

Company No. 4883233

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

RESOLUTION IN WRITING

of

**SIMPLE HEALTH & BEAUTY GROUP LIMITED**  
(the "Company")

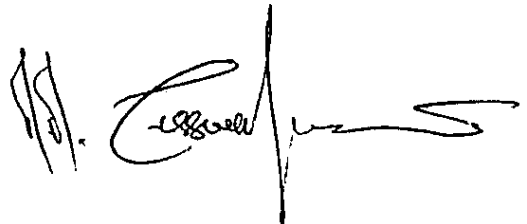
Passed on: 15 September 2009

We, being at least 75% of the eligible members and therefore representing more than 75% of the total voting rights of eligible members who at the circulation date of this resolution would have been entitled to vote on the resolution, **RESOLVE**, in accordance with Chapter 2, Part 13 of the Companies Act 2006, to pass the following as a special written resolution:

**THAT** the Company adopts new articles of association in the form attached with effect from the date hereof.

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**Duke Street V Limited**

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Signed for and on behalf of  
**Duke Street Capital V GmbH & co KG**

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Signed for and on behalf of  
**DSC V Beteiligungs-GmbH**

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Signed for and on behalf of  
**Accantia Employee Benefits Limited**

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Signed by  
**Duccio Baldi**

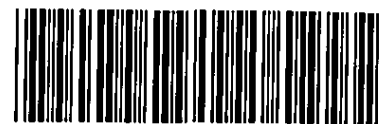
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Signed by  
**Gary Clarke**

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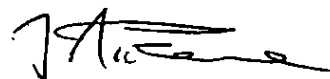
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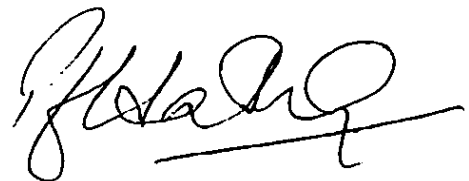
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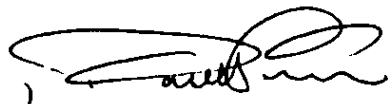
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Company No. 4883233

THE COMPANIES ACTS 1985, 1989 AND 2006

PRIVATE COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION  
OF  
SIMPLE HEALTH & BEAUTY GROUP LIMITED  
INCORPORATED ON 1 SEPTEMBER 2003  
ADOPTED BY SPECIAL RESOLUTION  
PASSED ON  
15 SEPTEMBER 2009

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Company No: 4883233

THE COMPANIES ACTS 1985, 1989 AND 2006

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COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

- of -

SIMPLE HEALTH & BEAUTY LIMITED<sup>1</sup>

adopted by Special Resolution passed

on 15 September 2009

1. INTERPRETATION

1.1 In these Articles:

"**2006 Act**" means the Companies Act 2006;

"**"A" Shareholder**" means a person entered in the register of members of the Company as the holder from time to time of an "A" Share;

"**"A" Shares**" means the "A" ordinary shares of 1p each in the capital of the Company, having the rights and being subject to the restrictions set out in these Articles;

"**Act**" means the Companies Act 1985;

"**acting in concert**" has the meaning given to it in the City Code on Takeovers and Mergers except that persons shall not be deemed to be acting in concert by virtue (and only by virtue) of the fact that some or all of them may be parties to the Shareholders Agreement;

"**Acquisition Agreement**" means the agreement dated 21 November 2003 entered into by the Sellers (as defined therein) and Newco as amended by a deed of amendment between the Sellers and Newco dated 14 January 2004 under which Newco agrees to purchase the shares in Accantia Limited from the Sellers (as defined therein);

"**Affiliate**" means, in relation to an Investor:

- (a) any Fund of which that Investor (or any group undertaking of that Investor) or that Investor's (or any group undertaking of that Investor's) general partner,

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<sup>1</sup> Pursuant to a certificate of incorporation on change of name dated 27 March 2009 the name of the Company changed from Accantia Group Limited to Simple Health and Beauty Group Limited.



trustee, nominee, manager or advisor is a general partner, trustee, nominee, manager or adviser;

- (b) any group undertaking of that Investor or of that Investor's general partner, trustee, nominee, manager or adviser (excluding any portfolio company thereof);
- (c) any general partner, limited partner, trustee, nominee, operator, arranger or manager or adviser to, or holder of interests (whether directly or indirectly) in, that shareholder, or of, to or in any group undertaking of that shareholder, or of, to or in any Fund referred to in (a) above or of, to or in any group undertaking referred to in (b) above; or
- (d) any Co-Investment Scheme of that Investor (or of any group undertaking of that Investor) or of any person referred to in (a), (b) or (c) above or any person holding shares or other interests under such scheme or entitled to the benefit of shares or other interests under such scheme;

**"Arrears"** means in relation to any Shares, all accruals, deficiencies and arrears of any dividend payable in respect of such Shares, whether or not earned or declared and irrespective of whether or not the Company has had at any time sufficient distributable profits to pay such dividend together with all interest and other amounts payable thereon;

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

**"B" Shareholder"** means a person entered in the register of members of the Company as the holder from time to time of a "B" Share;

**"B" Shares"** means the "B" redeemable ordinary shares of 1p each in the capital of the Company, having the rights and being subject to the restrictions set out in these Articles of Association;

**"Bad Leaver"** means a person who ceases to be employed or engaged by a Group Company and is not a Good Leaver;

**"Board"** means the board of directors of the Company from time to time;

**"Co-Investment Scheme"** means a scheme under which certain officers, employees or partners of an Investor (as defined in the Shareholders' Agreement) or its adviser or manager are entitled (as individuals or through a body corporate or any other vehicle) directly or indirectly to acquire shares which the Investor would otherwise acquire;

**"Companies Acts"** means the Act and the 2006 Act;

**"Company"** means Simple Health and Beauty Group Limited;<sup>1</sup>

**"Completion Date"** has the meaning given to it in Article 8.8.2(c);

**"Compulsory Purchase Notice"** has the meaning given to it in Article 11.1;

**"Compulsory Seller"** has the meaning given to it in Article 8.2;

**"connected person"** has the meaning given to that expression in section 839 ICTA and **"person connected"** shall be construed accordingly (except that for the purposes of these Articles, persons shall not be deemed to be connected with one another by virtue (and only by virtue) of the fact that some or all of them may be parties to the Shareholders' Agreement;

**"Confidential Information"** means all information:

- (a) which is confidential and which is used or otherwise relates to the business, customers, financial, technical or other affairs of any member of the Group or an Affiliate; or
- (b) which has been supplied to any member of the Group or an Affiliate in confidence; or
- (c) in relation to which any member of the Group or an Affiliate is bound by an obligation of confidence to a third party;

**"DDB Instrument"** means the instrument to be executed by Newco on or about 22 January 2004, constituting the DDBs;

**"DDBs"** means the 1,527,547 sterling secured registered £100 deep discount bonds due 2014 to be issued by Newco at an initial aggregate subscription price of £25,000,000 at a price of £16.36611 per DDB pursuant to the DDB Subscription Agreement and to be constituted by the DDB Instrument;

**"DDB Subscription Agreement"** means the subscription agreement relating to the issue of the DDBs to be executed on or about 22 January 2004 by the Original Subscribers, the Original Bond Arrangers and the Bond Facility Agent (each as defined therein) and Newco;

**"Deferred Shareholder"** means a person entered in the register of members of the Company as the holder from time to time of a Deferred Share;

**"Deferred Shares"** means the deferred shares of 1p each in the capital of the Company having the rights and being subject to the restrictions set out in these Articles;

**"DSVL"** means Duke Street V Limited as general partner of among others Duke Street Capital V UK No.1 Limited Partnership; Duke Street Capital V UK No.2 Limited Partnership; Duke Street Capital V UK No.3 Limited Partnership; Duke Street Capital V US No.1 Limited Partnership; Duke Street Capital V US No.2 Limited Partnership; and Duke Street Capital V US No.3 Limited Partnership of Nations House, 9<sup>th</sup> Floor, 103 Wigmore Street, London W1U 1QS;

**"DSCV GmbH"** means Duke Street Capital V GmbH & Co KG of Mainzer, Landstraße 46, 60325 Frankfurt am Main, Germany represented by Duke Street Capital V Verwaltungs GmbH, represented by its managing director Norbert Pacho;

**"Employee Trust"** means a trust established by any member of the Group for the benefit of bona fide employees of Group Companies;

**"Encumbrance"** means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind, or another type of agreement or arrangement having similar effect;

**"Exit"** has the meaning given to it in the Shareholders Agreement;

**"Family Member"** means, in relation to a Shareholder who is a director or employee of, or consultant to, a Group Company, his spouse or children and grandchildren (including step and adopted children and other issue);

**"Family Trust"** means in relation to a Shareholder who is a director or employee of, or consultant to, a Group Company, a trust (whether arising under a settlement, declaration or trust, testamentary disposition or on an intestacy) in respect of which the only beneficiaries (and the only persons capable of being beneficiaries) are the Shareholder who established the trust and/or his or her Family Members;

**"Finance Documents"** means the Intercreditor Deed, the Senior Facilities Agreement, the Mezzanine Facility Agreement, the PIK Facility Agreement and the DDB Instrument;

**"FSA"** means the Financial Services Authority or any body with responsibility under legislation replacing FSMA for carrying out regulatory activities;

**"FSMA"** means the Financial Services and Markets Act 2000;

**"Fully Diluted Share Capital"** means at the relevant time the aggregate of the issued Shares and all Shares that may be issued pursuant to the Warrant Instrument, as if all the outstanding Warrants had been exercised in full, together with all Shares capable of being issued by the Company pursuant to all Outstanding Options at that time;

**"Fund"** means any unit trust, investment trust, investment company, limited partnership, general partnership, collective investment scheme, pension fund, insurance company, authorised person under the Financial Services and Markets Act or any body corporate or other entity, in each case the assets of which are managed professionally for investment purposes;

**"Further Compulsory Purchase Notice"** has the meaning given to it in Article 11.6;

**"Good Leaver"** means a person who:

- (a) ceases to be employed or engaged by a Group Company by reason of:
  - (i) death;
  - (ii) physical or mental disability which renders him or her incapable of continued full time employment in his current position;

- (iii) retirement at normal retirement age;
- (iv) wrongful dismissal, unfair dismissal (other than for procedural reasons) or redundancy; or
- (b) ceases to be employed or engaged by a Group Company for any reason but is designated by the Board (with the Investor Directors' written consent) as a Good Leaver;

**"Group"** means the Company and its subsidiary undertakings from time to time and **"Group Company"** and **"member of the Group"** shall be construed accordingly;

**"ICTA"** means the Income and Corporation Taxes Act 1988;

**"Independent Expert"** means an umpire (acting as an expert and not as an arbitrator) nominated by the parties concerned or in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales;

**"Intercreditor Deed"** means the intercreditor deed dated on or about 6 June 2007 and entered into between amongst others, (1) the Governor and Company of the Bank of Scotland as Senior Facility Agent, (2) the Governor and Company of the Bank of Scotland as Security Agent, (3) the Governor and Company of the Bank of Scotland as the Original Senior Priority Lender, (4) the Governor and Company of the Bank of Scotland as Original Facility D Lender, (5) the Governor and Company of the Bank of Scotland as Original Ancillary Lender, (6) the Governor and Company of the Bank of Scotland as Original Issuing Bank, (7) the Governor and Company of the Bank of Scotland as Mezzanine Facility Agent, (8) the Governor and Company of the Bank of Scotland as Original Mezzanine Lender, (9) European Capital Financial Services (Guernsey) Limited as PIK Facility Agent, (10) European Capital Financial Services (Guernsey) Limited as PIK Security Agent, (11) European Capital S.A. SICAR as Original PIK Lender, (12) the financial institutions and persons named in schedule 1 therein as Investors and (13) the companies named in schedule 2 therein as Original Obligors, Intra-Group Creditors and Intra-Group Debtors (each as defined therein) regulating the priority and subordination of payments due and, where applicable, the enforcement of security;

**"investment company"** means a company whose sole or principal object is to invest its funds wholly or mainly in "investments" as defined in part II of schedule 2 of the FSMA (or in property or in such other assets referred to in paragraph 21.6 of the Listing Rules made by the LSE pursuant to section 73(2) of the FSMA (as amended from time to time), as the LSE may approve) with the object of spreading investment risk and managing its portfolio for the benefit of its shareholders;

**"investment trust"** means a company which has been approved by, or is seeking approval from, the Inland Revenue as an investment trust for the purposes of section 842 of ICTA in respect of its most recent accounting period or which has announced

that it will direct its affairs so as to enable it to seek such approval in respect of its current accounting period;

**"Investor"** has the meaning given to it in the Shareholders' Agreement and **"Investors"** shall be construed accordingly, for so long as such person is a party to the Shareholders' Agreement;

**"Investor Director"** means a director appointed pursuant to Article 5 and the **"Investor Directors"** shall mean both such directors appointed pursuant to such Article;

**"Investor Loan Note Instrument"** means the instrument executed by the Newco dated on or about the date on which these Articles are adopted constituting the £45,874,455 unsecured loan notes of the Newco as supplemented, varied or amended from time to time;

**"Issue Price"** means the aggregate of the amount paid up (or credited as paid up) in respect of the nominal value, together with any amount credited to the share premium account in respect of the relevant share in the capital of the Company;

**"Leaver"** has the meaning given to it in Article 8.1;

**"Listing"** means either:

- (a) both the admission of any of the Company's shares to the Official List of the UK Listing Authority becoming effective (in accordance with paragraph 7.1 of the rules made by the UK Listing Authority pursuant to section 74 FSMA) and the admission of any of the Company's shares to trading on the LSE's market for listed securities (in accordance with paragraph 2.1 of the Admission and Disclosure Standards of the LSE as amended from time to time) becoming effective; or
- (b) the admission to trading of any of the Company's shares on the Alternative Investment Market of the LSE becoming effective; or
- (c) equivalent admission to trading to or permission to deal on any other Recognised Investment Exchange becoming effective in relation to any of the Company's shares;

**"LSE"** means the London Stock Exchange plc;

**"Majority Investors"** means the holders of more than 50 per cent in number of the "B" Shares from time to time in issue;

**"Management Loan Note Instrument"** means the instrument executed by Newco dated on or about 22 January 2004 constituting the £4,125,545 unsecured loan notes of the Newco as supplemented, varied or amended from time to time;

**"Market Value"** means, in relation to shares in the Company, the price which the Independent Expert states in writing to be in its opinion the market value on the basis of a sale as between a willing seller and a willing purchaser of the entire issued share capital of the Company in the open market taking into account all factors as the Independent Expert may deem relevant but disregarding the fact that the shares in the Company constitute a minority, majority or any other particular holding of shares in the Company or that the transfer of shares in the Company is restricted by these Articles;

**"Mezzanine Facility Agreement"** means a mezzanine facility agreement dated on or about 29 March 2007 and entered into between amongst (1) the Company (2) the Newco, (3) the companies listed in part 1 schedule 1 thereto as Original Mezzanine Guarantors, (4) The Governor and Company of the Bank of Scotland as Mezzanine Arranger, (5) the Original Mezzanine Lenders, (6) The Governor and Company of the Bank of Scotland as Mezzanine Facility Agent and as Security Agent (each as defined therein) (as the same may be amended, supplemented, novated or restated from time to time);

**"Minority Shareholder"** has the meaning given to it in Article 11.1;

**"Minority Shares"** has the meaning given to it in Article 11.2.1;

**"Newco"** means Pinkwood Limited, the Company's wholly-owned subsidiary with registered number 4945078<sup>2</sup>;

**"New Holding Company"** means a holding company of the Company in which the share capital structure of the Company is replicated in all material respects;

**"Offer"** has the meaning given to it in Article 10.3.2;

**"Offeree"** has the meaning given to it in Article 8.3 or Article 11.1 (as appropriate);

**"Outstanding Options"** means at the relevant time all outstanding options, warrants (excluding the Warrants) or outstanding rights (whether or not contingent and assuming full performance of any performance linked rights), to subscribe for shares, or securities convertible into shares, in the capital of the Company;

**"PIK Facility Agreement"** means a PIK facility agreement dated on or about 6 June 2007 and entered into amongst (1) the Company, (2) Newco, (3) European Capital Financial Services (Guernsey) Limited as PIK Arranger, (4) The Original PIK Lenders and (5) European Capital Financial Services (Guernsey) Limited as PIK Facility Agent and as Security Agent;

**"Proposed Transfer"** has the meaning given to it in Article 10.1;

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<sup>2</sup> Pursuant to a certificate of incorporation on change of name dated 27 January 2004 the name of Newco changed from Pinkwood Limited to Accantia Group Holdings Limited.

**"Recognised Investment Exchange"** has the meaning given to it in section 285 FSMA;

**"Relevant Claim"** has the meaning given to it in the Acquisition Agreement;

**"Relevant Proportion"** means:

- (a) 100 per cent. if the Termination Date for the relevant Leaver occurs on or before 22 January 2009; or
- (b) 50 per cent. if the Termination Date for the relevant Leaver occurs after 22 January 2009;

**"Remuneration Committee"** means the committee of the Board which has delegated authority to determine issues relating to the remuneration and benefits of the directors and senior employees of any Group Company, as varied from time to time;

**"Required Proportion"** means the proportion represented by the number of shares in the Company which are the subject of the Proposed Transfer divided by the aggregate number of shares in issue held by the person who is proposing to make the Proposed Transfer;

**"Sale Notice"** has the meaning given to it in Article 8.2;

**"Sale Price"** has the meaning given to it in Article 8.6;

**"Sale Shares"** has the meaning given to it in Article 8.3;

**"Selling Shareholder"** has the meaning given to it in Article 10.8;

**"Senior Facilities Agreement"** means a term and revolving facilities agreement dated on or about 29 March 2007 between (1) the Company, (2) the Newco, (3) the subsidiaries listed in part 1 schedule 1 therein as Original Borrowers, (4) the subsidiaries listed in part 1 schedule 1 therein as Original Guarantors, (5) The Governor and Company of the Bank of Scotland as Arranger, (6) the Original Lenders and (7) The Governor and Company of the Bank of Scotland as Facility Agent and as Security Agent (each as defined therein) (as the same may be amended, supplemented, novated or restated from time to time);

**"Shareholder"** means a holder of Shares;

**"Shareholders"** means together the "A" Shareholders and the "B" Shareholders;

**"Shareholders' Agreement"** means an agreement entered into on or around 21 November 2003 made between (1) the Company, (2) Newco, (3) Geoffrey Michael Percy and others, (4) Duke Street V Limited and others, as supplemented, varied or amended from time to time;

**"Shares"** means the "A" Shares, the "B" Shares and Deferred Shares in issue from time to time;

**"Subsequent Shares"** has the meaning given to it in Article 11.6;

**"Table A"** means Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (S.I. 1985 No. 805) (as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (S.I. 1985 No. 1052));

**"Termination Date"** means, in relation to a Leaver:

- (a) where employment or directorship is to cease by virtue of notice given by an employer to an employee, the date on which such notice is served;
- (b) if an employee or a director dies, the date of his death or certification of such death (if the date of death is unknown);
- (c) where a person is a director or consultant but not an employee, the date on which the contract for services is terminated; or
- (d) in any other case, the date on which the contract of employment or services is terminated;

**"Transfer"** shall include, in relation to any share or any legal or beneficial interest in any share, to:

- (a) sell, assign, transfer or otherwise dispose of it;
- (b) create or permit to subsist any Encumbrance over it;
- (c) direct (by way of renunciation or otherwise) that another person should, or assign any right to, receive it;
- (d) enter into any agreement in respect of the votes or any other rights attached to the share; or
- (e) agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing;

**"Transfer Notice"** has the meaning given to it in Article 10.8;

**"Transfer Shares"** has the meaning given to it in Article 10.8;

**"UK Listing Authority"** means the Financial Services Authority acting in its capacity as competent authority for the purposes of FSMA;

**"Warrantholders"** means a holder of the Warrants;

**"Warrant Instrument"** means the instrument executed on or about 22 January 2004 by the Company, constituting the Warrants;

**"Warrants"** means the warrants to subscribe for "B" Shares in the Company to be issued by the Company and held by the Warrantholders under the terms of the Warrant Instrument.



1.2 In these Articles, a reference to:

1.2.1 a "**subsidiary undertaking**" or a "**group undertaking**" is to be construed in accordance with sections 258 and 259 respectively of the Act and "**holding company**" is to be construed in accordance with section 736 of the Act;

1.2.2 a statutory provision includes a reference to:

(a) the statutory provision as modified or re-enacted or both from time to time before the date of adoption of these Articles; and

(b) any subordinate legislation made under the statutory provision (as so modified or re-enacted) before the date of adoption of these Articles;

1.2.3 a "**person**" includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of a state or any joint venture, association or partnership, works council or employee representative body (whether or not having a separate legal personality);

1.2.4 (unless the context otherwise requires) the singular shall include the plural and vice versa;

1.2.5 Unless the context otherwise requires or the word or expressions is otherwise defined in the articles:

(a) words and expressions to which a particular meaning is give by the Companies Acts (as in force at the relevant date), shall have the same meaning in the articles; and

(b) words and expressions to which a particular meaning is given by both the Act and the 2006 Act shall have the meaning set out in the 2006 Act;

1.2.6 A member is "present" at a meeting if the member (being an individual) attends in person or if the member (being a corporation) attends by its duly authorised representative who attends in person, or if the member attends by his or its duly appointed proxy, who attends in person.

1.3 The headings in these Articles do not affect their interpretation or construction.

1.4 Where an ordinary resolution of the Company is required for any purpose, a special resolution is also effective for that purpose.

## 2. **TABLE A**

2.1 The regulations contained in Table A apply to the Company except to the extent that they are excluded or modified by, or inconsistent with, these Articles.

2.2 The first sentence of regulation 24 and regulations 38, 50, 60, 61, 64, 73 to 78 (inclusive), 80, 81,85, 86, 90, 94 to 98 (inclusive), 115 and 118 of Table A do not apply to the Company.

- 2.3 Regulation 1 of Table A shall be modified by the deletion of the definition of "the Act". Reference to "the Act" in regulations in Table A that apply to the Company shall be replaced with reference to the "Companies Act" (as defined above).

3. **SHARE CAPITAL**

The authorised share capital of the Company at the date of adoption of these Articles is £11,591.54 divided into:

- 3.1 125,000 "A" Shares;
- 3.2 961,957 "B" Shares; and
- 3.3 72,197 Deferred Shares.

4. **SHARE RIGHTS**

- 4.1 Except as otherwise provided in these Articles, the "A" Shares and the "B" Shares rank pari passu but they constitute separate classes of shares.
- 4.2 The "B" Shares are redeemable by the Company.
- 4.3 In the event of a return of capital or income by the Company on a winding-up, liquidation, capital reduction (or other analogous event) of the Company, the "B" Shares shall rank in priority to the "A" Shares such that the assets of the Company remaining after the payment of its liabilities (including any Arrears) shall be paid to the "B" Shareholders pro rata to the number of "B" Shares held by such persons in priority to the "A" Shareholders who in turn shall be paid pro rata to the number of "A" Shares held by such persons.
- 4.4 The Deferred Shares shall not be entitled to any dividend or distribution, whether pursuant to these Articles or otherwise.
- 4.5 The Deferred Shares shall not entitle the Deferred Shareholders to receive notice of or to attend or vote at any general meeting of the Company by virtue of their holdings of any such Deferred Shares.
- 4.6 Subject to the provisions of the Companies Act 1985 (as amended from time to time), the Company shall be entitled to repurchase the Deferred Shares for a sum of 1p in aggregate payable to each holder of such Deferred Shares (as the case may be).
- 4.7 The Deferred Shares are not transferable.
- 4.8 The holder of each Deferred Share has the right to receive, after all share capital (including premium) on the "A" Shares and "B" Shares in issue has been paid, 1p for every £100,000,000,000 of capital returned.
- 4.9 In circumstances where a Relevant Claim by Pinkwood Limited (Company Number 4945078) against a "B" Shareholder (the "Warranty Claim Shareholder") becomes a Settled Relevant Claim as defined by the Acquisition Agreement, the

Company may (on such date as it shall determine (the "**Redemption Date**")) redeem such number of "B" Shares of the Warranty Claim Shareholder as is required to satisfy the Settled Relevant Claim in accordance with the Acquisition Agreement.

- 4.10 Where the Company elects to redeem "B" Shares in accordance with Article 4.9, the Company shall first if necessary issue to the Warranty Claim Shareholder one Deferred Share for each "B" Share to be redeemed in consideration for the redemption price of £0.01 per Deferred Share payable by the relevant Warranty Claim Shareholder (the "**Deferred Share Redemption Sum**").
- 4.11 On the Redemption Date the Company shall pay the following amount (the "**redemption money**") in cash in respect of each "B" Share to be redeemed;
- 4.11.1 the nominal amount; and
- 4.11.2 all unpaid Arrears calculated to and including the Redemption Date pursuant to Article 4.9.
- 4.12 The redemption money shall become a debt due and payable by the Company to the Warranty Claim Shareholders on the Redemption Date. The Company shall set off the amount due by the Warranty Claim Shareholder against the redemption money in full and final settlement of the "**Deferred Share Redemption Sum**".
- 4.13 The redemption money shall be paid to the Warranty Claim Shareholder in respect of those "B" Shares which are to be redeemed against receipt of the relevant share certificate (or an indemnity in a form reasonably satisfactory to the Board in respect of a share certificate which cannot be produced). If the Warranty Claim Shareholder produces neither the share certificate nor a satisfactory indemnity, the Company may retain the redemption money due to that shareholder pending delivery of the certificate or a satisfactory indemnity.
- 4.14 The Company shall cancel share certificates in respect of redeemed "B" Shares and issue new certificates without charge in respect of any "B" Shares represented by those certificates which remain in issue.

## 5. **INVESTOR DIRECTORS**

- 5.1 Duke Street Capital V US No. 1 Limited Partnership is entitled to appoint two non-executive directors to the Board (the "**Investor Directors**") and is entitled to remove any such directors and appoint another person or persons (as appropriate) in their place.
- 5.2 The initial appointments of the Investor Directors shall be made pursuant to the Shareholders' Agreement. Subsequent appointments and removals shall be made by written notice served on the Company. Each such appointment and removal shall take effect forthwith upon such notice being received by the Company.
- 5.3 Duke Street Capital V US No. 1 Limited Partnership shall have the right to appoint the Investor Directors to the board of directors of any subsidiary undertaking of the

Company and to any committee of the board of any member of the Group and the provisions of Article 5.2 relating to notice shall apply mutatis mutandis to any such appointment.

5.4 Each Investor Director is entitled to:

5.4.1 an annual fee of £30,000 (plus VAT or overseas equivalent), payable quarterly in arrears; and

5.4.2 all costs and expenses incurred by him in respect of attending meetings of the Company or carrying out authorised business in connection with his office as a director.

5.5 The holders of more than 50 per cent. of the "B" Shares from time to time in issue may by notice in writing to the Company appoint such number of directors to the Board or any board of a subsidiary undertaking of the Company and to any committee of the Board of any member of the Group as they see fit.

5.6 The Chairman is entitled to such an annual fee as settled by the Remuneration Committee, payable quarterly in arrears and increased in accordance with Article 5.7 together with all reasonable expenses properly incurred by him in connection with his office as a director.

5.7 The fees referred to in Articles 5.4 and 5.6 shall be increased annually as agreed between the Majority Investors and the Board, and in the absence of such agreement, in accordance with any increase in the UK Retail Price Index calculated in the year preceding the date of any increase and if such index ceases to exist any similar replacement index. The first increase will take place on 22 January 2005.

**6. PROVISIONS APPLYING ON EVERY TRANSFER OF "A" AND "B" SHARES**

6.1 The directors shall not register a transfer of Shares unless:

6.1.1 the transfer is permitted by Articles 7 or 9 or has been made in accordance with Articles 8, 10 or 11 (inclusive); and

6.1.2 the proposed transferee has entered into a deed of adherence to the Shareholders' Agreement, in the form required by that agreement.

6.2 The "A" Shareholders are not entitled to transfer "A" Shares unless the transfer is permitted by Article 7 or has been made in accordance with Articles 8, 10 or 11.

6.3 The "B" Shareholders are not entitled to transfer "B" Shares unless the transfer is permitted by Article 9 or has been made in accordance with Articles 8, 10 or 11.

6.4 For the purpose of ensuring compliance with the transfer provisions in these Articles and that a transfer of "A" Shares or "B" Shares is permitted under these Articles or that no circumstances have arisen whereby a notice is required to be or ought to have been given under these Articles or that an offer is required to be or ought to have been made pursuant to Article 10.3.2, the Board may, and shall if so requested by an

Investor Director, require any shareholder to procure that such person as the Board or an Investor Director may reasonably believe to have information relevant to such purpose, provides the Company with such information and evidence as the Board (or an Investor Director) may think fit regarding any matter which they deem relevant to such purpose. Until such information or evidence is provided, the Board shall be entitled to refuse to register any relevant transfer. If the directors refuse to register a transfer of shares in the Company they share, as soon as reasonably practicable, and in any event within two months after the date on which the transfer is lodged with it, give the transferee notice of refusal to register the transfer together with its reason for the refusal.

**7. TRANSFER RESTRICTIONS FOR "A" SHAREHOLDERS**

No "A" Share may be transferred other than:

- 7.1 with the written consent of an Investor Director;
- 7.2 to the trustee or trustees of a Family Trust **PROVIDED THAT** the trustee or trustees of any such Family Trust shall not be entitled to transfer "A" Shares pursuant to this Article 7.2 other than to the new or remaining trustees of the Family Trust upon a change of trustees **PROVIDED FURTHER THAT** no such transfer shall be made except with the prior consent of the Majority Investors and where such consent is requested such consent shall be given when the Majority Investors are reasonably satisfied with the identity of the replacement trustees of such trust. If any Family Trust whose trustees hold "A" Shares ceases to be a Family Trust, the trustees shall be deemed to have transferred the "A" Shares held by the Family Trust to the original settlor;
- 7.3 to the spouse of an "A" Shareholders **PROVIDED THAT** if the spouse who holds "A" Shares ceases to be a spouse of the original "A" Shareholder, such former spouse shall immediately transfer the "A" Shares held by him or her to the original "A" Shareholder;
- 7.4 when required by Article 8;
- 7.5 to the personal representatives or beneficiaries of an "A" Shareholder who has died and who was a director or an employee of any member of the Group once the "A" Shareholder's personal representatives or beneficiaries can no longer be bound to sell those shares pursuant to Article 8;
- 7.6 on and after Listing;
- 7.7 in acceptance of an offer by a proposed transferee made under Article 10; or
- 7.8 when required by Article 11.
- 7.9 the first subsequent transfer of shares transferred to DSVL and / or DSCV GmbH by James Lancaster prior to 22 July 2004;

7.10 a transfer of up to 200 "A" Shares by DSVL and DSCV GmbH to an Employee Trust;  
or

7.11 a transfer of up to 200 "A" Shares by an Employee Trust to bona fide employees of any Group Company.

## 8. **COMPULSORY TRANSFER**

8.1 Article 8 applies when an employee or director of, or consultant to, any Group Company who either:

8.1.1 is a "A" Shareholder;

8.1.2 has established a Family Trust which holds "A" Shares, or has transferred "A" Shares to a Family Trust; and/or

8.1.3 has transferred "A" Shares to a spouse,

is declared bankrupt or ceases for any reason to be an employee or director of, or consultant to, a Group Company and does not continue as an employee of or consultant to any other Group Company (a "**Leaver**").

8.2 Within six months following the Termination Date, an Investor Director may serve a written notice (the "**Sale Notice**") on:

8.2.1 the Shareholder who is a Leaver;

8.2.2 if the Leaver has died, his personal representatives or any other person who becomes entitled to Shares on the death of a Shareholder;

8.2.3 a Shareholder who is a spouse of a Leaver;

8.2.4 any Shareholders which are the trustees for the time being of a Leaver's Family Trust;

8.2.5 if the Leaver has become bankrupt, any person who becomes entitled to Shares on his bankruptcy (if an individual), or the receivership, administrative receivership, administration, liquidation or other arrangement for the winding-up (whether solvent or insolvent) of a Shareholder (if a company);

8.2.6 any Shareholder to whom Shares have been transferred under Article 7.1; and

8.2.7 any Shareholder who is a nominee of any person referred to in Articles 8.2.1 to 8.2.6 (inclusive);

(each a "**Compulsory Seller**" and one or more of them, the "**Compulsory Sellers**").

8.3 The Sale Notice may require the Compulsory Seller(s) to offer some or all of the Relevant Proportion of the "A" Shares in respect of which they are the registered holder or to which they are entitled whether as a result of their holding of "A" Shares or otherwise (the "**Sale Shares**") to:

- 8.3.1 a person or persons intended to take the Leaver's place;
- 8.3.2 any one or more of the existing directors, officers or employees of, or consultants to a Group Company (other than an employee of an Investor);
- 8.3.3 an Employee Trust;
- 8.3.4 a nominee (pending nomination of a person pursuant to Article 8.3.1 to 8.3.3 and 8.3.5 (inclusive); or
- 8.3.5 any other person or persons approved by the Remuneration Committee and with the written consent of the holders of 50 per cent. or more in number of the "A" Shares in issue,

(each an "Offeree" and one or more of them, the "Offerees") on the terms specified, in the Sale Notice free from all Encumbrances and together with all rights attached.

- 8.4 The Sale Notice may reserve to the Remuneration Committee the right to finalise the identity of the Offeree(s) once the price for the Sale Shares has been agreed in accordance with Article 8.6 or certified in accordance with Articles 8.6 or 8.7.
- 8.5 The Compulsory Sellers shall then offer the Sale Shares to the Offeree(s), as identified by the Remuneration Committee, free from all Encumbrances and together with all rights attaching to the Sale Shares, on the terms set out in Articles 8.6 to 8.10.
- 8.6 The price for each Sale Share (the "Sale Price") shall be the price agreed between the Compulsory Seller(s) and an Investor Director or, if they do not agree a price within 7 days of the date of the Sale Notice, at the price certified by the Independent Expert, acting as an expert and not as an arbitrator, to be:
  - 8.6.1 the lower of (1) the Issue Price of the Sale Shares (or where the Sale Shares were originally acquired by the Leaver by way of transfer rather than allotment, the lower of the Issue Price and the amount paid by such Leaver on a transfer) and (2) Market Value of the Sale Shares on the Termination Date, if the Leaver is a Bad Leaver; or
  - 8.6.2 the Market Value of the Sale Shares as at the Termination Date, if the Leaver is a Good Leaver.
- 8.7 The Independent Expert shall be instructed to certify the Sale Price as soon as possible after being instructed by the Company to do so and his or her decision shall (in the absence of fraud or manifest error) be final and binding on the parties. The costs of the Independent Expert shall be paid by the Company and/or the Compulsory Seller in such proportions as the Independent Expert may determine.

- 8.8 Within 7 days of the Sale Price being agreed under Article 8.7 or certified under Articles 8.6 or 8.7:
- 8.8.1 the Company shall notify the Compulsory Seller(s) of the names and addresses of the Offeree(s) and the number of Sale Shares to be offered to each; and
- 8.8.2 the Company shall notify each Offeree specifying:
- (a) the number of Sale Shares on offer to him;
  - (b) the Sale Price; and
  - (c) the date, between 7 and 14 days after the date of the notice, on which the sale and purchase of the Sale Shares is to be completed (the "Completion Date").
- 8.9 Subject to the Company serving notice on the Compulsory Seller(s) that the Offeree(s) has or have put the Company in the requisite funds, the Compulsory Seller(s) shall deliver duly executed stock transfer form(s) in respect of the Sale Shares, together with the relevant share certificate(s) (or an indemnity in respect thereof in a form satisfactory to the Board) to the Company on or before the Completion Date. On the Completion Date the Company shall pay the Compulsory Seller(s), on behalf of each of the Offeree(s), the aggregate Sale Price due for the Sale Shares. The Company's receipt for the aggregate Sale Price due shall be a good discharge to the Offeree(s). The Company shall hold the aggregate Sale Price on trust for the Compulsory Seller(s) without any obligation to pay interest.
- 8.10 Subject to the Company serving notice on the Compulsory Seller(s) that the Offeree(s) has or have put the Company in the requisite funds, if a Compulsory Seller fails to comply with its obligations under Article 8.9, the Board may (and shall, if requested by an Investor Director) authorise any director to execute, complete and deliver in the name of and as agent for that Compulsory Seller a transfer of the Sale Shares to the relevant Offeree. Subject to due stamping, the Board may authorise registration of the transfer after which point the validity of the proceedings shall not be questioned by any person. The defaulting Compulsory Seller shall surrender his share certificate (or, where appropriate, provide an indemnity in respect thereof in a form satisfactory to the Board) for the Sale Shares to the Company. On surrender, the Compulsory Seller(s) shall be entitled to the aggregate Sale Price for the Sale Shares transferred on their behalf. If such share certificate relates to any Sale Shares which the Compulsory Seller is not bound to sell, the Company shall issue a fresh certificate for the balance.
- 8.11 The Shareholders acknowledge and agree that the power conferred on the Board under Article 8.10 to complete documentation on behalf of a Compulsory Seller is necessary as security for the performance by the Compulsory Seller(s) of their obligations under these Articles.
- 8.12 Subject to Article 8.13, unless an Investor Director otherwise agrees in writing, any shares held by a Compulsory Seller on the date of the Sale Notice (and any shares



issued to a Compulsory Seller after the date of the Sale Notice whether by virtue of the exercise of any right or option granted or arising by virtue of the holding of the Sale Shares or any "B" Shares by the Compulsory Seller) shall:

- 8.12.1 cease to confer the right to be entitled to receive notice of or to attend or vote at any general meeting of the Company or at any meeting of the holders of any class of shares in the capital of the Company with effect from the date of the Sale Notice (or, where appropriate, the date of issue of such shares, if later);
  - 8.12.2 not be counted in determining the total number of votes which may be cast at any such meeting or required for the purposes of a written resolution of any members or class of members; and
  - 8.12.3 not be transferred under Article 7 or Article 10 until the Compulsory Seller can no longer be bound to sell them under Article 8.3.
- 8.13 The rights referred to in Article 8.12 shall be restored immediately upon the transfer of the Sale Shares in accordance with this Article 8.

**9. TRANSFER RESTRICTIONS FOR "B" SHAREHOLDERS**

No "B" Share may be transferred other than:

- 9.1 with the written consent of the holders of 50 per cent. or more in number of the "B" Shares in issue;
- 9.2(A) in the case of a "B" Shareholder which is an undertaking, to a group undertaking of the transferor if the transferee gives an undertaking to the Company that if the transferee is to cease to be a group undertaking of the transferor, all its shares in the Company will, before the cessation, be transferred to another group undertaking of the original transferor;
- 9.2(B) between DSVL, DSCV GmbH, Duke Street Capital V Verwaltungs GmbH and DSC V Beteiligungs GmbH;
- 9.3 in the case of a "B" Shareholder which holds "B" Shares by or on behalf of a Fund:
  - 9.3.1 to another nominee or trustee for, or general partner of, the Fund and any "B" Shares held by a nominee or trustee for such a Fund may be transferred to that Fund or to another nominee or trustee for such a Fund; or;
  - 9.3.2 on a distribution in kind under the constitutive documents of the Fund:
    - (a) to the partners in or holders of units in, or to shareholders of, participants in or the holders of other interests in such Fund (or to a nominee or trustee for any such partners, holders, members or investors); and
    - (b) any "B" Shares held by any nominee or trustee for such holders, partners, members or investors may be transferred to such holders,

partners, members or investors or to another nominee or trustee for such holders, partners, members or investors; or

- 9.3.3 to another Fund which is advised or managed by the same adviser or manager or by another member of the same wholly owned group of such manager or adviser or to a nominee or trustee for such a fund as the former limited partnership, unit trust, investment trust or investment company;
- 9.4 in the case of a "B" Shareholder which holds "B" Shares as a nominee, to the person on whose behalf it holds such shares as nominee or to another person acting as nominee of such person;
- 9.5 in the case of a "B" Shareholder which is an investment trust, to another investment trust which is also managed by the manager of the "B" Shareholder;
- 9.6 by an Investor to its Co-Investment Scheme;
- 9.7 in the case of a Co-Investment Scheme which holds "B" Shares through another undertaking to:
  - 9.7.1 another undertaking which holds or is to hold shares for the Co-Investment Scheme; or
  - 9.7.2 the officers, employees or partners entitled to the "B" Shares under the Co-Investment Scheme;
- 9.8 to the trustee or trustees of a Family Trust **PROVIDED THAT** the trustee or trustees of any such Family Trust shall not be entitled to transfer "B" Shares pursuant to this Article 9.8 other than to the new or remaining trustees of the Family Trust upon a change of trustees **PROVIDED FURTHER THAT** no such transfer shall be made except with the prior consent of the Majority Investors and where such consent is requested such consent shall be given when the Majority Investors are reasonably satisfied with the identity of the replacement trustees of such trust. If any Family Trust whose trustees hold "B" Shares ceases to be a Family Trust, the trustees shall be deemed to have transferred the "B" Shares held by the Family Trust to the original settlor;
- 9.9 to the spouse of a "B" Shareholders **PROVIDED THAT** if the spouse who holds "B" Shares ceases to be a spouse of the original "B" Shareholders, such former spouse shall immediately transfer the "B" Shares held by him or her to the original "B" Shareholder;
- 9.10 to the personal representatives or beneficiaries of "B" Shareholders who has died and who was a director or an employee of any member of the Group once the "B" Shareholder's personal representatives or beneficiaries can no longer be bound to sell "A" Shares pursuant to Article 8;
- 9.11 to a permitted syndicatee in accordance with the terms of clause 4 of the Shareholders' Agreement;

- 9.12 on and after Listing;
- 9.13 in acceptance of an offer by a proposed transferee made under Article 10;
- 9.14 when required by Article 11;
- 9.15 to the Company in accordance with the provisions of the Act; or
- 9.16 the first subsequent transfer of shares transferred to DSVL and/or DSCV GmbH by James Lancaster prior to 22 July 2004.

#### 10. TAG-ALONG RIGHTS

10.1 Subject to Article 10.2, Articles 10.3 to 10.12 (inclusive) apply in circumstances where a proposed transfer of "A" Shares or "B" Shares, whether in one or a series of related transactions (the "**Proposed Transfer**"), would, if registered, result in a person and any other person who is a connected person of that first person or with whom he is acting in concert (each being "**a member of the purchasing group**") acquiring 50 per cent. or more in number of the "A" Shares and "B" Shares in issue, taken together.

10.2 Article 10.3 does not apply if the proposed transfer referred to in Article 10.1 is:

- 10.2.1 permitted by Articles 7.2 to 7.11 (inclusive) ("**Permitted Transfers**");
- 10.2.2 permitted by Articles 9.2 to 9.16 (inclusive), other than if such transfer is pursuant to Article 9.3.3 or 9.5 and the principal purpose for such transfer is to avoid the operation of Article 10.3 ("**Permitted Transfers**"); or
- 10.2.3 to a person who is an original party to the Shareholders' Agreement as an Investor.

10.3 No transfer to which Article 10.11 applies may be made or registered unless:

- 10.3.1 the holders of 50 per cent. or more in number of the "B" Shares in issue and the holders of 50 per cent. or more in number of the "A" Shares in issue have given their written consent to the transfer and the Warrantholders have given a Consent (as defined in the Warrant Instrument) to the transfer in accordance with the terms of the Warrant Instrument; or
- 10.3.2 the proposed transferee has given written notice of the proposed transfer to the remaining "A" Shareholders, "B" Shareholders and the Warrantholders and has made an offer (the "**Offer**") to buy all the other "A" Shares and "B" Shares (including any shares which may be allotted during the offer period or upon the Offer becoming unconditional pursuant to the exercise of the Warrants or pursuant to any other exercise or conversion of options over or rights to subscribe for securities convertible into shares in existence at the date of such offer) (the "**Offer Shares**"), on the terms set out in Articles 10.5 and 10.6 (if applicable) (unless, in the case of a particular Shareholder or Warrantholder less favourable terms are agreed by such Shareholder or

Warrantholder in writing) and the Offer is or has become wholly unconditional.

- 10.4 Subject to Article 11, any transfer of "A" Shares and/or "B" Shares pursuant to Article 10.1, 10.3 or 10.13 shall not be subject to any other restrictions on transfer contained in these Articles.
- 10.5 The terms of the proposed transferee's Offer shall be that:
- 10.5.1 the Offer shall be open for acceptance for not less than 14 days and shall be deemed to have been rejected if not accepted in accordance with the terms of the Offer and by the date specified in it; and
- 10.5.2 the consideration for each Offer Share shall be the highest consideration offered for each "A" Share or "B" Share respectively whose proposed transfer has led to the Offer (exclusive of costs).
- 10.6 The Offer may be conditional on the proposed transferee holding or increasing its aggregate shareholding to a specified proportion of the Fully Diluted Share Capital.
- 10.7 Any dispute on the consideration for the Offer Shares under Article 10.5 shall be referred by the Company (at the request of any Shareholder or in its own discretion) to an Independent Expert. The Independent Expert shall act as an expert and not as an arbitrator and his or her decision shall be final and binding (save in the case of fraud or manifest error). The Independent Expert's terms of reference shall be to determine the matters in dispute within 10 days of his or her appointment and the parties shall each provide the Independent Expert with all information relating to the consideration which the Independent Expert reasonably requires and the Independent Expert shall be entitled (to the extent they consider it appropriate) to base his or her determination on such information. The Independent Expert's costs shall be paid by such parties and in such proportions as the Independent Expert may determine.
- 10.8 The Company shall notify the holders of the "A" Shares, "B" Shares and Warrants of the terms of any Offer extended to them pursuant to Article 10.3.2 forthwith upon receiving notice of the same from the proposed transferee whereupon any holder of Shares and the Warrantholders (a "**Selling Shareholder**") who wishes to transfer Offer Shares to the proposed transferee pursuant to the terms of the Offer shall serve notice on the Company (the "**Transfer Notice**") at any time before the proposed transferee's offer ceases to be open for acceptance (the "**Closing Date**") stating the number of "A" Shares, "B" Shares or Warrants it wishes to transfer (the "**Transfer Shares**").
- 10.9 Article intentionally left blank.
- 10.10 The Transfer Notice shall make the Company the agent of the Selling Shareholder for the sale of the Transfer Shares on the terms of the proposed transferee's offer and on any terms specified in the Transfer Notice.

10.11 Within 7 days after the Closing Date:

- 10.11.1 the Company shall notify the proposed transferee in writing of the names and addresses of the Selling Shareholders who have accepted the offer made by the proposed transferee;
- 10.11.2 the Company shall notify each Selling Shareholder in writing of the number of Transfer Shares which he/it is to dispose of and the identity of the transferee; and
- 10.11.3 the Company's notices shall state the time and place, between 7 and 14 days after the Closing Date, on which the sale and purchase of the Transfer Shares held by each Selling Shareholder is to be completed.

10.12 If any Selling Shareholder does not transfer his respective Transfer Shares in accordance with Article 10.11, the Board may authorise any director to execute, complete and deliver in the name of and as agent for the Selling Shareholders a transfer of the Transfer Shares to the relevant member of the purchasing group against receipt by the Company of the consideration for each Sale Share. The Company shall hold such consideration in trust for the Selling Shareholder without any obligation to pay interest. The Company's receipt of the consideration shall be a good discharge to the relevant member of the purchasing group. The directors shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Selling Shareholder shall surrender to the Company its share certificate (or, where appropriate, provide an indemnity in respect thereof in a form satisfactory to the Board) for the Transfer Shares to be transferred by him whereupon the defaulting Selling Shareholder shall be entitled to the consideration for the relevant Transfer Shares.

10.13 If a Proposed Transfer (which for the avoidance of doubt, does not include a Permitted Transfer (as defined in Article 10.2.1 or 10.2.2 or a transfer as specified in Article 10.2.3) is permitted under Article 7.1 or Article 9.1 but Article 10.1 does not apply as the members of the purchasing group will not acquire 50 per cent. or more in number of the "A" Shares and the "B" Shares in issue (taken together), then such Proposed Transfer may not be made or registered unless:

- 10.13.1 the proposed transferee has given written notice of the proposed transfer to the remaining "A" Shareholders, "B" Shareholders and the Warrantholders and has made an offer (the "Co-Sale Offer") to buy:
  - (a) the Required Proportion of the other "A" Shares and "B" Shares; and
  - (b) all such "B" Shares which may be allotted during the offer period or upon the Co-Sale Offer becoming unconditional pursuant to the exercise of the Warrants in accordance with the terms of the Warrant Instrument as a result of the Co-Sale Offer being made,

(the "Co-Sale Shares"), on the terms set out in Articles 10.5 to 10.12 (inclusive) which shall apply as if references to "Offer" were to "Co-Sale Offer" and references to "Offer Shares" were to "Co-Sale Shares" and as if references to Article 10.3.2 were to Article 10.13 and the provisions of Articles 10.3.2 and 10.4 to 10.12 (inclusive) shall apply (unless in the case of a particular Shareholder or Warrantholder less favourable terms are agreed by such "A" Shareholder, "B" Shareholder or Warrantholder in writing); and

10.13.2 the Co-Sale Offer is or has become wholly unconditional:

10.14 If, as a result of the operation of Article 10.13, a member of the purchasing group (as defined in Article 10.1) would acquire 50 per cent. or more in the number of "A" Shares and/or "B" Shares in issue, then the provisions of Article 10.1 to 10.12 (inclusive) shall apply to the Proposed Transfer instead of clause 10.13.

#### 11. **DRAG-ALONG RIGHTS**

11.1 If, as a result of any arms' length bona fide transaction or series of transactions, any proposed transfers of "A" Shares or "B" Shares pursuant to Articles 7.1, 9.1 and/or 10, as a result of the Offer pursuant to Article 10.3.2, (in each case excepting Permitted Transfers or a transfer to a person who is an original party to the Shareholders' Agreement as an Investor) would, if registered, result in the proposed transferee and any other person who is a connected person of that first person or with whom he is acting in concert acquiring a shareholding of 50 per cent. or more in number of the "A" Shares and "B" Shares in issue taken together, the proposed transferee may at any time until the proposed transfers have been completed, by serving a written notice (a "**Compulsory Purchase Notice**") on each other "A" Shareholder and "B" Shareholder (each a "**Minority Shareholder**"), require each Minority Shareholder to transfer all their Shares (free from all Encumbrances and together with all rights then attaching thereto and with full title guarantee) to one or more persons identified in the Compulsory Purchase Notice (each an "**Offeree**") at the consideration specified in the Compulsory Purchase Notice (which shall be equal to and in the same form as the highest consideration to be paid for any "A" Share or "B" Share to be transferred pursuant to the arms length bona fide transaction or series of transactions) on the date specified in the Compulsory Purchase Notice (the "**Completion Date**"), being a date which is not less than 7 or more than 14 days after the date of the Compulsory Purchase Notice. Any dispute relating to the consideration specified in the Compulsory Purchase Notice shall be referred to an Independent Expert in accordance with Article 10.7 (with appropriate adjustments).

11.2 Subject to the Company serving notice on the Minority Shareholders that the Offeree(s) has or have put the Company in the requisite funds, the shares subject to the Compulsory Purchase Notices shall be sold and purchased in accordance with the following provisions, namely:

11.2.1 on or before the Completion Date each Minority Shareholder shall deliver to the Company duly executed stock transfer forms for the Shares which are the

subject of the Compulsory Purchase Notice and which are held by him (the "Minority Shares"), together with the relevant share certificates (or an indemnity in respect thereof in a form satisfactory to the Board). On the Completion Date the Company shall pay each of the Minority Shareholders, on behalf of the Offeree the price for the Minority Shares held by each of them. The Company's receipt for the price shall be a good discharge to the Offerees. The Company shall hold any funds received from the Offerees in trust for the Minority Shareholders without any obligation to pay interest;

- 11.2.2 if a Minority Shareholder fails to comply with his obligations under Article 11.2.1 in respect of the Minority Shares held by him on or before the Completion Date, the Board may (and will if so requested by an Investor Director) authorise any director to execute, complete and deliver in the name of and as agent for the Minority Shareholder a transfer and indemnity (if necessary) relating to the Minority Shares to each Offeree. The Board shall authorise registration of the transfer once appropriate stamp duty has been paid and the validity of such proceedings shall not be brought into question. The defaulting Minority Shareholders shall surrender to the Company his share certificate (or, where appropriate, provide an indemnity in respect thereof in a form satisfactory to the Board) for the Minority Shares formerly held by him whereupon he shall be entitled to the price for the Minority Shares formerly held by him.
- 11.3 Subject to Article 11.4, unless an Investor Director otherwise agrees in writing, any shares held by a Minority Shareholder on the Completion Date (and any shares issued to a Minority Shareholder after the Completion Date whether by virtue of the exercise of any right or option granted or arising by virtue of the holding of the Sale Shares by the Minority Shareholder) shall:
  - 11.3.1 cease to confer the right to be entitled to receive notice of or to attend or vote at any general meeting of the Company or at any meeting of the holders of any class of shares in the capital of the Company with effect from the Completion Date (or, where appropriate, the date of issue of such shares, if later);
  - 11.3.2 not be counted in determining the total number of votes which may be cast at any such meeting or required for the purposes of a written resolution of any members or class of members;
  - 11.3.3 not be transferred under Article 7 or Article 10 until the Minority Shareholder can no longer be bound to sell them under Article 11.22.
- 11.4 The rights referred to in Article 11.3 shall be restored immediately upon the transfer of the Sale Shares in accordance with Article 11.2.
- 11.5 Whilst this Article applies to the Minority Shares, those shares may not be transferred otherwise than under this Article. Article 10 does not apply to transfers of shares made under this Article 11.

11.6 If any Shares are issued by the Company within 6 months of the date of the Compulsory Purchase Notices, the members of the purchasing group shall be entitled to serve an additional notice (a "**Further Compulsory Purchase Notice**") on each holder of such shares requiring them (the "**Subsequent Shares**") to sell all their Subsequent Shares to one or more persons identified in the Further Compulsory Purchase Notice at the consideration specified in Article 11.1 or otherwise as determined in accordance with Article 10.7 (with appropriate adjustments). The provisions of Article 11.2 shall apply to the Subsequent Shares mutatis mutandis **PROVIDED THAT:**

11.6.1 references in Article 11.2 to the "**Compulsory Purchase Notice(s)**" shall be to the "**Further Compulsory Purchase Notice(s)**"; and

11.6.2 references in Article 11.2 to the "**Share(s)**" shall be to the "**Subsequent Share(s)**".

## 12. **VARIATION OF CLASS RIGHTS**

12.1 The rights attaching to the "A" Shares (the "**A Rights**") shall only be varied with the consent in writing of the holders of not less than 75 per cent. of the "A" Shares or by a special resolution passed at a separate class meeting of the holders of the "A" Shares. Any variation which does not adversely affect the "A" Rights shall not require such consent.

12.2 The rights attaching to the "B" Shares (the "**B Rights**") shall only be varied with the consent in writing of the holders of not less than 75 per cent. of the "B" Shares or by a special resolution passed at a separate class meeting of the holders of the "B" Shares. Any variation which does not adversely affect the "B" Rights shall not require such consent.

12.3 Unless otherwise expressly provided by the terms of their issue, the rights attached to any class of shares in the Company not be deemed to be varied by any alteration to these Articles made conditional upon, or otherwise in connection with, a Listing.

12.4 The provisions of these Articles relating to general meetings of the Company or to the proceedings at such meetings shall, mutatis mutandis, apply to any separate meeting of the holders of any class of shares in the Company except that:

(a) the necessary quorum at any such meeting (other than an adjourned meeting) shall be two persons holding or representing by proxy at least one-third in nominal amount of the issued shares of the class (unless all the shares in the Company of any class are registered in the name of a single shareholder in which case the quorum shall be that person, his proxy or duly authorised representative of such shareholder);

(b) at any adjourned meeting the necessary quorum shall be one person holding shares of the class or his proxy;



- (c) every holder of shares of the class in the Company shall, on a poll, have one vote in respect of every share of the class held by him; and
- (d) a poll may be demanded by any one holder of shares of the class in the Company whether present in person or by proxy.

### **13. GENERAL PROVISIONS**

#### **13.1 Share Certificates**

Regulation 6 of Table A is modified by the inclusion of the following words after the words "with the seal" in the second sentence of regulation 6: "or shall be signed by a director and the secretary of the Company, or by two directors of the Company or by a director of the Company before a witness. . . "

#### **13.2 Lien**

13.2.1 Regulation 8 of Table A is modified by the deletion of the words "(not being a fully paid share)".

13.2.2 The lien conferred by regulation 8 of Table A shall apply to all shares, whether fully paid or not, and to all shares registered in the name of any person under a liability (whether actual or contingent) whether he shall be the sole registered holder of such shares or one of two or more joint holders of such shares and regulation 8 of Table A shall be construed accordingly.

#### **13.3 Purchase of Own Shares**

Regulation 35 of Table A shall be modified by the deletion of the words "otherwise than out of distributable profits of the company or the proceeds of a fresh issue of shares" and the substitution for them of the words ", whether out of its distributable profits or out of the proceeds of a fresh issue of shares or otherwise".

#### **13.4 General Meetings**

13.4.1 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 either of the Investor Directors acting alone" after the second word of that regulation.

13.4.2 A general meeting may consist of a conference between members some or all of whom are in different places provided that each member who participates is able:

- (a) to hear each of the other participating members addressing the meeting; and
- (b) if he so wishes, to address all of the other participating members simultaneously,

whether directly, by conference telephone or by any other form of communications equipment (whether in use when these Articles are adopted or not) or by a combination of those methods.

- 13.4.3 A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of members required to form a quorum. A meeting held in this way is deemed to take place at the place where the largest group of participating members is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates. A resolution put to the vote of a meeting shall be decided by each member indicating to the chairman (in such manner as the chairman may direct) whether the member votes in favour of or against the resolution or abstains. References in this Article to members shall include their duly appointed proxies and, in the case of corporate members, their duly authorised representatives.

### **13.5 Notice of General Meetings**

An annual general meeting and a general meeting called for the passing of a special resolution or an elective resolution must be called by at least 21 clear days' notice. All other general meetings must be called by at least 14 clear days' notice but a general meeting may be called by shorter notice if it is so agreed:

- 13.5.1 in the case of an annual general meeting or a meeting called for the passing of an elective resolution, by all the members entitled to attend and vote at that meeting; and
- 13.5.2 in the case of any other meeting, by a majority in number of the members having a right to attend and vote, being a majority (i) together holding not less than such percentage in nominal value of the shares in the Company giving that right as has been determined by elective resolution of the members in accordance with the Act, or (ii) if no such elective resolution is in force, together holding not less than 95 per cent in nominal value of the shares giving that right.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify that the meeting is an annual general meeting.

Subject to the provisions of the Articles and to any restrictions imposed on any shares, the notice shall be given to all the members, to all persons entitled to a share in consequence of the death or bankruptcy of a member and to the directors and auditors.

### **13.6 Proceedings at General Meetings**

- 13.6.1 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and for its duration. Two persons entitled to vote upon the business to be transacted,

each being a Shareholder or a proxy for a member or a duly authorised representative of a corporation, of whom at least one shall represent at least 50% of the "B" Shareholders, shall be a quorum. If a meeting is adjourned pursuant to regulation 41 of Table A because a quorum is not present or if a meeting becomes inquorate for a period exceeding fifteen minutes, and at the adjourned meeting a quorum is not present within half an hour of the time set for that meeting, the Shareholders present shall constitute a quorum.

- 13.6.2 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.
- 13.6.3 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.
- 13.6.4 Regulation 51 of Table A is amended by replacing the first and second sentences with the following words: "A poll demanded shall be taken forthwith".

#### **13.7 Votes of Members**

- 13.7.1 A proxy shall be entitled to vote on a show of hands and regulation 54 shall be construed accordingly.
- 13.7.2 Regulation 57 of Table A is modified by the inclusion after the word "shall" of the phrase", unless the directors otherwise determine,".
- 13.7.3 Regulation 59 of Table A is modified by the addition at the end of the second sentence 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."
- 13.7.4 An instrument appointing a proxy must be in writing in any usual form or in any other form which the directors may approve and must be executed by or on behalf of the appointor.
- 13.7.5 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".

### **13.8 Number of Directors**

- 13.8.1 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 one.
- 13.8.2 At all times the Company shall have at least one director who is a natural person. A natural person shall have attained the age of 16 years before his appointment as a director becomes effective.

### **13.9 Alternate Directors**

- 13.9.1 Any Director may 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. However, if the alternate director is a natural person then that person must have attained the age of 16 years before his appointment as an alternate director of the Company becomes effective. In regulation 67 of Table A the words "but, if" and those words which follow to the end of the regulation shall be deleted.
- 13.9.2 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 of which his appointor is a member. An alternate director may waive the requirement that notice be given to him of a meeting of directors or a committee of directors of which his appointor is a member, either prospectively or retrospectively. Regulation 66 of Table A is modified accordingly.
- 13.9.3 An alternate director shall not be entitled as such to receive any remuneration from the Company although he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct, and the first sentence of regulation 66 of Table A shall be modified accordingly.
- 13.9.4 A director, or any other person mentioned in regulation 65 of Table A, may act as an alternate director to represent more than one director, and an alternate director shall be entitled at any meeting of the Board to one vote for every director whom he represents in addition to his own vote (if any) as a director, but he shall count as only one person for the purpose of determining whether a quorum is present.
- 13.9.5 Regulation 68 of Table A is modified by the addition at the end of the first sentence of the following sentence: "Any such notice may be left at or sent by post or facsimile transmission to the office or another place designated for the purpose by the directors."

### **13.10 Delegation of Directors' Powers**

Regulation 72 of Table A is modified by the addition at the end of the regulation of the following sentence: "Where a provision of the Articles refers to the exercise of a power, authority or discretion by the directors and that power, authority or discretion has been delegated by the directors to a committee, the provision must be construed as permitting the exercise of the power, authority or discretion by the committee."

### **13.11 Appointment and Retirement of Directors**

- 13.11.1 The directors are not subject to retirement by rotation. Reference in regulations 67, 78 and 84 of Table A to retirement by rotation shall not apply to the Company.
- 13.11.2 The Company may by ordinary resolution appoint a person who is willing to and act to be a director either to fill a vacancy or as an additional director.
- 13.11.3 The holder or holders of more than half in nominal value of the shares giving the right to attend and vote at general meetings of the Company may by serving notice on the Company remove a director from office and appoint a person to be a director. The notice may consist of several documents in similar form each signed by or on behalf of one or more holders and shall be left at, or sent by post or facsimile transmission to the registered office of the Company or such other place designated by the directors for the purpose. A removal or appointment takes effect when the notice is received by the Company or on such later date (if any) specified in the notice. This Article does not apply to the removal or appointment of the Investor Directors.

### **13.12 Disqualification and Removal of Directors**

- 13.12.1 The office of a director shall be vacated if:
  - (a) he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director;
  - (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (c) he becomes, in the opinion of all his co-directors, incapable by reason of mental disorder of discharging his duties as director;
  - (d) he resigns his office by notice in writing to the Company;
  - (e) 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 that period attended any such meetings instead of him, and the directors resolve that his office be vacated;

- (f) (other than in the case of the Investor Directors) he is removed from office by notice addressed to him at his last-known address and signed by all his co-directors;
- (g) (other than in the case of the Investor Directors) he is removed from office by notice given by a member or members under Article [13.11.4]; or
- (h) being an executive director he shall, for whatever reason, cease to be employed by any member of the Group without the prior written consent of the Investor Director.

13.12.2 Those persons voting against a resolution under section 303 of the Act to remove the Investor Directors or voting against a resolution to amend or alter this Article 13.12.2 or Article 5 or to alter their respective effect are deemed, in respect of that resolution, to have votes which together carry at least one vote in excess of seventy-five per cent. of the votes exercisable at the general meeting at which such a resolution is to be proposed and such votes shall be apportioned amongst such persons in the proportions in which they hold shares in the capital of the Company and regulation 54 of Table A is modified accordingly.

### **13.13 Director's appointments and interests**

- 13.13.1 Regulation 84 of Table A shall be modified by addition of the words: "with the consent of the Majority Investors" after the words "the directors" and before the words "may appoint" in the first sentence of regulation 84, and after the words "the directors" and before the word "determine" and after the words "as they" and before the words "think fit" in the second sentence of regulation 84.
- 13.13.2 Regulation 85 of Table A shall be modified by the addition of the words: "and except in the case of the Investor Directors, to the consent of the Majority Investors" after the words "provisions of the Act" and before the words ", and provided that he has disclosed" in the first sentence of regulation 85.
- 13.13.3 A director shall be authorised for the purposes of sections 173(2) and 175 of the 2006 Act to act or continue to act as a director of the Company notwithstanding that at the time of his appointment or subsequently he also:
  - (a) holds office as a director of any Group Company or any Affiliate;
  - (b) holds office as a director of an Investor or of an Affiliate of that Investor or of a portfolio company of such Investor or Affiliate;
  - (c) holds any other office, employment or engagement with any other Group Company or any Affiliate;

- (d) participates in any scheme, transaction or arrangement for the benefit of the employees or former employees of the Company or any other Group Company or any Affiliate (including any pension fund or retirement, death or disability scheme or other bonus or employee benefit scheme); or
- (e) is interested directly or indirectly in any shares or debentures (or any rights to acquire shares or debentures in the Company or in any other Group Company or any Affiliate).

13.13.4 A director for the time being appointed to the Board or any committee of the Board pursuant to these Articles shall be authorised for the purposes of sections 173(2) and 175 of the 2006 Act to act or continue to act as a director of the Company notwithstanding that at the time of his appointment or subsequently he also:

- (a) holds office as a director of an Investor or of an Affiliate of that Investor or of a portfolio company of such Investor or Affiliate.
- (b) holds any other office, employment or engagement with an Investor of the Company or an Affiliate of that Investor or a portfolio company of such Investor or Affiliate; or
- (c) is interested directly or indirectly, including for the avoidance of doubt, by virtue of any co-investment scheme in any shares or debentures (or any right to acquire shares or debentures) in an Investor or Affiliate of that Investor or a portfolio company of such Investor or Affiliate.

13.13.5 A director for the time being appointed to the Board pursuant to these Articles or pursuant to the Shareholders Agreement, shall be authorised for the purposes of sections 173(2) and 175 of the 2006 Act to act or continue to act as a director of the Company notwithstanding his role as a representative of the Investors (or any one of them) for the purposes of monitoring and evaluating their investment in the Company or any Group Company. Without limitation, such director shall be authorised for the purposes of sections 173(2) and 175 of the 2006 Act to:

- (a) attend and vote at meetings of the directors (or any committee thereof) at which any relevant matter will or may be discussed and receive board papers relating thereto;
- (b) receive Confidential Information and other documents and information relating to the Company, the Group and/or any Affiliate and use and apply such information in performing his duties as a director or officer of, or consultant to or employee to an Investor or an Affiliate of that Investor and disclose that information to third parties in accordance with these Articles or any agreement between the Investors; and

- (c) give or withhold consent or give any direction or approval under these Articles or the Shareholders Agreement on behalf of the Investors (or any of them) in relation to any relevant matter.
- 13.13.6 For the avoidance of doubt, except as otherwise expressly permitted by these Articles, or in the proper performance of his duties to the Company under the 2006 Act, Article 13.13.5 does not authorise the relevant director to disclose Confidential Information to an investor, an Affiliate of an Investor or a portfolio company of such Investor or Affiliate except as otherwise expressly permitted by these Articles or any agreement between the Investors or in his proper performance of his duties to the Company under the 2006 Act
- 13.13.7 The Board may authorise any matter proposed to it which would, if not so authorised, involve a breach of duty by director under section 175 of the 2006 Act.
- 13.13.8 Any authorisation under Article 13.7 will be effective only if:
  - (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other director interested in the matter under consideration; and
  - (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.
- 13.13.9 The Board may give any authorisation under Article 13.13.7 above upon such terms as it thinks fit. The Board may vary or terminate any such authorisation at any time.
- 13.13.10 For the avoidance of any doubt and without prejudice to the remainder of these articles or the Acts, the Company may authorise (specifically or generally) any matter proposed to it which would, if not so authorised, involve a breach of duty by a director under section 175 of the 2006 Act. Such authorisation shall be effected:
  - (a) with the consent in writing of the holders of more than 50 per cent. of the ordinary shares for the time being in issue; or
  - (b) by an ordinary resolution,and shall constitute "authorisation by the members" for the purposes of these articles of association.
- 13.13.11 For the purposes of these Articles, a conflict of interest includes a conflict of interest and duty and a conflict of duties and interests includes both direct and indirect interests.
- 13.13.12 A director shall be under no duty to the Company with respect to any information which he obtains or has obtained otherwise than as a director of



the Company and in respect of which he owes a duty of confidentiality to another person. In particular, the director shall not be in breach of the general duties he owes to the Company by virtue of sections 171 to 177 (inclusive) of the 2006 Act if he:

- (a) fails to disclose any such information to the Board or to any director or other officer or employee of, or consultant to, the Company; or
- (b) does not use or apply any such information in performing his duties as director of the Company.

13.13.13 However, to the extent that his relationship with that other person gives rise to a conflict of interest or a potential conflict of interest, this Article 13.13.13 applies only if the existence of that relationship has been authorised pursuant to Articles 13.13.3 or 13.13.4 or authorised by the Board pursuant to Article 13.13.7 or authorised by the members, and his relationship with that person gives rise to a conflict of interest or possible conflict of interest, the director shall not be in breach of the general duties he owes to the Company by virtue of sections 171 to 177 of the 2006 Act if, at his discretion or at the request or direction of the Board or any committee of the Board he:

- (a) absents himself from a meeting of directors (or a committee thereof) at which any matter relating to the conflict of interest or potential conflict of interest will or may be discussed or from the discussion of any such matter at a meeting of directors or otherwise; or
- (b) makes arrangements not to receive documents and information relating to any matter which gives rise to the conflict of interest or potential conflict of interest sent or supplied by or on behalf of the Company or for such documents and information to be received and read by a professional adviser on his behalf,

for so long as he reasonably believes such conflict of interest (or potential conflict of interest) subsists.

13.13.14 The provisions of Articles 13.13.3, 13.13.4, 13.13.7 and 13.13.12 are without prejudice to any equitable principle or rule of law which may excuse the director from:

- (a) disclosing information, in circumstances where disclosure would otherwise be required under these Articles, or
- (b) attending meetings or discussions or receiving documents and information as referred to in Article 13.13.5, in circumstances where such attendance or receipt would otherwise be required under these Articles.

#### **13.14 Directors' gratuities and pensions**

Regulation 87 shall be modified by the addition of the words: "with the consent of the Majority Investors" after the words "The directors" and before the words "may provide benefits" in the first sentence of regulation 87.

#### **13.15 Proceedings of Directors**

- 13.15.1 Regulation 88 of Table A is modified by the exclusion of the third sentence and the substitution for it of the following sentences: "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 meeting of directors or a committee of directors, either prospectively or retrospectively" and by the addition of the word "not" between the words "shall" and "have" in the fourth sentence.
- 13.15.2 The quorum for the transaction of the business of the directors shall be two directors present throughout the meeting of whom one is an Investor Director (if one is appointed under Article 5), unless otherwise agreed in writing by the Majority Investors.
- 13.15.3 The directors with the consent of the Majority Investors may appoint one of their number to be the chairman of the board of directors and may at any time remove him from that office and regulation 91 shall be construed accordingly.
- 13.15.4 A 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 the 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.
- 13.15.5 Meetings of the board of directors shall take place at least 10 times a year (at intervals of not more than five weeks) and at least five working days' notice shall be given to each director of such a meeting provided that with the consent of a majority of the directors, including an Investor Director, board meetings may be held less frequently and/or convened on shorter notice.

13.15.6 If and for so long as there is a sole director of the Company:

- (a) he may exercise all the powers conferred on the directors by the Articles by any means permitted by the Articles or the Act;
- (b) for the purpose of regulation 89 of Table A the quorum for the transaction of business is one; and
- (c) all other provisions of the Articles apply with any necessary modification (unless the provision expressly provides otherwise).

13.15.7 Without prejudice to the obligation of any director to disclose his interest in accordance with section 317 of the Act and section 182 of the 2006 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 **PROVIDED THAT** he has first obtained the consent of the Majority Investors (unless the director concerned is an Investor Director, in which case no such consent shall be required). 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.

#### 13.16 Dividends

13.16.1 The directors may deduct from a dividend or other moneys payable to a member on or in respect of a share in the Company any amounts presently payable by him to the Company in respect of that share.

13.16.2 Regulation 103 of Table A shall be modified by the addition of the following words: "with the consent of the Majority Investors" after the words "the directors" in the first sentence of regulation 103.

#### 13.17 Capitalisation of Profits

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

#### 13.18 Notices

13.18.1 Regulation 112 of Table A is modified by:

- (a) the addition of the following sentence at the end of the first sentence of regulation 112: "Without prejudice to any provision of the Act or any other legislation or to any other provisions of these Articles requiring notices or documents to be delivered in a particular way, the Company may also give any notice to a member by fax (except for share certificates) to a fax number notified by the shareholder in writing or by

electronic mail (except for share certificates) to an address notified by the shareholder in writing for such purpose; and

- (b) 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 is entitled to have notices given to him at that address."

13.18.2 A notice sent to a member (or to another person entitled to receive notices under the Articles) by post to an address within the United Kingdom is deemed to be given:

- (a) 24 hours after posting, if pre-paid as first class; or
- (b) 48 hours after posting, if pre-paid as second class.

13.18.3 A notice sent to a member (or to another person entitled to receive notices under the Articles) by post to an address outside the United Kingdom is deemed to be given 72 hours 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. A notice or document (other than a share certificate) sent by fax is treated as being delivered at the time it was sent. A notice or document (other than a share certificate) sent by electronic mail is treated as being delivered at the time it was sent.

13.18.4 Regulation 116 of Table A is modified by the deletion of the words "within the United Kingdom".

13.18.5 Where the Articles require notice to be given by the holders of a stated percentage of shares, notice may consist of several documents in similar form each signed by or on behalf of one or more shareholders.

13.18.6 Members can deliver a notice or other document to the Company:

- (a) by delivering it by hand to the registered office of the Company from time to time;
- (b) by sending it by post or other delivery service not referred to below in an envelope (with postage or delivery paid) to the registered office of the Company from time to time;
- (c) by fax to the fax number notified by the Company in its communications to shareholders for this purpose; or
- (d) so far as the legislation allows, by electronic mail to the address notified by the Company in its communications to shareholders for this purpose.

- 13.18.7 A notice of document delivered by hand is treated as being delivered at the time it is left at the registered office of the Company from time to time.
- 13.18.8 A notice or document sent by post or other delivery service not referred to below is treated as being delivered at the time it is received at the registered office of the Company from time to time.
- 13.18.9 A notice or document sent by fax is treated as being delivered at the time it was received.
- 13.18.10 A notice or document sent by electronic mail is treated as being delivered at the time it was received.
- 13.18.11 This Article does not affect any provision of the Act or any other legislation or any other provisions of the Articles requiring notices or documents to be delivered in a particular way.

#### **13.19 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.

#### **14. RELATIONSHIP TO FINANCE DOCUMENTS**

- 14.1 The provisions of the Articles are subject to the following provisions of this Article 14.
- 14.2 Notwithstanding any other provisions of these Articles:
  - 14.2.1 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 Finance Documents;
  - 14.2.2 no dividends or other distributions payable in respect of shares in the Company, whether pursuant to the provisions of these Articles or otherwise, shall constitute a debt enforceable against the Company unless permitted to be paid in accordance with the Finance Documents; and
  - 14.2.3 where any dividend or redemption payment is not made because of the provisions of Article 14.2.2 such dividend shall be paid or redemption payment made upon the necessary consent being obtained or the prohibition in Article 14.2.2 ceasing to apply.

**15. INDEMNITY, DEFENCE COSTS AND INSURANCE**

**15.1 Indemnity of officers and funding of directors' defence costs**

15.1.1 To the extent permitted by the Acts and without prejudice to any indemnity to which he may otherwise be entitled, every person who is or was a director or other officer of the Company (other than any person (whether or not an officer of the Company) engaged by the Company as auditor) shall be and shall be kept indemnified out of the assets of the Company against all costs, charges, losses and liabilities incurred by him (whether in connection with any negligence, default, breach of duty or breach of trust by him or otherwise) in relation to the Company or its affairs provided that such indemnity shall not apply in respect of any liability incurred by him:

- (a) to the Company or to any associated company;
- (b) to pay a fine imposed in criminal proceedings;
- (c) to pay a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);
- (d) in defending any criminal proceedings in which he is convicted;
- (e) in defending any civil proceedings brought by the Company, or an associated company, in which judgment is given against him; or
- (f) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely:
  - (i) section 144(3) or (4) of the Act (acquisition of shares by innocent nominee); or
  - (ii) section 1157 of the 2006 Act (general power to grant relief in case of honest and reasonable conduct).

15.2 In articles 15.1.1(d), 15.1.1(e) or 15.1.1(f) the reference to a conviction, judgment or refusal of relief is a reference to one that has become final. A conviction, judgment or refusal of relief becomes final:

15.2.1 if not appealed against, at the end of the period for bringing an appeal; or

15.2.2 if appealed against, at the time when the appeal (or any further appeal) is disposed of.

**An appeal is disposed of:**

15.2.3 if it is determined and the period for bringing any further appeal has ended; or

15.2.4 if it is abandoned or otherwise ceases to have effect.

15.3 To the extent permitted by the Acts and without prejudice to any indemnity to which he may otherwise be entitled, every person who is or was a director of the Company acting in its capacity as a trustee of an occupational pension scheme shall be and shall be kept indemnified out of the assets of the Company against all costs, charges, losses and liabilities incurred by him in connection with the Company's activities as trustees of the scheme provided that such indemnity shall not apply in respect of any liability incurred by him:

15.3.1 to pay a fine imposed in criminal proceedings;

15.3.2 to pay a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement or a regulatory nature (howsoever arising); or

15.3.3 in defending criminal proceedings in which he is convicted.

For the purposes of this article, a reference to a conviction is to the final decision in the proceedings. The provisions of article 15.2 shall apply in determining when a conviction becomes final.

15.4 Without prejudice to article 15.1.1 or to any indemnity to which a director may otherwise be entitled, and to the extent permitted by the Acts and otherwise upon such terms and subject to such conditions as the directors may in their absolute discretion think fit, the directors shall have the power to make arrangements to provide a director with funds to meet expenditure incurred or to be incurred by him in defending any criminal or civil proceedings or in connection with an application under section 144(3) or (4) of the Act (acquisition of shares by innocent nominee) or section 1157 of the 2006 Act (general power to grant relief in case of honest and reasonable conduct) or in defending himself in an investigation by a regulatory authority or against action proposed to be taken by a regulatory authority or to enable a director to avoid incurring any such expenditure. Any such funds shall be repayable by the director in the circumstances set out in section 205(2) - 205(5) of the 2006 Act.

#### 15.5 **Power to purchase insurance**

To the extent permitted by the Acts, the directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of a person who is or was;

- (a) a director, alternate director or secretary of the Company or of a company which is or was a subsidiary undertaking of the Company or in which the Company has or had an interest (whether direct or indirect); or
- (b) trustee or a retirement benefits scheme or other trust in which a person referred to in the preceding paragraph is or has been interested,

indemnifying him and keeping him indemnified against liability for negligence, default, breach of duty or breach of trust or other liability which may lawfully be insured against by the Company.