

COMPANY NO. 03998831



SHAZAM ENTERTAINMENT LIMITED

(the *Company*)

WRITTEN MEMBERS' RESOLUTION

(Resolution passed 23 July 2001)

In accordance with section 381A of the Companies Act 1985, **WE**, being all the members of the Company who at the date of this resolution would be entitled to attend and vote at a general meeting of the Company, **AGREE** that the following resolutions shall have effect as if passed by the Company in general meeting and accordingly **WE RESOLVE**:

ORDINARY RESOLUTION

1. **THAT** the authorised share capital of the Company be increased from £1,000 to £5,001,000 by the creation of 25,000,000 preferred ordinary shares of £0.20 each having the rights as set out in the new articles of association of the Company proposed to be adopted pursuant to the resolution numbered 2 below.

SPECIAL RESOLUTION

2. **THAT** the regulations (in the form of the print produced to the meeting marked "A" and attached to this written resolution) be adopted with immediate effect as the new articles of association of the Company to replace in their entirety the existing articles of association of the Company.

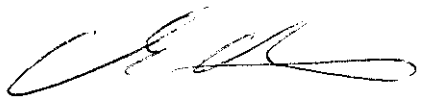
ORDINARY RESOLUTION

3. **THAT** in place of all existing authorities the directors be generally and unconditionally authorised pursuant to section 80 of the Companies Act 1985 to allot relevant securities (within the meaning of section 80) up to an aggregate nominal amount of £5,000,000 for a period expiring (unless previously renewed, varied or revoked by the Company in general meeting) five (5) years after the date on which this resolution is passed, but the Company may make an offer or agreement which would or might require relevant securities to be allotted after expiry of this authority and the directors may allot relevant securities in pursuance of that offer or agreement as if this authority had not expired.

SPECIAL RESOLUTION

4. **THAT** subject to the passing of the resolution numbered 3 and in place of all existing powers the directors be generally empowered pursuant to section 95 of the Companies Act 1985 (the *Act*) to allot equity securities (within the meaning of section 94


of the Act) for cash, pursuant to the authority in the resolution numbered 3 (the *authority*), as if section 89(1) of the Act did not apply to the allotment. This power shall cease to have effect when the authority is revoked or (if not revoked) expires but the Company may make an offer or agreement which would or might require equity securities to be allotted after expiry of this power and the directors may allot equity securities in pursuance of that offer or agreement as if this power had not expired.



.....
Signed by:
CHRISTOPHER BARTON

.....
Signed by:
RYSAFFE TRUSTEE COMPANY
For and on behalf of
VENTURE 2000 TRUST

.....
Signed by:
RYSAFFE TRUSTEE COMPANY
For and on behalf of the
P. INGHELBRECHT TRUST



.....
Signed by:
AVERY WANG, *through his attorney*

Company number 03998831

THE COMPANIES ACTS 1985 to 1989
PRIVATE COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF
SHAZAM ENTERTAINMENT LIMITED

Adopted 23 July 2001

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**ARTICLES OF ASSOCIATION
OF
SHAZAM ENTERTAINMENT LIMITED**

1 Preliminary - definitions and interpretation

1.1 In these Articles, unless the contrary intention appears, the following definitions apply:

<i>Acquirer</i>	as defined in Article 11.1;
<i>Act</i>	the Companies Act 1985 including any statutory modification or re-enactment of that Act for the time being in force;
<i>Applicant</i>	as defined in Article 9.6;
<i>Articles</i>	these regulations, and reference to an <i>Article</i> is reference to the regulation of corresponding number in these regulations;
<i>Auditors</i>	the Company's auditors from time to time;
<i>Board</i>	the Directors for the time being;
<i>Business Day</i>	a day, other than a Saturday or a Sunday, on which banks are open for business in the City of London;
<i>Committee</i>	a committee or other body to which the Directors delegate any of their powers;
<i>Conversion Ratio</i>	the ratio determined in accordance with Article 5.3.5;
<i>Director</i>	any director of the Company from time to time (including, where applicable, an alternate director);
<i>Distribution</i>	dividends or distributions paid or made by the Company in respect of Shares other than in connection with a return of capital;

<i>Dragged Sellers</i>	as defined in Article 11.1;
<i>Excess Offered Shares</i>	as defined in Article 9.6;
<i>Fair Value</i>	as defined in Article 9.9;
<i>Financial Year</i>	the same meaning as in section 742 of the Companies Act 1985;
<i>FLV</i>	Flanders Language Valley Fund CVA, (registered number 36.367), Flanders Language Valley 63, 8900 Ieper-Belguim;
<i>Founder Trust</i>	a Trust of which the only beneficiaries (and the only people capable of being beneficiaries) are an individual Founder and/or his spouse and/or his lineal descendants by blood or adoption (including, to avoid doubt, trusts which hold Shares at the date of adoption of these Articles);
<i>Founders</i>	Christopher Barton of Flat 7, 12 Talbot Road, London, W2 5LH, United Kingdom, Avery Wang of 2925 Ross Road, Palo Alto, California 94303-3935, USA, Dheeraj Mukherjee of The Colonnades 235, 34 Porchester Square, London, W2 6AS, United Kingdom and Philip Inghelbrecht of 22 Hazlitt Road, West Kensington, London, W14 0JY, United Kingdom;
<i>Group</i>	in relation to a company, that company and all its Subsidiary Undertakings, every Person which is a Parent Company of that company or any of its Subsidiary Undertakings and any Person which is a Subsidiary Undertaking of any such Parent Company, and in respect of each Investor any partner, Subsidiary Undertaking, holding company, affiliated private equity fund and venture capital fund, limited partnership, member or co-investment fund of any Investor or any company, affiliated private equity fund, venture capital fund or co-investment fund in which any Investor is interested or holds a partnership interest or of which any Investor is a member, and for the avoidance of doubt IDG Ventures Europe LP shall be deemed to be part of the same group as IDG;
<i>IDG</i>	International Data Group Inc, a corporation having its registered office at One Exeter Place, Boston, Massachusetts 02116, USA;

<i>Investor Director</i>	a director appointed in accordance with article 15.4
<i>Listing</i>	the unconditional granting of permission for any of the Ordinary Shares (including those arising on any conversion of Preferred Ordinary Shares) to be traded on any recognised investment exchange (as defined in section 207 of the Financial Services Act 1986);
<i>Lynx New Media</i>	Lynx New Media Ventures GP A Limited, (registered no. 04000835), 1 Canada Square, London E14 5AD, England;
<i>Offer Notice</i>	as defined in Article 9.3;
<i>Offer Price</i>	as defined in Article 9.2.2;
<i>Offered Shares</i>	as defined in Article 9.2.1;
<i>Ordinary Shareholders</i>	the holders from time to time of all the Ordinary Shares (and an <i>Ordinary Shareholder</i> is a Person who holds an Ordinary Share);
<i>Ordinary Shares</i>	ordinary shares of £0.000004 each in the capital of the Company;
<i>Ordinary "B" Shares</i>	ordinary "B" shares of £0.000004 each in the capital of the Company;
<i>Original Preferred Ordinary Shareholders</i>	IDG, Lynx New Media and FLV for so long as they each hold 5% of the issued Shares (assuming that the Preferred Ordinary Shares had converted into Ordinary Shares at the Conversion Ratio);
<i>Parent Company and Subsidiary Undertaking</i>	a parent company or subsidiary undertaking for the purposes of section 258 Companies Act 1985;
<i>Person</i>	includes an individual, legal entity, a trust, corporation, firm or other body of persons;
<i>Preference Approval</i>	approval given in writing by holders of not less than 75% of the issued Preferred Ordinary Shares, each such holder holding at least 5% of the issued Preferred Ordinary Shares, or if there are not enough of such holders to obtain 75% approval or if no Preferred Ordinary Shares are in issue, approval by holders of a

	majority of the then issued Shares;
<i>Preferred Ordinary Shareholders</i>	the holders from time to time of all the Preferred Ordinary Shares (and a <i>Preferred Ordinary Shareholder</i> is a Person who holds a Preferred Ordinary Share);
<i>Preferred Ordinary Shares</i>	the shares designated as 'Preferred Ordinary Shares' in the capital of the Company;
<i>Preferred Recipient</i>	as defined in Article 9.4;
<i>Proposing Transferor</i>	as defined in Article 9.1;
<i>Recipient</i>	as defined in Article 9.3;
<i>Regulation</i>	the regulation of the corresponding number in Table A;
<i>Relevant Shares</i>	as defined in Article 5.3.5;
<i>Shareholders</i>	the Ordinary Shareholders and the Preferred Ordinary Shareholders together (and the expression " <i>Shareholder</i> " shall be construed accordingly);
<i>Shareholders' Agreement</i>	means any agreement which is made between holders of Shares regulating their conduct as shareholders which is, by Preference Approval, designated to be a Shareholders Agreement;
<i>Shares</i>	all issued shares of the Company;
<i>Subscription Price</i>	has the meaning given in Article 5.3.5;
<i>Subsidiary</i>	the same meaning as in section 736 of the Companies Act 1985;
<i>Table A</i>	Table A in the schedule to the Companies (Tables A to F) Regulations 1985;
<i>Tag Number</i>	as defined in Article 10.1; and
<i>Transfer Notice</i>	as defined in Article 9.1.

- 1.2 The Regulations contained in Table A, apart from Regulations 17, 24, 25, 26, 39, 40, 41, 50, 54, 64, 65, 73-80, 81(e), 86, 88-91 and 94-98, apply to the Company except insofar as they are inconsistent with these Articles.

- 1.3 Definitions adopted for Table A apply in these Articles.
- 1.4 Reference to any gender includes reference to each other gender (masculine, feminine and neuter).
- 1.5 Reference to "written" shall include electronic mail provided that receipt is confirmed by the sender.

2 Share capital

- 2.1 The authorised share capital at the date of adoption of these Articles is £5,001,000 divided into:
- 125,000,000 Ordinary Shares;
 - 125,000,000 Ordinary "B" Shares; and
 - 25,000,000 Preferred Ordinary Shares of £0.20 each.
- 2.2 The Ordinary Shares, the Ordinary "B" Shares and the Preferred Ordinary Shares constitute different classes of shares but, except as expressly provided in these Articles, rank equally with one another in all respects.
- 2.3 Subject as provided in Articles 2.4 and 2.5, the Company may issue Shares only with Preference Approval.
- 2.4 Ordinary Shares may be issued to employees in accordance with the terms of any employee option scheme (approved in accordance with Article 19.2.3).
- 2.5 Ordinary Shares may be issued on conversion of Preferred Ordinary Shares in accordance with these Articles.
- 2.6 The Company does not have power to issue share warrants to bearer (but may, with Preference Approval, issue warrants to subscribe for shares).

3 Private company status and issues of new Shares

- 3.1 The Company is a private company and accordingly any invitation to the public to subscribe for any Shares or debentures of the Company is prohibited.
- 3.2 In accordance with section 91(1) of the Act, sections 89(1), 90(1) to (5) and sections 90(6) of the Act do not apply to the Company.

- 3.3 Except as provided in Article 2.5 and 3.5, all new Shares shall be offered for subscription to the Shareholders in the proportion that the number of Shares held respectively by each Shareholder (on the basis that all Preferred Ordinary Shares had been converted into Ordinary Shares at the Conversion Ratio) bears to the total number of Shares in issue.
- 3.4 Such offer shall be made by the Company giving a notice to each Shareholder:
- 3.4.1 specifying the number of Shares to which each Shareholder is entitled;
 - 3.4.2 limiting a time period of 14 days within which the offer, if not accepted, will be deemed to be declined; and
 - 3.4.3 specifying that after the expiration of such time period (or on the receipt within such time period of confirmation from the Shareholder to whom such notice is given that he declines to accept all or any part of the Shares so offered) the Directors may dispose of such shares in such manner as they may think most beneficial to the Company.

If, owing to the inequality in the number of new Shares to be issued and the number of Shares held by Shareholders entitled to have the offer of new Shares, any difficulty shall arise in the apportionment of any such new Shares amongst the Shareholders such difficulties shall in the absence of direction by the Company be determined by the Board.

- 3.5 The provisions of Article 3.3 and 3.4 above shall not apply in the case of:
- 3.5.1 the exercise of options in existence at the time of adoption of these Articles; or
 - 3.5.2 the issue of options in favour of bona fide officers or employees with the approval of the Board and the Venture Investors; or
 - 3.5.3 the issue of Preferred Ordinary Shares to the Original Preferred Ordinary Shareholders, pursuant to any agreement subsisting at the date of adoption of these Articles; or
 - 3.5.4 the issue of Ordinary Shares to any Person pursuant to a consultancy agreement with the Company subsisting at the date of adoption of these Articles.

4 **Ordinary Shares**

4.1 *Voting*

Each Ordinary Share confers on its holder the right to attend and speak at general meetings of the Company and to vote on a resolution proposed to holders of Ordinary Shares in accordance with Article 14.3.

4.2 *Dividends*

Subject to Article 5.2, each Ordinary Share in issue from time to time shall share equally in any dividend declared, paid or made in respect of Ordinary Shares.

5 **Preferred Ordinary Shares**

5.1 *Voting*

Subject to Article 14.3, each Preferred Ordinary Share confers on its holder the rights (including the rights to attend, speak and vote) at general meetings of the Company to which the holder would be entitled had the Preferred Ordinary Share been converted in to Ordinary Shares (at the Conversion Ratio) immediately before the relevant right is exercised.

5.2 *Dividends*

Each Preferred Ordinary Share in issue from time to time confers on its holder the right to participate in any dividend declared in respect of Ordinary Shares as if the Preferred Ordinary Share (together with all other Preferred Ordinary Shares held by the same Person) had been converted into Ordinary Shares (at the Conversion Ratio) immediately before the dividend was declared.

5.3 *Conversion*

5.3.1 Preferred Ordinary Shares may convert in to Ordinary Shares on the terms of this Article 5.3.

5.3.2 Each Preferred Ordinary Share confers on its holder the right to elect by notice in writing given to the Board that the Preferred Ordinary Share shall convert in to Ordinary Shares.

5.3.3 All the Preferred Ordinary Shares shall automatically convert into fully paid Ordinary Shares upon:

5.3.3.1 written notice signed by holders of not less than 75% of the Preferred Ordinary Shares then in issue being given to the Board and to each holder of Preferred Ordinary Shares;

5.3.3.2 immediately prior to completion of an underwritten Listing which:

(i) values each Ordinary Share (assuming the Preferred Ordinary Shares had been converted in to Ordinary Shares at the Conversion Ratio) at not less than 175% of the Subscription Price; and

(ii) raises in aggregate not less than £10,000,000 (net of underwriters' commissions and expenses).

5.3.4 The Preferred Ordinary Shares held by a shareholder which are being converted shall convert in to the nearest whole number of Ordinary Shares (fractional entitlements being rounded down to the nearest whole number) determined by multiplying the number of Preferred Ordinary Shares then being converted by the Conversion Ratio.

5.3.5 The Conversion Ratio shall, subject to Article 5.3.6, be:

the **Subscription Price** divided by the **Weighted Average Price**

Where:

Adjusted Subscription Price = the Subscription Price as adjusted from time to time in accordance with these Articles;

Subscription Price = £0.300; and

Weighted Average Price = the sum of (i) the total amount paid for all Preferred Ordinary Shares in issue at the time of issue of the Relevant Shares and (ii) the total amount paid on subscription for

Relevant Shares, the sum of those two being divided by the **Denominator Number** which shall become the **Adjusted Subscription Price** for any Subsequent calculation of whether an issue of shares is an issue of Relevant Shares,

and for these purposes:

Relevant Shares are all the Shares issued, allotted after the date of adoption of these Articles where the amount paid (or agreed to be paid) for each Share is less than the **Adjusted Subscription Price** other than:

- Ordinary Shares the subject of a share option scheme approved in accordance with Article 19.2.1;
- Shares the subject of options and warrants in existence at the date of adoption of these Articles;
- Shares issued as consideration for the acquisition of an interest in another Person with approval of the Board and with Preference Approval;
- arrangements the subject of express Preference Approval stating that the issue of a certain number of Shares shall be disregarded for the purposes of calculating the Conversion Ratio;
- Ordinary Shares issued on the conversion of the Preferred Ordinary Shares;
- Shares issued on a Listing approved in accordance with Article 19.4.3; and
- Shares issued on a reorganisation of the share capital (which are dealt with in Article 5.3.6).

Denominator Number being the number of Preferred Ordinary Shares in issue at the time of issue of the Relevant Shares plus the total number of Relevant Shares.

5.3.6 If there is a reorganisation of the Company's share capital (whether by way of split, combination or otherwise) or if there is a bonus issue or other adjustment to the Company's share capital the Board or a holder of the Preferred Ordinary Shares may request the Auditors to adjust the Conversion Ratio (to take account of the reorganisation, bonus issue or other adjustment) and to certify the then current Conversion Ratio (the intention being that upon conversion the holders of the Preferred Ordinary Shares shall hold the same proportion of the issued Ordinary Shares as they would have held had the reorganisation, bonus issue or other adjustment not occurred). The Auditors' costs shall be borne by the Company. The Auditors' certificate shall, except in the case of manifest error, be binding on the Company and holders of Shares.

6 Return of capital

6.1 On a return of capital (whether as a result of liquidation or otherwise, but not on the redemption or the purchase by the Company of its own shares) the assets of the Company available for distribution amongst its members shall be applied in the following order of priority (each of the following sub-paragraphs constituting a separate category for the purposes of Article 6.2, payments in each case being made in proportion to the number of Shares of the relevant class held):

6.1.1 first, in paying to each holder of Preferred Ordinary Shares the greater of:

6.1.1.1 an amount equal to the Subscription Price plus all unpaid arrears and accruals in respect of dividends relating to those Shares (whether or not payable); and

6.1.1.2 the amount equal to:

(a) if the return of capital occurs after 20 January 2002 but before 20 July 2003, 125% of the Subscription Price;

(b) if the return of capital occurs after 20 July 2003 but before 20 July 2004, 150% of the Subscription Price; and

- (c) if the return of capital occurs after 20 July 2004,
175% of the Subscription Price;

6.1.2 secondly, in paying any balance to the holders of Ordinary Shares an amount equal to the nominal value of the Ordinary Shares.

6.2 If the assets of the Company are insufficient to make payment in full of the amount due to each of the holders of Shares of the relevant class constituting the relevant category, such assets as are available for distribution shall be distributed amongst those holders pro rata as nearly as may be to their then holdings of the relevant class of Shares.

7 Lien

7.1 The lien conferred by Regulation 8 attaches to all Shares, whether fully paid or not, registered in the name of a person indebted or under liability to the Company, whether he is the sole holder of the Shares or one of two or more joint holders, and to all distributions and other money and property attributable to them.

7.2 The lien conferred by Regulation 8 shall be for all sums presently payable to the Company by him or his estate and that Regulation is modified accordingly.

8 Dealings in Shares

8.1 A Shareholder is not entitled to transfer any interest in any Share unless the transfer is permitted by this Article 8 or it is made in accordance with Articles 9, 10 or 11.

8.2 Subject to Article 8.6, Ordinary Shares may be transferred:

8.2.1 with express Preference Approval (naming the transferee and the price to be paid for the Shares being transferred);

8.2.2 subject to Article 8.3, by a Founder to trustees of a Founder Trust;

8.2.3 subject to Article 8.3, by the trustees of a Founder Trust to replacement trustee(s) of the same Founder Trust; and

8.2.4 by the trustees of a Founder Trust to the relevant Founder.

8.3 No transfer is permitted by Articles 8.2.2 and 8.2.3 unless each relevant transferee has before the transfer is made agreed to deliver to the Company, and has before or at the same time as the transfer is presented for registration (or, if sooner,

within seven Business Days following the date of delivery of the transfer to the transferee) delivered to the Company a deed:

- 8.3.1 confirming that the transferee is a trustee of a Founder Trust;
- 8.3.2 agreeing that the transferee shall adhere to any Shareholders' Agreement as if it were named as a "Founder" in that Agreement; and
- 8.3.3 agreeing not to transfer the relevant Ordinary Shares to any person other than the relevant Founder in accordance with these Articles.

8.4 Preferred Ordinary Shares may be transferred:

- 8.4.1 with express Preference Approval (naming the transferee and the price to be paid for the Shares being transferred);
- 8.4.2 subject to Article 8.5, by an Original Preferred Ordinary Shareholder to a member of the same Group as that Original Preferred Ordinary Shareholder; and
- 8.4.3 by a person to whom an Original Preferred Ordinary Shareholder has (directly or indirectly) transferred shares to a member of the same Group as that Original Preferred Ordinary Shareholder, in accordance with the undertaking required to be given in accordance with Article 8.5

8.5 No transfer is permitted by Articles 8.4.2 and 8.4.3 unless the relevant transferee has before the transfer is made agreed to deliver to the Company, and has before or at the same time as the transfer is presented for registration (or, if sooner, within seven Business Days following the date of delivery of the transfer to the transferee) delivered to the Company a deed undertaking that if the transferee ceases to be a member of the same Group as the relevant Original Preferred Ordinary Shareholder (transferring the shares or from whom the shares were previously transferred) it shall within a reasonable period (being not more than ten Business Days after the later of such cessation and the date on which a holder of Ordinary Shares or the Board notify it that they require a transfer to be made in accordance with the relevant undertaking) transfer those of the Preferred Ordinary Shares then held by it to a Person which is a member of the same Group as the relevant Original Preferred Ordinary Shareholder.

8.6 Notwithstanding Article 9, the Founders and Founder Trusts may not before the third anniversary of the date of adoption of these Articles, without first obtaining Preference Approval:

8.6.1 dispose of or agree to dispose of or grant any option in respect of the legal or beneficial interest in any Share for the time being held by him; or

8.6.2 enter into any arrangement (including without limitation, any renunciation in favour of a third party of any rights in relation to any rights issue of Shares) as a result of which any benefit or entitlement as derived from a Share held by him is to be held or passed to another person; or

8.6.3 charge, mortgage or in any way encumber the same.

8.7 The provisions of Articles 8.8 and 8.9 shall apply to a Founder and his relevant Founder Trust if the Founder:

8.7.1 is convicted of fraud, theft, or of a criminal offence punishable by imprisonment;

8.7.2 is found to be guilty of gross misconduct by knowingly distributing Shazam's confidential documents (or any document in respect of which Shazam owes a duty of confidentiality) to third parties; or

8.7.3 joins a direct competitor (as determined by the Board) without prior unanimous approval from the Board.

8.8 If this clause applies, the relevant Founder shall be deemed to have served a Transfer Notice in accordance with Article 9 and:

8.8.1 if this clause applies as a result of circumstances described in Articles 8.7.1 or 8.7.2 occurring, the Founder shall be deemed to have specified that the Offer Price is the nominal value of an Ordinary Share;

8.8.2 if this clause applies only as a result of circumstances described in Article 8.7.3 occurring, the Founder shall be deemed not to have specified an Offer Price (so that the relevant Shares shall be offered at Fair Value in accordance with Article 9.2.2).

- 8.9 If Shareholders do not acquire all the Shares that are subject to a Transfer Notice deemed to have been served in accordance with Article 8.8, Shazam may offer the unsold Shares for sale to a third party at the same price of those Shares offered to the Shareholders. The sale of those Shares by Shazam may be completed only with Preference Approval and, if Preference Approval is given, each Founder shall approve the transfer.

9 First refusal rights on transfer (pre-emption rights)

- 9.1 Where this Article 9 applies the Shareholder who wishes to transfer Shares (the "*Proposing Transferor*") shall give notice in writing to the Board at the Company's office (a "*Transfer Notice*") complying with the requirements of Article 9.2. A Transfer Notice may only relate to one class of Shares, a Shareholder may not serve more than one Transfer Notice in respect of Ordinary Shares in any three month period unless the Shareholder has first obtained Preference Approval.

9.2 The Transfer Notice:

- 9.2.1 shall specify the class and number of Shares offered ("*Offered Shares*");
- 9.2.2 may specify a price per Offered Share which the Proposing Transferor is willing to accept for the Offered Shares ("*Offer Price*") and, if no Offer Price is stated in the Transfer Notice, the Board shall immediately following receipt of the Transfer Notice instruct the Auditors to determine the fair value of each Offered Share (the "*Fair Value*") in accordance with Article 9.11;
- 9.2.3 shall constitute the Board as the agent of the Proposing Transferor to offer and sell the Offered Shares to other holders of Shares and at the Offer Price per Share or, if no Offer Price is specified, the Fair Value per Share determined in accordance with Article 9.11;
- 9.2.4 shall specify the identity of the proposed transferee (if any); and
- 9.2.5 may not be withdrawn except in accordance with Article 9.18.

- 9.3 The Board (acting as agent of the Proposing Transferor) shall within a reasonable period (not exceeding twenty Business Days) following receipt of the Transfer Notice if it specified an Offer Price (or, in the case of any other Transfer Notice, following receipt of the Auditors' determination of the Fair Value), give written

notice complying with the provisions of Article 9.5 to each Person who, on the date of service of the Transfer Notice holds Shares other than the Proposing Transferor (each Person to whom notice is given being a "*Recipient*") conditionally offering the Offered Shares to those Shareholders (the "*Offer Notice*").

9.4 Reference in this Article 9 to a "*Preferred Recipient*" is reference to a Recipient who has priority in respect of any of the Offered Shares, determined in accordance with Article 9.5.3.

9.5 The Offer Notice shall specify:

9.5.1 the information specified in the Transfer Notice in accordance with Article 9.2 and (if, no Offer Price was specified in the Transfer Notice, the Fair Value) and a statement that the Fair Value has been determined by the Auditors;

9.5.2 if it is the case, that the offer made in the Offer Notice is conditional on the Transfer Notice not being withdrawn in accordance with the Article 9.18;

9.5.3 the number of Offered Shares (if any) in respect of which the Recipient has priority being:

9.5.3.1 if the Offered Shares are Preferred Ordinary Shares, that proportion of the Offered Shares which the Recipient's holding of Preferred Ordinary Shares bears to the total number of Preferred Ordinary Shares (excluding the Offered Shares) in issue as at the date of service of the Transfer Notice (if the proportionate number of Shares results in a fractional entitlement, the entitlement to priority shall be rounded down to the nearest whole number); and

9.5.3.2 if the Offered Shares are Ordinary Shares, that proportion of the Offered Shares which the Recipient's aggregate holding of:

(a) Ordinary Shares, and

(b) Ordinary Shares to which the holder would be entitled had the Preferred Ordinary Shares held

by the Recipient been converted in to Ordinary Shares (at the Conversion Ratio) immediately before the date of service of the Transfer Notice

bears to the total number of:

- (a) Ordinary Shares held by Recipients, and
- (b) Ordinary Shares to which Recipients would be entitled had all the Preferred Ordinary Shares held by them been converted in to Ordinary Shares (at the Conversion Ratio) immediately before the date of service of the Transfer Notice

but so that, if the proportionate number of Shares results in a fractional entitlement, the entitlement to priority shall be rounded down to the nearest whole number of Shares;

9.5.4 if the Offered Shares are Ordinary Shares and the Recipient holds Preferred Ordinary Shares, the fact that the Recipient has the participatory rights on transfer described in Article 10.1; and

9.5.5 the date on which the Offer Notice will lapse and no longer be capable of acceptance (being the Business Day falling twenty Business Days after the date on which the Offer Notice is despatched to the Recipient unless the Recipient has by then applied for Offered Shares).

9.6 Each Recipient who accepts the conditional offer made under Article 9.2 (an *"Applicant"*) may state in his reply whether or not he accepts the Offer Price (if any). An Applicant may offer to acquire more Offered Shares than the number of Offered Shares in respect of which he has priority (if any) (such an offer being an offer to acquire *"Excess Offered Shares"*).

9.7 If:

9.7.1 a Preferred Recipient does not apply for all of the Offered Shares in respect of which that recipient has priority (determined in accordance with Article 9.5.3); and

9.7.2 an Applicant applies for Excess Offered Shares,

then those unclaimed Offered Shares referred to in (9.7.1) above shall be used in or towards satisfying those applications for Excess Offered Shares made by Preferred Recipients in proportion to the number of unclaimed Offered Shares to the total number of Offered Shares applied for by each of those Preferred Recipients and, if any unclaimed Offered Shares then remain unallocated, these unclaimed Offered Shares shall be used in or towards satisfying those applications for Excess Offered Shares made by the Applicants who are not Preferred Recipients in proportion to the number of unclaimed Offered Shares then remaining unallocated to the total number of Offered Shares applied for by each of those Applicants. If Applicants do not apply for all of the Offered Shares the Board may, if the Company is then lawfully able to purchase Offered Shares, resolve that the Company shall purchase any or all (or so many as it may lawfully acquire) of those of the Offered Shares which are not taken up by Applicants. If the Board resolves that the Company shall purchase any such Shares, the Company shall be deemed to be an Applicant in respect of those Shares. If the Company is an Applicant it shall be deemed to have served a reply stating that it does not accept the Offer Price if there is one.

- 9.8 Shares representing fractional entitlements shall be allocated by the Directors by the drawing of lots.
- 9.9 If a holder of Preferred Ordinary Shares entitled to participate in the giving of Preference Approval states in its reply that it accepts Offered Shares, but that it does not accept the Offer Price then, immediately on the expiry of the period of twenty Business Days referred to in Article 9.5.5 or (if earlier) upon all recipients of Offer Notices having replied, the Board shall instruct the Auditors to determine the fair value of each Offered Share (the "*Fair Value*") in accordance with Article 9.11.
- 9.10 The costs of the Auditors in determining the Fair Value shall be borne as to half by the Proposing Transferor (up to a maximum amount of £10,000) and as to the balance by the Company if the Fair Value is less than the Offer Price but shall otherwise be borne by the Company or those holders of Preferred Ordinary Shares entitled to participate in the giving of Preference Approval who do not accept the Offer Price in such proportions as the Auditors, in their absolute discretion, determine as being fair in all the circumstances (provided that the Auditors shall not require any Applicant to pay more than £10,000).
- 9.11 In determining the Fair Value of the Offered Shares, the Auditors shall (subject always to Article 9.12) value the Offered Shares using the following principles, assumptions and bases:

- 9.11.1 valuing the Offered Shares as on an arms' length sale between a willing seller and a willing buyer (on the basis that the buyer holds no Shares) and taking into account the price per Offered Share specified in any offer to purchase the Offered Shares received by the Proposing Transferor (provided that the Auditors are satisfied that that offer is bona fide and is from a party unconnected with the Proposing Transferor);
 - 9.11.2 if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
 - 9.11.3 on the assumption that the Offered Shares are capable of being transferred without restriction (whether or not they are capable of being so transferred);
 - 9.11.4 on the basis that no reduced or additional value is attached to any holding of Shares by virtue only of the holding comprising on or after purchase a majority or minority of the total issued share capital; and
 - 9.11.5 the application in all other respects of principles and practices consistent with those customarily applied by the Auditors in assessing valuations (and, where appropriate, adopting policies and principles adopted in the previous audited accounts of the Company).
- 9.12 If any difficulty arises in applying any of the assumptions or bases applicable to the determination of the Fair Value the Auditors shall (subject to the provisions of any Shareholders' Agreement) resolve the difficulty in such manner as they, in their absolute discretion, think fit.
- 9.13 In determining the Fair Value, the Auditors shall be deemed to be acting as experts and not as arbitrators and (save for bad faith or manifest error) their decision shall be final and binding.
- 9.14 Upon receiving the Auditors' determination of the Fair Value in writing, the Board shall deliver a copy of the Auditors' determination to the Proposing Transferor and (if there are any at that time) each relevant holder of Preferred Ordinary Shares.
- 9.15 If the Proposing Transferor is not entitled to withdraw the Transfer Notice or has not withdrawn the Transfer Notice pursuant to Article 9.18 within the five Business Day period referred to in that Article, the Board shall as soon as practicable notify all the Applicants and the Proposing Transferor of:

- 9.15.1 the number of Offered Shares allocated to each Applicant;
- 9.15.2 the price to be paid for each of the Offered Shares being the lower of the Offer Price (if there is one) and the Fair Price (if there is one); and
- 9.15.3 the place and time (being not earlier than ten and not later than twenty Business Days after the date of the notification) at which:
 - 9.15.3.1 the price is to be paid by the Applicants to the Proposing Transferor; and
 - 9.15.3.2 appropriate transfers of the Offered Shares are to be delivered to the Applicants by the Proposing Transferor.
- 9.16 The Proposing Transferor shall be bound to transfer the Offered Shares with full title guarantee and free from all encumbrances against tender of the Transfer Price in accordance with the terms of the notice delivered in accordance with Article 9.15 and each Applicant shall be bound to acquire the Offered Shares specified in the notice served on him in accordance with Article 9.15.
- 9.17 If after having become bound to transfer Offered Shares pursuant to Article 9.16 the Proposing Transferor defaults in transferring Offered Shares, then the following provisions shall apply:
 - 9.17.1 the Company may receive the purchase money and the Proposing Transferor shall be deemed to have appointed any director or the secretary as the agent of the Proposing Transferor to execute a transfer of the Offered Shares in favour of the Applicant(s) and to receive the purchase money in trust for the Proposing Transferor;
 - 9.17.2 the receipt of the Company for the purchase money shall be a good discharge to the Applicant(s) and after it has been entered in the register of members in purported exercise of the power the validity of the proceedings shall not be questioned by any person; and
 - 9.17.3 the Proposing Transferor shall be bound to deliver up the share certificate for the Offered Shares and on its delivery shall be entitled to receive the purchase price without interest. If the certificate comprises any Shares which the Proposing Transferor has not

become bound to transfer the Company shall issue to the Proposing Transferor a share certificate for the balance of those Shares.

- 9.18 The Proposing Transferor may withdraw the Transfer Notice served by him and cancel the Company's authority to sell Offered Shares (other than Offered Shares in respect of which Applicants have accepted the Offer Price) by delivering to the Company written notice of cancellation of authority within five Business Days after notification to the Proposing Transferor by the Company in accordance with Article 9.14 of the Auditors' determination if that determination is that the Fair Price is less than the Offer Price (provided that before, or at the same time as, that notice of cancellation of authority is served the Proposing Transferor has paid his proportion (if any) of the Auditors' costs in relation to the determination of the Fair Value, or has undertaken to pay those costs in a manner satisfactory to the Board).
- 9.19 If there are any Offered Shares which are not sold pursuant to the terms of this Article 9 after a Transfer Notice has been served and the procedure for sale stated in this Article 9 has been exhausted, the Proposing Transferor may at any time before the date falling three months after delivery of the Transfer Notice to the Board sell such unsold Offered Shares (subject always to the participatory rights, if any, exercised by holders of Preferred Ordinary Shares in accordance with Article 10.2) to any Person at a price per Offered Share which is no less than the Offer Price or, if no Offer Price was stated, the Fair Value. The Person purchasing the Offered Shares may, with Preference Approval, acquire all the Proposing Transferor's unsold Offered Shares and additional Shares from Recipients to satisfy those Recipients' participatory rights on transfer.
- 9.20 The Directors shall, before registering a transfer permitted by Article 9.19, take reasonable steps to satisfy themselves that the relevant Shares are being sold on bona fide arms' length terms in accordance with the provisions of this Article (and shall not register the relevant transfer if they are not so satisfied).

10 Tag-along rights

- 10.1 If the Offered Shares are Ordinary Shares and the Recipient holds Preferred Ordinary Shares, the Recipient may express his desire to exercise participatory rights on transfer by giving written notice to the Board before the earlier of:
- (a) the date specified in accordance with Article 9.5.5 for the Offer Notice to lapse, and

- (b) the date on which the Recipient responds to the conditional offer contained in the Offer Notice.

If the Recipient expresses his desire to exercise participatory rights on transfer the Proposing Transferor shall be obliged to procure that the number of Ordinary Shares sold by the Proposing Transferor is reduced by the number (the "*Tag Number*") determined in accordance with Article 10.2 and that the Person purchasing any of the Offered Shares acquires the Tag Number of Ordinary Shares from that Recipient for the same price per share price as it pays for the Ordinary Shares acquired from the Proposing Transfer, but so that the Recipient shall be obliged only to warrant its title to the Ordinary Shares it transfers (and not to give any other warranty or indemnity). Recipients who give such notice shall be bound to sell the Tag Number of Ordinary Shares to a purchaser of Offered Shares.

- 10.2 The Tag Number of Ordinary Shares in respect of which a Recipient may exercise participatory rights on transfer is the number (rounded down to the nearest integer) derived from the following formula:

(NOS divided by PP) multiplied by RHP

where:

NOS = the number of Ordinary Shares which the purchaser intending to purchase Offered Shares proposes to purchase,

PP = is the participating pool being the aggregate of:

- the total number of Ordinary Shares held by the Proposing Transferor,
- the total number of Ordinary Shares to which the Proposing Transferor would be entitled if all the Preferred Ordinary Shares held by it were converted in to Ordinary Shares (at the Conversion Ratio) immediately before completion of the sale of the Offered Shares,
- the total number of Ordinary Shares held by each Recipient who also holds Preferred Ordinary Shares, and

- the total number of Ordinary Shares to which Recipients holding Preferred Ordinary Shares would be entitled if all the Preferred Ordinary Shares held by them were converted in to Ordinary Shares (at the Conversion Ratio) immediately before completion of the sale of the Offered Shares, and

RHP = is the Recipient's holding of participating shares, being the aggregate of:

- the total number of Ordinary Shares held by the Recipient, and
- the total number of Ordinary Shares to which the Recipient would be entitled if all the Preferred Ordinary Share held by it were converted in to Ordinary Shares (at the Conversion Ratio) immediately before completion of the sale of the Offered Shares.

11 Drag-along rights

11.1 For the purposes of this Article 11.1 the Preferred Ordinary Shares are assumed to represent that number of Ordinary Shares to which they would convert at the Conversion Ratio.

11.2 If as a result of one or more transfers a person (the "*Acquirer*") alone or together with other members of any Group of which it is a member would (following compliance with the procedures in Article 9) acquire:

11.2.1 at any time prior to 20 July 2006 more than 90% of the Ordinary Shares; or

11.2.2 at any time on or after 20 July 2004 (but before 20 July 2006 more than 75% of the Preferred Ordinary Shares held by the Original Preferred Ordinary Shareholders, and in which case Article 6 shall not apply; or

11.2.3 at any time on or after 20 July 2006 more than 75% of the Preferred Ordinary Shares held by the Original Preferred Ordinary Shareholders,

the Acquirer and any proposing transferee may by joint election require each other holder of Shares (the "*Dragged Sellers*") to transfer all their Shares to the Acquirer, on the same terms as offered to the proposing transferees in which case each Dragged Seller shall be bound to transfer the Shares held by him, giving a warranty that he is entitled to sell the relevant Shares (but so that if he, or a member of his Group holds Preferred Ordinary Shares, or Ordinary Shares resulting from the conversion of Preferred Ordinary Shares held by him or a member of his Group he shall not be obliged to give any other warranty or indemnity) at a price equal to the higher of:

11.2.4 the price paid for the Shares acquired by the Acquirer as a result of which this Article 11 entitles the Acquirer to require Shareholders to transfer Shares to it;

11.2.5 the average price paid by the Acquirer and each member of the Acquirer's Group for Shares acquired by each of them other than:

- (a) Shares for which they subscribed,
- (b) Shares acquired by them at a price per Share which is below the price at which any member of the Acquirer's Group subscribed for any Shares,
- (c) if it reduces the average price paid, the price paid for the Shares acquired by the Acquirer or as a result of which this Article 11 entitles the Acquirer to require Shareholders to transfer Shares to it, and
- (d) Shares acquired by a member of the Acquirer's Group from another member of that Group to the extent that those acquisitions reduce the average price paid,

11.2.6 (in the case of a transfer of Preferred Ordinary Shares under Articles 11.2.1 and 11.2.3 only) the amount the Dragged Seller would have been entitled to receive in accordance with Article 6 in respect of each Preferred Ordinary Share held by it if the Company were put into liquidation on the date on which the Acquirer acquires Shares under Articles 11.2.1 and 11.2.3.

11.3 If a Dragged Seller defaults on its obligations under Article 11.1 or the following provisions shall apply:

- 11.3.1 the Company may receive the purchase money and the Dragged Seller shall be deemed to have appointed each director and the secretary severally to act as his agent to execute a transfer of the relevant Shares in favour of the Acquirer and to have appointed the Company as his agent to receive the purchase money in trust for him (but not so that the Company shall be liable to account to the transferor for any interest);
 - 11.3.2 the receipt of the Company for the purchase money shall be a good discharge to the Acquirer and, after the transfer has been entered in the register of members in purported exercise of the power of the directors, the validity of the transfer and related proceedings shall not be questioned by any person; and
 - 11.3.3 the Dragged Seller shall be bound to deliver up the share certificate for the relevant Shares and on its delivery shall be entitled to receive the purchase price without interest.
- 11.4 If the Acquirer defaults on its obligations under this Article 10 each Dragged Seller may either (i) give written notice to the Company (with a copy to the Acquirer) stating that the Dragged Seller wishes to proceed with the sale of the relevant Shares or (ii) give written notice to the Company (with a copy to the Acquirer) stating that the Dragged Seller does not wish to sell the relevant Shares, and in each case the Acquirer shall have five days in which to pay the purchase price, failing which the Acquirer shall have no further right rights or remedies against the Dragged Seller as a result of this Article 11.
- 11.5 Unless a Dragged Seller gives notice that it does not wish to proceed to sell the relevant shares (in accordance with Article 11.4) Article 11.4 shall not prejudice the Dragged Seller's rights to sue for specific performance for any default by the Acquirer on its obligations under this Article 11.

12 Registration of transfers

- 12.1 The Directors shall refuse to register a transfer of Shares unless:
- 12.1.1 it is lodged at the office or at such other place as the Directors appoint and is accompanied by the certificate for the Shares to which it relates; and

- 12.1.2 it is in favour of not more than one Person (or not more than three Persons who have certified to the Company that they are acting as trustees of a single trust); and
- 12.1.3 it is:
 - 12.1.3.1 in favour of a Person who is bound by the terms of any Shareholders' Agreement; or
 - 12.1.3.2 if there is a Shareholders' Agreement, lodged together with a deed in favour of the Company and each Shareholder (other than the transferor) duly executed by the transferee by which the transferee agrees to be bound mutatis mutandis by the terms of the Shareholder's Agreement as if it were named in that agreement as the original holder of the Shares the subject of the transfer; or
 - 12.1.3.3 in respect of Shares which are transferred pursuant to Article 6.4; and
- 12.1.4 if it is in respect of Shares which are not fully paid, it is lodged together with a guarantee in such form as the Directors reasonably require in respect of the payment of amounts which remain to be paid in respect of the relevant Shares.
- 12.2 Unless the Directors are not entitled to register a transfer of Shares properly presented to them at the office, they shall register a transfer so presented.
- 12.3 If the directors are not entitled to register a transfer of Shares, they shall within fourteen Business Days after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal to register the transfer.
- 13 **Notice of general meetings**
 - 13.1 Regulation 37 is amended by replacing 'eight weeks' with 'four weeks'.
 - 13.2 The first sentence of Regulation 38 is amended:
 - 13.2.1 by deleting 'or a resolution appointing a person as a director';

13.2.2 by adding after 'a special resolution' the words but not including a written resolution;

13.2.3 by adding at the end 'unless Preference Approval is given for a shorter period of notice'.

14 Proceedings at general and class meetings

14.1 *Quorum*

14.1.1 No business shall be transacted at a general or class meeting unless a quorum is present.

14.1.2 If a quorum is not present within half an hour of the time appointed for the meeting or if during the meeting a quorum ceases to be present, the meeting shall be adjourned to the same day in the next week, or if that is not a Business Day to the next following Business Day, at the same time and place or such other time and place as the Directors determine. At the adjourned meeting, two Preferred Ordinary Shareholders or an Ordinary Shareholder and a Preferred Ordinary Shareholder present in person or by proxy shall constitute a quorum and if no such quorum is present within half an hour of the time appointed for the adjourned meeting or if during the adjourned meeting a quorum ceases to be present, the meeting shall be dissolved.

14.2 *Right to demand poll*

14.2.1 Paragraph (b) in Regulation 46 is replaced with 'by any holder of Ordinary Shares having the right to vote at the meeting;'.

14.2.2 Paragraphs (c) and (d) of Regulation 46 are deleted.

14.3 *Voting*

14.3.1 On a show of hands each holder of Shares conferring a right to vote (whether present in person, by proxy or by corporate representative) shall have one vote.

14.3.2 On a poll each holder of Shares conferring a right to vote (whether present in person, by proxy or by corporate representative) shall be entitled to cast one vote for every Ordinary Share held or to which

the holder would be entitled had all the Preferred Ordinary Shares held by that Shareholder been converted into Ordinary Shares (at the Conversion Ratio) immediately before the right is exercised.

- 14.3.3 Each Preferred Ordinary Share confers on its holder a right to demand a poll on any matter in relation to which a vote is taken at a general meeting.

14.4 *Class meetings*

- 14.4.1 Subject as otherwise expressly provided in these Articles, meetings of holders of a class of Share shall be quorate if:

14.4.1.1 a majority (by number) of the holders of that class of Share is present in person or by proxy; or

14.4.1.2 a majority (by number) of the holders of that class of Share has consented to the meeting being held notwithstanding that, but for this Article and such consent, the meeting would not be quorate; or

14.4.1.3 the holder (or holders) of 70% of the issued Shares of the relevant class is (or are) so present in person or by proxy.

- 14.4.2 Subject as otherwise expressly provided in these Articles, at meetings of holders of a class of Shares, each holder shall:

14.4.2.1 on a show of hands have one vote; and

14.4.2.2 on a poll have one vote for each Share of the class which he holds.

- 14.5 Questions arising at meetings of holders of any class of Share shall (unless these Articles, any Shareholders' Agreement or statute otherwise requires) be decided by a majority of votes cast.

15 **Appointment and removal of Directors**

- 15.1 Unless otherwise determined by special resolution, the minimum number of Directors is two and their number shall not without Preference Approval exceed eight (of whom not more than four shall be executive Directors).

- 15.2 No Director shall be appointed or removed except in accordance with these Articles.
- 15.3 Each of the Founders who are Ordinary Shareholders or who are beneficiaries of a Founder Trust that holds Ordinary Shares, and who have subsisting service agreements with the Company and hold at least 1.5% of the issued Shares together may, subject to Article 15.6, appoint up to four executive Directors (and remove the executive Directors so appointed) in accordance with Article 15.8.1.
- 15.4 Each Original Preferred Ordinary Shareholder may from time to time appoint a non-executive Director and may remove that non-executive Director so appointed by it (each Director appointed in accordance with this article 15.4 is for so long as he holds office an *Investor Director*).
- 15.5 The Founders and the Preferred Ordinary Shareholders may jointly appoint an additional Director, who shall be a non-executive director and shall not represent either the Founders or the Preferred Ordinary Shareholders.
- 15.6 If holders of a majority of the issued Preferred Ordinary Shares and those Founders or Founder Trusts holding a majority of Ordinary Shares agree, the holders of a majority of the issued Preferred Ordinary Shares may by notice served on the Board, request that up to two named senior managers of the business shall be appointed as executive Directors. On receipt of such notice:
- 15.6.1 the Founders (or Founder Trusts, if appropriate) shall procure the removal of any Directors appointed in accordance with Article 15.3 to the extent necessary to allow the appointment of the named managers to be made without breaching Article 15.1; and
- 15.6.2 the Board shall, subject only to the named managers accepting appointment, appoint the named managers as executive Directors.
- 15.7 An executive Director appointed in accordance with Article 15.6 may be removed by notice given in accordance with Articles 15.8 and 15.9.
- 15.8 The right to appoint and remove Directors shall be exercised:
- 15.8.1 in the case of appointments and removals in accordance with Article 15.3, by holders of more than 50% of the issued Ordinary Shares held by the Founders and Founder Trusts,
- 15.8.2 in the case of appointments and removals in accordance with Article 15.4 by the relevant Original Preferred Ordinary Shareholder,

- 15.8.3 in the case of removals in accordance with Article 15.7, by the holders of a majority of the issued Preferred Ordinary Shares and those Founders or Founder Trusts holding a majority of Ordinary Shares,
- delivering notice to the Company in accordance with Article 15.9
- 15.9 Notices appointing or removing Directors shall be effective upon delivery to the Company's registered office of:
- 15.9.1 an appropriate notice naming the relevant Person signed by the relevant Shareholder(s) (or their duly authorised representatives); and
- 15.9.2 in the case of appointments only, a notice consenting to act and specifying an address for service of notices of meetings (being the address referred to in Article 18.2.1) signed by the Person being appointed as a Director.
- 15.10 The Directors are not subject to retirement by rotation. The last sentence of Regulation 84 is accordingly deleted.
- 15.11 A person is not disqualified from being a director by having attained any particular age.
- 15.12 Notwithstanding any provision to the contrary in these Articles, any Director may be removed by the decision of a majority of the remainder of the Board if the relevant Director is or may be suffering from mental disorder and either:
- 15.12.1 he is admitted to hospital in pursuance of an application for admission to treatment under the Mental Health Act 1983 (or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960); or
- 15.12.2 an order is made by a court having jurisdiction (whether in the UK or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to this property or affairs.

16 Observer and information rights

- 16.1 Each Founder who holds (together with any associated Founder Trust) at least 5% of the total Ordinary Shares in issue shall be entitled to appoint and remove himself as an observer to the Board, the removal or appointment being made by notice served on the Company.
- 16.2 Each Original Preferred Ordinary Shareholder is entitled to appoint and remove an observer to the Board, or any committee of the Board, at which a Director appointed in accordance with Article 15.4 is not present.
- 16.3 Observers appointed under Articles 16.1 and 16.2 shall be subject to the same fiduciary and other duties of confidentiality to the Company and have the same rights to receive notice and information, and to attend meetings and speak, as though they were Directors, except that they shall not be entitled to vote.
- 16.4 Each Person who holds (whether alone or together with others which form part of the same Group) Preferred Ordinary Shares which if converted into Ordinary Shares (at the Conversion Ratio) would constitute at least 5% of the enlarged issued share capital (assuming every issued Preferred Ordinary Share were so converted) or anybody holding less than 5% of the enlarged share capital who has been given observer rights pursuant to any agreement with the Company, shall be entitled (at that Shareholder's own expense in relation to reasonable out of pocket costs properly incurred by the Company) to:
- 16.4.1 request copies of the Company's monthly management accounts to be delivered to it each month (and the Company shall comply with such request);
 - 16.4.2 request copies of the latest completed (and draft of the current) audited annual financial statements, budget and business plan (and the Company shall comply with such request); and
 - 16.4.3 inspect the premises, books and records of the Company during usual business hours.

17 Alternate Directors

- 17.1 A Director (other than an alternate director) may appoint as his alternate any person who is approved for that purpose by the holders of a majority of the Shares of the class by the holders of which he was appointed and may terminate the

appointment. An alternate director shall be entitled to receive notice of all meetings of the Directors whether he is present in the United Kingdom or not and the last sentence of Regulation 66 accordingly does not apply. In the absence of the director appointing him, an alternate director shall (in addition to any voting rights to which he is entitled if he is also a Director) be entitled to the same voting rights as his appointor and shall be treated as if he were appointed by the holders of the same class of Shares as the Shares held by the persons who appointed his appointor.

17.2 An alternate director ceases to be an alternate for his appointor when his appointor ceases to be a Director. An alternate director may also be removed by his appointor.

17.3 Regulation 68 is amended by adding after 'by notice to the company signed by the director making or revoking the appointment' the words 'and delivered to the office or tendered at a meeting of the Directors'.

18 **Proceedings of Directors**

18.1 *Introduction*

18.1.1 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit.

18.1.2 A Director may, and the secretary at the request of a Director shall, call a meeting of the Directors.

18.2 *Notice of meetings*

18.2.1 Unless an Investor Director consents to shorter notice, each Director shall be given not less than five Business Days' prior written notice of any meeting of the Board, accompanied (where applicable and reasonably practicable) by a written agenda specifying the business of such meeting and copies of any relevant papers to be discussed at the meeting, provided always that a shorter period of notice may be given either in the case of emergency or where commercial necessity so dictates or with the approval of at least one Director appointed in accordance with Article 15.4.

18.2.2 Meetings of the Board shall be convened and held at least once in each calendar month.

18.3 *Chairman*

18.3.1 For so long as Preferred Ordinary Shares are in issue the chairman of the Board shall, unless Preference Approval is given to another appointment, be the Investor Director nominated by IDG or Lynx New Media, such nomination to be rotated annually. The first chairman of the Board shall be Ajay Chowdhury.

18.3.2 The chairman of the Board shall not be entitled to a second or casting vote.

18.4 *Quorum and attendance at meetings by telephone*

18.4.1 The quorum for the transaction of business at any meeting of the Board (other than an adjourned meeting) shall be one Investor Director and one other Director who is not an Investor Director present at the time when the relevant business is transacted. If such a quorum is not present within 30 minutes from the time appointed for the meeting or if during the meeting such a quorum ceases to be present, the meeting shall be adjourned for not more than five Business Days and each Director who is entitled to receive notice of Board meetings shall be given at least two Business Days' notice of the adjourned meeting and at that adjourned meeting any two Directors (including at least one Investor Director or the IDG Director) present shall constitute a quorum.

18.4.2 Unless otherwise agreed by Preference Approval and subject to clause 18.4.3, the quorum of a Committee must include at least one Investor Director but otherwise no Directors need be appointed to a Committee, and Regulation 72 is amended accordingly.

18.4.3 The quorum of the remuneration Committee referred to in Article 18.5.2 shall be two of the Investor Directors.

18.4.4 A Person may participate in a meeting of the Directors or of a Committee of which he is a member by conference telephone or similar communications equipment by means of which all the persons participating in the meeting can hear each other at the same time. Participation by a Director in a meeting in this manner is treated as presence in person by the Director at the meeting.

18.5 *Business to be transacted at meetings of Directors and Committees*

18.5.1 The business of meetings of Directors and Committees is regulated by the following provisions of this Article 18 and by Article 19.

18.5.2 The Board shall (while there are holders of Preferred Ordinary Shares) have a remuneration Committee which shall consist of a majority of the Investor Directors. This Committee shall among other things, be responsible for setting and reviewing the salaries of the Founders.

18.6 *Voting*

18.6.1 At meetings of the Directors and of Committees, each Director present shall have one vote and no other person shall be entitled to vote.

18.6.2 A Director may vote at a meeting of the Directors or of a Committee on a resolution which concerns or relates to a matter in which he has, directly or indirectly, an interest but he remains obliged in any event to declare his interest in accordance with section 317 of the Act.

18.7 *Minutes*

18.7.1 Regulation 100 is amended by replacing paragraphs (a) and (b) with 'of all proceedings of general meetings and meetings of the Directors'.

19 **Limits on authority of Directors and Committees**

19.1 The Directors (both individually and as the Board), Committees and executive officers of the Company (including, without limitation, the chairman and any managing Director) shall not have the power, without Preference Approval, to commit the Company or a Subsidiary Undertaking of the Company to a transaction or arrangement referred to in Article 19.2 (and Regulations 70 and 72 are amended accordingly).

19.2 The transactions and arrangements referred to in Article 19.1 are any transaction or arrangement as a result of which the Company or any Subsidiary Undertaking of the Company:

- 19.2.1 increases, reduces, consolidates, sub-divides, converts, purchases, redeems or varies its authorised or issued share capital, share premium account, capital redemption reserve fund or other similar reserve or varies the rights or obligation (including liabilities in respect of partly paid shares) attached to any class of its shares or allots (whether conditionally or otherwise) or issues any shares or securities convertible in to shares, stock or debentures, or warrants or options in respect of shares, stock or debentures, other than (i) for the purpose of, or to facilitate the grant or exercise of, options under an employee option scheme which has previously been approved in accordance with the provisions of this Article or (ii) on a conversion of the Preferred Ordinary Shares;
- 19.2.2 commences any winding-up, dissolution or other insolvency procedure (other than as required by law) including any application to court for an administration order or any act (or decision to permit any act to be done) as a result of which the relevant company may be wound up (whether voluntarily or compulsorily);
- 19.2.3 sells, leases, transfer or grants any option over or otherwise disposes of:
- (i) the whole, or any significant part, of its business, undertaking or assets (including intellectual property); or
 - (ii) a member of the same Group or any shares in any member of the same Group;
- 19.2.4 agrees to do any of the things or acts referred to in the preceding sub-paragraphs of this Article 19.2.
- 19.3 The Directors (both individually and as the Board), Committees and executive officers of the Company (including, without limitation, the chairman and any managing Director) shall not (unless express Preference Approval has been given in respect of the relevant matter) have the power, without approval of any two Investor Directors to commit the Company or a Subsidiary Undertaking of the Company to a transaction or arrangement referred to in Article 19.4 (and Regulations 70 and 72 are amended accordingly).

19.4 The transactions and arrangements referred to in Article 19.3 are transactions or arrangements as a result of which the Company or any Subsidiary Undertaking of the Company:

- 19.4.1 alters its memorandum or articles of association or adopts or passes any further articles of association or resolutions inconsistent with them;
- 19.4.2 enters into any transaction other than in the ordinary course of trading business;
- 19.4.3 enters discussions or makes enquiries concerning the refinancing or merger of the Company (or any member of its Group) other than acknowledging approaches from potential financiers or funders, or submits any business plan or proposal to any potential investor or financier or applies for the admission of any shares to dealings on any recognised investment exchange;
- 19.4.4 enters into any equity joint venture;
- 19.4.5 forms or incorporates any entity, acquires, purchases or subscribes for shares, debenture, mortgages or securities (or any interest in any of them) in any Person or acquires any business or sells, transfers or disposes of any interest in such assets or business (consent, in each case, being required as to the terms of the acquisition, subscription, sale, transfer or disposal);
- 19.4.6 adopts any bonus or profit scheme or any employee option or share incentive scheme or employee share trust or other share ownership plan;
- 19.4.7 declares, pays or makes any dividend or distribution of capital or profits, other than as permitted under these Articles;
- 19.4.8 exercises any discretion reserved to directors relating to the transfer of shares;
- 19.4.9 undertakes any obligation which will result in a variance (either way) in the annual budget (if there is one) by more than 20%;
- 19.4.10 enters, terminates or varies a contract to which a Shareholder (or any person who is connected with a Shareholder connection being

determined in accordance with section 839 of the Income and Corporation Taxes Act 1988) is party or varies or determines the remuneration or other benefits, waives any breach or issues legal proceedings in respect of such a contract;

- 19.4.11 instigates, settles or compromises any litigation or similar process involving a Founder or an employee of the Company or any of its Subsidiary, or involving an amount claimed in excess of £50,000;
 - 19.4.12 approval of any annual budget or business plan;
 - 19.4.13 decides to allow registration to lapse, transfers or assigns any Intellectual Property Rights;
 - 19.4.14 appoints a Committee or authorises the delegation of any powers of the Directors to any body or other Person (other than as agreed in accordance with any Shareholders' Agreement);
 - 19.4.15 alters to its name; and
 - 19.4.16 agrees to do any of the things or acts referred to in the preceding sub-paragraphs of this Article 19.4.
- 19.5 The Directors, Committees and executive officers of the Company (including, without limitation the chairman and any managing director) shall not have the power without Board approval, to commit the Company or a Subsidiary Undertaking of the Company to a transaction or a arrangement referred to in Article 19.6 (and Regulations 70 and 72 are amended accordingly).
- 19.6 The transactions and arrangements referred to in Article 19.5 are any transaction or arrangement as a result of which the Company or a Subsidiary Undertaking of the Company:
- 19.6.1 appoints or removes any Director (other than pursuant to these Articles) or appoints any person as a director of a Subsidiary (other than a Director, but so that appointment as a director shall terminate if the person ceases to be a Director);
 - 19.6.2 incurs any borrowing, indebtedness or similar liability (including leasing, hire purchase and other analogous financial arrangements) other than in the usual course of the proper trading business of the

relevant company and in accordance with the annual budget (if there is one approved by the Board);

- 19.6.3 enters into any arrangement with any person (i) outside the usual course of the relevant Company's trading business or (ii) which is not on commercial arms' length terms intended to benefit the relevant company's business;
- 19.6.4 makes or agrees to make any loan or advance or give credit, other than (i) by way of deposit with a bank or other institution or (ii) the grant of normal trade credit or (iii) normal season ticket loans to its employees (not exceeding one month's salary per employee) or (iv) in the proper course of the relevant company's usual business;
- 19.6.5 gives any guarantee or indemnity in respect of the liabilities or obligations of any person, other than in respect of wholly owned subsidiaries of the Company or creates any mortgage, charge or encumbrance over any asset;
- 19.6.6 terminates any material contract the termination of which is likely to be materially prejudicial to the business as carried on by the relevant company;
- 19.6.7 makes payment to any non-executive Director (in his capacity as such) other than the reimbursement of legitimate business expenses properly incurred;
- 19.6.8 incurs any capital expenditure of an amount per item of expenditure in excess of £10,000 other than expenditure approved in the annual budget (if there is one) approved by the Board;
- 19.6.9 incurs aggregate expenditure in any calendar month exceeding £50,000 or exceeding in any three month period £100,000 other than expenditure approved in the annual budget;
- 19.6.10 enters into any contract or arrangement involving expenditure if the aggregate amount of expenditure by the relevant company would exceed £50,000 either in any 12 month period or in relation to any one project (the aggregate amount payable under an agreement for hire, hire purchase or purchase on credit sale or conditional terms

shall be deemed to be capital expenditure incurred when the relevant agreement is entered into);

- 19.6.11 enters or varies any contract of an onerous nature or for a term exceeding 12 months or where the obligations under the contract are not in the budget and exceed a value of £50,000;
 - 19.6.12 enters or varies any contract or agreement for the acquisition of freehold or leasehold property;
 - 19.6.13 enters or varies any lease, licence, tenancy or other similar obligation involving rental and other payments which exceed £250,000 per annum;
 - 19.6.14 delegates any matter to a Committee;
 - 19.6.15 appoints any auditors (other than the re-appointment of an existing auditor);
 - 19.6.16 alters the accounting reference date;
 - 19.6.17 makes any material change to any accounting policy or principle adopted for the preparation of the audited or management accounts of the relevant company; and
 - 19.6.18 agrees to do any of the things or acts referred to in the preceding sub-paragraphs of this Article 19.6,
- 19.7 The Directors, executive officers of the Company shall not have the power, without approval of the remuneration Committee, to commit the Company or a Subsidiary Undertaking of the Company to a transaction or arrangement referred to in Article 19.8 (and Regulations 70 and 72 are amended accordingly).
- 19.8 The transactions and arrangement referred to in Article 19.7 are transactions or arrangements as a result of which the Company or any Subsidiary Undertaking of the Company:
- 19.8.1 alters the terms of employment or remuneration of, or any service agreement with, any Founder or Director or increases the total emoluments, pensions or other benefits or payments payable to or for the benefit of a Founder or a past, present or future Director (or, in each case, their respective dependants) or grants consent under

any of their service agreements or gives of any notice pursuant to any of those service agreements, outside the parameters set out in the annual business plan (if there is one approved by the Board);

19.8.2 employs any person, or varies the terms of employment of any person, with a remuneration in excess of £50,000 per annum (inclusive of bonuses and commission) or engages or varies of the terms of engagement of any person pursuant to any contract for services where the fee payable exceeds £50,000 per annum, outside the parameters set out in the annual business plan and budget approved by the Board;

19.8.3 enters any contract of employment where the notice required to be given by the employer to terminate such contract exceeds six months;

19.9 The Company shall take all actions within its power to procure that the constitution of each of its Subsidiaries includes provisions identical to this Article 19 as if references to the Company were references to the Subsidiary.

20 Accounts

20.1 Regulation 109 is amended by replacing 'No member shall (as such) have any right of inspecting any accounting records' with 'A holder of Ordinary Shares shall be entitled, on giving reasonable notice, to inspect during business hours any accounting records'.

21 Notices

21.1 A notice required by these Articles to be given by the Company may be given by any visible form on paper, including telex, facsimile or similar communication. A notice given by immediate transmission is deemed to have been given at the time that it is transmitted to the person to whom it is addressed. Regulations 111 and 113 are amended accordingly.

21.2 A member whose registered address is not within the United Kingdom may give to the Company an address either within the United Kingdom or elsewhere at which notice may be given to him and he shall be entitled to have notices given to him at that address. Regulation 112 is amended accordingly.

22 **Indemnity**

22.1 Regulation 118 is amended:

22.1.1 by adding after 'shall be indemnified out of the assets of the Company' the words 'against losses and liabilities which he incurs, otherwise than as a result of his own negligence or default, in connection with the performance of his duties as such and';

22.1.2 by adding after 'in which judgement is given in his favour' the words 'or where the proceedings are withdrawn or settled on terms which do not include a finding or admission of a material breach of duty by him'; and

22.1.3 by adding at the end the following sentences:

'Subject to the provisions of the Act, the Directors may purchase and maintain insurance at the expense of the Company for the benefit of the Directors or other officers or the Auditors against liability which attaches to them or loss or expenditure which they incur in relation to anything done or omitted or alleged to have been done or omitted as Directors, officers or Auditors.'