



## THE COMPANIES ACTS 1985 TO 1989

### COMPANY LIMITED BY SHARES

### MEMORANDUM OF ASSOCIATION

of

### ENVIRONMENTAL PROPERTY SERVICES PLC

1. The name of the Company is ENVIRONMENTAL PROPERTY SERVICES PLC.
2. The Company is to be a public company.
3. The registered office of the Company is to be situated in England and Wales.
4. The objects for which the Company is established are:
  - 4.1 To engage in any activity of whatsoever nature in which a person may lawfully engage whether with a view to profit or otherwise howsoever including (without prejudice to the generality of the foregoing):
    - (a) carrying on either on the Company's own account or on account of any other person all or any of the businesses of manufacturers, builders, fabricators, general merchants and traders, cash, discount, mail order and credit traders, retailers, wholesalers, buyers, sellers, suppliers, distributors, importers and exporters, and shippers of, and dealers in all products, goods, wares, substances, materials, merchandise and produce of every description; manufacturers' agents and representatives; mechanical, general, civil, constructional, electrical, marine, radio, electronic, aeronautical, chemical and petrochemical engineers; consultants and advisers of all descriptions; land and property developers, estate agents, dealers in and lessors and developers of land and buildings; mortgage brokers, insurance brokers and consultants, stock brokers, financial agents, advisers, managers and administrators, hire purchase and general financiers, commission agents, capitalists, financiers, bankers; marketing and business consultants, advertising agents and contractors, public relations advisers and consultants; discount traders, mail order traders; haulage and transport contractors, garage and filling station proprietors, owners and operators; repairers, customisers,

charterers, hirers and letters on hire of, and dealers in motor and other vehicles, aircraft, ships, boats, vessels, plant, machinery, apparatus, tools, utensils, equipment and goods of every description, lightermen and carriers of goods and passengers by road, rail, water or air, transport agents, customs agents, stevedores, wharfingers, cargo superintendents, packers, shippers, railway, shipping and forwarding agents, warehouse storekeepers, cold store keepers, general storekeepers, hotel and restaurant proprietors, managers and operators, caterers, publicans, brewers, printers and publishers, travel agents, ticket agents and conductors of agency business of all kinds and generally to render services of all kinds to others, to act as brokers and agents for and to perform subcontracting for any other person;

- (b) participating in, undertaking, performing and carrying on all kinds of commercial, industrial, trading and financial operations and enterprises;
- (c) engaging in all kinds of artistic, cultural, educational and scientific activities and the promotion thereof and engaging in all kinds of design, invention, research, development and experimentation.

- 4.2 To carry on in any part of the world any other business or activity which may seem to the directors to be capable of being conveniently or advantageously carried on in connection with any of the above businesses or directly or indirectly to further or facilitate the objects of the Company or to enhance the value of or render profitable or more profitable any of the Company's property or assets or utilising its skills, know-how or expertise or otherwise to advance the interests of the Company or any of its members.
- 4.3 To be an investment holding company and to acquire (whether by original subscription, tender, purchase, exchange or otherwise) the whole of or any part of the stock, shares, debentures, debenture stocks, loan notes, bonds and other securities issued or guaranteed by a body corporate constituted or carrying on business in any part of the world or by any government, sovereign ruler, commissioners, public body or authority and to hold the same as investments, and to sell, exchange, carry and dispose of the same and to co-ordinate the business of any companies in which the Company is for the time being interested.
- 4.4 To purchase or otherwise acquire or take over the whole or any part of the share capital, business or undertaking, goodwill, property and assets of any person which may in the opinion of the directors be expedient or be capable of being conveniently carried on, or calculated directly or indirectly to enhance the value of or make profitable any of the Company's property or rights or to be suitable for the purposes of the Company and to become interested in, and carry on, dispose of, remove or put an end to the same or otherwise deal with any such business or undertaking and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person or to acquire an interest in, amalgamate or enter into partnership, joint venture or any arrangement for sharing profits, or for co-operation or union of interests or reciprocal concession or for limiting competition, or for mutual assistance, with any person and to subsidise or otherwise assist any such person, and to give or accept by way of consideration for any of the acts or things aforesaid or property acquired, any shares, monies, assets, rights, debentures, debenture stock or other securities that may be agreed, and to hold and retain

or sell, mortgage or otherwise deal with any shares, monies, assets, rights, debentures, debenture stock or other securities so received.

- 4.5 To purchase, take on lease, concession, grant or licence, or in exchange, hire or otherwise acquire, hold and manage any lands or buildings of freehold, leasehold or other tenure or any estate or interest therein and any other property of any description, whether real or personal, and easements privileges options or rights over through under the same or in connection therewith, and to develop, improve, manage, or otherwise deal with the same.
- 4.6 To construct, erect, maintain, alter, replace, or remove any buildings, works, shops, factories, offices, erections, plant, machinery, tools or equipment and to work, manage, own and control such things.
- 4.7 To sell, exchange, mortgage, let on rent, share of profit or otherwise, grant licences, easements, options and other rights over, through or under or in connection with, and in any other manner deal with or dispose of all or any part of the undertaking, property, assets, rights and effects of the Company for such consideration as may be thought fit and in particular for shares, stocks, debentures, debenture stock or other obligations or securities, whether fully or partly paid up, of any other company.
- 4.8 Either with or without the Company receiving any consideration or advantage, direct or indirect, therefrom, to transfer by way of gift or at an undervalue or otherwise all or any part of the assets or property of the Company to or enter into any arrangement at an undervalue with any person including without prejudice to the generality of the foregoing any subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company; to waive or release, with or without consideration any rights of, or any debts, liabilities or obligations owed to, the Company from any person including without prejudice to the generality of the foregoing any subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company.
- 4.9 Either with or without the Company receiving any consideration or advantage, direct or indirect, from giving any such guarantee, to guarantee by personal covenant or by mortgaging or charging all or any part of its undertaking, property and assets present and future and uncalled capital or by any combination of such methods or by any other means whatsoever the performance of the obligations (whether legally binding or not) and the payment of any moneys (including but not limited to capital or principal, premiums, dividends or interest, commissions, charges, discount and any costs or expenses relating thereto whether on any stocks, shares or securities or in any other manner whatsoever) by any person including but not limited to any person which is for the time being the Company's holding company or a subsidiary of the Company or of the Company's holding company or any person who is for the time being a member or otherwise has any interest in the Company or is associated with the Company in any business or venture or any other person and for the purposes of this paragraph 4.9 any references to "guarantee" shall include indemnities, sureties and any obligation (howsoever described) to pay, satisfy, provide funds for the payment or satisfaction of (including, without limitation, by advance of money, purchase of or subscription for shares or other securities and purchase of assets or services) or to indemnify against the consequences of any failure by any other

person to perform any obligation or make any payment, or otherwise agree to be responsible for, any indebtedness of any other person.

- 4.10 Apply for, purchase or otherwise acquire, register, protect, prolong, extend or renew and to hold in any part of the world any patents, patent rights, brevets d'invention, trademarks, service marks, designs, licences, protections, concessions and intellectual property rights of whatever nature which may appear likely to be advantageous or useful to the Company, and to use and manufacture under or grant licences or privileges in respect of or sell or let the same or any interest therein, and to expend money in experimenting upon and testing and in improving or seeking to improve any patents, inventions, designs or rights which the Company may hold, acquire or propose to acquire.
- 4.11 To adopt such means for publicising or making known any goods or services provided by the Company and keeping the same before the public as the directors may think fit and in particular to employ advertising, promotion and public relations techniques of all kinds.
- 4.12 To establish or promote or concur in establishing or promoting any company the establishment or promotion of which shall be considered by the directors to be desirable in the interests of the Company and to subscribe for, underwrite, purchase or otherwise acquire and hold, realise, sell or otherwise dispose of the shares (whether credited as paid up in full or in part), stocks, debentures, debenture stock or other securities and obligations of any person.
- 4.13 To co-ordinate the administration, policies, management, supervising, control, research, development, planning, manufacture, trading and any and all other activities of, and to act as financial advisers and consultants to, any company or companies or group of companies now or hereafter formed or incorporated or acquired which may be or may become related or associated in any way with the Company or with any company related or associated therewith and with or without remuneration or on such terms as to remuneration as may be agreed.
- 4.14 To vest any real or personal property, rights or interests acquired by or belonging to the Company in any person on behalf of or for the benefit of the Company, with or without any declared trust in favour of the Company.
- 4.15 To invest and deal with the Company's money and funds in any way the directors think fit and to receive money on deposit on any terms the directors think fit and to vary the investments and holdings of the Company as may from time to time be deemed desirable and to invest and deal with the monies of the Company in any manner.
- 4.16 To borrow, raise money and secure or discharge any debt or obligation of or binding on the Company in such manner as the directors may think fit and in particular by mortgages of or charges upon the undertaking and all or any part of the real and personal property (present and future) and the uncalled capital of the Company or by the creation and issue of debentures, debenture stock or other obligations or securities of any description and to purchase, redeem or pay off such securities.

- 4.17 To lend and advance money or give credit or receive money on deposit or give financial accommodation to any person with or without security on such terms as may seem expedient to the directors, including but not limited to any company which is for the time being the Company's holding company or a subsidiary of the Company or of the Company's holding company or any person who is for the time being a member or otherwise has any interest in the Company or is associated with the Company in any business or venture or any other person and to customers and others having dealings with the Company.
- 4.18 To draw, make, accept, endorse, discount, execute and issue cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures, debenture stock and other negotiable or transferable instruments.
- 4.19 To undertake interest rate and currency swaps, options, swap option contracts, forward exchange contracts, forward rate agreements, futures contracts or other financial instruments including but not limited to hedging agreements and derivatives of any kind and all or any of which may be on a fixed and/or floating rate basis and/or in respect of sterling, the Euro, any other currencies or basket of currencies including but not limited to European Currency Units (as the same may from time to time be designated or constituted) or commodities of any kind and in the case of such swaps, options, swap option contracts, forward exchange contracts, forward rate agreements, futures contracts or other financial instruments including hedging agreements and derivatives of any kind they may be undertaken by the Company on a speculative basis or otherwise.
- 4.20 To apply for, promote, and obtain any Act of Parliament, charter, contract, decree, right, privilege, concession, licence or authorisation of any government, state or municipality, provisional order or licence of the Department of Trade or other authority for enabling the Company to carry any of its objects into effect or for extending any of the powers of the Company, or for effecting any modification of the constitution of the Company, or for any other purpose which may seem expedient to the directors and to carry out, exercise and comply with any such charter, contract, decree, right, privilege, concession, licence or authorisation and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests.
- 4.21 To enter into any arrangements with any governments, organisations, associations, clubs, persons or authorities (supreme, municipal, local or otherwise) or any companies that may seem conducive to the objects of the Company or any of them.
- 4.22 To act as trustee of any kind including but not limited to trustee of any deeds constituting or securing any debentures, debenture stock or other securities or obligations and to undertake and execute any trust or trust business (including but not limited to the business of acting as trustee under wills and settlements), and to do anything that may be necessary or assist in the obtaining of any benefit under the estate of any individual and also to undertake the office of executor, administrator, secretary, treasurer or registrar or to become manager of any business and to keep any register or undertake any registration duties, whether in relation to securities or otherwise.

- 4.23 To remunerate any person rendering services to the Company, whether by cash payment or by the allotment of shares, debentures, debenture stock, or other securities of the Company credited as paid up in full or in part or otherwise.
- 4.24 To pay out of the funds of the Company all expenses which the Company may lawfully pay in respect of or incidental to the promotion, formation and registration of or the raising of money for the Company or any other person or the issue of its shares or other securities, including without limitation brokerage and commissions for obtaining applications for or taking, placing or underwriting or procuring the underwriting of shares, debentures, debenture stock or other securities of the Company or any other person or to contract with any other person to pay the same.
- 4.25 To establish and maintain or procure the establishment and maintenance of, any pension or superannuation funds or schemes (whether contributory or otherwise) for the benefit of and to give or procure the giving of donations, gratuities, pensions, allowances and emoluments to any persons who are or were at any time in the employment or service of the Company, or any of its predecessors in business or of any company which is a subsidiary of the Company or is allied to or associated with the Company or with any such subsidiary, or who may be or have been directors or officers of the Company, or of any such other company as aforesaid, or any persons in whose welfare the Company or any such other company as aforesaid is or has been at any time interested, and the wives, widows, families, relations and dependants of any such persons, and to establish, subsidise and subscribe to any institutions, associations, societies, clubs or funds calculated directly or indirectly to be for the benefit of, or to advance the interests and well-being of the Company or of any other person as aforesaid and to make payments for or towards the insurance of any such persons as aforesaid.
- 4.26 To establish and contribute to any scheme for the purchase or subscription by trustees of shares or other securities of the Company to be held for the benefit of the employees of the Company, any subsidiary of the Company or any person allied to or associated with the Company, to lend money to those employees or to trustees on their behalf to enable them to purchase or subscribe for shares or other securities of the Company and to formulate and carry into effect any scheme for sharing the profits of the Company with employees.
- 4.27 To subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general, charitable, political or useful object, or for any purpose likely directly or indirectly to further the objects of the Company.
- 4.28 To insure the life of any person or to insure against any accident to any person who may, in the opinion of the directors, be of value to the Company as having or holding for the Company interests, goodwill or influence or other assets and to pay the premiums on such insurance.
- 4.29 To establish, grant or take up agencies and to procure the Company and any branch office of the Company to be registered or recognised in any part of the world.
- 4.30 To distribute among the members of the Company in kind any property of the Company or proceeds of sale or disposal of any such property (whether by way of dividend or

otherwise) and in particular any shares, debentures, debenture stock or other securities belonging to the Company or of which the Company may have the power of disposing.

- 4.31 To do all or any of the above things in any part of the world, either as principals, agents, trustees, contractors or otherwise and either alone or in conjunction with others and either by or through agents, sub-contractors, trustees or otherwise.
- 4.32 To do all such things as may be deemed incidental or conducive to the attainment of the above objects or any of them.
5. In clause 4 reference to:
- (a) a "person" includes a reference to any partnership, firm, association, body corporate, authority, organisation, individual or other person or body of persons whether corporate or unincorporate, and whether domiciled in the United Kingdom or elsewhere and whether incorporated or unincorporated;
  - (b) the "Act" is, unless the context otherwise requires, a reference to the Companies Act 1985, as modified or re-enacted or both from time to time; and
  - (c) a "subsidiary" or "holding company" is to be construed in accordance with section 736 of the Act.
6. The objects specified in each of the paragraphs of clause 4 shall be regarded as independent objects, and accordingly shall in no way be limited or restricted (except where otherwise expressed in such paragraphs) by reference to or inference from the terms of any other paragraph or the name of the Company, but may be carried out in as full and ample a manner and construed in as wide a sense as if each of the said paragraphs defined the objects of a separate and distinct company.
7. The liability of the members is limited.
8. The initial authorised share capital of the Company is £1,000 divided into 1,000 ordinary shares of £1 each. The shares in the original or any increased capital may be divided into several classes, and have attached thereto respectively any preferential, deferred or other special rights, privileges, conditions or restrictions as to dividend, capital, voting or otherwise.<sup>1</sup>

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<sup>1</sup> By a written resolution of the Company passed on 12 August 1999, it was resolved that the Company: (1) subdivide each ordinary share of £1 in the capital of the Company into ordinary shares of £0.10 each; and (2) increase its authorised share capital from £1,000 to £98,486.70 divided into 984,867 ordinary shares of £0.10 each.

I, the person whose name, address and description is subscribed, am desirous of being formed into a Company in pursuance of this Memorandum of Association and I agree to take the number of shares in the capital of the Company set opposite my name.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS	Number of Shares taken by each Subscriber (in words)
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CLARE JENKINS  
For and on behalf of  
HUNTSMOOR NOMINEES LIMITED  
Carmelite  
50 Victoria Embankment  
LONDON  
EC4Y 0DX

ONE

DATED this 21st day of April 1999

WITNESS to the above signature:

ELIZABETH WARD  
Carmelite  
50 Victoria Embankment  
LONDON  
EC4Y 0DX



THE COMPANIES ACTS 1985 AND 1989

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PUBLIC COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION  
OF  
ENVIRONMENTAL PROPERTY SERVICES PLC

Incorporated on 1999  
13 May

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ADOPTED BY WRITTEN RESOLUTION

Passed on 1999  
13 August

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Nabarro Nathanson  
50 Stratton Street  
London W1X 6NX

Tel: 0171 493 9933

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THE COMPANIES ACTS 1985 AND 1989

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PUBLIC COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

of

ENVIRONMENTAL PROPERTY SERVICES PLC

adopted by a Written Resolution passed

on 1999  
13 August

**1. INTERPRETATION**

1.1 In these Articles;

**“the Act”**

means the Companies Act 1985 including any statutory modification or re-enactment for the time being in force;

**“Alchemy”**

means Alchemy Partners (Guernsey) Limited;

**“Alchemy Director”**

means the director appointed as such under the Shareholders Agreement;

**“EPS Holdings”**

means Environmental Property Services Holdings Limited (Company Number 3769998);

**“Facility Agreement”**

means the facility agreement dated 24 July 1999 between (1) the Company (2) EPS Holdings (3) Bank of Scotland;

**“Founder”**

means any of David Anderson, George Rajendra, David Hamilton, Nigel Morley and Richard Burl;

**“Listing”**

means the listing of the Company's, or any holding company's issued share capital on a recognised investment exchange (as defined by section 207 (1) of the Financial Services Act 1986);

**“Ordinary Shareholders”**

means the holders of Ordinary Shares;

**“Option Agreements”**

shall have the meaning ascribed thereto in the Shareholders' Agreement;

**“Privileged Relation”**

means, in relation to a shareholder who is an individual, the wife, husband or child under the age of eighteen of the shareholder (including any adopted child or step-child;

**“Shareholders Agreement”**

means the agreement of 24 July 1999 made by (1) David Anderson and others (2) Alchemy (3) the Company and (4) Environmental Property Services Holdings Limited as amended from time to time;

**“Subordination Agreement”**

means the subordination agreement to be entered into on the date of adoption of these Articles between (1) the Company (2) EPS Holdings (3) Bank of Scotland (4) Alchemy (5) Alchemy Partners Nominees Limited.

1.2 Words and expressions defined in the Act or the Shareholders' Agreement have the same meanings in these Articles, unless inconsistent with the context.

1.3 The renunciation of a right to be allotted shares shall be treated as if it were a transfer of those shares and therefore shall be governed by Articles 6 to 11.

**2. SUBORDINATION AND FACILITY AGREEMENT**

Notwithstanding any other provisions contained herein these Articles shall be subject to the terms of the Subordination Agreement and the Facility Agreement.

**3. TABLE A**

3.1 The regulations contained in Table A in the Schedule to the Companies (Tables A-F) Regulations 1985, as amended ("Table A"), apply to the Company except to the extent that they are excluded by or inconsistent with these Articles.

- 3.2 Regulations 24, 64, 73 to 78, 80, 81, 90, 94, 95, 115 and 118 of Table A do not apply.

#### **4. SHARE CAPITAL**

The share capital of the Company at the date of adoption of these Articles is £98,486.70 divided into 984,867 ordinary shares of 10p each ("Ordinary Shares").

#### **5. PROVISIONS APPLYING ON EVERY TRANSFER OF ORDINARY SHARES**

Save as regards transfers in accordance with the Option Agreements shareholders are not entitled to transfer (or seek to transfer) and the directors may not register a transfer of Ordinary Shares unless:

- 5.1 it is expressly permitted by Article 6 or has been made in accordance with Articles 7, 8, 9 or 10 (as appropriate); and
- 5.2 the proposed transferee has entered into an agreement to be bound by the Shareholders Agreement in the form required by that agreement.

In the event of an infringement of this Article, the relevant shareholder shall be bound to give a Sale Notice in accordance with Article 7 in respect of all the Ordinary Shares in which he is interested.

- 5.3 Save as regards transfers of Ordinary Shares in accordance with the Option Agreements, for the purpose of ensuring that a transfer of Ordinary Shares is permitted under these Articles or that there has been no breach of these Articles, the directors (acting by a majority) may from time to time require any member or the legal personal representative of any deceased member of any person named as transferee in any transfer lodged for registration or who is seeking to transfer their Ordinary Shares to furnish to the Company such information and evidence as the directors may think fit regarding any matter which they may deem relevant to such purpose. Failing such information or evidence being furnished to the satisfaction of the directors within a reasonable time after request, the directors shall be entitled to refuse to register the transfer in question *or, in case no other transfer is in question or otherwise to require by notice in writing* that a Sale Notice be given in respect of the Ordinary Shares concerned. If such information or evidence discloses that a Sale Notice ought to have been given in respect of any shares, the directors may by notice in writing require that a Sale Notice be given in respect of the Ordinary Shares concerned. In any case where the directors have duly required a Sale Notice to be given in respect of any Ordinary Shares and such Sale Notice is not duly given within a period of 14 days, or such longer period as the directors may allow for the purpose, such Sale Notice shall (except and to the extent that a transfer permitted under these Articles of any such Ordinary Shares shall have been lodged) be deemed to have been given on the date after the expiration of the said period as the directors may by resolution determine and the provisions of the Article relating to Sale Notices shall take effect accordingly save that the Asking Price shall be calculated as provided in Article 10.4.

## **6. PERMITTED TRANSFERS OF ORDINARY SHARES**

- 6.1 With the written consent of the holders of 50% or more of the Ordinary Shares in issue, Ordinary Shares may be transferred to any person.
- 6.2 A shareholder which is a body corporate may transfer Ordinary Shares to a member of the same group (meaning a subsidiary or holding company of the body corporate or a subsidiary of a holding company of the body corporate) if the transferee gives an undertaking to the Company that if the transferee ceases to be a member of the same group, all its shares in the Company will, before the cessation, be transferred to another member of the same group.
- 6.3 An Ordinary Shareholder who holds Ordinary Shares as nominee or trustee for a limited partnership or unit trust which is primarily a vehicle for institutional investors may transfer those Ordinary Shares;
  - 6.3.1 to another nominee or trustee for the limited partnership or unit trust;
  - 6.3.2 on a distribution in kind under the relevant partnership agreement or trust deed, to the partners of the limited partnership or their nominees or the holders of units in the unit trust or their nominees; or
  - 6.3.3 to a nominee or trustee for a limited partnership, unit trust or investment trust which is primarily a vehicle for institutional investors and which is advised or managed by the adviser or manager of the former limited partnership or unit trust.
- 6.4 An Ordinary Shareholder may transfer any Ordinary Shares to any Privileged Relation.
- 6.5 In the event that any person to whom Ordinary Shares are transferred pursuant to Article 6.4 ceases to be within the required relationship to the Ordinary Shareholder such Ordinary Shares shall be transferred back to the Ordinary Shareholder who transferred them or to any other person falling within the required relationship and if the holder of such Ordinary Shares fails to transfer the Ordinary Shares in those circumstances such holder shall be deemed to have served a Sale Notice and the provisions of Article 7 shall apply and the Asking Price shall be the price certified by the Company's auditors or another firm of chartered accountants of repute appointed by the Board, acting as experts and not as arbitrators, to be the market value of the Ordinary Shares as between a willing buyer and a willing seller.

## **7. PRE-EMPTION RIGHTS**

- 7.1 An Ordinary Shareholder ("Selling Shareholder") who wishes to transfer Ordinary Shares or any beneficial interest therein to a person to whom Article 6 does not apply shall serve notice on the Company ("Sale Notice") stating the number of shares he wishes to transfer ("Sale Shares") and his asking price for each share ("Asking Price").
- 7.2 The Selling Shareholder may state in the Sale Notice that he is only willing to transfer all the Sale Shares, in which case no Sale Shares can be sold unless offers are received for all of them.

- 7.3 The Sale Notice shall make the Company the agent of the Selling Shareholder for the sale of the Sale Shares on the following terms, which the Company shall notify to the other Ordinary Shareholders within seven days of receiving the Sale Notice:
- 7.3.1 the price for each Sale Share is the Asking Price;
- 7.3.2 *the Sale Shares are to be sold free from all liens, charges and encumbrances together with all rights attaching to them;*
- 7.3.3 subject to Article 7.9, each of the other Ordinary Shareholders (except those who are Compulsory Sellers for the purposes of Article 10) is entitled to buy the Sale Shares in proportions reflecting, as nearly as possible, the nominal amount of their existing holdings of Ordinary Shares; an Ordinary Shareholder is entitled to buy fewer Sale Shares than his proportional entitlement;
- 7.3.4 Ordinary Shareholders may offer to buy any number of the Ordinary Shares that are not accepted by the other Ordinary Shareholders ("Excess Shares");
- 7.3.5 any additional terms pursuant to Article 7.2.
- 7.4 21 days after the Company's despatch of the terms for the sale of the Sale Shares (the "Closing Date"):
- (i) the Sale Notice shall become irrevocable;
  - (ii) an Ordinary Shareholder who has not responded to the offer in writing shall be deemed to have declined it; and
  - (iii) each offer made by an Ordinary Shareholder to acquire Sale Shares shall become irrevocable.
- 7.5 If the Company receives offers for more Ordinary Shares than the number of Sale Shares, each Ordinary Shareholder who offered to buy Excess Shares shall be entitled to a number of Excess Shares reflecting, as nearly as possible, the number of Excess Shares he offered to buy as a proportion of the total number of Excess Shares for which offers were received.
- 7.6 Within seven days after the Closing Date, the Company shall notify the Selling Shareholder and the Ordinary Shareholders who offered to buy Sale Shares of the result of the offer and, if any Sale Shares are to be sold pursuant to the offer:
- the Company shall notify the Selling Shareholder of the names and addresses of the Ordinary Shareholders who are to buy Sale Shares and the number to be bought by each;
  - the Company shall notify each Ordinary Shareholder of the number of Sale Shares he is to buy; and
  - the Company's notices shall state a place and time, between seven and 14 days later, on which the sale and purchase of the Sale Shares is to be completed.
- 7.7 If the Selling Shareholder does not transfer Sale Shares in accordance with Article 7.6, the directors may authorise any director to transfer the Sale Shares on the Selling Shareholder's behalf to the buying Ordinary Shareholders concerned against receipt by the Company of the Asking Price per share. The Company shall hold the Asking Price in

trust for the Selling Shareholder without any obligation to pay interest. The Company's receipt of the Asking Price shall be a good discharge to the buying Ordinary Shareholder. The directors shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Selling Shareholder shall surrender his share certificate for the Sale Shares to the Company. On surrender, he shall be entitled to the Asking Price for the Sale Shares.

- 7.8 If, by the Closing Date, the Company has not received offers for all the Sale Shares, the Selling Shareholder may within the next two months transfer the Sale Shares for which offers were not received (or, if the Sale Notice stated that he was only willing to transfer all the Sale Shares, all the Sale Shares) to any person at no less than the Asking Price per share, with any other terms being no more favourable than those in the Sale Notice.
- 7.9 Article 7 shall apply where the Selling Shareholder is a Founder save that the provisions of Article 7.3.3 shall be varied so that the Sale Shares shall be offered:-
- 7.9.1 firstly to a person or persons being intended to take the Founder's place as an employee of the Company as if such person or persons were "Ordinary Shareholders" referred to in Articles 7.3 to 7.7;
- 7.9.2 any of the Sale Shares which are not transferred pursuant to Article 7.9.1 Sale Shares shall then be offered to the other Founders in proportions reflecting as nearly as possible the nominal amount of their existing holdings of Ordinary Shares and as if such other Founders were "Ordinary Shareholders" referred to in Articles 7.3 to 7.7;
- 7.9.3 any Sale Shares which are not transferred pursuant to Article 7.9.2 shall be transferred in accordance with the provisions of Article 7 and this Article shall have no further application in relation to the transfer of such Sale Shares.

## **8. TRANSFERS WHICH CHANGE CONTROL**

- 8.1 Subject to Article 8.3 Article 8 applies when a transfer of Ordinary Shares made under Article 6.1 or 7 would, if registered, result in a person and any other person:
- (i) who in relation to him is a connected person, as defined in section 839 of the *Income and Corporation Taxes Act 1988*, or
  - (ii) with whom he is acting in concert, as defined in *The City Code on Takeovers and Mergers* (and *Alchemy's* role or the role of any of its associates as investment adviser shall not be deemed to make its clients act in concert)
- (each a "member of the purchasing group") holding or increasing a holding of 50% or more of the Ordinary Shares in issue.
- 8.2 No transfer to which Article 8 applies may be made or registered unless:
- 8.2.1 it is agreed to in writing by the holders of 75% or more of the Ordinary Shares in issue; or
- 8.2.2 the proposed transferee has made an offer to buy all the other Ordinary Shares (including any Ordinary Shares issuable on the exercise of any then outstanding subscription rights) on the terms set out in Article 8.4 and the offer has closed and



each accepted offer has been completed, unless failure to complete is the fault of the offeree.

- 8.3 Article 8 shall not apply to any transfer of Ordinary Shares to Alchemy or to any person to whom Alchemy transfers Ordinary Shares under Article 6 ("Alchemy Transferee"), where Alchemy or the Alchemy Transferee is the buyer of last resort under Article 10 or where Alchemy or the Alchemy Transferee acquire Ordinary Shares which are transferred under Article 7.
- 8.4 The terms of the proposed transferee's offer shall be as follows:
- 8.4.1 the offer shall be open for acceptance for at least 21 days;
- 8.4.2 the consideration for each Ordinary Share shall be the higher of:
- (i) the highest consideration offered for each Ordinary Share whose proposed transfer has led to the offer; and
  - (ii) the highest consideration paid by any member of the purchasing group for an Ordinary Share in the twelve months up to the offer.
- 8.5 Any dispute on the appropriate consideration for the Ordinary Shares shall be referred to an umpire chosen by the parties concerned or, if they cannot agree on an umpire, nominated by the President of the Institute of Chartered Accountants in England and Wales. The umpire shall act as an expert and not as an arbitrator and his decision shall be final and binding. The Selling Shareholder wishing to sell Ordinary Shares to the proposed transferee shall pay half the umpire's costs and Ordinary Shareholders in dispute with the proposed transferee shall pay the other half.
- 8.6 The provisions of Article 7.6 shall apply to a transfer of Ordinary Shares to the proposed transferee.

## **9. DRAG-ALONG RIGHTS**

If transfers under Articles 6.1, 7 and/or 8 result in members of the purchasing group holding or increasing their shareholding to 50% or more of the Ordinary Shares in issue, the members of the purchasing group may, by serving a "Compulsory Purchase Notice" on each other Ordinary Shareholder ("Minority Shareholder"), require all the Minority Shareholders to sell all their Ordinary Shares and beneficial interests therein to one or more persons identified by the members of the purchasing group at the consideration specified in Article 8.4.2.

The shares subject to the Compulsory Purchase Notices shall be sold and purchased in accordance with the provisions of Articles 10.6 to 10.8 *mutatis mutandis*:

- (i) the "completion date" being the date which is 14 days after the service of the Compulsory Purchase Notices;
- (ii) "Sale Shares" being the Minority Shareholder's Ordinary Shares;
- (iii) "Compulsory Sellers" being the Minority Shareholders; and
- (iv) "Offerees" being the persons identified as purchasers in the Compulsory Purchase Notice.

- 9.2 While Article 9 applies to a Minority Shareholder's shares, those shares may not be transferred otherwise than under Article 9.
- 9.3 Article 7 does not apply to transfers of shares made under Article 9.

## 10. COMPULSORY TRANSFER

- 10.1 Article 10 applies when an employee of the Company or any of its subsidiary undertakings who is an Ordinary Shareholder ceases, for any reason, to be an employee of the Company or any of its subsidiary undertakings.
- 10.2 Within two months after the cessation of employment, the Alchemy Director may serve notice requiring the Ordinary Shareholder (or his personal representatives in the case of his death) ("Compulsory Sellers") to offer some or all of their Ordinary Shares ("Sale Shares") to:
- (i) a person or persons intended to take the employee's place;
  - (ii) any of the existing employees of the Company or any of its subsidiary undertakings;
  - (iii) participants or potential participants in, or trustees of an employees' share scheme of the Company and its subsidiary undertakings; and/or
  - (iv) any other person or persons approved by resolution of the directors
- ("Offerees"). The Alchemy Director's notice may reserve the Alchemy Director the right to finalise the identity of the Offerees once the price for the Sale Shares has been agreed or certified.
- 10.3 The Compulsory Sellers shall then offer their Sale Shares to the Offerees free from all liens, charges and encumbrances together with all rights attaching to them on the following terms.
- 10.4 The price for the Sale Shares shall be the price agreed between the Compulsory Sellers and the Alchemy Director or, if they do not agree a price within 14 days of the Alchemy Director's notice, the price certified by the Company's auditors or another firm of chartered accountants of repute appointed by the Board, acting as experts and not as arbitrators, to be:
- 10.4.1 the market value which is in the opinion of the auditors/accountants likely to result in a sale of the Sale Shares immediately after the cessation of employment; or
  - 10.4.2 if the employment ceases less than one year after the issue of the Sale Shares, the issue price of the Sale Shares if less.
- 10.5 Within seven days after the price has been agreed or certified:
- 10.5.1 the Company shall notify the Compulsory Sellers of the names and addresses of the Offerees and the number of Sale Shares to be offered to each;
  - 10.5.2 the Company shall notify each Offeree of the number of Sale Shares on offer to him; and

- 10.5.3 the Company's notices shall specify the price per share and state a date, between seven and 14 days later, on which the sale and purchase of the Sale Shares is to be completed ("completion date").
- 10.6 By the completion date the Compulsory Sellers shall deliver stock transfer forms for the Sale Shares, with the relevant share certificates, to the Company. On the completion date the Company shall pay the Compulsory Sellers, on behalf of each of the Offerees, the agreed or certified price for the Sale Shares to the extent the Offerees have put the Company in the requisite funds. The Company's receipt for the price shall be a good discharge to the Offerees. The Company shall hold the price in trust for the Compulsory Sellers without any obligation to pay interest.
- 10.7 To the extent that Offerees have not, by the completion date, put the Company in funds to pay the agreed or certified price, the Compulsory Sellers shall be entitled to the return of the stock transfer forms and share certificates for the relevant Sale Shares and the Compulsory Sellers shall have no further rights or obligations under Article 10 in respect of those Sale Shares.
- 10.8 If a Compulsory Seller fails to deliver stock transfer forms for Sale Shares to the Company by the completion date, the directors may (and shall, if requested by the Alchemy Director) authorise any director to transfer the Sale Shares on the Compulsory Seller's behalf to each Offeree to the extent the Offeree has, by the completion date, put the Company in funds to pay the agreed or certified price for the Sale Shares offered to him. The directors shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Compulsory Seller shall surrender his share certificate for the Sale Shares to the Company. On surrender, he shall be entitled to the agreed or certified price for the Sale Shares.
- 10.9 While Ordinary Shares are liable to be Sale Shares by virtue of Article 10.2, they may not be transferred under Articles 6 or 7 which shall not apply during such period.

## **11. GENERAL PROVISIONS**

### **11.1 Shareholders' meetings and resolutions**

- 11.1.1 Regulation 37 of Table A is modified by the deletion of the words "eight weeks" and the substitution for them of the words "28 days" and by the insertion of the words "or the Alchemy Director acting alone" after the second word of that regulation.
- 11.1.2 Regulation 40 of Table A is modified by the deletion of the second sentence and the substitution for it of the words "A person or persons (being a member or a proxy for a member or a duly authorised representative of a corporation) holding or representing at least 60% in nominal value of the Ordinary Shares in issue shall be a quorum".
- 11.1.3 A corporation which is a member of the Company may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or at any meeting of any class of members of the Company. The person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member.

- 11.1.4 A poll may be demanded by the chairman or by any member present in person or by proxy and entitled to vote and regulation 46 of Table A is modified accordingly.
- 11.1.5 Where an ordinary resolution of the Company is expressed to be required for any purpose, a special or extraordinary resolution is also effective for that purpose, and where an extraordinary resolution is expressed to be required for any purpose, a special resolution is also effective for that purpose.
- 11.1.6 Regulation 53 of Table A is modified by the addition at the end of the following sentence: "If a resolution in writing is described as a special resolution or as an extraordinary resolution it shall have effect accordingly."
- 11.1.7 Regulation 57 of Table A is modified by the inclusion after the word "shall" of the phrase "unless the directors otherwise determine".
- 11.1.8 Regulation 59 of Table A is modified by the addition at the end of the following sentence: "Deposit of an instrument of proxy shall not preclude a member from attending and voting at the meeting or at any adjournment of it."
- 11.1.9 Regulation 62 of Table A is modified by the deletion in paragraph (a) of the words "deposited at" and by the substitution for them of the words "left at or sent by post or by facsimile transmission to", by the substitution in paragraph (a) of the words, "one hour" in place of "48 hours" and by the substitution in paragraph (b) of the words "one hour" in place of "24 hours".
- 11.2 Number of directors
- Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) is not subject to any maximum and the minimum number is two.
- 11.3 Alternate directors
- 11.3.1 The Alchemy Director is entitled to appoint any person willing to act, whether or not he is a director of the Company, to be an alternate director. That person need not be approved by resolution of the directors and regulation 65 of Table A is modified accordingly.
- 11.3.2 An alternate director who is absent from the United Kingdom is entitled to receive notice of all meetings of directors and meetings of committees of directors and regulation 66 of Table A is modified accordingly.
- 11.3.3 Regulation 68 of Table A is modified by the addition at the end of the following sentence. "Any such notice may be left at or sent by post or facsimile transmission to the office or such other place as may be designated for the purpose by the directors."
- 11.4 Appointment, retirement and removal of directors
- 11.4.1 The directors are not subject to retirement by rotation and any reference in any regulation of Table A to retirement by rotation is to be disregarded.
- 11.4.2 The Company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.

11.4.3 A person appointed by the directors to fill a vacancy or as an additional director need not retire from office at the annual general meeting next following his appointment and the last two sentences of regulation 79 of Table A are deleted.

11.4.4 The holders of a majority of the shares giving the right to vote at general meetings may at any time and from time to time by serving notice on the Company remove any director from office and appoint any person to be a director. A removal or appointment takes effect when the notice is received by the Company or on a later date specified in the notice.

Article 11.4.4 does not apply to the removal or appointment of an Alchemy Director.

#### 11.5 Disqualification and removal of directors

11.5.1 The office of a director shall be vacated if:

- (i) he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director;
- (ii) he becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (iii) he resigns his office by notice in writing to the Company;
- (iv) he has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and his alternate director (if any) has not during such period attended any such meetings instead of him, and the directors resolve that his office be vacated; or
- (v) (other than in the case of the Alchemy Director) he is removed from office by notice addressed to him at his last-known address and signed by all his co-directors.

11.5.2 A person voting against a resolution under section 303 of the Act to remove the Alchemy Director is deemed, in respect of that resolution, to have five times the votes of a person voting in favour of the resolution and regulation 54 of Table A is modified accordingly.

#### 11.6 Proceedings of directors

11.6.1 Regulation 88 of Table A is modified by the exclusion of the third sentence and the substitution for it of the following sentence: "Every director shall receive notice of a meeting, whether or not he is absent from the United Kingdom. A director may waive the requirement that notice be given to him of a board meeting either prospectively or retrospectively."

11.6.2 The quorum for the transaction of the business of the directors shall be the Alchemy Director unless the Alchemy Director has been given reasonable written notice of such meeting, waives that right to attend or has appointed an alternate director who attends or similarly waives his right to attend, in which case the quorum shall be two directors. Regulation 89 of Table A is amended accordingly.

11.6.3 Any director or his alternate may validly participate in a meeting of the directors or a committee of directors through the medium of conference telephone or similar form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout such meeting. A person participating in this

way is deemed to be present in person at the meeting and is counted in a quorum and entitled to vote. Subject to the Act, all business transacted in this way by the directors or a committee of the directors is for the purposes of the Articles deemed to be validly and effectively transacted at a meeting of the directors or of a committee of the directors although fewer than two directors or alternate directors are physically present at the same place. The meeting is deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is.

11.6.4 Meetings of the board of directors shall take place no less frequently than once per calendar month and at least five working days' notice shall be given to each director provided that with the consent of the *Alchemy Director*, board meetings may be held less frequently and convened on less notice.

11.6.5 If the number of Directors is reduced below the minimum number fixed by these Articles or decided by the Company by ordinary resolution, the continuing directors or director may act only for the purpose of appointing an additional director or directors to make up that minimum or convening a general meeting of the Company for the purpose of making such appointment. If no director or directors is or are able or willing to act, two members may convene a general meeting for the purpose of appointing directors. An additional director appointed in this way holds office (subject to the Articles) only until the dissolution of the next annual general meeting after his appointment unless he is re-appointed during the meeting.

11.6.6 Without prejudice to the obligation of any director to disclose his interest in accordance with section 317 of the Act, a director may vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty. The director shall be counted in the quorum present when any such resolution is under consideration and if he votes his vote shall be counted.

#### 11.7 Borrowing powers of directors

The directors may exercise all the powers of the Company to borrow and raise money and to mortgage and charge all or any part of the undertaking, property and uncalled capital of the Company and, subject to the provisions of 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.

#### 11.8 Dividends

The directors may deduct from any dividend or other moneys payable to a person in respect of a share any amounts due from him to the Company on account of a call or otherwise in relation to a share.

#### 11.9 Capitalisation of profits

The directors may, with the authority of an ordinary resolution of the Company, resolve that any shares allotted under regulation 110 of Table A to any member in respect of a holding by him of any partly paid shares rank for dividends, so long as those shares remain partly paid, only to the extent that those partly paid shares rank for dividend and regulation 110 of Table A is modified accordingly

#### 11.10 Notices

- 11.10.1 Regulation 112 of Table A is modified by the deletion of the last sentence and the substitution for it of the following: "A member whose registered address is not within the United Kingdom shall be entitled to have notices given to him at that address."
- 11.10.2 A notice sent by post to an address within the United Kingdom is deemed to be given 24 hours after posting, if pre-paid as first class, and 48 hours after posting, if pre-paid as second class. A notice sent by post to an address outside the United Kingdom is deemed to be given four days after posting, if pre-paid as airmail. Proof that an envelope containing the notice was properly addressed, pre-paid and posted is conclusive evidence that the notice was given. A notice not sent by post but left at a member's registered address is deemed to have been given on the day it was left.
- 11.10.3 Regulation 116 of Table A is modified by the deletion of the words "within the United Kingdom".
- 11.10.4 Where the Articles require notice to be given by the holders stated percentage of shares, notice may consist of several documents in similar form each signed by or on behalf of one or more shareholders.

#### 11.11 Indemnity

- 11.11.1 Subject to the provisions of the Act, but without prejudice to an indemnity to which he may otherwise be entitled, every director, alternate director or secretary of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses and liabilities incurred by him in the proper execution of his duties or the proper exercise of his powers, authorities and discretions including, without limitation, a liability incurred defending proceedings (whether civil or criminal) in which judgment is given in his favour or in which he is acquitted or which are otherwise disposed of without a finding or admission of material breach of duty on his part, or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.
- 11.11.2 The directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of a person who is a director, alternate director, secretary or auditor, or former director, alternate director, secretary or auditor, of the Company or of a company which is a subsidiary of the Company or in which the Company has an interest (whether direct or indirect), or who is or was trustee of a retirements benefit scheme or another trust in which a director, alternate director or secretary or former director, alternate director or secretary is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the Company.

#### 11.12 Facility Agreement and Subordination Agreement

Notwithstanding any other provision of these Articles no payment shall be declared or made by the Company by way of dividend or other distribution, purchase, redemption, reduction or return of shares or capital or by addition to or repayment of any dividend reserve if and to the extent that such payment is prohibited or restricted by the terms of the Facility Agreement or Subordination Agreement. No dividend or other distribution

payable in respect of Shares whether pursuant to the provisions of these Articles or otherwise shall constitute a debt of the Company unless permitted to be paid in accordance with the terms of the Facility Agreement.