each Convertible Share of which he is the holder.

6.3 Subject to Article 6.4 and 6.6, the Preference Shares and the Deferred Shares will entitle the holders thereof to be given notice of all general meetings but will not entitle the

holders to attend or vote at any general meeting but no separate notice need be given to any holder of Preference Shares or Deferred Shares who also holds any Ordinary Share or Convertible Share provided he is given notice in respect of such Ordinary Share or Convertible Share.

6.4 If at any time:-

6.4.1 the Company has failed to pay the Preference Dividend and/or any Dividend Supplement on any Preference Shares (as the case may be) within six months of the due date (irrespective of whether such dividend would be unlawful by reason of the Company having insufficient Available Profits); or

6.4.2 the Company has failed to redeem any Preference Shares within six months of the due dates in accordance with the requirements of Article 8.3 (irrespective of whether such redemption would be unlawful by reason of the Company having insufficient Available Profits); or

6.4.3 on a resolution proposed for the winding up of the Company, or on a resolution proposed for varying any of the rights attaching to the Preference Shares and/or 'B' Ordinary Shares (in each case not proposed, or consented in writing to, by the holder(s) of 'B' Ordinary Shares);

then the Preference Shares shall entitle each holder thereof, on a show of hands, to two votes, and on a poll, to two votes for each Preference Share of which it is the holder.

6.5 If at any time:-

6.5.1 a holder of shares is in material breach of the provisions of these Articles (including a transfer in breach of the provisions of these Articles); or

6.5.2 the Company has terminated any of the Service Agreements by reason of a repudiatory breach thereof by the employee concerned;

then the shares of which such person is the holder or to which such person is entitled, any shares formerly held by such person, which have been transferred by such person in breach of the provisions of these Articles or are held by any Permitted Transferee of such person, (and including in the case of the termination of the Service Agreements of Richard Evans the shares held by Ositech S.A. or its Permitted Transferees, and in the case of David Demetrius the shares held by Philtech S.A. or its Permitted Transferees, and in the case of Alistair Phillips shares held by Chrisalis (Trustees) Guernsey Limited or its Permitted Transferees) having been transferred to such Permitted Transferee by such person or any other Permitted Transferee of such person in accordance with Article 12, and any shares issued to, and still held by, (or by a permitted Transferee of) any person on the basis that such person(s) would have been (a) Permitted Transferee(s) of such person had such shares been issued directly to such person shall immediately cease to entitle the holder(s) thereof to voting rights (whether on a show of hands or on a poll and exercisable at a general meeting) and such disenfranchisement shall continue, in the case of Article 6.5.1, for so long as such breach subsists or, in the case of Article 6.5.2 until such time as such person or such person's Permitted Transferees ceases to be such a holder.

6.6 No voting rights shall attach to the Deferred Shares unless the Company shall have failed to issue bonus shares in respect of any such shares and consolidate any such shares into 'A' Ordinary Shares or 'C' Ordinary Shares (as the case may be) when required to do so by Article 26 whereupon each Deferred Share in respect of which bonus share(s) should have been issued share shall receive one vote pari passu with the Ordinary Shares.

### **CONVERSION RIGHTS**

7.1.1 Subject to Article 7.1.2, each holder of a Convertible Share may at any time prior to 1 September, 2004, give 30 days' written notice (a "Conversion Notice") to the Company that it wishes to convert some or all of its Convertible Shares then in issue into 'C' Ordinary Shares, following which the Convertible Shares specified in the Conversion Notice shall be converted into an equal number of 'C' Ordinary Shares.

7.1.2 In the event of a proposed Sale or Quotation, in which the holders of all Ordinary Shares and Convertible Shares are offered the opportunity to sell or obtain a Quotation for all of their shares in the Company, approved by at least 50 per cent. (by numbers of votes on a poll) of the holders of the 'A' Ordinary Shares, the 'B' Ordinary Shares, the 'C' Ordinary Shares and the Convertible Shares, each holder of a Convertible Share shall be obliged, at its own option, either to convert its Convertible Shares into 'C' Ordinary Shares upon the basis set out in this Article 7, or to have the Company redeem its Convertible Shares in accordance with Article 8.9, and if it chooses to convert shall be deemed to have served a Conversion Notice, provided that if such Sale or Quotation is not completed, there shall be no redemption or conversion and any Conversion Notice shall be revoked.

7.2 Conversion of the Convertible Shares shall be effected forthwith by the Company by, unless otherwise agreed by the holders of such Convertible Shares, if lawful, converting all the rights of the Convertible Shares to those of 'C' Ordinary Shares so that they are henceforth 'C' Ordinary Shares of 10p each with the same Issue Price as the previous Convertible Shares, but if that method is not lawful then in such other manner as the Board may determine and as the law may allow and in particular, but without prejudice to the generality of the foregoing, may be effected in accordance with the provisions below:-

7.2.1 the Board may determine to effect conversion by redeeming each Convertible Share falling to be converted on the relevant Conversion Date at a price equal to the Issue Price of such share either out of Available Profits or out of the proceeds of a fresh issue of 'C' Ordinary Shares, provided that the Board shall first have obtained all requisite authorities for the purpose of enabling them to allot 'C' Ordinary Shares which fall to be allotted pursuant to this Article 7 and/or to grant rights to subscribe therefor;

7.2.2 if the Board elects to redeem out of Available Profits, each Convertible Share falling to be converted shall confer on the holder thereof the right to subscribe for one 'C' Ordinary Share (each having the same nominal value as the other 'C' Ordinary Shares in issue immediately after the conversion) at such premium as shall represent the amount (if any) by which the redemption moneys exceed the nominal

amount of the 'C' Ordinary Shares to which the holder is so entitled. In any such case, each holder of Convertible Shares falling to be converted shall be deemed irrevocably to authorise and instruct the Board to apply the redemption moneys payable to him in subscribing for such 'C' Ordinary Shares at such premium (if any) as aforesaid;

7.2.3 if the Board elects to redeem out of the proceeds of a fresh issue of 'C' Ordinary Shares, each Convertible Share falling to be converted shall confer on the holder thereof the right to subscribe, and shall authorise the secretary of the Company (or any other person appointed for the purpose by the Board) to subscribe as agent on the holder's behalf (which authority shall include the right to borrow money), for one 'C' Ordinary Share at such premium (if any) as shall represent the amount by which the redemption moneys exceed the nominal amount of the 'C' Ordinary Share to which the holder is so entitled. In any such case, each holder of Convertible Shares falling to be converted shall be deemed irrevocably to authorise and instruct the Board to apply the redemption monies payable to him in payment to his said agent.

7.3 As soon as practicable before a Conversion Date, the Company shall give written confirmatory notice to each holder of Convertible Shares falling to be converted of the date on which conversion is due to be made and the place at which the certificates in respect of such shares are to be presented.

7.4 The 'C' Ordinary Shares resulting from the conversion shall for purposes of dividend, voting and return of capital be identical in all respects and form one class with and have the same nominal value as the other 'C' Ordinary Shares in the capital of the Company then in issue.

#### **REDEMPTION RIGHTS**

8.1 Provided that such shares have not been converted or redeemed on or prior to 30 September 2002, the Company shall redeem at the Issue Price:-

8.1.1 one third of the Convertible Shares then in issue, on 1 October 2002;

8.1.2 one half of the Convertible Shares then in issue, on 1 October 2003; and

8.1.3 all of the Convertible Shares then in issue, on 1 October 2004.

8.2 Subject to Article 8.3, the Company may, if so resolved by the Board, at any time on not less than one month's notice in writing served on a holder of Preference Shares out of any profits or moneys of the Company which may be lawfully applied for that purpose, redeem at the Issue Price in tranches of not less than 500,000 (or such lesser number if less than 500,000 remain unredeemed at any time) such total number of Preference Shares as is specified in such notice, provided that no such notice shall be served on any holder of Preference Shares other than Richard F Evans, Ositech S.A. or their Permitted Transferees, unless such a notice is also served on Richard F Evans, Ositech S.A. and their Permitted Transferees for redeeming an equivalent proportion of the Preference Shares held by Richard F Evans, Ositech S.A. and their Permitted Transferees.

8.3.1 Provided that such shares have not been redeemed on or prior to 30 September 1999, the Company shall redeem at the Issue Price:-

8.3.1.1 one third of the Preference Shares then in issue, on 1 October 1999;

8.3.1.2 one half of the Preference Shares then in issue, on 1 October 2000; and

8.3.1.3 all the Preference Shares then in issue, on 1 October 2001.

8.3.2 Notwithstanding the provisions of Articles 8.2 and 8.3.1 the Company shall redeem all the Preference Shares then in issue, at the Issue Price, immediately prior to either of a sale of the whole of the issued equity share capital of the Company or a Quotation.

8.4 If on the date fixed for redemption, by reason of the provisions of the Act the Company is unable to redeem in full the number of Convertible Shares or Preference Shares

(as the case may be) falling for redemption on that date, the Company shall, subject to Article 4.4, redeem firstly as many of the Preference Shares as can, consistently with such provisions, properly be redeemed and the balance as soon thereafter as such provisions shall permit, and secondly as many of the Convertible Shares as can, consistently with such provisions, properly be redeemed and the balance as soon thereafter as such provisions permit.

8.5 If the Company is at any time redeeming less than all the Preference Shares or Convertible Shares (as the case may be) for the time being in issue, the number of shares to be redeemed shall be apportioned between those holders of the Preference Shares or Convertible Shares (as the case may be) whose Preference Shares or Convertible Shares (as the case may be) fall to be redeemed pro rata according to the number of Preference Shares or Convertible Shares (as the case may be) held by them respectively at the date fixed for redemption.

8.6 Where Convertible Shares or Preference Shares (as the case may be) are to be redeemed in accordance with Articles 8.1, 8.2 or 8.3, the Company shall give to the holders of the Preference Shares or Convertible Shares (as the case may be) falling to be redeemed, prior notice in writing. The notice shall specify the particular Convertible Shares or Preference Shares (as the case may be) to be redeemed and the date fixed for redemption (or, if not then known, the expected date for redemption) and shall not be given less than 14 nor more than 42 days prior to the date fixed for redemption, and, in the case of a redemption pursuant to Article 8.3.2, if the proposed sale of the whole of the issued equity share capital of the Company, or Quotation, does not occur within one month of the expected date for redemption there shall be no redemption and the said notice shall be revoked.

8.7 On the date fixed for any redemption conversion or consolidation of any shares of the Company, each of the holders of such shares falling to be redeemed, converted or consolidated (as the case may be) shall be bound to deliver to the Company, at the Company's registered office (or such other place as the Board may reasonably determine), the certificate(s) for such shares concerned as are held by it (or an indemnity, in a form

reasonably satisfactory to the Board, in respect of any lost certificate) in order that the same may be cancelled. Upon such delivery, the Company, in the case of a redemption, shall pay to the holder (or, in the case of any joint holders, to the holder whose name stands first in the Company's Register of Members in respect of such shares) the amount due to it in respect of such redemption against delivery of a proper receipt for the redemption moneys, and in the case of a conversion or consolidation shall issue certificates for the shares into which the converted or consolidated shares are converted or consolidated, to such holders.

8.8 If any certificate delivered to the Company pursuant to Article 8.7 includes any shares not falling to be redeemed, converted or consolidated on the date fixed for such redemption, conversion or consolidation, a fresh certificate in respect of those shares shall be issued to the holder(s) thereof as soon as practicable thereafter (and, in any event, within 28 days thereafter).

8.9 There shall be paid on the redemption of each Preference Share or Convertible Share (as the case may be) an amount equal to:-

8.9.1 100 per cent of the Issue Price thereof; and

8.9.2 all arrears and accruals of the Preference Dividend or CCRP Dividend (as the case may be) in respect thereof (and any Dividend Supplement(s) in respect thereof), calculated down to (and including) the date of actual payment;

and such aggregate amount shall, subject to the Company having profits or other moneys which may be lawfully applied for such redemption, at that time become a debt due from and immediately payable by the Company to the holders of such Preference Shares or Convertible Shares (as the case may be). If and to the extent that the debt so constituted is not paid in full on the due date, the unpaid amount shall carry interest at the Applicable Rate in respect of the period from (and including) the date fixed for redemption down to (and including) the date of actual payment, calculated on a daily basis and compounded with half-yearly rests.



8.10 As from (and including) the date fixed for redemption, the Preference Dividend or CCRP Dividend in respect of any Preference Shares or Convertible Shares (as the case may be) falling to be redeemed on such date (and any Dividend Supplement(s) in respect thereof) shall cease to accrue except on any Preference Share or Convertible Shares (as the case may be) in respect of which, on due presentation of the certificate relating thereto or an appropriate indemnity in respect of a lost certificate, payment of the redemption moneys is refused or cannot be paid.

### **LIEN**

9. The lien conferred by Regulation 8 shall attach to all shares of any class which are not fully paid, whether he be the sole registered holder thereof or one of two or more joint holders. Regulation 8 shall be modified accordingly.

### **PROHIBITED TRANSFERS**

10.1 Notwithstanding any other provisions of these Articles:-

10.1.1 prior to the expiry of a period of 18 months from the date of the adoption of these Articles a holder of one or more 'A' Ordinary Shares, 'C' Ordinary Shares, 'D' Ordinary Shares, or Convertible Shares shall be prohibited from effecting a transfer (other than a transfer in accordance with Articles 12 or 13) of such shares without the prior written consent of the holders of the 'B' Ordinary Shares;

10.1.2 prior to the fifth anniversary of the adoption of these Articles no member may effect a transfer (other than a transfer in accordance with Articles 12 or 13) of any shares without the prior written consent of the Board, such consent not to be unreasonably withheld or delayed, PROVIDED that during the period of 18 months referred to in Article 10.1.1 above a holder of one or more 'B' Ordinary Shares, may transfer any shares to not more than 5 BVCA Members without any consent(s).

10.2 Notwithstanding any other provisions of these Articles, no transfer of any Deferred Shares shall be made by any member holding more than one class of shares in the Company unless such member also offers to transfer a proportionate number of shares of all other classes held by such member. For the avoidance of doubt, the provisions of this Article 10.2 shall apply to any transfer made or proposed to be made pursuant to Article 12.

### **PRE-EMPTION PROVISIONS**

11.1 Except in the case of a transfer which is a Permitted Transfer, every member (other than a holder of Preference Shares or 'B' Ordinary Shares making any transfer permitted by the proviso to Article 10.1) who wishes to transfer any shares ("the Vendor") shall give notice in writing of such wish to the Company ("the Transfer Notice").

11.2 Each Transfer Notice shall:-

11.2.1 relate to one class of shares only;

11.2.2 specify the number of shares which the Vendor wishes to transfer ("the Sale Shares");

11.2.3 specify the identity of the person to whom the Vendor intends to transfer the Sale Shares ("the Proposed Transferee");

11.2.4 specify the price per share ("the Sale Price") at which the Vendor is prepared to transfer the Sale Shares;

11.2.5 be deemed to constitute the Company the Vendor's agent for the sale of the Sale Shares at the Sale Price in the manner prescribed by these Articles; and

11.2.6 not be varied or cancelled (without the prior written consent of the Board).

A Vendor may provide in the Transfer Notice that unless purchasers are found for all or not

less than a specified number of the Sale Shares, he shall not be bound to transfer such shares (a "Minimum Transfer Condition") and any such provision shall be binding on the Company.

11.3 The Company shall, within seven days of receipt of a Transfer Notice, offer for purchase each of the Sale Shares to each member (other than the Vendor and his Permitted Transferees in such capacity) at the Sale Price and invite each of them to state in writing within 28 days of the date of despatch of such offer whether he is willing to purchase any, and if so how many, of the Sale Shares.

11.4 If the said members or any of them shall, within such 28 day period, apply for any of the Sale Shares, the Company shall allocate those Sale Shares which have been applied for:-

11.4.1 first, to all members holding shares of the same class as the Sale Shares (for which purpose 'C' Ordinary Shares and Convertible Shares shall be treated as one class) (if any) who have applied to purchase any of them and, if such members have applied in aggregate for a greater number than the Sale Shares, such applications shall be scaled down by the Company proportionately (as nearly as practicable) according to the number of shares of the same class held by them at the date of the offer; and

11.4.2 second, (if any of the Sale Shares shall remain after the applicants referred to in Article 11.4.1 have been satisfied in full), in the case of Sale Shares which are 'A' Ordinary Shares or 'A' Deferred Shares to members holding 'C' Ordinary Shares and Convertible Shares, in the case of Sale Shares which are 'C' Ordinary Shares, 'C' Deferred Shares or Convertible Shares to members holding 'A' Ordinary Shares, and in the case of Sale Shares which are 'B' Ordinary Shares, Preference Shares or 'D' Ordinary Shares rateably to members holding 'A' Ordinary Shares, 'C' Ordinary Shares or Convertible Shares, who have applied to purchase any of them and, if such members have applied in aggregate for a greater number than the Sale Shares, such application shall be scaled down by the Company proportionately (as nearly as practicable) according to the number of shares (other than Preference Shares,

Deferred Shares and shares of the same class as the Sale Shares) held by them at the date of offer; and

11.4.3 thirdly (if any of the Sale Shares shall remain after the applicants referred to in Article 11.4.1 and 11.4.2 have been satisfied in full), to members holding shares of any different class or classes of shares to the Sale Shares who have applied to purchase any of them and, if such members have applied in aggregate for a greater number than the Sale Shares, such application shall be scaled down by the Company proportionately (as nearly as practicable) according to the number of shares (other than Preference Shares, Deferred Shares and shares of the same class as the Sale Shares) held by them at the date of the offer,

Provided that, unless the Board otherwise consents, Deferred Shares shall only be capable of transfer pursuant to Article 11.4.1 and only to members who are employees or directors of the Company or any Group Company or their Permitted Transferees, and unless the Board otherwise consents any such Deferred Shares subject to a Transfer Notice but not allocated pursuant to Article 11.4.1 shall be redeemed at a price of 1p per 1000 Deferred Shares (and the redemption price from a holding the aggregate price for which is not a multiple of 1p will be rounded downwards to the nearest penny but the minimum aggregate redemption price for the number of Shares redeemed from any member and his Permitted Transferees shall be 1p).

11.5 If and to the extent that any of the Sale Shares are not applied for by members of the Company within the said period of 28 days, the Company may, if so resolved by the Board, by notice in writing (given at any time within the period of seven days after the expiry of the said 28 day period) invite any person or persons selected by the Board to apply for any of the Sale Shares not applied for by the members of the Company at the Sale Price. If a person or persons so selected by the Board shall apply within seven days of such invitation for any Sale Shares, the Company shall allocate to him or them such number of Sale Shares as it in its absolute discretion decides, subject always to the provisions of Article 11.6.

11.6 No offeree of the Sale Shares shall be obliged to take more than the maximum number of Sale Shares that he has indicated to the Company he is willing to purchase. An

allocation of Sale Shares made by the Company pursuant to Article 11.4 or Article 11.5 shall constitute the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them.

11.7 Notwithstanding the provisions of Articles 11.4 and 11.5 an allocation of Sale Shares shall not be binding on a Vendor unless and until the Company has found purchasers for the minimum number specified in any Minimum Transfer Condition or the Vendor has agreed otherwise in writing.

11.8 The Company shall forthwith upon allocating any Sale Shares give notice in writing ("a Sale Notice") to the Vendor and to each person to whom Sale Shares have been so allocated, of the number of Sale Shares allocated to him and the aggregate price payable therefor. Completion of the sale and purchase of those Sale Shares in accordance with the Sale Notice shall take place within seven days after the date of the Sale Notice whereupon the Vendor shall, upon payment of the price due in respect thereof, transfer those Sale Shares specified in the Sale Notice to the person or persons to whom they have been allocated and deliver the relative share certificates.

11.9 If in any case the Vendor, having become bound as aforesaid, makes default in transferring the Sale Shares, the Company may receive such purchase money and may nominate some person to execute an instrument of transfer of such Sale Shares in the name and on behalf of the Vendor and thereafter, when such instrument has been duly stamped, the Company shall cause the name of the proposed transferee to be entered in the Register of Members as the holder of such Sale Shares and where applicable shall hold the purchase money in trust (without interest) for the Vendor. The receipt of the Company for the purchase money shall be a good discharge to the proposed transferee (who shall not be bound to see to the application thereof) and, after his name has been entered in the Register of Members in purported exercise of the aforesaid powers, the validity of the proceedings shall not be questioned by any person.

11.10 In the event of all (or the minimum number specified in any Minimum Transfer Condition) of the Sale Shares not being sold under the preceding paragraphs of this Article the Vendor, may at any time within three calendar months after receiving confirmation from

the Company that the pre-emption provisions herein contained have been exhausted, transfer any Sale Shares not sold to the Proposed Transferee at any price not less than the Sale Price, provided that:-

11.10.1 the Board shall be entitled to refuse registration of the Proposed Transferee if he is, or is believed to be a nominee for, a person reasonably considered by the Board to be a competitor or connected with a competitor of the business of the Group; and

11.10.2 any such sale shall be a bona fide sale and the Board may require to be satisfied (in such manner as it may reasonably think fit) that the Sale Shares are being sold in pursuance of a bona fide sale for not less than the Sale Price without any deduction, rebate or allowance whatsoever to the Proposed Transferee and if not so satisfied may refuse to register the instrument of transfer.

11.11 Any Ordinary Shares transferred pursuant to a Transfer Notice under the provisions of this Article 11 by a holder of such shares to:-

11.11.1 a member or members holding 'A' Ordinary Shares shall be redesignated as an 'A' Ordinary Share;

11.11.2 a member or members holding 'B' Ordinary Shares shall be redesignated as a 'B' Ordinary Share;

11.11.3 a member or members holding Convertible Shares and/or 'C' Ordinary Shares shall be redesignated as a 'C' Ordinary Share; and

11.11.4 a member or members holding 'D' Ordinary Shares shall be redesignated as a 'D' Ordinary Share.

and in each case shall be deemed to have an Issue Price equal to the Issue Price of the relevant Ordinary Share.

**PERMITTED TRANSFERS**

12. A member or members may at any time transfer any share:-

12.1 to any person with the prior written consent of the holders of the 'A' Ordinary Shares, 'B' Ordinary Shares, 'C' Ordinary Shares and Convertible Shares;

12.2 to a Related Person of that member;

12.3 if such member holds such share or shares as a result of a transfer made after the date of the adoption of these Articles by a person in relation to whom such member is a Permitted Transferee to the person who originally transferred such shares or any other Permitted Transferee, of such original transferor;

12.4 to a trust the beneficiaries of which are that member, his or her Related Persons, his or her children under the age of 18, his or her grandchildren or any of them (notwithstanding that one or more charities may be named as residuary beneficiaries of such trust) or to a corporate body controlled by such a trust;

12.5 if trustees of any trust referred to in Article 12.4:-

12.5.1 upon any change of trustees, to the new or remaining trustee or trustees for the time being of such trust; and

12.5.2 to the settlor and/or any of the Related Persons of the settlor on their becoming entitled to the same under the terms of the trust;

12.6 to the trustees of a trust established to encourage or facilitate the holding of shares in the Company by bona fide employees of the Company or any other Group Company or any section of such employees;

12.7 in the case of a member being a trustee of any trust referred to in Article 12.6:

12.7.1 upon any change of trustees, to the new or remaining trustee or trustees for the time being of such trust; and

12.7.2 to any bona fide employees of the Company or any other Group Company on their becoming entitled to the same under the terms of the trust;

12.8 if a member is a company, to any holding company of which that company is a wholly-owned subsidiary or to a wholly-owned subsidiary of that member or (in the case of a member holding 'A' Ordinary Shares, 'C' Ordinary Shares, Deferred Shares or Convertible Shares) to any person or a trust of the type referred to in Article 12.4 who owns or controls that company;

12.9 if a member is an individual, with the consent of the Board, to any company owned or controlled by that individual.

12.10 Holders of Convertible Shares may, at any time within three months of the date of adoption of these Articles, transfer a maximum aggregate of 200,000 Convertible Shares to any person(s) nominated by them.

12.11 Any holder of 'B' Ordinary Shares may, at any time, transfer any shares to any member of the ECI Group provided that if such transfer is proposed to be made to any person described within paragraph (b) of the definition of ECI Group above (or a nominee for such a person), such transfer may only be made on a distribution in specie on a winding up.

12.12 For the purpose of ensuring that a transfer of shares is duly authorised hereunder, the Board may, and shall if so requested by any holder of 'B' Ordinary Shares from time to time, require:-

12.12.1 any member; or

12.12.2 any person named as transferee in any transfer lodged for



registration; or

12.12.3 such other person as the Board or any such holder may reasonably believe to have information relevant to such purpose;

to furnish to the Company such information and evidence as the Board may think fit regarding any matter which they deem relevant to such purpose including the names, addresses, ages and interests of all persons respectively having interests in the shares from time to time registered in the member's name and the Board may refuse to register the relevant transfer until it has received such information and evidence.

### LEAVERS

13.1 Subject to Article 13.2, whenever any person becomes a Leaver, the Company will within the period commencing on the relevant Leaving Date and expiring at midnight on the first anniversary of such date:-

13.1.1 serve one or more (as the case may be) Compulsory Purchase Notices on behalf of the Leaver and/or the Leaver's Permitted Transferee(s) in respect of all (or if so agreed by the Leaver, some) of the Leaver's Shares; or

13.1.2 serve one or more (as the case may be) notices on the Leaver and/or the Leaver's Permitted Transferee(s) notifying it/them that it/they may retain all or some of the Leaver's Shares; or

13.1.3 serve one or more (as the case may be) notices on the Leaver and/or the Leaver's Permitted Transferee(s) notifying it/them that the provisions of Article 13.4 shall apply in respect of all or if so agreed by the Leaver some of the Leaver's Shares notwithstanding the fact that such notice is served prior to midnight on the first anniversary of the Leaving Date;

and the references to the "Leaver's Shares" in Article 13.3 shall be construed as references to such number of the Leaver's Shares in respect of which the relevant notice has been

served.

13.2 Whenever a person becomes a Leaver:-

13.2.1 before the second anniversary of the date of adoption of these Articles the Company may only serve a Compulsory Purchase Notice in accordance with Article 13.1.1 in circumstances where the Leaver is not a "Good Leaver". For the purposes of these Articles a "Good Leaver" means William Hibbert or any person who becomes a Leaver or a Leaver's Permitted Transferee by reason of incapacity, ill health, his own or some other person's death or circumstances constituting wrongful or unfair dismissal (whether or not a claim for unfair dismissal could be brought);

13.2.2 after the second anniversary of the date of adoption of these Articles, the Company may only serve a Compulsory Purchase Notice in accordance with Article 13.1.1 in circumstances where the Company has terminated the employment of the Leaver by reason of a repudiatory breach by the employee concerned of his contract of employment which justified summary dismissal without payment of compensation.

13.3 Whenever a Compulsory Purchase Notice is served in accordance with Article 13.1.1:-

13.3.1 the Company will, within five days of the date of service of the Compulsory Purchase Notice, serve notice on the relevant holder(s) of the Leaver's Shares stating that a Compulsory Purchase Notice has been served and notifying such holder(s) of the expected date for the purchase of the Leaver's Shares (provided that such notice shall be served not less than two clear days prior to the date upon which actual completion of the purchase is expected to take place);

13.3.2 the Company shall effect the purchase of the Leaver's Shares in accordance with such lawful method as the holders of the 'B' Ordinary Shares shall direct in writing provided that any fresh issue of shares used to finance such purchase shall be made in accordance with the pre-emption provisions contained in these Articles but pro-rata to holdings of all the holders of 'A' Ordinary Shares, 'B' Ordinary

Shares, 'C' Ordinary Shares and Convertible Shares and not just to the holders of shares of one class. Relevant shareholder approval for the purchase of the Leaver's Shares must be obtained within 90 days of the date on which the Company serves the Compulsory Purchase Notice or such later date as the Board shall agree before or after the expiry of such period and completion of the purchase of the Leaver's Shares by the Company must take place within seven days of the date upon which the Company becomes lawfully able to purchase the Leaver's Shares in accordance with the Act, failing which the Compulsory Purchase Notice shall be deemed to have been withdrawn;

13.3.3 the price to be paid for each of the Leaver's Shares will be 100 per cent. of the lower of the Issue Price and the price determined pursuant to Article 13.3.4 provided that any holder of Convertible Shares, 'C' Ordinary Shares and/or Preference Shares shall be entitled to be paid 100 per cent. of the Issue Price;

13.3.4 if for the purposes of Article 13.3.3 or 13.4.3 the market value of a Leaver's Shares needs to be determined it shall be determined by the Auditors (or, at the discretion of the Board, any merchant bank) and shall be certified by them to the Company as representing, at such date, in their opinion the market value thereof on the basis of the sale as between a willing vendor and a willing purchaser of the entire issued share capital of the Company in the open market taking into account all such factors as the Auditors (or merchant bank) may deem relevant including, but not by way of limitation the latest available results of the Company, the trading conditions then current, the then existing strength of the management of the Company and the Company's prospects, but not the existence of the provisions of Articles 10 and 13 or that the shares have been disenfranchised (if appropriate), and in making such valuation the Auditors (or merchant bank) shall allocate to the particular class of Leaver's Shares that proportion of the market value of the entire class of shares to which such Leaver's Shares belong as equals the proportion that the Leaver's Shares bears to such entire class of shares (for which purposes the 'A' Ordinary Shares, the 'B' Ordinary Shares, the Convertible Shares, the 'C' Ordinary Shares and the 'D' Ordinary Shares shall be regarded as a single class of shares). The Auditors (or merchant bank) shall certify a market value for each Leaver's

Shares as soon as possible after being instructed by the Company. In so certifying the Auditors (or merchant bank) shall be deemed to be acting as experts and not arbitrators and the Arbitration Acts 1950 to 1979 shall not apply. The certificate of the Auditors (or merchant bank) shall, in the absence of manifest error, be final and binding. The cost of obtaining such certificate shall, subject to complying with the Act, be borne by the Company;

13.3.5 completion of the sale and purchase of the Leaver's Shares shall take place at the registered office of the Company (or at such other place as the Board may reasonably determine) and, at completion, the Leaver and/or the Leaver's Permitted Transferee(s) shall deliver (or procure the delivery of) a duly signed stock transfer form or forms in respect of the Leaver's Shares together with the relative share certificates or, if such certificate is lost, together with a form of indemnity for lost certificate in a form reasonably acceptable to the Board. Upon receipt of the duly signed stock transfer form or forms and the relevant share certificates the Company shall pay the aggregate purchase price for the Leaver's Shares to the relevant holder thereof by way of a banker's draft; and

13.3.6 if the Leaver and/or the Leaver's Permitted Transferee(s) fails to attend completion of the sale of the Leaver's Shares or attends completion but does not present duly executed stock transfer forms in respect of the Leaver's Shares and relative share certificates and/or indemnities for any lost certificates, the Company may receive the purchase money due to the Leaver and/or the Leaver's Permitted Transferee(s) (as the case may be) and may nominate some person to execute an instrument of transfer of the Leaver's Shares in the name of and on behalf of the Leaver and/or the Leaver's Permitted Transferee(s) (as the case may be). When such instrument has been duly presented for stamping the Company shall cause the name of the Leaver and/or any Leaver's Permitted Transferee(s) (as the case may be) to be deleted from the Register of Members and the Leaver's Shares to be cancelled and, where applicable, shall hold the purchase money in trust without interest for the Leaver and/or the Leaver's Permitted Transferee(s) (as the case may be). After the name(s) of the Leaver and/or the Leaver's Permitted Transferee(s) (as the case may be) have been deleted from the Register of Members in purported exercise of

the aforesaid powers the validity of the proceedings shall not be questioned by any person save in the case of manifest error.

13.4 If at midnight on the first anniversary of the relevant Leaving Date, the Company has not served (a) notice(s) pursuant to Articles 13.1.1 or 13.1.2 in respect of all the Leaver's Shares or if, at any time prior to such time and date, the Company serves (a) notice(s) pursuant to Article 13.1.3, the Leaver and the Leaver's Permitted Transferee(s) shall be deemed to have served a Transfer Notice in respect of all of the Leaver's Shares then held by the Leaver and the Leaver's Permitted Transferee(s) (or, in the case of a notice served pursuant to Article 13.1.3, such lesser number of Leaver's Shares as the Leaver may agree) and the provisions of Articles 11.2 to 11.11 (inclusive) shall apply mutatis mutandis to any such Transfer Notice, provided that for these purposes:-

13.4.1 the Sale Shares shall comprise the above-mentioned shares;

13.4.2 no Proposed Transferee shall be specified in the Transfer Notice; and

13.4.3 the Sale Price shall be the higher of market value of the Sale Shares, such market value to be calculated on the basis set out in Article 13.3.4, and the Issue Price of the Sale Shares.

13.5 For the purpose of determining whether or not circumstances have arisen where the provisions of this Article 13 would apply, the Board may, and shall if so reasonably required by any holder of 'B' Ordinary Shares from time to time, require:-

13.5.1 any member or the legal personal representative of any deceased member;  
or

13.5.2 any person named as transferee in any transfer lodged for registration; or

13.5.3 such other person as the Board or any such holder may reasonably believe to have information relevant to such purpose;

to furnish to the Company such information and evidence as the Board may think fit regarding any matter which they deem relevant to such purpose including the names, addresses, ages and interests of all persons respectively having interests in the shares from time to time registered in the member's name and if such information and evidence is not so furnished, or if as a result of such information and evidence the Board is reasonably satisfied that an event giving rise to a Leaver has occurred, the provisions of this Article 13 shall apply.

### **TRANSFER OF A SIGNIFICANT INTEREST**

14.1 Without prejudice to the provisions of Articles 10, 11 or 13, no sale or transfer of any shares or series of related sales or transfers of shares (the "Specified Shares"), which if made and registered would result in a person or persons acting in concert, not being persons to whom the 'A' Ordinary Shares, 'B' Ordinary Shares and Convertible Shares listed in Article 3 are originally issued (or their Permitted Transferees), obtaining a "Significant Interest" (as defined in Article 14.2.1) in the Company, shall be made or registered unless before the transfer is made the proposed transferee(s) has/have offered (with such offer remaining open for at least 4 weeks) to purchase all of the shares in issue at the Specified Price (as defined in Article 14.2.3).

14.2 For the purpose of this Article 14:-

14.2.1 the expression "Significant Interest" shall mean shares conferring in the aggregate 30 per cent. or more of the total voting rights conferred by all the equity share capital of the Company for the time being in issue to vote at all general meetings;

14.2.2 the expressions "transfer" and "transferee(s)" shall include (without prejudice to the generality of Article 2.6) respectively the renunciation of a renounceable letter of allotment and renouncee under any such letter of allotment;

14.2.3 the expression "the Specified Price" shall mean the consideration per share at least equal to the aggregate of (1) that offered or paid or payable by the proposed

transferee(s) for each of the Specified Shares; (2) the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of the Specified Shares, which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Specified Shares; and in the event of disagreement as to the amount of the Specified Price, its calculation shall be referred to an umpire (who shall act as an expert and not as an arbitrator) nominated by the parties concerned (or, in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales upon the application of any such parties) whose decision shall be final and binding;

14.2.4 the expression "persons acting in concert" shall mean any persons who pursuant to an agreement or understanding (whether formal or informal) actively co-operate with each other through the acquisition by any of them of shares in the Company to obtain in aggregate a Significant Interest in the Company and, without prejudice to the generality of the foregoing, the following persons shall for the purposes of this Article be deemed to be persons acting in concert with a transferee(s) namely:-

14.2.4.1 if a transferee is a body corporate, any director, or shareholder in the transferee or any person connected with such director or shareholder;

14.2.4.2 any person who is connected with the transferee; and

14.2.4.3 if the transferee is a body corporate, any body corporate which in relation to the transferee is a subsidiary or subsidiary undertaking, a holding company or a fellow subsidiary or subsidiary undertaking of such holding company (where "holding company" includes any company of which the transferee is a subsidiary undertaking).

### **ANNUAL GENERAL MEETINGS**

15.1 The Board shall procure that the Annual General Meeting in respect of each financial year of the Company shall be convened to take place not later than 60 days after the date of the Auditors' report relating to the Accounts for the relevant financial year.

15.2 The Board shall cause to be laid before each such Annual General Meeting the Accounts for the relevant financial year, together with the respective reports thereon of the directors' and the Auditors'.

### **PROCEEDINGS AT GENERAL MEETINGS**

16.1 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and, subject to Article 16.2, for its duration. Three persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation and at least one of whom shall be a holder or a proxy or duly authorised representative of a holder of an 'A' Ordinary Share, at least one of whom shall be a holder or a proxy or a duly authorised representative of a holder of a 'B' Ordinary Share, and at least one of whom shall be a holder or a proxy or duly authorised representative of a holder of either a 'C' Ordinary Share or a Convertible Share, shall be a quorum.

16.2 If within half an hour from the time appointed for the meeting a quorum is not present, or if during a meeting a quorum ceases to be present for a period exceeding 10 minutes, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the members present may decide and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the member or members present shall constitute a quorum.

16.3 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded at any general meeting by the Chairman, or by any member present in person or by proxy and entitled to vote or by a duly



authorised representative of a corporation which is a member entitled to vote.

16.4 The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors must be delivered to the registered office of the Company not less than 48 hours before the time appointed for the holding of the meeting or to the place of the meeting at any time before the time appointed for the holding of the meeting and Regulation 62 shall be modified accordingly.

16.5 When a poll has been demanded it shall be taken immediately following the demand.

16.6 The Chairman of the meeting shall not, in the case of an equality of votes, whether on a show of hands or on a poll, be entitled to exercise any second or casting vote.

16.7 With respect to any such resolution in writing as is referred to in Regulation 53 of Table A, in the case of a corporation which holds a share, the signature of any director or the secretary thereof shall be sufficient for the purposes of Regulation 53.

#### **NOMINATED DIRECTORS**

17.1 The holders for the time being of more than 50 per cent in nominal value of each of (a) the 'B' Ordinary Shares, (provided that in the first 18 months after the date of adoption of these Articles this right shall vest in the Investors (other than Investors who are not, or are not nominees for, ECI 5, ECI 5 'B' or ECI Developments 3) instead) and (b) (taken together) the Convertible Shares and 'C' Ordinary Shares, shall separately have the right at any time and from time to time to appoint one person to be a director of the Company and the holders for the time being of more than 50 per cent. in nominal value of the issued 'A' Ordinary Shares shall have the right at any time and from time to time to appoint two persons to be directors of the Company (a "Nominated Director") and, in relation to such right, the following provisions shall have effect:-

17.1.1 any such appointment shall be effected by notice in writing to the Company signed by such holders who may in like manner at any time and from time to time

remove from office any director so appointed and appoint any person in place of any director so removed or otherwise vacating office;

17.1.2 each such appointment and removal shall take effect forthwith upon such notice being received by the Company and the provisions of Regulation 76 shall be read subject to this Article 17; and

17.1.3 only the shares held by the class(es) of shareholders with the right to appoint the relevant Nominated Director shall confer upon the holders thereof the right to vote upon any resolution pursuant to section 303 of the Act for the removal of such Nominated Director for the time being holding office pursuant to this Article.

17.2 Notice of meetings of the Board shall be served on each Nominated Director at the address notified by him to the Company for this purpose whether he shall be present in or absent from the United Kingdom and if he has appointed an alternate director or such alternate director at the address notified by such alternate director to the Company.

#### **NUMBER OF DIRECTORS**

18. The number of directors (including the Nominated Directors but excluding alternate directors) shall not be less than three nor more than eight.

#### **ALTERNATE DIRECTORS**

19. A director (other than an alternate director) may appoint any other director or, in the case of the Nominated Director, any other person whomsoever or, in the case of any other director, any other person approved by resolution of the directors and willing to act, to be an alternate director and may remove from office an alternate director so appointed.

20. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.

21. Any director of the Company who is appointed an alternate director shall be entitled

to vote at a meeting of the directors on behalf of the director so appointing him as distinct from the vote to which he is entitled in his own capacity as a director of the Company and shall also be considered as two directors for the purpose of making a quorum of directors unless he is the only director present.

### **PROCEEDINGS OF DIRECTORS**

22. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Any three directors (who shall at all times include the Nominated Directors or their alternates) shall constitute a quorum and a quorum of directors must be present throughout all meetings of directors. The Chairman of the meeting shall not have a second or casting vote, in the case of an equality of votes, and the fifth sentence of Regulation 88 shall not apply to the Company.

23. The directors may hold meetings by telephone and the provisions of these Articles shall apply, mutatis mutandis, to any such meeting.

23A. No director may vote on any matter related to the transfer of shares held by him or his Permitted Transferees. So long as Article 6.5 applies no director who is a holder of any of the shares so disenfranchised or whose Permitted Transferees are such holders may vote at any meeting of directors or be required to give effect to any written resolution of the Board.

### **RETIREMENT BY ROTATION**

24. The directors shall not be liable to retire by rotation and the words "by rotation or otherwise" and "and deemed to have been reappointed" in Regulation 67, "other than a director retiring by rotation" in Regulation 76, "(other than a director retiring by rotation at the meeting)" in Regulation 77, "and may also determine the rotation in which any additional directors are to retire" in Regulation 78, the last two sentences of Regulation 79 and the last sentence of Regulation 84 shall not apply to the Company.

### **BORROWING POWERS**

25. The directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and assets (present or future) and uncalled capital and, subject to the Act, to issue debentures and other securities, whether outright or as collateral security, for any debt, liability or obligation of the Company or of any third party.

### **IRR**

26.1 If on an "Exit" (being a Quotation or Sale or (at the option of more than 50 per cent of the holders of the 'A' Ordinary Shares together with more than 50 per cent (taken together) of the holders of the Convertible Shares and the 'C' Ordinary Shares) or the disposal outside the ECI Group of all the 'B' Ordinary Shares, (whether in a single transaction or over a series of transactions, whether or not related) after the second anniversary of the date of adoption of these Articles) there is an Excess (as defined below), the conversion ratchet described in this Article 26 will be carried out immediately prior to such Quotation or Sale.

26.2.1 Whether there is an "Excess" shall be determined by finding the notional "exit value" on the "Exit" in respect of the 'B' Ordinary Shares and any other shares of the kinds referred to in Article 26.3.2 and 26.3.10 below (but not any 'B' Preference Shares or other redeemable shares in either case that are redeemed) which will deliver a 40 per cent IRR (as defined below) with the Relevant Cashflows and then deducting that notional exit value from the actual "Exit Value" (as defined below) for such shares and the result of such deduction

(if positive) shall be the "Excess". If the result of so deducting such notional exit value is a negative amount, this Article 26 shall not operate.

26.2.2 For the purposes of this Article 26, IRR shall mean such discount rate which when applied to the Relevant Cashflows on a monthly basis gives a net present value of zero.

26.2.3 In this Article 26 "ECI Group" shall have the meaning defined in paragraphs (a) and (so far as it relates to persons in (a)) (c) but not (b) or (so far as it relates to persons in (b)) (c) of the definition of ECI Group in Article 2.1.

26.3 "Relevant Cashflows" shall mean the following sums expressed as negative cashflows:

1. £4.4 million and any future subscription before such Quotation or Sale for 'B' Ordinary Shares and Preference Shares by the Investors or any other member of the ECI Group or any person who subscribed for shares who would have been a Permitted Transferee of the Investors or any other member of the ECI Group (for the purpose of this Article 26 such Preference Shares are referred to as 'B' Preference Shares);
2. the amount subscribed at any time before such Quotation or Sale for other kinds of shares in the Company by the Investors or any other member of the ECI Group or any person who subscribed for shares who would have been a Permitted Transferee of the Investors or any other member of the ECI Group;
3. loans made at any time before such Quotation or Sale to the Company or any subsidiary undertaking of the Company by the Investors or any other member of the ECI Group;

PLUS the following sums expressed as positive cashflows:

4. dividends (including Dividend Supplements and interest in respect of late dividends) actually paid at, or at any time before, such Quotation or Sale in respect of the 'B' Preference Shares (together with dividends which would have been payable had the Investors subscribed in full for 4,040,000 Preference Shares on the date of adoption of these Articles) and the 'B' Ordinary Shares and any former 'B' Ordinary Shares which have been redesignated under Article 11.11 and any shares of the kind described in paragraph 2 above, including associated tax credits calculated on the basis that Section 231(1) ICTA applies;
5. interest actually paid at, or at any time before, such Quotation or Sale in respect of loans within paragraph 3 above, including the amount of any withholding tax that has to be deducted in respect of such interest;
6. repayments in whole or in part of loans within paragraph 3 above;
7. payments for redemption of the 'B' Preference Shares or any redeemable shares issued to persons as described in paragraph 2 above (including any premiums and any accrued dividends);
8. the value at which the Company may have repurchased any 'B' Ordinary Shares or 'B' Preference Shares or any shares of the kind described in paragraph 2 above or any redesignated former "B" Ordinary Shares as referred to in paragraph 4 above;
9. the redemption value of any 'B' Preference Shares not redeemed at or at any time before such Quotation or Sale;
10. the Quotation/Sale Value of the 'B' Ordinary Shares or any shares transferred pursuant to Article 11 which have been redesignated as other than 'B' Ordinary Shares and any shares of the kind described in paragraph 2 above in issue ("the Exit Value");

whether or not such shares are held by the Investors or any member of the ECI Group or any Permitted Transferee thereof at the time of such positive Relevant Cashflows.

The Ratchet shall operate as follows:

26.4 'X' 'B' Ordinary Shares will be redeemed at a price of 1p per 1000 shares. 'X' has the meaning and value described in Article 26.8. (The redemption price for a holding the aggregate price for which is not a multiple of 1p will be rounded downwards to the nearest penny but the aggregate minimum redemption price for the number of shares redeemed under this Article 26.4 will be 1p).

26.5 All Deferred Shares except 'Y' 'A' Deferred Shares and 'Z' 'C' Deferred Shares will be redeemed at a price of 1p per 1000 shares, where 'Y' and 'Z' have the meanings and values described in Article 26.8. (The aggregate redemption price for a holding, the aggregate price for which is not a multiple of 1p, will be rounded downwards to the nearest penny but the minimum redemption price for the number of shares redeemed under this Article 26.5 will be 1p).

26.6 9,999 'A' Deferred Shares will be issued as fully paid bonus shares for each 'A' Deferred Share remaining after the operation of Article 26.5. The 'A' Deferred Shares will then be consolidated into 'A' Ordinary Shares of 10p each at a rate of one 'A' Ordinary Share of 10p per 10,000 'A' Deferred Shares of 0.001p each.

26.7 9,999 'C' Deferred Shares will be issued as fully paid bonus shares for each 'C' Deferred Share remaining after the operation of Article 26.5. The 'C' Deferred Shares will then be consolidated into 'C' Ordinary Shares of 10p each at a rate of one 'C' Ordinary Share of 10p per 10,000 'C' Deferred Shares of 0.001p each.

26.8 'X', 'Y' and 'Z' shall be determined as follows:-

1. 'X' shall be a number of 'B' Ordinary Shares representing 60 per cent. of the Conversion Pool (as defined below);

2. 'Y' shall be a number of 'A' Deferred Shares representing two-thirds of 'X';
3. 'Z' shall be a number of 'C' Deferred Shares representing one-third of 'X'.

26.9 The "Conversion Pool" will be the number of 'B' Ordinary Shares obtained by dividing the Excess by the value of a 'B' Ordinary Share. For this purpose, the value of a 'B' Ordinary Share shall be determined by dividing the Quotation/Sale Value of the Company by the aggregate of the numbers of issued shares in the Company and using the following assumptions:-

1. All issued shares in the Company have the same rights and value per share;
2. All Convertible Shares in issue before operation of the Conversion Ratchet have been converted already into issued 'C' Ordinary Shares;
3. 'A' Deferred Shares and 'C' Deferred Shares do not exist;
4. Any other shares in the Company issued to the Investors or any other member of the ECI Group or any person who subscribed for shares who would have been a Permitted Transferee of the Investors or any other member of the ECI Group apart from Preference Shares are deemed to be 'B' Ordinary Shares;
5. All Preference Shares have previously been redeemed or repurchased at par.

26.10 The 'A' Deferred Shares, 'B' Ordinary Shares and 'C' Deferred Shares that are to be redeemed or receive bonus shares (as the case may be) under this Article 26 shall be selected by allocating the redemption and bonus shares (as the case may be) amongst the holders of shares of the relevant class pro rata to their holdings of such shares, provided that 'A' Deferred Shares not held by a person who was an employee or director of the Company at the date hereof or his Permitted Transferee and 'C' Deferred Shares not held by an employee or director of the Company or his Permitted Transferee shall be disregarded.



26.11 The bonus shares referred to in Articles 26.6 and 26.7 will, so far as lawfully possible, be paid up using the capital redemption reserve of the Company created as a result of the redemptions carried out under Articles 26.4 and 26.5.

### THE SEAL

27.1 In addition to its powers under section 36A of the Act, the Company may have a seal and the Board shall provide for the safe custody of such seal. The seal shall only be used by the authority of the Board or of a committee of the Board authorised by the Board. The Board shall determine who may sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Director and shall be countersigned by the secretary or by a second Director or by some other person appointed by the Board for the purpose.

27.2 All forms of certificates for shares or debentures or representing any other form of security (other than letters of allotment or scrip certificates) shall be issued executed by the Company but the Board may by resolution determine either generally or in any particular case that any signatures may be affixed to such certificates by some mechanical or other means or may be printed on them or that such certificates need not bear any signature.

27.3 The Company may have:-

27.3.1 an official seal kept by virtue of section 40 of the Act; and

27.3.2 an official seal for use abroad under the provisions of the Act, where and as the Board shall determine.

### INDEMNITY

28. Every Director or other officer or auditor of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities (including any such liability as is mentioned in section 310 of the Act), which he may sustain or incur in the execution of the duties of his office or otherwise in relation thereto, and no Director or

other officer or auditor shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto; provided that this Article shall only have effect in so far as its provisions are not avoided by the said section.

### INSURANCE

29. Subject to the provisions of the Act, the Board shall have the power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time Directors, officers, employees or auditors of the Company, or of any company or body which is its holding company or in which the Company or such holding company has an interest whether direct or indirect or which is in any way allied to or associated with the Company or who were at any time trustees of any pension fund in which any employees of the Company or of any other such company or body are interested including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or in the exercise or purported exercise of their powers and/or otherwise in relation to their duties, powers or offices in relation to the Company and/or any such other company, body or pension fund. For the purposes of this Article "holding company" shall have the same meaning as in the Companies Act 1989.