

**Ten Health & Fitness Limited (the Company)**

**Company number: 06286799**

**Written resolution of the Company**

**Dated 18 June 2019 (Circulation Date)**

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Pursuant to chapter 2 of part 13 of the Companies Act 2006 (the **Act**), the directors of the Company propose that resolutions 2 and 3 below are passed as ordinary resolutions (the **Ordinary Resolutions**) and resolutions 1 and 4 below are passed as special resolutions (the **Special Resolutions**, and the Ordinary Resolutions and Special Resolutions together being the **Resolutions**).

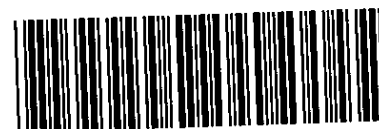
**Special Resolution**

- 1 **THAT** the attached draft articles of association be adopted as the new articles of association of the Company in substitution for, and to the exclusion of, the Company's existing articles of association.

**Ordinary Resolutions**

- 2 **THAT** each of the 10,131 issued ordinary shares of £0.10 in the capital of the Company be and are hereby re-designated as 10,131 B ordinary shares of £0.10 in the capital of the Company having the rights and being subject to the restrictions set out in the articles of association adopted pursuant to resolution 1.
- 3 **THAT**, the directors are generally and unconditionally authorised, for the purpose of section 551 of the Act and generally, to exercise all and any powers of the Company to allot the following shares in the Company:
- (a) 5,089 A ordinary shares of £0.10 each;
  - (b) 1,600,000 preference shares of £1 each; and
  - (c) 2,207 C ordinary shares of £0.10 each.

having the rights and being subject to the restrictions set out in the articles of association adopted pursuant to resolution 1. This authority shall expire five years after the date on which this resolution is passed, except that the Company may, before such expiry, make any offer or agreement which would or might require shares to be allotted or such rights to be granted after such expiry (and the directors may allot shares or grant such rights in pursuance of such offer or agreement as if the authority conferred by this resolution had not expired) and apply insofar as it has not expired or been waived or revoked by ordinary resolution of the Company and shall be in addition to all and any existing authorities to allot shares and to grant rights to subscribe for, or to convert any security into, shares in the Company that have been granted by ordinary resolution of the Company under section 551 of the Act to the extent they are unused.



### Special resolution

- 4       **THAT**, subject to the passing of the Ordinary Resolution at resolution 3 above, pursuant to section 571 of the Act, the directors be generally empowered to allot the shares set out in resolution 3 above, as if section 561 of the Act did not apply to any such allotment.

### Agreement

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

We, the undersigned, being entitled to vote on the above Resolutions hereby irrevocably agree to such Resolutions:

  
Justin Rogers

Date:

  
Joanne Matthews

Date:

  
James Heywood

Date:

  
Richard Fifield

Date:

.....  
Raj Sinhal

Date:

Important notes:

- 1 If you agree with the Resolutions, please indicate your agreement by signing and dating where indicated above and returning this document to the Company using one of the following methods:

- **By hand:** delivering the signed copy to c/o Claire Scanlon, Trowers & Hamlins LLP, 3 Bunhill Row, London, EC1Y 8YZ.
- **Post:** returning the signed copy by post to c/o Claire Scanlon, Trowers & Hamlins LLP, 3 Bunhill Row, London, EC1Y 8YZ.
- **E-mail:** by attaching a scanned copy of the signed document to an e-mail and sending it to CScanlon@trowers.com.

By signing above, you indicate your agreement to all of the Resolutions. You cannot agree to some only of the resolutions. An ordinary resolution must be passed by members representing a simple majority (ie more than 50%) of the voting rights of eligible members. A special resolution must be passed by members representing not less than 75% of the voting rights of eligible members.

Please note that once you have indicated your agreement to the Resolutions, you may not revoke your agreement.

If you disagree with the Resolutions, you do not need to do anything. If you do not reply, you will be deemed to have rejected the Resolutions.

- 2 If it is not passed by the end of 28 days after the Circulation Date it will lapse. If you agree to the Resolutions, please ensure that your agreement reaches us by the end of 28 days after the Circulation Date.

Company number: 06286799

**COMPANY LIMITED BY SHARES**  
**WRITTEN RESOLUTIONS**  
of  
**TEN HEALTH & FITNESS LIMITED**  
(the "Company")

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the Directors of the Company propose that the following resolutions are passed as written resolutions as detailed below.

**RESOLUTIONS**

1. **THAT** the Company, in good faith and for the purpose of carrying on its business, enter into the arrangements to be effected under or pursuant to a Debenture to be made between (1) the Company and (2) Reward Capital Limited (the "**Debenture**") and perform its obligations in relation to the Debenture.
2. **THAT** the Directors be authorised to pass and to implement such resolutions as they think fit in connection with the Company's entry into, and the performance of its obligations in relation to the Debenture, including approval and execution of the Debenture and all related matters.

**AGREEMENT**

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

We, the undersigned, being persons entitled to vote on the above resolutions, irrevocably agree to such resolutions:

<b>Name of Shareholder</b>	<b>Signature</b>	<b>Date of Signature</b>
<b>Joanne Mathews</b>	.....	.....
<b>Justin Rogers</b>	.....	.....

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**James Heywood**

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**Richard Fifield**

.....

**Raj Sinhal**

*R Sinhal* .....

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.....

Copy:                      Auditors

**NOTES**

1.        Shareholders who wish to agree to such resolutions should signify their agreement by sign and return this document to the Company.  
  
          If you do not agree to the resolutions, you do not need to do anything; you will not be deemed to agree if you fail to reply.
  2.        If sufficient agreement is not received by 28 days from sending then these resolutions will lapse and shareholders will not be able to indicate agreement after that date. If you agree to the resolutions, please ensure your agreement reaches us before that date.
  3.        Once you have indicated your agreement to the resolutions, you may not revoke your agreement.
  4.        In the case of joint holders of shares, only the vote of the senior holder who votes will be counted by the Company. Seniority is determined by the order in which the names of the joint holders appear in the register of members.
  5.        If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.
  6.        The resolutions will take effect when the last signed and dated resolution has been delivered to and received by the Company (please see note 1 above).
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## COMPANIES ACT 2006

### A PRIVATE COMPANY LIMITED BY SHARES

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#### ARTICLES OF ASSOCIATION

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(Adopted by Written Resolution passed on 18 June 2019)

of

Ten Health & Fitness Limited

(Company Number 06286799)

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**THE COMPANIES ACT 2006**  
**A PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

(adopted by Written Resolution passed on 18 June 2019)

of

**Ten Health & Fitness Limited**

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**1. INTRODUCTION**

1.1 The articles contained in the Model Articles apart from Articles 5 (Directors may delegate), 6 (Committees), 7 (Directors to take decisions collectively), 8 (Unanimous decisions), 10(1) and (2) (Participation in directors' meetings), 11(2) and (3) (Quorum for directors' meeting), 12 (Chairing of directors' meetings), 13 (Casting vote), 14 (Conflicts of interest), 17 (Methods of appointing directors), 19 (Directors Remuneration), 21 (All shares to be fully paid up), 22 (Powers to issue different classes of shares), 26(5) (Share transfers), 41 (Adjournment), 42 (Voting), 44(4) (Poll Votes), 49(3) and (4) (Company Seal), 50 (No right to inspect accounts and other records), 52 (Indemnity) and 53 (Insurance) shall apply to the Company except insofar as they are inconsistent with the following Articles.

1.2 In these Articles and the Model Articles any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force.

**2. DEFINITIONS**

2.1 In these Articles the following words and expressions shall have the following meanings:

<b>"A Ordinary Shares"</b>	the A ordinary shares of £0.10 each in the capital of the Company and having the rights ascribed thereto as set out in these Articles and <b>"A Ordinary Share"</b> shall be construed accordingly;
<b>"AA Ordinary Shares"</b>	the AA ordinary shares of £0.000001 each in the capital of the Company and having the rights ascribed thereto as set out in these Articles and <b>"AA Ordinary Share"</b> shall be construed accordingly;
<b>"A Ordinary Shareholders"</b>	the holders for the time being of the issued A Ordinary Shares and <b>"A Ordinary Shareholder"</b> shall be construed accordingly;
<b>"AA Ordinary Shareholders"</b>	the holders for the time being of the issued AA Ordinary Shares and <b>"AA Ordinary Shareholder"</b> shall be construed accordingly;
<b>"Acceptance Period"</b>	the period during which an offer made under Article 11.7 is

	open for acceptance;
<b>"Adoption Date"</b>	the date of adoption of these Articles;
<b>"Asset Sale"</b>	the disposal by the Company of all or substantially all of its undertaking and assets;
<b>"Available Profits"</b>	profits available for distribution within the meaning of part 23 of the CA 2006;
<b>"Auditors"</b>	the auditors for the time being of the Company or such other firm of chartered accountants appointed in accordance with Article 11.4;
<b>"Bad Leaver"</b>	any person who ceases to be an Employee at any time as a result of: <ul style="list-style-type: none"> <li>(i) that person's resignation within a period of 12 months from the Adoption Date (otherwise than in circumstances where the person would be treated as a Good Leaver);</li> <li>(ii) that person committing an act of fraud;</li> <li>(iii) that person carrying out an act of gross misconduct; ;</li> </ul>
<b>"Beneficial Owner"</b>	as defined in Article 10.3;
<b>"Board"</b>	the board of Directors of the Company;
<b>"B Ordinary Shares"</b>	the B ordinary shares of £0.10 each in the capital of the Company and having the rights ascribed thereto as set out in these Articles and <b>"B Ordinary Share"</b> shall be construed accordingly;
<b>"B Ordinary Shareholders"</b>	the holders for the time being of the issued B Ordinary Shares and <b>"B Ordinary Shareholder"</b> shall be construed accordingly;
<b>"Business Day"</b>	a day (other than a Saturday or Sunday or bank holiday) on which the clearing banks in the city of London are open for business;
<b>"C Ordinary Shares"</b>	the C ordinary shares of £0.10 each in the capital of the Company and having the rights ascribed thereto as set out in these Articles;
<b>"C Ordinary Shareholders"</b>	the holders for the time being of the issued C Ordinary Shares;
<b>"CA 2006"</b>	the Companies Act 2006 and every statutory modification or re-enactment thereof for the time being in force;
<b>"company"</b>	includes any body corporate;
<b>"Company"</b>	Ten Health & Fitness Limited, a private limited company incorporated in England with the registered number 06286799;
<b>"Conflict Situation"</b>	any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict with the interests of the Company including (without limitation) any such situation or matter which relates to the exploitation

	of any property, information or opportunity (irrespective of whether the Company could take advantage of the property, information or opportunity);
<b>"Connected"</b>	means: <ul style="list-style-type: none"> <li>(i) when used in Articles 4.1.6, 4.3.2 or 4.4.3, as defined by Section 1122 of the Corporation Tax Act 2010, provided however that any determination of fact as to whether two or more persons are acting together shall, in the absence of any ruling by HM Revenue &amp; Customs, be made by the tax advisers appointed by the Investor acting as experts and not as arbitrators and whose certificate or certificates from time to time shall be final and binding on the Company and all shareholders; and</li> <li>(ii) when used in any other provision of these Articles, as defined by Section 1122 of the Corporation Tax Act 2010;</li> </ul>
<b>"Deed of Adherence"</b>	a deed of adherence to the terms of any Investment Agreement in a form specified by the Board;
<b>"Deferred Shares"</b>	deferred shares of £0.10 each in the capital of the Company, having the rights set out in these Articles;
<b>"the Directors"</b>	the directors for the time being of the Company or (as the context shall require) any of them (each a "Director") acting as the Board of the Company;
<b>"the Drag Along Price"</b>	as defined in Article 16.1;
<b>"the Drag Along Right"</b>	as defined in Article 16.1;
<b>"Eligible Shareholders"</b>	as defined in Article 15.1.1;
<b>"Emergency Issue"</b>	an issue of Equity Shares by the Company in respect of an Emergency Issue Event;
<b>"Emergency Issue Event"</b>	<ul style="list-style-type: none"> <li>(a) there has been or, in the reasonable opinion of the Board, there is a reasonable likelihood of there being a material breach of any provision of any banking facility or other instrument evidencing financial indebtedness of the Group (where such breach has not been waived), including without limitation a material breach of the Foresight Loan Note Instrument; or</li> <li>(b) the Company or any Group Company is, or, in the reasonable opinion of the Board, is reasonably likely to become, insolvent (unless the relevant Group Company receives the funding which is the subject of the Emergency Issue proposal),</li> </ul> <p>and the Board reasonably determines that the Group Company requires funding on an urgent basis, provided that the quantum of Equity Shares to be issued shall be limited to the amount of funding required for the purpose of curing the underlying requirement for the Emergency Issue;</p>
<b>"Employee"</b>	an individual (other than an Investor Director) who:

	(a) is employed by; and/or (b) is a director of the Company or any Member of the same Group of the Company;
<b>"Employee Member"</b>	any Employee who is a Member by virtue of their holding of B Ordinary Shares or C Ordinary Shares;
<b>"Employee Options"</b>	options granted over C Ordinary Shares conferring in aggregate no more than 12.7% of the Company's economic and voting rights to the Company's employees from time to time under an employee share option scheme approved by the Investor Director;
<b>"Employee Trust"</b>	a trust approved by the Board with the approval of the Investor Director and whose beneficiaries are bona fide employees of the Company;
<b>"Equity Shareholders"</b>	the holders for the time being of issued Equity Shares and <b>"Equity Shareholder"</b> shall be construed accordingly;
<b>"Equity Shares"</b>	the A Ordinary Shares, the AA Ordinary Shares, the B Ordinary Shares and the C Ordinary Share in issue from time to time;
<b>"equity share capital"</b>	shall have the meaning set out in sections 548 of the CA 2006;
<b>"Excess Shares"</b>	as defined in Article 11.9.1;
<b>"Excluded Person"</b>	any Member (or other person entitled to a Share in the manner set out in Article 12.1) whom the Directors are entitled under Article 10.5, Article 12.1 or Article 14 to require to give a Transfer Notice (but only throughout such time as the Directors are entitled to require him to give a Transfer Notice);  any Member or other person who has been required to give a Transfer Notice under Article 10.5, Article 12.1 or Article 14 (whether or not that requirement has been complied with);
<b>"Executive"</b>	has the meaning given in an Investment Agreement;
<b>"Exit"</b>	a Sale, Listing or disposal by the Investor of their Equity Shares and Preference Shares;
<b>"Family Member"</b>	in relation to any person or deceased person, such person's spouse or civil partner and parents and every child and remoter descendant of such person (including stepchildren and adopted children);
<b>"Family Trusts"</b>	in relation to any person or deceased person means trusts under which no immediate beneficial interest in any of the Equity Shares in question is for the time being vested in any person other than that person and/or a Family Member of that person. For these purposes a person shall be deemed to be beneficially interested in an Equity Share if that Share or the income derived from it is or may become liable to be transferred or paid or applied or appointed to or for the benefit of that person;
<b>"Financial Year"</b>	the period commencing on 1 January and ending on the

	following 31 December;
<b>"FMV"</b>	fair market value as agreed between the Employee Member and the Directors (acting with the consent of the Investor Director) or as determined in accordance with Article 11.5;
<b>"Foresight Loan Note Instrument"</b>	shall have the meaning given to it in any Investment Agreement;
<b>"Foresight Loan Notes"</b>	the unsecured loan notes held by the Investor pursuant to the terms of the Foresight Loan Note Instrument;
<b>"Good Leaver"</b>	any person who: <ul style="list-style-type: none"> <li>(a) ceases to be an Employee at any time by reason of: <ul style="list-style-type: none"> <li>(i) death; or</li> <li>(ii) permanent or long term disability, incapacity or serious illness (not caused by illegal drug or alcohol dependence) which in the opinion of the Board and the Investor Director is sufficiently serious to prevent him from carrying out normal duties in accordance with his contract of employment;</li> <li>(iii) permanent or long term disability, incapacity or serious illness of a Family Member, where the relevant person has resigned on the basis that they consider themselves unable to continue performing their role;</li> <li>(iv) retirement beyond the age of 60 years old;</li> </ul> </li> <li>(b) the Board (acting with the consent of the Investor Director, or if none is appointed, the written consent of an Investor Majority) determine in their absolute discretion, to be a Good Leaver.</li> </ul>
<b>"Group"</b>	the Company and its subsidiaries from time to time and "Group Company" shall be construed accordingly;
<b>"Intermediate Leaver"</b>	any person who ceases to be an Employee at any time and who is not a Good Leaver or a Bad Leaver;
<b>"Investment Agreement"</b>	means any one or more written agreements relating to the Company and to which the Company and some or all of the Members including at least an Investor Majority and a majority of the B Ordinary Shareholders are a party, and expressly stated on its face to be an Investment Agreement for the purposes of these or of any earlier Articles, as any such agreement is amended, waived, restated, modified or supplemented from time to time;
<b>"Investor Director"</b>	such person as is appointed by the Investor as a director of the Company pursuant to Article 21.1;
<b>"Investor Group"</b>	in relation to any corporate Investor, that Investor and its Associated Companies (as defined in section 256 of the CA 2006) from time to time;
<b>"Investor Majority"</b>	person or persons together holding at least 50% of the A Ordinary Shares and AA Ordinary Shares (as if such classes

	constituted a single class of share) for the time being in issue;
<b>"Investors"</b>	shall have the meaning given in any Investment Agreement and <b>"Investor"</b> shall be construed accordingly;
<b>"Issue Price"</b>	the aggregate price paid for the relevant Shares whether by purchase or subscription and including any premium paid on subscription;
<b>"ITEPA"</b>	Income Tax (Earnings and Pensions) Act 2003;
<b>"Listed or Listing"</b>	the admission of all or any of the equity share capital of the Company to trading on: <ul style="list-style-type: none"> <li>(a) the main market of the London Stock Exchange plc; or</li> <li>(b) the Alternative Investment Market of the London Stock Exchange plc; or</li> <li>(c) any other recognised investment exchange (as defined by Section 285, Financial Services and Markets Act 2000) (as amended) as approved by the Investor and such admission becoming effective in accordance with the rules of the relevant investment exchange;</li> </ul>
<b>"Mandatory Transfer Date"</b>	in respect of an Employee Member the earlier of the date of cessation of employment or directorship;
<b>"Member"</b>	a holder of Equity Shares;
<b>"a Member of the same Group"</b>	as regards any company, a company which is for the time being a holding company or a subsidiary of that company or of any such holding company;
<b>"Model Articles"</b>	the model articles for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008/3229);
<b>"Offer"</b>	either: <ul style="list-style-type: none"> <li>(a) an offer to purchase all the Equity Shares other than those already held by the Offeror and/or any persons acting in concert with him (as defined in the City Code on Take-overs and Mergers); or</li> <li>(b) the entering into of one or more agreements which will result in any persons who are acting in concert (as defined above) acquiring all the Equity Shares, which agreements are unconditional or subject only to conditions in the sole control of any or all of the persons who are acting in concert;</li> </ul> <p>in each case being an offer or agreement which is approved by the Investor as being an offer or an agreement to which Articles 15 and 16 do not apply;</p>
<b>"the Offeror"</b>	as defined in Article 16.1;
<b>"Pre Existing Option Shares"</b>	means shares in the capital of the Company acquired after the Adoption Date as a result of the exercise of employee share options where such options were granted to the

	relevant person prior to the Adoption Date;
<b>"Preference Shares"</b>	the preference shares of £1.00 each in the capital of the Company and having the rights ascribed thereto as set out in these Articles and <b>"Preference Share"</b> shall be construed accordingly;
<b>"Preference Shareholders"</b>	the holders for the time being of the issued Preference Shares;
<b>"the Prescribed Price"</b>	the price per Sale Share agreed or determined pursuant to Article 11.4 or determined pursuant to Article 11.5;
<b>"Proposing Transferee"</b>	as defined in Article 15.1;
<b>"Proposing Transferor"</b>	a Member proposing to transfer or dispose of Equity Shares or any interest therein;
<b>"Purchase of Own Shares Option"</b>	has the meaning given in Article 11.8.2(a);
<b>"Purchaser"</b>	a Member willing to purchase Equity Shares comprised in a Transfer Notice;
<b>"Quarter Dates"</b>	means 31 March, 30 June, 30 September and 31 December in each calendar year;
<b>"Remuneration Committee"</b>	as defined in any Investment Agreement;
<b>"Relevant Interest"</b>	as defined in Article 15.3.1;
<b>"the Relevant Transaction"</b>	as defined in Article 15.1;
<b>"Sale"</b>	completion of the transaction(s) by which an Offer has arisen;
<b>"the Sale Shares"</b>	all Equity Shares comprised in a Transfer Notice;
<b>"Shares"</b>	issued shares in the capital of the Company;
<b>"Subsidiary" and "holding company"</b>	shall have the meanings set out in Sections 1159 to 1162 of the CA 2006;
<b>"Tag Notice"</b>	a written notice served by a Member of the Company in accordance with Article 15.1 and Article 15.2;
<b>"Tax Act"</b>	the Income Tax Act 2007, as amended;
<b>"Transfer Notice"</b>	a written notice served by a Member on the Company, in accordance with Article 11 or deemed to have been served pursuant to Article 13;
<b>"Transferee Company"</b>	a company for the time being holding shares in consequence of a transfer or series of transfers of shares between Members of the same Group (the relevant Transferor Company in the case of a series of transfers being the first transferor in that series);
<b>"Transferor Company"</b>	a company (other than a company which is also a Transferee Company in respect of the same shares) which has transferred shares to a Member of the same Group;
<b>"VCT Legislation"</b>	section 450 of the Corporation Tax Act 2010 and Part 6 of the Tax Act;

### **3. SHARE CAPITAL**

- 3.1 The issued share capital of the Company at the date of adoption of these Articles shall, following the issue of shares pursuant to any Investment Agreement, comprise A Ordinary Shares, B Ordinary Shares, and Preference Shares.
- 3.2 In these Articles, unless the context requires otherwise, references to Equity Shares shall include shares of those respective classes created and/or issued after the date of adoption of these Articles.

### **4. SHARE RIGHTS**

The Equity Shares shall have, and be subject to, the following rights and restrictions:

#### **4.1 Income**

- 4.1.1 The Company's Available Profits will be applied as set out in this Article 4.1.
- 4.1.2 In respect of each Financial Year end following the third anniversary of the Adoption Date and commencing on such date, the Company will, before application of any Available Profits to reserve or for any other purpose pay in respect of each Preference Share, a fixed non-cumulative cash preferential dividend (at the annual rate of 10% per annum of the Issue Price per Preference Share) to the person registered as its holder ("**Preference Dividend**"). The Preference Dividend shall be paid in cash on each of the Quarter Dates in each year following the approval by the Board of the accounts for the applicable Financial Year and the same Quarter Dates in each year thereafter. Should there be insufficient Available Profits in any Financial Year to pay the full amount of the Preference Dividend, the Preference Dividend will be payable in such part as will utilise all Available Profits for the relevant Financial Year.
- 4.1.3 Other than in respect of the Preference Dividend, the distribution of any profits of the Company shall require prior approval of the Investor Director.
- 4.1.4 Subject to Article 4.1.3, 4.1.5 and 4.1.7 the profits of the Company after the payment of the Preference Dividend, which the Company may so resolve to distribute, shall be distributed as to £1 in aggregate to the holders of the Deferred Shares and the balance shall be shared amongst the holders of Equity Shares *pari passu* (as if the Equity Shares constituted one class of shares) in proportion to the number of Equity Shares held.
- 4.1.5 No dividend other than the Preference Dividend shall be payable (unless the consent of an Investor Majority is obtained in writing) on the Equity Shares if on the proposed payment date any amounts of capital and interest on the Foresight Loan Notes remains outstanding.
- 4.1.6 In order to comply with the VCT Legislation no single company which is a holder of Shares shall (together with any Connected person) be entitled to receive, if the whole of the income of the Company were in fact distributed among its participators (without regard to any rights which any holder has as a loan creditor or by reason of that holder's possession of, or entitlement to acquire relevant fixed-rate preference shares), more than 50% of the amount so distributed. For these purposes, the expression "participator" and "loan creditor" shall bear the meanings respectively give to them by Section 253 of the Tax Act and the expression "relevant fixed rate preference shares" shall bear the meaning given by Chapter 4, Part 6 of the Tax Act.
- 4.1.7 The maximum sum which the holders of the C Ordinary Shares as a class shall be entitled to receive shall be in aggregate 12.7% of any sum distributed pursuant to



Article 4.1.1 and between the holders of the C Ordinary Shares such sum shall be distributed amongst the holders of the C Ordinary Shares *pari passu* in proportion to the number of C Ordinary Shares held.

- 4.1.8 Model Article 30 to Model Article 35 (inclusive) shall be subject to this Article 4.1 and, in the event of any inconsistency, the provisions of this Article 4.1 shall prevail.

## 4.2 Proceeds of Sale

Immediately following the exercise of any Employee Options, the proceeds of any Sale ("**Sale Proceeds**") shall be distributed amongst the holders of Shares as follows:

- 4.2.1 First, if the full amount of any Preference Dividend has not been paid in accordance with Article 4.1.2 before the date of the Sale (or has only been partly paid) due to a lack of Available Profits, an amount equal to the Preference Dividend which would otherwise have been paid calculated as at the date of the Sale shall be paid to the Preference Shareholders *pro rata* to the number of Preference Shares held by them.
- 4.2.2 Second, each Preference Shareholder shall be entitled to an amount equal to 30% of the Issue Price paid in respect of each Preference Share they hold.
- 4.2.3 Third, each Preference Shareholder shall be entitled to an amount equal to Issue Price paid on each Preference Share they hold.
- 4.2.4 Fourth, but subject always to Article 4.2.5, the remaining balance of such Sale Proceeds shall be distributed amongst the holders of the Equity Shares (as if they were one and the same class) *pro rata* according to the number of Equity Shares held **PROVIDED THAT** if, distribution of the remaining Sale Proceeds under this Article 4.2.4, would result in the holders of each AA Ordinary Share and A Ordinary Share receiving an amount per share less than the Issue Price paid thereon, then:
- (a) the remaining balance of the Sale Proceeds under this Article 4.2.4 shall first be used to pay to each holder of an AA Ordinary Share or an A Ordinary Share the Issue Price paid thereon; and
- (b) the remaining balance of the Sale Proceeds thereafter shall, subject always to Article 4.2.5, be distributed amongst the holders of the B Ordinary Shares and the C Ordinary Shares (as if they were one and the same class) *pro rata* according to the number of B Ordinary Shares and C Ordinary Shares held.
- 4.2.5 The maximum sum of any proceeds of a Sale which the holders of the C Ordinary Shares shall be entitled to receive shall be in aggregate 12.7% of such proceeds and between the holders of the C Ordinary Shares such sum shall be distributed to the holders of the C Ordinary Shares in proportion to the number of C Ordinary Shares held.

## 4.3 Return of Capital

- 4.3.1 Subject to Article 4.3.2 and 4.3.3 on a return of assets on a liquidation or capital reduction or similar, the assets of the Company remaining after payment of its liabilities shall be distributed as to £1 in aggregate to the holders of the Deferred Shares and the balance shall be shared amongst the holders of Equity Shares and Preference Shares *pari passu* as if both classes constituted one and the same class of share and in proportion to the number of shares held, save that the entitlement of the holders of the Preference Shares shall be limited to a sum equal to the Issue Price of each Preference Share held.

- 4.3.2 In order to comply with the VCT Legislation no single company which is a holder of Equity Shares shall (together with any Connected person) be entitled (otherwise than by reason of that holder's possession of, or entitlement to acquire relevant fixed-rate preference shares) on a return of assets on liquidation or capital reduction or otherwise to receive more than 50% of the capital available for payment to all members. For those purposes the expression "relevant fixed-rate preference shares" shall bear the meaning given by Chapter 4, Part 6 of the Tax Act.
- 4.3.3 The maximum sum which the holders of the C Ordinary Shares as a class shall be entitled to receive shall be in aggregate 12.7% of any sum distributed pursuant to Article 4.3.1 and between the holders of the C Ordinary Shares such sum shall be distributed amongst the holders of the C Ordinary Shares *pari passu* in proportion to the number of C Ordinary Shares held.
- 4.3.4 Any sum which is unable to be paid due to the limiters in this Article 4 shall instead be distributed to all other Equity Shareholders *pro-rata* to the number of Equity Shares they hold as if they constituted one and the same class of share.

#### 4.4 Voting

Subject to the provisions of Article 12.7:

- 4.4.1 on a show of hands every holder of Equity Shares who (being an individual) is present in person or (being a corporation) is present by a representative shall have one vote;
- 4.4.2 on a poll every holder of Equity Shares who is present in person or by a proxy or (being a corporation) by a representative shall have one vote for every Equity Share of which he is the holder;
- 4.4.3 notwithstanding the foregoing in order to comply with the VCT Legislation no single company which is a holder of Equity Shares shall (together with any Connected person) be entitled to exercise more than 50% of the voting rights attaching to the equity share capital of the Company; and
- 4.4.4 notwithstanding the foregoing, the holders of the C Ordinary Shares in aggregate shall not be entitled to exercise more than 12.7% of the voting rights attaching to the equity share capital of the Company.
- 4.4.5 the Preference Shares and the Deferred Shares shall not carry any voting rights.

#### 5. ISSUE OF NEW SHARES: PRE-EMPTION

- 5.1 Subject to Article 5.3, the following pre-emption process shall apply before any new Equity Shares are issued:

- 5.1.1 any new Equity Shares from time to time created shall before they are issued to any third party be offered to Equity Shareholders, and for the purposes of this Article 5.1, all Equity Shares shall be treated as if they were the same class of Share save that under this pre-emption process, each Equity Shareholder will only ever be offered a class of Equity Share that corresponds to the existing class of Equity Share they hold ("Pre-Emption Offer"). By way of illustrated example, if the Company wishes to issue 100,000 new Equity Shares and the following shares are in issue:

- 50,000 B Ordinary Shares
- 25,000 A Ordinary Shares
- 25,000 AA Ordinary Shares

the A Ordinary Shareholders and AA Ordinary Shareholders would be together be offered 50,000 new AA Ordinary Shares and/or A Ordinary Shares (pro rata to the number of AA Ordinary Shares and A Ordinary Shares they hold as if such shares constituted a single class) and the B Ordinary Shareholders would be offered 50,000 new B Ordinary Shares (pro rata to the number of B Ordinary Shares they hold).

5.1.2 The Pre-Emption Offer shall be made by notice in writing specifying:

- (a) the number and class of shares offered ("**Relevant Securities**");
- (b) the price per share (which shall be the same price per share), and

stating a time (not being less than thirty days or greater than forty-two days) within which the offer, if not accepted, will be deemed to be declined and stipulate that any offeree who wishes to subscribe for a number of Relevant Securities in excess of the number to which he is entitled under Article 5.1 shall, in his acceptance, state the number of excess Relevant Securities ("**Excess Securities**") for which he wishes to subscribe.

5.1.3 Any Relevant Securities not accepted by offerees pursuant to an offer made in accordance with Article 5.1 and Article 5.1.2 shall be used to satisfy any requests for Excess Securities. If there are insufficient Excess Securities to satisfy such requests, the Excess Securities shall be allotted to the applicants in the respective proportions that the number of Equity Shares held by each such applicant bears to the total number of Equity Shares held by all applicants (as nearly as possible without involving fractions or increasing the number of Excess Securities allotted to any Equity Shareholder beyond that applied for by him).

5.2 The provisions of Article 5.1 shall not apply to the issue of shares pursuant to the exercise of Employee Options or pursuant to any Investment Agreement and may in any event be disapplied in relation to any class of shares by special resolution.

### 5.3 **Emergency Fundraising**

5.3.1 If the Board, with the consent of the Investor Director (or if none is appointed, an Investor Majority) (not to be unreasonably withheld), resolves that there is an Emergency Issue Event and there is a need for an Emergency Issue, the provisions of this Article 5.3 shall apply unless a special resolution has been passed to the contrary and where an Investor Director does not respond within 72 hours of a request by the Board for such consent, it shall be deemed to have been provided.

5.3.2 Where the Board has resolved (in accordance with Article 5.3.1) for the Company to make an Emergency Issue, the Company shall not be required to first make an offer to its Members in accordance with Article 5.1 and the Company may issue such number of Equity Shares at such price and to such Equity Shareholders as it deems appropriate in connection with the Emergency Issue ("**Emergency Funding Shares**") ("**Initial Emergency Funding Round**").

5.3.3 If an Emergency Issue is proposed, notwithstanding any other provision in any Investment Agreement or the Articles, all Shareholders shall:

- (a) consent to any Board of Shareholders' meeting or meeting of a class of Shareholders being held on short notice to implement the Emergency Issue (as applicable) and to procure (so far as it is able) that any director appointed by it will so consent;

- (b) vote in favour of all resolutions as a Shareholder and/or holder of a class of Shares whether at a meeting or by signing a written resolution and/or a class consent and/or (subject to his fiduciary duties) as a director, which are proposed by the Board to implement the Emergency Issue (s applicable); and
  - (c) procure the circulation to the Board or Shareholders of written resolutions, consents and/or approvals (respectively) required to implement the Emergency Issue and to sign such resolutions, consents and/or approvals and return them to the Company as soon as possible.
- 5.3.4 As soon as reasonably practicable following an Emergency Issue, and in any event not later than 10 Business Days after the Emergency Issue, the Company shall offer (the “Catch-Up Offer”) all the holders of the Equity Shares the right to subscribe for such number of Equity Shares that would maintain their percentage shareholding in the Company at the level it was immediately prior to the issue of the Emergency Funding Shares (as if a Pre Emption Offer had been made prior to the Emergency Issue). The Catch-Up Offer shall be made at the same price as the price at which the Emergency Funding Shares were issued. The Catch-Up Offer shall be made on terms such that within 10 Business Days of receipt of the Catch-Up Offer by the Equity Shareholders, they shall be obliged to indicate to the Company and the holders of the Equity Shares who participated in the Emergency Issue whether or not they wish to take up their entitlement under the Catch-up Offer (either in whole or in part) and thereafter, any Equity Shareholder who has indicated that they will participate shall have 60 days to complete their subscription for the relevant shares. .
- 5.3.5 Any Equity Shares allotted pursuant to this Article 5.3 (whether pursuant to an Emergency Issue or a Catch-Up Offer) shall be issued in the same class as the Equity Shares already held by the relevant Equity Shareholder save that the A Ordinary Shareholders may elect to receive AA Ordinary Shares rather than A Ordinary Shares. For the avoidance of doubt, if an A Shareholder would have been entitled to receive 50 A Ordinary Shares, that A Shareholder may at its discretion, elect to receive 50 AA Ordinary Shares notwithstanding that the AA Ordinary Shares have a different nominal value to the A Ordinary Shares.
- 5.3.6 It is a principle of these Articles that unless a special resolution is passed to the contrary, no shareholder shall be diluted by the operation of an Emergency Issue without having had the opportunity to avoid such dilution whether by participating in the Emergency Issue itself, or exercising their rights under the Catch Up Offer within the requisite timeframes.
- 5.3.7 Any Equity Shares offered to Investors pursuant to this Article 5.3 may be taken up by any person to whom an Investor may transfer Shares pursuant to Article 10.2.
- 5.4 Subject to this Article 5.4, and Articles 5.1, 5.2 and 5.3, for the purposes of sections 549 and 551 of the CA 2006, the shares in the capital of the Company shall be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper, provided that:
  - 5.4.1 no shares shall be issued at a discount to their nominal value;
  - 5.4.2 the allotment or grant to that person must be approved in writing by the Investor Director;
  - 5.4.3 no shares to which Articles 5.1 applies shall be issued more than three months after the expiry of the period for acceptance of the last offer of such shares made under

Article 5.1 unless the procedure set out in Article 5.1 is repeated in respect of such shares (and so that the time limit set out in this Article 5.4.3 shall apply equally to any repetition of that procedure);

- 5.4.4 no shares shall be issued at a price less than that at which they were offered to the Members in accordance with Article 5.1 and if the Directors are proposing to issue such shares wholly or partly for a non-cash consideration the cash equivalent of such consideration for the purposes of this sub-paragraph shall be as reasonably determined by the Auditors who shall act as experts and not as arbitrators and whose determination shall be final and binding on the Company and each of its members. For the avoidance of doubt this Article 5.4.4 shall not apply to the issue of any shares pursuant to Employee Options or pursuant to any Investment Agreement;
- 5.4.5 no Equity Shares shall be allotted to any person who is not already a party to any Investment Agreement unless that person has first executed and delivered to the Company a Deed of Adherence or unless it is otherwise agreed by the Board and the Investor Majority that a Deed of Adherence is not required;
- 5.4.6 no Shares shall be allotted to any employee, director, prospective employee or prospective director unless such person has entered into a joint section 431 ITEPA election with the Company or unless this requirement is waived by the Board acting with the consent of the Investor Director.
- 5.5 The provisions of Section 561(1) and 562(1) to (6) inclusive and 568(3) CA 2006 shall not apply to the allotment of equity securities made by the Company.
- 5.6 Any Investor shall be entitled to offer any right (in whole or in part) under this Article 5 to subscribe for Shares to any person to whom such Investor would be permitted to transfer its shares under Article 10.2.
- 6. **VARIATION OF CLASS RIGHTS**
- 6.1 Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class may be varied or abrogated, either whilst the Company is a going concern or during or in contemplation of a winding-up:
  - 6.1.1 in the case of the A Ordinary Shareholders with the consent in writing of the Investor Director appointed or with the sanction of an ordinary resolution passed at a separate meeting of the holders of the A Ordinary Shares;
  - 6.1.2 in the case of the AA Ordinary Shareholders with the consent in writing of the Investor Director appointed or with the sanction of an ordinary resolution passed at a separate meeting of the holders of the AA Ordinary Shares;
  - 6.1.3 in the case of the Preference Shareholders, with the consent in writing of the Investor Director or with the sanction of an ordinary resolution passed at a separate meeting of the holders of the Preference Shares; or
  - 6.1.4 in the case of any class of Equity Shares other than the A Ordinary Shares and AA Ordinary Shares with the sanction of an ordinary resolution passed at a separate meeting of the holders of the applicable class of Equity Shares.
- 6.2 To every such separate meeting all the provisions of these Articles relating to general meetings of the Company shall apply (mutatis mutandis) except that:
  - 6.2.1 the necessary quorum shall be at least one person holding or representing by proxy at

least one-third in nominal amount of the issued shares of the class, but so that at any adjourned meeting of such holders at which such a quorum is not present the holder or holders present shall be a quorum; and

6.2.2 the holders of shares of the class in question shall on a poll have one vote in respect of every share of the class held by them respectively

6.3 Without prejudice to the generality of this Article, it is a term of issue of the A Ordinary Shares, AA Ordinary Shares and the Preference Shares that the following events shall be deemed to be an attempted variation of the rights attaching to such shares and shall therefore require class consent in accordance with Article 6.1:

6.3.1 any resolution to wind-up the Company or any subsidiary of the Company;

6.3.2 any increase in the issued capital of the Company, save for the Employee Options or pursuant to the Investment Agreement or pursuant to Article 5.3;

6.3.3 any reduction (other than pursuant to a Purchase of Own Shares Option) or subdivision or consolidation of the issued share capital of the Company;

6.3.4 the grant by the Company of a right to subscribe for or to convert securities into shares in the capital of the Company, save for Employee Options or pursuant to the Investment Agreement or as agreed by the Remuneration Committee;

6.3.5 the redemption of any of the Company's shares or the entering into of a contract by the Company to purchase any of its shares other than pursuant to a Purchase of Own Shares Option;

6.3.6 any alteration of the Company's memorandum or articles of association; or

6.3.7 registration as a public company.

## 7. LIEN

7.1 The Company shall have a first and paramount lien on every share, which is not fully paid, for all and any indebtedness of any holder thereof to the Company (whether a sole holder or one of two or more joint holders) in respect of the shares concerned.

7.2 The Company's lien over a share takes priority over any third party's interest in that share and extends to any dividend or other money payable by the Company in respect of that share, and (if the lien is enforced and the share is sold by the Company) the proceeds of sale of that share.

7.3 The Directors (with the consent of the Investor Director) may at any time decide that a Share, which is or would otherwise be subject to the Company's lien will not be subject to it, either wholly or in part.

## 8. REGISTRATION OF TRANSFERS

8.1 Subject to Article 8.2, the Directors shall be required to register promptly any transfer of Shares made in accordance with the provisions of these Articles provided in all cases where the transferee is not already a party to any Investment Agreement, a Deed of Adherence duly executed by all relevant parties is laid before the meeting at which the transfer is to be approved (unless such requirement has been waived by the Board acting with the consent of the Investor Director), but shall not register any transfer of shares otherwise.

8.2 The Directors may refuse to register a transfer of a Share:

- 8.2.1 which is not fully paid up (as to nominal value or premium) and a transfer of a share on which the Company has a lien;
  - 8.2.2 if it is in favour of more than four transferees;
  - 8.2.3 unless it is lodged at the office or such other place as the Directors may determine and is accompanied by the certificate for the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.
- 8.3 In addition the Directors may refuse to register a transfer of a Share to a bankrupt, a minor or a person of unsound mind.
9. **TRANSFERS PURSUANT TO OFFERS MADE UPON A CHANGE OF CONTROL OR WITH INVESTOR MAJORITY CONSENT**
- 9.1 Subject to the provisions of Article 10, any Shares may at any time be transferred by any Member:
- 9.1.1 pursuant to acceptance of any offer made to that Member under the requirements of Article 15 (Tag Along);
  - 9.1.2 pursuant to Article 10, Article 11, Article 12, Article 16; or
  - 9.1.3 with the consent of the Shareholders by special resolution, which shall include an Investor Majority.
10. **PERMITTED TRANSFERS**
- 10.1 Subject to the provisions of Article 8, any Share (other than any Equity Share in respect of which the holder shall have been required by the Directors under these Articles to give a Transfer Notice or shall be deemed to have given a Transfer Notice) may at any time be transferred:
- 10.1.1 between the Executives, with the consent of the Investor Director (such consent not to be unreasonably withheld);
  - 10.1.2 by an individual Member (the “**Original Transferor**”) (subject to the provisions of Article 12 in respect of Employee Members) to trustees to be held on Family Trusts of such a Member, or to a Family Member of such Member, but the voting rights of such shares shall be exercised, in the case of any B Ordinary Share or C Ordinary Shares, by the Original Transferor;
  - 10.1.3 in the event of the death of any Member (subject to the provisions of Article 12 in respect of Employee Members) by his personal representative to trustees to be held on Family Trusts of such Member, or to a Family Member of such Member;
  - 10.1.4 by any Member, being a company, to a Member of the same Group as such Member, save that the transferee can only hold the Shares for so long as it is a member of the same Group as the original Member and on the transferee ceasing to be a member of that Group the transferee will transfer the Shares back to the original Member.
- 10.2 Any Investor may transfer any Shares to another party who is (i) a venture capital trust, venture capitalist, investment trust, investment company, limited partnership, EIS Fund (approved or unapproved) or such like entity manager or advised by the same investment manager or adviser, (ii) an Investor or (iii) an acquirer of an Investor or (iv) the fund manager/adviser to an Investor or an employee, member or partner of the fund manager/adviser to an Investor.
- 10.3 Any Shares held by a nominee for their beneficial owner (“**the Beneficial Owner**”) may be

transferred by the nominee to the Beneficial Owner or to another person shown to the reasonable satisfaction of the Directors to be a nominee for the Beneficial Owner only. Any Shares may be transferred by the Beneficial Owner to a person shown to the reasonable satisfaction of the Directors to be a nominee for the Beneficial Owner only. Where any person to whom any Shares have been transferred as a nominee ceases to hold such Shares as nominee for the Beneficial Owner only he shall forthwith transfer such Shares to the Beneficial Owner or to another person shown to the reasonable satisfaction of the Directors to be a nominee for the Beneficial Owner only and in default of doing so he shall be deemed to have given a Transfer Notice in respect of all such Shares.

10.4 Where Shares have been transferred to trustees under Article 10.1.1 or 10.1.3, on any change of trustees, the Relevant Shares (as defined below) may be transferred to the trustees for the time being of the trust concerned.

10.5 In the event that:

10.5.1 a Transferee Company holding Relevant Shares ceases to be a Member of the same Group as the Transferor Company from which (whether directly or by a series of transfers under Article 10.1.4) the Relevant Shares were derived; or

10.5.2 any Relevant Shares held by trustees cease to be held on a Family Trust of the Member;

the Member holding the Shares shall notify the Directors in writing that such an event has occurred and such Member shall be bound, if and when required in writing by the Directors to do so, to give a Transfer Notice in respect of the Relevant Shares (but without specifying a proposed Prescribed Price (so that the Prescribed Price shall be determined pursuant to Article 11.4 and Article 11.5) and so that the right of revocation conferred by Article 11.10 shall not apply).

For this purpose the expression "the Relevant Shares" means (so far as the same remain held by the trustees of a Family Trust or by any Transferee Company) the shares originally transferred to the trustees or to the Transferee Company and any additional shares issued to such trustees or Transferee Company by way of a capitalisation or acquired by such trustees or Transferee Company in exercise of any right or option granted or arising by virtue of the holding of the Relevant Shares or any of them or the membership thereby conferred.

## 11. PRE-EMPTION RIGHTS

11.1 The right to transfer Shares or any interest therein shall be subject to the following restrictions, save that such restrictions shall not apply to any transfer of Shares pursuant to Article 9.1.3, Article 10, Article 12, the acceptance of an offer made pursuant to Article 15 (Tag Along) or to the proposed sale pursuant to Article 16.1 of the Shares for the time being in issue where the Vendors (as defined in Article 16 (Drag Along)) comply with their obligations under Article 16.

11.2 Before transferring or disposing of any Shares (or any interest in Shares) the Proposing Transferor shall serve a notice on the Company specifying the number and class of Shares in question and the proposed price for such Shares, and in the Transfer Notice the Proposing Transferor shall nominate the Company as his agent for the sale of those Shares at the Prescribed Price, to any Member or Members. A Transfer Notice shall not be served by a Member who is an employee of the Company at the time of the Transfer Notice being served without the consent of the Investor Director. Except as provided in this Article, a Transfer Notice once given or deemed to be given shall not be revocable except with the consent of the Directors (which shall include the consent of the Investor Director or, if none is appointed, an Investor Majority).

11.3 A Transfer Notice may comprise Shares of more than one class and shall, if the Proposing Transferor has received any offer to purchase Shares (whether or not an offer capable of becoming legally binding upon acceptance) within the period of three months prior to service of



the Transfer Notice, give the name of the offeror, the number and class of Shares concerned and the price offered in respect of each such Equity Share. A Transfer Notice may not be given by an Excluded Person unless required by the Directors under Article 10.5, or Article 16.

- 11.4 The Directors will endeavour to agree the Prescribed Price with the Proposing Transferor. If the Directors fail to agree the Prescribed Price with the Proposing Transferor within 14 days of receipt of the Transfer Notice by the Company or, as applicable, a Transfer Notice having been deemed to have been served, the Directors shall request the Auditors (or if they are unable or decline to act, an independent firm of chartered accountants appointed by the Directors or, in the event of *disagreement appointed on the application of the Proposing Transferor or by the Directors by the President of the Institute of Chartered Accountants in England & Wales and the provisions relating to Auditors in this Article 11 shall apply to such independent firm of chartered accountants (acting as experts and not as arbitrators)) to certify the Prescribed Price.*
- 11.5 The Auditors shall (acting as experts and not arbitrators) within 14 days of such a request certify to the Company the Prescribed Price, being the value of each Sale Share (or, where appropriate of each Sale Share of each class) calculated on the following basis:
- 11.5.1 by determining the sum which a willing purchaser would offer to a willing vendor for all the issued Shares;
  - 11.5.2 if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
  - 11.5.3 that the Sale Shares are capable of being transferred without restriction;
  - 11.5.4 valuing the Sale Shares as a rateable proportion of the total value of all the issued Shares without any premium or discount being attributable to the percentage of the issued Shares which they represent;
  - 11.5.5 reflect any other factors which the Auditors reasonably believe should be taken into account provided that such factors shall not override the above assumption and bases; and
  - 11.5.6 by dividing the resultant figure between the holders of Shares by applying the provisions of Article 4.2 as if that sum were the proceeds of a Sale.
- 11.6 The Auditors' certificate as to the Prescribed Price shall be final and binding, save in the event of manifest error.
- 11.7 Within 21 days following receipt of the Transfer Notice or (where relevant) the date on which the Transfer Notice is deemed to have been given or where the Prescribed Price is certified by the Auditors the date of certification of the Prescribed Price, the Company shall offer the Sale Shares to each Member (other than the Proposing Transferor and any Excluded Person) in accordance with the provisions of Article 11.8 for purchase at the Prescribed Price. All offers shall be made by notice in writing and state a time (being between 30 and 42 days inclusive following the date of such notice) within which the offer must be accepted or, in default, will be deemed to have been declined ("**Acceptance Period**"). A copy of such offer shall at the same time be sent by the Company to the Proposing Transferor.
- 11.8 If the Sale Shares are:
- 11.8.1 A Ordinary Shares and/or AA Ordinary Shares, the Company shall offer such Sale Shares:
    - (a) firstly to the A Ordinary Shareholders and/or AA Ordinary Shareholders, and

in the case of each Investor's allocation it shall be entitled to nominate any other entity which is managed by the same fund manager or investment adviser as the Investor; and

- (b) secondly to the B Ordinary Shareholders *pari passu* in proportion to the number of B Ordinary Shares held; and
- (c) thirdly to the C Ordinary Shareholders *pari passu* and in proportion to the number of C Ordinary Shares held.

11.8.2 B Ordinary Shares or C Ordinary Shares (held by an Employee Member), the Company shall offer such Sale Shares:

- (a) firstly, to the Company to buy back under chapter VII of Part V of the CA 2006 to the extent that it is lawfully able to do so ("**Purchase of Own Share Option**");
- (b) secondly, to either:
  - (i) an Employee Trust or such other trust as approved by the Remuneration Committee to hold the Shares until an incoming employee or director joins the Company, and the Remuneration Committee resolves such Sale Shares shall be transferred to that person; or
  - (ii) to an incoming or current employee or director where the Remuneration Committee resolves that such Sale Shares shall be transferred to that person;
- (c) thirdly, to the B Ordinary Shareholders *pari passu* and in proportion to the number of B Ordinary Shares held;
- (d) fourthly, to the C Ordinary Shareholders *pari passu* and in proportion to the number of C Ordinary Shares held; and
- (e) thereafter to the holders of A Ordinary Shares and/or AA Ordinary Shares *pari passu* (as if the shares constituted one class of shares) in proportion to the number of A Ordinary Shares and/or AA Ordinary Shares held by them respectively.

11.9 The Sale Shares shall be offered on the following basis:

- 11.9.1 any Member to whom the Sale Shares are offered may accept all or some only of the Sale Shares offered to him, and shall be invited to indicate whether, if he accepts all such Sale Shares, he wishes to purchase any Sale Shares which other Members decline to accept ("**Excess Shares**") and, if so, the maximum number of Excess Shares which he wishes to purchase;
- 11.9.2 any Excess Shares shall be allocated between the Members who have indicated that they wish to purchase Excess Shares *pro rata* to the proportion of the total number of Shares held by those Members but so that no Member shall be required or entitled to receive more than the maximum number indicated by him pursuant to Article 11.9.1;
- 11.9.3 subject to the provisions of Article 11.7, the Purchasers shall be bound to purchase the Sale Shares properly allocated to them at the Prescribed Price in accordance with the provisions of Article 11.

11.10 Not later than 7 days following the expiration of the Acceptance Period the Company shall give

written notice to the Proposing Transferor stating:

- 11.10.1 if it is the case, that no Member has sought to purchase any of the Sale Shares; or, otherwise
- 11.10.2 the number of Sale Shares which Members have sought to purchase, giving the name and address of each Purchaser and the number of Sale Shares to be purchased by him.
- 11.11 If within the Acceptance Period, Purchasers have been found for only some of the Sale Shares or if no Purchaser has been found for any of the Sale Shares, the Proposing Transferor may within 7 days of service on him of notice under this Article revoke his Transfer Notice by written notice to the Company.
- 11.12 If the Proposing Transferor is given notice under Article 11.10 (and subject to his not revoking his Transfer Notice in accordance with Article 11.11) he shall be bound on payment of the Prescribed Price to transfer the Sale Shares in question to the respective Purchasers. The sales and purchases shall be completed at the registered office of the Company during normal business hours on the first Business Day after the expiry of 14 days following the date of service of notice by the Company under Article 11.10.
- 11.13 If a Proposing Transferor fails to transfer any Sale Shares to a Purchaser after becoming bound to do so, the Directors may authorise any person to execute on behalf of and as attorney for the Proposing Transferor any necessary instruments of transfer and shall register the Purchaser as the holder of the relevant Sale Shares. The Company's receipt of the purchase money shall be a good discharge to the Purchaser and the Company shall thereafter hold the purchase money on trust for the Proposing Transferor. After the name of the Purchaser has been entered in the Register of Members in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.
- 11.14 If the Company fails before the end of the Acceptance Period to find a Purchaser or Purchasers for any of the Sale Shares, the Proposing Transferor may (subject to Articles 8 and 11.16) sell all or any of the Sale Shares to any third party/parties.
- 11.15 If before the end of the Acceptance Period the Company finds a Purchaser or Purchasers for some (but not all) of the Sale Shares and serves notice accordingly under Article 11.10 the Proposing Transferor may (subject to Articles 8 and 11.16) sell all or any of the Sale Shares for which no Purchaser has been found to any third party/parties unless he revokes his Transfer Notice pursuant to Article 11.10 in which case he may sell all (but not some only) of the Sale Shares to any third party/parties.
- 11.16 The right of the Proposing Transferor to sell Sale Shares pursuant to Article 11.14 or Article 11.15 shall be subject to the following restrictions:
  - 11.16.1 Sale Shares may not be sold after the expiry of three months after the date on which notice is given by the Company under Article 11.10 save that the Board (with the consent of the Investor Director, or if none is appointed, an Investor Majority) may extend this period for another three months;
  - 11.16.2 Sale Shares must be sold on a bona fide sale at a price not less than the Prescribed Price and without any deduction, rebate or allowance whatsoever to the Purchaser;
  - 11.16.3 the provisions of Article 15 (if applicable); and
  - 11.16.4 no Shares may be transferred, or disposed of, pursuant to this Article 11.16 by any person who is an Excluded Person unless the Directors resolve to approve such transfer or disposal.

- 11.17 The costs of the Auditors shall be borne by the Company.
- 11.18 The restrictions imposed by this Article 11 may be waived in relation to any proposed transfer of Shares with the consent of all Members who, but for such waiver, would or might have been entitled to have such shares offered to them in accordance with Articles 11.8 (as the context shall require).
- 11.19 For the purposes of Article 11.16.2 and calculating whether or not a price to be paid for the Sale Shares is more or less than the Prescribed Price, then the cash value of any non-cash consideration shall be that agreed between the Proposing Transferor and the Company, or if the Proposing Transferor and the Company fail to agree such cash value within 15 Business Days following the earlier of any request by the Proposing Transferor to so value any non-cash consideration and the submission to the Company of the relevant stock transfer form(s) relating to a transfer of the Sale Shares for non-cash consideration, the cash value shall be the amount certified as such as at the date of the earlier of the request for valuation and the purported transfer of the Sale Shares at the request of the Directors, by the Auditors (acting as experts and not arbitrators). Their certificate shall be final and binding.
- 11.20 Any Investor shall be entitled to offer any right (in whole or in part) under this Article 11 to subscribe for or acquire Shares to any person to whom such Investor would be permitted to transfer its shares under Article 10.2.
- 11.21 If the Directors wish to take up the Purchase of Own Shares Option, the Directors shall proceed to convene as soon as practicable a general meeting or circulate a written resolution to approve the purchase of the Shares in question on the terms specified in this Article 11 and, if required, to approve a payment in respect of the purchase otherwise than out of distributable profits or the proceeds of a fresh issue of Shares, and the Directors shall ensure that the other formalities required by the CA 2006 are expeditiously complied with. If the Company fails to complete the purchase within 42 days after the date on which the Directors resolve to take up the purchase, or the Members fail to pass the relevant resolution to approve the Purchase of Own Shares Option within that period the Shares in question shall be offered in accordance with the remaining provisions of Article 11.8. as if the Company had declined to take up the Purchase of Own Shares Option.
12. **MANDATORY TRANSFERS**
- 12.1 A person entitled to a share in consequence of the bankruptcy, receivership or liquidation of a Member shall be bound if required in writing to do so by the Directors or the Investor Director to give a Transfer Notice in respect of all the Shares then registered in the name of the Member in bankruptcy, receivership, or liquidation, within 2 weeks of receipt of the relevant request.
- 12.2 A Director shall be entitled to give a Transfer Notice in respect of all the Shares then registered in the name of the Member in bankruptcy.
- 12.3 If a Transfer Notice is given or is deemed to have been given pursuant to Article 12.1 or Article 12.2 (as the context shall require) the Sale Shares shall be offered in accordance with the provisions of Article 11.8 or 11.8.2 (as the context shall require) and in such circumstances the Sale Shares shall be transferred at the Prescribed Price.
- 12.4 If any person who is an Employee Member ceases to be an Employee Member (and for this purpose, where that person is re-appointed as a director pursuant to any appointment rights under the Investment Agreement, that re-appointment shall be disregarded) then he (and, any person to whom he has directly or indirectly transferred Shares pursuant to Article 10.1) shall be deemed to have given a Transfer Notice on the date on which they so ceased to be an Employee Member in respect of:

**12.4.1 where such Employee Member is an Executive and is:**

- (a) a Good Leaver, 25% of the Shares then registered in the name of the Employee Member (and any person to whom he has directly or indirectly transferred Shares pursuant to Article 10.1 as at the Mandatory Transfer Date) and 100% of all Shares which may be capable of being issued as the result of any options granted to the Employee Member and that have vested in the Employee Member as at the Mandatory Transfer Date;
- (b) a Bad Leaver, 100% of the Shares then registered in the name of the Employee Member (and any person to whom he has directly or indirectly transferred Shares pursuant to Article 10.1 as at the Mandatory Transfer Date) and 100% of all Shares which may be capable of being issued as the result of any options granted to the Employee Member and that have vested in the Employee Member as at the Mandatory Transfer Date;
- (c) an Intermediate Leaver, [X]% the Shares then registered in the name of the Employee Member (and any person to whom he has directly or indirectly transferred Shares pursuant to Article 10.1 as at the Mandatory Transfer Date) and 100% of all Shares which may be capable of being issued as the result of any options granted to the Employee Member and that have vested in the Employee Member as at the Mandatory Transfer Date, where [X] will be calculated as follows:

$$X = 60 - ((35/1825) \times Y)$$
 Where: Y = the number of days elapsed from (and including) the Adoption Date up to (and including) the Mandatory Transfer Date PROVIDED that if the number of days elapsed is more than 1825, then Y shall be 1825

**12.4.2 where such Employee Member is not an Executive and is:**

- (a) a Good Leaver, 25% of the Shares then registered in the name of the Employee Member (and any person to whom he has directly or indirectly transferred Shares pursuant to Article 10.1 as at the Mandatory Transfer Date) and 100% of all Shares which may be capable of being issued as the result of any options granted to the Employee Member and that have vested in the Employee Member as at the Mandatory Transfer Date;
- (b) a Bad Leaver, 100% of the Shares then registered in the name of the Employee Member (and any person to whom he has directly or indirectly transferred Shares pursuant to Article 10.1 as at the Mandatory Transfer Date) and 100% of all Shares which may be capable of being issued as the result of any options granted to the Employee Member and that have vested in the Employee Member as at the Mandatory Transfer Date;
- (c) an Intermediate Leaver:
  - (i) [X]% of Pre Existing Option Shares then registered in the name of the Employee Member (and any person to whom he has directly or indirectly transferred Shares pursuant to Article 10.1 as at the Mandatory Transfer Date) where:  $X=60-((35/1825) \times Y)$  Where: Y = the number of days elapsed from (and including) the Adoption Date up to (and including) the Mandatory Transfer Date PROVIDED that if the number of days elapsed is more than 1825, then Y shall be 1825;

- (ii) 75% of the Shares then registered in the name of the Employee Member (and any person to whom he has directly or indirectly transferred Shares pursuant to Article 10.1 as at the Mandatory Transfer Date) , where such Shares are not Pre Existing Option Shares, and
- (iii) 100% of all Shares which may be capable of being issued as the result of any options granted to the Employee Member and that have vested in the Employee Member as at the Mandatory Transfer Date,

12.5 Notwithstanding any other provision of these Articles, the Prescribed Price for the Sale Shares:

- 12.5.1 under Article 12.4.1(a) shall be FMV;
- 12.5.2 under Article 12.4.1(b) shall be the lower of FMV and Issue Price;
- 12.5.3 under Article 12.4.1(c) shall be FMV;
- 12.5.4 under Article 12.4.2(a) shall be FMV;
- 12.5.5 under Article 12.4.2(b) shall be the lower of FMV and Issue Price; and
- 12.5.6 under Article 12.4.2(c) shall be FMV.

12.6 If the Employee Member who is deemed to have given the Transfer Notice fails to complete the sale of the Shares in question to the Company, the Directors may authorise any person to execute on behalf of and as attorney for the Employee Member who is deemed to have given the Transfer Notice an appropriate contract and, in the absence of the relative share certificate, any indemnity in respect thereof requested by the Directors and may deliver it or them on his behalf. The Company shall send a cheque in respect of the Prescribed Price to the Employee Member who is deemed to have given the Transfer Notice at his registered address and after appropriate entries have been made in the Register of Members in purported exercise of this power, the validity of the proceedings shall not be questioned by any person.

12.7 As from the point in time when any Employee Member (who is not an Executive) becomes a Leaver, he shall, before the transfer provisions of this Article 12 have been operated and notwithstanding any other provision of these Articles, cease to have the right to attend or to vote at general meetings or to vote on a written resolution (unless otherwise determined by the Directors (with the consent of the Investor Director) and all voting rights conferred by their Shares (including, for the avoidance of doubt, the balance of any Shares retained by them) shall be exercised by the Board (with the consent of the Investor Director) provided always that any Sale Shares purchased from a Member shall have their voting rights re-instated on a transfer of such Sale Shares.

12.8 If a former Employee Member (or his personal representatives) acquires Shares pursuant to an employee share option scheme he shall be deemed to have given a Transfer Notice pursuant to the provisions of Article 12.3 at the acquisition date of the Shares (or such later date as the Board determines in writing with the consent of the Investor Director).

12.9 If an Employee Member ceases to be an Employee at any time and is a Good Leaver they shall, subject to the consent of the Investor Director (not to be unreasonably withheld) be entitled to elect to sell a greater percentage of their shareholding than that set out in Article 12.4.1 and the prescribed price in respect of such additional shares to be sold shall be FMV.

### 13. EVIDENCE OF COMPLIANCE

In any case where the Directors require a Transfer Notice to be given and it is not duly given within

a period of two weeks of notice being given requiring the Transfer Notice to be given, a Transfer Notice in respect of the Shares in question shall be deemed to have been given at the expiration of that period. Any Transfer Notice deemed to have been given or required to be given under any provision of these Articles shall not be capable of revocation and (notwithstanding any of the provisions of these Articles) shall extend not just to the Shares registered in the name of the Member concerned but to any person Connected to him and/or to whom he has directly or indirectly transferred Shares pursuant to Article 10.1.

**14. EVIDENCE OF AUTHORISATION**

For the purpose of ensuring that a transfer of Shares is duly authorised under these Articles or that no circumstances have arisen requiring a Transfer Notice to be given, the Directors may require any Member or the personal representatives or trustee in bankruptcy, receiver or liquidator of any Member or any person named as transferee in any instrument of transfer lodged for registration to provide to the Company such information as the Directors reasonably think fit regarding any matter which they consider relevant. If such information is not provided to the reasonable satisfaction of the Directors within a reasonable time after request, the Directors shall be entitled to refuse to register the transfer in question or (in case no transfer is in question) to require by notice in writing that a Transfer Notice be given in respect of the Shares concerned. If the information discloses (in the reasonable opinion of the Directors) that a Transfer Notice ought to have been given in respect of any Shares the Directors may by notice in writing require that a Transfer Notice be given in respect of the Shares concerned.

**15. TAG ALONG**

**15.1** Notwithstanding the provisions of Article 10 no sale or transfer of the legal or beneficial interest in any Shares ("**the Relevant Transaction**") (other than one made pursuant to Article 9) may be made or validly registered if as a result of such sale or transfer a Relevant Interest is obtained by a person (or persons acting in concert) where such person(s) did not have a Relevant Interest immediately prior to the Relevant Transaction, unless the Proposing Transferor:

- 15.1.1** shall have procured a written offer complying with the provisions of Article 15.4 to have been made by the proposed transferee (or any person or persons acting in concert with it) ("**the Proposing Transferee**") to the holders of all the other issued Shares to acquire their entire holding of Shares (the "**Eligible Shareholders**"); and
- 15.1.2** shall have served a notice on the Eligible Shareholders in respect of such proposed offer (the "**Tag Notice**").

**15.2** The Tag Notice will specify:

- 15.2.1** that Eligible Shareholders are entitled to transfer all of their shareholdings to the Proposing Transferee;
- 15.2.2** the terms of sale to which the Eligible Shareholders are required to adhere and enclose copies of the tag along documents (if any) relating to the sale;
- 15.2.3** the identity of the proposed purchaser;
- 15.2.4** the Specified Price and/or type of consideration being offered (including non-cash consideration) for each class of Shares held by the Eligible Shareholders; and
- 15.2.5** the proposed place, date and time of completion.

**15.3** For the purpose of this Article 15:

- 15.3.1 the expression a "**Relevant Interest**" shall mean an interest in more than 50% of the Equity Shares in issue for the time being;
  - 15.3.2 the expressions "transfer" and "transferee" shall include respectively the renunciation of a renounceable letter of allotment and the renouncement under any such letter of allotment; and
  - 15.3.3 the expression "acting in concert" shall bear the meaning ascribed to it in the City Code on Take-overs and Mergers (as amended from time to time).
- 15.4 The offer referred to in Article 15.1 above shall be on terms that:
- 15.4.1 it will be open for acceptance in England and Wales for a period of at least 28 days following the making of the offer;
  - 15.4.2 each Member to whom it is made shall be entitled to receive for each of the Shares held by him a sum per Share equal to the Specified Price (or otherwise on the same terms for non-cash consideration where relevant);
  - 15.4.3 the purchase of any Shares in respect of which such offer is accepted shall be completed at the same time as the Relevant Transaction;
  - 15.4.4 and otherwise on the same terms for all members (and for this purpose any offer which provides for any warranties or indemnities (other than warranties as to title and capacity) or restrictive covenants from some, but not all, Members shall be deemed to comply with this Article 15.4);
  - 15.4.5 in the case of an offer made to an Investor, that offer must also provide for the immediate repayment of the Foresight Loan Notes in full with any interest thereon and the immediate repayment of the Issue Price of each Preference Share and any unpaid Preference Dividends.
- 15.5 The expression "**the Specified Price**" shall mean:
- 15.5.1 a price per Share which shall be determined by valuing the entire issued share capital of the Company ("**the Sale Value**") by reference to the aggregate of:
  - 15.5.2 the amount offered or paid or payable by the proposed transferee or transferees or his or their nominees respectively for each of the Shares comprised in the Relevant Interest to the holder or holders thereof or, if higher, the highest amount paid or payable for an Equity Share in any related or previous transaction within the 12 months preceding the offer by the same purchaser or any person acting in concert with the Proposing Transferee; and
  - 15.5.3 an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holder or holders of the Shares comprised in the Relevant Interest which, having regard to the substance of the transaction as a whole, can reasonably be regarded as an addition to the price paid or payable for the Relevant Interest (and, for the avoidance of doubt and without prejudice to the generality of the foregoing, any additional consideration which is linked to future profits, turnover or some other measure of the future performance of the Company shall be regarded as consideration which is an addition to the price paid or payable for the Relevant Interest); and
  - 15.5.4 the Specified Price which each Member shall be entitled to receive in respect of each Share held by him shall then be determined by applying the provisions of Article 4.2 as



if the Sale Value were the proceeds of a Sale.

- 15.6 Any disagreement as to the calculation of the Specified Price which each Member is entitled to receive in respect of each Share held by him for the purposes of this Article shall be referred to the Auditors or if a Member objects or they are unable to act or decline to act, an independent firm of chartered accountants appointed by the Directors, or in the event of disagreement, appointed on the application of the Proposing Transferor or the Directors by the President of the Institute of Chartered Accountants in England and Wales and the provisions relating to the Auditors in this Article 15 shall apply to such independent firm of chartered accountants (acting as experts and not arbitrators) whose decision shall be final and binding (in the absence of manifest error) and the costs of the Auditors shall be borne by the Company.

## 16. **DRAG ALONG**

### 16.1 If:

- 16.1.1 subject to Article 16.2, at any time one or more Members holding between them not less than 50% of the Company's voting rights for the time being in issue propose to sell the legal or beneficial interest in their entire holdings of Shares; or
- 16.1.2 on the fifth year anniversary of the adoption of these Articles, there has been no Exit, the holders of more than 50% of the A Ordinary Shares and AA Ordinary Shares, propose to sell the legal and beneficial interest in their entire holdings of Shares,

(in each case the "Vendors") on arms' length terms to a person with whom none of them is Connected or one or more such persons acting in concert (the "Offeror") then the Vendors acting pursuant to Article 16.1.1 or 16.1.2 shall have the right to require the holders of all other issued Shares in the Company (the "Called Shareholders") to sell and transfer their entire holdings of Shares (for the same consideration as the Vendors whether this be cash or non-cash consideration) to the Offeror (or as the Offeror shall direct) in accordance with this Article 16.1 (the "Drag Along Right") at a price (the "Drag Along Price") to be determined on the basis set out in Article 15.5 (or if the cash is non-cash consideration having a value equal to the Drag Along Price) and otherwise on the terms specified in Article 16 (as if the Vendors' proposed sale was a Relevant Transaction), provided that where any of the Investors are Called Shareholders, they may only be required to sell and transfer pursuant to an exercise of the Drag Along Right if, upon completion of the sale and transfer, the Foresight Loan Notes are repaid in full together with any accrued or unpaid interest thereon.

- 16.2 The Drag Along Right under Article 16.1.1 can only be exercised if the consent of an Investor Majority has been obtained.
- 16.3 The Drag Along Right may be exercised by the Vendors serving written notice to that effect (a "Drag Along Notice") on the Called Shareholders at any time before the transfer of the Vendors' Shares to the Offeror.
- 16.4 A Drag Along Notice shall specify that the Called Shareholders are, or will in accordance with this Article 16 be, required to sell and transfer their Shares to the Offeror on or about the date specified in the Drag Along Notice (which shall be not less than 7 days after the date of the Drag Along Notice or (if no such date is specified in the Drag Along Notice) on or about such date as the Vendors may subsequently specify by notice in writing to the Called Shareholders (which shall be not less than 7 days after the date of the Drag Along Notice).
- 16.5 A Drag Along Notice once given shall be irrevocable but shall lapse (and the obligations thereunder shall lapse) in the event that for any reason the Vendors do not transfer their entire holdings of Shares to the Offeror or the Offeror's nominee not later than the date specified as the date for completion of the sale and purchase of Shares pursuant to exercise of the Drag Along

Right.

16.6 Upon any person, following the giving of a Drag Along Notice, becoming a Member pursuant to the exercise of a pre-existing option to subscribe for or otherwise acquire Shares in the Company (a "**New Member**"), a Drag Along Notice shall be deemed to have been given to the New Member forthwith on the same terms as the previous Drag Along Notice and the New Member shall *thereupon be bound to sell and transfer all such Shares acquired by him to the Offeror or as the Offeror may direct* and the provisions of this Article shall apply mutatis mutandis to the New Member save that completion of the sale of such Shares shall take place forthwith upon the Drag Along Notice being deemed to have been given to the New Member.

16.7 *If the Vendors exercise the Drag Along Right, it shall not be necessary for them first to have given Transfer Notices pursuant to Article 11.*

#### 17. **PROCEEDINGS AT GENERAL MEETINGS**

17.1 Save as herein otherwise provided two Equity Shareholders present in person or by proxy (or, being a corporation, by representative), one of whom must be a proxy or duly authorised representative of the Investor holding A Ordinary Shares shall be a quorum.

17.2 If a quorum is not present within half an hour from the time appointed for a general meeting or ceases to be present the general meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine.

17.3 If at any adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall form a quorum.

17.4 In the case of any equality of votes at a general meeting, whether on a show of hands or on a poll, the chairman of the meeting shall not be entitled to a second or casting vote.

#### 18. **ALTERNATE DIRECTORS**

No meeting of the Directors shall be invalid because notice thereof or of any business to be transacted at that meeting was not given to any alternate director if his appointer attends such meeting.

#### 19. **APPOINTMENT AND RETIREMENT OF DIRECTORS**

19.1 The Directors shall not be required to retire by rotation.

19.2 The Company may by ordinary resolution appoint any person who is willing to act to be a director, either to fill a vacancy or as an additional director.

19.3 The Directors may appoint a person who is willing to act to be a Director, either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of directors.

#### 20. **PROCEEDINGS OF THE DIRECTORS**

20.1 The number of Directors shall not be less than two or more than eight.

20.2 Subject to Article 20.5, the quorum necessary for the transaction of business of the Directors shall be two, at least one of whom shall be an Investor Director if at the time of the meeting an Investor Director has been appointed.

- 20.3 At any meeting of the Directors each Director (or his alternate director) present at the meeting shall be entitled to one vote.
- 20.4 In the case of an equality of votes at any meeting of the Directors the chairman of such meeting shall not be entitled to a second or casting vote.
- 20.5 Any Director including an alternate Director may participate in a meeting of the Directors or a committee of the Directors of which he is a member by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in a meeting in this manner shall be deemed to constitute presence in person at such meeting and, subject to these Articles and the CA 2006, he shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be 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.
- 20.6 Model Article 9(3) and 9(4) shall be deleted and replaced with:
- “Notice of every meeting of the directors shall be given to each director and his alternate, including directors and alternate directors who may for the time being be absent from the United Kingdom and have given the Company an address within the United Kingdom or an e-mail address or a facsimile number outside the United Kingdom for service”.
- 21. INVESTOR DIRECTOR**
- 21.1 Notwithstanding any other provisions of these Articles, so long as the Investors or any of them are holders(s) of any Share(s) in the Company, they shall have the right (acting by an Investor Majority) to appoint one person as a Director of the Company (“Investor Director”) and subject to having consulted with Executives, and in the case of the first appointment, subject to Article 21.2 below, one person as a Director and chairman of the Company (“Chairman”) and, subject to having consulted with the Executives, to remove from office any person so appointed and (subject to such removal and having consulted with the Executives) to appoint another person in his place.
- 21.2 The first Chairman appointment shall be mutually agreed between the Investors (acting by an Investor Majority) and the Executives, so long as such appointment is agreed within 6 months of Completion (as defined in the Investment Agreement), after which the right to make the initial Chairman’s appointment shall be at the sole discretion of the Investors.
- 21.3 An Investor Director shall not be required to hold any Shares.
- 21.4 Any appointment or removal of an Investor Director or Chairman shall be by notice in writing to the Company which will take effect on delivery at the registered office of the Company or at any meeting of the Board.
- 21.5 For so long as the Investors are the holders of any Shares, on any resolution to remove an Investor Director the Shares held by the A Ordinary Shareholders who appointed such director shall together carry at least one vote in excess of 75% of the votes exercisable in respect of that resolution at the general meeting at which such resolution is to be proposed and if any such director is removed pursuant to Section 168 of the CA 2006 the A Ordinary Shareholders who appointed such director may reappoint him or any other person as an Investor Director.
- 22. DIRECTORS’ CONFLICTS OF INTERESTS**
- 22.1 If a proposed decision of the Directors is concerned with an actual or proposed transaction or arrangement with the Company in which a Director is in any way directly or indirectly interested, that Director shall be counted as participating in the decision making process for quorum and voting purposes provided that the relevant interest either:

- 22.1.1 has been duly declared in accordance with section 177 or section 182 CA 2006, as the case may require, or
- 22.1.2 is not required by the terms of either of those sections to be declared.
- 22.2 So long as the relevant interest falls within Article 22.1 or 22.3, a Director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction with the Company:
  - 22.2.1 may be a party to, or otherwise interest in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
  - 22.2.2 shall be entitled to vote at a meeting of Directors (or of a committee of the Directors) or participate in any unanimous decision, in respect of any such matter or proposed matter in which he is interested;
  - 22.2.3 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; and
  - 22.2.4 may be a Director, or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested.
- 22.3 The Directors are hereby empowered for the purposes of section 175 of the CA 2006 to authorise any Conflict Situation that may arise and to amend or vary any such authorisation so given. Any such authorisation, amendment or revocation shall be given by resolution of the directors made in accordance with these Articles and, in the case of such authorisation, that section. The Directors may give any such authorisation subject to such terms as they shall consider appropriate and reasonable in the circumstances.
- 22.4 Authorisation is given by each Member on the terms of these Articles to each director in respect of any Conflict Situation that exists as at the Adoption Date or that subsequently arises because (in either case) the director is or becomes a shareholder, investor or other participant in, lender to, guarantor, director, officer, manager or employee of, or otherwise in any other way interested or concerned in, any member of the Group ("**Group Conflict Authorisation**"). The terms applicable to the Group Conflict Authorisation ("**Group Conflict Authorisation Terms**") are automatically set by this Article 22.4 so that the director concerned:
  - 22.4.1 is not obliged to disclose to the Company information that is confidential to a third party obtained by him (other than in his capacity as a director of the Company or as its employee or agent or, if the directors so decide, in any other capacity that would otherwise oblige him to disclose it to the Company) in any situation to which the Group Conflict Authorisation applies, nor to use any such information directly or indirectly for the benefit of the Company or in performing his duties as a director of the Company, in circumstances where to do so would amount to a breach of a duty of confidence owed to that third party; and
  - 22.4.2 may (but will be under no obligation to):
    - (a) absent himself from the discussions of, and/or the making of decisions;
    - (b) make arrangements not to receive documents and information, relating to the Conflict Situation concerned,

and the Company will not treat anything done (or omitted to be done) by the director concerned in accordance with the Group Conflict Authorisation Terms as a breach by him of his duties under sections 172 to 174 of the CA 2006.

22.5 For the purposes of sections 175 and 180(4) of the CA 2006 and for all other purposes, it is acknowledged that an Investor Director may be or become subject to a Conflict Situation or Conflict Situations as a result of his also being or having been or being party to an agreement or understanding or circumstances under which he may become an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or a director or indirect investor in and/or otherwise commercially involved with or economically interested in any of the following:

22.5.1 an Investor; and/or

22.5.2 any Investor affiliate, which for these purposes means any person who or which, as regards any Investor or any other Investor affiliate of that Investor:

22.5.3 a company or entity which is a member of the Investor Group; and/or

22.5.4 is an investment manager or investment adviser to or of it and/or another Investor affiliate; and/or

22.5.5 is a Person in which the Investor and/or any Investor affiliated may have or acquire a direct or indirect economic interest, including without limitation any portfolio company investee; and/or

22.5.6 controls or is controlled, managed, advised (in an investment adviser capacity) or promoted by the Investor and/or such Investor affiliate; and/or

22.5.7 a trustee, manager, beneficiary, shareholder, partner, unit holder or other financier or any participant in or of it and/or that Investor affiliate, and/or

22.5.8 any carried interest or similar incentive arrangement associated with any Person or arrangement referred to in paragraph 22.5.1 or 22.5.2 of this Article,

where for these purposes "Person" shall mean any individual, body corporate, fund, trust, partnership or other entity whether or not having separate legal status.

22.5.9 An Investor Director's duties to the Company arising from his holding office as director shall not be breached or infringed as a result of any Conflict Situation envisaged by Article 22.4 and he shall be entitled to:

(a) receive notice (including any relevant board papers) of, attend, count in the quorum towards and vote at board meeting relating in any way to, and deal generally with, matters concerning, connected with or arising from the Conflict Situation concerned; and

(b) keep confidential and not disclose to the Company any information which comes into his possession as a result of such Conflict Situation where such information is confidential as regards any third party.

## 23. STEP IN RIGHTS

23.1 Subject to Article 23.2, if:

23.1.1 any one or a combination of the Executives (as defined in any Investment Agreement) are in material breach of any of their obligations in any Investment Agreement, their

service agreements or these articles of association, (which in any case, if capable of remedy has not been remedied within 30 days of the Executives receiving notice to remedy the same from the Investor Director), the consequences of which may be (in the reasonable opinion of the Investor Director) to the material detriment of the Company; or

- 23.1.2 the cash assets of the Group (as derived from the most recent management accounts of the Group at any given time) fall to less than £200,000, and for the purposes of this Article 23 the cash assets of the Group shall mean the aggregate of all positive and negative balances which the Company has on any and all of the bank accounts in its sole name and under its control and shall include the amount of any undrawn overdraft facility or other committed but undrawn loan facility available to the Group,

then the Investor Director shall serve notice on the Company that the provisions of this Article 23 have been implemented and, for so long as the relevant circumstances are continuing, the Investor Director alone shall count as a quorum at any meeting of Directors and shall be entitled at any meeting of Directors to cast such number of votes which exceeds the votes cast for a resolution to which the Investor Director is opposed or which exceeds the votes cast against a resolution which the Investor Director has proposed.

- 23.2 The rights granted to the Investor Director pursuant to Article 23.1 shall automatically and immediately cease with effect from such time as the circumstances giving rise to such right ceases to be continuing and/or the relevant breach has been remedied.

#### 24. **CONSENT MATTERS**

- 24.1 Where the consent of an Investor Majority is required in these Articles, such consent may be given by the Investor Director or such other person as is nominated by an Investor Majority provided that such consent is given in writing.

- 24.2 Where the consent of the "Investor Director" is referred to in these Articles, if there is no Investor Director appointed, such consent may instead be given by an Investor Majority.

#### 25. **DIRECTORS' BORROWING POWERS**

- 25.1 Subject as hereinafter provided, and as set out in any Investment Agreement, the Directors may exercise all the powers of the Company (whether express or implied) of borrowing or securing the payment of money, of guaranteeing the payment of money and the fulfilment of obligations and the performance of contracts, and of mortgaging or charging the undertaking, property, assets and uncalled capital of the Company and (subject to Section 551 of the CA 2006) of issuing debentures.

#### 26. **INDEMNITY**

- 26.1 Subject to the provisions of the CA 2006 every Director (including an alternate Director) or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the lawful execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court, and no Director (including an alternate Director) or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the lawful execution of the duties of his office or in relation thereto.

- 26.2 The Directors shall have power to purchase and maintain for any Director (including an alternate Director), officer or auditor of the Company, insurance against any liability which may attach to

him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a Director (including as an alternate Director), officer or auditor.

- 26.3 The Directors may authorise the directors of companies within the same group of companies as the Company to purchase and maintain insurance at the expense of the Company for the benefit of any director (including an alternate director), other officer or auditor of such company in respect of such liability, loss or expenditure as is referred to in Article 26.2.